

***Public Law 99-509**
99th Congress

An Act

Oct. 21, 1986
 [H.R. 5300]

To provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987.

Omnibus Budget
 Reconciliation
 Act of 1986.

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 “Omnibus Budget Reconciliation Act of 1986”.

(b) **TABLE OF CONTENTS.**—

Title I. Agriculture programs.

Title II. Banking and housing programs.

Title III. Energy and environmental programs.

Title IV. Transportation and related programs.

Title V. Maritime programs.

Title VI. Civil service, Postal Service, and governmental affairs generally.

Title VII. Fiscal procedures.

Title VIII. Revenues, trade, and related programs.

Title IX. Income security, medicare, medicaid, and maternal and child health programs.

TITLE I—AGRICULTURAL PROGRAMS

Subtitle A—Sale of Notes

SEC. 1001. SALE OF RURAL DEVELOPMENT NOTES.

(a) **SALES REQUIRED.**—The Secretary of Agriculture, under such terms as the Secretary may prescribe, shall sell notes and other obligations held in the Rural Development Insurance Fund established under section 309A of the Consolidated Farm and Rural Development Act in such amounts as to realize net proceeds to the Government of not less than—

- (1) \$1,000,000,000 from such sales during fiscal year 1987,
- (2) \$552,000,000 from such sales during fiscal year 1988, and
- (3) \$547,000,000 from such sales during fiscal year 1989.

(b) **NONRECOURSE SALES.**—The second sentence of section 309A(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1929a(e)) is amended by—

- (1) inserting “and other obligations” after “Notes”; and

(2) striking out the period at the end thereof and inserting in lieu thereof the following: “, including sale on a nonrecourse basis. The Secretary and any subsequent purchaser of such notes or other obligations sold by the Secretary on a nonrecourse basis shall be relieved of any responsibilities that might have been imposed had the borrower remained indebted to the Secretary.”.

(c) **CONTRACT PROVISIONS.**—Consistent with section 309A(e) of the Consolidated Farm and Rural Development Act, as amended by subsection (b), any sale of notes or other obligations, as described in

*Note: This is a subsequently typeset print of the hand enrollment which was signed by the President on October 21, 1986.

7 USC 1929a
 note.

7 USC 1929a.

7 USC 1929a
 note.

subsection (a), shall not alter the terms specified in the note or other obligation, except that, on sale, a note or other obligation shall not be subject to the provisions of section 333(c) of the Consolidated Farm and Rural Development Act.

(d) **ELIGIBILITY TO PURCHASE NOTES.**—Notwithstanding any other provision of law, each institution of the Farm Credit System shall be eligible to purchase notes and other obligations held in the Rural Development Insurance Fund and to service (including the extension of additional credit and all other actions necessary to preserve, conserve, or protect the institution's interest in the purchased notes or other obligations), collect, and dispose of such notes and other obligations, subject only to such terms and conditions as may be agreed to by the Secretary of Agriculture and the purchasing institution and as may be approved by the Farm Credit Administration.

7 USC 1983.
7 USC 1929a
note.

(e) **LOAN SERVICING.**—Prior to selling any note or other obligation, as described in subsection (a), the Secretary of Agriculture shall require persons offering to purchase the note or other obligation to demonstrate—

7 USC 1929 note.

(1) an ability or resources to provide such servicing, with respect to the loans represented by the note or other obligation, that the Secretary deems necessary to ensure the continued performance on the loan; and

(2) the ability to generate capital to provide the borrowers of the loans such additional credit as may be necessary in proper servicing of the loans.

SEC. 1002. LIMITATION ON SALES FROM THE AGRICULTURAL CREDIT INSURANCE FUND.

7 USC 1729 note.

During fiscal years 1987 through 1989, no note shall be sold out of the Agricultural Credit Insurance Fund, except in connection with transactions with the Secretary of the Treasury, without prior approval by Congress.

Subtitle B—Prepayment of Loans

SEC. 1011. PREPAYMENT OF REA GUARANTEED LOANS.

7 USC 936a.
Banks and
banking.

(a) **AMENDMENT TO RURAL ELECTRIFICATION ACT OF 1936.**—The Rural Electrification Act of 1936 is amended by inserting after section 306 (7 U.S.C. 936) the following new sections:

“SEC. 306A. PREPAYMENT OF LOANS.

“(a) Except as provided in subsection (c), a borrower of a loan made by the Federal Financing Bank and guaranteed under section 306 of this Act may prepay such loan (or any loan advance thereunder) by paying the outstanding principal balance due on the loan (or advance), if—

“(1) the loan is outstanding on July 2, 1986;

“(2) private capital, with the existing loan guarantee, is used to replace the loan; and

“(3) the borrower certifies that any savings from such prepayment will be passed on to its customers or used to improve the financial strength of the borrower in cases of financial hardship.

“(b) No sums in addition to the payment of the outstanding principal balance due on the loan may be charged as the result of

such prepayment against the borrower, the fund, or the Rural Electrification Administration.

Banks and
banking.

"(c)(1) A borrower will not qualify for prepayment under this section if, in the opinion of the Secretary of the Treasury, to prepay in such borrower's case would adversely affect the operation of the Federal Financing Bank.

Effective date.

"(2) Paragraph (1) shall be effective in fiscal year 1987 only for any loan the prepayment of the principal amount of which will cause the cumulative amount of net proceeds from all such prepayments made during such year to exceed \$2,017,500,000.

Ante, p. 710.

"(d)(1) The Administrator shall permit, subject to subsection (a), prepayments of principal on loans in fiscal year 1987 under this section or Public Law 99-349 in such amounts as to realize net proceeds from all such prepayments in fiscal year 1987 in an amount not less than \$2,017,500,000.

"(2) The Administrator shall establish—

"(A) eligibility criteria to ensure that any loan prepayment activity required to be carried out under this subsection will be directed to those cooperative borrowers in greatest need of the benefits associated with prepayment, as determined by the Administrator; and

"(B) such other eligibility criteria as the Administrator determines are necessary to carry out this subsection.

Securities.
7 USC 936.

"(e) Any guarantee of a loan prepaid under this section shall be fully assignable under the provisions of section 306 of this Act and transferable. However, the Administrator may require that any such guarantee, if transferred or assigned, be transferred or assigned to a loan or security that, if sold, will be grouped with nonguaranteed loans or securities and sold in a manner to ensure that such sale will not unreasonably compete with the marketing of obligations of the United States.

7 USC 936b.

"SEC. 306B. SALE OR PREPAYMENT OF DIRECT OR INSURED LOANS.

"A direct or insured loan made under this Act shall not be sold or prepaid at a value less than the face value of any outstanding principal balance on such loan, except when sold to or prepaid by the borrower at the lesser of the outstanding principal balance due on the loan or the loan's present value discounted from the face value at maturity at the rate set by the Administrator. The exception contained in the preceding sentence shall be effective for the period ending September 30, 1987."

Effective date.

7 USC 936 note.

(b) CONFORMING AMENDMENT.—Chapter I of the Act entitled "An Act making urgent supplemental appropriations for the fiscal year ending September 30, 1986, and for other purposes" (Public Law 99-349), approved July 2, 1986, is amended by striking out the undesignated paragraph relating to the prepayment of loans by Rural Electrification and Telephone Systems.

Ante, p. 710.

7 USC 936a note.

(c) REGULATIONS.—The Secretary of Agriculture shall issue regulations to implement this section within 60 days after the date of enactment of this Act. Such regulations—

Ante, p. 1875.

(1) shall facilitate prepayment of loans under section 306A of the Rural Electrification Act of 1936, as added by subsection (a); and

Utilities.

(2) may not require any rural utility that is a borrower of loans subject to section 306A to make unreasonable reductions in rates to its customers as a condition of such prepayment.

Subtitle C—Advance Deficiency Payments

SEC. 1021. ADVANCE DEFICIENCY PAYMENTS.

Notwithstanding any other provision of law, the Secretary of Agriculture, in accordance with the criteria in section 107C of the Agricultural Act of 1949, shall make advance deficiency payments available for the 1987 crops of wheat, feed grains, upland cotton, and rice. The percentage of the projected payment rate used in computing such payments shall not be less than (1) 40 percent in the case of wheat and feed grains, and (2) 30 percent in the case of rice and upland cotton.

7 USC 1445b-2
note.

7 USC 1445b-2.

Subtitle D—Farm Credit Institutions

SEC. 1031. SHORT TITLE.

This subtitle may be cited as the “Farm Credit Act Amendments of 1986”.

Farm Credit Act
Amendments of
1986.
12 USC 2001
note.

SEC. 1032. POLICY.

Section 1.1 of the Farm Credit Act of 1971 (12 U.S.C. 2001) is amended by adding at the end thereof the following new subsection:

Loans.

“(c) It is declared to be the policy of Congress that the credit needs of farmers, ranchers, and their cooperatives are best served if the institutions of the Farm Credit System provide equitable and competitive interest rates to eligible borrowers, taking into consideration the creditworthiness and access to alternative sources of credit for borrowers, the cost of funds, including any costs of defeasance under section 4.8(b), the operating costs of the institution, including the costs of any loan loss amortization under section 5.19(b), the cost of servicing loans, the need to retain earnings to protect borrowers’ stock, and the volume of net new borrowing. Further, it is declared to be the policy of Congress that Farm Credit System institutions take action in accordance with the Farm Credit Act Amendments of 1986 in such manner that borrowers from the institutions derive the greatest benefit practicable from that Act: *Provided*, That in no case is any borrower to be charged a rate of interest that is below competitive market rates for similar loans made by private lenders to borrowers of equivalent creditworthiness and access to alternative credit.”.

12 USC 2159.
Post., p. 1878.

SEC. 1033. TERMINATION OF FARM CREDIT ADMINISTRATION APPROVAL OF INTEREST RATES CHARGED BY SYSTEM INSTITUTIONS.

(a) **FEDERAL LAND BANKS.**—The first sentence of section 1.7 of the Farm Credit Act of 1971 (12 U.S.C. 2015) is amended by striking out “, with the approval of the Farm Credit Administration as provided in section 4.17 of this Act”.

(b) **FEDERAL INTERMEDIATE CREDIT BANKS.**—The second sentence of section 2.4 of the Farm Credit Act of 1971 (12 U.S.C. 2075) is amended by striking out “with the approval of the Farm Credit Administration as provided in section 4.17 of this Act”.

(c) **BANKS FOR COOPERATIVES.**—The first sentence of section 3.10(a) of the Farm Credit Act of 1971 (12 U.S.C. 2131(a)) is amended by striking out “, with the approval of the Farm Credit Administration as provided in section 4.17 of this Act”.

SEC. 1034. CERTAIN TRANSACTIONS WITH RESPECT TO SYSTEM OBLIGATIONS.

Section 4.8 of the Farm Credit Act of 1971 (12 U.S.C. 2159) is amended by—

- (1) inserting the designation “(a)” after the heading; and
- (2) adding at the end thereof the following:

“(b) Through December 31, 1988, each bank of the System, in addition to purchasing obligations as authorized by this Act, may, with the prior approval of the Farm Credit Administration and subject to such conditions as it may establish, (1) reduce the cost of its borrowings by doing one or more of the following: (A) contracting with a third party, or an entity that is established as a limited purpose System institution under section 4.25 and that is not to be included in the combined financial statements of other System institutions, with respect to the payment of interest on the bank's obligations and the obligations of other banks incurred before January 1, 1985, in consideration of the payment of market interest rates on such obligations, plus a premium, or (B) for the period July 1, 1986, through December 31, 1988, capitalizing interest costs on obligations incurred before January 1, 1985, in excess of the estimated interest costs on an equivalent amount of Farm Credit System obligations at prevailing market rates on such obligations of similar maturities as of the date of the enactment of this subsection, or (C) taking other similar action; and (2) amortize, over a period of not to exceed 20 years, the capitalization of the premium, capitalization of interest expense, or like costs of any action taken under clause (1).”

Contracts.

12 USC 2211.

SEC. 1035. DETERMINATION OF INTEREST RATES.

Loans.
State and local
governments.

Section 4.17 of the Farm Credit Act of 1971 (12 U.S.C. 2205) is amended by striking out the first sentence and inserting in lieu thereof the following: “Interest rates on loans from institutions of the Farm Credit System shall not be subject to any interest rate limitation imposed by any State constitution or statute or other laws. Such limitation is preempted for purposes of this Act.”

SEC. 1036. TERMINATION OF FARM CREDIT ADMINISTRATION APPROVAL OF INTEREST RATES CHARGED ON DIRECT AND DISCOUNTED LOANS.

Section 5.17(a)(5)(A) of the Farm Credit Act of 1971 (12 U.S.C. 2252(a)(5)(A)) is amended by striking out “and on loans made or discounted by such institutions”.

SEC. 1037. ACCOUNTING.

Reports.
Banks and
banking.
Loans.
Supra.

Section 5.19(b) of the Farm Credit Act of 1971 (12 U.S.C. 2254(b)) is amended by striking out the second sentence and inserting in lieu thereof the following: “Each such report shall contain financial statements prepared in accordance with generally accepted accounting principles, except with respect to any actions taken by any banks of the System under section 4.8(b), and contain such additional information as the Farm Credit Administration by regulation may require. Notwithstanding the provisions of the preceding sentence and any other provision of this Act, for the period July 1, 1986, through December 31, 1988, the institutions of the Farm Credit System may, on the prior approval of the Farm Credit Administration and subject to such conditions as it may establish, capitalize annually their provision for losses that is in excess of one-half of 1

percent of loans outstanding and amortize such capitalized amounts over a period not to exceed 20 years.”.

TITLE II—BANKING AND HOUSING PROGRAMS

SEC. 2001. SALE OF RURAL HOUSING LOANS.

(a) **REQUIRED SALES TO PUBLIC.**—The Secretary of Agriculture shall take such actions as may be necessary to ensure that loans made under title V of the Housing Act of 1949 are sold to the public in amounts sufficient to provide a net reduction in outlays of not less than \$1,715,000,000 in fiscal year 1987 from the proceeds of such sales.

42 USC 1487
note.

42 USC 1471.

(b) PROCEDURES AND TERMS OF SALES.—

(1) **ESTABLISHMENT OF GUIDELINES.**—The Secretary of Agriculture shall establish specific guidelines for the sale of loans under subsection (a). The guidelines shall address the procedures and terms applicable to the sale of the loans, including the kind of protections that should be provided to borrowers and terms that will ensure that the sale of the loans will be made at the lowest practicable cost to the Federal Government.

(2) **ASSISTANCE BY FEDERAL FINANCING BANK.**—In selling loans to the public under subsection (a), the Secretary of Agriculture shall use the Federal Financing Bank as an agent to sell the loans, unless the Secretary determines that the sale of loans directly by the Secretary will result in a higher rate of return to the Federal Government. If the Secretary determines to sell loans directly under this paragraph, the Secretary shall notify the Federal Financing Bank of such determination and the loans involved and, to the extent practicable, shall implement any reasonable recommendations that may be made by the Federal Financing Bank with respect to the procedures and terms applicable to the sale.

(c) REPORTS TO CONGRESS.—

(1) **NOTIFICATION OF INITIAL LOAN SALE.**—Not less than 20 days before the initial sale of loans under subsection (a), the Secretary of Agriculture shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives containing an estimate of the amount of the discount at which loans will be sold at such initial sale and an estimate of the discount at which loans will be sold at each subsequent sale during fiscal year 1987.

(2) **REPORTS BY SECRETARY.**—The Secretary of Agriculture shall submit periodic reports to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives setting forth the activities of the Secretary under this section. Each report shall include the guidelines established under subsection (b)(1), a description of the loans sold under subsection (a), and an analysis of the net reduction in outlays provided by the sale of the loans. The Secretary shall submit the first report under this paragraph not later than 60 days after the date of the enactment of this Act, and shall submit subse-

quent reports each 60 days thereafter through the end of fiscal year 1987.

(3) **REPORTS BY COMPTROLLER GENERAL.**—The Comptroller General of the United States shall conduct an audit and evaluation of the activities of the Secretary of Agriculture described in each report submitted under paragraph (1) or (2), in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Secretary as the Comptroller General determines necessary to conduct each such audit and evaluation. The Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report setting forth the results of each such audit and evaluation.

(d) **RELATION TO OTHER LAW.**—The sale of loans under this section shall not be subject to paragraph (2) or (3) of section 517(d) of the Housing Act of 1949.

SEC. 2002. SALE OF EXPORT-IMPORT BANK LOANS.

The Export-Import Bank Act of 1945 (12 U.S.C. 635 et seq.) is amended by adding at the end the following new section:

“SEC. 16. SALE OF BANK LOANS.

“(a) **REQUIRED SALES TO PUBLIC.**—The Board of Directors shall take such actions as may be necessary to ensure that loans made by the Bank under this Act are sold to the public in amounts sufficient to provide a net reduction in outlays of not less than \$1,500,000,000 in fiscal year 1987 from the proceeds of such sales.

“(b) PROCEDURES AND TERMS OF SALES.—

“(1) **ESTABLISHMENT OF GUIDELINES.**—The Board of Directors shall establish specific guidelines for the sale of loans under subsection (a). The guidelines shall address the procedures and terms applicable to the sale of the loans, including terms that will ensure that the sale of the loans will bring the highest possible return to the Federal Government.

“(2) **ASSISTANCE BY FEDERAL FINANCING BANK.**—In selling loans to the public under subsection (a), the Board of Directors shall use the Federal Financing Bank as an agent to sell the loans, unless the Board of Directors determines that the sale of loans directly by the Export-Import Bank will result in a higher rate of return to the Federal Government. If the Board of Directors determines to sell loans directly under this paragraph, the Board shall notify the Federal Financing Bank of such determination and the loans involved and, to the extent practicable, shall implement any reasonable recommendations that may be made by the Federal Financing Bank with respect to the procedures and terms applicable to the sale.

“(c) REPORTS TO CONGRESS.—

“(1) **NOTIFICATION OF INITIAL LOAN SALE.**—Not less than 20 days before the initial sale of loans under subsection (a), the Board of Directors shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives containing an estimate of the amount of the discount at which loans will be sold at such initial sale

and an estimate of the discount at which loans will be sold at each subsequent sale during fiscal year 1987.

“(2) **REPORTS BY BANK.**—The Board of Directors shall submit periodic reports to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives setting forth the activities of the Board of Directors under this section. Each such report shall include the guidelines established under subsection (b)(1), a description of the loans sold under subsection (a), and an analysis of the net reduction in outlays provided by the sale of such loans. The Board of Directors shall submit the first report under this paragraph not later than 60 days after the date of the enactment of this Act, and shall submit subsequent reports each 60 days thereafter through the end of fiscal year 1987.

“(3) **REPORTS BY COMPTROLLER GENERAL.**—The Comptroller General of the United States shall conduct an audit and evaluation of the activities of the Board of Directors described in each report submitted under paragraph (1) or (2), in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Board of Directors as the Comptroller General determines necessary to conduct each such audit and evaluation. The Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report setting forth the results of each such audit and evaluation.

“(d) **SECURITIES LAWS NOT APPLICABLE TO SALES.**—The sale of any loan under this section shall be deemed to be a sale of exempted securities within the meaning of section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) and section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)). The Bank shall file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be appropriate in view of the special character of the Bank and its operations as may be necessary in the public interest or for the protection of investors.”

Records.

Reports.

TITLE III—ENERGY AND ENVIRONMENTAL PROGRAMS

Subtitle A—Distribution of Petroleum Overcharge Funds

SEC. 3001. SHORT TITLE.

This subtitle may be cited as the “Petroleum Overcharge Distribution and Restitution Act of 1986”.

Petroleum
Overcharge
Distribution and
Restitution Act
of 1986.
15 USC 4501
note.

SEC. 3002. RESTITUTIONARY AMOUNTS COVERED.

15 USC 4501.

(a) **IN GENERAL.**—This subtitle (other than section 3005)—

(1) specifies the procedure for the disbursement of funds collected, including interest thereon, by the Secretary or the courts pursuant to the Emergency Petroleum Allocation Act of

15 USC 751 note;
12 USC 1904
note.

1973 or the Economic Stabilization Act of 1970 (and the regulations issued thereunder) as restitution for actual or alleged violations of such Acts or regulations; and

(2) subject to subsection (c), applies to—

(A) any amount of such funds held in escrow by the Secretary through accounts administered by the Secretary of the Treasury on or after the date of enactment of this Act; and

(B) any amount of such funds determined at any time, pursuant to judicial or administrative proceedings (including any settlement agreement or declaratory judgment) instituted by the Secretary to enforce such Acts and regulations, to be amounts paid for such actual or alleged violations, including any such amounts held in escrow by any court.

(b) SPECIAL RULE.—Amounts described in subsection (a)(2) and held in an escrow account by a court before the date of enactment of this Act may continue to be held by such court but shall be disbursed, together with any interest thereon, by the Secretary or, as appropriate, by the court only in accordance with the provisions of this subtitle.

(c) EXCLUSIONS.—Subsection (a)(2) does not apply to—

(1) any amount actually disbursed before the date of enactment of this Act to any person or class of persons pursuant to section 155 of Public Law 97-377 or any final judicial or administrative order or judgment (including any settlement agreement or declaratory judgment);

(2) any amount to which any person or class of persons has an enforceable right, created or vested, or governed by the terms and conditions of the settlement approved on July 7, 1986, in *In Re: the Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378, in the United States District Court for the District of Kansas; and

(3) any amount designated by judicial or administrative order or judgment (including any settlement agreement or declaratory judgment) for disbursement at any time to any specific person or class of persons—

(A) identified in such order or judgment as injured by the violation or alleged violation of the Acts described in subsection (a)(1) (including the regulations thereunder); or

(B) identified in such order or judgment issued before the date of enactment of this Act for indirect restitution.

(d) ESCROW ACCOUNTS.—Subject to subsections (b) and (c), the amounts covered by subsection (a) shall be held in appropriate escrow accounts administered for the Secretary by the Secretary of the Treasury.

(e) INTEREST.—Consistent with the disbursement requirements of this subtitle, the Secretary of the Treasury shall provide that amounts described in subsection (a) shall earn interest at the maximum rate earned on investments of Federal trust funds by the Secretary of the Treasury in short-term and long-term securities issued by the Federal Government (including minority bank investments).

96 Stat. 1919.

Securities.
Banks and
banking.

15 USC 4502.

SEC. 3003. IDENTIFICATION AND DISBURSEMENT OF RESTITUTIONARY AMOUNTS.

(a) IN GENERAL.—(1) Subject to paragraph (2)—

(A) all rulings, policies, or other statements (including any administrative order or settlement agreement) issued after the date of the enactment of this Act by any office, official, or employee of the Department of Energy; and

(B) all orders, including declaratory judgments, issued by any court after the date of the enactment of this Act, shall be consistent with the provisions of this subtitle.

(2) Nothing in this section shall affect the settlement approved on July 7, 1986, in *In Re: the Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378, in the United States District Court for the District of Kansas.

(b) **DISBURSEMENT OF RESTITUTIONARY AMOUNTS AS DIRECT RESTITUTION TO INJURED PERSONS.**—(1) The Secretary shall, through the Office of Hearings and Appeals of the Department of Energy, conduct proceedings expeditiously in accordance with subpart V regulations for the purpose of, to the maximum extent possible—

(A) identifying persons or classes of persons injured by any actual or alleged violation of the petroleum pricing and allocation regulations issued pursuant to the Emergency Petroleum Allocation Act of 1973 or the Economic Stabilization Act of 1970;

(B) establishing the amount of any injury incurred by such persons; and

(C) making restitution, through the disbursement of amounts in the escrow accounts described in subsections (b) and (d) of section 3002, to such persons.

(2) In conducting such proceedings, the Secretary shall take into consideration the reports released pursuant to several orders of the applicable Federal district court in *In Re: the Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378, in the United States District Court for the District of Kansas.

(c) **DETERMINATION OF EXCESS AMOUNT TO BE USED FOR INDIRECT RESTITUTION.**—(1) Within 45 days after the date of the enactment of this Act in the case of fiscal year 1987, and within 45 days after the beginning of each fiscal year after fiscal year 1987, the Secretary shall, using the best information available to the Secretary, determine and publish (along with a justification thereof) in the Federal Register the amount held in the escrow accounts described in subsections (b) and (d) of section 3002 that is in excess of the amount that will be needed to make restitution to persons or classes of persons in accordance with subsection (b)(1) of this section and to meet other commitments of such accounts (including the requirements of section 155 of Public Law 97-377). In making such determination, the Secretary shall give primary consideration to assuring that at all times sufficient funds (including a reasonable reserve) are set aside for making such restitution and meeting such other commitments.

(2) The Secretary shall make public the information referred to in the first sentence of paragraph (1).

(d) **DISBURSEMENT OF EXCESS AMOUNT AS INDIRECT RESTITUTION FOR ENERGY CONSERVATION PROGRAMS.**—(1) After the publication of the determination of an excess amount under subsection (c) for a fiscal year, the Secretary shall promptly provide for the disbursement of a portion or all of such excess amount for use in energy conservation programs. The amount so disbursed for a fiscal year shall be the smaller of—

(A) \$200,000,000 minus the amount of Federal funds appropriated for energy conservation programs for such fiscal year; or

15 USC 751 note.
12 USC 1904
note.

Reports.

Federal
Register,
publication.

96 Stat. 1919.

Public
information.

(B) the amount determined under subsection (c) to be the excess amount for such fiscal year.

(2) After determining the amount to be made available under paragraph (1), the Secretary shall apportion such amount among each of the energy conservation programs in a manner that will provide funding under this subtitle for the fiscal year concerned for each of such programs in the same proportionate amount that was provided for each of the programs by the Congress for fiscal year 1986. The Secretary shall then make available each amount apportioned for use under an energy conservation program in the same manner, to the same extent, under the same rulings and regulations, and for the same uses that Federal appropriated funds are made available and used under such program.

State and local
governments.

(3) The Secretary shall require that amounts made available under this subsection are used to supplement, and not supplant, funds otherwise available for energy conservation activities under Federal or State law.

15 USC 4503.

SEC. 3004. DEPOSIT OF REMAINDER OF EXCESS AMOUNT INTO THE TREASURY AS INDIRECT RESTITUTION.

The amount that remains from the excess amount described in section 3003(c) after all disbursements have been made for a fiscal year under section 3003(d) shall be deposited by the Secretary of the Treasury into the general fund of the Treasury.

15 USC 4504.

SEC. 3005. STATUTE OF LIMITATION.

(a) IN GENERAL.—(1) Except as provided in subsection (b), the commencement of a civil enforcement action shall be barred unless such action is commenced before the later of—

(A) September 30, 1988; or

(B) six years after the date of the violation upon which the action is based.

(2) For purposes of paragraph (1), the term “commencement of a civil enforcement action” means—

(A) the signing and issuance of a proposed remedial order against any person for filing with the Office of Hearings and Appeals of the Department of Energy; or

(B) the filing of a complaint with the appropriate district court of the United States.

(3) For purposes of this section, the term “civil enforcement action” means an administrative or judicial civil action by the Secretary under the Emergency Petroleum Allocation Act of 1973 or the Economic Stabilization Act of 1970 (or the regulations issued thereunder) for the enforcement of any violation of such Acts or regulations.

15 USC 751 note.
12 USC 1904
note.

(b) EXCEPTIONS.—(1) In computing the periods established in subparagraphs (A) and (B) of subsection (a)(1), there shall be excluded any period—

(A) during which any person who is or may become the subject of a civil enforcement action is outside the United States, has absconded or concealed himself, or is not subject to legal process;

(B) during which facts material to the establishment and maintenance of a civil enforcement action could not be known;

(C) occurring before full compliance with any subpoena or special report order issued to any person under section 13 of the Federal Energy Administration Act of 1974, and such additional

15 USC 772.

period (not to exceed 12 calendar months) after such compliance for the Secretary to consider the results thereof and commence a civil enforcement action;

(D) during the pendency of any relevant criminal action under the Acts or regulations described in subsection (a)(1) during which a civil enforcement action is held in abeyance as a result of prosecutorial discretion and with or without a stay, and such additional period (not to exceed 12 calendar months) after a final judicial order or dismissal of such criminal action to commence a civil enforcement action;

(E) before the issuance of an order that constitutes final agency action on a request for adjustment from any rule, regulation, or order under section 504 of the Department of Energy Organization Act, and such additional period (not to exceed 12 calendar months) to commence a civil enforcement action; or

42 USC 7194.

(F) of extension, to which the Secretary and the defendant have consented in writing, before the expiration of the time periods prescribed in subsection (a)(1).

(2) The provisions of subsection (a) shall not affect or apply to any civil enforcement action commenced before, on, or after the date of enactment of this Act and remanded by the Office of Hearings and Appeals, the Federal Energy Regulatory Commission, or the court for further action of any kind.

(3) The provisions of subsection (a) shall not apply to any agency orders issued under the Acts or regulations described in subsection (a)(1) or to regulations issued under this Act, other than a proposed remedial order subject to this section.

(c) **EXPRESSION OF INTENT.**—(1) It is the intent of the Congress that—

(A) the Secretary and the Administrator of the Economic Regulatory Administration shall, to the greatest extent possible and within the time frames specified on September 12, 1986, by such Administrator to the Committee on Energy and Commerce of the House of Representatives, commence civil enforcement actions with respect to all cases known by such Administrator as of the date of the enactment of this Act and designated by such Administrator as “prelitigation cases”, unless such an action is found not to be warranted;

(B) the Secretary and such Administrator not delay civil enforcement actions so as to cause the limitation in subsection (a)(1) to apply to any such case;

(C) any negotiations for the purpose of settlement of alleged violations not delay the commencement of a civil enforcement action; and

(D) the Department of Justice cooperate in ensuring that activities necessary, including the enforcement of subpoenas, to commence civil enforcement actions are carried out in a timely manner.

(2) Any failure to comply with the time frames described in paragraph (1)(A) shall not be considered for any purpose in any administrative or judicial proceeding subsequently commenced.

(d) **END OF INVESTIGATIONS AND AUDITS.**—Notwithstanding any other provision of law, the Secretary shall not initiate, after January 1, 1987, any audit or investigation of alleged civil violations of the Acts or regulations described in subsection (a)(1) for the purpose of commencement of any civil enforcement action. Nothing in this subsection shall affect or apply to any audit or investigation con-

ducted with respect to any civil enforcement action commenced (within the limitation established by subsection (a)(1)) before, on, or after the date of the enactment of this Act. Nothing in this subsection shall limit the authority of the Secretary to continue any audit or investigation initiated before January 1, 1987.

42 USC 7193,
7194.

(e) **LIMITATION ON REVIEW.**—Any review of a final agency action determined under section 503 or 504 of the Department of Energy Organization Act may not be initiated in any court by any person subject to such action after—

(1) 60 days after the effective date of that action; or

(2) 90 days after the date of the enactment of this Act, whichever occurs later.

(f) **OVERSIGHT.**—(1) In order to ensure the expeditious, effective, and efficient resolution of all civil enforcement actions (whether or not in administrative or judicial litigation) and all cases pending at the Office of Hearings and Appeals under subpart V regulations, the Secretary shall—

(A) maintain a personnel level for the compliance program of the Economic Regulatory Administration of 170 full-time equivalents for fiscal year 1987, subject to normal attrition and subject to the provisions of any appropriation Act enacted for such fiscal year concerning such program; and

(B) maintain for the remainder of the program an adequate mix of lawyers, auditors, technical, clerical, and administrative personnel.

(2) By July 1, 1987, and by July 1 of each year thereafter, the Administrator of the Economic Regulatory Administration shall provide to the Committee on Energy and Commerce of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate the full-time equivalent level necessary for such compliance program for the next fiscal year and the basis for that level.

(3) The Secretary shall, in any fiscal year, provide a notice of at least 30 days to such Committees before initiating any reduction of force at the Economic Regulatory Administration. Such notice shall provide at least—

(A) the reasons for such reduction;

(B) the impact on the mix of personnel and on all cases, whether or not in litigation, including the subpart V regulation proceedings; and

(C) the expected costs and savings for the applicable fiscal year.

(4) The Administrator of the Economic Regulatory Administration shall keep such Committees fully and currently informed about the status (including delays, settlement negotiations, and other pertinent matters) of all enforcement cases (whether or not in litigation) and subpart V regulation proceedings.

15 USC 4505.

SEC. 3006. REPORTS.

(a) **REPORT ON RECEIPTS AND DISBURSEMENTS.**—The Secretary shall transmit, not later than 60 days after the date of the enactment of this Act, a report to the committees referred to in subsection (d) containing a clear and complete statement of all receipts, disbursements, and commitments of restitutionary amounts, as of such date of enactment, by the Secretary pursuant to—

(1) any judicial or administrative proceeding (including any settlement agreement or declaratory judgment) instituted at

any time by the Secretary to enforce the crude oil and petroleum product pricing and allocation regulations issued under the Emergency Petroleum Allocation Act of 1973 or the Economic Stabilization Act of 1970; or

(2) section 155 of Public Law 97-377.

(b) **REPORT ON COLLECTION OF CERTAIN DEFICIENCY FUNDS.**—The Secretary shall transmit a report each fiscal year, beginning in fiscal year 1987, to such committees on the status of collections by the Secretary of deficiency funds to be deposited into the M.D.L. No. 378 escrow account established by the United States District Court for the District of Kansas until all such deficiency funds have been paid. The Secretary shall, in a manner substantially similar to that required by section 155 of Public Law 97-377 with respect to amounts disbursed under such section, monitor the disposition by the States of any funds disbursed to the States by the court pursuant to the opinion and order of such District Court, dated July 7, 1986, with respect to *In Re: the Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378, including the use of such funds for administrative costs and attorneys fees.

(c) **REPORT ON AMOUNT ESTIMATED TO BE AVAILABLE FOR INDIRECT RESTITUTION.**—The Secretary shall transmit, on March 1 of each year beginning with 1987 and continuing until all the restitutionary amounts to which section 3002(a) applies have been collected and disbursed as provided in this subtitle, a report to such committees containing an estimate of the amount that will be determined under section 3003(c) to be the excess amount for purposes of section 3003(d)(1)(B) for the fiscal year beginning the next October 1.

(d) **RECEIPT BY COMMITTEES.**—The reports required by this subtitle shall be transmitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

SEC. 3007. TERMINATION.

(a) **IN GENERAL.**—(1) Except as provided in subsection (b), the provisions of this subtitle (other than section 3005) shall terminate 90 days after the Secretary—

(A) determines that all of the restitutionary amounts to which section 3002(a) applies have been collected and disbursed as provided in this subtitle; and

(B) submits to Congress the final report required by section 3006.

(2) Such final report shall include the determination (and the justification thereof) described in paragraph (1)(A). Such report shall also be published in the Federal Register.

(b) **EXCEPTION.**—The requirements of section 3003(d) shall continue to be applicable to the use of restitutionary amounts received under this subtitle as long as such funds remain available.

SEC. 3008. DEFINITIONS.

For purposes of this subtitle:

(1) The term “Secretary” means the Secretary of Energy.

(2) The term “subpart V regulations” means the provisions of Subpart V—Special Procedures for Distribution of Refunds (10 CFR 205.280–205.288) and any amendment made after the date of the enactment of this Act, and all precedents and decisions under such regulations, but only to the extent that such provi-

15 USC 751 note.
12 USC 1904
note.

96 Stat. 1919.
State and local
governments.

15 USC 4506.

Reports.
Federal
Register,
publication.

15 USC 4507.

sions, precedents, decisions, and amendments are consistent with the provisions of this subtitle.

(3) The term "energy conservation programs" means—

(A) the program under part A of the Energy Conservation and Existing Buildings Act of 1976 (42 U.S.C. 6861 and following);

(B) the programs under part D of title III of the Energy Policy and Conservation Act (relating to primary and supplemental State energy conservation programs; 42 U.S.C. 6321 and following);

(C) the program under part G of title III of the Energy Policy and Conservation Act (relating to energy conservation for schools and hospitals; 42 U.S.C. 6371 and following); and

(D) the program under the National Energy Extension Service Act (42 U.S.C. 7001 and following).

(4) The term "person" includes refiners, retailers, resellers, farmer cooperatives, transportation entities, public and private utilities, school districts, Federal, State, and local governmental entities, farmers, and other individuals and their successors.

(5) The term "State" means each of the several States, the District of Columbia, the commonwealth of Puerto Rico, and any territory or possession of the United States.

Subtitle B—Information and Study Requirements

SEC. 3101. MANUFACTURERS ENERGY CONSUMPTION SURVEY.

(a) IN GENERAL.—Section 205 of the Department of Energy Organization Act (42 U.S.C. 7135) is amended by adding at the end the following new subsection:

"(i)(1) The Administrator shall conduct and publish the results of a survey of energy consumption in the manufacturing industries in the United States on at least a triennial basis and in a manner designed to protect the confidentiality of individual responses. In conducting the survey, the Administrator shall collect information, including—

"(A) quantity of fuels consumed;

"(B) energy expenditures;

"(C) fuel switching capabilities; and

"(D) use of nonpurchased sources of energy, such as cogeneration and waste by-products.

"(2) This subsection does not affect the authority of the Administrator to collect data under section 52 of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a)."

(b) REPEAL.—Part E of title III of the Energy Policy and Conservation Act (42 U.S.C. 6341-6346) is hereby repealed.

SEC. 3102. CRUDE OIL PRODUCTION AND REFINING CAPACITY IN THE UNITED STATES.

(a) IN GENERAL.—(1) The Secretary of Energy, acting with the Energy Information Administration, shall conduct a study of domestic crude oil production and petroleum refining capacity and the effects of imports thereon in order to assist the Congress and the

Classified
information.

Imports.

President in determining whether such production and capacity are adequate to protect the national security.

(2) The study provided for by this section shall be carried out within available appropriations.

(b) **PUBLIC COMMENT.**—The Secretary shall provide notice and reasonable opportunity for public comment with respect to conducting the study carried out under this section.

(c) **REPORTING DATE.**—The Secretary shall, within 120 days of the date of the enactment of this Act, transmit to the Congress and the President a copy of the findings and conclusions of the study carried out under this section. Such findings and conclusions shall be referred to the Committee on Energy and Natural Resources of the Senate and appropriate authorization committees of the House of Representatives.

(d) **ACTION BY THE PRESIDENT.**—The President shall, within 45 days after the date on which such report is transmitted to him, report his views concerning the levels at which imports of crude oil and refined petroleum products become a threat to the national security and advise the Congress concerning his views of the legislative or administrative action, or both, that will be required to prevent imports of crude oil and refined petroleum products from exceeding those import levels that threaten our national security.

President of U.S.
Defense and
national
security.

Subtitle C—Strategic Petroleum Reserve

SEC. 3201. AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 1987, 1988, AND 1989.

(a) **IN GENERAL.**—The following amounts are hereby authorized to be appropriated in accordance with section 660 of the Department of Energy Organization Act for operating expenses for the Strategic Petroleum Reserve to carry out part B of title I of the Energy Policy and Conservation Act for the acquisition, transportation, and injection of petroleum products, as defined for purposes of such part B, for the Reserve and for any drawdown and distribution of the Reserve:

42 USC 7270.

42 USC 6231.

(1) For fiscal year 1987, \$200,000,000.

(2) For fiscal year 1988, \$291,000,000.

(3) For fiscal year 1989, \$479,000,000.

(b) **EFFECT ON OTHER AUTHORIZATIONS.**—The authorization made by subsection (a) is in lieu of any other authorization of appropriation for fiscal years 1987, 1988, and 1989 for the expenses described in such subsection.

SEC. 3202. FILL RATE OF THE RESERVE; LIMITATION ON UNITED STATES SHARE OF THE NAVAL PETROLEUM RESERVE.

(a) **FILL RATE OF THE RESERVE.**—Section 160(c)(3) of the Energy Policy and Conservation Act (42 U.S.C. 6240(c)(3)) is amended—

Ante, p. 141.

(1) by striking out “fiscal year 1986 and continuing through fiscal years 1987 and 1988” and inserting in lieu thereof “fiscal year 1987 and continuing through fiscal years 1988 and 1989”;

(2) by striking out “527,000,000 barrels” and inserting in lieu thereof “750,000,000 barrels”; and

(3) by striking out “at a level” and all that follows through the period and inserting in lieu thereof “at the highest practicable fill rate achievable, subject to the availability of appropriated funds.”

Ante, p. 142.

(b) **LIMITATION ON UNITED STATES SHARE OF THE NAVAL PETROLEUM RESERVE.**—Section 160(d)(1) of such Act (42 U.S.C. 6240(d)(1)) is amended—

(1) in subparagraph (A), by striking out “527,000,000 barrels” and inserting in lieu thereof “750,000,000 barrels”;

(2) in subparagraph (B)—

(A) by striking out “100,000 barrels” and inserting in lieu thereof “75,000 barrels”; and

(B) by striking out “; or” and inserting in lieu thereof a period; and

(3) by striking out subparagraph (C).

SEC. 3203. INFORMATION TO BE CONTAINED IN ANNUAL REPORT ON SPR.

Section 165(a) of the Energy Policy and Conservation Act (42 U.S.C. 6245(a)) is amended by striking out paragraph (1) and inserting in lieu thereof the following:

“(1) a detailed statement of the status of the Strategic Petroleum Reserve, including—

“(A) an estimate of the final capacity of the Reserve and the scheduled annual fill rate for achieving such capacity;

“(B) the scheduled quarterly fill rate for the 12-month period beginning on the date on which such report is transmitted;

“(C) the type and quality of crude oil to be acquired for the Reserve pursuant to the schedule described in subparagraph (A);

“(D) the schedule of construction of any facilities needed to achieve the final capacity of the Reserve, including a description of the type and location of such facilities and of enhancements and improvements to existing facilities;

“(E) an estimate of the cost of acquiring crude oil and constructing facilities necessary to complete the Reserve;

“(F) a description of the current distribution plan for using the Reserve, including the method of drawdown and distribution to be utilized; and

“(G) an explanation of any changes made in the matters described in subparagraphs (A) through (F) since the transmittal of the previous report under this subsection;”.

Subtitle D—Federal Energy Management

SEC. 3301. FEDERAL ENERGY MANAGEMENT.

Section 545(a)(2) of the National Energy Conservation Policy Act (42 U.S.C. 8255(a)(2)) is amended by striking out “marginal” and inserting in lieu thereof “average”.

Subtitle E—Fees and Charges

42 USC 7178.

SEC. 3401. FEDERAL ENERGY REGULATORY COMMISSION FEES AND ANNUAL CHARGES.

(a) **IN GENERAL.**—(1) Except as provided in paragraph (2) and beginning in fiscal year 1987 and in each fiscal year thereafter, the Federal Energy Regulatory Commission shall, using the provisions of this subtitle and authority provided by other laws, assess and

collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year.

(2) The provisions of this subtitle shall not affect the authority, requirements, exceptions, or limitations in sections 10(e) and 30(e) of the Federal Power Act.

16 USC 803, 791.

(b) **BASIS FOR ASSESSMENTS.**—The fees or annual charges assessed shall be computed on the basis of methods that the Commission determines, by rule, to be fair and equitable.

(c) **ESTIMATES.**—The Commission may assess fees and charges under this section by making estimates based on data available to the Commission at the time of assessment.

(d) **TIME OF PAYMENT.**—The Commission shall provide that the fees and charges assessed under this section shall be paid by the end of the fiscal year for which they were assessed.

(e) **ADJUSTMENTS.**—The Commission shall, after the completion of a fiscal year, make such adjustments in the assessments for such fiscal year as may be necessary to eliminate any overrecovery or underrecovery of its total costs, and any overcharging or undercharging of any person.

(f) **USE OF FUNDS.**—All moneys received under this section shall be credited to the general fund of the Treasury.

(g) **WAIVER.**—The Commission may waive all or part of any fee or annual charge assessed under this section for good cause shown.

Subtitle F—Environmental Programs

SEC. 3501. ABANDONED MINE RECLAMATION RESEARCH AND DEVELOPMENT.

30 USC 1231 note.

After the enactment of this Act, the research and demonstration authorities of the Department of the Interior under the provisions of section 401(c)(6) of the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87) shall be transferred to, and carried out by, the Director of the Bureau of Mines. Research and demonstration projects under such provision shall be selected by a panel appointed by the Director of the Bureau of Mines to be comprised of 9 persons, including 4 representatives of State abandoned mine reclamation programs, 4 representatives of the Bureau of Mines, and one representative of the Office of Surface Mining Reclamation and Enforcement.

30 USC 1231.

SEC. 3502. GREAT SWAMP NATIONAL WILDLIFE REFUGE.

(a) No later than 60 days after the enactment of this section, the United States Environmental Protection Agency shall provide the House Committee on Merchant Marine and Fisheries and the Senate Committees on Environment and Public Works and Energy and Natural Resources with an interim status report on the implementation of agency responsibilities for conducting or approving preliminary assessments, site investigations and, if necessary, Remedial Investigation/Feasibility Studies for contaminant problems on the Great Swamp National Wildlife Refuge, as set forth in the July 9, 1985, Interagency Memorandum of Agreement between the United States Environmental Protection Agency, the United States Fish and Wildlife Service, and the National Park Service. This report shall describe in a systematic and comprehensive way the clean-up plan developed to date and the progress made thereunder, including the identification of responsible parties where possible, for

Reports.

the Rolling Knoll landfill, the Harding landfill, and all asbestos dumpsites identified within the Great Swamp National Wildlife Refuge. The report shall also discuss the appointment of appropriate field personnel to direct the clean-up effort; an assessment and ranking of the contaminant threats to the Refuge based upon information available to date; and a detailed work plan and schedule for completing site investigation work, including the analysis of samples collected during site investigations, and initiating Remedial Investigation/Feasibility Studies where necessary.

Reports.

(b) Not later than 240 days after the enactment of this section, the United States Environmental Protection Agency shall provide the committees of Congress set forth in subsection (a) of this section with an update of its interim status report. This update shall address the same factors included in the original interim report and shall identify what progress has been made in implementing the site investigation, data analysis, and remedial clean-up responsibilities set forth in the interim report.

Reports.

(c) The development of the interim and updated reports required in subsections (a) and (b) of this section shall be carried out with unobligated funds available to the United States Environmental Protection Agency.

TITLE IV—TRANSPORTATION AND RELATED PROGRAMS

Subtitle A—Rail Related Issues

PART 1—GENERAL PROVISIONS

SEC. 4001. SHORT TITLE; TABLE OF CONTENTS OF SUBTITLE.

(a) **SHORT TITLE.**—This subtitle may be cited as the “Conrail Privatization Act”.

(b) **TABLE OF CONTENTS OF SUBTITLE.**—

PART 1—GENERAL PROVISIONS

Sec. 4001. Short title; table of contents of subtitle.

Sec. 4002. Findings.

Sec. 4003. Purposes.

Sec. 4004. Definitions.

PART 2—CONRAIL

SUBPART A—SALE OF CONRAIL

Sec. 4011. Preparation for public offering.

Sec. 4012. Public offering.

Sec. 4013. Fees.

SUBPART B—OTHER MATTERS RELATING TO THE SALE

Sec. 4021. Rail service obligations.

Sec. 4022. Ownership limitations.

Sec. 4023. Board of Directors.

Sec. 4024. Provisions for employees.

Sec. 4025. Certain enforcement relief.

SUBPART C—MISCELLANEOUS TECHNICAL AND CONFORMING AMENDMENTS AND REPEALS

Sec. 4031. Abolition of United States Railway Association.

Sec. 4032. Applicability of Regional Rail Reorganization Act of 1973 to Conrail after sale.

Sec. 4033. Miscellaneous amendments and repeals.

Sec. 4034. Exemption from liability.

Conrail
Privatization
Act.

- Sec. 4035. Charter amendment.
- Sec. 4036. Status of Conrail after sale.
- Sec. 4037. Effect on contracts.
- Sec. 4038. Resolution of certain issues.

PART 3—PROMOTION OF RAIL COMPETITION

- Sec. 4051. Agriculture contract disclosure.
- Sec. 4052. Boxcar provision.

SEC. 4002. FINDINGS.

45 USC 1301.

The Congress finds that—

- (1) the bankruptcy of the Penn Central and other railroads in the Northeast and Midwest resulted in a transportation emergency which required the intervention of the Federal Government;
- (2) the United States Government created the Consolidated Rail Corporation, which provides essential rail service to the Northeast and Midwest;
- (3) the future of rail service in the Northeast and Midwest is essential and must be protected through rail service obligations, consistent with the transfer of the Corporation to the private sector;
- (4) the Northeast Rail Service Act of 1981 has achieved its purpose in allowing the Corporation to become financially self-sustaining;
- (5) the Federal Government has invested over \$7,000,000,000 in providing rail service to the Northeast and Midwest;
- (6) the Government, as a result of its ownership and investment of taxpayer dollars in the Corporation, controls substantial assets, including cash of approximately \$1,000,000,000;
- (7) the Corporation's viability and sound performance allow it to be sold to the American public for a substantial sum through a public offering;
- (8) a public offering of the Corporation's stock will preserve competitive rail service in the region, provide a reasonable return to the Government, and protect employment;
- (9) the Corporation's employees contributed significantly to the turnaround in the Corporation's financial performance and they should share in the Corporation's success through a settlement of their claims for reimbursement for wages below industry standard, and a share in the common equity of the Corporation;
- (10) the requirements of section 401(e) of the Regional Rail Reorganization Act of 1973 are met by this subtitle; and
- (11) the Secretary of Transportation has discharged the responsibilities of the Department of Transportation under the Northeast Rail Service Act of 1981 with respect to the sale of the Corporation as a single entity.

45 USC 1101
note.

45 USC 761.

SEC. 4003. PURPOSES.

45 USC 1302.

The purposes of this subtitle are to transfer the interest of the United States in the common stock of the Corporation to the private sector in a manner that provides for the long-term viability of the Corporation, provides for the continuation by the Corporation of its rail service in the Northeast and Midwest, provides for the protection of the public interest in a sound rail transportation system, and, to the extent not inconsistent with such purposes, secures the maximum proceeds to the United States.

45 USC 1303.

SEC. 4004. DEFINITIONS.

For the purposes of this subtitle—

(1) the term “capital expenditures” means amounts expended by the Corporation and its subsidiaries for replacement or rehabilitation of, or enhancements to, the railroad plant, property, trackage, and equipment of the Corporation and its subsidiaries, as determined in accordance with generally accepted accounting principles, and in interpreting generally accepted accounting principles, no amount spent on normal repair, maintenance, and upkeep of such railroad plant, property, trackage, and equipment in the ordinary course of business shall constitute capital expenditures;

(2) the term “Commission” means the Interstate Commerce Commission;

(3) the term “consolidated funded debt” means the aggregate, after eliminating intercompany items, of all funded debt of the Corporation and its consolidated subsidiaries, consolidated in accordance with generally accepted accounting principles;

(4) the term “consolidated tangible net worth” means the market value of the common equity of the Corporation as of the sale date, plus or minus the change from the sale date to the date of measurement in the excess, after making appropriate deductions for any minority interest in the net worth of subsidiaries, of—

(A) the assets of the Corporation and its subsidiaries (excluding intercompany items) which, in accordance with generally accepted accounting principles, are tangible assets, after deducting adequate reserves in each case where, in accordance with generally accepted accounting principles, a reserve is proper, over

(B) all liabilities of the Corporation and its subsidiaries (excluding intercompany items),

taking into account inventory and securities on the basis of the cost or current market value, whichever is lower, and not taking into account patents, trademarks, trade names, copyrights, licenses, goodwill, treasury stock, or any write-up in the book value of any assets;

(5) the term “Corporation” means the Consolidated Rail Corporation;

(6) the term “cumulative net income” means, for any period, the net income of the Corporation and its consolidated subsidiaries as determined in accordance with generally accepted accounting principles, before provision for expenses (net of income tax effect) related to—

(A) amounts paid by the Corporation under section 4024(e), and comparable payments made to present and former employees of the Corporation not covered by such section; and

(B) the aggregate value of any shares and cash distributed by the Corporation under section 4024(f);

(7) the term “debt” means (A) indebtedness, whether or not represented by bonds, debentures, notes, or other securities, for the repayment of money borrowed, (B) deferred indebtedness for the payment of the purchase price of property or assets purchased, (C) guarantees, endorsements, assumptions, and other contingent obligations in respect of, or to purchase or to other-

wise acquire, indebtedness of others, and (D) indebtedness secured by any mortgage, pledge, or lien existing on property owned, subject to such mortgage, pledge, or lien, whether or not indebtedness secured thereby shall have been assumed;

(8) the term "funded debt" means all debt created, assumed, or guaranteed, directly or indirectly, by the Corporation and its subsidiaries which matures by its terms, or is renewable at the option of the Corporation or any such subsidiary to a date, more than 1 year after the date of the original creation, assumption, or guarantee of such debt by the Corporation or such subsidiary;

(9) the term "liabilities" means all items of indebtedness or liability which, in accordance with generally accepted accounting principles, would be included in determining total liabilities as shown on the liabilities side of a balance sheet as at the date as of which liabilities are to be determined;

(10) the term "person" means an individual, corporation, partnership, association, trust, or other entity or organization, including a government or political subdivision thereof or a governmental body;

(11) the term "preferred stock" means any class or series of preferred stock, and any class or series of common stock having liquidation and dividend rights and preferences superior to the common stock of the Corporation offered for sale under section 4012;

(12) the term "public offering" means an underwritten offering to the public of such common stock of the Corporation as the Secretary of Transportation determines to sell under section 4012;

(13) the term "sale date" means the date on which the initial public offering is closed;

(14) the term "subsidiary" means any corporation more than 50 percent of whose outstanding voting securities are directly or indirectly owned by the Corporation; and

(15) the term "United States share" means a share of common stock of the Corporation held by the United States Government on the date of the enactment of this Act or as a result of any split required pursuant to section 4012(d).

PART 2—CONRAIL

Subpart A—Sale of Conrail

SEC. 4011. PREPARATION FOR PUBLIC OFFERING.

(a) PUBLIC OFFERING MANAGERS.—(1) Not later than 30 days after the date of the enactment of this Act, the Secretary of Transportation, in consultation with the Secretary of the Treasury and the Chairman of the Board of Directors of the Corporation, shall retain the services of investment banking firms to serve jointly and be compensated equally as co-lead managers of the public offering (hereafter in this subpart referred to as the "co-lead managers") and to establish a syndicate to underwrite the public offering. The total number of co-lead managers shall be no fewer than 4 nor greater than 6. The Secretary shall designate one co-lead manager to coordinate and administer the public offering.

(2) In selecting the investment banking firms to serve as co-lead managers of the public offering under paragraph (1), consideration

Securities.
Banks and
banking.
45 USC 1311.

shall be given to the firm's institutional and retail distribution capabilities, financial strength, knowledge of the railroad industry, experience in large scale public offerings, research capability, and reputation. In addition, recognition shall also be given to contributions made by particular investment banking firms before the date of the enactment of this Act in demonstrating and promoting the long-term financial viability of the Corporation.

(b) **PAYMENT TO THE UNITED STATES.**—(1) Not later than 30 days after the date of the enactment of this Act, the Corporation shall transfer to the Secretary of the Treasury \$200,000,000.

(2) On or before February 1, 1987, or 30 days before the sale date, whichever occurs first, the Secretary of Transportation shall determine whether to require the Corporation to transfer to the Secretary of the Treasury, in addition to amounts transferred under paragraph (1), not to exceed \$100,000,000, taking into account the viability of the Corporation. The Corporation shall transfer such funds as are required to be transferred under this paragraph.

(c) **REGISTRATION STATEMENT.**—The Corporation shall prepare and cause to be filed with the Securities and Exchange Commission a registration statement with respect to the securities to be offered and sold in accordance with the securities laws and the rules and regulations thereunder in connection with the initial and any subsequent public offering.

(d) **LIMIT ON AUTHORITY TO PURCHASE STOCK.**—Section 216(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726(b)) is amended by adding at the end thereof the following new paragraph:

“(5) The authority of the Association to purchase debentures or series A preferred stock of the Corporation shall terminate upon the date of the enactment of the Conrail Privatization Act.”.

Securities.
45 USC 1312.

SEC. 4012. PUBLIC OFFERING.

(a) **STRUCTURE OF PUBLIC OFFERING.**—(1) After the registration statement referred to in section 4011(c) is declared effective by the Securities and Exchange Commission, the Secretary of Transportation, in consultation with the Secretary of the Treasury, the Chairman of the Board of Directors of the Corporation, and the co-lead managers, shall offer the United States shares for sale in a public offering, except as provided in paragraphs (2) and (3).

(2) The Secretary of Transportation, after such consultation, may elect to offer less than all of the United States shares for sale at the time of the initial sale.

(3) Under no circumstances shall the Secretary of Transportation offer any of the United States shares for sale unless, before the sale date, the Secretary determines, after such consultation, that the estimated sum of the gross proceeds from the sale of all the United States shares will be an adequate amount. A determination by the Secretary under this paragraph shall not be reviewable.

(4) In making a determination under paragraph (3), the Secretary shall have the goal of obtaining at least \$2,000,000,000 in aggregate gross proceeds for the United States from the public offering and any payments made under section 4011(b).

(b) **SUBSEQUENT SALES.**—If the Secretary of Transportation elects to offer for sale less than all the United States shares, the Secretary shall sell the remaining United States shares in subsequent public offerings.

(c) **CONSENT OF THE CORPORATION NOT REQUIRED.**—Any public offering under this section may be made without the consent of the Corporation.

(d) **AUTHORITY TO REQUIRE STOCK SPLITS.**—(1) The Secretary of Transportation, in consultation with the co-lead managers and the Chairman of the Board of Directors of the Corporation, may, in connection with the initial public offering described in subsection (a), before the filing of the registration statement referred to in section 4011(c), require the Corporation to declare a stock split or reverse stock split.

(2) The Corporation shall take such action as may be necessary to comply with the Secretary's requirements under this subsection.

(e) **CANCELLATION OF OTHER SECURITIES HELD BY THE UNITED STATES.**—(1) In consideration for amounts transferred to the United States under section 4011(b), the Secretary of Transportation shall, concurrent with the initial public offering described in subsection (a), deliver to the Corporation all preferred stock, 7.5 percent debentures, and contingent interest notes of the Corporation. The Corporation shall immediately cancel such debentures, preferred stock, and contingent interest notes, and any interest of the United States in such debentures, preferred stock, and contingent interest notes shall be thereby extinguished.

(2) For purposes of regulation by the Commission and State public utility regulation, the actions authorized by this subsection, the public offering, and the value of the consideration received therefor shall not change the value of the Corporation's assets net of depreciation and shall not be used to alter the calculation of the Corporation's stock or asset values, rate base, expenses, costs, returns, profits, or revenues, or otherwise affect or be the basis for a change in the regulation of any railroad service, rate, or practice provided or established by the Corporation, or any change in the financial reporting practice of the Corporation.

(f) **MINORITY INVESTMENT BANKING FIRMS.**—The Secretary of Transportation shall ensure that minority owned or controlled investment banking firms shall have an opportunity to participate to a significant degree in any public offering under this part.

(g) **INVESTMENT BANKING FIRM REQUIREMENTS.**—(1) The level of any investment banking firm's participation in the public offering shall be consistent with that firm's financial capabilities.

(2) No investment banking firm which was not in existence on September 1, 1986, shall participate in the public offering.

(h) **GENERAL ACCOUNTING OFFICE AUTHORITY TO CONDUCT AUDITS.**—The General Accounting Office may make such audits as may be deemed appropriate by the Comptroller General of the United States of all accounts, books, records, memoranda, correspondence, and other documents and transactions of the Corporation and the co-lead managers associated with the public offering. The co-lead managers shall agree, in writing, to allow the General Accounting Office to make such audits. The General Accounting Office shall report the results of all such audits to the Congress.

Records.
Reports.

SEC. 4013. FEES.

45 USC 1313.

(a) **INVESTMENT BANKING FIRM FEES.**—The Secretary of Transportation, in consultation with the Secretary of the Treasury, shall agree to pay to investment banking firms and other persons participating with such firms in the public offering the absolute minimum amount in fees necessary to carry out the public offering.

(b) **COSTS OF THE PUBLIC OFFERING.**—All costs of the public offering payable by the Secretary of Transportation shall be paid from the proceeds of the public offering.

Subpart B—Other Matters Relating to the Sale

45 USC 1321.

SEC. 4021. RAIL SERVICE OBLIGATIONS.

(a) **OBLIGATIONS OF THE CORPORATION.**—During a period of 5 years beginning on the date of the enactment of this Act, the following obligations shall apply to the Corporation:

(1) The Corporation shall spend in each fiscal year the greater of (A) an amount equal to the Corporation's depreciation for financial reporting purposes for such year or (B) \$500,000,000, in capital expenditures. With respect to any fiscal year, the Corporation's Board of Directors may reduce the required capital expenditures for such year to an amount which the Board determines is justified by prudent business and engineering practices, except that the Corporation's capital expenditures shall not be less than \$350,000,000 for its first fiscal year beginning after the sale date, a total of \$700,000,000 for its first two fiscal years beginning after the sale date, a total of \$1,050,000,000 for its first three fiscal years beginning after the sale date, a total of \$1,400,000,000 for its first four fiscal years beginning after the sale date, and a total of \$1,750,000,000 for its first five fiscal years beginning after the sale date.

(2)(A) Unless the Corporation is in compliance with the requirements of subparagraph (B), no common stock dividend or preferred stock dividend may be declared or paid by the Corporation.

(B)(i) The Corporation shall have been in compliance with the requirements of paragraph (1) as of the end of the fiscal year immediately preceding the fiscal year in which such dividend payment is made.

(ii) After payment of any common stock dividend, the Corporation shall have on hand cash or cash equivalents of \$400,000,000. Such amount may include amounts borrowed by the Corporation only to the extent that the consolidated funded debt of the Corporation does not exceed 175 percent of the consolidated tangible net worth of the Corporation.

(iii) After payment of any common stock dividend, the cumulative amount of all common stock dividends paid between the sale date and the date of payment of such dividend shall not exceed 45 percent of—

(I) the cumulative net income of the Corporation as reflected in the quarterly financial statements of the Corporation, for the period beginning after the end of the last fiscal quarter of the Corporation ending before the sale date, and ending at the end of the last fiscal quarter of the Corporation ending before the date of the declaration of such dividend, less

(II) the cumulative amount of any preferred stock dividends declared and paid between the sale date and the date of payment of such common stock dividend.

(C) For purposes of this paragraph—

(i) the term "common stock dividend" means—

(I) the declaration or payment by the Corporation of any dividends in cash, property, or other assets with respect to any shares of the common stock of the Corporation (other than dividends payable solely in shares of the common stock of the Corporation);

(II) the application of any of the property or assets of the Corporation to the purchase, redemption, or other acquisition or retirement of any shares of the common stock of the Corporation;

(III) the setting apart of any sum for the purchase, redemption, or other acquisition or retirement of any shares of the common stock of the Corporation; and

(IV) the making of any other distribution, by reduction of capital or otherwise, with respect to any shares of the common stock of the Corporation,

except that the merger of ConRail Equity Corporation into the Corporation shall not constitute a common stock dividend; and

(ii) the term "preferred stock dividend" means—

(I) the declaration or payment by the Corporation of any dividends in cash, property, or other assets with respect to any shares of the preferred stock of the Corporation;

(II) the application of any of the property or assets of the Corporation to the purchase, redemption, or other acquisition or retirement of any shares of the preferred stock of the Corporation;

(III) the setting apart of any sum for the purchase, redemption, or other acquisition or retirement of any shares of the preferred stock of the Corporation; and

(IV) the making of any other distribution, by reduction of capital or otherwise, with respect to any shares of the preferred stock of the Corporation.

(3) The Corporation shall continue its affirmative action program and its minority vendor program, substantially as such programs were being conducted by the Corporation as of February 8, 1985, subject to any provisions of applicable law.

Minorities.

(4) The Corporation shall not permit to occur any transaction or series of transactions (other than in the ordinary course of business of the Corporation and its subsidiaries) whereby all or any substantial part of the railroad assets and business of the Corporation and its subsidiaries taken as a whole are sold, leased, transferred, or otherwise disposed of to any corporation or entity other than to a wholly owned subsidiary of the Corporation.

(5) The Corporation shall offer any line for which an abandonment certificate is issued by the Commission to a purchaser who agrees to provide interconnecting rail service. Such offer shall last for the 120-day period following the date of issuance of the abandonment certificate and the price for such abandoned line shall be equal to 75 percent of net liquidation value as determined by the Commission, pursuant to regulations that had been issued under section 308 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 748).

(6) The Corporation and its subsidiaries shall maintain, preserve, protect, and keep their respective properties in good repair, working order, and condition, and shall not permit

deferral of normal and prudent maintenance necessary to provide and maintain rail service.

(b) COMPLIANCE CERTIFICATES.—(1) Within 90 days after the close of each of its fiscal years, or at the time its financial statements have been audited, whichever occurs later, the Corporation shall deliver to the Secretary of Transportation a certificate executed by an executive officer of the Corporation. Such certificate shall certify that, as of such date, the Corporation is in compliance with all requirements (other than the requirement regarding a common stock dividend or a preferred stock dividend) set forth in this section. Such certificate shall include audited consolidated financial statements.

(2) Within 5 days after the declaration of any common stock dividend or preferred stock dividend, the Corporation shall deliver to the Secretary of Transportation a certificate executed by an executive officer of the Corporation. Such certificate shall certify that, after giving effect to any such dividend, the Corporation shall be in compliance with any requirement regarding a common stock dividend or a preferred stock dividend set forth in this section. Such certificate shall include—

(A) quarterly financial statements; and

(B) a report of the Corporation's total capital expenditures, for the period with respect to which the dividend has been declared, and the fiscal year to date, and shall compare such capital expenditures to the budgeted capital expenditures and to the capital expenditures during the comparable periods of the previous fiscal year.

Reports.

Securities.
45 USC 1322.

SEC. 4022. OWNERSHIP LIMITATIONS.

(a) GENERAL.—(1) During a period of 3 years beginning on the sale date, no person, directly or indirectly, may acquire or hold securities representing more than 10 percent of the total votes of all outstanding voting securities of the Corporation.

(2) This subsection shall not apply—

(A) to the employee stock ownership plan (or successor plans) of the Corporation,

(B) to the Secretary of Transportation,

(C) to a railroad as described under subsection (b),

(D) to underwriting syndicates holding shares for resale, or

(E) in the case of shares beneficially held for others, to commercial banks, broker-dealers, clearing corporations, or other nominees.

Banks and
banking.

(b) RAILROADS.—(1) During a period of 1 year beginning on the sale date, no railroad may purchase or hold, directly or indirectly, more than 10 percent of any class of stock of the Corporation. During such period, no railroad may file an application with the Commission for a merger or consolidation with the Corporation or the acquisition of control of the Corporation under section 11344 of title 49, United States Code.

(2) During a period of 3 years beginning on the sale date, any railroad which purchases or holds any stock of the Corporation shall vote such stock in the same proportion as all other common stock of the Corporation is voted. After the expiration of 1 year after the sale date, the preceding sentence shall not apply to any railroad with respect to which the Commission has approved an application for a merger or consolidation with the Corporation or the acquisition of

control of the Corporation under section 11344 of title 49, United States Code.

(3) As used in this subsection, the term "railroad" means a class I railroad as determined by the Commission under the definition in effect on the date of the enactment of this Act, and includes any entity controlling, controlled by, or under common control with any railroad (other than the Corporation or its subsidiaries).

SEC. 4023. BOARD OF DIRECTORS.

45 USC 1323.

The Board of Directors of the Corporation shall be comprised as follows:

(1) Except as provided in paragraph (3), with respect to the period ending June 30, 1987, the board shall remain as it exists on the date of the enactment of this Act, with any vacancies being filled by directors nominated and elected by the remainder of the members of the board.

(2)(A) Except as provided in paragraph (3), with respect to the period beginning July 1, 1987, the board shall consist of—

(i) 3 directors appointed by the Secretary of Transportation;

(ii) the Chief Executive Officer and the Chief Operating Officer of the Corporation; and

(iii) 8 directors appointed from among persons knowledgeable in business affairs by the special court trustees named under subparagraph (C), in consultation with the Secretary of Transportation and the Chairman of the Board of Directors of the Corporation, and recognizing the need for and importance of—

(I) continuity in the direction of the Corporation's business and affairs;

(II) preserving the value of the investment of the United States in the Corporation;

(III) preserving essential rail service provided by the Corporation; and

(IV) providing for the sale of the United States shares.

(B) The Secretary of Transportation and the special court trustees may appoint directors under subparagraph (A) from among existing directors of the Corporation.

(C)(i) If more than 50 percent of the interest of the United States in the Corporation has not been sold before June 1, 1987, the special court established under section 209 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 719) shall, on that date, name 3 trustees from among persons knowledgeable in business affairs to make the appointments required by subparagraph (A)(iii). The Corporation shall compensate the special court trustees in an amount to be specified by the special court, not to exceed the amount paid by the Corporation to its directors for comparable services.

(ii) No person shall be eligible to be appointed as a special court trustee under this subparagraph who, at any time during the 30 months immediately preceding such appointment, was an officer, employee, or director of the United States Railway Association, the Corporation, or the Department of Transportation.

(3)(A) After the sale date, one director shall be elected by the public shareholders of the Corporation for each increment of

12.5 percent of the interest of the United States in the Corporation that has been sold through public offering.

(B) With respect to the period ending June 30, 1987—

(i) the first director elected under this paragraph shall replace the member of the board who became a director most recently from among—

(I) directors appointed by the United States Railway Association, or elected under paragraph (1) to replace such a director, and

(II) directors appointed by the Secretary of Transportation, or elected under paragraph (1) to replace such a director;

(ii) the second director elected under this paragraph shall replace the member of the Board who became a director most recently from among directors described in clause (i)(I) or (II), whichever group the first director replaced under this subparagraph was not a member of; and

(iii) subsequent directors elected under this paragraph shall replace members alternately from the groups described in clause (i)(I) and (II).

(C) With respect to the period beginning July 1, 1987, directors elected under this paragraph shall replace directors appointed by the special court trustees under paragraph (2)(A)(iii), in the order designated by the special court trustees in a list to be issued at the time of such original appointments.

(D) With respect to the period beginning on the first date more than 50 percent of the interest of the United States in the Corporation has been sold through public offering and ending when 100 percent of such interest has been sold—

(i) all remaining members of the board referred to in paragraph (2)(A)(iii), and

(ii) with respect to the period ending June 30, 1987, all remaining members of the board, except 3 members appointed by the Secretary of Transportation and the Chief Executive Officer and the Chief Operating Officer of the Corporation,

shall be replaced by directors elected by the public shareholders of the Corporation.

(E) After 100 percent of the interest of the United States in the Corporation has been sold, any remaining directors appointed by the Secretary of Transportation, the United States Railway Association, or the special court trustees referred to under paragraph (2)(A)(iii), shall be replaced by directors elected by the public shareholders of the Corporation.

(F) Nothing in this paragraph shall be construed to prohibit any director referred to in this section from being elected as a director by the public shareholders of the Corporation.

(4)(A) No director appointed or elected under this section shall be a special court trustee or an employee of the United States, except as elected by the public shareholders of the Corporation.

(B) No director appointed or elected under this section shall be an employee of the Corporation, except as provided in paragraph (2)(A)(ii) or as elected by the public shareholders of the Corporation.

SEC. 4024. PROVISIONS FOR EMPLOYEES.

(a) TRANSITIONAL EMPLOYEE PROTECTION.—Section 701(d)(2) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 797(d)(2)) is amended to read as follows:

“(2) Notwithstanding any other provision of law—

“(A) upon exhaustion of appropriated funds available for payment of benefits or expenses of administration of the Railroad Retirement Board (hereafter in this section referred to as the ‘Board’) under this section, or on the expiration of 60 days after the date of enactment of the Conrail Privatization Act, whichever first occurs, the United States shall have no further liability under this section, but the Corporation shall—

“(i) as agent for the Board, pay benefits under this section, without reimbursement, in such amounts and to such eligible employees as the Board shall designate, subject to the limitations prescribed in the benefit schedules issued under subsection (a); and

“(ii) on a periodic basis determined by the Board, advance to the Board its necessary expenses of administration, including expenses reasonably required for close-out of the program of labor protection under this section and for technical transition to the program of labor protection required by the Conrail Privatization Act, which advances shall be made without reimbursement.

“(B) The Corporation shall promptly honor the Board’s requests for advances under this paragraph as due and payable liquidated debts, subject to later adjustment after audit by the Inspector General of the Board. The Board is authorized to receive and apply Corporation funds advanced under this paragraph for administration of this section and to refund to the Corporation any excess administrative funds advanced by the Corporation.

“(C) The Corporation shall be deemed subrogated to the right of the Board to recover any benefit paid by the Corporation as agent for the Board that was improvidently paid under this paragraph, and the Board shall cooperate with the Corporation in its effort to recover any such payment; but the Corporation shall have no claim against the Board for such payment, and the Board shall not be made a real party in interest to any lawsuit or to any proceeding with respect to recovery of such payment.

“(D) Benefits provided by the Corporation, as agent for the Board, shall, for purposes of this title, be deemed to have been made available under section 713 of this title.”.

45 USC 797L.

(b) DISPUTE RESOLUTION.—Section 701 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 797) is further amended by adding at the end thereof a new subsection as follows:

“(e) DISPUTE RESOLUTION.—Any dispute or controversy regarding eligibility for benefits under this section shall be determined under such procedures as the Board may by regulation prescribe. Subject to administrative reconsideration by the Board under its own procedures, findings of fact and conclusions of law of the Board in determination of any claim for such benefits shall, in the absence of fraud or an action exceeding the Board’s jurisdiction, be binding and conclusive for all purposes and shall not be subject to review in any manner. For purposes of administration of this section, the adminis-

- 45 USC 359, 362. trative powers and penalties set forth in sections 9 and 12 of the Railroad Unemployment Insurance Act shall apply as if incorporated herein.”.
- Effective date.
45 USC 797 and
note.
Ante, p. 1903. (c) **REPEAL OF SECTION 701.**—Section 701 of the Regional Rail Reorganization Act of 1973 is repealed effective on the sale date. Notwithstanding this repeal—
- (1) any dispute or controversy regarding benefits under section 701 shall be determined under the terms of the law in effect prior to such repeal; and
 - (2) the Railroad Retirement Board shall take such actions as may be necessary to complete administration and closeout of the section 701 program and the Board is authorized to receive and apply Corporation funds for this purpose.
- 45 USC 797 note. (d) **CONTINUING RESPONSIBILITIES.**—(1) On and after the sale date, the Corporation shall provide the protection for its employees described in “Part III, Article III, Employee Protection”, of the “Definitive Agreement of September 17, 1985, By and Between Conrail and the Undersigned Representatives of Conrail’s Agreement Employees” and Appendix 3 thereto, together with any amendments thereto, or under any other terms and conditions as shall be agreed between the Corporation and the representatives of its employees.
- (2) The Corporation shall pay, as designated by the Railroad Retirement Board, any remaining benefits under section 701 of the Regional Rail Reorganization Act of 1973 that accrued, but were not disbursed, prior to the sale date.
- Records. (3) The Railroad Retirement Board shall transfer to the Corporation such information regarding administration of the labor protection program under such section 701 as may be reasonably necessary for the Corporation to discharge its responsibilities under this subsection, including copies of the individual claim records of employees of the Corporation.
- (4) The United States shall have no liability for benefits under this subsection.
- 45 USC 797 note. (e) **COMPENSATION FOR WAGES BELOW INDUSTRY STANDARD.**—The Corporation shall pay \$200,000,000 to present and former employees subject to collective bargaining agreements, in accordance with the terms and conditions in the Definitive Agreement referred to in subsection (d)(1), or as otherwise agreed between the parties.
- Securities.
45 USC 797 note. (f) **ESOP TRANSACTIONS.**—(1) As soon as practicable after the date of the enactment of this Act, the employee stock ownership plan of the Corporation (hereafter in this subsection referred to as the “ESOP”) shall be amended to provide that—
- (A) the shares of the ConRail Equity Corporation preferred stock held by the ESOP shall be surrendered by the ESOP in exchange for an equal number of shares of the common stock of the Corporation, and such common stock of the Corporation shall be allocated by the ESOP to the same persons in the same amounts as the shares of ConRail Equity Corporation preferred stock had been allocated; and
 - (B) the remaining shares of the ConRail Equity Corporation preferred stock held by the Corporation shall be cancelled, and an equal number of shares of the common stock of the Corporation shall be contributed by the Corporation to the ESOP, which shares shall be allocated by the ESOP to persons who are or were ESOP participants in accordance with the formula set forth in section 2 of Article II of Part III of the Definitive

Agreement referred to in subsection (d)(1), and in accordance with a comparable formula for present and former employees of the Corporation not covered by such section of the Definitive Agreement, except that no contribution by the Corporation to the ESOP shall be made which would affect the tax-qualified status of the ESOP, or of any of the employee benefit plans maintained by the Corporation or any affiliate of the Corporation, under the Internal Revenue Code of 1954.

Post, p. 2095.

(2)(A)(i) As soon as practicable after the expiration of 180 days after 100 percent of the United States shares are sold, the ESOP shall distribute all of the stock in the accounts of its participants and beneficiaries, except as provided in clause (ii).

(ii) Fractional shares shall not be distributed under clause (i). Shares equal to the aggregate amount of fractional shares shall be surrendered by the ESOP and redeemed by the Corporation for cash at the average closing price for the common stock of the Corporation on a national securities exchange for the 10 business days immediately preceding the date of distribution under clause (i), or, if the common stock of the Corporation is not listed on a national securities exchange, at the average closing price for such stock for such 10 business days as appearing in any regularly published reporting or quotation service, and the proceeds of such redemption shall be distributed by the ESOP to the same participants and beneficiaries and in the same amounts as the fractional shares had been allocated.

(B) After completing the distribution under subparagraph (A), the ESOP shall terminate.

(3) The Corporation shall distribute any full shares of its common stock which, because of the exception under paragraph (1)(B), could not be contributed to the ESOP to those persons to whom the ESOP would have allocated such shares pursuant to paragraph (1)(B) had such shares been contributed to the ESOP. The Corporation shall pay cash pursuant to the formula set forth in paragraph (2)(A)(ii) in lieu of fractional shares.

(4) For purposes of Rule 144 promulgated under the Securities Act of 1933, each share of the common stock of the Corporation distributed under this subsection shall be deemed to have been beneficially owned by the recipient, as of the date of such distribution, for a period of 3 years.

15 USC 77a.

SEC. 4025. CERTAIN ENFORCEMENT RELIEF.

(a) **ENFORCEMENT ACTIONS.**—The Secretary of Transportation, with respect to any provision of section 4021 or 4022, and any person who suffers direct and substantial economic injury as a result of an alleged violation by the Corporation, with respect to the provisions of section 4021(a)(1) and (2), and section 4022, may bring an action to require compliance with such provision.

(b) **SPECIAL COURT.**—Any action brought under this part shall be brought before the special court established under section 209 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 719). Such special court may limit the enforcement of a restriction under section 4021, if the effect of such restriction would be to substantially impair the continued viability of the Corporation.

Claims.
45 USC 1324.

Subpart C—Miscellaneous Technical and Conforming Amendments and Repeals

45 USC 1341.

Effective date.

SEC. 4031. ABOLITION OF UNITED STATES RAILWAY ASSOCIATION.

(a) **ABOLITION AND TERMINATION.**—(1) Effective April 1, 1987, the United States Railway Association is abolished.

(2) On January 1, 1987, all powers, duties, rights, and obligations of such association relating to the Corporation under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) shall be transferred to the Secretary of Transportation.

(3) The sole function of the United States Railway Association after January 1, 1987, shall be the termination of its affairs and the liquidation of its assets.

(b) **TRANSFER OF SECURITIES AND RESPONSIBILITIES.**—(1) Any securities of the Corporation held by the United States Railway Association shall, upon the date of the enactment of this Act, be transferred to the Secretary of Transportation.

(2) If, on the date the United States Railway Association is abolished under subsection (a), such association shall not have completed the termination of its affairs and the liquidation of its assets, the duty of completing such winding up of its affairs and liquidation shall be transferred to the Secretary of Transportation, who for such purposes shall succeed to all remaining powers, duties, rights, and obligations of such association.

Securities.

(c) **FINANCING AGREEMENT.**—(1) On January 1, 1987, the Amended and Restated Financing Agreement, dated May 10, 1979, between the United States Railway Association and the Corporation, together with any and all rights and obligations of or on behalf of any person with respect to such agreement, shall terminate and be of no further force or effect, except for those provisions specifying terms and conditions for payments made to the United States with respect to debentures, preferred stock, and contingent interest notes.

Effective date.

(2) Effective as of the sale date, those provisions of the Financing Agreement referred to in paragraph (1) shall terminate.

SEC. 4032. APPLICABILITY OF REGIONAL RAIL REORGANIZATION ACT OF 1973 TO CONRAIL AFTER SALE.

Section 301 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 741) is amended by adding at the end thereof the following new subsection:

“(k) **GOVERNING PROVISIONS AFTER SALE.**—The provisions of this Act shall not apply to the Corporation and to activities and other actions and responsibilities of the Corporation and its directors and employees after the sale date, other than with regard to—

Post, p. 1908.

45 USC 711.

45 USC 713.

45 USC 719.

45 USC 726.

“(1) section 102;

“(2) section 201(d);

“(3) section 203, but only with respect to information relating to proceedings before the special court established under section 209(b);

“(4) section 209, other than subsection (f) thereof;

“(5) section 216(f)(8), but only as such authority applies to activities related to the ESOP and related trust before the sale date;

“(6) section 216(f)(9), but only as such indemnification applies to activities relating to the ESOP and related trust before the sale date;

"(7) section 216(f)(10) with respect to all securities of the Corporation issued or transferred in connection with the public offering under the Conrail Privatization Act and all securities of ConRail Equity Corporation and all interests in the ESOP;

Securities.
45 USC 726.

"(8) section 217(c) and (e);

Post, p. 1908.

"(9) subsection (b) of this section, but only with respect to matters covered by the last sentence of such subsection;

"(10) subsection (i) of this section, but only as such authority applies to service as a director of the Corporation before the sale of the interest of the United States in the common stock of the Corporation;

Securities.

"(11) section 302, but only to the extent of (A) the creation and maintenance of the power and authority of the Corporation to operate rail service and to rehabilitate, improve, and modernize rail properties, and (B) the creation and maintenance of the powers of the Corporation as a railroad in any State in which it operates as of the sale date;

State and local
governments.
45 USC 742.

"(12) section 303(b)(1) and (2), but only to the extent of establishing the legal effect of the conveyance of property ordered and of the deeds and other instruments executed, acknowledged, delivered, or recorded in connection therewith and the quality of title acquired in such property;

45 USC 743.

"(13) section 303(b)(3)(B) with respect to the effect of an assignment, conveyance, or assumption as set forth in the last sentence of such subparagraph (B);

"(14) section 303(b)(5);

"(15) section 303(b)(6), but only with respect to establishing and maintaining the rights of the Corporation with respect to, limiting its obligations with respect to, and establishing the status of, the employee pension and welfare benefit plans transferred to the Corporation thereunder and with respect to the exclusivity of the jurisdiction of the special court and the limitation of jurisdiction of other courts;

"(16) section 303(e);

"(17) section 304, but only with respect to the finality of abandonments completed before the sale date pursuant to the authority thereof;

45 USC 744.

"(18) section 305, but only as to the effect, and continuing administration, of supplemental transactions consummated before the sale date;

45 USC 745.

"(19) section 308, but only (A) as to the finality of abandonments completed before the sale date and (B) as to abandonments of lines where a notice or notices of insufficient revenues with respect to such lines have been filed before November 1, 1985;

45 USC 748.

"(20) section 601(a)(2), but only with respect to activities before the sale date;

45 USC 791.

"(21) section 601(b)(2) and (b)(3), but only with respect to issuance of and transactions in any security of the Corporation before the sale date;

"(22) section 702(e);

45 USC 797a.

"(23) section 703;

45 USC 797b.

"(24) section 704;

45 USC 797c.

"(25) sections 706(a), 707, and 708(a), but only insofar as they establish part of the prevailing status quo for the Corporation's employees' rates of pay, rules, and working conditions, such

45 USC
797e-797g.

provisions to continue to apply unless changed pursuant to section 6 of the Railway Labor Act (45 U.S.C. 156);

45 USC 797h.

"(26) section 709;

45 USC 797i.

"(27) section 710(b)(1);

45 USC 797j.

"(28) section 711; and

45 USC 797m.

"(29) section 714, but only with regard to disputes or controversies specified in such section that arose before the sale date."

SEC. 4033. MISCELLANEOUS AMENDMENTS AND REPEALS.

45 USC 701 note.

(a) **REGIONAL RAIL REORGANIZATION ACT OF 1973 REPEALS.**—The following provisions of the Regional Rail Reorganization Act of 1973 (together with any items relating to such provisions contained in the table of contents of such Act) are repealed:

(1) Title IV (45 U.S.C. 761 through 769c).

(2) Section 713 (45 U.S.C. 797l).

(b) **REGIONAL RAIL REORGANIZATION ACT OF 1973 AMENDMENTS.**—(1) Section 102 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702) is amended by inserting after paragraph (17) a new paragraph as follows:

"(17A) 'sale date' means the date on which the initial public offering of the securities of the Corporation is closed under the Conrail Privatization Act;".

(2) Section 217(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 727(c)) is amended by striking "until the property" and all that follows, and inserting in lieu thereof "applicable to any taxable period commencing before January 1, 1987."

(3) Section 217(e) of such Act (45 U.S.C. 727(e)) is amended by striking "and shall collect".

(c) **AMENDMENTS AND REPEALS OF OTHER RAIL LAWS.**—(1)(A) Section 1152 of the Northeast Rail Service Act of 1981 (45 U.S.C. 1105) is amended—

(i) by inserting "or part 2 of the Conrail Privatization Act" after "subtitle" each place it appears; and

(ii) in the second sentence of subsection (c), by inserting "as the case may be," after the insertion made by clause (i) of this subparagraph.

(B) Section 1168(a) of the Northeast Rail Service Act of 1981 (45 U.S.C. 1116(a)) is amended by inserting before the period at the end the following: "and to the implementation of the sale of the interest of the United States in Conrail under the Conrail Privatization Act".

(C)(i) The following provisions of the Northeast Rail Service Act of 1981 are repealed:

(I) Section 1154 (45 U.S.C. 1107).

(II) Section 1161 (45 U.S.C. 1110).

(III) Section 1166 (45 U.S.C. 1114).

(IV) Subsection (c) of section 1167 (45 U.S.C. 1115).

(ii) The items relating to such sections 1154, 1161, and 1166 in the table of contents of such Act are repealed.

(2) Section 501(8) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821(8)) is amended by striking out "(A)" and by striking out all that follows "improved asset utilization;"

(3) Section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825) is amended—

(A) in subsection (a)(1), by striking out all after "railroad" through "1981"; and

(B) in subsection (b)(2)(C), by striking out all after "costs" the second time it appears through "subsidy".

(4) Subsection (b)(1) of section 509 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 829) is repealed.

(5) Section 511(e) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 831(e)) is amended—

(A) by striking out "(1)" in the first paragraph;

(B) by striking all that follows "time" in the first paragraph and inserting in lieu thereof a period; and

(C) by striking out paragraph (2).

(6) Section 402 of the Rail Safety and Service Improvement Act of 1982 (45 U.S.C. 825a) is repealed.

(7) Section 10362(b)(7)(A) of title 49, United States Code, is amended by striking out "by the Consolidated Rail Corporation or".

SEC. 4034. EXEMPTION FROM LIABILITY.

45 USC 1342.

(a) **IN GENERAL.**—No person referred to in section 216(f)(8)(C)(i), (ii), or (iii) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726(f)(8)(C)(i), (ii), or (iii)) shall be liable, for money damages or otherwise, to any party if, with respect to the subject matter of the action, suit, or proceeding, such person was fulfilling a duty, in connection with any action taken under this part, which such person in good faith reasonably believed to be required by law or vested in such person.

(b) **EXCEPTION.**—This section shall not apply to claims arising out of the Securities Act of 1933, the Securities Exchange Act of 1934, or the Constitution or laws of any State, territory, or possession of the United States relating to transactions in securities, which claims are in connection with a public offering under section 4012 of this Act.

Claims.
Securities.
State and local
governments.
15 USC 77a.
15 USC 78a.

SEC. 4035. CHARTER AMENDMENT.

45 USC 1343.

Within 60 days after the date of the enactment of this Act, the Corporation shall amend its Articles of Incorporation to contain the following provision, which provision shall not be subject to amendment or repeal:

"It shall be a fundamental purpose of the Corporation to maintain continued rail service in its service area."

SEC. 4036. STATUS OF CONRAIL AFTER SALE.

45 USC 1344.

The Corporation shall be a rail carrier as defined in section 10102(19) of title 49, United States Code, notwithstanding this part.

SEC. 4037. EFFECT ON CONTRACTS.

45 USC 1345.

Nothing in this part shall affect any obligation of the Corporation to carry out its transportation contracts and equipment leases, equipment trusts, and conditional sales agreements, in accordance with their terms.

SEC. 4038. RESOLUTION OF CERTAIN ISSUES.

45 USC 1346.

(a) **EMPLOYEE ISSUES.**—Section 4024 completely and finally—

(1) extinguishes all employee rights, and any obligation of the United States, under section 401(e) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 761(e)) as in effect immediately before the date of the enactment of this Act;

(2) resolves any and all claims against the Corporation or any other person arising under the Definitive Agreement referred to

Claims.

- in section 4024(d)(1) or any other agreement containing similar terms and conditions;
- Claims. (3) resolves all claims to pay entitlements arising out of the pay increase deferrals by present and former employees of the Corporation under the Agreement of May 5, 1981, between Conrail and Certain Labor Organizations for Labor Contributions to Self-Sufficiency for Conrail;
- 45 USC 156. (4) resolves all issues raised by notices served by representatives of such employees under section 6 of the Railway Labor Act proposing repayment of or compensation for such deferrals; and
- Claims. (5) resolves all claims against the Railway Labor Executives' Association or the Corporation by any adviser, consultant, or other person who has provided services to such association in connection with any matter referred to in this part.
- (b) CORPORATION ACTIONS.—The Corporation shall not be considered to be in breach, default, or violation of any agreement to which it is a party, notwithstanding any provision of such agreement, because of any provision of this part or any action the Corporation is required to take under this part.
- Claims. (c) RIGHT TO SUE WITHDRAWN.—The United States hereby withdraws any stated or implied consent for the United States, or any agent or officer of the United States, to be sued by any person for any legal, equitable, or other relief with respect to any claim arising out of, or resulting from, acts or omissions under this part, except actions brought to require the Secretary of Transportation to perform duties or acts required under subpart A.

PART 3—PROMOTION OF RAIL COMPETITION

SEC. 4051. AGRICULTURE CONTRACT DISCLOSURE.

Section 10713(b) of title 49, United States Code, is amended by inserting "(1)" after "(b)"; and by adding at the end a new paragraph as follows:

"(2)(A) The essential terms of any contract for the transportation of agricultural commodities to be made available to the general public in tariff format under this subsection shall include, but shall not be limited to (i) the identity of the shipper party to the contract; (ii) the specific origins, transit points and other shipper facilities subject to the contract, and destinations served under such contract; (iii) the duration of the contract, including provisions for optional extension; (iv) the actual volume requirements, if any; (v) whether any transportation service has begun under a contract before the date such contract is filed with or approved by the Commission, and (vi) the date on which the contract became applicable to the transportation services provided under the contract. The Commission shall interpret this subsection to provide for liberal discovery to shippers seeking remedies under subsection (d)(2)(B) of this section.

"(B) Any amendment, supplement, or change to any term or provision of any contract described in subparagraph (A), including extensions of such contract, changes of origin, transit points, affected shipper facilities, destination points, or negotiated economic terms, shall be deemed to be a separate and new contract for the purposes of this subsection. Such amendments, supplements, or changes shall be filed separately with the Commission as provided in paragraph (1).

“(C) Within 60 days after the date of the enactment of the Conrail Privatization Act, the Commission shall issue regulations which require that essential terms of contracts described in subparagraph (A) shall be made available to the general public in tariff format as provided in this paragraph.

Regulations.

“(D) The railroad contract rate advisory service established pursuant to subsection (m) of this section shall assess the impact on competition among agricultural shippers of variations between contract rates for various shipments and the published single car rates, and shall submit a report to the Congress not later than 120 days after the date of the enactment of the Conrail Privatization Act.”.

Reports.

SEC. 4052. BOXCAR PROVISION.

The authority of the Commission to promulgate that portion of the rule adopted by the Commission in Ex Parte No. 346 (Sub. No. 19) served September 12, 1986, consisting of small railroad protections, is hereby confirmed.

Subtitle B—Economic Development Administration

SEC. 4101. SALE OF NOTES.

Notwithstanding any other provision of law, the Secretary of Commerce shall, under such terms as the Secretary may provide, sell defaulted notes held by the Economic Development Administration in such amounts as to realize net proceeds of not less than \$50,000,000 from such sales during fiscal year 1987.

TITLE V—MARITIME PROGRAMS

Subtitle A—Maritime Loan Guarantees

SEC. 5001. LOAN GUARANTEES.

(a) Section 362(b) of title 11, United States Code, is amended—

(1) by striking the period in paragraph (11) and inserting in lieu thereof a semicolon; and

(2) by adding at the end thereof the following:

“(12) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Transportation under the Ship Mortgage Act, 1920 (46 App. U.S.C. 911 et seq.) (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage, or a security interest in or relating to a vessel or vessel under construction, held by the Secretary of Transportation under section 207 or title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1117 and 1271 et seq., respectively), or under applicable State law; or

State and local governments.

11 USC 1101 et seq.

“(13) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization

11 USC 1101 *et seq.*

pursuant to chapter 11 of this title and which was brought by the Secretary of Commerce under the Ship Mortgage Act, 1920 (46 App. U.S.C. 911 *et seq.*) (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage in a vessel or a mortgage, deed of trust, or other security interest in a fishing facility held by the Secretary of Commerce under section 207 or title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1117 and 1271 *et seq.*, respectively).

The provisions of paragraphs (12) and (13) of this subsection shall apply with respect to any such petition filed on or before December 31, 1989."

Reports.
11 USC 362 *note.*

Before July 1, 1989, the Secretary of Transportation and the Secretary of Commerce each shall submit a report to the Committees on Merchant Marine and Fisheries, and the Judiciary of the House of Representatives and the Committees on Commerce, Science, and Transportation, and the Judiciary of the Senate on the effects of this subsection together with any recommendations for legislation.

11 USC 362 *note.*

(b) The amendments made by subsection (a) of this section shall apply only to petitions filed under section 362 of title 11, United States Code, which are made after August 1, 1986.

46 USC 1271 *et seq.*

(c) Subsection L of section 30 of the Merchant Marine Act of 1920 (46 App. U.S.C. 952) is amended by adding at the end the following: "When the Secretary of Commerce or Transportation is a mortgagee under this Act, the Secretary may foreclose on liens arising from rights attendant to the creation of mortgages under title XI of the Merchant Marine Act, 1936, subject to section 362(b) of title 11, United States Code."

SEC. 5002. AMOUNT OF GUARANTEE FOR OBLIGATIONS.

Section 1103(a) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1273(a)) is amended by adding at the end thereof the following: "A guarantee, or commitment to guarantee, made by the Secretary under this title shall cover 100 percent of the amount of the principal and interest of the obligation."

SEC. 5003. AMOUNT OF GUARANTEE FOR OBLIGATIONS RELATING TO FISHING VESSELS OR FISHERY FACILITIES.

Section 1104(b)(2) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1274(b)(2)) is amended by striking "Provided, further, That in the case of any vessel to be used in the fishing trade or industry, such obligations may be in an aggregate principal amount which does not exceed 87½ per centum of the actual cost or depreciated actual cost of the vessel;" and inserting in lieu thereof "Provided further, That in the case of a fishing vessel or fishery facility, the obligation shall be in an aggregate principal amount equal to 80 percent of the actual cost or depreciated actual cost of the fishing vessel or fishery facility, except that no debt may be placed under this proviso through the Federal Financing Bank:"

Alaska.
16 USC 1856
note.

SEC. 5004. FOREIGN FISH PROCESSING IN NORTON SOUND.

For purposes of processing pink salmon within the internal waters of the State of Alaska, the geographic area bounded on the north by a parallel of latitude of 64 degrees, 23 minutes, on the south by a parallel of latitude of 63 degrees, 51 minutes, on the east by the baseline from which the territorial sea is measured, and on the west by the outer limit of the territorial sea, shall be considered to be internal waters of the State of Alaska for the purposes of section

306(c)(4)(B) of the Fishery Conservation and Management Act (16 U.S.C. 1856(c)(4)(B)) until September 30, 1993.

Subtitle B—Load Line and Tonnage Measurement User Fees

SEC. 5101. AMENDMENTS TO TITLE 46.

Subtitle II of title 46, United States Code, is amended as follows:

(1) The table of chapters at the beginning of the subtitle is amended by—

(A) striking “[PART C—RESERVED FOR LOAD LINES OF VESSELS]” and inserting—

“PART C—LOAD LINES OF VESSELS

“51. Load lines 5101”;

and

(B) striking “[PART J—RESERVED FOR MEASUREMENT OF VESSELS]” and inserting—

“PART J—MEASUREMENT OF VESSELS

“141. General	14101
“143. Convention measurement	14301
“145. Regulatory measurement	14501
“147. Penalties	14701”

(2) Immediately after part B, strike “[PART C—RESERVED FOR LOAD LINES OF VESSELS]” and insert the following new part C:

“PART C—LOAD LINES OF VESSELS

“CHAPTER 51—LOAD LINES

Sec.

- “5101. Definitions.
- “5102. Application.
- “5103. Load line requirements.
- “5104. Assignment of load lines.
- “5105. Load line surveys.
- “5106. Load line certificate.
- “5107. Delegation of authority.
- “5108. Special exemptions.
- “5109. Reciprocity for foreign vessels.
- “5110. Submersible vessels.
- “5111. Providing loading information.
- “5112. Loading restrictions.
- “5113. Detention of vessels.
- “5114. Use of Customs Service officers and employees for enforcement.
- “5115. Regulations.
- “5116. Penalties.

“§ 5101. Definitions

“In this chapter—

“(1) ‘domestic voyage’ means movement of a vessel between places in, or subject to the jurisdiction of, the United States, except movement between—

46 USC 5101.

"(A) a place in a territory or possession of the United States or the Trust Territory of the Pacific Islands; and

"(B) a place outside that territory, possession, or Trust Territory.

"(2) 'economic benefit of the overloading' means the amount obtained by multiplying the weight of the overload (in tons) by the lesser of—

"(A) the average freight rate value of a ton of the vessel's cargo for the voyage; or

"(B) \$50.

"(3) 'existing vessel' means—

"(A) a vessel on a domestic voyage, the keel of which was laid, or that was at a similar stage of construction, before January 1, 1986; and

"(B) a vessel on a foreign voyage, the keel of which was laid, or that was at a similar stage of construction, before July 21, 1968.

"(4) 'freeboard' means the distance from the mark of the load line assigned under this chapter to the freeboard deck.

"(5) 'freeboard deck' means the deck or other structure the Secretary prescribes by regulation.

"(6) 'minimum safe freeboard' means the freeboard that the Secretary decides cannot be reduced safely without limiting the operation of the vessel.

"(7) 'weight of the overload' means the amount obtained by multiplying the number of inches that the vessel is submerged below the applicable assigned freeboard by the tons-an-inch immersion factor for the vessel at the assigned minimum safe freeboard.

46 USC 5102.

"§ 5102. Application

"(a) Except as provided in subsection (b) of this section, this chapter applies to the following:

"(1) a vessel of the United States.

"(2) a vessel on the navigable waters of the United States.

"(3) a vessel—

"(A) owned by a citizen of the United States or a corporation established by or under the laws of the United States or a State; and

"(B) not registered in a foreign country.

"(4) a public vessel of the United States.

"(5) a vessel otherwise subject to the jurisdiction of the United States.

"(b) This chapter does not apply to the following:

"(1) a vessel of war.

"(2) a recreational vessel when operated only for pleasure.

"(3) a fishing vessel.

"(4) a fish processing vessel of not more than 5,000 gross tons that—

"(A)(i) was constructed as a fish processing vessel before August 16, 1974; or

"(ii) was converted for use as a fish processing vessel before January 1, 1983; and

"(B) is not on a foreign voyage.

"(5) a fish tender vessel of not more than 500 gross tons that—

State and local governments.

“(A)(i) was constructed, under construction, or under contract to be constructed as a fish tender vessel before January 1, 1980; or

“(ii) was converted for use as a fish tender vessel before January 1, 1983; and

“(B) is not on a foreign voyage.

“(6) a vessel of the United States on a domestic voyage that does not cross the Boundary Line, except a voyage on the Great Lakes.

“(7) a vessel of less than 24 meters (79 feet) overall in length.

“(8) a public vessel of the United States on a domestic voyage.

“(9) a vessel excluded from the application of this chapter by an international agreement to which the United States Government is a party.

International agreements.

“(10) an existing vessel of not more than 150 gross tons that is on a domestic voyage.

“(11) a small passenger vessel on a domestic voyage.

“(12) a vessel of the working fleet of the Panama Canal Commission not on a foreign voyage.

“(c) On application by the owner and after a survey under section 5105 of this title, the Secretary may assign load lines for a vessel excluded from the application of this chapter under subsection (b) of this section. A vessel assigned load lines under this subsection is subject to this chapter until the surrender of its load line certificate and the removal of its load line marks.

“(d) This chapter does not affect an international agreement to which the Government is a party that is not in conflict with the International Convention on Load Lines currently in force for the United States.

International agreements.

“§ 5103. Load line requirements

46 USC 5103.

“(a) A vessel may be operated only if the vessel has been assigned load lines.

“(b) The owner, charterer, managing operator, agent, master, and individual in charge of a vessel shall mark and maintain the load lines permanently and conspicuously in the way prescribed by the Secretary.

“§ 5104. Assignment of load lines

46 USC 5104.

“(a) The Secretary shall assign load lines for a vessel so that they indicate the minimum safe freeboard to which the vessel may be loaded. However, if the owner requests, the Secretary may assign load lines that result in greater freeboard than the minimum safe freeboard.

“(b) In assigning load lines for a vessel, the Secretary shall consider—

“(1) the service, type, and character of the vessel;

“(2) the geographic area in which the vessel will operate; and

“(3) applicable international agreements to which the United States Government is a party.

International agreements.

“(c) An existing vessel may retain its load lines assigned before January 1, 1986, unless the Secretary decides that a substantial change in the vessel after those load lines were assigned requires that new load lines be assigned under this chapter.

“(d) The minimum freeboard of an existing vessel may be reduced only if the vessel complies with every applicable provision of this chapter.

"(e) The Secretary may designate by regulation specific geographic areas that have less severe weather or sea conditions and from which there is adequate time to return to available safe harbors. The Secretary may reduce the minimum freeboard of a vessel operating in these areas.

46 USC 5105.

"§ 5105. Load line surveys

"(a) The Secretary may provide for annual, renewal, and other load line surveys.

"(b) In conducting a load line survey, the Secretary shall consider whether—

"(1) the hull and fittings of the vessel—

"(A) are adequate to protect the vessel from the sea; and

"(B) meet other requirements the Secretary may prescribe by regulation;

"(2) the strength of the hull is adequate for all loading conditions;

"(3) the stability of the vessel is adequate for all loading conditions;

"(4) the topsides of the vessel are arranged and constructed to allow rapid overboard drainage of deck water in heavy weather; and

"(5) the topsides of the vessel are adequate in design, arrangement, and equipment to protect crewmembers performing outside tasks necessary for safe operation of the vessel.

46 USC 5106.

"§ 5106. Load line certificate

"(a) On finding that a load line survey of a vessel under this chapter is satisfactory and that the vessel's load lines are marked correctly, the Secretary shall issue the vessel a load line certificate and deliver it to the owner, master, or individual in charge of the vessel.

"(b) The certificate shall be maintained as required by the Secretary.

46 USC 5107.

"§ 5107. Delegation of authority

"(a) The Secretary shall delegate to the American Bureau of Shipping or other similarly qualified organizations the authority to assign load lines, survey vessels, determine that load lines are marked correctly, and issue load line certificates under this chapter.

"(b) Under regulations prescribed by the Secretary, a decision of an organization delegated authority under subsection (a) of this section related to the assignment of a load line may be appealed to the Secretary.

"(c) For a vessel intended to be engaged on a foreign voyage, the Secretary may delegate to another country that is a party to the International Convention on Load Lines, 1966, the authority to assign load lines, survey vessels, determine that the load lines are marked correctly, and issue an International Load Line Certificate (1966).

"(d) The Secretary may terminate a delegation made under this section after giving written notice to the organization.

46 USC 5108.

"§ 5108. Special exemptions

"(a) The Secretary may exempt a vessel from any part of this chapter when—

“(1) the vessel is entitled to an exemption under an international agreement to which the United States Government is a party; or

International agreements.

“(2) under regulations (including regulations on special operations conditions) prescribed by the Secretary, the Secretary finds that good cause exists for granting an exemption.

“(b) When the Secretary grants an exemption under this section, the Secretary may issue a certificate of exemption stating the extent of the exemption.

“(c) A certificate of exemption issued under subsection (b) of this section shall be maintained as required by the Secretary.

“§ 5109. Reciprocity for foreign vessels

International agreements.
46 USC 5109.

“(a) When the Secretary finds that the laws and regulations of a foreign country related to load lines are similar to those of this chapter and the regulations prescribed under this chapter, or when a foreign country is a party to an international load line agreement to which the United States Government is a party, the Secretary shall accept the load line marks and certificate of a vessel of that foreign country as complying with this chapter and the regulations prescribed under this chapter. The Secretary may control the vessel as provided for in the applicable international agreement.

“(b) Subsection (a) of this section does not apply to a vessel of a foreign country that does not recognize load lines assigned under this chapter.

“§ 5110. Submersible vessels

46 USC 5110.

“Notwithstanding sections 5103–5105 of this title, the Secretary may prescribe regulations for submersible vessels to provide a minimum level of safety. In developing the regulations, the Secretary shall consider factors relevant to submersible vessels, including the structure, stability, and watertight integrity of those vessels.

“§ 5111. Providing loading information

46 USC 5111.

“The Secretary may prescribe regulations requiring the owner, charterer, managing operator, and agent of a vessel to provide loading information (including information on loading distribution, stability, and margin of strength) to the master or individual in charge of the vessel in a language the master or individual understands.

“§ 5112. Loading restrictions

46 USC 5112.

“(a) A vessel may not be loaded in a way that submerges the assigned load line or the place at which the load line is required to be marked on the vessel.

“(b) If the loading or stability conditions of a vessel change, the master or individual in charge of the vessel, before moving the vessel, shall record in the official logbook or other permanent record of the vessel—

Records.

“(1) the position of the assigned load line relative to the water surface; and

“(2) the draft of the vessel fore and aft.

“(c) A vessel may be operated only if the loading distribution, stability, and margin of strength are adequate for the voyage or movement intended.

“(d) Subsections (a) and (b) of this section do not apply to a submersible vessel.

46 USC 5113. "§ 5113. Detention of vessels

"(a) When the Secretary believes that a vessel is about to leave a place in the United States in violation of this chapter or a regulation prescribed under this chapter, the Secretary may detain the vessel by giving notice to the owner, charterer, managing operator, agent, master, or individual in charge of the vessel.

"(b) A detained vessel may be cleared under section 4197 of the Revised Statutes (46 App. U.S.C. 91) only after the violation has been corrected. If the vessel was cleared before being detained, the clearance shall be withdrawn.

"(c) Under regulations prescribed by the Secretary, the owner, charterer, managing operator, agent, master, or individual in charge of a detained vessel may petition the Secretary to review the detention order.

"(d) After reviewing a petition, the Secretary may affirm, withdraw, or change the detention order. Before acting on the petition, the Secretary may require any independent survey that may be necessary to determine the condition of the vessel.

"(e) The owner of a vessel is liable for the cost incident to a petition for review and any required survey if the vessel is found to be in violation of this chapter or a regulation prescribed under this chapter.

46 USC 5114. "§ 5114. Use of Customs Service officers employees for enforcement

"(a) With the approval of the Secretary of the Treasury, the Secretary may use an officer or employee of the United States Customs Service to enforce this chapter and the regulations prescribed under this chapter.

"(b) The Secretary shall consult with the Secretary of the Treasury before prescribing a regulation that affects the enforcement responsibilities of an officer or employee of the Customs Service.

46 USC 5115. "§ 5115. Regulations

"(a) The Secretary may prescribe regulations to carry out this part.

46 USC 5116. "§ 5116. Penalties

"(a) Except as otherwise provided in this section, the owner, charterer, managing operator, agent, master, and individual in charge of a vessel violating this chapter or a regulation prescribed under this chapter are each liable to the United States Government for a civil penalty of not more than \$5,000. Each day of a continuing violation is a separate violation. The vessel also is liable in rem for the penalty.

"(b) The owner, charterer, managing operator, agent, master, and individual in charge of a vessel allowing, causing, attempting to cause, or failing to take reasonable care to prevent a violation of section 5112(a) of this title are each liable to the Government for a civil penalty of not more than \$10,000 plus an additional amount equal to twice the economic benefit of the overloading. The vessel also is liable in rem for the penalty.

"(c) The master or individual in charge of a vessel violating section 5112(b) of this title is liable to the Government for a civil penalty of not more than \$5,000. The vessel also is liable in rem for the penalty.

"(d) A person causing or allowing the departure of a vessel from a place within the jurisdiction of the United States in violation of a detention order issued under section 5113 of this title shall be fined not more than \$10,000, imprisoned for not more than one year, or both.

"(e) A person causing or allowing the alteration, concealment, or removal of a mark placed on a vessel under section 5103(b) of this title and the regulations prescribed under this chapter, except to make a lawful change or to escape enemy capture in time of war, shall be fined not more than \$10,000, imprisoned for not more than 2 years, or both."

(3) Immediately after part I, strike "[PART J—RESERVED FOR MEASUREMENT OF VESSELS]" and insert the following new part J:

"PART J—MEASUREMENT OF VESSELS

"CHAPTER 141—GENERAL

"Sec.

"14101. Definitions.

"14102. Regulations.

"14103. Delegation of authority.

"14104. Measurement to determine application of a law.

"§ 14101. Definitions

"In this part—

"(1) 'Convention' means the International Convention on Tonnage Measurement of Ships, 1969.

"(2) 'existing vessel' means a vessel the keel of which was laid or that was at a similar stage of construction before July 18, 1982.

"(3) 'Great Lakes' means—

"(A) the Great Lakes; and

"(B) the St. Lawrence River west of—

"(i) a rhumb line drawn from Cap des Rosiers to West Point, Anticosti Island; and

"(ii) on the north side of Anticosti Island, the meridian of longitude 63 degrees west.

"(4) 'vessel engaged on a foreign voyage' means a vessel—

"(A) arriving at a place under the jurisdiction of the United States from a place in a foreign country;

"(B) making a voyage between places outside the United States (except a foreign vessel engaged on that voyage);

"(C) departing from a place under the jurisdiction of the United States for a place in a foreign country; or

"(D) making a voyage between a place within a territory or possession of the United States and another place under the jurisdiction of the United States not within that territory or possession.

"§ 14102. Regulations

The Secretary may prescribe regulations to carry out this part.

"§ 14103. Delegation of authority

"(a) The Secretary may delegate to a qualified person the authority to measure a vessel and issue an International Tonnage Certificate (1969) or other appropriate certificate of measurement under this part.

46 USC 14101.

TIAS 10490.

46 USC 14102.

46 USC 14103.

"(b) Under regulations prescribed by the Secretary, a decision of the person delegated authority under subsection (a) of this section related to measuring a vessel or issuing a certificate may be appealed to the Secretary.

Infra.

"(c) For a vessel intended to be engaged on a foreign voyage, the Secretary may delegate to another country that is a party to the Convention the authority to measure the vessel and issue an International Tonnage Certificate (1969) under chapter 143 of this title.

"(d) The Secretary may terminate a delegation made under this section after giving written notice to the person.

46 USC 14104.

"§ 14104. Measurement to determine application of a law

"When the application of a law of the United States to a vessel depends on the vessel's tonnage, the vessel shall be measured under this part.

"CHAPTER 143—CONVENTION MEASUREMENT

"Sec.

"14301. Application.

"14302. Measurement.

"14303. International Tonnage Certificate (1969).

"14304. Remeasurement.

"14305. Optional regulatory measurement.

"14306. Reciprocity for foreign vessels.

"14307. Inspection of foreign vessels.

46 USC 14301.

"§ 14301. Application

"(a) Except as otherwise provided in this section, this chapter applies to the following:

"(1) a documented vessel.

"(2) a vessel that is to be documented under chapter 121 of this title.

"(3) a vessel engaged on a foreign voyage.

46 USC 12101 *et seq.*

"(b) This chapter does not apply to the following:

"(1) a vessel of war.

"(2) a vessel of less than 24 meters (79 feet) overall in length.

"(3) a vessel operating only on the Great Lakes, unless the owner requests.

"(4) a vessel (except a vessel engaged on a foreign voyage) the keel of which was laid or that was at a similar stage of construction before January 1, 1986, unless—

"(A) the owner requests; or

"(B) the vessel undergoes a change that the Secretary finds substantially affects the vessel's gross tonnage.

"(5) before July 19, 1994, an existing vessel unless—

"(A) the owner requests; or

"(B) the vessel undergoes a change that the Secretary finds substantially affects the vessel's gross tonnage.

"(c) A vessel made subject to this chapter at the request of the owner may be remeasured only as provided by this chapter.

International agreements.

"(d) After July 18, 1994, an existing vessel (except an existing vessel referred to in subsection (b)(5) (A) or (B) of this section) may retain its tonnages existing on July 18, 1994, for the application of relevant requirements under international agreements (except the Convention) and other laws of the United States. However, if the vessel undergoes a change substantially affecting its tonnage after July 18, 1994, the vessel shall be remeasured under this chapter.

"(e) This chapter does not affect an international agreement to which the United States Government is a party that is not in conflict with the Convention or the application of IMO Resolutions A.494 (XII) of November 19, 1981, A.540 (XIII) of November 17, 1983, and A.541 (XIII) of November 17, 1983.

International
agreements.

"§ 14302. Measurement

46 USC 14302.

"(a) The Secretary shall measure a vessel to which this chapter applies in the way provided by this chapter and the Convention.

"(b) Except as provided in section 1602(a) of the Panama Canal Act of 1979 (22 U.S.C. 3792(a)), a vessel measured under this chapter may not be required to be measured under another law.

"(c) Unless otherwise provided by law, the measurement of a vessel under this chapter applies to a law of the United States whose applicability depends on a vessel's tonnage, if that law—

"(1) becomes effective after July 18, 1994; or

"(2) is in effect before July 19, 1994, is not enumerated in section 14305 of this title, and is identified by the Secretary by regulation as a law to which this chapter applies.

Effective date.
Regulations.

"§ 14303. International Tonnage Certificate (1969)

46 USC 14303.

"(a) After measuring a vessel under this chapter, the Secretary shall issue, on request of the owner, an International Tonnage Certificate (1969) and deliver it to the owner or master of the vessel.

"(b) The certificate shall be maintained as required by the Secretary.

"§ 14304. Remeasurement

46 USC 14304.

"(a) To the extent necessary, the Secretary shall remeasure a vessel to which this chapter applies if—

"(1) the Secretary or the owner alleges an error in its measurement; or

"(2) the vessel or the use of its space is changed in a way that substantially affects its tonnage.

"(b) Except as provided in this chapter or section 14504 of this title, a vessel that has been measured does not have to be remeasured to obtain another document or endorsement under chapter 121 of this title.

Post, p. 1923.

46 USC 12101 *et*
seq.
46 USC 14305.

"§ 14305. Optional regulatory measurement

"(a) On request of the owner of a documented vessel measured under this chapter, the Secretary also shall measure the vessel under chapter 145 of this title. The tonnages determined under that chapter shall be used in applying—

"(1) parts A, B, C, E, F, and G and sections 12106(c) and 12108(c) of this title;

"(2) section 3(d)(3) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 903(d)(3));

"(3) section 4 of the Bridge to Bridge Radiotelephone Act (33 U.S.C. 1203(a));

"(4) section 4(a)(3) of the Ports and Waterways Safety Act (33 U.S.C. 1223(a)(3));

"(5) section 4283 of the Revised Statutes of the United States (46 App. U.S.C. 183);

"(6) sections 27 and 27A of the Act of June 5, 1920 (46 App. U.S.C. 883 and 883-1);

"(7) Act of July 14, 1956 (46 App. U.S.C. 883a);

46 USC 12106,
12108.

Post, p. 1923.

"(8) sections 351, 352, 355, and 356 of the Ship Radio Act (47 U.S.C. 351, 352, 354, and 354a);

"(9) section 403 of the Commercial Fishing Industry Vessel Act (46 U.S.C. 3302 note);

46 USC 8303,
8304.

"(10) the Officers' Competency Certificates Convention, 1936, and sections 8303 and 8304 of this title;

16 UST 185.

"(11) the International Convention for the Safety of Life at Sea as provided by IMCO Resolution A.494 (XII) of November 19, 1981;

"(12) the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, 1978, as provided by IMO Resolution A.540 (XIII) of November 17, 1983;

"(13) the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, as provided by IMO Resolution A.541 (XIII) of November 17, 1983;

"(14) provisions of law establishing the threshold tonnage levels at which evidence of financial responsibility must be demonstrated; or

"(15) unless otherwise provided by law, any other law of the United States in effect before July 19, 1994, and not listed by the Secretary under section 14302(c) of this title.

"(b) As long as the owner of a vessel has a request in effect under subsection (a) of this section, the tonnages determined under that request shall be used in applying the other provisions of law described in subsection (a) to that vessel.

46 USC 14306.

"§ 14306. Reciprocity for foreign vessels

"(a) When the Secretary finds that the laws and regulations of a foreign country related to measurement of vessels are similar to those of this chapter and the regulations prescribed under this chapter, or when a foreign country is a party to the Convention, the Secretary shall accept the measurement and certificate of a vessel of that foreign country as complying with this chapter and the regulations prescribed under this chapter.

International
agreements.

"(b) Subsection (a) of this section does not apply to a vessel of a foreign country that does not recognize measurements under this chapter. The Secretary may apply measurement standards the Secretary considers appropriate to the vessel, subject to applicable international agreements to which the United States Government is a party.

46 USC 14307.

"§ 14307. Inspection of foreign vessels

"(a) The Secretary may inspect a vessel of a foreign country to verify that—

"(1) the vessel has an International Tonnage Certificate (1969) and the main characteristics of the vessel correspond to the information in the certificate; or

"(2) if the vessel is from a country not a party to the Convention, the vessel has been measured under laws and regulations similar to those of this chapter and the regulations prescribed under this chapter.

Records.

"(b) For a vessel of a country that is a party to the Convention, if the inspection reveals that the vessel does not have an International Tonnage Certificate (1969) or that the main characteristics of the vessel differ from those stated on the certificate or other records in a

way that increases the gross or net tonnage of the vessel, the Secretary promptly shall inform the country whose flag the vessel is flying.

“(c) For a vessel of a country not a party to the Convention—
 “(1) if the vessel has been measured under laws and regulations that the Secretary finds are similar to those of this chapter and the regulations prescribed under this chapter, the vessel shall be deemed to have been issued an International Tonnage Certificate (1969); and

“(2) if the vessel has not been measured as described in clause (1) of this subsection, the Secretary may measure the vessel.

“(d) An inspection under this section shall be conducted in a way that does not delay a vessel of a country that is a party to the Convention.

“CHAPTER 145—REGULATORY MEASUREMENT

“Subchapter I—General

“Sec.

“14501. Application.

“14502. Measurement.

“14503. Certificate of measurement.

“14504. Remeasurement.

“Subchapter II—Formal Systems

“14511. Application.

“14512. Standard tonnage measurement.

“14513. Dual tonnage measurement.

“Subchapter III—Simplified System

“14521. Application.

“14522. Measurement.

Subchapter I—General

“§ 14501. Application

“This chapter applies to the following:

“(1) a vessel not measured under chapter 143 of this title if—

“(A) the vessel is to be documented under chapter 121 of this title; or

“(B) the application of a law of the United States to the vessel depends on the vessel's tonnage.

“(2) a vessel measured under chapter 143 of this title if the owner requests that the vessel also be measured under this chapter as provided in section 14305 of this title.

“§ 14502. Measurement

“The Secretary shall measure a vessel to which this chapter applies in the way provided by this chapter.

“§ 14503. Certificate of measurement

“The Secretary shall prescribe the certificate to be issued as evidence of a vessel's measurement under this chapter.

“§ 14504. Remeasurement

“(a) To the extent necessary, the Secretary shall remeasure a vessel to which this chapter applies if—

“(1) the Secretary or the owner alleges an error in its measurement;

46 USC 14501.

Ante, p. 1920.
46 USC 12101 *et seq.*

Ante, p. 1921.

46 USC 14502.

46 USC 14503.

46 USC 14504.

"(2) the vessel or the use of its space is changed in a way that substantially affects its tonnage;

Post, p. 1925;
infra.

"(3) after being measured under subchapter III of this chapter, the vessel becomes subject to subchapter II of this chapter because the vessel or its use is changed; or

"(4) although not required to be measured under subchapter II of this chapter, the vessel was measured under subchapter II and the owner requests that the vessel be measured under subchapter III of this chapter.

Ante, p. 1920.

"(b) Except as provided in this section and chapter 143 of this title, a vessel that has been measured does not have to be remeasured to obtain another document or endorsement under chapter 121 of this title.

46 USC 12101
et seq.

"Subchapter II—Formal Systems

46 USC 14511.

"§ 14511. Application

"This subchapter applies to a vessel described in section 14501 of this title if—

"(1) the owner requests; or

"(2) the vessel is—

"(A) self-propelled;

"(B) at least 24 meters (79 feet) overall in length; and

"(C) not operated only for pleasure.

46 USC 14512.

"§ 14512. Standard tonnage measurement

Regulations.

"(a) The Secretary shall prescribe regulations for measuring the gross and net tonnages of a vessel under this subchapter. The regulations shall provide for tonnages comparable to the tonnages that could have been assigned under sections 4151 and 4153 of the Revised Statutes of the United States, as sections 4151 and 4153 existed immediately before the enactment of this section.

Post, p. 1928.

"(b) On application of the owner or master of a vessel of the United States used in foreign trade, the Secretary may attach an appendix to the vessel's register stating the measurement of spaces that may be deducted from gross tonnage under laws and regulations of other countries but not under those of the United States.

46 USC 14513.

"§ 14513. Dual tonnage measurement

"(a) On application by the owner and approval by the Secretary, the tonnage of spaces prescribed by the Secretary may be excluded in measuring under this section the gross tonnage of a vessel measured under section 14512 of this title. The spaces prescribed by the Secretary shall be comparable to the spaces that could have been excluded under section 2 of the Act of September 29, 1965 (Public Law 89-219, 79 Stat. 891), as section 2 existed immediately before the enactment of this section.

46 USC 83a.

"(b) The Secretary shall prescribe the design, location, and dimensions of the tonnage mark to be placed on a vessel measured under this section.

"(c)(1) If a vessel's tonnage mark is below the uppermost part of the load line marks, each certificate stating the vessel's tonnages shall state the gross and net tonnages when the mark is submerged and when it is not submerged.

"(2) Except as provided in paragraph (1) of this subsection, a certificate stating a vessel's tonnages may state only one set of gross and net tonnages.

"Subchapter III—Simplified System

"§ 14521. Application

46 USC 14521.

"This subchapter applies to a vessel described in section 14501 of this title that is not measured under subchapter II of this chapter.

Ante, p. 1924.

"§ 14522. Measurement

46 USC 14522.

"(a) In this section, "length" means the horizontal distance of the hull between the foremost part of the stem and the aftermost part of the stern, excluding fittings and attachments.

"(b)(1) The Secretary shall assign gross and net tonnages to a vessel based on its length, breadth, depth, other dimensions, and appropriate coefficients.

"(2) The Secretary shall prescribe the way dimensions (except length) are measured and which coefficients are appropriate.

"(c) The resulting gross tonnages, taken as a group, reasonably shall reflect the relative internal volumes of the vessels measured under this subchapter. The resulting net tonnages shall be in approximately the same ratios to corresponding gross tonnages as are the net and gross tonnages of comparable vessels measured under subchapter II of this chapter.

"(d) Under regulations prescribed by the Secretary, the Secretary may determine the gross and net tonnages of a vessel representative of a designated class, model, or type, and then assign those gross and net tonnages to other vessels of the same class, model, or type.

"CHAPTER 147—PENALTIES

"Sec.

"14701. General violation.

"14702. False statements.

"§ 14701. General violation

46 USC 14701.

"The owner, charterer, managing operator, agent, master, and individual in charge of a vessel violating this part or a regulation prescribed under this part are each liable to the United States Government for a civil penalty of not more than \$20,000. Each day of a continuing violation is a separate violation. The vessel also is liable in rem for the penalty.

"§ 14702. False statements

46 USC 14702.

"A person knowingly making a false statement or representation in a matter in which a statement or representation is required by this part or a regulation prescribed under this part is liable to the United States Government for a civil penalty of not more than \$20,000 for each false statement or representation. The vessel also is liable in rem for the penalty."

SEC. 5102. CONFORMING AND MISCELLANEOUS AMENDMENTS.

(a) Title 14, United States Code, is amended as follows:

(1) In the analysis of chapter 17, add the following after item

663:

"664. User fees."

(2) In section 651, strike "preceding fiscal year." and substitute "preceding fiscal year, including amounts collected as provided under section 664 of this title."

(3) After section 663, add the following new section:

46 USC 664.

"§ 664. User fees

Uniformed
services.

"(a) A fee or charge for a service or thing of value provided by the Coast Guard shall be prescribed as provided in section 9701 of title 31.

"(b) Amounts collected by the Secretary for a service or thing of value provided by the Coast Guard shall be deposited in the general fund of the Treasury as proprietary receipts of the department in which the Coast Guard is operating and ascribed to Coast Guard activities.

Reports.

"(c) Before January 1 of each year, the Secretary shall submit a report to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate that includes—

"(1) a verification of each activity for which a fee or charge is collected stating—

"(A) the amount collected in the prior fiscal year; and

"(B) that the amount spent on that activity in that fiscal year is not less than the amount collected; and

"(2) the amount expected to be collected in the current fiscal year for each activity for which a fee or charge is expected to be collected."

(b) Title 46, United States Code, is amended as follows:

(1) In section 2101—

(A) between clauses (20) and (21), insert the following new clause:

"(20a) 'overall in length' means—

"(A) for a foreign vessel or a vessel engaged on a foreign voyage, the greater of—

"(i) 96 percent of the length on a waterline at 85 percent of the least molded depth measured from the top of the keel (or on a vessel designed with a rake of keel, on a waterline parallel to the designed waterline); or

"(ii) the length from the fore side of the stem to the axis of the rudder stock on that waterline; and

"(B) for any other vessel, the horizontal distance of the hull between the foremost part of the stem and the aftermost part of the stern, excluding fittings and attachments."; and

(B) add at the end the following new clause:

"(47) 'vessel of war' means a vessel—

"(A) belonging to the armed forces of a country;

"(B) bearing the external marks distinguishing vessels of war of that country;

"(C) under the command of an officer commissioned by the government of that country and whose name appears in the appropriate service list or its equivalent; and

"(D) staffed by a crew under regular armed forces discipline."

(2) Section 2102 is amended by striking "chapters 43" and substituting "chapters 37, 43, 51,".

(3) In section 2109, strike "This" and substitute "Except as otherwise provided, this".

(4) In section 2110—

(A) strike "examination of vessels" and substitute "examination of vessels under part B of this subtitle"; and

(B) strike "measurement or".

(5) Section 3701 (5) and (6) is repealed.

(6) In section 12102—

(A) insert the subsection designation "(a)" at the beginning of the text of the section; and

(B) add at the end of the section the following new subsection:

"(b) A vessel is eligible for documentation only if it has been measured under part J of this subtitle. However, the Secretary may issue a temporary certificate of documentation for a vessel before it is measured."

Ante, p. 1919.

SEC. 5103. MISCELLANEOUS PROVISIONS.

46 USC note
prec. 2101.

(a) Laws effective after January 1, 1986, that are inconsistent with this subtitle supersede this subtitle to the extent of the inconsistency.

(b) A reference to a law replaced by this subtitle, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision of this subtitle.

(c) An order, rule, or regulation in effect under a law replaced by this subtitle continues in effect under the corresponding provision of this subtitle until repealed, amended, or superseded.

(d) An action taken or an offense committed under a law replaced by this subtitle is deemed to have been taken or committed under the corresponding provision of this subtitle.

(e) An inference of legislative construction is not to be drawn by reason of the caption or catch line of a provision enacted by this subtitle.

(f) If a provision enacted by this subtitle is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision of this subtitle is held invalid in one or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid application or applications.

(g) The Secretary of Transportation shall—

46 USC 14301
note.

(1) before July 19, 1990, submit to Congress—

(A) a study of—

(i) the impact of applying vessel tonnage determined under chapter 143 of title 46 (as enacted by section 5101 of this subtitle), United States Code, in laws of the United States that contain provisions based on tonnage, including an analysis of the number and types of vessels that would become subject to additional laws or more stringent requirements because of that application; and

(ii) the extent to which the tonnage thresholds in laws of the United States whose application is based on tonnage would have to be raised so that additional vessels would not become subject to those laws if their application is based on tonnage determined under chapter 143; and

(B) a recommendation of the levels to which the tonnage thresholds in laws of the United States whose application is

Ante, p. 1920.

Reports.

46 USC note
prec. 2101.

based on tonnage should be raised if a complete conversion to the International Convention measurement system under chapter 143 is made;

(2) in conducting the study under clause (1) of this subsection, consult with representatives of the private sector having experience with the operation of vessels likely to be affected by laws of the United States whose application is based on tonnage; and

(3) before July 19, 1988, submit to Congress an interim progress report on the study conducted under clause (1) of this subsection.

SEC. 5104. REPEALS.

(a) The repeal of a law by this subtitle may not be construed as a legislative implication that the provision was or was not in effect before its repeal.

(b) The laws specified in the following schedule are repealed, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before the date of enactment of this subtitle:

Revised Statutes

Revised Statutes Section	United States Code	Title Section
4148	46 App.	71
4149	46 App.	72
4151	46 App.	75
4153	46 App.	77
4154	46 App.	81

Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		United States Code	
			Vol- ume	Page	Title	Section
1882 Aug. 5	398 .....	.....	22	300	46 App.	81
1935 Aug. 27	747 .....	.....	49	888	46 App.	88-88i
1965 Sept. 29	89-219 .....	.....	79	891	46 App.	72, 74, 77, 83- 83k
1973 Oct. 1	93-115 .....	.....	87	418	46 App.	86-86i
1976 Sept. 10	94-406	8	90	1236	46 App.	420

Subtitle C—Establishment of a Timetable for Completion of Coast Guard Offshore Safety Studies

SEC. 5201. REGULATIONS.

(a) **DEADLINE FOR EFFECTIVENESS.**—The Secretary of the department in which the Coast Guard is operating (hereafter in this subtitle referred to as the “Secretary”) shall issue final regulations, to become effective before September 1, 1987, relating to the evacuation of personnel as provided for in the advance notice of proposed rulemaking regarding the revision of the regulations on outer Continental Shelf activities (50 Fed. Reg. 9290 (1985)), published March 7, 1985.

(b) **CONSIDERATION OF STANDBY VESSELS FOR EVACUATION.**—In preparing regulations referred to in subsection (a), the Secretary shall consider requiring standby vessels for the evacuation of personnel from manned installations on the outer Continental Shelf.

SEC. 5202. REPORTS TO CONGRESS.

(a) **PRELIMINARY REPORT.**—The Secretary shall, before December 31, 1986, submit to the Congress a report setting forth the progress made in preparing the regulations referred to in section 5201(a).

(b) **FINAL REPORT.**—The Secretary shall, before September 1, 1987, submit to the Congress a report setting forth the justification for the manned installation evacuation procedures contained in the final regulations referred to in section 5201(a).

TITLE VI—CIVIL SERVICE, POSTAL SERVICE, AND GOVERNMENTAL AFFAIRS GENERALLY

Subtitle A—Civil Service and Postal Service

SEC. 6001. ELECTIONS TO CONTRIBUTE TO THE THRIFT SAVINGS FUND.

(a) **PARTICIPANTS IN THE FEDERAL EMPLOYEES’ RETIREMENT SYSTEM.**—(1) Paragraph (4) of section 8432(b) of title 5, United States Code (as added by Public Law 99-335), is amended—

Ante, p. 541.

(A) by inserting “(A)” after “(4)”;

(B) by inserting “continues as an employee or Member without a break in service through April 1, 1987,” in the first sentence after “January 1, 1987.”;

(C) by striking out “January 1, 1987.” in the second sentence and inserting in lieu thereof “April 1, 1987.”;

(D) by striking out “the last day of that election period.” in the third sentence and inserting in lieu thereof “the date on which the employee or Member makes that election.”; and

(E) by adding at the end thereof the following new subparagraph:

“(B) Notwithstanding subsection (a), the maximum amount that an employee or Member may contribute during any pay period which begins on or after April 1, 1987, and before October 1, 1987, pursuant to an election made during the election period provided

under subparagraph (A) is the amount equal to 15 percent of such individual's basic pay for such pay period."

Ante, p. 541.

(2) Section 8432(c) of title 5, United States Code, is amended—

(A) in paragraph (1)—

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

(ii) by adding at the end thereof the following new subparagraphs:

"(B) In the case of each employee or Member who is an employee or Member on January 1, 1987, and continues as an employee or Member without a break in service through April 1, 1987, the employing agency shall contribute to the Thrift Savings Fund for the benefit of such employee or Member the amount equal to 1 percent of the total basic pay paid to such employee or Member for that period of service.

"(C) If an employee or Member—

"(i) is an employee or Member on January 1, 1987;

"(ii) separates from Government employment before April 1, 1987; and

"(iii) before separation, completes the number of years of civilian service applicable to such employee or Member under subparagraph (A) or (B) of subsection (g)(2),

the employing agency shall contribute to the Thrift Savings Fund for the benefit of such employee or Member the amount equal to 1 percent of the total basic pay paid to such employee or Member for service performed on or after January 1, 1987, and before the date of the separation."; and

(B) in paragraph (2), by inserting after subparagraph (B) the following:

"(C) Notwithstanding subparagraph (B), the amount contributed under subparagraph (A) by an employing agency with respect to any contribution made by an employee or Member during any pay period which begins after the date on which such employee or Member makes an election under subsection (b)(4) and before July 1, 1987, shall be the amount equal to the sum of—

"(i) two times such portion of the total amount of the employee's or Member's contribution as does not exceed 3 percent of such employee's or Member's basic pay for such pay period; and

"(ii) such portion of the total amount of the employee's or Member's contributions as exceeds 3 percent, but does not exceed 5 percent, of such employee's or Member's basic pay for such pay period."

5 USC 8432 note.

(3) The contributions required to be made to the Thrift Savings Fund under paragraphs (1)(B), (1)(C), and (3) of section 8432(c) of title 5, United States Code, shall be made as soon as practicable during the 15-day period which begins on April 1, 1987.

5 USC 8351 note.

(b) PARTICIPANTS IN THE CIVIL SERVICE RETIREMENT AND DISABILITY SYSTEM.—Section 206(b) of the Federal Employees' Retirement System Act of 1986 (Public Law 99-335) is amended to read as follows:

Ante, p. 593.

"(b)(1) An election may first be made by an employee of the Federal Government or a Member of Congress under subsection (a)(2) of section 8351 of title 5, United States Code (as added by subsection (a)(1)), during an election period prescribed for the purposes of this subsection by the Executive Director of the Federal Retirement Thrift Investment Board. Such period shall begin on April 1, 1987.

Ante, p. 593.

"(2) An election made by an employee or Member as provided in paragraph (1) shall take effect on the first day of the employee's or Member's first pay period which begins on or after the date of such election.

Effective date.

"(3) Notwithstanding section 8351(b)(2) of title 5, United States Code (as added by subsection (a)(1)), the maximum amount that an employee or Member may contribute during any pay period which begins on or after April 1, 1987, and before October 1, 1987, pursuant to an election made during the election period provided under paragraph (1) is the amount equal to 7.5 percent of such individual's basic pay for such pay period."

Ante, p. 593.

(c) **INAPPLICABILITY OF LIMITATION ON NUMBER OF ELECTIONS WITHIN A SIX-MONTH PERIOD.**—(1) The requirement to make contributions for a 6-month period after an election, as provided in subsection (a) of section 8432 of title 5, United States Code, shall not apply to contributions made pursuant to an election made during the period provided in subsection (b)(4) of such section or 206(b) of the Federal Employees' Retirement System Act of 1986.

5 USC 8432 note.

(2) The first election period prescribed under section 8432(b)(1) of title 5, United States Code, shall commence on July 1, 1987.

Ante, p. 541.

(3) Each employee or Member who makes an election referred to in paragraph (1) may make an election under section 8432(b)(1) of title 5, United States Code, during the election period that begins on July 1, 1987.

Ante, p. 1930.

(d) **REGULATIONS.**—The Executive Director of the Federal Retirement Thrift Investment Board may prescribe regulations to carry out subsections (a), (b), and (c) and the amendments made by subsections (a) and (b).

5 USC 8432 note.

(e) **BUDGET OF THE FEDERAL EMPLOYEES' THRIFT INVESTMENT BOARD.**—Section 8472 of title 5, United States Code, is amended by adding at the end thereof the following:

Ante, p. 578.

"(i) The Board shall prepare and submit to the President, and, at the same time, to the appropriate committees of Congress, an annual budget of the expenses and other items relating to the Board which shall be included as a separate item in the budget required to be transmitted to the Congress under section 1105 of title 31.

"(j) The Board may submit to the President, and, at the same time, shall submit to each House of the Congress, any legislative recommendations of the Board relating to any of its functions under this title or any other provision of law."

(f) **EFFECTIVE DATE.**—This section, other than subsection (d), and the amendments made by this section shall take effect on January 1, 1987.

5 USC 8432 note.

SEC. 6002. CIVIL SERVICE RETIREMENT AND DISABILITY FUND.

(a) **INVESTMENT AND RESTORATION OF THE FUND.**—Section 8348 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(j)(1) Notwithstanding subsection (c) of this section, the Secretary of the Treasury may suspend additional investment of amounts in the Fund if such additional investment could not be made without causing the public debt of the United States to exceed the public debt limit.

Public debt limit.

"(2) Any amounts in the Fund which, solely by reason of the public debt limit, are not invested shall be invested by the Secretary of the Treasury as soon as such investments can be made without exceeding the public debt limit.

Public debt limit.

31 USC 3101 *et seq.*

"(3) Upon expiration of the debt issuance suspension period, the Secretary of the Treasury shall immediately issue to the Fund obligations under chapter 31 of title 31 that (notwithstanding subsection (d) of this section) bear such interest rates and maturity dates as are necessary to ensure that, after such obligations are issued, the holdings of the Fund will replicate to the maximum extent practicable the obligations that would then be held by the Fund if the suspension of investment under paragraph (1) of this subsection, and any redemption or disinvestment under subsection (k) of this section for the purpose described in such paragraph, during such period had not occurred.

"(4) On the first normal interest payment date after the expiration of any debt issuance suspension period, the Secretary of the Treasury shall pay to the Fund, from amounts in the general fund of the Treasury of the United States not otherwise appropriated, an amount determined by the Secretary to be equal to the excess of—

Public debt limit.

"(A) the net amount of interest that would have been earned by the Fund during such debt issuance suspension period if—

"(i) amounts in the Fund that were not invested during such debt issuance suspension period solely by reason of the public debt limit had been invested, and

"(ii) redemptions and disinvestments with respect to the Fund which occurred during such debt issuance suspension period solely by reason of the public debt limit had not occurred, over

"(B) the net amount of interest actually earned by the Fund during such debt issuance suspension period.

"(5) For purposes of this subsection and subsections (k) and (l) of this section—

"(A) the term 'public debt limit' means the limitation imposed by section 3101(b) of title 31; and

"(B) the term 'debt issuance suspension period' means any period for which the Secretary of the Treasury determines for purposes of this subsection that the issuance of obligations of the United States may not be made without exceeding the public debt limit."

(b) SALES AND REDEMPTIONS BY THE FUND.—Section 8348 of title 5, United States Code, as amended by subsection (a), is further amended by adding at the end the following new subsection:

Securities.
Public debt limit.

"(k)(1) Subject to paragraph (2) of this subsection, the Secretary of the Treasury may sell or redeem securities, obligations, or other invested assets of the Fund before maturity in order to prevent the public debt of the United States from exceeding the public debt limit.

"(2) The Secretary may sell or redeem securities, obligations, or other invested assets of the Fund under paragraph (1) of this subsection only during a debt issuance suspension period, and only to the extent necessary to obtain any amount of funds not exceeding the amount equal to the total amount of the payments authorized to be made from the Fund under the provisions of this subchapter or chapter 84 of this title or related provisions of law during such period. A sale or redemption may be made under this subsection even if, before the sale or redemption, there is a sufficient amount in the Fund to ensure that such payments are made in a timely manner."

Ante, p. 516.

(c) REPORTS REGARDING THE OPERATION AND STATUS OF THE FUND.—Section 8348 of title 5, United States Code, as amended by

subsections (a) and (b), is further amended by adding at the end the following new subsection:

"(1)(1) The Secretary of the Treasury shall report to Congress on the operation and status of the Fund during each debt issuance suspension period for which the Secretary is required to take action under paragraph (3) or (4) of subsection (j) of this section. The report shall be submitted as soon as possible after the expiration of such period, but not later than the date that is 30 days after the first normal interest payment date occurring after the expiration of such period. The Secretary shall concurrently transmit a copy of such report to the Comptroller General of the United States.

Reports.

"(2) Whenever the Secretary of the Treasury determines that, by reason of the public debt limit, the Secretary will be unable to fully comply with the requirements of subsection (c) of this section, the Secretary shall immediately notify Congress of the determination. The notification shall be made in writing."

Public debt limit.

SEC. 6003. CHANGE IN METHOD BY WHICH REVENUE FOREGONE IS COMPUTED FOR CERTAIN CATEGORIES OF MAIL.

(a) **IN GENERAL.**—Section 3626 of title 39, United States Code, is amended by adding at the end the following:

"(i)(1) As used in this subsection—

"(A) 'reduced-rate category' means any class of mail or kind of mailer for which a rate schedule is established under subsection (a) of this section; and

"(B) 'regular-rate category' means any class or kind of mail other than a class or kind referred to in section 2401(c) of this title.

"(2) This subsection shall be used in determining the costs recovered by revenues plus appropriations for the reduced-rate categories, for the purpose of distinguishing costs to be recovered from rates and fees for regular-rate categories under this chapter, and for the purpose of determining the appropriation requests under section 2401(c) of this title relating to the reduced-rate categories. It shall be assumed that the combination of postage and appropriations to be received for each of the reduced-rate categories will bear the same ratio to the costs attributed as required by section 3622(b)(3) of this title to such respective categories, as the revenues to be received from the most closely corresponding regular-rate category, as estimated in determining the rates for such category, bear to the costs attributed to that regular-rate category as required by section 3622(b)(3) of this title."

(b) **CONFORMING AMENDMENT.**—Section 2401(c) of title 39, United States Code, is amended by striking "3626" and inserting "3626(a)-(h)".

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on January 1, 1989, or on the effective date of the next general change in rates and fees under sections 3622 and 3625 of title 39, United States Code, whichever is sooner.

39 USC 3626
note.

SEC. 6004. APPLICABILITY OF CERTAIN LIMITATIONS.

Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) shall not apply with respect to any transfer of funds from the principal campaign committee of the incumbent candidate for the office of Representative who died on January 20, 1985, to the principal campaign committee of his surviving spouse, who was a candidate for such office.

Program Fraud
Civil Remedies
Act of 1986.
31 USC 3801
note.

31 USC 3801
note.

Subtitle B—Program Fraud Civil Remedies

SEC. 6101. SHORT TITLE.

This subtitle may be cited as the "Program Fraud Civil Remedies Act of 1986".

SEC. 6102. FINDINGS AND PURPOSES.

(a) **FINDINGS.**—The Congress finds that—

(1) false, fictitious, and fraudulent claims and statements in Government programs are a serious problem;

(2) false, fictitious, and fraudulent claims and statements in Government programs result in the loss of millions of dollars annually by allowing persons to receive Federal funds to which they are not entitled;

(3) false, fictitious, and fraudulent claims and statements in Government programs undermine the integrity of such programs by allowing ineligible persons to participate in such programs; and

(4) present civil and criminal remedies for such claims and statements are not sufficiently responsive.

(b) **PURPOSES.**—The purposes of this subtitle are—

(1) to provide Federal agencies which are the victims of false, fictitious, and fraudulent claims and statements with an administrative remedy to recompense such agencies for losses resulting from such claims and statements, to permit administrative proceedings to be brought against persons who make, present, or submit such claims and statements, and to deter the making, presenting, and submitting of such claims and statements in the future; and

(2) to provide due process protections to all persons who are subject to the administrative adjudication of false, fictitious, or fraudulent claims or statements.

SEC. 6103. PROVISION OF ADMINISTRATIVE REMEDIES FOR FALSE CLAIMS AND STATEMENTS.

(a) **ESTABLISHMENT OF REMEDIES.**—Subtitle III of title 31, United States Code, is amended by inserting after chapter 37 the following new chapter:

"CHAPTER 38—ADMINISTRATIVE REMEDIES FOR FALSE CLAIMS AND STATEMENTS

"Sec.

"3801. Definitions.

"3802. False claims and statements; liability.

"3803. Hearing and determinations.

"3804. Subpoena authority.

"3805. Judicial review.

"3806. Collection of civil penalties and assessments.

"3807. Right to administrative offset.

"3808. Limitations.

"3809. Regulations.

"3810. Reports.

"3811. Effect on other law.

"3812. Prohibition against delegation.

"§ 3801. Definitions

"(a) For purposes of this chapter—

31 USC 3801.

“(1) ‘authority’ means—

“(A) an executive department;

“(B) a military department;

“(C) an establishment (as such term is defined in section 11(2) of the Inspector General Act of 1978) which is not an executive department; and

5 USC app.

“(D) the United States Postal Service;

“(2) ‘authority head’ means—

“(A) the head of an authority; or

“(B) an official or employee of the authority designated, in regulations promulgated by the head of the authority, to act on behalf of the head of the authority;

“(3) ‘claim’ means any request, demand, or submission—

“(A) made to an authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

“(B) made to a recipient of property, services, or money from an authority or to a party to a contract with an authority—

“(i) for property or services if the United States—

“(I) provided such property or services;

“(II) provided any portion of the funds for the purchase of such property or services; or

“(III) will reimburse such recipient or party for the purchase of such property or services; or

“(ii) for the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

“(I) provided any portion of the money requested or demanded; or

“(II) will reimburse such recipient or party for any portion of the money paid on such request or demand; or

“(C) made to an authority which has the effect of decreasing an obligation to pay or account for property, services, or money,

except that such term does not include any claim made in any return of tax imposed by the Internal Revenue Code of 1954;

Post, p. 2095.

“(4) ‘investigating official’ means an individual who—

“(A)(i) in the case of an authority in which an Office of Inspector General is established by the Inspector General Act of 1978 or by any other Federal law, is the Inspector General of that authority or an officer or employee of such Office designated by the Inspector General;

5 USC app.

“(ii) in the case of an authority in which an Office of Inspector General is not established by the Inspector General Act of 1978 or by any other Federal law, is an officer or employee of the authority designated by the authority head to conduct investigations under section 3803(a)(1) of this title; or

Post, p. 1939.

“(iii) in the case of a military department, is the Inspector General of the Department of Defense or an officer or employee of the Office of Inspector General of the Department of Defense who is designated by the Inspector General; and

“(B) who, if a member of the Armed Forces of the United States on active duty, is serving in grade O-7 or above or, if

5 USC 5331.

Post, p. 1937.

a civilian employee, is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule;

"(5) 'knows or has reason to know', for purposes of establishing liability under section 3802, means that a person, with respect to a claim or statement—

"(A) has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

"(B) acts in deliberate ignorance of the truth or falsity of the claim or statement; or

"(C) acts in reckless disregard of the truth or falsity of the claim or statement,

and no proof of specific intent to defraud is required;

"(6) 'person' means any individual, partnership, corporation, association, or private organization;

"(7) 'presiding officer' means—

5 USC 551 *et seq.*

"(A) in the case of an authority to which the provisions of subchapter II of chapter 5 of title 5 apply, an administrative law judge appointed in the authority pursuant to section 3105 of such title or detailed to the authority pursuant to section 3344 of such title; or

"(B) in the case of an authority to which the provisions of such subchapter do not apply, an officer or employee of the authority who—

5 USC 3301
et seq.

"(i) is selected under chapter 33 of title 5 pursuant to the competitive examination process applicable to administrative law judges;

"(ii) is appointed by the authority head to conduct hearings under section 3803 of such title;

"(iii) is assigned to cases in rotation so far as practicable;

"(iv) may not perform duties inconsistent with the duties and responsibilities of a presiding officer;

"(v) is entitled to pay prescribed by the Office of Personnel Management independently of ratings and recommendations made by the authority and in accordance with chapter 51 of such title and subchapter III of chapter 53 of such title;

"(vi) is not subject to performance appraisal pursuant to chapter 43 of such title; and

"(vii) may be removed, suspended, furloughed, or reduced in grade or pay only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing by such Board;

"(8) 'reviewing official' means any officer or employee of an authority—

"(A) who is designated by the authority head to make the determination required under section 3803(a)(2) of this title;

"(B) who, if a member of the Armed Forces of the United States on active duty, is serving in grade O-7 or above or, if a civilian employee, is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule; and

"(C) who is—

"(i) not subject to supervision by, or required to report to, the investigating official; and

5 USC 5331.

“(ii) not employed in the organizational unit of the authority in which the investigating official is employed; and

“(9) ‘statement’ means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

“(A) with respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

“(B) with respect to (including relating to eligibility for)—

“(i) a contract with, or a bid or proposal for a contract with; or

(ii) a grant, loan, or benefit from, an authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit,

except that such term does not include any statement made in any return of tax imposed by the Internal Revenue Code of 1954.

Post, p. 2095.

“(b) For purposes of paragraph (3) of subsection (a)—

“(1) each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim;

“(2) each claim for property, services, or money is subject to this chapter regardless of whether such property, services, or money is actually delivered or paid; and

“(3) a claim shall be considered made, presented, or submitted to an authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority, recipient, or party.

“(c) For purposes of paragraph (9) of subsection (a)—

“(1) each written representation, certification, or affirmation constitutes a separate statement; and

“(2) a statement shall be considered made, presented, or submitted to an authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority.

“§ 3802. False claims and statements; liability

31 USC 3802.

“(a)(1) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know—

“(A) is false, fictitious, or fraudulent;

“(B) includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

“(C) includes or is supported by any written statement that—

“(i) omits a material fact;

“(ii) is false, fictitious, or fraudulent as a result of such omission; and

"(iii) is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or

"(D) is for payment for the provision of property or services which the person has not provided as claimed, shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than \$5,000 for each such claim. Except as provided in paragraph (3) of this subsection, such person shall also be subject to an assessment, in lieu of damages sustained by the United States because of such claim, of not more than twice the amount of such claim, or the portion of such claim, which is determined under this chapter to be in violation of the preceding sentence.

"(2) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that—

"(A) the person knows or has reason to know—

"(i) asserts a material fact which is false, fictitious, or fraudulent; or

"(ii) (I) omits a material fact; and

"(II) is false, fictitious, or fraudulent as a result of such omission;

"(B) in the case of a statement described in clause (ii) of subparagraph (A), is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; and

"(C) contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than \$5,000 for each such statement.

"(3) An assessment shall not be made under the second sentence of paragraph (1) with respect to a claim if payment by the Government has not been made on such claim.

"(b)(1) Except as provided in paragraphs (2) and (3) of this subsection—

"(A) a determination under section 3803(a)(2) of this title that there is adequate evidence to believe that a person is liable under subsection (a) of this section; or

"(B) a determination under section 3803 of this title that a person is liable under subsection (a) of this section,

may provide the authority with grounds for commencing any administrative or contractual action against such person which is authorized by law and which is in addition to any action against such person under this chapter.

"(2) A determination referred to in paragraph (1) of this subsection may be used by the authority, but shall not require such authority, to commence any administrative or contractual action which is authorized by law.

"(3) In the case of an administrative or contractual action to suspend or debar any person who is eligible to enter into contracts with the Federal Government, a determination referred to in paragraph (1) of this subsection shall not be considered as a conclusive determination of such person's responsibility pursuant to Federal procurement laws and regulations.

Post, p. 1939.

Contracts.

“§ 3803. Hearing and determinations

31 USC 3803.

Reports.

Ante, p. 1937.

“(a)(1) The investigating official of an authority may investigate allegations that a person is liable under section 3802 of this title and shall report the findings and conclusions of such investigation to the reviewing official of the authority. The preceding sentence does not modify any responsibility of an investigating official to report violations of criminal law to the Attorney General.

“(2) If the reviewing official of an authority determines, based upon the report of the investigating official under paragraph (1) of this subsection, that there is adequate evidence to believe that a person is liable under section 3802 of this title, the reviewing official shall transmit to the Attorney General a written notice of the intention of such official to refer the allegations of such liability to a presiding officer of such authority. Such notice shall include—

“(A) a statement of the reasons of the reviewing official for the referral of such allegations;

“(B) a statement specifying the evidence which supports such allegations;

“(C) a description of the claims or statements for which liability under section 3802 of this title is alleged;

“(D) an estimate of the amount of money or the value of property or services requested or demanded in violation of section 3802 of this title; and

“(E) a statement of any exculpatory or mitigating circumstances which may relate to such claims or statements.

“(b)(1) Within 90 days after receipt of a notice from a reviewing official under paragraph (2) of subsection (a), the Attorney General or an Assistant Attorney General designated by the Attorney General shall transmit a written statement to the reviewing official which specifies—

“(A) that the Attorney General or such Assistant Attorney General approves or disapproves the referral to a presiding officer of the allegations of liability stated in such notice;

“(B) in any case in which the referral of allegations is approved, that the initiation of a proceeding under this section with respect to such allegations is appropriate; and

“(C) in any case in which the referral of allegations is disapproved, the reasons for such disapproval.

“(2) A reviewing official may refer allegations of liability to a presiding officer only if the Attorney General or an Assistant Attorney General designated by the Attorney General approves the referral of such allegations in a written statement described in paragraph (1) of this subsection.

“(3) If the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to an authority head a written finding that the continuation of any hearing under this section with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, such hearing shall be immediately stayed and may be resumed only upon written authorization of the Attorney General.

“(c)(1) No allegations of liability under section 3802 of this title with respect to any claim made, presented, or submitted by any person shall be referred to a presiding officer under paragraph (2) of subsection (b) if the reviewing official determines that—

“(A) an amount of money in excess of \$150,000; or

Ante, p. 1937.

"(B) property or services with a value in excess of \$150,000, is requested or demanded in violation of section 3802 of this title in such claim or in a group of related claims which are submitted at the time such claim is submitted.

"(2)(A) Except as provided in subparagraph (B) of this paragraph, no allegations of liability against an individual under section 3802 of this title with respect to any claim or statement made, presented, or submitted, or caused to be made, presented, or submitted, by such individual relating to any benefits received by such individual shall be referred to a presiding officer under paragraph (2) of subsection (b).

"(B) Allegations of liability against an individual under section 3802 of this title with respect to any claim or statement made, presented, or submitted, or caused to be made, presented, or submitted, by such individual relating to any benefits received by such individual may be referred to a presiding officer under paragraph (2) of subsection (b) if—

"(i) such claim or statement is made by such individual in making application for such benefits;

"(ii) such allegations relate to the eligibility of such individual to receive such benefits; and

"(iii) with respect to such claim or statement, the individual—

"(I) has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

"(II) acts in deliberate ignorance of the truth or falsity of the claim or statement; or

"(III) acts in reckless disregard of the truth or falsity of the claim or statement.

"(C) For purposes of this subsection, the term 'benefits' means—

"(i) benefits under the supplemental security income program under title XVI of the Social Security Act;

"(ii) old age, survivors, and disability insurance benefits under title II of the Social Security Act;

"(iii) benefits under title XVIII of the Social Security Act;

"(iv) aid to families with dependent children under a State plan approved under section 402(a) of the Social Security Act;

"(v) medical assistance under a State plan approved under section 1902(a) of the Social Security Act;

"(vi) benefits under title XX of the Social Security Act;

"(vii) benefits under the food stamp program (as defined in section 3(h) of the Food Stamp Act of 1977);

"(viii) benefits under chapters 11, 13, 15, 17, and 21 of title 38;

"(ix) benefits under the Black Lung Benefits Act;

"(x) benefits under the special supplemental food program for women, infants, and children established under section 17 of the Child Nutrition Act of 1966;

"(xi) benefits under section 336 of the Older Americans Act;

"(xii) any annuity or other benefit under the Railroad Retirement Act of 1974;

"(xiii) benefits under the National School Lunch Act;

"(xiv) benefits under any housing assistance program for lower income families or elderly or handicapped persons which is administered by the Secretary of Housing and Urban Development or the Secretary of Agriculture;

"(xv) benefits under the Low-Income Home Energy Assistance Act of 1981; and

42 USC 1381.

42 USC 401.

42 USC 1395.

45 USC 797, 797

note.

42 USC 602.

42 USC 1396a.

42 USC 1397.

7 USC 2012.

38 USC 301 *et*

seq.—601 *et seq.*,

801 *et seq.*

42 USC 1786.

42 USC 3030f.

45 USC 231t.

42 USC 1751

note.

42 USC 8621

note.

"(xvi) benefits under part A of the Energy Conservation in Existing Buildings Act of 1976,
which are intended for the personal use of the individual who receives the benefits or for a member of the individual's family.

42 USC 6861.

"(d)(1) On or after the date on which a reviewing official is permitted to refer allegations of liability to a presiding officer under subsection (b) of this section, the reviewing official shall mail, by registered or certified mail, or shall deliver, a notice to the person alleged to be liable under section 3802 of this title. Such notice shall specify the allegations of liability against such person and shall state the right of such person to request a hearing with respect to such allegations.

Ante, p. 1937.

"(2) If, within 30 days after receiving a notice under paragraph (1) of this subsection, the person receiving such notice requests a hearing with respect to the allegations contained in such notice—

"(A) the reviewing official shall refer such allegations to a presiding officer for the commencement of such hearing; and

"(B) the presiding officer shall commence such hearing by mailing by registered or certified mail, or by delivery of, a notice which complies with paragraphs (2)(A) and (3)(B)(i) of subsection (g) to such person.

"(e)(1)(A) Except as provided in subparagraph (B) of this paragraph, at any time after receiving a notice under paragraph (2)(B) of subsection (d), the person receiving such notice shall be entitled to review, and upon payment of a reasonable fee for duplication, shall be entitled to obtain a copy of, all relevant and material documents, transcripts, records, and other materials, which relate to such allegations and upon which the findings and conclusions of the investigating official under paragraph (1) of subsection (a) are based.

Records.

"(B) A person is not entitled under subparagraph (A) to review and obtain a copy of any document, transcript, record, or material which is privileged under Federal law.

"(2) At any time after receiving a notice under paragraph (2)(B) of subsection (d), the person receiving such notice shall be entitled to obtain all exculpatory information in the possession of the investigating official or the reviewing official relating to the allegations contained in such notice. The provisions of subparagraph (B) of paragraph (1) do not apply to any document, transcript, record, or other material, or any portion thereof, in which such exculpatory information is contained.

"(f) Any hearing commenced under paragraph (2) of subsection (d) shall be conducted by the presiding officer on the record in order to determine—

Records.

"(1) the liability of a person under section 3802 of this title; and

"(2) if a person is determined to be liable under such section, the amount of any civil penalty or assessment to be imposed on such person.

Any such determination shall be based on the preponderance of the evidence.

"(g)(1) Each hearing under subsection (f) of this section shall be conducted—

"(A) in the case of an authority to which the provisions of subchapter II of chapter 5 of title 5 apply, in accordance with—

5 USC 551 *et seq.*

"(i) the provisions of such subchapter to the extent that such provisions are not inconsistent with the provisions of this chapter; and

“(ii) procedures promulgated by the authority head under paragraph (3) of this subsection; or

“(B) in the case of an authority to which the provisions of such subchapter do not apply, in accordance with procedures promulgated by the authority head under paragraphs (2) and (3) of this subsection.

Regulations.

“(2) An authority head of an authority described in subparagraph (B) of paragraph (1) shall by regulation promulgate procedures for the conduct of hearings under this chapter. Such procedures shall include:

Ante, p. 1937.

“(A) The provision of written notice of the hearing to any person alleged to be liable under section 3802 of this title, including written notice of—

“(i) the time, place, and nature of the hearing;

“(ii) the legal authority and jurisdiction under which the hearing is to be held; and

“(iii) the matters of facts and law to be asserted.

“(B) The provision to any person alleged to be liable under section 3802 of this title of opportunities for the submission of facts, arguments, offers of settlement, or proposals of adjustment.

“(C) Procedures to ensure that the presiding officer shall not, except to the extent required for the disposition of ex parte matters as authorized by law—

“(i) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to the hearing to participate; or

“(ii) be responsible to or subject to the supervision or direction of the investigating official or the reviewing official.

“(D) Procedures to ensure that the investigating official and the reviewing official do not participate or advise in the decision required under subsection (h) of this section or the review of the decision by the authority head under subsection (i) of this section, except as provided in subsection (j) of this section.

“(E) The provision to any person alleged to be liable under section 3802 of this title of opportunities to present such person's case through oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

“(F) Procedures to permit any person alleged to be liable under section 3802 of this title to be accompanied, represented, and advised by counsel or such other qualified representative as the authority head may specify in such regulations.

“(G) Procedures to ensure that the hearing is conducted in an impartial manner, including procedures to—

“(i) permit the presiding officer to at any time disqualify himself; and

“(ii) permit the filing, in good faith, of a timely and sufficient affidavit alleging personal bias or another reason for disqualification of a presiding officer or a reviewing official.

Regulations.

“(3)(A) Each authority head shall promulgate by regulation procedures described in subparagraph (B) of this paragraph for the conduct of hearings under this chapter. Such procedures shall be in addition to the procedures described in paragraph (1) or paragraph (2) of this subsection, as the case may be.

“(B) The procedures referred to in subparagraph (A) of this paragraph are:

“(i) Procedures for the inclusion, in any written notice of a hearing under this section to any person alleged to be liable under section 3802 of this title, of a description of the procedures for the conduct of the hearing.

Ante, p. 1937.

“(ii) Procedures to permit discovery by any person alleged to be liable under section 3802 of this title only to the extent that the presiding officer determines that such discovery is necessary for the expeditious, fair, and reasonable consideration of the issues, except that such procedures shall not apply to documents, transcripts, records, or other material which a person is entitled to review under paragraph (1) of subsection (e) or to information to which a person is entitled under paragraph (2) of such subsection. Procedures promulgated under this clause shall prohibit the discovery of the notice required under subsection (a)(2) of this section.

Records.

“(4) Each hearing under subsection (f) of this section shall be held—

“(A) in the judicial district of the United States in which the person alleged to be liable under section 3802 of this title resides or transacts business;

“(B) in the judicial district of the United States in which the claim or statement upon which the allegation of liability under such section was made, presented, or submitted; or

“(C) in such other place as may be agreed upon by such person and the presiding officer who will conduct such hearing.

“(h) The presiding officer shall issue a written decision, including findings and determinations, after the conclusion of the hearing. Such decision shall include the findings of fact and conclusions of law which the presiding officer relied upon in determining whether a person is liable under this chapter. The presiding officer shall promptly send to each party to the hearing a copy of such decision and a statement describing the right of any person determined to be liable under section 3802 of this title to appeal the decision of the presiding officer to the authority head under paragraph (2) of subsection (i).

“(i)(1) Except as provided in paragraph (2) of this subsection and section 3805 of this title, the decision, including the findings and determinations, of the presiding officer issued under subsection (h) of this section are final.

Post, p. 1944.

“(2)(A)(i) Except as provided in clause (ii) of this subparagraph, within 30 days after the presiding officer issues a decision under subsection (h) of this section, any person determined in such decision to be liable under section 3802 of this title may appeal such decision to the authority head.

“(ii) If, within the 30-day period described in clause (i) of this subparagraph, a person determined to be liable under this chapter requests the authority head for an extension of such 30-day period to file an appeal of a decision issued by the presiding officer under subsection (h) of this section, the authority head may extend such period if such person demonstrates good cause for such extension.

“(B) Any authority head reviewing under this section the decision, findings, and determinations of a presiding officer shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (f) of this section unless a demonstration is made of extraordinary circumstances causing the failure to raise the objec-

tion. If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the presiding officer for consideration of such additional evidence.

“(C) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the presiding officer pursuant to this section. The authority head shall promptly send to each party to the appeal a copy of the decision of the authority head and a statement describing the right of any person determined to be liable under section 3802 of this title to judicial review under section 3805 of this title.

Ante, p. 1937.
Infra.

“(j) The reviewing official has the exclusive authority to compromise or settle any allegations of liability under section 3802 of this title against a person without the consent of the presiding officer at any time after the date on which the reviewing official is permitted to refer allegations of liability to a presiding officer under subsection (b) of this section and prior to the date on which the presiding officer issues a decision under subsection (h) of this section. Any such compromise or settlement shall be in writing.

31 USC 3804.

“§ 3804. Subpoena authority

Records.
Reports.
Ante, p. 1939.

“(a) For the purposes of an investigation under section 3803(a)(1) of this title, an investigating official is authorized to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and data not otherwise reasonably available to the authority.

“(b) For the purposes of conducting a hearing under section 3803(f) of this title, a presiding officer is authorized—

“(1) to administer oaths or affirmations; and

“(2) to require by subpoena the attendance and testimony of witnesses and the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence which the presiding officer considers relevant and material to the hearing.

“(c) In the case of contumacy or refusal to obey a subpoena issued pursuant to subsection (a) or (b) of this section, the district courts of the United States shall have jurisdiction to issue an appropriate order for the enforcement of any such subpoena. Any failure to obey such order of the court is punishable by such court as contempt. In any case in which an authority seeks the enforcement of a subpoena issued pursuant to subsection (a) or (b) of this section, the authority shall request the Attorney General to petition any district court in which a hearing under this chapter is being conducted, or in which the person receiving the subpoena resides or conducts business, to issue such an order.

31 USC 3805.

“§ 3805. Judicial review

“(a)(1) A determination by a reviewing official under section 3803 of this title shall be final and shall not be subject to judicial review.

“(2) Unless a petition is filed under this section, a determination under section 3803 of this title that a person is liable under section 3802 of this title shall be final and shall not be subject to judicial review.

“(b)(1)(A) Any person who has been determined to be liable under section 3802 of this title pursuant to section 3803 of this title may obtain review of such determination in—

Ante, pp. 1937, 1939.

“(i) the United States district court for the district in which such person resides or transacts business;

“(ii) the United States district court for the district in which the claim or statement upon which the determination of liability is based was made, presented, or submitted; or

“(iii) the United States District Court for the District of Columbia.

“(B) Such review may be obtained by filing in any such court a written petition that such determination be modified or set aside. Such petition shall be filed—

“(i) only after such person has exhausted all administrative remedies under this chapter; and

“(ii) within 60 days after the date on which the authority head sends such person a copy of the decision of such authority head under section 3803(i)(2) of this title.

“(2) The clerk of the court shall transmit a copy of a petition filed under paragraph (1) of this subsection to the authority and to the Attorney General. Upon receipt of the copy of such petition, the authority shall transmit to the Attorney General the record in the proceeding resulting in the determination of liability under section 3802 of this title. Except as otherwise provided in this section, the district courts of the United States shall have jurisdiction to review the decision, findings, and determinations in issue and to affirm, modify, remand for further consideration, or set aside, in whole or in part, the decision, findings, and determinations of the authority, and to enforce such decision, findings, and determinations to the extent that such decision, findings, and determinations are affirmed or modified.

Records.

“(c) The decisions, findings, and determinations of the authority with respect to questions of fact shall be final and conclusive, and shall not be set aside unless such decisions, findings, and determinations are found by the court to be unsupported by substantial evidence. In concluding whether the decisions, findings, and determinations of an authority are unsupported by substantial evidence, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

Records.

“(d) Any district court reviewing under this section the decision, findings, and determinations of an authority shall not consider any objection that was not raised in the hearing conducted pursuant to section 3803(f) of this title unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the court shall remand the matter to the authority for consideration of such additional evidence.

“(e) Upon a final determination by the district court that a person is liable under section 3802 of this title, the court shall enter a final judgment for the appropriate amount in favor of the United States.

“§ 3806. Collection of civil penalties and assessments

31 USC 3806.

“(a) The Attorney General shall be responsible for judicial enforcement of any civil penalty or assessment imposed pursuant to the provisions of this chapter.

Ante, p. 1939.

Ante, p. 1944.

"(b) Any penalty or assessment imposed in a determination which has become final pursuant to this chapter may be recovered in a civil action brought by the Attorney General. In any such action, no matter that was raised or that could have been raised in a hearing conducted under section 3803(f) of this title or pursuant to judicial review under section 3805 of this title may be raised as a defense, and the determination of liability and the determination of amounts of penalties and assessments shall not be subject to review.

"(c) The district courts of the United States shall have jurisdiction of any action commenced by the United States under subsection (b) of this section.

"(d) Any action under subsection (b) of this section may, without regard to venue requirements, be joined and consolidated with or asserted as a counterclaim, cross-claim, or setoff by the United States in any other civil action which includes as parties the United States and the person against whom such action may be brought.

"(e) The United States Claims Court shall have jurisdiction of any action under subsection (b) of this section to recover any penalty or assessment if the cause of action is asserted by the United States as a counterclaim in a matter pending in such court.

"(f) The Attorney General shall have exclusive authority to compromise or settle any penalty or assessment the determination of which is the subject of a pending petition pursuant to section 3805 of this title or a pending action to recover such penalty or assessment pursuant to this section.

"(g)(1) Except as provided in paragraph (2) of this subsection, any amount of penalty or assessment collected under this chapter shall be deposited as miscellaneous receipts in the Treasury of the United States.

"(2)(A) Any amount of a penalty or assessment imposed by the United States Postal Service under this chapter shall be deposited in the Postal Service Fund established by section 2003 of title 39.

42 USC 401.

"(B) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this chapter with respect to a claim or statement made in connection with old age and survivors benefits under title II of the Social Security Act shall be deposited in the Federal Old-Age and Survivors Insurance Trust Fund.

"(C) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this chapter with respect to a claim or statement made in connection with disability benefits under title II of the Social Security Act shall be deposited in the Federal Disability Insurance Trust Fund.

42 USC 1395c.

"(D) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this chapter with respect to a claim or statement made in connection with benefits under part A of title XVIII of the Social Security Act shall be deposited in the Federal Hospital Insurance Trust Fund.

42 USC 1395j.

"(E) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this chapter with respect to a claim or statement made in connection with benefits under part B of title XVIII of the Social Security Act shall be deposited in the Federal Supplementary Medical Insurance Trust Fund.

“§ 3807. Right to administrative offset

31 USC 3807.

“(a) The amount of any penalty or assessment which has become final under section 3803 of this title, or for which a judgment has been entered under section 3805(e) or 3806 of this title, or any amount agreed upon in a settlement or compromise under section 3803(j) or 3806(f) of this title, may be collected by administrative offset under section 3716 of this title, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the person liable for such penalty or assessment.

Taxes.

Ante, p. 1939.*Ante*, pp. 1944, 1945.

“(b) All amounts collected pursuant to this section shall be remitted to the Secretary of the Treasury for deposit in accordance with section 3806(g) of this title.

“§ 3808. Limitations

31 USC 3808.

Claims.

“(a) A hearing under section 3803(d)(2) of this title with respect to a claim or statement shall be commenced within 6 years after the date on which such claim or statement is made, presented, or submitted.

“(b) A civil action to recover a penalty or assessment under section 3806 of this title shall be commenced within 3 years after the date on which the determination of liability for such penalty or assessment becomes final.

“(c) If at any time during the course of proceedings brought pursuant to this chapter the authority head receives or discovers any specific information regarding bribery, gratuities, conflict of interest, or other corruption or similar activity in relation to a false claim or statement, the authority head shall immediately report such information to the Attorney General, and in the case of an authority in which an Office of Inspector General is established by the Inspector General Act of 1978 or by any other Federal law, to the Inspector General of that authority.

5 USC app.

“§ 3809. Regulations

31 USC 3809.

“Within 180 days after the date of enactment of this chapter, each authority head shall promulgate rules and regulations necessary to implement the provisions of this chapter. Such rules and regulations shall—

“(1) ensure that investigating officials and reviewing officials are not responsible for conducting the hearing required in section 3803(f) of this title, making the determinations required by subsections (f) and (h) of section 3803 of this title, or making collections under section 3806 of this title; and

“(2) require a reviewing official to include in any notice required by section 3803(a)(2) of this title a statement which specifies that the reviewing official has determined that there is a reasonable prospect of collecting, from a person with respect to whom the reviewing official is referring allegations of liability in such notice, the amount for which such person may be liable.

“§ 3810. Reports

31 USC 3810.

“Not later than October 31 of each year, each authority head shall prepare and transmit to the appropriate committees and subcommittees of the Congress an annual report summarizing actions

taken under this chapter during the most recent 12-month period ending the previous September 30. Such report shall include—

Ante, p. 1939.

“(1) a summary of matters referred by the investigating official of the authority to the reviewing official of the authority under section 3803(a)(1) of this title during such period;

“(2) a summary of matters transmitted to the Attorney General under section 3803(a)(2) of this title during such period;

“(3) a summary of all hearings conducted by presiding officers under section 3803(f) of this title, and the results of such hearings, during such period; and

“(4) a summary of the actions taken during such period to collect any civil penalty or assessment imposed under this chapter.

31 USC 3811.

“§ 3811. Effect on other law

44 USC 3501 *et seq.*

“(a) This chapter does not diminish the responsibility of any agency to comply with the provisions of chapter 35 of title 44.

“(b) This chapter does not supersede the provisions of section 3512 of title 44.

“(c) For purposes of this section, the term ‘agency’ has the same meaning as in section 3502(1) of title 44.

31 USC 3812.

“§ 3812. Prohibition against delegation

“Any function, duty, or responsibility which this chapter specifies be carried out by the Attorney General or an Assistant Attorney General designated by the Attorney General, shall not be delegated to, or carried out by, any other officer or employee of the Department of Justice.”

(b) **TECHNICAL AMENDMENT.**—The table of chapters for subtitle III of title 31, United States Code, is amended by inserting after the item relating to chapter 37 the following new item:

“38. Administrative Remedies for False Claims and Statements..... 3801”.

(c) **CONFORMING AMENDMENTS.**—Section 504(b)(1)(C) of title 5, United States Code, is amended—

(1) by striking out “and” before “(ii)”;

(2) by inserting before the semicolon a comma and “and (iii) any hearing conducted under chapter 38 of title 31”.

Ante, p. 1934.

31 USC 3801
note.

SEC. 6104. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect on the date of enactment of this Act, and shall apply to any claim or statement made, presented, or submitted on or after such date.

TITLE VII—FISCAL PROCEDURES

2 USC 907 note.

SEC. 7001. COST-OF-LIVING ADJUSTMENTS IN CERTAIN FEDERAL BENEFITS.

(a) **IN GENERAL.**—Benefits which are payable in calendar year 1987, 1988, 1989, 1990, or 1991, under programs listed in section 257(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177), including any cost-of-living adjustment in such benefits, shall not be subject to modification, suspension, or reduction in such calendar year pursuant to a Presidential order issued under such Act.

2 USC 907.

(b) **DEFINITION.**—For purposes of this section, the term “cost-of-living adjustment” means any increase or change in the amount of a benefit or in standards relating to such benefit under any provision of Federal law which requires such increase or change as a result of any change in the Consumer Price Index (or any component thereof) or any other index which measures costs, prices, or wages.

SEC. 7002. EXEMPT PROGRAMS AND ACTIVITIES.

(a) **IN GENERAL.**—Section 255(g)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)) is amended by inserting after the item relating to Compensation of the President the following new item:

“Dual benefits payments account (60-0111-0-1-601);”.

(b) **APPLICATION.**—The amendment made by subsection (a) shall apply to fiscal years beginning after September 30, 1986.

2 USC 905 note.

SEC. 7003. COMPUTATION OF RETIREMENT ANNUITY FOR PART-TIME EMPLOYMENT.

(a)(1) Subsection (b) of section 15204 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272; 100 Stat. 335) is repealed.

38 USC 4109.

(2) The provision of title 38, United States Code, that was repealed by such subsection is revived.

(b) Subsection (c) of section 15204 of such Act is redesignated as subsection (b).

5 USC 8339 note.

(c) This section is effective with respect to individuals who retire after September 19, 1986.

Effective date.
38 USC 4109
note.

SEC. 7004. REVENUE SHARING PAYMENTS.

Notwithstanding section 6702(b) of title 31, United States Code, the Secretary of the Treasury shall make the installment payment of revenue sharing funds under chapter 67 of such title that is otherwise required to be paid on or before October 5, 1986, by no later than September 30, 1986.

31 USC 6701 *et seq.*

SEC. 7005. HIGHER EDUCATION SAVINGS.

For the purpose of complying with the instructions set forth in the concurrent resolution on the budget for the fiscal year 1987 (S. Con. Res. 120, 99th Congress, agreed to June 27, 1986), the provisions of the bill, S. 965, as passed by the House of Representatives on September 24, 1986, as passed by the Senate on September 25, 1986, and submitted to the President, shall be treated as if they were included in this Act.

Ante, p. 1268.

SEC. 7006. MISCELLANEOUS.

(a) Section 20001(d) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended—

Ante, p. 390.

(1) by striking out “(1)(A) above if” in paragraph (2) and inserting in lieu thereof “paragraph (1)(A) if the Chairman and Ranking Minority Member of the Committee on the Budget and the Chairman and Ranking Minority Member of the Committee which reported the provision certify that”;

(2) by striking out “it is designed to mitigate the” in clause (A) of such paragraph and inserting in lieu thereof “the provision mitigates”;

(3) by striking out “it” in clause (B) of such paragraph and inserting in lieu thereof “the provision”; and

(4) by adding at the end thereof the following new paragraph.

"(3) A provision reported by a committee shall not be considered extraneous under paragraph (1)(C) if (A) the provision is an integral part of a provision or title, which if introduced as a bill or resolution would be referred to such committee, and the provision sets forth the procedure to carry out or implement the substantive provisions that were reported and which fall within the jurisdiction of such committee; or (B) the provision states an exception to, or a special application of, the general provision or title of which it is a part and such general provision or title if introduced as a bill or resolution would be referred to such committee."

Ante, p. 390.

(b) Section 20001(c) of such Act is amended by striking out "January 2, 1987" and inserting in lieu thereof "January 2, 1988".

(c) Senate Resolution 286 (99th Congress, 2d Session) is amended by striking "section 1201" each place it appears and inserting in lieu thereof "section 20001"

20 USC 1063.

SEC. 7007. MODIFICATION OF TITLE III, PART B, HIGHER EDUCATION ACT ALLOCATION FORMULA.

Ante, p. 1296.

Section 324 of the Higher Education Act (as amended by the Higher Education Amendments of 1986) is amended—

(1) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively;

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

"(d) MINIMUM ALLOTMENT —(1) Notwithstanding subsections (a), (b), and (c), the amount allotted to each part B institution under this section shall not be less than \$350,000.

Ante, p. 1307.

"(2) If the amount appropriated pursuant to section 360(a)(2)(A) for any fiscal year is not sufficient to pay the minimum allotment required by paragraph (1) of this subsection to all part B institutions, the amount of such minimum allotments shall be ratably reduced. If additional sums become available for such fiscal year, such reduced allocation shall be increased on the same basis as they were reduced (until the amount allotted equals the minimum allotment required by paragraph (1))."; and

(3) by striking out "subsection (a), (b), or (c)" in subsection (e) (as redesignated by paragraph (1) of this subsection) and inserting in lieu thereof "subsection (a), (b), (c), or (d)"; and

(4) by amending subsection (c) to read as follows:

Minorities.

"(c) ALLOTMENT; GRADUATE AND PROFESSIONAL STUDENT BASIS.— From the amounts appropriated to carry out this part for any fiscal year, the Secretary shall allot to each part B institution a sum which bears the same ratio to one-fourth of that amount as the percentage of graduates per institution, who are admitted to and in attendance at a graduate or professional school in a degree program in disciplines in which Blacks are underrepresented, bears to the percentage of such graduates per institution for all part B institutions."

SEC. 7008. USE OF URBAN RENEWAL LAND DISPOSITION PROCEEDS.

Massachusetts.

Notwithstanding any other provision of law or other requirement, the City of Boston in the State of Massachusetts is authorized to retain any land disposition proceeds from the financially closed-out Government Center Urban Renewal Project (NO MASS. R-35) not paid to the Department of Housing and Urban Development, and to use such proceeds in accordance with the requirements of the community development block grant program specified in title I of

the Housing and Community Development Act of 1974. The City of Boston shall retain such proceeds in a lump sum and shall be entitled to retain and use all past and future earnings from such proceeds, including any interest. 42 USC 5301.

TITLE VIII—REVENUES, TRADE, AND RELATED PROGRAMS

Subtitle A—Revenue Provisions

PART I—INCREASES IN CERTAIN PENALTIES

SEC. 8001. INCREASE IN PENALTY FOR UNDERPAYMENTS OF TAX DEPOSITS.

(a) **IN GENERAL.**—Subsection (a) of section 6656 of the Internal Revenue Code of 1954 (relating to underpayment of deposits) is amended by striking out “5 percent” and inserting in lieu thereof “10 percent”. *Post*, p. 2095; 26 USC 6656.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to penalties assessed after the date of the enactment of this Act. 26 USC 6656 note.

SEC. 8002. INCREASE IN PENALTY FOR SUBSTANTIAL UNDERSTATEMENT OF LIABILITY.

(a) **IN GENERAL.**—Subsection (a) of section 6661 of the Internal Revenue Code of 1954 (relating to substantial understatement of liability) is amended to read as follows: 26 USC 6661.

“(a) **ADDITION TO TAX.**—If there is a substantial understatement of income tax for any taxable year, there shall be added to the tax an amount equal to 25 percent of the amount of any underpayment attributable to such understatement.”

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to penalties assessed after the date of the enactment of this Act. 26 USC 6661 note.

(c) **REPEAL OF INCREASE IN PENALTY BY TAX REFORM ACT OF 1986.**—Section 1504 of the Tax Reform Act of 1986 (relating to increase in penalty for substantial understatement of liability) is hereby repealed. 26 USC 6661, 6661 note. *Post*, p. 2743.

PART II—CERTAIN EXCISE TAX DEPOSITS ACCELERATED

SEC. 8011. CERTAIN EXCISE TAX DEPOSITS ACCELERATED.

(a) TOBACCO.—

(1) **IN GENERAL.**—Paragraph (2) of section 5703(b) of the Internal Revenue Code of 1954 (relating to method of payment of tax) is amended to read as follows:

“(2) TIME FOR PAYMENT OF TAXES.—

“(A) **IN GENERAL.**—Except as otherwise provided in this paragraph, in the case of taxes on tobacco products and cigarette papers and tubes removed during any semi-monthly period under bond for deferred payment of tax, the last day for payment of such taxes shall be the 14th day after the last day of such semimonthly period. *Post*, p. 2095; 26 USC 5703.

“(B) IMPORTED ARTICLES.—In the case of tobacco products and cigarette papers and tubes which are imported into the United States—

“(i) IN GENERAL.—The last day for payment of tax shall be the 14th day after the date on which the article is entered into the customs territory of the United States.

“(ii) SPECIAL RULE FOR ENTRY FOR WAREHOUSING.—Except as provided in clause (iv), in the case of an entry for warehousing, the last day for payment of tax shall not be later than the 14th day after the date on which the article is removed from the 1st such warehouse.

“(iii) FOREIGN TRADE ZONES.—Except as provided in clause (iv) and in regulations prescribed by the Secretary, articles brought into a foreign trade zone shall, notwithstanding any other provision of law, be treated for purposes of this subsection as if such zone were a single customs warehouse.

“(iv) EXCEPTION FOR ARTICLES DESTINED FOR EXPORT.—Clauses (ii) and (iii) shall not apply to any article which is shown to the satisfaction of the Secretary to be destined for export.

“(C) TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES BROUGHT INTO THE UNITED STATES FROM PUERTO RICO.—In the case of tobacco products and cigarette papers and tubes which are brought into the United States from Puerto Rico, the last day for payment of tax shall be the 14th day after the date on which the article is brought into the United States.

“(D) SPECIAL RULE WHERE 14TH DAY FALLS ON SATURDAY, SUNDAY, OR HOLIDAY.—Notwithstanding section 7503, if, but for this subparagraph, the due date under this paragraph would fall on a Saturday, Sunday, or a legal holiday (as defined in section 7503), such due date shall be the immediately preceding day which is not a Saturday, Sunday, or such a holiday.”

(2) TECHNICAL AMENDMENT.—Subsection (c) of section 5704 of such Code (relating to tobacco products and cigarette papers and tubes released in bond from customs custody) is amended by striking out “to a manufacturer of tobacco products or cigarette papers and tubes or”.

(b) DISTILLED SPIRITS, WINES, AND BEER.—

(1) IN GENERAL.—Subsection (d) of section 5061 of such Code (relating to method of collecting tax) is amended to read as follows:

“(d) TIME FOR COLLECTING TAX ON DISTILLED SPIRITS, WINES, AND BEER.—

“(1) IN GENERAL.—Except as otherwise provided in this subsection, in the case of distilled spirits, wines, and beer to which this part applies (other than subsection (b) of this section) which are withdrawn under bond for deferred payment of tax, the last day for payment of such tax shall be the 14th day after the last day of the semimonthly period during which the withdrawal occurs.

“(2) IMPORTED ARTICLES.—In the case of distilled spirits, wines, and beer which are imported into the United States (other than in bulk containers)—

“(A) IN GENERAL.—The last day for payment of tax shall be the 14th day after the date on which the article is entered into the customs territory of the United States.

“(B) SPECIAL RULE FOR ENTRY FOR WAREHOUSING.—Except as provided in subparagraph (D), in the case of an entry for warehousing, the last day for payment of tax shall not be later than the 14th day after the date on which the article is removed from the 1st such warehouse.

“(C) FOREIGN TRADE ZONES.—Except as provided in subparagraph (D) and in regulations prescribed by the Secretary, articles brought into a foreign trade zone shall, notwithstanding any other provision of law, be treated for purposes of this subsection as if such zone were a single customs warehouse.

“(D) EXCEPTION FOR ARTICLES DESTINED FOR EXPORT.—Subparagraphs (B) and (C) shall not apply to any article which is shown to the satisfaction of the Secretary to be destined for export.

“(3) DISTILLED SPIRITS, WINES, AND BEER BROUGHT INTO THE UNITED STATES FROM PUERTO RICO.—In the case of distilled spirits, wines, and beer which are brought into the United States (other than in bulk containers) from Puerto Rico, the last day for payment of tax shall be the 14th day after the date on which the article is brought into the United States.

“(4) SPECIAL RULE WHERE 14TH DAY FALLS ON SATURDAY, SUNDAY, OR HOLIDAY.—Notwithstanding section 7503, if, but for this paragraph, the due date under this subsection for payment of tax would fall on a Saturday, Sunday, or a legal holiday (within the meaning of section 7503), such due date shall be the immediately preceding day which is not a Saturday, Sunday, or such a holiday.”

(2) TECHNICAL AMENDMENT.—Paragraph (2) of section 5054(a) of such Code (relating to determination and collection of tax on beer) is amended by striking out all that follows “or,” and inserting in lieu thereof “if entered for warehousing, at the time of removal from the 1st such warehouse”.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to removals during semimonthly periods ending on or after December 31, 1986.

(2) IMPORTED ARTICLES, ETC.—Subparagraphs (B) and (C) of section 5703(b)(2) of the Internal Revenue Code of 1954 (as added by this section), paragraphs (2) and (3) of section 5061(d) of such Code (as amended by this section), and the amendments made by subsections (a)(2) and (b)(2) shall apply to articles imported, entered for warehousing, or brought into the United States or a foreign trade zone after December 15, 1986.

(3) SPECIAL RULE FOR DISTILLED SPIRITS AND TOBACCO FOR SEMI-MONTHLY PERIOD ENDING DECEMBER 15, 1986.—With respect to remittances of—

(A) taxes imposed on distilled spirits by section 5001 or 7652 of such Code, and

(B) taxes imposed on tobacco products and cigarette papers and tubes by section 5701 or 7652 of such Code, for the semimonthly period ending December 15, 1986, the last day for payment of such remittances shall be January 14, 1987.

26 USC 5061
note.

26 USC 5703.

(4) **TREATMENT OF SMOKELESS TOBACCO IN INVENTORY ON JUNE 30, 1986.**—The tax imposed by section 5701(e) of the Internal Revenue Code of 1954 shall not apply to any smokeless tobacco which—

(A) on June 30, 1986, was in the inventory of the manufacturer or importer, and

(B) on such date was in a form ready for sale.

PART III—TAX TREATMENT OF CONRAIL PUBLIC SALE

45 USC 1347.

SEC. 8021. TAX TREATMENT OF CONRAIL PUBLIC SALE.

(a) TREATMENT AS NEW CORPORATION.—

Post, p. 2095.

(1) **IN GENERAL.**—For periods after the public sale, for purposes of the Internal Revenue Code of 1954, Conrail shall be treated as a new corporation which purchased all of its assets as of the beginning of the day after the date of the public sale for an amount equal to the deemed purchase price.

26 USC 338.

(2) **ALLOCATION AMONG ASSETS.**—The deemed purchase price shall be allocated among the assets of Conrail in accordance with the temporary regulations prescribed under section 338 of the Internal Revenue Code of 1954 (as such regulations were in effect on the date of the enactment of this Act). The Secretary shall establish specific guidelines for carrying out the preceding sentence so that the basis of each asset will be clearly ascertainable. For purposes of applying the regulations referred to in the first sentence, accounts receivable and materials and supplies shall be treated as cash equivalents.

(3) **DEEMED PURCHASE PRICE.**—For purposes of this subsection, the deemed purchase price is an amount equal to the gross amount received pursuant to the public sale, multiplied by a fraction—

Securities.

(A) the numerator of which is 100 percent, and

(B) the denominator of which is the percentage (by value) of the stock of Conrail sold in the public sale.

The amount determined under the preceding sentence shall be adjusted under regulations prescribed by the Secretary for liabilities of Conrail and other relevant items.

(b) **NO INCOME FROM CANCELLATION OF DEBT OR PREFERRED STOCK.**—No amount shall be included in the gross income of any person by reason of any cancellation of any obligation (or preferred stock) of Conrail in connection with the public sale.

(c) **DISALLOWANCE OF CERTAIN DEDUCTIONS.**—No deduction shall be allowed to Conrail for any amount which is paid after the date of the public sale to employees of Conrail for services performed on or before the date of the public sale.

26 USC 401, 501.

(d) **WAIVER OF CERTAIN EMPLOYEE STOCK OWNERSHIP PLAN PROVISIONS.**—For purposes of determining whether the employee stock ownership plans of Conrail meet the qualifications of sections 401 and 501 of the Internal Revenue Code of 1954—

(1) the limits of section 415 of such Code (relating to limitations on benefits and contributions under qualified plans) shall not apply with respect to interests in stock transferred pursuant to this Act or a law heretofore enacted, and

(2) the 2-year waiting period for withdrawals shall not apply to withdrawals of amounts (or shares) in participants accounts in connection with the public sale.

(e) DEFINITIONS.—For purposes of this section—

(1) CONRAIL.—The term “Conrail” means the Consolidated Rail Corporation. Such term includes any corporation which was a subsidiary of Conrail immediately before the public sale.

(2) PUBLIC SALE.—The term “public sale” means the sale of stock in Conrail pursuant to a public offering under the Conrail Privatization Act. If there is more than 1 public offering under such Act, such term means the sale pursuant to the initial public offering under such Act.

Ante, p. 1892.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Treasury or his delegate.

PART IV—TAX ON PETROLEUM AND OIL SPILL LIABILITY TRUST FUND

Subpart A—Tax Provisions if Superfund Amendments Not Enacted

SEC. 8031. TAX ON PETROLEUM.

(a) IN GENERAL.—Subsections (a) and (b) of section 4611 of the Internal Revenue Code of 1954 (relating to environmental tax on petroleum) are each amended by striking out “of 0.79 cent a barrel” and inserting in lieu thereof “at the rate specified in subsection (c)”.

Ante, p. 1761;
post, p. 1956.

(b) INCREASE IN TAX.—Section 4611 of such Code is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

“(c) RATE OF TAX.—

“(1) IN GENERAL.—The rate of the taxes imposed by this section is the sum of—

“(A) the Hazardous Substance Superfund financing rate, and

“(B) the Oil Spill Liability Trust Fund financing rate.

“(2) RATES.—For purposes of paragraph (1)—

“(A) the Hazardous Substance Superfund financing rate is 0.79 cent a barrel, and

“(B) the Oil Spill Liability Trust Fund financing rate is 1.3 cents a barrel.”

(c) CREDIT AGAINST PORTION OF TAX ATTRIBUTABLE TO OIL SPILL RATE.—Section 4612 of such Code (relating to definitions and special rules) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

Ante, p. 1761.

“(c) CREDIT AGAINST PORTION OF TAX ATTRIBUTABLE TO OIL SPILL RATE.—There shall be allowed as a credit against so much of the tax imposed by section 4611 as is attributable to the Oil Spill Liability Trust Fund financing rate for any period an amount equal to the excess of—

“(1) the sum of—

“(A) the aggregate amounts paid by the taxpayer before January 1, 1987, into the Deepwater Port Liability Trust Fund and the Offshore Oil Pollution Compensation Fund, and

“(B) the interest accrued on such amounts before such date, over

“(2) the amount of such payments taken into account under this subsection for all prior periods.”

(d) CONFORMING AMENDMENTS.—

(1) Subsection (e) of section 4611 of such Code (relating to application of taxes), as redesignated by subsection (b), is amended to read as follows:

“(e) APPLICATION OF TAXES.—

“(1) SUPERFUND RATE.—The Hazardous Substance Superfund financing rate under subsection (c) shall not apply after September 30, 1985.

“(2) OIL SPILL RATE.—

“(A) IN GENERAL.—Except as provided in subparagraph (C), the Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply on and after the commencement date and before January 1, 1992.

“(B) COMMENCEMENT DATE.—

“(i) IN GENERAL.—For purposes of this paragraph, the term ‘commencement date’ means the later of—

“(I) February 1, 1987, or

“(II) the 1st day of the 1st calendar month beginning more than 30 days after the date of the enactment of qualified authorizing legislation.

“(ii) QUALIFIED AUTHORIZING LEGISLATION.—For purposes of clause (i), the term ‘qualified authorizing legislation’ means any law enacted before September 1, 1987, which is substantially identical to subtitle E of title VI, or subtitle D of title VIII, of H.R. 5300 of the 99th Congress as passed the House of Representatives.

“(C) NO TAX IF AMOUNTS COLLECTED EXCEED \$300,000,000.—

“(i) ESTIMATES BY SECRETARY.—The Secretary as of the close of each calendar quarter (and at such other times as the Secretary determines appropriate) shall make an estimate of the amount of taxes which will be collected under this section (to the extent attributable to the Oil Spill Liability Trust Fund financing rate) during the period beginning on the commencement date and ending on December 31, 1991.

“(ii) TERMINATION IF \$300,000,000 CREDITED BEFORE JANUARY 1, 1992.—If the Secretary estimates under clause (i) that more than \$300,000,000 will be credited to the Fund before January 1, 1992, the Oil Spill Liability Trust Fund financing rate shall not apply after the date on which (as estimated by the Secretary) \$300,000,000 will be so credited to the Fund.”

(2) Subsection (c) of section 4661 of such Code (relating to termination of tax on certain chemicals) is amended to read as follows:

“(c) TERMINATION.—The tax imposed by this section shall not apply after September 30, 1985.”

(3) Paragraph (1) of section 221(b) of the Hazardous Substance Response Revenue Act of 1980 (relating to transfers to Response Trust Fund) is amended by adding at the end thereof the following:

“In the case of the tax imposed by section 4611, subparagraph (A) shall apply only to so much of such tax as is attributable to

Post, p. 1958.

Ante, p. 1774.

the Hazardous Substance Superfund financing rate under section 4611(c)."

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the commencement date (as defined in section 4611(e)(2) of the Internal Revenue Code of 1954, as added by this section).

Ante, p. 1956.

(2) COORDINATION WITH SUPERFUND REAUTHORIZATION.—The amendments made by this section shall not take effect if the Superfund Amendments and Reauthorization Act of 1986 is enacted.

Ante, p. 1613.

Subpart B—Tax Provisions If Superfund Amendments Enacted

SEC. 8032. INCREASE IN ENVIRONMENTAL TAX ON PETROLEUM.

(a) IN GENERAL.—Subsection (c) of section 4611 of the Internal Revenue Code of 1954 (relating to environmental tax on petroleum), as amended by the Superfund Amendments and Reauthorization Act of 1986, is amended to read as follows:

Ante, pp. 1761, 1955.

"(c) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the taxes imposed by this section is the sum of—

"(A) the Hazardous Substance Superfund financing rate, and

"(B) the Oil Spill Liability Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Hazardous Substance Superfund financing rate is—

"(i) except as provided in clause (ii), 8.2 cents a barrel, and

"(ii) 11.7 cents a barrel in the case of the tax imposed by subsection (a)(2), and

"(B) the Oil Spill Liability Trust Fund financing rate is 1.3 cents a barrel."

(b) CREDIT AGAINST PORTION OF TAX ATTRIBUTABLE TO OIL SPILL RATE.—Section 4612 of such Code (relating to definitions and special rules), as so amended, is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

Ante, pp. 1761, 1955.

"(d) CREDIT AGAINST PORTION OF TAX ATTRIBUTABLE TO OIL SPILL RATE.—There shall be allowed as a credit against so much of the tax imposed by section 4611 as is attributable to the Oil Spill Liability Trust Fund financing rate for any period an amount equal to the excess of—

"(1) the sum of—

"(A) the aggregate amounts paid by the taxpayer before January 1, 1987, into the Deepwater Port Liability Trust Fund and the Offshore Oil Pollution Compensation Fund, and

"(B) the interest accrued on such amounts before such date, over

"(2) the amount of such payments taken into account under this subsection for all prior periods."

(c) CONFORMING AMENDMENTS.—

Ante, pp. 1761,
1955.

(1) Subsection (e) of section 4611 of such Code (relating to application of taxes), as so amended, is amended—

(A) in the subsection heading by striking out “TAXES” and inserting in lieu thereof “HAZARDOUS SUBSTANCE SUPERFUND FINANCING RATE”,

(B) in paragraph (1) by striking out “the taxes imposed by this section” and inserting in lieu thereof “the Hazardous Substance Superfund financing rate under this section”,

(C) in paragraphs (2) and (3)(A) after “this section” by inserting “(to the extent attributable to the Hazardous Substance Superfund financing rate)”, and

(D) in paragraph (3)(B) by striking out “no tax shall be imposed under this section” and inserting in lieu thereof “the Hazardous Substance Superfund financing rate under this section shall not apply”.

(2) Section 4611 of such Code, as so amended, is amended by adding at the end thereof the following new subsection:

“(f) APPLICATION OF OIL SPILL LIABILITY TRUST FUND FINANCING RATE.—

“(1) IN GENERAL.—Except as provided in paragraph (3), the Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply on and after the commencement date and before January 1, 1992.

“(2) COMMENCEMENT DATE.—

“(A) IN GENERAL.—For purposes of this subsection, the term ‘commencement date’ means the later of—

“(i) February 1, 1987, or

“(ii) the 1st day of the 1st calendar month beginning more than 30 days after the date of the enactment of qualified authorizing legislation.

“(B) QUALIFIED AUTHORIZING LEGISLATION.—For purposes of subparagraph (A), the term ‘qualified authorizing legislation’ means any law enacted before September 1, 1987, which is substantially identical to subtitle E of title VI, or subtitle D of title VIII, of H.R. 5300 of the 99th Congress as passed the House of Representatives.

“(3) NO TAX IF AMOUNTS COLLECTED EXCEED \$300,000,000.—

“(A) ESTIMATES BY SECRETARY.—The Secretary as of the close of each calendar quarter (and at such other times as the Secretary determines appropriate) shall make an estimate of the amount of taxes which will be collected under this section (to the extent attributable to the Oil Spill Liability Trust Fund financing rate) during the period beginning on the commencement date and ending on December 31, 1991.

“(B) TERMINATION IF \$300,000,000 CREDITED BEFORE JANUARY 1, 1992.—If the Secretary estimates under subparagraph (A) that more than \$300,000,000 will be credited to the Fund before January 1, 1992, the Oil Spill Liability Trust Fund financing rate shall not apply after the date on which (as estimated by the Secretary) \$300,000,000 will be so credited to the Fund.”

(3) Sections 4661(c) and 4671(e) of such Code (relating to termination of environmental taxes) are each amended by striking out “no tax is imposed under section 4611(a)” and inserting in lieu thereof “the Hazardous Substance Superfund financing rate under section 4611 does not apply”.

Ante, pp. 1761,
1956.

(4) Subsection (b) of section 9507 of such Code (relating to transfers to Superfund) is amended by adding at the end thereof the following:

Infra; post, p. 1962.

"In the case of the tax imposed by section 4611, paragraph (1) shall apply only to so much of such tax as is attributable to the Hazardous Substance Superfund financing rate under section 4611(c)."

*Ante, pp. 1955, 1957.
26 USC 4611
note.*

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the commencement date (as defined in section 4611(f)(2) of the Internal Revenue Code of 1954, as added by this section).

Ante, p. 1958.

(2) COORDINATION WITH SUPERFUND REAUTHORIZATION.—The amendments made by this section shall take effect only if the Superfund Amendments and Reauthorization Act of 1986 is enacted.

Ante, p. 1613.

Subpart C—Oil Spill Liability Trust Fund

SEC. 8033. OIL SPILL LIABILITY TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9506 the following new section:

Post, p. 2095; 26 USC 9501.

"SEC. 9507. OIL SPILL LIABILITY TRUST FUND.

*Post, p. 1962;
26 USC 9507.*

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Oil Spill Liability Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Oil Spill Liability Trust Fund amounts equivalent to—

"(1) taxes received in the Treasury under section 4611 (relating to environmental tax on petroleum) to the extent attributable to the Oil Spill Liability Trust Fund financing rate under section 4611(c),

"(2) amounts recovered, collected, or received under subtitle A of the Comprehensive Oil Pollution Liability and Compensation Act,

"(3) amounts remaining (on the 1st day the Oil Spill Liability Trust Fund financing rate under section 4611(c) applies) in the Deep Water Port Liability Fund established by section 18(f) of the Deep Water Port Act of 1974,

33 USC 1517.

"(4) amounts remaining (on such date) in the Offshore Oil Pollution Compensation Fund established under section 302 of the Outer Continental Shelf Lands Act Amendments of 1978, and

43 USC 1812.

"(5) amounts credited to such trust fund under section 311(s) of the Federal Water Pollution Control Act.

33 USC 1321.

"(c) EXPENDITURES.—

"(1) GENERAL EXPENDITURE PURPOSES.—

"(A) IN GENERAL.—Amounts in the Oil Spill Liability Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures for—

"(i) the payment of removal costs described in the Comprehensive Oil Pollution Liability and Compensation Act,

33 USC 1321.

33 USC 1474.

Ante, pp. 1761,
1955.

"(ii) the payment of claims under the Comprehensive Oil Pollution Liability and Compensation Act for damage which is not otherwise compensated,

"(iii) carrying out subsections (c), (d), (i), and (l) of section 311 of the Federal Water Pollution Control Act with respect to any discharge of oil (as defined in such section),

"(iv) carrying out section 5 of the Intervention on the High Seas Act relating to oil pollution or the substantial threat of oil pollution,

"(v) the payment of all expenses of administration incurred by the Federal Government under the Comprehensive Oil Pollution Liability and Compensation Act, and

"(vi) the payment of contributions to the International Fund under such Act.

For purposes of this subparagraph, references to the Comprehensive Oil Pollution Liability and Compensation Act shall be treated as references to qualified authorizing legislation (as defined in section 4611).

"(B) SPECIAL RULES.—

"(i) PAYMENTS TO GOVERNMENTS ONLY FOR REMOVAL COSTS AND NATURAL RESOURCE DAMAGE ASSESSMENTS AND CLAIMS.—Except in the case of payments described in subparagraph (A)(v), amounts shall be available under subparagraph (A) for payments to any government only for—

"(I) removal costs and natural resource damage assessments and claims, and

"(II) administrative expenses related to such costs, assessments, or claims.

"(ii) RESTRICTIONS ON CONTRIBUTIONS TO INTERNATIONAL FUND.—Under regulations prescribed by the Secretary, amounts shall be available under subparagraph (A) with respect to any contribution to the International Fund only in proportion to the portion of such fund used for a purpose for which amounts may be paid from the Oil Spill Liability Trust Fund.

"(2) LIMITATIONS ON EXPENDITURES.—

"(A) \$500,000,000 PER INCIDENT, ETC.—The maximum amount which may be paid from the Oil Spill Liability Trust Fund with respect to—

"(i) any single incident shall not exceed \$500,000,000, and

"(ii) natural resource damage assessments and claims in connection with any single incident shall not exceed \$250,000,000.

"(B) \$30,000,000 MINIMUM BALANCE.—Except in the case of payments described in paragraph (1)(A)(i), a payment may be made from such Trust Fund only if the amount in such Trust Fund after such payment will not be less than \$30,000,000.

"(d) AUTHORITY TO BORROW.—

"(1) IN GENERAL.—There are authorized to be appropriated to the Oil Spill Liability Trust Fund, as repayable advances, such sums as may be necessary to carry out the purposes of such Trust Fund.

Appropriation
authorization.

"(2) **LIMITATION ON AMOUNT OUTSTANDING.**—The maximum aggregate amount of repayable advances to the Oil Spill Liability Trust Fund which is outstanding at any one time shall not exceed \$500,000,000.

"(3) **REPAYMENT OF ADVANCES.**—

"(A) **IN GENERAL.**—Advances made to the Oil Spill Liability Trust Fund shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in such Fund.

"(B) **FINAL REPAYMENT.**—No advance shall be made to the Oil Spill Liability Trust Fund after December 31, 1991, and all advances to such Fund shall be repaid on or before such date.

"(C) **RATE OF INTEREST.**—Interest on advances made pursuant to this subsection shall be—

"(i) at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding, and

"(ii) compounded annually.

"(e) **LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.**—

"(1) **GENERAL RULE.**—Any claim filed against the Oil Spill Liability Trust Fund may be paid only out of such Trust Fund.

"(2) **COORDINATION WITH OTHER PROVISIONS.**—Nothing in the Comprehensive Oil Pollution Liability and Compensation Act (or in any amendment made by such Act) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Oil Spill Liability Trust Fund.

"(3) **ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.**—If at any time the Oil Spill Liability Trust Fund has insufficient funds (or is unable by reason of subsection (c)(2)) to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under paragraph (1) and such subsection, be paid in full in the order in which they were finally determined."

(b) **CLERICAL AMENDMENT.**—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9506 the following new item:

"Sec. 9507. Oil Spill Liability Trust Fund."

(c) **EFFECTIVE DATE.**—

26 USC 9509.

(1) **IN GENERAL.**—The amendments made by this section shall take effect on the commencement date (as defined in section 4611 of the Internal Revenue Code of 1954, as amended by this part).

Ante, pp. 1761, 1955.

(2) **COORDINATION WITH SUPERFUND REAUTHORIZATION.**—If the Superfund Amendments and Reauthorization Act of 1986 is enacted—

Ante, p. 1613.

(A) subsection (a) of this section shall be applied by substituting "section 9508" for "section 9506",

Ante, p. 1959.

(B) section 9507 of the Internal Revenue Code of 1954, as added by this section, is hereby redesignated as section 9509 of such Code, and

(C) in lieu of the amendment made by subsection (b), the table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9508 the following new item:

"Sec. 9509. Oil Spill Liability Trust Fund."

PART V—DENIAL OF CERTAIN TAX BENEFITS WITH RESPECT TO ACTIVITIES IN CERTAIN FOREIGN COUNTRIES

SEC. 8041. DENIAL OF CERTAIN TAX BENEFITS WITH RESPECT TO ACTIVITIES IN CERTAIN FOREIGN COUNTRIES.

(a) DENIAL OF FOREIGN TAX CREDIT.—Section 901 of the Internal Revenue Code of 1954 (relating to taxes of foreign countries and of possessions of the United States), as amended by the Tax Reform Act of 1986, is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

Post, p. 2095;
26 USC 901.

"(j) DENIAL OF FOREIGN TAX CREDIT, ETC., WITH RESPECT TO CERTAIN FOREIGN COUNTRIES.—

"(1) IN GENERAL.—Notwithstanding any other provision of this part—

"(A) no credit shall be allowed under subsection (a) for any income, war profits, or excess profits taxes paid or accrued (or deemed paid under section 902 or 960) to any country if such taxes are with respect to income attributable to a period to which this subsection applies to such country, and

"(B) subsections (a), (b), and (c) of section 904 and sections 902 and 960 shall be applied separately with respect to income attributable to such a period from sources within any country so identified.

"(2) COUNTRIES TO WHICH SUBSECTION APPLIES.—

"(A) IN GENERAL.—This subsection shall apply to any foreign country—

"(i) the government of which the United States does not recognize, unless such government is otherwise eligible to purchase defense articles or services under the Arms Export Control Act,

"(ii) with respect to which the United States has severed diplomatic relations,

"(iii) with respect to which the United States has not severed diplomatic relations but does not conduct such relations, or

"(iv) which the Secretary of State has, pursuant to section 6(j) of the Export Administration Act of 1979, as amended, designated as a foreign country which repeatedly provides support for acts of international terrorisms.

"(B) PERIOD FOR WHICH SUBSECTION APPLIES.—This subsection shall apply to any foreign country described in subparagraph (A) during the period—

"(i) beginning on the later of—

22 USC 2751
note.

Terrorism.
Ante, p. 874.

“(I) January 1, 1987, or

“(II) 6 months after such country becomes a country described in subparagraph (A), and

“(ii) ending on the date the Secretary of State certifies to the Secretary of the Treasury that such country is no longer described in subparagraph (A).

“(3) TAXES ALLOWED AS A DEDUCTION.—Section 275 shall not apply to any tax which is not allowable as a credit under subsection (a) by reason of this subsection.

“(4) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations which treat income paid through 1 or more entities as derived from a foreign country to which this subsection applies if such income was, without regard to such entities, derived from such country.”

(b) DENIAL OF DEFERRAL OF INCOME.—

(1) GENERAL RULE.—Section 952(a) of such Code (defining subpart F income) is amended—

(A) by striking out “and” at the end of paragraph (3), by striking out the period at the end of paragraph (4) and inserting in lieu thereof “, and”, and by inserting immediately after paragraph (4) the following new paragraph:

“(5) the income of such corporation derived from any foreign country during any period during which section 901(j) applies to such foreign country.”, and

(B) by adding at the end thereof the following sentence: “For purposes of paragraph (5), the income described therein shall be reduced, under regulations prescribed by the Secretary, so as to take into account deductions (including taxes) properly allocable to such income.”

(2) INCOME DERIVED FROM FOREIGN COUNTRY.—Section 952 of such Code (defining subpart F income), as amended by the Tax Reform Act of 1986, is amended by adding at the end thereof the following new subsection:

“(d) INCOME DERIVED FROM FOREIGN COUNTRY.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of subsection (a)(5), including regulations which treat income paid through 1 or more entities as derived from a foreign country to which section 901(j) applies if such income was, without regard to such entities, derived from such country.”

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

Post, p. 2095.

Regulations.

26 USC 901 note.

PART VI—APPROPRIATIONS FOR IRS ENFORCEMENT

SEC. 8051. APPROPRIATIONS FOR IRS ENFORCEMENT.

For purposes of reconciliation, in order to provide for an accurate estimate of revenue raised by increased appropriations for the Internal Revenue Service, the enacted appropriations measure providing funding for the Internal Revenue Service for the fiscal year ending September 30, 1987, will include the following funding levels: for “Salaries and Expenses”, \$95,147,000; for “Processing Tax Returns”, \$1,332,902,000; for “Examinations and Appeals”, \$1,623,162,000; and for “Investigation, Collection, and Taxpayer

Service", \$1,196,581,000: *Provided*, That the allocation to the Senate Committee on Appropriations pursuant to section 302(a) of the Budget Act, as amended, under Senate Concurrent Resolution 120, the concurrent resolution on the budget for fiscal year 1987, is increased by \$300,000,000 in both new budget authority and outlays.

PART VII—STUDY OF COMMUNICATION SERVICES NOT SUBJECT TO FEDERAL EXCISE TAX

SEC. 8061. STUDY OF COMMUNICATION SERVICES NOT SUBJECT TO FEDERAL EXCISE TAX.

(a) **IN GENERAL.**—The Secretary of the Treasury or his delegate shall conduct a study of communication services which are exempt from the tax imposed by section 4251 of the Internal Revenue Code of 1954 by reason of being a private communication service (as defined in section 4252(d) of such Code) or by reason of a specific exemption from such tax under section 4253 of such Code. Such study shall include an estimate of the reduction in tax revenues by reason of each such exemption, shall describe the types of persons which benefit from each such exemption, and a method under which such tax could be extended to private communication services (as so defined). In conducting such study, the Secretary of the Treasury or his delegate shall consult with the Secretary of Commerce and the Chairman of the Federal Communications Commission.

(b) **REPORT.**—The report of the study under subsection (a) shall be submitted, not later than June 30, 1987, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

PART VIII—AMENDMENTS RELATED TO TAX REFORM ACT OF 1986

SEC. 8071. TREATMENT OF CERTAIN TRUCKS, ETC.

Subsection (a) of section 204 of the Tax Reform Act of 1986 (relating to additional transitional rules) is amended by adding at the end thereof the following new paragraph:

"(40) **CERTAIN TRUCKS, ETC.**—The amendments made by section 201 shall not apply to trucks, tractor units, and trailers which a privately held truck leasing company headquartered in Des Moines, Iowa, contracted to purchase in September 1985 but only to the extent the aggregate reduction in Federal tax liability by reason of the application of this paragraph does not exceed \$8,500,000."

SEC. 8072. APPLICATION OF AT-RISK RULES TO LOW-INCOME HOUSING CREDIT.

(a) **IN GENERAL.**—Paragraph (1) of section 42(k) of the Internal Revenue Code of 1986 (relating to low-income housing credit), as added by the Tax Reform Act of 1986, is amended by striking out "subparagraph (D)(iv)(I)" and inserting in lieu thereof "subparagraphs (D)(ii)(II) and (D)(iv)(I)".

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect as if included in the amendment made by section 252(a) of the Tax Reform Act of 1986.

Post, p. 2095;
26 USC 4251.

Post, p. 2095;
26 USC 168 note.
Iowa.

Post, p. 2095;
26 USC 42.

26 USC 42 note.

Post, p. 2095.

SEC. 8073. TREATMENT OF CERTAIN RURAL HOUSING FOR PURPOSES OF TRANSITIONAL RULE FOR LOW-INCOME HOUSING.

(a) **IN GENERAL.**—Subsection (d) of section 502 of the Tax Reform Act of 1986 (defining qualified investor) is amended by adding at the end thereof the following new paragraph:

26 USC 469 note.
Post, p. 2095.

“(4) **SPECIAL RULE FOR CERTAIN RURAL HOUSING.**—In the case of any interest in a qualified low-income housing project which—

“(A) is assisted under section 515 of the Housing Act of 1949 (relating to the Farmers’ Home Administration Program), and

42 USC 1485.

“(B) is located in a town with a population of less than 10,000 and which is not part of a metropolitan statistical area,

paragraph (1)(B) shall be applied by substituting ‘35 percent’ for ‘50 percent’ and subsection (b)(1) shall be applied by substituting ‘5th taxable year’ for ‘6th taxable year’. The preceding sentence shall not apply to any interest unless, on December 31, 1986, at least one-half of the number of payments required with respect to such interest remain to be paid.”

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect as if included in section 502 of the Tax Reform Act of 1986 on the date of its enactment.

26 USC 469 note.

PART IX—COORDINATION WITH OTHER PROVISIONS

SEC. 8081. COORDINATION WITH OTHER PROVISIONS.

26 USC 1 note.
Taxes.

Nothing in any provision of this Act (other than this title) shall be construed as—

- (1) imposing any tax (or exempting any person or property from any tax),
- (2) establishing any trust fund, or
- (3) authorizing amounts to be expended from any trust fund.

Subtitle B—Customs Revenues

SEC. 8101. CUSTOMS USER FEES FOR THE PROCESSING OF MERCHANDISE ENTRIES.

(a) **AMOUNT OF FEE.**—Subsection (a) of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)) is amended by adding at the end thereof the following new paragraphs:

“(9) For the processing of any merchandise (other than an article that is—

“(A) provided for in schedule 8 of the Tariff Schedules of the United States,

“(B) a product of an insular possession of the United States, or

“(C) a product of any county listed in General Headnote 3(e)(vi) or (vii) of such Schedules)

that is formally entered, or withdrawn from warehouse for consumption—

“(i) after November 30, 1986, and

“(ii) before October 1, 1987;

a fee in an amount equal to 0.22 percent ad valorem.

“(10) For the processing of any merchandise (other than an

19 USC 1202
note.

article described in subparagraph (A), (B), or (C) of paragraph (9)) that is formally entered, or withdrawn from warehouse for consumption, during any fiscal year occurring after September 30, 1987; a fee in an amount equal to the lesser of—

“(A) 0.17 percent ad valorem, or

“(B) an ad valorem rate which the Secretary of the Treasury estimates will provide a total amount of revenue during the fiscal year equal to—

“(i) the total amount authorized to be appropriated for such fiscal year to the United States Customs Service for salaries and expenses incurred in conducting commercial operations during such fiscal year, reduced by

“(ii) the excess, if any, of—

“(I) the total amount authorized to be appropriated for such salaries and expenses for such fiscal year, over

“(II) the total amount actually appropriated for such salaries and expenses for such fiscal year;

except that if appropriations are not authorized for a fiscal year, the fee imposed under this paragraph with respect to that year shall be in an amount equal to 0.17 percent ad valorem.”.

(b) **REDUCTION IN AMOUNT OF FEE.**—Subsection (b) of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by adding at the end thereof the following new paragraphs:

“(8)(A) The fee charged under subsection (a)(9) or (10) with respect to the processing of merchandise shall—

“(i) be paid by the importer of record of the merchandise; and

“(ii) be based on the value of the merchandise as determined under section 402 of the Tariff Act of 1930.

“(B)(i) By no later than the date that is 5 days after the date on which any funds are appropriated to the United States Customs Service for salaries or expenses incurred in conducting commercial operations, the Secretary of the Treasury shall determine the ad valorem rate of the fee charged under subsection (a)(10) and shall publish the determination in the Federal Register. Such ad valorem rate shall apply with respect to services provided for the processing of entries, and withdrawals from warehouse, for consumption made after the date that is 60 days after the date of such determination.

“(ii) No determination is required under clause (i) with respect to an appropriation to the United States Customs Service if the funds appropriated are available for less than 60 days.

“(9) The Secretary may reduce by an amount he considers equitable the fees charged under subsection (a) for the processing of merchandise entries at facilities at which users reimburse the United States Customs Service, pursuant to section 9701 of title 31, United States Code, or section 236 of the Trade and Tariff Act of 1984 (19 U.S.C. 58b), for the services that it provides at the facilities.”.

(c) **PROVISION OF CUSTOMS SERVICES.**—(1) Subsection (e) of section 13031(e) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by adding at the end thereof the following new paragraph:

“(4) Notwithstanding any other provision of law, during any period when fees are authorized under subsection (a), no charges, other than such fees, may be collected for—

Ante, p. 308.

19 USC 1401a.
Federal
Register,
publication.

“(A) any cargo inspection, clearance, or other customs service performed (regardless whether performed outside of normal business hours on an overtime basis); or

“(B) any customs personnel provided; in connection with the arrival or departure of any commercial vessel, vehicle or aircraft, or its passengers, crew, and cargo, in the United States.”.

(2) Paragraph (2) of such subsection (e), as amended by section 1893 of the Tax Reform Act of 1986, is amended by striking out “Paragraph (1)” and inserting “This subsection”.

(d) CUSTOMS USER FEE ACCOUNT.—Subsection (f) of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)) is amended by adding at the end thereof the following new paragraphs:

“(3) Except as provided in paragraph (2), all funds in the Customs User Fee Account shall only be available, to the extent provided for in appropriation Acts, for the salaries and expenses of the United States Customs Service incurred in conducting commercial operations.

“(4) At the close of fiscal year 1988 and each even-numbered fiscal year occurring thereafter, the Secretary of the Treasury shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding how the fees imposed under subsection (a) should be adjusted in order that the balance of the Customs User Fee Account approximates a zero balance. Before making recommendations regarding any such adjustments, the Secretary of the Treasury shall provide adequate opportunity for public comment. The recommendations shall, as precisely as possible, propose fees which reflect the actual costs to the United States Government for the commercial services provided by the United States Customs Service.”.

Reports.

(e) TERMINATION OF FEES.—Subsection (j) of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended—

19 USC 58c note.
Ante, p. 310.

(1) by striking out “provided in paragraph (2)” in paragraph (1) and inserting in lieu thereof “otherwise provided in this subsection”; and

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

“(3) Fees may not be charged under subsection (a) after September 30, 1989.”.

Paragraph (3) shall not apply to any authorization made by title IX of this Act.

SEC. 8102. AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1987 FOR THE UNITED STATES CUSTOMS SERVICE.

Section 301 of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075) is amended as follows:

Ante, p. 305.

(1) Subsection (a) is amended—

(A) by inserting “(1)” after “(a)”; and

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

“(2) The authorization of the appropriations for the United States Customs Service for each fiscal year after fiscal year 1987 shall specify—

“(A) the amount authorized for the fiscal year for the salaries and expenses of the Service in conducting commercial operations; and

“(B) the amount authorized for the fiscal year for the salaries and expenses of the Service for other than commercial operations.”; and

(2) Subsection (b) is amended to read as follows:

Appropriation
authorization.

“(b)(1) There are authorized to be appropriated to the Department of the Treasury not to exceed \$1,001,180,000 for the salaries and expenses of the United States Customs Service for fiscal year 1987; of which—

“(A) \$749,131,000 is for salaries and expenses to maintain current operating levels, and includes such sums as may be necessary to complete the testing of the prototype of the automatic license plate reader program and to implement that program;

“(B) \$80,999,000 is for the salaries and expenses of additional personnel to be used in carrying out drug enforcement activities; and

“(C) \$171,050,000 is for the operation and maintenance of the air interdiction program of the Service, of which—

“(i) \$93,500,000 is for additional aircraft, communications enhancements, and command, control, communications, and intelligence centers, and

“(ii) \$350,000 is for a feasibility and application study for a low-level radar detection system in collaboration with the Los Alamos National Laboratory.

“(2) No part of any sum that is appropriated under the authority of paragraph (1) may be used to close any port of entry at which, during fiscal year 1986—

“(A) not less than 2,500 merchandise entries (including informal entries) were made; and

“(B) not less than \$1,500,000 in customs revenues were assessed.”.

Subtitle C—Public Debt Limit and Related Provisions

31 USC 3101
note.

SEC. 8201. TEMPORARY INCREASE IN PUBLIC DEBT LIMIT.

During the period beginning on the date of the enactment of this Act and ending on May 15, 1987, the public debt limit set forth in subsection (b) of section 3101 of title 31, United States Code, shall be temporarily increased by \$189,000,000,000.

SEC. 8202. RESTORATION OF LOST INTEREST TO CERTAIN TRUST FUNDS.

(a) **GENERAL RULE.**—The Secretary of the Treasury shall pay, from amounts in the general fund of the Treasury not otherwise appropriated, to each qualified fund on the 1st normal interest payment date after the date of the enactment of this Act an amount equal to the interest payment shortfall for such fund.

(b) **QUALIFIED FUND.**—For purposes of this section, the term “qualified fund” means any fund which is listed in Table III of the Monthly Statement of Public Debt issued by the Department of the Treasury for September 30, 1986, and which has an interest pay-

ment shortfall. Such term shall not include the Department of Defense Military Retirement Fund.

(c) **INTEREST PAYMENT SHORTFALL.**—For purposes of this section, the term “interest payment shortfall” means, with respect to any fund, the reduction in the interest which would have been earned by such fund during the period beginning with September 30, 1986, and ending with the date of the enactment of this Act as the result of noninvestments, redemptions, and disinvestments with respect to such fund which occurred during such period and which would not have occurred if H.J. Res. 668 (99th Congress, 2d Session), as passed by the House of Representatives on June 26, 1986, had been enacted into law on September 30, 1986. Such amount shall be reduced by any payment to such fund under any other provision of law in respect of such lost interest.

SEC. 8203. RESTORATION OF DEPARTMENT OF DEFENSE MILITARY RETIREMENT FUND.

The Secretary of the Treasury shall immediately issue to the Department of Defense Military Retirement Fund obligations under chapter 31 of title 31, United States Code, which such Secretary, in consultation with the Secretary of Defense, determines would have been issued to such fund on October 1, 1986, if H.J. Res. 668 (99th Congress, 2d session), as passed by the House of Representatives on June 26, 1986, had been enacted into law on September 30, 1986. Such obligations shall be market-based special obligations issued at prices, including accrued interest, prevailing for such obligations on October 1, 1986. Such obligations shall be issued as of October 1, 1986, and the fund shall earn interest on such obligations beginning on October 1, 1986. Such obligations shall be substituted for obligations which are held by such fund on the date of the enactment of this Act (and any uninvested balance on such date in such fund shall be reduced) in a manner which will ensure that, after such substitution (and reduction), the holdings of such fund will replicate to the maximum extent practicable the holdings which would have been held by such fund on such date if such H.J. Res. 668 had been enacted into law on September 30, 1986.

31 USC 3101 *et seq.*

TITLE IX—INCOME SECURITY, MEDICARE, MEDICAID, AND MATERNAL AND CHILD HEALTH PROGRAMS

Subtitle A—OASDI provisions

Subtitle B—Provisions relating to public assistance

Subtitle C—Older Americans pension benefits

Subtitle D—Provisions relating to medicare

Subtitle E—Medicaid and maternal and child health

Subtitle F—Provision relating to access to health care

Subtitle A—OASDI Provisions

SEC. 9001. ELIMINATION OF 3-PERCENT TRIGGER FOR COST-OF-LIVING INCREASES.

(a) **ELIMINATION OF TRIGGER.**—Section 215(i)(1)(B) of the Social Security Act is amended by striking out “with respect to which the applicable increase percentage is 3 percent or more” and inserting

42 USC 415.

in lieu thereof "with respect to which the applicable increase percentage is greater than zero".

(b) CONFORMING AMENDMENTS.—

42 USC 415.

(1) IN CURRENT LAW.—Section 215(i) of such Act is further amended—

(A)(i) by striking out clause (i) in paragraph (2)(C) and redesignating clauses (ii) and (iii) of such paragraph as clauses (i) and (ii), respectively; and

(ii) by striking out "under clause (ii)" in clause (ii) of such paragraph as so redesignated and inserting in lieu thereof "under clause (i)";

42 USC 1305
note.

(B) by inserting "and by section 9001 of the Omnibus Budget Reconciliation Act of 1986" after "Social Security Amendments of 1983" in paragraph (4); and

(C) by striking out "because the wage increase percentage was less than 3 percent" in paragraph (5)(A)(i) and inserting in lieu thereof "because there was no wage increase percentage greater than zero".

(2) IN APPLICABLE FORMER LAW.—Section 215(i) of such Act, as in effect in December 1978 and applied in certain cases under the provisions of such Act in effect after December 1978, is amended—

(A) by striking out " , by not less than 3 per centum," in paragraph (1)(B); and

(B) by striking out "(C)(i) Whenever" and all that follows down through "(ii) Whenever" in paragraph (2)(C) and inserting in lieu thereof "(C) Whenever".

42 USC 1395r.

(c) TECHNICAL AMENDMENT TO SMI PROGRAM.—Section 1839(f)(2)(A) of such Act is amended to read as follows:

42 USC 402, 423.

"(A) the monthly premium amount determined under subsection (a)(2) for that January reduced by the amount (if any) by which the monthly benefit under section 202 or 223 for that November, after the deduction of the premium (disregarding subsection (b)) for that individual for that December and after rounding under section 215(g), would exceed the monthly benefit under section 202 or 223 for that December, after the deduction of the monthly premium amount determined under subsection (a)(2) (disregarding subsection (b)) for that individual for that January and after rounding under section 215(g), or".

42 USC 415.

42 USC 415 note.

(d) EFFECTIVE DATE.—(1) Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply with respect to cost-of-living increases determined under section 215(i) of the Social Security Act (as currently in effect, and as in effect in December 1978 and applied in certain cases under the provisions of such Act in effect after December 1978) in 1986 and subsequent years.

(2) The amendments made by paragraphs (1)(A) and (2)(B) of subsection (b) shall apply with respect to months after September 1986.

(3) The amendment made by subsection (c) shall apply with respect to monthly premiums (under section 1839 of the Social Security Act) for months after December 1986.

SEC. 9002. DEPOSITS OF SOCIAL SECURITY CONTRIBUTIONS BY STATE AND LOCAL GOVERNMENT EMPLOYERS.

26 USC 3126,
3127;
post, p. 2095;
26 USC 3121 et
seq.

(a) RETURNS AND PAYMENTS.—(1) Subchapter C of chapter 21 of the Internal Revenue Code of 1954 is amended by redesignating

section 3126 as section 3127, and by inserting after section 3125 the following new section:

"SEC. 3126. RETURN AND PAYMENT BY GOVERNMENTAL EMPLOYER.

"If the employer is a State or political subdivision thereof, or an agency or instrumentality of any one or more of the foregoing, the return of the amount deducted and withheld upon any wages under section 3101 and the amount of the tax imposed by section 3111 may be made by any officer or employee of such State or political subdivision or such agency or instrumentality, as the case may be, having control of the payment of such wages, or appropriately designated for that purpose."

(2) The table of sections for subchapter C of chapter 21 of such Code is amended by striking out the last item and inserting in lieu thereof the following:

"Sec. 3126. Return and payment by governmental employer.

"Sec. 3127. Short title."

(b) TREATMENT OF SERVICE UNDER SECTION 218 AGREEMENTS AS EMPLOYMENT PERFORMED BY EMPLOYEES.—

(1) SERVICE TREATED AS EMPLOYMENT.—(A) Section 3121(b)(7) of such Code is amended—

(i) by striking out "; or" at the end of subparagraph (C) and inserting in lieu thereof a comma;

(ii) by striking out the semicolon at the end of subparagraph (D) and inserting in lieu thereof "; or"; and

(iii) by adding after subparagraph (D) the following new subparagraph:

"(E) service included under an agreement entered into pursuant to section 218 of the Social Security Act;"

(B) Section 1402(b) of such Code is amended by striking out "under an agreement entered into pursuant to the provisions of section 218 of the Social Security Act (relating to coverage of State employees), or" in the flush sentence immediately following paragraph (2).

(2) INDIVIDUAL PERFORMING SERVICES TREATED AS EMPLOYEE.—

(A) Section 3121(d) of such Code is amended by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) any individual who performs services that are included under an agreement entered into pursuant to section 218 of the Social Security Act; or"

(B) Section 3306(i) of such Code is amended by striking out "subparagraphs (B) and (C) of paragraph (3)" and inserting in lieu thereof "paragraph (3) and subparagraphs (B) and (C) of paragraph (4)".

(c) CONFORMING AMENDMENTS IN SOCIAL SECURITY ACT.—(1) Subsections (e), (h), (i), (j), (q), (r), (s), (t), and (w) of section 218 of the Social Security Act are repealed; and subsections (f), (g), (k), (l), (m), (n), (o), (p), and (u) of such section are redesignated as subsections (e), (f), (g), (h), (i), (j), (k), (l), and (m), respectively.

(2)(A) Section 205(c)(1)(D)(i) of such Act is amended by inserting "(as in effect prior to December 31, 1986)" after "section 218(e)".

(B) Section 205(c)(5)(F)(iii) of such Act is amended—

(i) by inserting "(as in effect prior to December 31, 1986)" after "section 218"; and

(ii) by inserting "(as so in effect)" after "subsection (q) of such section".

Wages.

26 USC 3126.

Infra.

42 USC 418.

42 USC 405.

42 USC 418.

(C) Section 218(d)(6) of such Act is amended—

(i) by striking out “subsection (f)” in subparagraph (A) and inserting in lieu thereof “subsection (e)”; and

(ii) by striking out “subsection (f)(1)” in subparagraph (F) and inserting in lieu thereof “subsection (e)(1)”.

(D) Section 218(d)(8)(D) of such Act is amended by striking out “subsection (p)” and inserting in lieu thereof “subsection (l)”.

(E) Section 218(e)(1) of such Act (as redesignated by paragraph (1) of this subsection) is amended by striking out “Except as provided in subsection (e)(2), any agreement” and inserting in lieu thereof “Any agreement”.

42 USC 424a.

(F) Section 224(a)(2)(B) of such Act is amended by striking out “section 218(k)” and inserting in lieu thereof “section 218(g)”.

Wages.

Taxes.

42 USC 418 note.

(d) **EFFECTIVE DATE.**—The amendments made by this section are effective with respect to payments due with respect to wages paid after December 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to the provisions of section 218(e)(2) of the Social Security Act prior to the date of the enactment of this Act; except that in cases where, in accordance with the currently applicable schedule, deposits of taxes due under an agreement entered into pursuant to section 218 of the Social Security Act would be required within 3 days after the close of an eighth-monthly period, such 3-day requirement shall be changed to a 7-day requirement for wages paid prior to October 1, 1987, and to a 5-day requirement for wages paid after September 30, 1987, and prior to October 1, 1988. For wages paid prior to October 1, 1988, the deposit schedule for taxes imposed under sections 3101 and 3111 shall be determined separately from the deposit schedule for taxes withheld under section 3402 if the taxes imposed under sections 3101 and 3111 are due with respect to service included under an agreement entered into pursuant to section 218 of the Social Security Act.

26 USC 3101,
3111.
26 USC 3402.

Subtitle B—Provisions Relating to Public Assistance

SEC. 9101. TARGETING UNDER INCOME AND ELIGIBILITY VERIFICATION SYSTEM.

State and local
governments.
42 USC 1520b-7.

Section 1137(a)(4)(C) of the Social Security Act is amended by inserting after “payments” the following: “, and no State shall be required to use such information to verify the eligibility of all recipients”.

SEC. 9102. ANNUAL CALCULATION OF FEDERAL PERCENTAGE FOR AFDC PURPOSES.

42 USC 1301
note.
Ante, p. 219.

Section 9528(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (as added by section 9421(a) of this Act) is amended (effective as provided in section 9421(b))—

State and local
governments.
42 USC 603,
1396b.

(1) by striking out “payment to a State under section 1903” and inserting in lieu thereof “payments to States under sections 403 and 1903”; and

(2) by inserting “with respect to either such section” after “shall not apply to a State”.

SEC. 9103. REQUIREMENT OF STATUTORILY PRESCRIBED PROCEDURES TO PROHIBIT RETROACTIVE MODIFICATION OF CHILD SUPPORT ARREARAGES.

(a) **IN GENERAL.**—Section 466(a) of the Social Security Act is amended by inserting immediately after paragraph (8) the following new paragraph:

State and local governments.
42 USC 666.

“(9) Procedures which require that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes required by paragraph (2), is (on and after the date it is due)—

“(A) a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced,

“(B) entitled as a judgment to full faith and credit in such State and in any other State, and

“(C) not subject to retroactive modification by such State or by any other State;

except that such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.”.

(b) **EFFECTIVE DATE.**—(1) Except as provided in paragraph (2), the amendment made by subsection (a) shall become effective on the date of the enactment of this Act.

42 USC 666 note.

(2) In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part D of title IV of the Social Security Act to the requirements imposed by the amendment made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such part solely by reason of its failure to meet the requirements imposed by such amendment prior to the beginning of the fourth month beginning after the end of the first session of the State legislature which ends on or after the date of the enactment of this Act. For purposes of the preceding sentence, the term “session” means a regular, special, budget, or other session of a State legislature.

State and local governments.

42 USC 651.

Subtitle C—Older Americans Pension Benefits

SEC. 9201. PROHIBITION AGAINST DISCRIMINATION ON THE BASIS OF AGE IN EMPLOYEE PENSION BENEFIT PLANS.

Section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) is amended by adding at the end the following new subsection:

“(i)(1) Except as otherwise provided in this subsection, it shall be unlawful for an employer, an employment agency, a labor organization, or any combination thereof to establish or maintain an employee pension benefit plan which requires or permits—

“(A) in the case of a defined benefit plan, the cessation of an employee’s benefit accrual, or the reduction of the rate of an employee’s benefit accrual, because of age, or

“(B) in the case of a defined contribution plan, the cessation of allocations to an employee’s account, or the reduction of the rate at which amounts are allocated to an employee’s account, because of age.

“(2) Nothing in this section shall be construed to prohibit an employer, employment agency, or labor organization from observing any provision of an employee pension benefit plan to the extent that such provision imposes (without regard to age) a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

“(3) In the case of any employee who, as of the end of any plan year under a defined benefit plan, has attained normal retirement age under such plan—

“(A) if distribution of benefits under such plan with respect to such employee has commenced as of the end of such plan year, then any requirement of this subsection for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of the actuarial equivalent of in-service distribution of benefits, and

“(B) if distribution of benefits under such plan with respect to such employee has not commenced as of the end of such year in accordance with section 206(a)(3) of the Employee Retirement Income Security Act of 1974 and section 401(a)(14)(C) of the Internal Revenue Code of 1986, and the payment of benefits under such plan with respect to such employee is not suspended during such plan year pursuant to section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 or section 411(a)(3)(B) of the Internal Revenue Code of 1986, then any requirement of this subsection for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age.

29 USC 1056.

Post, p. 2095.

29 USC 1053.

Regulations.

The provisions of this paragraph shall apply in accordance with regulations of the Secretary of the Treasury. Such regulations shall provide for the application of the preceding provisions of this paragraph to all employee pension benefit plans subject to this subsection and may provide for the application of such provisions, in the case of any such employee, with respect to any period of time within a plan year.

“(4) Compliance with the requirements of this subsection with respect to an employee pension benefit plan shall constitute compliance with the requirements of this section relating to benefit accrual under such plan.

“(5) Paragraph (1) shall not apply with respect to any employee who is a highly compensated employee (within the meaning of section 414(q) of the Internal Revenue Code of 1986) to the extent provided in regulations prescribed by the Secretary of the Treasury for purposes of precluding discrimination in favor of highly compensated employees within the meaning of subchapter D of chapter 1 of the Internal Revenue Code of 1986.

“(6) A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the subsidized portion of any

early retirement benefit is disregarded in determining benefit accruals.

“(7) Any regulations prescribed by the Secretary of the Treasury pursuant to clause (v) of section 411(b)(1)(H) of the Internal Revenue Code of 1986 and subparagraphs (C) and (D) of section 411(b)(2) of such Code shall apply with respect to the requirements of this subsection in the same manner and to the same extent as such regulations apply with respect to the requirements of such sections 411(b)(1)(H) and 411(b)(2).

“(8) A plan shall not be treated as failing to meet the requirements of this section solely because such plan provides a normal retirement age described in section 3(24)(B) of the Employee Retirement Income Security Act of 1974 and section 411(a)(8)(B) of the Internal Revenue Code of 1986.

29 USC 1002.
Post, p. 2095.

“(9) For purposes of this subsection—

“(A) The terms ‘employee pension benefit plan’, ‘defined benefit plan’, ‘defined contribution plan’, and ‘normal retirement age’ have the meanings provided such terms in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002).

“(B) The term ‘compensation’ has the meaning provided by section 414(s) of the Internal Revenue Code of 1986.”

SEC. 9202. BENEFIT ACCRUAL BEYOND NORMAL RETIREMENT AGE.

(a) ERISA AMENDMENTS.—

(1) IN GENERAL.—Subsection (a) of section 204 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(a)) is amended to read as follows:

“(a) Each pension plan shall satisfy the requirements of subsection (b)(3), and—

“(1) in the case of a defined benefit plan, shall satisfy the requirements of subsection (b)(1); and

“(2) in the case of a defined contribution plan, shall satisfy the requirements of subsection (b)(2).”

(2) DEFINED BENEFIT PLANS.—Section 204(b)(1) of such Act is amended by adding at the end thereof the following new subparagraph:

“(H)(i) Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if, under the plan, an employee’s benefit accrual is ceased, or the rate of an employee’s benefit accrual is reduced, because of the attainment of any age.

“(ii) A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan imposes (without regard to age) a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

“(iii) In the case of any employee who, as of the end of any plan year under a defined benefit plan, has attained normal retirement age under such plan—

“(I) if distribution of benefits under such plan with respect to such employee has commenced as of the end of such plan year, then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent

of the actuarial equivalent of in-service distribution of benefits, and

29 USC 1056.

29 USC 1053.

“(II) if distribution of benefits under such plan with respect to such employee has not commenced as of the end of such year in accordance with section 206(a)(3), and the payment of benefits under such plan with respect to such employee is not suspended during such plan year pursuant to section 203(a)(3)(B), then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age.

The preceding provisions of this clause shall apply in accordance with regulations of the Secretary of the Treasury. Such regulations may provide for the application of the preceding provisions of this clause, in the case of any such employee, with respect to any period of time within a plan year.

Post, p. 2095.

“(iv) Clause (i) shall not apply with respect to any employee who is a highly compensated employee (within the meaning of section 414(q) of the Internal Revenue Code of 1986) to the extent provided in regulations prescribed by the Secretary of the Treasury for purposes of precluding discrimination in favor of highly compensated employees within the meaning of subchapter D of chapter 1 of the Internal Revenue Code of 1986.

“(v) A plan shall not be treated as failing to meet the requirements of clause (i) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals.

Regulations.

“(vi) Any regulations prescribed by the Secretary of the Treasury pursuant to clause (v) of section 411(b)(1)(H) of the Internal Revenue Code of 1986 shall apply with respect to the requirements of this subparagraph in the same manner and to the same extent as such regulations apply with respect to the requirements of such section 411(b)(1)(H).”

29 USC 1054.

(3) DEFINED CONTRIBUTION PLANS.—Section 204(b) of such Act is further amended—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(B) by inserting after paragraph (1) the following new paragraph:

“(2)(A) A defined contribution plan satisfies the requirements of this paragraph if, under the plan, allocations to the employee’s account are not ceased, and the rate at which amounts are allocated to the employee’s account is not reduced, because of the attainment of any age.

“(B) Subparagraph (A) shall not apply with respect to any employee who is a highly compensated employee (within the meaning of section 414(q) of the Internal Revenue Code of 1986) to the extent provided in regulations prescribed by the Secretary of the Treasury for purposes of precluding discrimination in favor of highly compensated employees within the meaning of subchapter D of chapter 1 of the Internal Revenue Code of 1986.

“(C) A plan shall not be treated as failing to meet the requirements of subparagraph (A) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals.

“(D) Any regulations prescribed by the Secretary of the Treasury pursuant to subparagraphs (C) and (D) of section 411(b)(2) of the Internal Revenue Code of 1986 shall apply with respect to the requirements of this paragraph in the same manner and to the same extent as such regulations apply with respect to the requirements of such section 411(b)(2).”

Regulations.

(b) IRC AMENDMENTS.—

(1) DEFINED BENEFIT PLANS.—Section 411(b)(1) of the Internal Revenue Code of 1986 (relating to accrued benefit requirements) is amended—

26 USC 411.

(A) by striking out “GENERAL RULES.—” and inserting in lieu thereof “DEFINED BENEFIT PLANS.—”; AND

(B) by adding at the end thereof the following new subparagraph:

“(H) CONTINUED ACCRUAL BEYOND NORMAL RETIREMENT AGE.—

“(i) IN GENERAL.—Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if, under the plan, an employee’s benefit accrual is ceased, or the rate of an employee’s benefit accrual is reduced, because of the attainment of any age.

“(ii) CERTAIN LIMITATIONS PERMITTED.—A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan imposes (without regard to age) a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

“(iii) ADJUSTMENTS UNDER PLAN FOR DELAYED RETIREMENT TAKEN INTO ACCOUNT.—In the case of any employee who, as of the end of any plan year under a defined benefit plan, has attained normal retirement age under such plan—

“(I) if distribution of benefits under such plan with respect to such employee has commenced as of the end of such plan year, then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of the actuarial equivalent of in-service distribution of benefits, and

“(II) if distribution of benefits under such plan with respect to such employee has not commenced as of the end of such year in accordance with section 401(a)(14)(C), and the payment of benefits under such plan with respect to such employee is not suspended during such plan year pursuant to subsection (a)(3)(B), then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of

benefits after the attainment of normal retirement age.

The preceding provisions of this clause shall apply in accordance with regulations of the Secretary. Such regulations may provide for the application of the preceding provisions of this clause, in the case of any such employee, with respect to any period of time within a plan year.

“(iv) **DISREGARD OF SUBSIDIZED PORTION OF EARLY RETIREMENT BENEFIT.**—A plan shall not be treated as failing to meet the requirements of clause (i) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals.

Regulations.

“(v) **COORDINATION WITH OTHER REQUIREMENTS.**—The Secretary shall provide by regulation for the coordination of the requirements of this subparagraph with the requirements of subsection (a), sections 404, 410, and 415, and the provisions of this subchapter precluding discrimination in favor of highly compensated employees.”.

Ante, p. 1977.

(2) **DEFINED CONTRIBUTION PLANS.**—Section 411(b) of such Code is further amended—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

“(B) by inserting after paragraph (1) the following new paragraph:

“(2) **DEFINED CONTRIBUTION PLANS.**—

“(A) **IN GENERAL.**—A defined contribution plan satisfies the requirements of this paragraph if, under the plan, allocations to the employee's account are not ceased, and the rate at which amounts are allocated to the employee's account is not reduced, because of the attainment of any age.

“(B) **DISREGARD OF SUBSIDIZED PORTION OF EARLY RETIREMENT BENEFIT.**—A plan shall not be treated as failing to meet the requirements of subparagraph (A) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals.

Regulations.

“(C) **APPLICATION TO TARGET BENEFIT PLANS.**—The Secretary shall provide by regulation for the application of the requirements of this paragraph to target benefit plans.

“(D) **COORDINATION WITH OTHER REQUIREMENTS.**—The Secretary may provide by regulation for the coordination of the requirements of this subparagraph with the requirements of subsection (a), sections 404, 410, and 415, and the provisions of this subchapter precluding discrimination in favor of highly compensated employees.”.

(3) **CONFORMING AMENDMENT.**—The first sentence of section 411(a) of such Code (relating to minimum vesting standards) is amended by striking out “paragraph (2) of subsection (b), and” and all that follows through the end thereof and inserting in lieu thereof “subsection (b)(3), and also satisfies, in the case of a defined benefit plan, the requirements of subsection (b)(1) and, in the case of a defined contribution plan, the requirements of subsection (b)(2).”.

SEC. 9203. TREATMENT OF INDIVIDUALS HIRED AT AGES NEAR RETIREMENT AGE.

(a) REPEAL OF PROVISIONS PERMITTING CERTAIN PLANS TO EXCLUDE OLDER EMPLOYEES FROM PLAN PARTICIPATION ON THE BASIS OF AGE.—

(1) ERISA AMENDMENT.—Section 202(a)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1052(a)(2)) is amended by striking out “unless—” and all that follows and inserting in lieu thereof a period.

(2) IRC AMENDMENT.—Section 410(a)(2) of the Internal Revenue Code of 1986 (relating to maximum age conditions) is amended by striking out “unless—” and all that follows and inserting in lieu thereof a period.

Post, p. 2095;
26 USC 410.

(b) DELAYED NORMAL RETIREMENT AGE FOR INDIVIDUALS COMMENCING PLAN PARTICIPATION WITHIN 5 YEARS OF ATTAINING NORMAL RETIREMENT AGE UNDER THE PLAN.—

(1) ERISA AMENDMENT.—Subparagraph (B) of section 3(24) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(24)(B)) is amended to read as follows:

“(B) the latest of—

“(i) the time a plan participant attains age 65,

“(ii) in the case of a plan participant who commences participation in the plan within 5 years before attaining normal retirement age under the plan, the 5th anniversary of the time the plan participant commences participation in the plan, or

“(iii) in the case of a plan participant not described in clause (ii), the 10th anniversary of the time the plan participant commences participation in the plan.”.

(2) IRC AMENDMENT.—Subparagraph (B) of section 411(a)(8) of the Internal Revenue Code of 1986 (relating to normal retirement age) is amended to read as follows:

26 USC 411.

“(B) the latest of—

“(i) the time a plan participant attains age 65,

“(ii) in the case of a plan participant who commences participation in the plan within 5 years before attaining normal retirement age under the plan, the 5th anniversary of the time the plan participant commences participation in the plan, or

“(iii) in the case of a plan participant not described in clause (ii), the 10th anniversary of the time the plan participant commences participation in the plan.”.

SEC. 9204. EFFECTIVE DATE; REGULATIONS.

29 USC 623 note.

(a) APPLICABILITY TO EMPLOYEES WITH SERVICE AFTER 1988.—

(1) IN GENERAL.—The amendments made by sections 9201 and 9202 shall apply only with respect to plan years beginning on or after January 1, 1988, and only to employees who have 1 hour of service in any plan year to which such amendments apply.

(2) SPECIAL RULE FOR 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 March 1, 1986, paragraph (1) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for “January 1, 1988” the date of the commencement of the first plan year beginning on or after the earlier of—

(A) the later of—

(i) January 1, 1988, or

(ii) the date on which the last of such collective bargaining agreements terminate (determined without regard to any extension thereof after February 28, 1986), or

(B) January 1, 1990.

(b) **APPLICABILITY OF AMENDMENTS RELATING TO NORMAL RETIREMENT AGE.**—The amendments made by section 9203 shall apply only with respect to plan years beginning on or after January 1, 1988, and only with respect to service performed on or after such date.

(c) **PLAN AMENDMENTS.**—If any amendment made by this subtitle requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1989, if—

(1) during the period after such amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment, and

(2) such plan amendment applies retroactively to the period after such amendment takes effect and such first plan year. A pension plan shall not be treated as failing to provide definitely determinable benefits or contributions, or to be operated in accordance with the provisions of the plan, merely because it operates in accordance with this subsection.

Regulations.

(d) **INTERAGENCY COORDINATION.**—The regulations and rulings issued by the Secretary of Labor, the regulations and rulings issued by the Secretary of the Treasury, and the regulations and rulings issued by the Equal Employment Opportunity Commission pursuant to the amendments made by this subtitle shall each be consistent with the others. The Secretary of Labor, the Secretary of the Treasury, and the Equal Employment Opportunity Commission shall each consult with the others to the extent necessary to meet the requirements of the preceding sentence.

(e) **FINAL REGULATIONS.**—The Secretary of Labor, the Secretary of the Treasury, and the Equal Employment Opportunity Commission shall each issue before February 1, 1988, such final regulations as may be necessary to carry out the amendments made by this subtitle.

Subtitle D—Provisions Relating to Medicare

TABLE OF CONTENTS

PART 1—PROVISIONS RELATING TO MEDICARE PART A ONLY

Sec. 9301. Changes in inpatient hospital deductible.

Sec. 9302. Applicable percentage increase in payments for inpatient hospital services.

Sec. 9303. Payments for hospital capital-related costs.

Sec. 9304. Coverage of hospitals in Puerto Rico under a DRG prospective payment system.

Sec. 9305. Improving quality of care with respect to part A services.

Sec. 9306. Payments to large rural hospitals serving a disproportionate share of low-income patients.

Sec. 9307. Technical amendments and miscellaneous provisions relating to part A.

PART 2—PROVISIONS RELATING TO PARTS A AND B

Sec. 9311. Periodic interim payment system (PIP) for DRG hospitals and prompt payment for medicare providers.

Sec. 9312. Health maintenance organizations and competitive medical plans.

- Sec. 9313. Provisions relating to improvement of quality of care.
- Sec. 9314. Direct costs of graduate medical education.
- Sec. 9315. Payments for home health services.
- Sec. 9316. Establishment of patient outcome assessment research program.
- Sec. 9317. Improvements in civil monetary penalty and exclusion provisions.
- Sec. 9318. Hospital protocols for organ procurement and standards for organ procurement agencies.
- Sec. 9319. Medicare as secondary payer; coverage requirements for certain other payers.
- Sec. 9320. Payment for services of certified registered nurse anesthetists.
- Sec. 9321. Technical amendments and miscellaneous provisions relating to parts A and B.

PART 3—PROVISIONS RELATING TO MEDICARE PART B

- Sec. 9331. Payment for physicians' services.
- Sec. 9332. Incentives for physician participation.
- Sec. 9333. Limits on reasonable charges.
- Sec. 9334. Payment for cataract surgical procedures.
- Sec. 9335. Payment rates for renal services and improvements in administration of end stage renal disease networks and program.
- Sec. 9336. Vision care.
- Sec. 9337. Occupational therapy services.
- Sec. 9338. Services of a physician assistant.
- Sec. 9339. Payment for clinical diagnostic laboratory tests.
- Sec. 9340. Payment for parenteral and enteral nutrition supplies and equipment.
- Sec. 9341. Changing medicare appeal rights.
- Sec. 9342. Alzheimer's disease demonstration projects.
- Sec. 9343. Payments for ambulatory surgery.
- Sec. 9344. Technical amendments and miscellaneous provisions relating to part B.

PART 4—IMPROVED REVIEW OF QUALITY BY PEER REVIEW ORGANIZATIONS

- Sec. 9351. PRO review of hospital denial notices.
- Sec. 9352. PRO review of inpatient hospital services and early readmission cases.
- Sec. 9353. PRO review of quality of care.

PART 1—PROVISIONS RELATING TO MEDICARE PART A ONLY

SEC. 9301. CHANGES IN INPATIENT HOSPITAL DEDUCTIBLE.

(a) **IN GENERAL.**—Section 1813(b) of the Social Security Act (42 U.S.C. 1395e(b)) is amended to read as follows:

“(b)(1) The inpatient hospital deductible for 1987 shall be \$520. The inpatient hospital deductible for any succeeding year shall be an amount equal to the inpatient hospital deductible for the preceding calendar year, changed by the applicable percentage increase (as defined in section 1886(b)(3)(B)) which is applied under section 1886(d)(3)(A) for discharges in the fiscal year that begins on October 1 of such preceding calendar year, and adjusted to reflect changes in real case mix (determined on the basis of the most recent case mix data available). Any amount determined under the preceding sentence which is not a multiple of \$4 shall be rounded to the nearest multiple of \$4 (or, if it is midway between two multiples of \$4, to the next higher multiple of \$4).

“(2) The Secretary shall promulgate the inpatient hospital deductible and all coinsurance amounts under this section between September 1 and September 15 of the year preceding the year to which they will apply.

“(3) The inpatient hospital deductible for a year shall apply to—

“(A) the deduction under the first sentence of subsection (a)(1) for the year in which the first day of inpatient hospital services occurs in a spell of illness, and

Ante, p. 153.
Post, p. 1983.

“(B) to the coinsurance amounts under subsection (a) for inpatient hospital services and post-hospital extended care services furnished in that year.”.

42 USC 1395e
note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to inpatient hospital services and post-hospital extended care services furnished on or after January 1, 1987, and to the monthly premium (under part A of title XVIII of the Social Security Act) for months beginning with January 1987.

42 USC 1395c.
42 USC 1395e
note.

(c) **PROMULGATION OF NEW DEDUCTIBLE.**—The Secretary of Health and Human Services shall provide, within 30 days after the date of the enactment of this Act, for the publication of the inpatient hospital deductible, the coinsurance amounts for inpatient hospital services and post-hospital extended care services and the monthly part A premiums for 1987, as modified under the amendment made by subsection (a).

SEC. 9302. APPLICABLE PERCENTAGE INCREASE IN PAYMENTS FOR INPATIENT HOSPITAL SERVICES.

(a) **APPLICABLE PERCENTAGE INCREASE.**—

(1) **IN GENERAL.**—Subclause (II) of section 1886(b)(3)(B)(i) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(i)) is amended to read as follows:

“(II) for fiscal year 1987, 1.15 percent, and for fiscal year 1988, the market basket percentage increase (as defined in clause (ii)) minus 2.0 percentage points, and”.

Ante, p. 154; *post*,
p. 1983.

(2) **CONFORMING AMENDMENTS.**—(A) Section 1886(d)(3)(A) of such Act is amended by striking “and 1986” and inserting “, 1986, 1987, and 1988”.

(B) Section 1886(e)(4) of such Act is amended by striking “determine for each fiscal year (beginning with fiscal year 1987)” and inserting “recommend for fiscal year 1988 an appropriate change factor for inpatient hospital services for discharges in that fiscal year and shall determine for each subsequent fiscal year”.

(C) Section 1866(e)(5) of such Act is amended by inserting “recommendation or” before “determination” each place it appears.

42 USC 1395ww
note.

(3) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall apply to cost reporting periods beginning on or after October 1, 1986 and, for purposes of section 1886(d) of the Social Security Act, for cost reporting periods beginning and discharges occurring on or after October 1, 1986.

(b) **SEPARATE OUTLIER OFFSETS FOR URBAN AND RURAL HOSPITALS.**—

(1) **IN GENERAL.**—Section 1886(d)(3)(B) of such Act is amended—

(A) by inserting “for hospitals located in an urban area and for hospitals located in a rural area” after “subparagraph (A)”, and

(B) by inserting before the period the following: “for hospitals located in such respective area”.

42 USC 1395ww
note.

(2) **EFFECTIVE DATE.**—The amendments made by paragraph (1) shall apply to discharges occurring on or after October 1, 1986.

42 USC 1395ww
note.

(3) **MAINTAINING CURRENT OUTLIER POLICY IN FISCAL YEAR 1987.**—For payments made under section 1886(d) of the Social Security Act for discharges occurring in fiscal year 1987—

(A) the proportions under paragraph (3)(B) for hospitals located in urban and rural areas shall be established at such levels as produce the same total dollar reduction under such paragraph as if this section had not been enacted; and

(B) the thresholds and standards used for making additional payments under paragraph (5) of such section shall be the same as those in effect as of October 1, 1986.

(c) COMPUTING URBAN AND RURAL AVERAGES.—Section 1886(d)(3)(A) of such Act is amended by adding at the end the following: "With respect to discharges occurring on or after October 1, 1987, the Secretary shall compute urban and rural averages on the basis of discharge weighting rather than hospital weighting, making appropriate adjustments to ensure that computation on such basis does not result in total payments under this section that are greater or less than the total payments that would have been made under this section but for this sentence, and making appropriate changes in the manner of determining the reductions under subparagraph (C)(ii)."

42 USC 1395ww.

(d) REGIONAL REFERRAL CENTERS.—

(1) CRITERIA.—

(A) IN GENERAL.—Section 1886(d)(5)(C)(i) of such Act is amended—

(i) by inserting "(I)" after "(C)(i)", and

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

"(II) The Secretary shall provide, under subclause (I), for the classification of a rural hospital as a regional referral center if the hospital has a case mix equal to or greater than the median case mix for hospitals (other than hospitals with approved teaching programs) located in an urban area in the same region (as defined in paragraph (2)(D)), has at least 5,000 discharges a year or, if less, the median number of discharges in urban hospitals in the region in which the hospital is located (or, in the case of a rural osteopathic hospital, meets the criterion established by the Secretary under subclause (I) with respect to the annual number of discharges for such hospitals), and meets any other criteria established by the Secretary under subclause (I)."

(B) EFFECTIVE DATE.—(i) Subject to clause (ii), the amendments made by subparagraph (A) shall apply to payments for discharges occurring on or after October 1, 1986.

42 USC 1395ww
note.

(ii) An appeal for classification of a rural hospital as a regional referral center, pursuant to the amendments made by subparagraph (A), which is filed before January 1, 1987, and which is approved shall be effective with respect to discharges occurring on or after October 1, 1986.

(2) EXTENSION OF REGIONAL REFERRAL CENTER CLASSIFICATION.—Any hospital that is classified as a regional referral center under section 1886(d)(5)(C)(i) of the Social Security Act on the date of the enactment of this Act shall continue to be classified as a regional referral center for cost reporting periods beginning on or after October 1, 1986, and before October 1, 1989.

42 USC 1395ww
note.

(3) BUDGET-NEUTRAL IMPLEMENTATION.—Paragraph (2) and the amendment made by paragraph (1)(A) shall be implemented in a manner that ensures that total payments under section 1886 of the Social Security Act are not increased or decreased by

42 USC 1395ww
note.

reason of the classifications required by such paragraph or amendment.

Minnesota.

(4) RURAL SECONDARY SPECIALTY DEMONSTRATION PROJECT.—

(A) ESTABLISHMENT.—The Secretary of Health and Human Services (in this paragraph referred to as the "Secretary") shall enter into an agreement with Lake Region Hospital and Nursing Home at Fergus Falls, Minnesota, for the purpose of conducting a rural secondary specialty center demonstration project (in this paragraph referred to as the "project") under title XVIII of the Social Security Act.

42 USC 1395.

(B) PURPOSE.—The purpose of this project shall be to determine the effect that a modified system of making payments under part A of such title to rural secondary specialty centers would have on—

42 USC 1395c.

- (i) total expenditures under such part, and
- (ii) the access of medicare beneficiaries located in rural areas to quality health care.

(C) PAYMENTS.—During the period of the demonstration project, payments under part A of such title shall be made under the project on the basis of average standardized amounts computed for urban areas in the region in which the project is conducted, as adjusted by a rural wage index.

(D) DURATION.—The project shall be of a maximum duration of three years.

(E) REPORTS.—The Secretary shall submit a final report to the Congress on the project not later than six months after the completion of the project.

(e) MISCELLANEOUS PROVISIONS.—

42 USC 1395ww.

(1) ANNUAL ADJUSTMENT.—Section 1886(d)(4)(C) of such Act is amended by striking "in fiscal year 1986 and at least every four fiscal years" and inserting "in fiscal year 1988 and at least annually".

Puerto Rico.

(2) CLARIFYING AUTHORITY TO VARY RATES.—Section 1886(e)(4) of such Act is amended by adding at the end the following new sentence: "The percentage change shall be the same for all subsection (d) hospitals and subsection (d) Puerto Rico hospitals, but may be different from that for other hospitals (and units not included as such hospitals) and may vary among such other hospitals and units."

(3) NOTICE OF EARLIER PROMULGATION OF PERCENTAGE INCREASE.—Section 1886(e)(3) of such Act is amended—

Reports.

(A) by inserting "(A)" after "(3)", and

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

"(B) The Secretary, not later than April 1, 1987, for fiscal year 1988 and not later than March 1 before the beginning of each fiscal year (beginning with fiscal year 1989), shall report to the Congress the Secretary's initial estimate of the percentage change that the Secretary will recommend or determine under paragraph (4) with respect to that fiscal year."

(4) EXTENSION OF SOLE COMMUNITY PROVIDER PROVISION.—Section 1886(d)(5)(C)(ii) of such Act is amended by striking "1986" and inserting "1988".

42 USC 1395ww
note.

(f) PROMULGATION OF NEW RATE.—The Secretary of Health and Human Services shall provide, within 30 days after the date of the enactment of this Act, for the publication of the payments rates that will apply under section 1886 of the Social Security Act, for dis-

charges occurring on or after October 1, 1986, taking into account the amendments made by this section, without regard to the provisions of chapter 5 of title 5, United States Code.

5 USC 500 *et seq.*

SEC. 9303. PAYMENTS FOR HOSPITAL CAPITAL-RELATED COSTS.

(a) IN GENERAL.—Section 1886(g) of the Social Security Act (42 U.S.C. 1395ww(g)) is amended by adding at the end the following new paragraph:

“(3)(A) Except as provided in subparagraph (B), in determining the amount of the payments that may be made under this title with respect to all the capital-related costs of inpatient hospital services of a subsection (d) hospital, the Secretary shall reduce the amounts of such payments otherwise established under this title by—

“(i) 3.5 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1987,

“(ii) 7 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during fiscal year 1988, and

“(iii) 10 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during fiscal year 1989.

“(B) Subparagraph (A) shall not apply to payments with respect to the capital-related costs of any hospital that is a sole community hospital (as defined in subsection (d)(5)(C)(ii)).

“(C) If the Secretary provides, under subsection (a)(4), for the inclusion of other capital-related costs in operating costs of inpatient hospital services, the Secretary shall provide—

“(i) notwithstanding any other provision of this title, for the continuation of payment under the reasonable cost methodology described in section 1861(v)(1) with respect to capital-related costs of any hospital that is such a sole community hospital for cost reporting periods beginning before October 1, 1990, and

42 USC 1395x.

“(ii) in the design of such payment system that the aggregate payment amounts under this title for such other capital-related costs for payments attributable to portions of cost reporting periods occurring during fiscal year 1988 and fiscal year 1989 shall approximate the aggregate payment amount under this title that would have been made (taking into account the provisions of subparagraphs (A) and (B)) during that fiscal year but for the inclusion of such costs by the Secretary.”.

(b) ADDITION OF PUERTO RICO HOSPITALS.—Effective for cost reporting periods beginning and discharges occurring (as the case may be) on or after October 1, 1987, section 1886(g)(3)(A) of the Social Security Act (as amended by subsection (a)) is amended by inserting “and a subsection (d) Puerto Rico hospital” after “subsection (d) hospital”.

(c) CLARIFICATION OF SECRETARIAL AUTHORITY TO INCORPORATE PAYMENT FOR OTHER CAPITAL-RELATED COSTS UNDER THE PROSPECTIVE PAYMENT SYSTEM.—Section 1886(a)(4) of such Act is amended by striking “October 1, 1987” and inserting “October 1 of 1987 (or of such later year as the Secretary may, in his discretion, select)”.

Ante, p. 749.

SEC. 9304. COVERAGE OF HOSPITALS IN PUERTO RICO UNDER A DRG PROSPECTIVE PAYMENT SYSTEM.

(a) IN GENERAL.—Section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) is amended by adding at the end the following new paragraph:

42 USC 1395f.

42 USC 1395e.

"(9)(A) Notwithstanding section 1814(b) but subject to the provisions of section 1813, the amount of the payment with respect to the operating costs of inpatient hospital services of a subsection (d) Puerto Rico hospital for inpatient hospital discharges in a fiscal year beginning on or after October 1, 1987, is equal to the sum of—

"(i) 75 percent of the Puerto Rico adjusted DRG prospective payment rate (determined under subparagraph (B) or (C)) for such discharges, and

"(ii) 25 percent of the discharge-weighted average of—

"(I) the national adjusted DRG prospective payment rate (determined under paragraph (3)(D)) for hospitals located in an urban area, and

Rural areas.

"(II) such rate for hospitals located in a rural area, for such discharges, adjusted in the manner provided in paragraph (3)(E) for different area wage levels. As used in this section, the term 'subsection (d) Puerto Rico hospital' means a hospital that is located in Puerto Rico and that would be a subsection (d) hospital (as defined in paragraph (1)(B)) if it were located in one of the fifty States.

Rural areas.

Urban areas.

"(B) The Secretary shall determine a Puerto Rico adjusted DRG prospective payment rate, for each inpatient hospital discharge in fiscal year 1988 involving inpatient hospital services of a subsection (d) Puerto Rico hospital for which payment may be made under part A of this title. Such rate shall be determined for such hospitals located in urban or rural areas within Puerto Rico, as follows:

"(i) The Secretary shall determine the target amount (as defined in subsection (b)(3)(A)) for the hospital for the cost reporting period beginning in fiscal year 1987 and increase such amount by prorating the applicable percentage increase (as defined in subsection (b)(3)(B)) to update the amount to the midpoint in fiscal year 1988.

"(ii) The Secretary shall standardize the amount determined under clause (i) for each hospital by—

"(I) excluding an estimate of indirect medical education costs,

"(II) adjusting for variations among hospitals by area in the average hospital wage level,

"(III) adjusting for variations in case mix among hospitals, and

"(IV) excluding an estimate of the additional payments to certain subsection (d) Puerto Rico hospitals to be made under subparagraph (D)(v) (relating to disproportionate share payments).

"(iii) The Secretary shall compute a discharge weighted average of the standardized amounts determined under clause (ii) for all hospitals located in an urban area and for all hospitals located in a rural area (as such terms are defined in paragraph (2)(D)).

"(iv) The Secretary shall reduce the average standardized amount by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this paragraph which are additional payments described in subparagraph (D)(i) (relating to outlier payments).

"(v) For each discharge classified within a diagnosis-related group for hospitals located in an urban or rural area, respec-

tively, the Secretary shall establish a Puerto Rico DRG prospective payment rate equal to the product of—

“(I) the average standardized amount (computed under clause (iii) and reduced under clause (iv)) for hospitals located in an urban or rural area, respectively, and

“(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

“(vi) The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the Puerto Rico DRG prospective payment rate computed under clause (v) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the Puerto Rican average hospital wage level.

“(C) The Secretary shall determine a Puerto Rico adjusted DRG prospective payment rate, for each inpatient hospital discharge after fiscal year 1988 involving inpatient hospital services of a subsection (d) Puerto Rico hospital for which payment may be made under part A of this title. Such rate shall be determined for hospitals located in urban or rural areas within Puerto Rico as follows:

Urban areas.
Rural areas.

42 USC 1395c.

“(i) The Secretary shall compute an average standardized amount for hospitals located in an urban area and for hospitals located in a rural area equal to the respective average standardized amount computed for the previous fiscal year under subparagraph (B)(iii) or under this clause, increased for fiscal year 1989 by the applicable percentage increase under subsection (b)(3)(B), and adjusted for subsequent fiscal years in accordance with the final determination of the Secretary under subsection (e)(4), and adjusted to reflect the most recent case-mix data available.

“(ii) The Secretary shall reduce each of the average standardized amounts by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this paragraph which are additional payments described in subparagraph (D)(i) (relating to outlier payments).

“(iii) For each discharge classified within a diagnosis-related group for hospitals located in an urban or rural area, respectively, the Secretary shall establish a Puerto Rico DRG prospective payment rate equal to the product of—

“(I) the average standardized amount (computed under clause (i) and reduced under clause (ii)) for hospitals located in an urban or rural area, respectively, and

“(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

“(iv) The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the Puerto Rico DRG prospective payment rate computed under clause (iii) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the Puerto Rico average hospital wage level.

“(D) The following provisions of paragraph (5) shall apply to subsection (d) Puerto Rico hospitals receiving payment under this paragraph in the same manner and to the extent as they apply to subsection (d) hospitals receiving payment under this subsection:

“(i) Subparagraph (A) (relating to outlier payments).

“(ii) Subparagraph (B) (relating to payments for indirect medical education costs), except that for this purpose the sum of the amount determined under subparagraph (A) of this paragraph and the amount paid to the hospital under clause (i) of this subparagraph shall be substituted for the sum referred to in paragraph (5)(B)(i)(I).

“(iii) Subparagraph (C)(iii) (relating to exceptions and adjustments).

“(iv) Subparagraph (E) (relating to payments for costs of certified registered nurse anesthetists).

“(v) Subparagraph (F) (relating to disproportionate share payments), except that for this purpose the sum described in clause (ii) of this subparagraph shall be substituted for the sum referred to in paragraph (5)(F)(ii)(I).”

42 USC 1395ww.

(b) CONFORMING AMENDMENTS.—(1) The first sentence of subclause (I) of section 1886(d)(5)(C)(i)(I) of such Act, as redesignated by section 9302(d), is amended by inserting “(other than under paragraph (9))” after “established under this subsection”.

(2) The second and third sentences of section 1886(d)(5)(C)(ii) of such Act are each amended by inserting “(other than under paragraph (9))” after “payment amounts under this subsection”.

(c) BUDGET NEUTRALITY.—Section 1886(e)(1) of the Social Security Act is amended by adding at the end the following new subparagraph:

“(C) For discharges occurring in fiscal year 1988, the Secretary shall provide for such equal proportional adjustment in each of the average standardized amounts otherwise computed under subsection (d)(3) for that fiscal year as may be necessary to assure that—

“(i) the aggregate payment amounts otherwise provided under subsections (d)(1)(A)(iii), (d)(5), and (d)(9) for that fiscal year for operating costs of inpatient hospital services of subsection (d) hospitals and subsection (d) Puerto Rico hospitals, are not greater or less than—

“(ii) the payment amounts that would have been payable for such services for those same hospitals for that fiscal year but for the enactment of the amendments made by section 9304 of the Omnibus Budget Reconciliation Act of 1986.”

42 USC 1395ww
note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges occurring on or after October 1, 1987.

SEC. 9305. IMPROVING QUALITY OF CARE WITH RESPECT TO PART A SERVICES.

(a) REFINEMENT OF PROSPECTIVE PAYMENT SYSTEM.—

(1) DEVELOPMENT OF LEGISLATIVE PROPOSAL.—The Secretary of Health and Human Services shall develop and submit to Congress a specific legislative proposal to improve the classification and payment system under section 1886(d) of the Social Security Act (and, as appropriate, the system for payment of outliers under section 1886(d)(5)(A) of such Act) in order to assure that the amount of payment per discharge approximates the cost of medically necessary care provided in an efficient manner for individual patients or classes of patients with similar conditions.

Ante, p. 1985.

(2) ACCOUNTING FOR SEVERITY OF ILLNESS.—In developing the proposal, the Secretary shall account for variations in severity

of illness and case complexity which are not adequately accounted for by the current classification and payment system.

(3) **DEADLINE.**—The proposal shall be submitted to Congress by not later than 2 years after the date of the enactment of this Act.

(b) **REQUIRING NOTICE OF HOSPITAL DISCHARGE RIGHTS.**—

(1) **REQUIREMENT FOR HOSPITALS TO PROVIDE STATEMENT.**—Section 1866(a)(1) of the Social Security Act (42 U.S.C. 1395cc(a)(1)), as amended by section 1895(b) of the Tax Reform Act of 1986 and by section 233 of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986, is amended—

Post, p. 2025.

Post, p. 2931.

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

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

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

"(M) in the case of hospitals, to provide to each individual who is entitled to benefits under part A (or to a person acting on the individual's behalf), at or about the time of the individual's admission as an inpatient to the hospital, a written statement (containing such language as the Secretary prescribes consistent with this paragraph) which explains—

"(i) the individual's rights to benefits for inpatient hospital services and for post-hospital services under this title,

"(ii) the circumstances under which such an individual will and will not be liable for charges for continued stay in the hospital,

"(iii) the individual's right to appeal denials of benefits for continued inpatient hospital services, including the practical steps to initiate such an appeal, and

"(iv) the individual's liability for payment for services if such a denial of benefits is upheld on appeal, and which provides such additional information as the Secretary may specify."

(2) **EFFECTIVE DATE.**—The Secretary of Health and Human Services shall first prescribe the language required under section 1866(a)(1)(M) of the Social Security Act not later than six months after the date of the enactment of this Act. The requirement of such section shall apply to admissions to hospitals occurring on such date (not later than 60 days after the date such language is first prescribed) as the Secretary shall provide.

42 USC 1395cc
note.

(c) **REQUIRING HOSPITALS TO PROVIDE DISCHARGE PLANNING PROCESS.**—

(1) **REQUIREMENT AS CONDITION OF PARTICIPATION.**—Section 1861(e)(6) of the Social Security Act (42 U.S.C. 1395x(e)(6)) is amended—

(A) by inserting "(A)" after "(6)", and

(B) by inserting before the semicolon at the end the following: "and (B) has in place a discharge planning process that meets the requirements of subsection (ee)".

(2) **DISCHARGE PLANNING PROCESS DEFINED.**—Section 1861 of such Act is further amended by adding at the end the following new subsection:

“DISCHARGE PLANNING PROCESS

“(ee)(1) A discharge planning process of a hospital shall be considered sufficient if it is applicable to services furnished by the hospital to individuals entitled to benefits under this title and if it meets the guidelines and standards established by the Secretary under paragraph (2).

“(2) The Secretary shall develop guidelines and standards for the discharge planning process in order to ensure a timely and smooth transition to the most appropriate type of and setting for post-hospital or rehabilitative care. The guidelines and standards shall include the following:

“(A) The hospital must identify, at an early stage of hospitalization, those patients who are likely to suffer adverse health consequences upon discharge in the absence of adequate discharge planning.

“(B) Hospitals must provide a discharge planning evaluation for patients identified under subparagraph (A) and for other patients upon the request of the patient, patient’s representative, or patient’s physician.

“(C) Any discharge planning evaluation must be made on a timely basis to ensure that appropriate arrangements for post-hospital care will be made before discharge and to avoid unnecessary delays in discharge.

“(D) A discharge planning evaluation must include an evaluation of a patient’s likely need for appropriate post-hospital services and the availability of those services.

“(E) The discharge planning evaluation must be included in the patient’s medical record for use in establishing an appropriate discharge plan and the results of the evaluation must be discussed with the patient (or the patient’s representative).

“(F) Upon the request of a patient’s physician, the hospital must arrange for the development and initial implementation of a discharge plan for the patient.

“(G) Any discharge planning evaluation or discharge plan required under this paragraph must be developed by, or under the supervision of, a registered professional nurse, social worker, or other appropriately qualified personnel.”

(3) EFFECT OF ACCREDITATION.—The second sentence of section 1865(a) of such Act (42 U.S.C. 1395bb(a)) is amended—

(A) by inserting “, requires a discharge planning process (or imposes another requirement which serves substantially the same purpose),” after “the same purpose”, and

(B) by inserting “clause (A) or (B) of” after “comply also with”.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to hospitals as of one year after the date of the enactment of this Act.

(d) REVIEW OF STANDARDS FOR MEDICARE CONDITIONS OF PARTICIPATION FOR ASSURING QUALITY OF INPATIENT HOSPITAL SERVICES.—The Secretary of Health and Human Services shall arrange for a study of the adequacy of the standards used for hospitals, for purposes of meeting the conditions of participation under title XVIII of the Social Security Act, in assuring the quality of services furnished in hospitals. The Secretary shall report to Congress on the results of the study by not later than 2 years after the date of the enactment of this Act.

42 USC 1395x
note.

42 USC 1395.
Reports.

(e) **STUDY OF PAYMENT FOR ADMINISTRATIVELY NECESSARY DAYS.—**

(1) **IN GENERAL.**—The Secretary of Health and Human Services shall conduct a study to determine whether a payment should be made (in a budget-neutral manner under title XVIII of such Act to hospitals receiving payments under section 1886(d) of such Act) to a hospital for administratively necessary days, separate from the per-discharge and outlier payments made under such section.

Health care facilities.

42 USC 1395.

(2) **ADMINISTRATIVELY NECESSARY DAYS DEFINED.**—In this subsection, an “administratively necessary day” is a day of continued inpatient hospital stay, for an individual entitled to benefits under part A of title XVIII of the Social Security Act, necessitated by a delay in obtaining placement for the individual in a skilled nursing facility.

42 USC 1935c.

(3) **CONSIDERATIONS IN CONDUCTING STUDY.**—In conducting the study, the Secretary shall consider—

(A) the need for such a payment in order to minimize—

(i) the disproportionate financial impact of current law on certain hospitals (or hospitals in certain locations) due to difficulties in arranging for appropriate post-hospital care, such as difficulties resulting from a shortage of beds in skilled nursing facilities where those hospitals are located and from the source of payment for such care, and

(ii) the risk of inappropriate discharge to a non-institutional or inappropriate institutional setting of individuals who need post-hospital services in a skilled nursing facility, and

(B) the administrative mechanisms that can be used to prevent inappropriate payments for administratively necessary days.

(4) **REPORT ON STUDY.**—The Secretary shall report to Congress on the results of the study not later than January 1, 1989.

(f) **EXTENDING WAIVER OF LIABILITY PROVISIONS TO HOSPICE PROGRAMS.—**

42 USC 1395y note.

(1) **IN GENERAL.**—The Secretary of Health and Human Services shall, for purposes of determining whether payments to a hospice program should be denied pursuant to section 1862(a)(1)(C) of the Social Security Act, apply (under section 1879(a) of such Act) a presumption of compliance of 2.5 percent (based on the number of days of hospice care billed) in a manner substantially similar to that provided to home health agencies under policies in effect as of July 1, 1985.

42 USC 1395y.

Infra.

(2) **EFFECTIVE DATE.**—Paragraph (1) shall apply to hospice care furnished on or after the first day of the first month that begins at least 6 months after the date of the enactment of this Act and before November 1, 1988.

(g) **EXTENSION OF WAIVER OF LIABILITY PROVISIONS TO CERTAIN COVERAGE DENIALS FOR HOME HEALTH SERVICES.—**

(1) **IN GENERAL.**—Section 1879 of the Social Security Act (42 U.S.C. 1395pp) is amended—

(A) in subsection (a)(1), by inserting “or by reason of a coverage denial described in subsection (g)” after “section 1862(a)(1) or (9)”;

(B) in the first sentence of subsection (a), by inserting “and as though the coverage denial described in subsection (g) had not occurred” before the period at the end;

42 USC 1395y.

(C) in the third sentence of subsection (a), by inserting "or by reason of a coverage denial described in subsection (g)" after "section 1862(a)(1) or (9)";

(D) in subsection (c), by inserting "or by reason of a coverage denial described in subsection (g)" after "section 1862(a)(1) or (9)"; and

(E) by adding at the end the following new subsections:

"(f)(1) A home health agency which meets the applicable requirements of paragraphs (3) and (4) shall be presumed to meet the requirement of subsection (a)(2) with respect to any coverage denial described in subsection (g).

"(2) The presumption of paragraph (1) with respect to specific services may be rebutted by actual or imputed knowledge of the facts described in subsection (a)(2), including any of the following:

"(A) Notice by the fiscal intermediary of the fact that payment may not be made under this title with respect to the services.

"(B) It is clear and obvious that the provider should have known at the time the services were furnished that they were excluded from coverage.

"(3) The requirements of this paragraph are as follows:

"(A) The agency complies with requirements of the Secretary under this title respecting timely submittal of bills for payment and medical documentation.

"(B) The agency program has reasonable procedures to notify promptly each patient (and the patient's physician) where it is determined that a patient is being or will be furnished items or services which are excluded from coverage under this title.

"(4) The requirement of this paragraph is that, on the basis of bills submitted by a home health agency during the previous quarter, the rate of denial of bills for the agency by reason of a coverage denial described in subsection (g) does not exceed 2.5 percent, computed based on visits for home health services billed.

"(5) In this subsection, the term 'fiscal intermediary' means, with respect to a home health agency, an agency or organization with an agreement under section 1816 with respect to the agency.

"(g) The coverage denial described in this subsection is, with respect to the provision of home health services to an individual, a failure to meet the requirements of section 1814(a)(2)(C) or section 1835(a)(2)(A) in that the individual—

"(1) is or was not confined to his home, or

"(2) does or did not need skilled nursing care on an intermittent basis."

42 USC 1395h.

42 USC 1395f.

42 USC 1395n.

42 USC 1395pp
note.

42 USC 1395.

Ante, p. 1991.

(2) **REPORTS.**—The Secretary of Health and Human Services shall report to Congress annually in March of 1987 and 1988—

(A) information on the frequency and distribution (by type of provider) of denials of bills for payment under title XVIII of the Social Security Act for extended care services, home health services, and hospice care, by reason of section 1862(a)(1) or (9) of such Act and coverage denials described in section 1879(g) of such Act, including—

(i) the reasons for such denials,

(ii) the extent to which payments were nonetheless made because of section 1879 of such Act, and

(iii) the rate of reversals of such denials, and

(B) such other information as may be appropriate to evaluate the appropriateness of any percentage standards

established for the granting of favorable presumptions with respect to such denials.

(3) **EFFECTIVE DATE.**—The amendments made by paragraph (1) shall apply to coverage denials occurring on or after July 1, 1987, and before October 1, 1989. 42 USC 1395pp note.

(h) **DEVELOPMENT OF UNIFORM NEEDS ASSESSMENT INSTRUMENT.**— 42 USC 1395x note.

(1) **DEVELOPMENT.**—The Secretary of Health and Human Services shall develop a uniform needs assessment instrument that—

(A) evaluates—

- (i) the functional capacity of an individual,
- (ii) the nursing and other care requirements of the individual to meet health care needs and to assist with functional incapacities, and
- (iii) the social and familial resources available to the individual to meet those requirements; and

(B) can be used by discharge planners, hospitals, nursing facilities, other health care providers, and fiscal intermediaries in evaluating an individual's need for post-hospital extended care services, home health services, and long-term care services of a health-related or supportive nature.

The Secretary may develop more than one such instrument for use in different situations.

(2) **ADVISORY PANEL.**—The Secretary shall develop any instrument in consultation with an advisory panel, appointed by the Secretary, that includes experts in the delivery of post-hospital extended care services, home health services, and long-term care services and includes representatives of hospitals, of physicians, of skilled nursing facilities, of home health agencies, of long-term care providers, of fiscal intermediaries, and of medicare beneficiaries.

(3) **REPORT ON INSTRUMENT.**—The Secretary shall report to Congress, not later than January 1, 1989, on the instrument or instruments developed under this section. The report shall recommendations for the appropriate use of such instrument or instruments.

(i) **INCLUDING IN ANNUAL REPORTS ON PROSPECTIVE PAYMENT SYSTEM INFORMATION ON QUALITY OF POST-HOSPITAL CARE.**—

(1) **IN GENERAL.**—Section 603(a)(2) of the Social Security Amendments of 1983 is amended—

(A) by striking "1987" in subparagraph (A) and inserting "1989", and

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

"(E) In each annual report to Congress under subparagraph (A), the Secretary shall include—

"(i) an evaluation of the adequacy of the procedures for assuring quality of post-hospital services furnished under title XVIII of the Social Security Act,

"(ii) an assessment of problems that have prevented groups of medicare beneficiaries (including those eligible for medical assistance under title XIX of such Act) from receiving appropriate post-hospital services covered under such title, and

"(iii) information on reconsiderations and appeals taken under title XVIII of such Act with respect to payment for post-hospital services."

42 USC 1395ww note.

42 USC 1395.

42 USC 1396.

42 USC 1395ww
note.
42 USC 1395x
note.

Health care
facilities.

42 USC 1395c,
1395j.

Health care
facilities.
Health care
professionals.

42 USC 1395.

Grants.
Contracts.
42 USC 1395i.

42 USC 1395.

(2) **EFFECTIVE DATE.**—The amendment made by paragraph (1)(B) shall apply to reports for years beginning with 1986.
(k) **PRIOR AND CONCURRENT AUTHORIZATION DEMONSTRATION PROJECT.**—

(1) **IN GENERAL.**—The Secretary of Health and Human Services shall conduct a demonstration program concerning prior and concurrent authorization for post-hospital extended care services and home health services furnished under part A or part B of title XVIII of the Social Security Act.

(2) **SCOPE.**—The program shall include at least four projects and shall be initiated by not later than January 1, 1987.

(3) **CONSULTATION AND MONITORING.**—The program shall be developed in consultation with an advisory panel that includes experts in the delivery of post-hospital extended care services, home health services, and long-term care services and includes representatives of hospitals, of physicians, of skilled nursing facilities, of home health agencies, of long-term care providers, of fiscal intermediaries, and of medicare beneficiaries. The Secretary shall monitor the acceptance of individuals entitled to benefits under title XVIII of the Social Security Act by providers to ensure that the placement of such individuals is not delayed until the results of prior and concurrent review are known.

(4) **EVALUATION AND REPORT.**—The Secretary shall evaluate the demonstration program conducted under this subsection and shall report to Congress on such evaluation no later than February 1, 1989. Such evaluation and report shall address—

(A) the administrative and program costs for prior and concurrent authorization across demonstration projects and in comparison to administrative and program costs under the current system of retroactive review, including costs for uncovered services paid under the waiver of liability which would not be incurred under prior or concurrent authorization;

(B) impact of prior or concurrent authorization on access to and availability of extended care services and home health services in comparison to the current system (including costs to providers) and on timely discharge of hospital inpatients; and

(C) accuracy and associated cost savings of payment determinations and rates of claim reversals under prior or concurrent authorization versus the current system.

(5) **FUNDING.**—Expenditures made for the demonstration program shall be made from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act. Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this subsection.

(6) **WAIVER OF MEDICARE REQUIREMENTS.**—The Secretary shall waive compliance with such requirements of title XVIII of the Social Security Act to the extent and for the period the Secretary finds necessary for the conduct of the demonstration program.

SEC. 9306. PAYMENTS TO LARGE RURAL HOSPITALS SERVING A DISPROPORTIONATE SHARE OF LOW-INCOME PATIENTS.

(a) **QUALIFYING HOSPITALS.**—Section 1886(d)(5)(F)(v) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F)(v)) is amended by adding at the end the following new sentence:

“A hospital located in a rural area and with 500 or more beds also ‘serves a significantly disproportionate number of low income patients’ for a cost reporting period if the hospital has a disproportionate patient percentage (as defined in clause (vi)) for that period which equals or exceeds a percentage specified by the Secretary.”.

(b) **PAYMENT AMOUNT.**—Section 1886(d)(5)(F)(iv) of such Act is amended—

(1) in subclause (I), by inserting “or is described in the second sentence of subclause (III)” after “100 or more beds”, and

(2) in subclause (III), by inserting “and is not described in the second sentence of clause (v)” after “rural area”.

(c) **EXTENSION OF DISPROPORTIONATE SHARE PROVISION.**—Section 1886(d) of such Act is further amended, in paragraphs (2)(C)(iv), (3)(C)(ii), (5)(B)(ii), and (5)(F)(i), by striking “1988” each place it appears and inserting “1989”.

(d) **EFFECTIVE DATE.**—The amendments made by subsections (a) and (b) shall apply to discharges occurring on or after October 1, 1986.

42 USC 1395ww
note.

SEC. 9307. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PART A.

(a) **TEMPORARY WAIVER OF INPATIENT LIMITATIONS FOR THE CONNECTICUT HOSPICE, INC.**—With respect to the Connecticut Hospice, Inc., for hospice care provided before October 1, 1988, the reference in section 1861(dd)(2)(A)(iii) of the Social Security Act (42 U.S.C. 1395x(dd)(2)(A)(iii)) to “20 percent” is deemed a reference to “50 percent”.

(b) **MASSACHUSETTS MEDICARE REPAYMENT.**—The Secretary of Health and Human Services shall not, on or after the date of the enactment of this section and before January 1, 1988, recoup from, or otherwise reduce payments to, hospitals in the State of Massachusetts because of alleged overpayments to such hospitals under part A of title XVIII of the Social Security Act which occurred during the period of the State-wide hospital reimbursement demonstration project conducted in that State, between October 1, 1982, and June 30, 1986, under section 402 of the Social Security Amendments of 1967 and section 222 of the Social Security Amendments of 1972.

42 USC 1395c.

(c) **PART A COBRA TECHNICAL CORRECTIONS.**—(1) Effective as if included in the enactment of the Tax Reform Act of 1986, if House Concurrent Resolution 395 (99th Congress, 2d Session) has not been adopted, section 1895(b) of the Tax Reform Act of 1986 is amended—

42 USC 1395b-1,
1395ll,
86 Stat. 1390.
42 USC 1395ww.

(A) by striking paragraph (1), and

(B) by striking subparagraphs (A) and (B) of paragraph (2).

(2) Effective as if included in the enactment of the Tax Reform Act of 1986—

Post, p. 2095; 42
USC 1395u.

(A) section 1895(b) of such Act is amended, in subparagraph (A)(ii) of the paragraph relating to “PHYSICIAN PAYMENT”, by inserting before the period the following: “the first place it appears”, and

(B) section 1895(d)(5)(A) of such Act is amended by striking “162(k)(2)” and inserting “162(k)(5)”.

42 USC 162.

42 USC 1395ww.

(3) If House Concurrent Resolution 395 (99th Congress, 2d Session) has been adopted, effective for discharges occurring on or after May 1, 1986, section 1886(d)(5)(F)(vi)(I) of the Social Security Act is amended—

(A) by striking “supplementary” and inserting “supplemental”, and

(B) by striking “fiscal year” and inserting “period”.

42 USC 1395dd.

Ante, p. 164.

Effective date.

42 USC 1395ww

note.

42 USC 1395ww

note.

(4) Paragraphs (2) and (3) of section 1867(b) of the Social Security Act are amended by striking “legally responsible”.

(d) MISCELLANEOUS ACCOUNTING PROVISION.—Effective on the date of the enactment of Public Law 99-107, in applying section 5(a) of such Act, a cost reporting period beginning on September 28, 29, or 30 is deemed to begin on October 1 and any reference to September 30 is deemed also to be a reference to September 27.

PART 2—PROVISIONS RELATING TO PARTS A AND B

SEC. 9311. PERIODIC INTERIM PAYMENT SYSTEM (PIP) FOR DRG HOSPITALS AND PROMPT PAYMENT FOR MEDICARE PROVIDERS.

(a) PERIODIC INTERIM PAYMENTS.—

(1) IN GENERAL.—Section 1815 of the Social Security Act (42 U.S.C. 1395g) is amended by adding at the end the following new subsection:

Puerto Rico.

“(e)(1) The Secretary shall provide payment under this part for inpatient hospital services furnished by a subsection (d) hospital (as defined in section 1886(d)(1)(B), and including a distinct psychiatric or rehabilitation unit of such a hospital) and a subsection (d) Puerto Rico hospital (as defined in section 1886(d)(9)(A)) on a periodic interim payment basis (rather than on the basis of bills actually submitted) in the following cases:

42 USC 1395ww.

“(A) Upon the request of a hospital which is paid through an agency or organization with an agreement with the Secretary under section 1816, if the agency or organization, for three consecutive calendar months, fails to meet the requirements of subsection (c)(2) of such section and if the hospital meets the requirements (in effect as of October 1, 1986) applicable to payment on such a basis, until such time as the agency or organization meets such requirements for three consecutive calendar months.

42 USC 1395h.

“(B) In the case of hospital that—

“(i) has a disproportionate share adjustment percentage (as established in clause (iv) of such section) of at least 5.1 percent (as computed for purposes of establishing the average standardized amounts for discharges occurring during fiscal year 1987), and

“(ii) requests payment on such basis, but only if the hospital was being paid for inpatient hospital services on such a periodic interim payment basis as of June 30, 1987, and continues to meet the requirements (in effect as of October 1, 1986) applicable to payment on such a basis.

“(C) In the case of a hospital that—

“(i) is located in a rural area,

“(ii) has 100 or fewer beds, and

“(iii) requests payment on such basis,

Rural areas.

but only if the hospital was being paid for inpatient hospital services on such a periodic interim payment basis as of June 30, 1987, and continues to meet the requirements (in effect as of October 1, 1986) applicable to payment on such a basis.

“(2) The Secretary shall provide (or continue to provide) for payment on a periodic interim payment basis (under the standards established under section 405.454(j) of title 42, Code of Federal Regulations, as in effect on October 1, 1986) with respect to—

“(A) inpatient hospital services of a hospital that is not a subsection (d) hospital (as defined in section 1886(d)(1)(B));

“(B) a hospital which is receiving payment under a State hospital reimbursement system under section 1814(b)(3) or 1886(c), if payment on a periodic interim payment basis is an integral part of such reimbursement system;

“(C) extended care services;

“(D) home health services; and

“(E) hospice care;

if the provider of such services elects to receive, and qualifies for, such payments.

“(3) In the case of a subsection (d) hospital or a subsection (d) Puerto Rico hospital (as defined for purposes of section 1886) which has significant cash flow problems resulting from operations of its intermediary or from unusual circumstances of the hospital's operation, the Secretary may make available appropriate accelerated payments.”

(2) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall apply to claims received on or after July 1, 1987.

(3) **TRANSITION.**—Upon the request of a hospital which—

(A) as of June 30, 1987, is receiving payments under part A of title XVIII of such Act for inpatient hospital services on a periodic interim payment basis,

(B) requests continuation of payment on such basis, and

(C) is paid through an agency or organization with an agreement under section 1816 of such Act,

the Secretary of Health and Human Services shall continue payment on such a basis until not earlier than the end of the first period of three consecutive calendar months (beginning no earlier than April 1987) during all of which the agency or organization has met the requirements of section 1816(c)(2) of such Act (relating to prompt payment of claims).

(b) **PROMPT PAYMENT OF CLAIMS UNDER PART A.**—Section 1816(c) of the Social Security Act (42 U.S.C. 1395h(c)) is amended—

(1) by inserting “(1)” after “(c)”, and

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

“(2)(A) Each agreement under this section shall provide that payment shall be issued, mailed, or otherwise transmitted with respect to not less than 95 percent of all claims submitted under this title—

“(i) which are clean claims, and

“(ii) for which payment is not made on a periodic interim payment basis,

within the applicable number of calendar days after the date on which the claim is received.

“(B) In this paragraph:

“(i) The term ‘clean claim’ means a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special

42 USC 1395ww.
State and local
governments.
42 USC 1395f.

Puerto Rico.

Claims.
42 USC 1395g
note.
42 USC 1395g
note.
42 USC 1395c.

Claims.
42 USC 1395h.

Claims.

treatment that prevents timely payment from being made on the claim under this title.

“(ii) The term ‘applicable number of calendar days’ means—

“(I) with respect to claims received in the 12-month period beginning October 1, 1986, 30 calendar days,

“(II) with respect to claims received in the 12-month period beginning October 1, 1987, 26 calendar days,

“(III) with respect to claims received in the 12-month period beginning October 1, 1988, 25 calendar days, and

“(IV) with respect to claims received in the 12-month period beginning October 1, 1989, and claims received in any succeeding 12-month period, 24 calendar days.

Claims.

“(C) If payment is not issued, mailed, or otherwise transmitted within the applicable number of calendar days (as defined in clause (ii) of subparagraph (B)) after a clean claim (as defined in clause (i) of such subparagraph) is received from a hospital, skilled nursing facility, home health agency, or hospice program that is not receiving payments on a periodic interim payment basis with respect to such services, interest shall be paid at the rate used for purposes of section 3902(a) of title 31, United States Code (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made.”

(c) PROMPT PAYMENT OF CLAIMS UNDER PART B.—Section 1842(c) of the Social Security Act (42 U.S.C. 1395u(c)) is amended—

(1) by inserting “(1)” after “(c)”, and

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

Contracts.
Claims.

“(2)(A) Each contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B), shall provide that payment shall be issued, mailed, or otherwise transmitted with respect to not less than 95 percent of all claims submitted under this part—

“(i) which are clean claims, and

“(ii) for which payment is not made on a periodic interim payment basis,
within the applicable number of calendar days after the date on which the claim is received.

“(B) In this paragraph:

“(i) The term ‘clean claim’ means a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this part.

“(ii) The term ‘applicable number of calendar days’ means—

“(I) with respect to claims received in the 12-month period beginning October 1, 1986, 30 calendar days,

“(II) with respect to claims received in the 12-month period beginning October 1, 1987, 26 calendar days (or 19 calendar days with respect to claims submitted by participating physicians),

“(III) with respect to claims received in the 12-month period beginning October 1, 1988, 25 calendar days (or 18 calendar days with respect to claims submitted by participating physicians), and

“(IV) with respect to claims received in the 12-month period beginning October 1, 1989, and claims received in any succeeding 12-month period, 24 calendar days (or 17

calendar days with respect to claims submitted by participating physicians).

“(C) If payment is not issued, mailed, or otherwise transmitted within the applicable number of calendar days (as defined in clause (ii) of subparagraph (B)) after a clean claim (as defined in clause (i) of such subparagraph) is received, interest shall be paid at the rate used for purposes of section 3902(a) of title 31, United States Code (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made.”.

Claims.

(d) EFFECTIVE DATES.—

(1) Except as provided in paragraph (2), the amendments made by subsections (b) and (c) shall apply to claims received on or after November 1, 1986.

42 USC 1395h
note.
Claims.

(2) Sections 1816(c)(2)(C) and 1842(c)(2)(C) of the Social Security Act, as added by such amendments, shall apply to claims received on or after April 1, 1987.

Ante, pp. 1997,
1998.
Claims.

(3) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 of the Social Security Act and contracts under section 1842 of such Act, and regulations, to such extent as may be necessary to implement the provisions of this Act on a timely basis.

Contracts.

SEC. 9312. HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS.

(a) REPEAL OF “2 FOR 1” CONVERSION REQUIREMENT FOR CERTAIN HEALTH MAINTENANCE ORGANIZATIONS.—Section 114(c)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 is amended by adding at the end the following new subparagraph:

42 USC 1395mm
note.

“(E) The preceding provisions of this paragraph shall not to apply to payments made for current, nonrisk medicare enrollees for months beginning with April 1987.”.

(b) REQUIRING THE PROVISION OF AN EXPLANATION OF ENROLLEE RIGHTS.—

(1) IN GENERAL.—Subsection (c)(3) of section 1876 of the Social Security Act (42 U.S.C. 1395mm) is amended by adding at the end the following new subparagraph:

“(E) Each eligible organization shall provide each enrollee, at the time of enrollment and not less frequently than annually thereafter, an explanation of the enrollee’s rights under this section, including an explanation of—

- “(i) the enrollee’s rights to benefits from the organization,
- “(ii) the restrictions on payments under this title for services furnished other than by or through the organization,
- “(iii) out-of-area coverage provided by the organization,
- “(iv) the organization’s coverage of emergency services and urgently needed care, and
- “(v) appeal rights of enrollees.”.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on January 1, 1987, and shall apply to enrollments effected on or after such date.

42 USC 1395mm
note.

(c) RESTRICTING WAIVER OF REQUIREMENT OF 50 PERCENT NON-MEDICARE ENROLLMENT.—

(1) RESTRICTION ON NEW WAIVERS.—Paragraph (2) of subsection (f) of such section is amended by striking all that follows “only” and inserting a dash and the following:

42 USC 1396.
Contracts.
State and local
governments.

"(A) to the extent that more than 50 percent of the population of the area served by the organization consists of individuals who are entitled to benefits under this title or under a State plan approved under title XIX, or

"(B) in the case of an eligible organization that is owned and operated by a governmental entity, only with respect to a period of three years beginning on the date the organization first enters into a contract under this section, and only if the organization has taken and is making reasonable efforts to enroll individuals who are not entitled to benefits under this title or under a State plan approved under title XIX.".

(2) SANCTIONS FOR NONCOMPLIANCE.—

(A) SUSPENSION OF ENROLLMENT OR PAYMENT FOR NEW ENROLLEES.—Such subsection is further amended by adding at the end the following new paragraph:

"(3) If the Secretary determines that an eligible organization has failed to comply with the requirements of this subsection, the Secretary may provide for the suspension of enrollment of individuals under this section or of payment to the organization under this section for individuals newly enrolled with the organization, after the date the Secretary notifies the organization of such noncompliance."

(B) TERMINATION OF CONTRACT.—Subsection (i)(1)(C) of such section is amended by striking "and (e)" and insert "(e), and (f)".

42 USC 1395mm
note.

(3) EFFECTIVE DATES.—

(A) NEW RESTRICTION.—The amendment made by paragraph (1) shall apply to modifications and waivers granted after the date of the enactment of this Act.

(B) SANCTIONS FOR NONCOMPLIANCE.—The amendments made by paragraph (2) shall take effect on the date of the enactment of this Act.

(C) TREATMENT OF CURRENT WAIVERS.—In the case of an eligible organization (or successor organization) that—

42 USC 1395mm.

(i) as of the date of the enactment of this Act, has been granted, under paragraph (2) of section 1876(f) of the Social Security Act, a modification or waiver of the requirement imposed by paragraph (1) of that section, but

(ii) does not meet the requirement for such modification or waiver under the amendment made by paragraph (1) of this subsection,

the organization shall make, and continue to make, reasonable efforts to meet scheduled enrollment goals, consistent with a schedule of compliance approved by the Secretary of Health and Human Services. If the Secretary determines that the organization has complied, or made significant progress towards compliance, with such schedule of compliance, the Secretary may extend such waiver. If the Secretary determines that the organization has not complied with such schedule, the Secretary may provide for a sanction described in section 1876(f)(3) of the Social Security Act (as amended by this section) effective with respect to individuals enrolling with the organization after the date the Secretary notifies the organization of such noncompliance.

(d) REQUIRING PROMPT PAYMENT OF CLAIMS.—

(1) **IN GENERAL.**—Subsection (g) of such section is amended by adding at the end the following new paragraph:

“(6)(A) A risk-sharing contract under this section shall require the eligible organization to provide prompt payment (consistent with the provisions of sections 1816(c)(2) and 1842(c)(2)) of claims submitted for services and supplies furnished to individuals pursuant to such contract, if the services or supplies are not furnished under a contract between the organization and the provider or supplier.

Contracts.

Ante, pp. 1997, 1998.

“(B) In the case of an eligible organization which the Secretary determines, after notice and opportunity for a hearing, has failed to make payments of amounts in compliance with subparagraph (A), the Secretary may provide for direct payment of the amounts owed to providers and suppliers for such covered services furnished to individuals enrolled under this section under the contract. If the Secretary provides for such direct payments, the Secretary shall provide for an appropriate reduction in the amount of payments otherwise made to the organization under this section to reflect the amount of the Secretary's payments (and costs incurred by the Secretary in making such payments).”.

(2) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall apply to risk-sharing contracts under section 1876 of the Social Security Act with respect to services furnished on or after January 1, 1987.

Contracts.
42 USC 1395mm
note.

(e) **REQUIRING ACCESS TO FINANCIAL RECORDS AND DISCLOSURE OF INTERNAL LOANS.**—

(1) **IN GENERAL.**—Subsection (i)(3)(C) of such section is amended—

(A) by striking “and” at the end,

(B) by inserting “(i)” after “(C)”, and

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

“(ii) shall require the organization to provide and supply information (described in section 1866(b)(2)(C)(ii)) in the manner such information is required to be provided or supplied under that section;

42 USC 1395cc.

“(iii) shall require the organization to notify the Secretary of loans and other special financial arrangements which are made between the organization and subcontractors, affiliates, and related parties; and”.

Loans.

(2) **EFFECTIVE DATE.**—The amendments made by paragraph (1) shall apply to contracts as of January 1, 1987.

Contracts.
42 USC 1395mm
note.

(f) **AUTHORITY TO IMPOSE CIVIL MONEY PENALTIES.**—Subsection (i) of such section is amended by adding at the end the following new paragraph:

“(6)(A) Any eligible organization with a risk-sharing contract under this section that fails substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under such contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals, is subject to a civil money penalty of not more than \$10,000 for each such failure.

Contracts.

“(B) The provisions of section 1128A (other than subsection (a)) shall apply to a civil money penalty under subparagraph (A) in the same manner as they apply to a civil money penalty under that section.”.

Post, pp. 2003, 2008.

(g) **STUDY OF AAPCC AND ACR.**—The Secretary of Health and Human Services shall provide, through contract with an appropriate organization, for a study of the methods by which—

Contracts.
42 USC 1395 mm
note.

42 USC 1395mm.

(1) the adjusted average per capita cost ("AAPCC", as defined in section 1876(a)(4) of the Social Security Act) can be refined to more accurately reflect the average cost of providing care to different classes of patients, and

(2) the adjusted community rate ("ACR", as defined in section 1876(e)(3) of such Act) can be refined.

The Secretary shall submit to Congress, by not later than January 1, 1988, specific legislative recommendations concerning methods by which the calculation of the AAPCC and the ACR can be refined.

42 USC 1395mm
note.

(h) ALLOWING MEDICARE BENEFICIARIES TO DISENROLL AT A LOCAL SOCIAL SECURITY OFFICE.—The Secretary of Health and Human Services shall provide that individuals enrolled with an eligible organization under section 1876 of the Social Security Act may disenroll, on and after June 1, 1987, at any local office of the Social Security Administration.

42 USC 1395mm
note.

(i) USE OF RESERVE FUNDS.—Notwithstanding any provision of section 1876(g)(5) of the Social Security Act (42 U.S.C. 1395mm(g)(5)) to the contrary, funds reserved by an eligible organization under such section before the date of the enactment of this Act may be applied, at the organization's option, to offset the amount of any reduction in payment amounts to the organization effected under Public Law 99-177 during fiscal year 1986.

99 Stat. 1037.

SEC. 9313. PROVISIONS RELATING TO IMPROVEMENT OF QUALITY OF CARE.

(a) PERMITTING PROVIDER REPRESENTATION OF BENEFICIARIES.—

42 USC 406,
1302, 1395hh.

(1) IN GENERAL.—Section 1869(b)(1) of the Social Security Act (42 U.S.C. 1395ff(b)(1)) is amended by adding at the end the following new sentence: "Sections 206(a), 1102, and 1871 shall not be construed as authorizing the Secretary to prohibit an individual from being represented under this subsection by a person that furnishes or supplies the individual, directly or indirectly, with services or items solely on the basis that the person furnishes or supplies the individual with such a service or item. Any person that furnishes services or items to an individual may not represent an individual under this subsection with respect to the issue described in section 1879(a)(2) unless the person has waived any rights for payment from the beneficiary with respect to the services or items involved in the appeal. If a person furnishes services or items to an individual and represents the individual under this subsection, the person may not impose any financial liability on such individual in connection with such representation."

42 USC 1395pp.

(2) TREATMENT OF COSTS OF UNSUCCESSFUL APPEAL.—Section 1861(v)(1) of such Act (42 U.S.C. 1395x(v)(1)) is amended by adding at the end the following new subparagraph:

"(R) In determining such reasonable cost, costs incurred by a provider of services representing a beneficiary in an unsuccessful appeal of a determination described in section 1869(b) shall not be allowable as reasonable costs."

42 USC 1395x
note.

(3) EFFECTIVE DATE.—The amendments made by this paragraph take effect on the date of the enactment of this Act.

(b) PERMITTING REVIEW OF TECHNICAL DENIALS.—

(1) IN GENERAL.—Section 1869 of such Act is further amended—

(A) in subsection (a), by inserting before "shall" the following: "and any other determination with respect to a claim for benefits under part A", and

(B) in subsection (b)(1)—

(i) by striking "or" at the end of subparagraph (B),

(ii) by inserting "or" at the end of subparagraph (C), and

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

"(D) any other denial (other than under part B of title XI) of a claim for benefits under part A or a claim for benefits with respect to home health services under part B,".

42 USC 1320c.

(2) **EFFECTIVE DATE.**—The amendments made by this subsection take effect on the date of the enactment of this Act.

42 USC 1395ff note.

(c) **PROHIBITION OF CERTAIN PHYSICIAN INCENTIVE PLANS.**—

(1) **MAKING CERTAIN PLANS SUBJECT TO CIVIL MONETARY PENALTIES.**—Section 1128A of the Social Security Act (42 U.S.C. 1320a-7a) is amended—

Post, p. 2008.

(A) by striking "subsection (a)" each place it appears and inserting "subsection (a) or (b)",

(B) in subsection (a)(1), by striking "(h)(1)" and "(h)(2)" and inserting "(i)(1)" and "(i)(2)", respectively,

(C) in subsection (f), by striking "subsection (d)" and inserting "subsection (e)",

(D) by redesignating subsections (b) through (h) as subsections (c) through (i), respectively, and

(E) by inserting after subsection (a) the following new subsection:

"(b)(1) If a hospital, an eligible organization with a risk-sharing contract under section 1876, or an entity with a contract under section 1903(m) knowingly makes a payment, directly or indirectly, to a physician as an inducement to reduce or limit services provided with respect to individuals who—

Contracts.

Ante, p. 1999.

42 USC 1396b.

"(A) are entitled to benefits under part A or part B of title XVII or to medical assistance under a State plan approved under title XIX,

State and local

governments.

42 USC 300u.

42 USC 1396.

"(B) in the case of an eligible organization or an entity, are enrolled with the organization or entity, and

"(C) are under the direct care of the physician, the hospital or organization shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than \$2,000 for each such individual with respect to whom the payment is made.

"(2) Any physician who knowingly accepts receipt of a payment described in paragraph (1) shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than \$2,000 for individual described in such paragraph with respect to whom the payment is made."

(2) **EFFECTIVE DATE.**—The amendments made by paragraph (1) shall apply to—

42 USC 1320a-7a note.

(A) payments by hospitals occurring more than 6 months after the date of the enactment of this Act, and

(B) payments by eligible organizations or entities occurring on or after April 1, 1989.

(3) **STUDY.**—The Secretary of Health and Human Services shall report to Congress, not later than January 1, 1988, concerning incentive arrangements offered by health mainte-

Reports.

Health care

professionals.

42 USC 1320a-7a note.

nance organizations and competitive medical plans to physicians. The report shall—

(A) review the type of incentive arrangements in common use,

(B) evaluate their potential to pressure improperly physicians to reduce or limit services in a medically inappropriate manner, and

(C) make recommendations concerning providing for an exception, to the prohibition contained in section 1128A(b) of the Social Security Act, for incentive arrangements that may be used by such organizations and plans to encourage efficiency in the utilization of medical and other services but that do not have a substantial potential for adverse effect on quality.

Post, pp. 2003, 2008.

42 USC 1395//
note.

(d) STUDY TO DEVELOP A STRATEGY FOR QUALITY REVIEW AND ASSURANCE.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall arrange for a study to design a strategy for reviewing and assuring the quality of care for which payment may be made under title XVIII of the Social Security Act.

42 USC 1395.

(2) ITEMS INCLUDED IN STUDY.—Among other items, the study shall—

(A) identify the appropriate considerations which should be used in defining “quality of care”;

(B) evaluate the relative roles of structure, process, and outcome standards in assuring quality of care;

(C) develop prototype criteria and standards for defining and measuring quality of care;

(D) evaluate the adequacy and focus of the current methods for measuring, reviewing, and assuring quality of care;

Research and
development.

(E) evaluate the current research on methodologies for measuring quality of care, and suggest areas of research needed for further progress;

(F) evaluate the adequacy and range of methods available to correct or prevent identified problems with quality of care;

(G) review mechanisms available for promoting, coordinating, and supervising at the national level quality review and assurance activities; and

(H) develop general criteria which may be used in establishing priorities in the allocation of funds and personnel in reviewing and assuring quality of care.

(3) REPORT.—The Secretary shall submit to Congress, not later than 2 years after the date of the enactment of this Act, a report on the study. Such report shall address the items described in paragraph (2) and shall include recommendations with respect to strengthening quality assurance and review activities for services furnished under the medicare program.

(4) ARRANGEMENTS FOR STUDY.—(A) The Secretary shall request the National Academy of Sciences, acting through appropriate units, to submit an application to conduct the study described in this subsection. If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application

to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.

(B) In developing plans for the conduct of the study, the Secretary shall assure that consumer and provider groups, peer review organizations, the Joint Commission on Accreditation of Hospitals, professional societies, and private purchasers of care with experience and expertise in the monitoring of the quality of care are consulted.

(5) **COORDINATION.**—The Secretary shall designate an office with responsibilities for coordinating studies, under this subsection and other authority, relating to the quality of services furnished to medicare and medicaid beneficiaries, in particular studies relating to the evaluation of the prospective payment system on the quality of health care provided to medicare beneficiaries. These responsibilities shall include assessing the feasibility and costs of alternative studies in relation to their importance, overseeing and coordinating access to needed data, and maintaining a clearinghouse for both public and private sector studies.

SEC. 9314. DIRECT COSTS OF GRADUATE MEDICAL EDUCATION.

(a) **CLARIFYING COUNTING OF TIME SPENT IN OUTPATIENT SETTINGS.**—Section 1886(h)(4) of such Act, as amended by section 1895(b) of the Tax Reform Act of 1986, is amended by adding at the end the following new subparagraph:

42 USC 1395ww.
Post, p. 2095.

“(E) **COUNTING TIME SPENT IN OUTPATIENT SETTINGS.**—Such rules shall provide that only time spent in activities relating to patient care shall be counted and that all the time so spent by a resident under an approved medical residency training program shall be counted towards the determination of full-time equivalency, without regard to the setting in which the activities are performed, if the hospital incurs all, or substantially all, of the costs for the training program in that setting.”.

Health care
facilities.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall apply to payments for approved residency training programs as of July 1, 1987.

42 USC 1395ww
note.

SEC. 9315. PAYMENTS FOR HOME HEALTH SERVICES.

(a) **LIMITATIONS ON PAYMENT FOR HOME HEALTH SERVICES.**—Section 1861(v)(1)(L) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)) is amended—

(1) by inserting “(i)” after “(L)”, and

(2) by striking “the 75th percentile” and all that follows through “as the Secretary may determine.” and inserting in lieu thereof “for cost reporting periods beginning on or after—

“(I) July 1, 1985, and before July 1, 1986, 120 percent,

“(II) July 1, 1986, and before July 1, 1987, 115 percent, or

“(III) July 1, 1987, 112 percent,

of the mean of the labor-related and nonlabor per visit costs for free standing home health agencies.

“(ii) Effective for cost reporting periods beginning on or after July 1, 1986, such limitations shall be applied on an aggregate basis for the agency, rather than on a discipline specific basis, with appropriate adjustment for administrative and general costs of hospital-based agencies.”.

Effective date.

42 USC 1395x
note.

(b) **CONSIDERATIONS IN ESTABLISHING LIMITS.**—In establishing limitations under section 1861(v)(1)(L) of the Social Security Act on payment for home health services for cost reporting periods beginning on or after July 1, 1986, the Secretary of Health and Human Services shall—

(1) base such limitations on the most recent data available, which data may be for cost reporting periods beginning no earlier than October 1, 1983; and

(2) take into account the changes in costs of home health agencies for billing and verification procedures that result from the Secretary's changing the requirements for such procedures, to the extent the changes in costs are not reflected in such data. Paragraph (2) shall apply to changes in requirements effected before, on, or after July 1, 1986.

42 USC 1395x
note.

(c) **GAO REPORT.**—The Comptroller General shall study and report to Congress, not later than February 1, 1988, on—

(1) the appropriateness and impact on medicare beneficiaries of applying the per visit cost limits for home health services under section 1861(v)(1)(L) of the Social Security Act on a discipline-specific basis, rather than on an aggregate basis, for all home health services furnished by an agency, and

(2) the appropriateness of the percentage limits established under such section.

SEC. 9316. ESTABLISHMENT OF PATIENT OUTCOME ASSESSMENT RESEARCH PROGRAM.

(a) **IN GENERAL.**—Section 1875 of the Social Security Act (42 U.S.C. 139511) is amended by adding at the end the following new subsection:

“(c)(1) The Secretary shall establish a patient outcome assessment research program (in this subsection referred to as the ‘research program’) to promote research with respect to patient outcomes of selected medical treatments and surgical procedures for the purpose of assessing their appropriateness, necessity, and effectiveness. The research program shall include—

“(A) reorganization of data relating to claims under parts A and B of this title in a manner that facilitates research with respect to patient outcomes,

“(B) assessments of the appropriateness of admissions and discharges,

“(C) assessments of the extent of professional uncertainty regarding efficacy,

“(D) development of improved methods for measuring patient outcomes,

“(E) evaluations of patient outcomes, and

“(F) evaluation of the effects on physicians' practice patterns of the dissemination to physicians and peer review organizations with contracts under part B of title XI of the findings of the research conducted under subparagraphs (B), (C), (D), and (E).

“(2) In selecting treatments and procedures to be studied, the Secretary shall give priority to those medical and surgical treatments and procedures—

“(A) for which data indicate a highly (or potentially highly) variable pattern of utilization among beneficiaries under this title in different geographic areas, and

Health care
professionals.
Contracts.
42 USC 1320c.

"(B) which are significant (or potentially significant) for purposes of this title in terms of utilization by beneficiaries, length of hospitalization associated with the treatment or procedure, costs to the research program, and risk involved to the beneficiary.

"(3) For purposes of carrying out the research program, there are authorized to be appropriated—

Appropriation
authorization.

"(A) from the Federal Hospital Insurance Trust Fund \$4,000,000 for fiscal year 1987 and \$5,000,000 for each of fiscal years 1988 and 1989, and

"(B) from the Federal Supplementary Medical Insurance Trust Fund \$2,000,000 for fiscal years 1987 and \$2,500,000 for each of fiscal years 1988 and 1989.

"(4) Not less than 90 percent of the amount appropriated for any fiscal year to carry out the research program shall be used to fund grants to, and cooperative agreements with, non-Federal entities to conduct research described in paragraph (1). The remainder may be used by the Secretary to provide such research by Federal entities and for administrative costs.

"(5) The research program shall be administered by the National Center for Health Services Research and Health Care Technology established under section 305 of the Public Health Service Act (in this subsection referred to as the 'Center'). The Center shall establish application procedures for grants and cooperative agreements, and shall establish peer review panels to review all such applications and all research findings. The Center shall consult with the council on health care technology (established under a grant under section 309 of the Public Health Service Act) in establishing the scope and priorities for the research program and shall report periodically to any such council on the status of the program.

Grants.
Contracts.
42 USC 242c.

"(6) The Secretary shall make available data derived from the programs under this title and other programs administered by the Secretary for use in the research program.

Reports.
42 USC 242n.

"(7) The Center shall report to the Committees on Finance and Appropriations of the Senate and the Committees on Ways and Means, Energy and Commerce, and Appropriations of the House of Representatives not later than 18 months after the date of the enactment of this Act, and annually thereafter, with respect to the findings under the research program. In cooperation with appropriate medical specialty groups, the Center shall disseminate such findings as widely as possible, including disseminating such findings to each peer review organization which has a contract under part B of title XI."

Reports.
Contracts.

42 USC 1320c.

(b) PERMITTING SERVICES TO BE PROVIDED UNDER RESEARCH PROGRAM.—Section 1862(a)(1) of such Act (42 U.S.C. 1395y(a)(1)) is amended—

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

(2) by striking the semicolon at the end of subparagraph (D) and inserting ", and", and

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

"(E) in the case of research conducted pursuant to section 1875(c), which is not reasonable and necessary to carry out the purposes of that section;"

Ante, p. 2006.

SEC. 9317. IMPROVEMENTS IN CIVIL MONETARY PENALTY AND EXCLUSION PROVISIONS.

(a) **COLLATERAL ESTOPPEL EFFECT OF PRIOR FEDERAL CRIMINAL CONVICTIONS.**—Section 1128A(c) of the Social Security Act (42 U.S.C. 1320a-7a(c)), as redesignated by section 9313(c), is amended by adding at the end the following new paragraph:

“(3) In a proceeding under subsection (a) or (b) which—

“(A) is against a person who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal crime charging fraud or false statements, and

“(B) involves the same transaction as in the criminal action, the person is estopped from denying the essential elements of the criminal offense.”.

(b) **AUTHORITY OF HEARING OFFICER TO SANCTION MISCONDUCT.**—Such section is further amended by adding at the end the following new paragraph:

“(4) The official conducting a hearing under this section may sanction a person, including any party or attorney, for failing to comply with an order or procedure, failing to defend an action, or other misconduct as would interfere with the speedy, orderly, or fair conduct of the hearing. Such sanction shall reasonably relate to the severity and nature of the failure or misconduct. Such sanction may include—

“(A) in the case of refusal to provide or permit discovery, drawing negative factual inferences or treating such refusal as an admission by deeming the matter, or certain facts, to be established,

“(B) prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense,

“(C) striking pleadings, in whole or in part,

“(D) staying the proceedings,

“(E) dismissal of the action,

“(F) entering a default judgment,

“(G) ordering the party or attorney to pay attorneys' fees and other costs caused by the failure or misconduct, and

“(H) refusing to consider any motion or other action which is not filed in a timely manner.”.

(c) **CLARIFICATION OF EXCLUSION AUTHORITY FOR CERTAIN OFFENDERS.**—Section 1128 of such Act (42 U.S.C. 1320a-7) is amended by adding at the end the following new subsection:

“(f) For purposes of subsection (a), a physician or other individual is considered to have been ‘convicted’ of a criminal offense—

“(1) when a judgment of conviction has been entered against the physician or individual by a Federal, State, or local court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged;

“(2) when there has been a finding of guilt against the physician or individual by a Federal, State, or local court;

“(3) when a plea of guilty or nolo contendere by the physician or individual has been accepted by a Federal, State, or local court; or

“(4) when the physician or individual has entered into participation in a first offender or other program where judgment of conviction has been withheld.”.

Health care
professionals.
State and local
governments.

(d) **EFFECTIVE DATES.**—(1) The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, without regard to when the criminal conviction was obtained, but shall only apply to a conviction upon a plea of *nolo contendere* tendered after the date of the enactment of this Act.

42 USC 1320a-7a
note.

(2) The amendment made by subsection (b) shall apply to failures or misconduct occurring on or after the date of the enactment of this Act.

(3) The provisions—

42 USC 1320a-7
note.

(A) of paragraphs (1), (2), and (3) of section 1128(f) of the Social Security Act (as added by the amendment made by subsection (c)) shall apply to judgments entered, findings made, and pleas entered, before, on, or after the date of the enactment of this Act, and

Ante, p. 2008.

(B) of paragraph (4) of such section shall apply to participation in a program entered into on or after the date of the enactment of this Act.

SEC. 9318. HOSPITAL PROTOCOLS FOR ORGAN PROCUREMENT AND STANDARDS FOR ORGAN PROCUREMENT AGENCIES.

(a) **IN GENERAL.**—Title XI of the Social Security Act is amended by inserting after section 1137 the following new section:

“HOSPITAL PROTOCOLS FOR ORGAN PROCUREMENT AND STANDARDS FOR ORGAN PROCUREMENT AGENCIES

“SEC. 1138. (a)(1) The Secretary shall provide that a hospital meeting the requirements of title XVIII or XIX may participate in the program established under such title only if—

42 USC 1320b-8.
42 USC 1395,
1396.

“(A) the hospital establishes written protocols for the identification of potential organ donors that—

“(i) assure that families of potential organ donors are made aware of the option of organ or tissue donation and their option to decline,

“(ii) encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of such families, and

“(iii) require that an organ procurement agency designated by the Secretary pursuant to subsection (b)(1)(F) be notified of potential organ donors; and

“(B) In the case of a hospital in which organ transplants are performed, the hospital is a member of, and abides by the rules and requirements of, the Organ Procurement and Transplantation Network established pursuant to section 372 of the Public Health Service Act (in this section referred to as the ‘Network’).

42 USC 274.

“(2) For purposes of this subsection, the term ‘organ’ means a human kidney, liver, heart, lung, pancreas, and any other human organ or tissue specified by the Secretary for purposes of this subsection.

“(b)(1) The Secretary shall provide that payment may be made under title XVIII or XIX with respect to organ procurement costs attributable to payments made to an organ procurement agency only if the agency—

“(A)(i) is a qualified organ procurement organization (as described in section 371(b) of the Public Health Service Act) that is operating under a grant made under section 371(a) of such Act, or (ii) has been certified or recertified by the Secretary within

42 USC 273.

the previous two years as meeting the standards to be a qualified organ procurement organization (as so described);

"(B) meets the requirements that are applicable under such title for organ procurement agencies;

"(C) meets performance-related standards prescribed by the Secretary;

"(D) is a member of, and abides by the rules and requirements of, the Network;

"(E) allocates organs, within its service area and nationally, in accordance with medical criteria and the policies of the Network; and

"(F) is designated by the Secretary as an organ procurement organization payments to which may be treated as organ procurement costs for purposes of reimbursement under such title.

"(2) The Secretary may not designate more than one organ procurement organization for each service area (described in section 371(b)(1)(E) of the Public Health Service Act) under paragraph (1)(F)."

42 USC 273.

42 USC 1320b-8
note.

42 USC 1395,
1396.

(b) **EFFECTIVE DATES.**—(1) Section 1138(a) of the Social Security Act shall apply to hospitals participating in the programs under titles XVIII and XIX of such Act as of October 1, 1987.

(2) Section 1138(b) of such Act shall apply to costs of organs procured on or after October 1, 1987.

SEC. 9319. MEDICARE AS SECONDARY PAYER; COVERAGE REQUIREMENTS FOR CERTAIN OTHER PAYERS.

(a) **MEDICARE SECONDARY FOR DISABLED EMPLOYEES OF CERTAIN LARGE EMPLOYERS.**—Section 1862(b) of the Social Security Act (42 U.S.C. 1395y(b)) is amended by adding at the end the following new paragraph:

"(4)(A)(i) A large group health plan may not take into account that an active individual is eligible for or receives benefits under this title under section 226(b), other than an individual who is, or would upon application be, entitled to benefits under section 226A.

42 USC 426.

42 USC 426-1.

"(ii) Payment may not be made under this title, except as provided in clause (iii), with respect to any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to the item or service as required under clause (i).

Claims.

"(iii) Any payment under this title with respect to any item or service to which clause (i) applies shall be conditioned on reimbursement to the appropriate Trust Fund established by this title. In order to recover payment made under this title for the item or service, the United States may bring an action against any entity which is required under this subsection (a) to pay with respect to the item or service (and may, in accordance with paragraph (5), collect double damages against that entity), or against any other entity that has received payment from that entity with respect to the item or service, and may join or intervene in any action related to the events that gave rise to the need for the item or service. The United States shall be subrogated (to the extent of payment made under this title for an item or service) to any right under clause (i) of an individual or any other entity to payment with respect to the item or service. The Secretary may waive (in whole or in part) the provisions of this clause in the case of an individual claim if the Secretary determines that the waiver is in the best interests of the program established under this title.

“(B) In this paragraph:

“(i) The term ‘large group health plan’ has the meaning given such term in section 5000(b) of the Internal Revenue Code of 1986.

Post, p. 2095.

“(ii) The term ‘active individual’ means an employee (as may be defined in regulations), the employer, an individual associated with the employer in a business relationship, or a member of the family of any of those persons.

“(C) The provisions of subparagraph (B) of paragraph (3) shall apply to coordination of payment under this paragraph in the case of large group health plans in the same manner as they apply to coordination of payment under paragraph (3) in the case of group health plans.

“(D) The preceding provisions of this paragraph shall only apply to items and services furnished on or after January 1, 1987, and before January 1, 1992.”

(b) ESTABLISHMENT OF PRIVATE CAUSE OF ACTION WHERE MEDICARE SECONDARY.—Such section is further amended by adding at the end the following new paragraph:

“(5) There is hereby created a private cause of action for damages (which shall be in an amount double the amount otherwise provided) in the case of a workmen’s compensation law or plan, automobile or liability insurance policy or plan or no fault insurance plan, group health plan, or large group health plan which is made a primary payer under paragraph (1), (2), (3), or (4), respectively, and which fails to provide for primary payment (or appropriate reimbursement) in accordance with such respective paragraphs.”

Insurance.

(c) SPECIAL ENROLLMENT PERIODS.—

(1) Section 1837(i)(1) of such Act (42 U.S.C. 1395p(i)(1)) is amended by adding at the end the following: “In the case of an individual who has not attained the age of 65, at the time the individual first satisfies paragraph (1) of section 1836, is enrolled in a large group health plan as an active individual (as those terms are defined in section 1862(b)(4)(B)), and has elected not to enroll (or to be deemed enrolled) under this section during the individual’s initial enrollment period, there shall be a special enrollment period described in paragraph (3)(B).”

42 USC 1395o.

42 USC 1395y.

(2) Section 1837(i)(2) of such Act (42 U.S.C. 1395p(i)(2)) is amended by adding at the end the following: “In the case of an individual who has not attained the age of 65, has enrolled (or has been deemed to have enrolled) in the medical insurance program established under this part during the individual’s initial enrollment period, or is an individual described in the second sentence of paragraph (1), has enrolled in such program during any subsequent special enrollment period under this subsection during which the individual was not enrolled in a large group health plan as an active individual (as those terms are defined in section 1862(b)(4)(B)), and has not terminated enrollment under this section at any time at which the individual is not enrolled in such a large group health plan as an active individual, there shall be a special enrollment period described in paragraph (3)(B).”

(3) Section 1837(i)(3) of such Act (42 U.S.C. 1395p(i)(3)) is amended—

Ante, p. 171.

(A) by inserting “(A)” after “(3)”,

(B) by inserting “the first sentences of” after “referred to in”,

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

“(B) The special enrollment period referred to in the second sentences of paragraphs (1) and (2) is the period beginning with the first day of the first month in which the individual is no longer enrolled as an active individual in a large group health plan (as such terms are defined in section 1862(b)(4)(B)) and ending seven months later.”.

42 USC 1395y.

(4) The second sentence of section 1839(b) of such Act (42 U.S.C. 1395r(b)) is amended by inserting before the period the following: “or months during which the individual has not attained the age of 65 and for which the individual can demonstrate that the individual was enrolled in a large group health plan as an active individual (as those terms are defined in section 1862(b)(4)(B))”.

Post, p. 2095.

(d) **TAX IMPOSED ON NONCONFORMING PLANS.—**

(1) Subtitle D of the Internal Revenue Code of 1954 (relating to miscellaneous excise taxes) is amended by adding at the end the following new chapter:

“CHAPTER 47—CERTAIN LARGE GROUP HEALTH PLANS

“Sec. 5000. Certain large group health plans.

26 USC 5000.

“SEC. 5000. CERTAIN LARGE GROUP HEALTH PLANS.

“(a) **IMPOSITION OF TAX.**—There is hereby imposed on any employer or employee organization that contributes to a nonconforming large group health plan a tax equal to 25 percent of the employer’s or employee organization’s expenses incurred during the calendar year for each large group health plan to which the employer or employee organization contributes.

“(b) **LARGE GROUP HEALTH PLAN.**—For purposes of this section, the term ‘large 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 the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families, that covers employees of at least one employer that normally employed at least 100 employees on a typical business day during the previous calendar year.

“(c) **NONCONFORMING LARGE GROUP HEALTH PLAN.**—For purposes of this section, the term ‘nonconforming large group health plan’ means a large group health plan that at any time during a calendar year does not comply with the requirements of section 1862(b)(4)(A)(i) of the Social Security Act.

42 USC 1395y.

“(d) **GOVERNMENT ENTITIES.**—For purposes of this section, the term ‘employer’ does not include a Federal or other governmental entity.”.

(2) The table of chapters of subtitle D of such Code is amended by adding at the end thereof the following:

“CHAPTER 47. Certain large group health plans.”.

Reports.
42 USC 1395y
note.

(e) **STUDY OF IMPACT ON DISABLED BENEFICIARIES AND FAMILY.**—The Comptroller General shall study and report to Congress, by not later than March 1, 1990, the impact of the amendments made by this section on access of disabled individuals and members of their family to employment and health insurance. The report shall include information relating to—

(1) the number of disabled medicare beneficiaries for whom medicare has become secondary, either through their employment or the employment of a family member;

(2) the amount of savings to the medicare program achieved annually through this provision; and

(3) the effect on employment, and employment-based health coverage, of disabled individuals and family members.

(f) **EFFECTIVE DATES.**—

(1) Except as provided in paragraph (2), the amendments made by this section shall apply to items and services furnished on or after January 1, 1987.

(2) The amendments made by subsection (c) shall apply to enrollments occurring on or after January 1, 1987.

42 USC 1395y
note.

SEC. 9320. PAYMENT FOR SERVICES OF CERTIFIED REGISTERED NURSE ANESTHETISTS.

(a) **EXTENSION OF PASS-THROUGH FOR COSTS OF CERTIFIED REGISTERED NURSE ANESTHETISTS.**—Section 2312(c) of the Deficit Reduction Act of 1984 is amended by striking “October 1, 1987.” and inserting “January 1, 1989. In the case of a cost reporting period that begins before January 1, 1989, but end after such date, additional payments under the amendment made by subsection (a) shall be proportionately reduced to reflect the portion of the period occurring after such date.”.

42 USC 1395ww
note.

(b) **COVERAGE OF SERVICES OF A CERTIFIED REGISTERED NURSE ANESTHETIST UNDER PART B.**—Section 1861(s) of the Social Security Act (42 U.S.C. 1395x(s)) is amended—

(1) by redesignating paragraphs (11) through (14) as paragraphs (12) through (15), respectively;

(2) by striking “and” at the end of paragraph (9);

(3) by striking the period at the end of paragraph (10) and inserting “; and”; and

(4) by inserting after paragraph (10) the following new paragraph:

“(11) services of a certified registered nurse anesthetist (as defined in subsection (bb)).”.

(c) **DEFINITION OF SERVICES OF A CERTIFIED REGISTERED NURSE ANESTHETIST.**—Section 1861 of such Act is amended by inserting after subsection (aa) the following new subsection:

“**SERVICES OF A CERTIFIED REGISTERED NURSE ANESTHETIST**

“(bb)(1) The term ‘services of a certified registered nurse anesthetist’ means anesthesia services and related care furnished by a certified registered nurse anesthetist (as defined in paragraph (2)) which the nurse anesthetist is legally authorized to perform as such by the State in which the services are furnished.

“(2) The term ‘certified registered nurse anesthetist’ means a certified registered nurse anesthetist licensed by the State who meets such education, training, and other requirements relating to anesthesia services and related care as the Secretary may prescribe. In prescribing such requirements the Secretary may use the same requirements as those established by a national organization for the certification of nurse anesthetists.”.

(d) **DIRECT PAYMENT FOR SERVICES.**—Section 1832(a)(2)(B) of such Act (42 U.S.C. 1395k(a)(2)(B)) is amended—

(1) by striking “and” at the end of clause (i),

(2) by striking “; and” at the end of clause (ii) and inserting “, and”, and

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

“(iii) services of a certified registered nurse anesthetist; and”.

(e) AMOUNT OF PAYMENT.—(1) Section 1833(a)(1) of such Act (42 U.S.C. 1395l(a)(1)) is amended by striking “and” at the end of subparagraph (E), and by adding at the end the following: “and (H) with respect to services of a certified registered nurse anesthetist under section 1861(s)(11), the amounts paid shall be 80 percent of the lesser of the actual charge or the fee schedule for such services established by the Secretary in accordance with subsection (l).”.

(2) Section 1833 of such Act is further amended by adding at the end the following new subsection:

“(1)(1) The Secretary shall establish a fee schedule for services of certified registered nurse anesthetists under section 1861(s)(11).

“(2) Except as provided in paragraph (3), the fee schedule established under paragraph (1) shall be initially based on audited data from cost reporting periods ending in fiscal year 1985. The fee schedule shall be adjusted annually (to become effective on January 1 of each calendar year) by the percentage increase in the MEI (as defined in section 1842(b)(4)(E)(ii)) for that year.

“(3)(A) In establishing the initial fee schedule for those services, the Secretary shall adjust the fee schedule to the extent necessary to ensure that the estimated total amount which will be paid under this title for those services plus applicable coinsurance in 1989 will equal the estimated total amount which would be paid under this title for those services in 1989 if the services were included as inpatient hospital services and payment for such services was made under part A in the same manner as payment was made in fiscal year 1987, adjusted to take into account changes in prices and technology relating to the administration of anesthesia.

“(B) The Secretary shall also reduce the prevailing charge of physicians for medical direction of a certified registered nurse anesthetist, or the fee schedule for services of certified registered nurse anesthetists, or both, to the extent necessary to ensure that the estimated total amount which will be paid under this title plus applicable coinsurance for such medical direction and such services in 1989 and 1990 will not exceed the estimated total amount which would have been paid but for the enactment of the amendments made by section 9320 of the Omnibus Budget Reconciliation Act of 1986. A reduced prevailing charge under this subparagraph shall become the prevailing charge but for subsequent years for purposes of applying the economic index under the fourth sentence of section 1842(b)(3).

“(4) In establishing the fee schedule under paragraph (1), the Secretary may utilize a system of time units, a system of base and time units, or any appropriate methodology. The Secretary may establish a nationwide fee schedule or adjust the fee schedule for geographic areas (as the Secretary may determine to be appropriate).

“(5)(A) Payment for the services of a certified registered nurse anesthetist (for which payment may otherwise be made under this part) may be made on the basis of a claim or request for payment presented by the certified registered nurse anesthetist furnishing such services, or by a hospital, physician, or group practice with which the certified registered nurse anesthetist furnishing such

Ante, p. 2013.

Effective date.

42 USC 1395u.

Health care
professionals.

Claims.
Contracts.

services has an employment or contractual relationship that provides for payment to be made under this part for such services to such hospital, physician, or group practice.

“(B)(i) Payment for the services of a certified registered nurse anesthetist under this part may be made only on an assignment-related basis, and any such assignment agreed to by a certified registered nurse anesthetist shall be binding upon any other person presenting a claim or request for payment for such services.

“(ii) Except for deductible and coinsurance amounts applicable under this section, any person who knowingly and willfully presents, or causes to be presented, to an individual enrolled under this part a bill or request for payment for services of a certified registered nurse anesthetist for which payment may be made under this part only on an assignment-related basis is subject to a civil monetary penalty of not to exceed \$2,000 for each such bill or request. Such a penalty shall be imposed in the same manner as civil monetary penalties are imposed under section 1128A with respect to actions described in subsection (a) of that section.

“(C) No hospital that presents a claim or request for payment for services of a certified nurse anesthetist under this part may treat any uncollected coinsurance amount imposed under this part with respect to such services as a bad debt of such hospital for purposes of this title.

“(6)(A) If an adjustment under paragraph (3)(B) results in a reduction in the reasonable charge for a physicians’ service and a nonparticipating physician furnishes the service to an individual entitled to benefits under this part (subject to subparagraph (D)), the physician may not charge the individual more than the limiting charge (as defined in subparagraph (B)) plus (for services furnished during the 12-month period beginning on the effective date of the reduction) $\frac{1}{2}$ of the amount by which the physician’s actual charges for the service for the previous 12-month period exceeds the limiting charge.

“(B) In subparagraph (A), the term ‘limiting charge’ means, with respect to a service, 125 percent of the prevailing charge for the service after the reduction referred to in subparagraph (A).

“(C) If a physician knowingly and willfully imposes charges in violation of subparagraph (A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).

“(D) This paragraph shall not apply to services furnished after the earlier of (i) December 31, 1990, or (ii) one-year after the date the Secretary reports to Congress, under section 1845(e)(3), on the development of the relative value scale under section 1845.”

(3) Section 1842(j)(2) of such Act (42 U.S.C. 1395u(j)(2)) is amended by striking “paragraph (1) or subsection (k)” and inserting “this paragraph”.

(f) NOT TREATED AS PART OF INPATIENT HOSPITAL SERVICES.—Section 1861(b)(4) of such Act (42 U.S.C. 1395x(b)(4)) is amended by inserting before the semicolon the following: “, anesthesia services provided by a certified registered nurse anesthetist”.

(g) CONFORMING AMENDMENTS TO HOSPITAL PAYMENTS.—(1) Section 1886(a)(4) of such Act (42 U.S.C. 1395ww(a)(4)) is amended by striking “, costs of anesthesia services provided by a certified registered nurse anesthetist,”.

(2) Section 1886(d)(5) of such Act (42 U.S.C. 1395ww(d)(5)) is amended by striking subparagraph (E).

Ante, pp. 2003, 2008.

Claims.

Health care professionals.

Health care professionals. Sanctions.

Reports.

Ante, p. 190.

(h) **OTHER CONFORMING AMENDMENTS.**—(1) Section 1862(a)(14) of such Act (42 U.S.C. 1395y(a)(14)) is amended by inserting before the period the following: “or are services of a certified registered nurse anesthetist”.

(2) Section 1866(a)(1)(H) of such Act (42 U.S.C. 1395cc(a)(1)(H)) is amended by inserting “, and other than services of a certified registered nurse anesthetist” after “1862(a)(14)”.

(3) Sections 1864(a), 1865(a), 1902(a)(9)(C), and 1915(a)(1)(B)(ii)(I) of such Act (42 U.S.C. 1395aa(a), 1395bb(a), 1396a(a)(9)(C), 1396n(a)(1)(B)(ii)(I)) are each amended by striking “paragraphs (11) and (12)” and inserting “paragraphs (12) and (13)”.

(i) **EFFECTIVE DATE.**—The amendments made by this section (other than subsection (a)) shall apply to services furnished on or after January 1, 1989.

(j) **CONSTRUCTION.**—Nothing in this section or the amendments made by this section shall contravene provisions of State law relating to the practice of medicine or nursing or State law requirements or institutional requirements regarding the administration of anesthesia and its medical direction or supervision.

SEC. 9321. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PARTS A AND B.

(a) **TREATMENT OF GROUP PURCHASING VENDOR AGREEMENTS.**—

(1) **IN GENERAL.**—Section 1877(b)(3) of the Social Security Act (42 U.S.C. 1395nn(b)(3)) 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 the following:

“(C) any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities who are furnishing services reimbursed under this title if—

“(i) the person has a written contract, with each such individual or entity which specifies the amount to be paid the person, which amount may be a fixed amount or a fixed percentage of the value of the purchases made by each such individual or entity under the contract, and

“(ii) in the case of an entity that is a provider of services, the person discloses (in such form and manner as the Secretary requires) to the entity and, upon request, to the Secretary the amount received from each such vendor with respect to purchases made by or on behalf of the entity.”.

(2) **EFFECTIVE DATE.**—The amendments made by paragraph (1) apply to payments made before, on, or after the date of the enactment of this Act.

(b) **EXTENSION AND CLARIFICATION OF COMPETITIVE CONTRACTING AUTHORITY.**—Section 2326(a) of the Deficit Reduction Act of 1984 is amended—

(1) by striking “of the fiscal years” and all that follows through “, the Secretary” and inserting “fiscal year (beginning with fiscal year 1985 and ending with fiscal year 1989), the Secretary”, and

(2) by inserting “or cost reimbursement provisions under sections 1816(c) or 1842(c) of such Act” after “such Act” the second place it appears.

(c) **TREATMENT OF CAPITAL-RELATED REGULATIONS.**—

42 USC 1395k
note.

42 USC 1395k
note.

Contracts.

42 USC 1395nn
note.

42 USC 1395h
note.

Ante, pp. 1997,
1998.
42 USC 1395ww
note.

(1) PROHIBITION OF ISSUANCE OF FINAL REGULATIONS ON CAPITAL-RELATED COSTS AS PART OF PAYMENT FOR OPERATING COSTS BEFORE SEPTEMBER 1, 1987.—Notwithstanding any other provision of law (except as provided in paragraph (3)), the Secretary of Health and Human Services may not issue, in final form, after September 1, 1986, and before September 1, 1987, any regulation that changes the methodology for computing the amount of payment for capital-related costs (as defined in paragraph (4)) for inpatient hospital services under part A of title XVIII of the Social Security Act. Any regulation published in violation of the previous sentence before the date of the enactment of this Act is void and of no effect.

42 USC 1395c.

(2) NOT INCLUDING CAPITAL-RELATED REGULATIONS IN BUDGET BASELINE.—Any reference in law to a regulation issued in final form or proposed by the Health Care Financing Administration pursuant to sections 1886(b)(3)(B), 1886(d)(3)(A), and 1886(e)(4) of the Social Security Act shall not include any regulation issued or proposed with respect to capital-related costs (as defined in paragraph (4)).

42 USC 1395ww.

(3) EXCEPTION.—Paragraph (1) shall not apply to any regulation issued for the sole purpose of implementing section 1886(g)(3)(A) and (B) of the Social Security Act (as amended by section 9303(a) of this Act).

(4) CAPITAL-RELATED COSTS DEFINED.—In this subsection, the term “capital-related costs” means those capital-related costs that are specifically excluded, under the second sentence of “operating costs of inpatient hospital services” (as defined in that section) for cost reporting periods beginning prior to October 1, 1987.

(d) LIMITATION ON AUTHORITY TO ISSUE CERTAIN FINAL REGULATIONS AND INSTRUCTIONS RELATING TO HOSPITALS OR PHYSICIANS.—Notwithstanding any other provision of law, except as required to implement specific provisions required under statute and except as provided under subsection (c) with respect to a regulation described in that subsection, the Secretary of Health and Human Services is not authorized to issue in final form after the date of the enactment of this Act and before September 1, 1987, any regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act in fiscal year 1988 of more than \$50,000,000, and which relates to hospitals or physicians.

42 USC 1395ww
note.

(e) 60-DAY NOTICE FOR PROPOSED REGULATIONS.—

(1) IN GENERAL.—Section 1871 of the Social Security Act (42 U.S.C. 1395hh) is amended by inserting “(a)” after “1871.” and by adding at the end the following new subsection:

“(b)(1) Except as provided in paragraph (2), before issuing in final form any regulation under subsection (a), the Secretary shall provide for notice of the proposed regulation in the Federal Register and a period of not less than 60 days for public comment thereon.

Federal
Register,
publication.

“(2) Paragraph (1) shall not apply where—

“(A) a statute specifically permits a regulation to be issued in interim final form or otherwise with a shorter period for public comment,

“(B) a statute establishes a specific deadline for the implementation of a provision and the deadline is less than 150 days after the date of the enactment of the statute in which the deadline is contained, or

“(C) subsection (b) of section 553 of title 5, United States Code, does not apply pursuant to subparagraph (B) of such subsection.”.

(2) **CONFORMING AMENDMENTS.**—(A) Section 1886(e)(3)(A) of such Act (42 U.S.C. 1395ww(e)(3)(A)), as amended by section 9302(e)(3)(B), is amended by striking “April” and inserting “March”.

(B) Section 1886(e)(5)(A) of such Act is amended by striking “June” and inserting “May”.

(3) **EFFECTIVE DATES.**—

(A) The amendments made by paragraph (1) shall apply to notices of proposed rulemaking issued after the date of the enactment of this Act.

(B) The amendments made by paragraph (2) shall take effect beginning with fiscal year 1989.

42 USC 1395hh
note.

42 USC 1395ww
note.

PART 3—PROVISIONS RELATING TO MEDICARE PART B

SEC. 9331. PAYMENT FOR PHYSICIANS' SERVICES.

(a) **DETERMINATION OF MAXIMUM ALLOWABLE PREVAILING CHARGES FOR PHYSICIANS' SERVICES.**—

(1) **IN GENERAL.**—Section 1842(b)(4)(A) of the Social Security Act (42 U.S.C. 1395u(b)(4)(A)) is amended by striking clause (iii) and inserting the following:

“(iii) In determining the maximum allowable prevailing charges which may be recognized consistent with the index described in the fourth sentence of paragraph (3) for physicians' services furnished on or after January 1, 1987, by participating physicians, the Secretary shall treat the maximum allowable prevailing charges recognized as of December 31, 1986, under such sentence with respect to participating physicians as having been justified by economic changes.

“(iv) In determining the prevailing charge level under the third and fourth sentences of paragraph (3) for a physicians' service furnished on or after January 1, 1987, by a nonparticipating physician, the Secretary shall set the level at 96 percent of the prevailing charge levels established under such sentences with respect to such service furnished by participating physicians.

“(v) Beginning with 1987, the percentage increase in the MEI (as defined in subparagraph (E)(ii)) for each year shall be the same for nonparticipating physicians as for participating physicians.”.

(2) **CONFORMING AMENDMENT.**—Section 1842(b)(4)(C) of such Act is amended—

(A) by striking “(i)” after “(C)”, and

(B) by striking clause (ii).

(3) **DEFINITIONS.**—Section 1842(b)(4) of such Act is further amended by adding at the end the following new subparagraph:

“(E) In this section:

“(i) The term ‘participating physician’ refers, with respect to the furnishing of services, to a physician who at the time of furnishing the services is a participating physician (under subsection (h)(1)), and the term ‘nonparticipating physician’ refers, with respect to the furnishing of services, a physician who at the time of furnishing the services is not a participating physician.

"(ii) The term 'percentage increase in the MEI' means, with respect to physicians' services furnished in a year, the percentage increase in the medicare economic index (referred to in the fourth sentence of paragraph (3)) applicable to such services furnished as of the first day of that year."

(4) **EFFECTIVE DATE.**—The amendments made by this subsection shall apply to services furnished on or after January 1, 1987.

42 USC 1395u
note.

(b) **GENERAL LIMIT ON ACTUAL CHARGES FOR NONPARTICIPATING PHYSICIANS.**—

42 USC 1395u.

(1) **IN GENERAL.**—Section 1842(j)(1) of such Act is amended—

(A) by inserting "(A)" after "(j)(1)", and

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

"(B)(i) During any period (on or after January 1, 1987, and before the date specified in clause (ii)), during which a physician is a nonparticipating physician, the Secretary shall monitor each such physician's actual charges for physicians' services furnished to individuals enrolled under this part. If such physician knowingly and willfully bills for such a service a physician's actual charge (as defined in subparagraph (C)(vi) in excess of the maximum allowable actual charge determined under subparagraph (C) for that service, the Secretary may apply sanctions against such physician in accordance with paragraph (2).

Sanctions.

"(ii) Clause (i) shall not apply to services furnished after the earlier of (I) December 31, 1990, or (II) one-year after the date the Secretary reports to Congress, under section 1845(e)(3), on the development of the relative value scale under section 1845.

Ante, p. 190.

"(C)(i) For a particular physicians' service furnished by a nonparticipating physician to individuals enrolled under this part during a year, for purposes of subparagraph (B), the maximum allowable actual charge is determined as follows: If the physician's actual charge for that service in the previous year was—

"(I) less than 115 percent of the prevailing charge for the year involved for such service furnished by nonparticipating physicians, the maximum allowable actual charge for the year involved is the greater of the maximum allowable actual charge described in subclause (II) or the charge described in clause (ii), or

"(II) equal to, or greater than, 115 percent of the prevailing charge for the year involved for such service furnished by nonparticipating physicians, the maximum allowable actual charge is 101 percent of the physician's maximum allowable actual charge for the service for the previous year.

"(ii) For purposes of clause (i)(I), the charge described in this clause for a particular physicians' service furnished in a year is the maximum allowable actual charge for the service of the physician for the previous year plus the product of (I) the applicable fraction (as defined in clause (iii)) and (II) the amount by which 115 percent of the prevailing charge for the year involved for such service furnished by nonparticipating physicians, exceeds the physician's maximum allowable actual charge for the service for the previous year.

"(iii) In clause (ii), the 'applicable fraction' is—

"(I) for 1987, $\frac{1}{4}$,

"(II) for 1988, $\frac{1}{3}$,

"(III) for 1989, $\frac{1}{2}$, and

"(IV) for any subsequent year, 1.

"(iv) For purposes of determining the maximum allowable actual charge under clauses (i) and (ii) for 1987, in the case of a physicians' service for which the physician has actual charges for the calendar quarter beginning on April 1, 1984, the 'maximum allowable actual charge' for 1986 is the physician's actual charge for such service furnished during such quarter.

"(v) For purposes of determining the maximum allowable actual charge under clauses (i) and (ii) for a year after 1987, in the case of a physicians' service for which the physician has no actual charges for the calendar quarter beginning on April 1, 1984, and for which a maximum allowable actual charge has not been previously established under this clause, the 'maximum allowable actual charge' for the previous year shall be the 50th percentile of the customary charges for the service (weighted by frequency of the service) performed by nonparticipating physicians in the locality during the 12-month period ending June 30 of that previous year.

"(vi) For purposes of this subparagraph and subparagraph (B), a 'physician's actual charge' for a physicians' service furnished in a year or other period is the weighted average (or, at the option of the Secretary for a service furnished in the calendar quarter beginning April 1, 1984, the median) of the physician's charges for such service furnished in the year or other period."

42 USC 1395u.

(2) PROVISION OF ACTUAL CHARGE INFORMATION BY CARRIER TO NONPARTICIPATING PHYSICIANS.—Section 1842(b)(3) of such Act is amended—

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

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

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

"(G) will provide to each nonparticipating physician, at the beginning of each year, a list of the physician's maximum allowable actual charges (established under subsection (j)(1)(C)) for the year for the physicians' services mostly commonly furnished by that physician;"

(3) CONFORMING AMENDMENT.—Section 1842(b)(4)(D) of such Act is amended by adding at the end the following new clause:

"(iv) In determining the customary charges for a physicians' service furnished on or after January 1, 1988, if a physician was a nonparticipating physician in a previous year (beginning with 1987), the Secretary shall not recognize any amount of such actual charges (for that service furnished during such previous year) that exceeds the maximum allowable actual charge for such service established under subsection (j)(1)(C)."

42 USC 1395u
note.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to services furnished on or after January 1, 1987.

42 USC 1395u
note.

(c) MEDICARE ECONOMIC INDEX.—

42 USC 1395j.

(1) FOR 1987.—Notwithstanding any other provision of law, for purposes of part B of title XVIII of the Social Security Act for physicians' services furnished in 1987, the percentage increase in the MEI (as defined in section 1842(b)(4)(E)(ii) of the Social Security Act) shall be 3.2 percent.

(2) PROHIBITING RETROACTIVE ADJUSTMENT OF MEDICARE ECONOMIC INDEX.—The Secretary of Health and Human Services is not authorized to revise the MEI in a manner that provides, for any period before January 1, 1985, for the substitution of a

rental equivalence or rental substitution factor for the housing component of the consumer price index.

(3) **ANNUALIZATION OF MEI.**—(A) The fourth sentence of section 1842(b)(3) of the Social Security Act (42 U.S.C. 1395u(b)(3)) is amended by inserting after “ending June 30, 1973,” the following: “or (with respect to physicians services furnished in a year after 1987) the level determined under this sentence for the previous year”, and inserting “year-to-year” before “economic changes”.

(B) The amendments made by subparagraph (A) shall apply to physicians' services furnished on or after January 1, 1988.

(4) **STUDY.**—The Secretary shall conduct a study of the extent to which the MEI appropriately and equitably reflects economic changes in the provision of the physicians' services to medicare beneficiaries. In conducting such study the Secretary shall consult with appropriate experts.

(5) **LIMITATION ON CHANGES IN MEI METHODOLOGY.**—The Secretary shall not change the methodology (including the basis and elements) used in the MEI from that in effect as of October 1, 1985, until completion of the study under paragraph (4). After the completion of the study, the Secretary may not change such methodology except after providing notice in the Federal Register and opportunity for public comment.

(6) **MEI DEFINED.**—In this subsection, the term “MEI” means the economic index referred to in the fourth sentence of section 1842(b)(3) of the Social Security Act.

(d) DEVELOPMENT AND USE OF HCFA COMMON PROCEDURE CODING SYSTEM.—

(1) Not later than July 1, 1989, the Secretary of Health and Human Services (in this subsection referred to as the “Secretary”), after public notice and opportunity for public comment and after consultation with appropriate medical and other experts, shall group the procedure codes contained in any HCFA Common Procedure Coding System for payment purposes to minimize inappropriate increases in the intensity or volume of services provided as a result of coding distinctions which do not reflect substantial differences in the services rendered.

(2) Not later than January 1, 1990, each carrier with which the Secretary has entered into a contract under section 1842 of the Social Security Act shall make payments under part B of title XVIII of such Act based on the grouping of procedure codes effected under paragraph (1).

(e) RECOMMENDATIONS.—

(1) Section 1845(e) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

“(4)(A) In making recommendations with respect to the application of the relative value scale for purposes of establishing a fee schedule, the Secretary shall—

“(i) develop and assess an appropriate index to be used for making adjustments to reflect justifiable differences in the costs of practice based upon geographic location without exacerbating the geographic maldistribution of physicians, and

“(ii) assess the advisability and feasibility of developing an appropriate adjustment to assist in attracting and retaining physicians in medically underserved areas.

42 USC 1395u note.

42 USC 1395u note.

Public information.
42 USC 1395u note.

42 USC 1395u note.

42 USC 1395u note.

Public information.

Contracts.

42 USC 1395u.
42 USC 1395j.

Ante, p. 192.

"(B) In carrying out the requirements of subparagraph (A), the Secretary shall take into consideration the recommendations made by the Physician Payment Review Commission.

"(C)(i) The Secretary shall develop an interim index under subparagraph (A)(i) prior to January 1, 1988, based upon the most accurate and recent data that are available with respect to the costs of practice.

"(ii) The Secretary shall collect data with respect to the costs of practice (including, but not limited to, data on nonphysician personnel costs, malpractice insurance costs, and commercial rents) for the purpose of refining the index under subparagraph (A)(i) prior to December 31, 1989, and periodically updating the index thereafter.

"(D) In conjunction with developing an index under subparagraph (A), the Secretary shall conduct a study of the advisability of redefining the localities designated by carriers for payment purposes."

42 USC 1395w-1.

(2) Section 1845(b)(3) of such Act is amended by inserting "and respecting the index and the adjustment described in subsection (e)(4)(A)" after "subsection (e)".

(3) Section 1845(e)(3) of such Act is amended—

(A) by striking "July 1, 1987" and inserting in lieu thereof "July 1, 1989", and

(B) by striking "on or after January 1, 1988" and inserting in lieu thereof "after December 31, 1989".

SEC. 9332. INCENTIVES FOR PHYSICIAN PARTICIPATION.

(a) RECRUITING.—

(1) CARRIER RESPONSIBILITY.—Section 1842(b)(3) of the Social Security Act (42 U.S.C. 1395u(b)(3)), as amended by section 9331(b)(2), is further amended—

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

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

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

"(H) if it makes determinations or payments with respect to physicians' services, will implement—

"(i) programs to recruit and retain physicians as participating physicians in the area served by the carrier, including educational and outreach activities and the use of professional relations personnel to handle billing and other problems relating to payment of claims of participating physicians; and

"(ii) programs to familiarize beneficiaries with the participating physician program and to assist such beneficiaries in locating participating physicians;"

(2) MEASURING CARRIER PERFORMANCE.—The Secretary of Health and Human Services shall provide, in the standards and criteria established under section 1842(b)(2) of the Social Security Act for contracts under that section, a system to measure a carrier's performance of the responsibilities described in sections 1842(b)(3)(H) and 1842(h) of such Act.

(3) CARRIER BONUSES FOR GOOD PERFORMANCE.—Of the amounts appropriated for administrative activities to carry out part B of title XVIII of the Social Security Act, the Secretary of Health and Human Services shall provide payments, totaling 1

Contracts.
42 USC 1395u
note.

42 USC 1395u
note.

42 USC 1395j.

percent of the total payments to carriers for claims processing in any fiscal year, to carriers under section 1842 of such Act, to reward such carriers for their success in increasing the proportion of physicians in the carrier's service area who are participating physicians.

(4) EFFECTIVE DATES.—

(A) CARRIER RESPONSIBILITY.—The amendment made by paragraph (1) shall be effective for contracts under section 1842 of the Social Security Act as of October 1, 1987.

(B) PERFORMANCE MEASURES.—The Secretary of Health and Human Services shall provide for the establishment of the standards and criteria required under paragraph (2) by not later than October 1, 1987, which shall apply to contracts as of October 1, 1987.

(C) CARRIER BONUSES.—From the amounts appropriated for each fiscal year (beginning with fiscal year 1988), the Secretary of Health and Human Services shall first provide for payments of bonuses to carriers under paragraph (3) not later than April 1, 1988, to reflect performance of carriers during the enrollment period at the end of 1987.

(b) DIRECTORIES OF PARTICIPATING PHYSICIANS.—

(1) REQUIRING DISTRIBUTION TO MEDICARE BENEFICIARIES, UPON REQUEST.—Section 1842(h) of the Social Security Act (42 U.S.C. 1395u(h)) is amended—

(A) in paragraph (2), by striking period and inserting the following: “and may request a copy of an appropriate directory published under paragraph (4). Each such carrier shall, without charge, mail a copy of such directory upon such a request.”;

(B) in paragraph (5)—

(i) by striking “publication of the directories” and inserting “the participation program under this subsection and the publication and availability of the directories”, and

(ii) by adding at the end the following: “The Secretary shall include such notice in the mailing of appropriate benefit checks provided under title II.”; and

(C) in the second sentence of paragraph (6)—

(i) by inserting before the period the following: “and that an appropriate number of copies of each such directory is sent to hospitals located in the area”, and

(ii) by adding at the end the following: “Such copies shall be sent free of charge.”.

(2) ORGANIZATION OF DIRECTORIES.—Section 1842(h)(4) of such Act is amended by adding at the end the following: “Each participating physician directory for an area shall provide an alphabetical listing of all participating physicians practicing in the area and an alphabetical listing by locality and specialty of such physicians.”.

(3) EFFECTIVE DATES.—The amendments made by this paragraph shall first apply to directories for 1987.

(c) PROHIBITING UNASSIGNED BILLING OF SERVICES DETERMINED TO BE MEDICALLY UNNECESSARY BY A CARRIER.—

(1) IN GENERAL.—Section 1842 of the Social Security Act is further amended by adding at the end the following new subsection:

“(1)(A) Subject to subparagraph (C), if—

42 USC 1395u
note.

Contracts.

Health care
facilities.

42 USC 1395u
note.

"(i) a nonparticipating physician furnishes services to an individual enrolled for benefits under this part,

"(ii) payment for such services is not accepted on an assignment-related basis,

42 USC 1320c.

42 USC 1395y.

"(iii) a carrier determines under this part or a peer review organization determines under part B of title XI that payment may not be made by reason of section 1862(a)(1) because a service otherwise covered under this title is not reasonable and necessary under the standards described in that section, and

"(iv) the physician has collected any amounts for such services,

the physician shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts so collected.

"(B) A refund under subparagraph (A) is considered to be on a timely basis only if—

"(i) in the case of a physician who does not request reconsideration or seek appeal on a timely basis, the refund is made within 30 days after the date the physician receives a denial notice under paragraph (2), or

"(ii) in the case in which such a reconsideration or appeal is taken, the refund is made within 15 days after the date the physician receives notice of an adverse determination on reconsideration or appeal.

"(C) Subparagraph (A) shall not apply to the furnishing of a service by a physician to an individual if—

"(i) the physician did not know and could not reasonably have been expected to know that payment may not be made for the service by reason of section 1862(a)(1), or

"(ii) before the service was provided, the individual was informed that payment under this part may not be made for the specific service and the individual has agreed to pay for that service.

Contracts.

"(2) Each carrier with a contract in effect under this section with respect to physicians and each peer review organization with a contract under part B of title XI shall send any notice of denial of payment for physicians' services based on section 1862(a)(1) and for which payment is not requested on an assignment-related basis to the physician and the individual involved.

Sanctions.

"(3) If a physician knowingly and willfully fails to make refunds in violation of paragraph (1)(A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2)."

42 USC 1395u
note.

(2) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall apply to services furnished on or after October 1, 1987.

42 USC 1395u.

(d) **DISCLOSURE OF INFORMATION OF UNASSIGNED CLAIMS FOR CERTAIN PHYSICIANS' SERVICES.**—

(1) **IN GENERAL.**—Section 1842 of the Social Security Act, as amended by subsection (c)(1), is further amended by adding at the end the following new subsection:

"(m)(1) In the case of a nonparticipating physician who—

"(A) performs an elective surgical procedure for an individual enrolled for benefits under this part and for which the physician's actual charge is at least \$500, and

"(B) does not accept payment for such procedure on an assignment-related basis,

the physician must disclose to the individual, in writing and in a form approved by the Secretary, the physician's estimated actual charge for the procedure, the estimated approved charge under this

part for the procedure, the excess of the physician's actual charge over the approved charge, and the coinsurance amount applicable to the procedure. The written estimate may not be used as the basis for, or evidence in, a civil suit.

"(2) A physician who fails to make a disclosure required under paragraph (1) with respect to a procedure shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts collected for the procedure in excess of the charges recognized and approved under this part.

"(3) If a physician knowingly and willfully fails to comply with paragraph (2), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).

Sanctions.

"(4) The Secretary shall provide for such monitoring of requests for payment for physicians' services to which paragraph (1) applies as is necessary to assure compliance with paragraph (2)."

(2) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall apply to surgical procedures performed on or after October 1, 1987.

42 USC 1395u note.

(e) **MAINTENANCE AND USE OF PARTICIPATING PHYSICIAN DIRECTORIES BY HOSPITALS.**—

42 USC 1395cc.

(1) **REQUIREMENT OF PARTICIPATION.**—Section 1866(a)(1) of the Social Security Act, as amended by section 9305(b)(1), is further amended—

Ante, p. 1989.

(A) by striking "and" at the end of subparagraph (L),
(B) by striking the period at the end of subparagraph (M) and inserting ", and", and

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

"(N) in the case of hospitals—

"(i) to make available to its patients the directory or directories of participating physicians (published under section 1842(h)(4)) for the area served by the hospital, and

"(ii) if hospital personnel (including staff of any emergency or outpatient department) refer a patient to a nonparticipating physician for further medical care on an outpatient basis, the personnel must inform the patient that the physician is a nonparticipating physician and, whenever practicable, must identify at least one qualified participating physician who is listed in such a directory and from whom the patient may receive the necessary services."

(2) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall apply to agreements under section 1866(a) of the Social Security Act as of October 1, 1987.

42 USC 1395cc note.

SEC. 9333. LIMITS ON REASONABLE CHARGES.

(a) **PROCEDURES FOR ESTABLISHMENT OF SPECIAL LIMITS ON REASONABLE CHARGES FOR PART B SERVICES.**—Section 1842(b)(8) of the Social Security Act (42 U.S.C. 1395u(b)(8)) is amended—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(2) by inserting "(A)" after "(8)"; and

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

"(B)(i) The Secretary may provide for an increase or decrease in the reasonable charge otherwise recognized under this section with respect to a specific physicians' service only in accordance with the

Health care professionals.

criteria set forth in subparagraph (A) and with the succeeding provisions of this paragraph.

"(ii) The factors described pursuant to subparagraph (A)(i) with respect to payment for physicians' services shall include, but need not be limited to, the following:

"(I) Prevailing charges for a service in a particular locality are significantly in excess of or below prevailing charges in other comparable localities, taking into account the relative costs of furnishing the services in the different localities.

42 USC 1396.

"(II) The programs established under this title and title XIX are the sole or primary sources of payment for a service.

"(III) The marketplace for a service is not truly competitive because of a limited number of physicians who perform that service.

"(IV) There have been increases in charges for a service that cannot be explained by inflation or technology.

"(V) The charges do not reflect changing technology, increased facility with that technology, or reductions in acquisition or production costs.

"(VI) The prevailing charges for a service under this part are substantially higher or lower than the payments made for the service by other purchasers in the same locality.

"(iii) In applying subparagraph (A), the Secretary may compare—

"(I) the charges and resource costs for related procedures,

"(II) charges and resource costs for the procedure over a period of time,

"(III) charges for a procedure in different geographic areas, and

"(IV) the charges and allowed payments for a procedure under this part and by other payors.

"(iv) The factors considered under subparagraph (A)(ii) shall take into account regional differences in fees, unless there is substantial economic justification for a uniform fee or a uniform payment limit. Such substantial economic justification must be explained by the Secretary in the notice and final determination required by paragraph (9).

"(v) An adjustment under clause (i) on the basis of a comparison of the prevailing charges in different localities may be made only if the Secretary determines that the prevailing charge allowed in one locality is out of line with prevailing charges allowed in other localities after accounting for differences in practice costs.

"(vi) In this subparagraph, 'resource costs' include factors such as the time required to provide a procedure (including pre-procedure evaluation and post-procedure follow-up), the complexity of the procedure, the training required to perform the procedure, and the risk involved in the procedure.

Claims.

"(C) In determining whether to adjust payment rates under subparagraph (B)(i), the Secretary shall consider the potential impacts on quality, access, and beneficiary liability of the adjustment, including the likely effects on assignment rates, reasonable charge reductions on unassigned claims, and participation rates of physicians."

Post, p. 2035.

(b) INHERENT REASONABLENESS PROCEDURES.—Section 1842(b) of the Social Security Act (42 U.S.C. 1395u(b)) is amended by redesignating paragraph (9) as paragraph (11) and inserting after paragraph (8) the following new paragraphs:

"(9)(A) In the case of any physicians' service with respect to which the Secretary—

Health care professionals.

"(i) determines, after appropriate consultation with representatives of the physicians likely to be affected by any change in the reasonable charge, that the application of this subsection results in the determination of a reasonable charge that, by reason of its grossly excessive or grossly deficient amount, is not inherently reasonable, and

"(ii) proposes to establish a reasonable charge that is realistic and equitable or a methodology for arriving at such a charge, the Secretary shall publish notice of such proposal in the Federal Register.

Federal Register, publication.

"(B) A notice required by subparagraph (A) shall—

"(i) specify the charge or methodology proposed to be established with respect to a service and shall explain the factors and data that the Secretary took into account in determining the charge or methodology so specified, and

"(ii) explain the potential impacts described in paragraph (8)(C).

"(C) After publication of the notice required by subparagraph (A), the Secretary shall allow not less than 60 days for public comment on the proposal.

"(D) In addition to carrying out its functions under section 1845, the Physician Payment Review Commission (in this paragraph referred to as the 'Commission') shall comment on any such proposal within the period of comment allowed by the Secretary pursuant to subparagraph (C).

Ante, p. 190.

"(E)(i) Taking into consideration the comments made by the Commission and the public, the Secretary shall publish in the Federal Register a final determination with respect to the reasonable charge or methodology to be established with respect to the service.

Federal Register, publication.

"(ii) A final determination published pursuant to clause (i) shall explain the factors and data that the Secretary took into consideration in making the final determination, and shall include and respond to the comments made by the Commission pursuant to subparagraph (D).

"(10)(A)(i) If an adjustment under paragraph (8)(B) results in a reduction in the reasonable charge for a physicians' service, and a nonparticipating physician furnishes the service to an individual entitled to benefits under this part after the effective date of such reduction and before the end of the period described in subparagraph (C), the physician may not charge the individual more than the limiting charge (as defined in clause (ii)) plus (for services furnished during the 12-month period beginning on the effective date of the reduction) $\frac{1}{2}$ of the amount by which the physician's actual charge for the service for the previous 12-month period exceeds the limiting charge.

Health care professionals.

"(ii) In clause (i), the term 'limiting charge' means, with respect to a service, 125 percent of the inherently reasonable charge established under paragraph (8).

"(B) If a physician knowingly and willfully imposes charges in violation of subparagraph (A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).

Sanctions.

"(C) Subparagraph (A) shall not apply to services furnished after the earlier of (i) December 31, 1990, or (ii) one-year after the date the

Reports.

Ante, p. 192.

42 USC 1395u
note.

42 USC 1395j.

42 USC 1395u
note.

Secretary reports to Congress, under section 1845(e)(3), on the development of the relative value scale under section 1845.”.

(c) **REVIEW OF PROCEDURES.**—Not later than October 1, 1987, the Secretary of Health and Human Services shall review the inherent reasonableness of the reasonable charges for at least 10 of the most costly procedures with respect to which payment is made under part B of title XVIII of the Social Security Act (determined on the basis of the aggregate annual payments under such part with respect to each such procedure).

(d) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 9334. PAYMENT FOR CATARACT SURGICAL PROCEDURES.

(a) **LIMITATIONS.**—Section 1842(b)(11) of the Social Security Act (42 U.S.C. 1395u(b)(11)), as redesignated by section 9333(b), is amended—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively,

(2) by inserting “(A)” after “(11)”, and

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

“(B)(i) In determining the reasonable charge under paragraph (3) for a cataract surgical procedure, subject to clause (ii), the prevailing charge for such procedure otherwise recognized for participating and nonparticipating physicians shall be reduced by 10 percent with respect to procedures performed in 1987 and shall be further reduced by 2 percent with respect to procedures performed in 1988. A reduced prevailing charge under this subparagraph shall become the prevailing charge level for subsequent years for purposes of applying the economic index under the fourth sentence of paragraph (3).

“(ii) In no case shall the reduction under clause (i) for a surgical procedure result in a prevailing charge in a locality for a year which is less than 75 percent of the weighted national average of such prevailing charges for such procedure for all the localities in the United States for 1986.

“(C)(i) In the case of a reduction in the reasonable charge for a physicians’ service under subparagraph (B), if a nonparticipating physician furnishes the service to an individual entitled to benefits under this part after the effective date of such reduction (subject to clause (iv)), the physician may not charge the individual more than the limiting charge (as defined in clause (ii)) plus (for services furnished during the 12-month period beginning on the effective date of the reduction) ½ of the amount by which the physician’s actual charges for the service for the previous 12-month period exceeds the limiting charge.

“(ii) In clause (i), the term ‘limiting charge’ means, with respect to a service, 125 percent of the prevailing charge for the service after the reduction referred to in clause (i).

“(iii) If a physician knowingly and willfully imposes charges in violation of clause (i), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).

“(iv) This subparagraph shall not apply to services furnished after the earlier of (I) December 31, 1990, or (II) one-year after the date the Secretary reports to Congress, under section 1845(e)(3), on the development of the relative value scale under section 1845.”.

(b) **RATIFICATION OF REGULATIONS.**—

(1) **IN GENERAL.**—The Congress hereby ratifies the final regulation of the Secretary of Health and Human Services published

Sanctions.

42 USC 1395u
note.

on page 35693 of volume 51 of the Federal Register on October 7, 1986, relating to reasonable charge payment limits for anesthesia services under the medicare program.

(2) **PATIENT PROTECTIONS.**—In the case of any reduction in the reasonable charge for physicians' services effected under the regulation described in paragraph (1), the provisions of section 1842(b)(10) of the Social Security Act (added by the amendment made by subsection (a)(3)) shall apply in the same manner and to the same extent as they apply to a reduction in the reasonable charge for a physicians' service effected under section 1842(b)(8) of such Act.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to services furnished on or after January 1, 1987.

Health care professionals.

42 USC 1395u.

42 USC 1395u note.

SEC. 9335. PAYMENT RATES FOR RENAL SERVICES AND IMPROVEMENTS IN ADMINISTRATION OF END STAGE RENAL DISEASE NETWORKS AND PROGRAM.

(a) **COMPOSITE RATES FOR DIALYSIS SERVICES.**—

(1) **IN GENERAL.**—Effective with respect to dialysis services provided on or after October 1, 1986, and before October 1, 1988, the Secretary of Health and Human Services shall establish the base rate for routine dialysis treatment in a free-standing facility and in a hospital-based facility under section 1881(b)(7) of the Social Security Act at a level equal to the respective rate in effect as of May 13, 1986, reduced by \$2.00.

42 USC 1395rr note.

42 USC 1395rr.

(2) **ASSURING PROMPT CONSIDERATION OF EXCEPTION REQUESTS.**—Section 1881(b)(7) of the Social Security Act (42 U.S.C. 1395rr(b)(7)) is amended—

(A) in the third sentence, by inserting “and of pediatric facilities” after “isolated, rural areas”, and

(B) by inserting after the third sentence the following new sentence: “Each application for such an exception shall be deemed to be approved unless the Secretary disapproves it by not later than 60 working days after the date the application is filed.”

(3) **EFFECTIVE DATE.**—The amendments made by paragraph (2) shall apply to applications filed on or after the date of the enactment of this Act.

42 USC 1395rr note.

(b) **REPORT ON PAYMENT RATES.**—

42 USC 1395rr note.

(1) **IN GENERAL.**—The Secretary of Health and Human Services shall provide for—

(A) a study to evaluate the effects of reductions in the rates of payment for facility and physicians' services under the medicare program for patients with end stage renal disease on their access to care or on the quality of care, and

(B) a report to Congress on the results of the study by not later than January 1, 1988.

Health care professionals.

Reports.

(2) **ARRANGEMENTS WITH INSTITUTE OF MEDICINE.**—The Secretary shall request the National Academy of Sciences, acting through appropriate units, to submit an application to conduct the study described in paragraph (1). If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate

arrangement for the conduct of the study by the entity which submits the best acceptable application.

(c) COVERAGE OF IMMUNOSUPPRESSIVE DRUGS.—

(1) IN GENERAL.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(A) by striking “and” at the end of subparagraph (H)(ii),

(B) by inserting “and” at the end of subparagraph (I), and

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

“(J) immunosuppressive drugs furnished, to an individual who receives an organ transplant for which payment is made under this title, within 1 year after the date of the transplant procedure.”.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to immunosuppressive drugs furnished on or after January 1, 1987.

(d) REORGANIZATION OF ESRD NETWORK AREAS AND ORGANIZATIONS.—

(1) IN GENERAL.—Subparagraph (A) of subsection (c)(1) of section 1881 of the Social Security Act (42 U.S.C. 1395rr) is amended to read as follows:

“(A)(i) For the purpose of assuring effective and efficient administration of the benefits provided under this section, the Secretary shall, in accordance with such criteria as he finds necessary to assure the performance of the responsibilities and functions specified in paragraph (2)—

“(I) establish at least 17 end stage renal disease network areas, and

“(II) for each such area, designate a network administrative organization which, in accordance with regulations of the Secretary, shall establish (aa) a network council of renal dialysis and transplant facilities located in the area and (bb) a medical review board, which has a membership including at least one patient representative and physicians, nurses, and social workers engaged in treatment relating to end stage renal disease.

The Secretary shall publish in the Federal Register a description of the geographic area that he determines, after consultation with appropriate professional and patient organizations, constitutes each network area and the criteria on the basis of which such determination is made.

“(ii)(I) In order to determine whether the Secretary should enter into, continue, or terminate an agreement with a network administrative organization designated for an area established under clause (i), the Secretary shall develop and publish in the Federal Register standards, criteria, and procedures to evaluate an applicant organization’s capabilities to perform (and, in the case of an organization with which such an agreement is in effect, actual performance of) the responsibilities described in paragraph (2). The Secretary shall evaluate each applicant based on quality and scope of services and may not accord more than 20 percent of the weight of the evaluation to the element of price.

“(II) An agreement with a network administrative organization may be terminated by the Secretary only if he finds, after applying such standards and criteria, that the organization has failed to perform its prescribed responsibilities effectively and efficiently. If such an agreement is to be terminated, the Secretary shall select a

42 USC 1395x
note.

Health care
professionals.

Federal
Register,
publication.

Federal
Register,
publication.

successor to the agreement on the basis of competitive bidding and in a manner that provides an orderly transition."

(2) **DEADLINE FOR ESTABLISHING NEW AREAS.**—The Secretary of Health and Human Services shall establish end stage renal disease network areas, pursuant to the amendment made by paragraph (1), not later than May 1, 1987. The Secretary shall establish network administrative organizations for such areas by not later than July 1, 1987.

42 USC 1395rr
note.

(3) **TRANSITION.**—If, under the amendment made by paragraph (1), the Secretary designates a network administrative organization for an area which was not previously designated for that area, the Secretary shall offer to continue to fund the previously designated organization for that area for a period of 30 days after the first date the newly designated organization assumes the duties of a network administrative organization for that area.

42 USC 1395rr
note.

(e) **PATIENT REPRESENTATION ON COUNCILS AND MEDICAL REVIEW BOARDS.**—Subparagraph (B) of subsection (c)(1) of section 1881 of the Social Security Act is amended to read as follows:

42 USC 1395rr.

"(B) At least one patient representative shall serve as a member of each network council and each medical review board."

(f) **RESPONSIBILITIES OF NETWORK ORGANIZATIONS.**—Subsection (c)(2) of section 1881 of such Act is amended—

(1) in subparagraph (A), by inserting before the semicolon the following: "and the participation of patients, providers of services, and renal disease facilities in vocational rehabilitation programs";

(2) in subparagraph (B), by inserting before the first semicolon the following: "and with respect to working with patients, facilities, and providers in encouraging participation in vocational rehabilitation programs";

(3) in subparagraph (D), by inserting before the semicolon the following: "and reporting to the Secretary on facilities and providers that are not providing appropriate medical care";

(4) in subparagraph (E), by inserting "and encouraging participation in vocational rehabilitation programs" after "self-care settings and transplantation"; and

(5) by redesignating subparagraphs (D) and (E) as subparagraphs (G) and (H), respectively, and inserting after subparagraph (C) the following new subparagraphs:

"(D) implementing a procedure for evaluating and resolving patient grievances;

"(E) conducting on-site reviews of facilities and providers as necessary (as determined by a medical review board or the Secretary), utilizing standards of care established by the network organization to assure proper medical care;

"(F) collecting, validating, and analyzing such data as are necessary to prepare the reports required by subparagraph (H) and subsection (g) and to assure the maintenance of the registry established under paragraph (7);".

Reports.

(g) **FACILITY COOPERATION WITH NETWORKS.**—The first sentence of subsection (c)(3) of section 1881 of such Act is amended by inserting "or to follow the recommendations of the medical review board" after "consistently failed to cooperate with network plans and goals".

(h) **INTENT OF CONGRESS RESPECTING MAXIMUM USE OF VOCATIONAL REHABILITATION SERVICES.**—The first sentence of subsection

42 USC 1395rr. (c)(6) of section 1881 of such Act is amended by inserting before the period the following: "and that the maximum practical number of patients who are suitable candidates for vocational rehabilitation services be given access to such services and encouraged to return to gainful employment".

42 USC 1395rr. (i) NATIONAL END STAGE RENAL DISEASE REGISTRY.—

(1) ESTABLISHMENT OF REGISTRY.—Subsection (c) of section 1881 of such Act is further amended by adding at the end the following new paragraph:

"(7) The Secretary shall establish a national end stage renal disease registry the purpose of which shall be to assemble and analyze the data reported by network organizations, transplant centers, and other sources on all end stage renal disease patients in a manner that will permit—

Reports. "(A) the preparation of the annual report to the Congress required under subsection (g);

"(B) an identification of the economic impact, cost-effectiveness, and medical efficacy of alternative modalities of treatment;

Research and development. "(C) an evaluation with respect to the most appropriate allocation of resources for the treatment and research into the cause of end stage renal disease;

"(D) the determination of patient mortality and morbidity rates, and trends in such rates, and other indices of quality of care; and

"(E) such other analyses relating to the treatment and management of end stage renal disease as will assist the Congress in evaluating the end stage renal disease program under this section.

The Secretary shall provide for such coordination of data collection activities, and such consolidation of existing end stage renal disease data systems, as is necessary to achieve the purpose of such registry, shall determine the appropriate location of the registry, and shall provide for the appointment of a professional advisory group to assist the Secretary in the formulation of policies and procedures relevant to the management of such registry."

42 USC 1395rr note. (2) REPORT.—The Secretary of Health and Human Services shall submit to the Congress, no later than April 1, 1987, a full report on the progress made in establishing the national end stage renal disease registry under the amendment made by paragraph (1) and shall establish such registry by not later than January 1, 1988.

(j) FUNDING OF ESRD NETWORK ORGANIZATIONS.—

(1) IN GENERAL.—Subsection (b)(7) of section 1881 of the Social Security Act is amended by adding at the end the following new sentence: "The Secretary shall reduce the amount of each composite rate payment under this paragraph for each treatment by 50 cents (subject to such adjustments as may be required to reflect modes of dialysis other than hemodialysis) and provide for payment of such amount to the network administrative organization (designated under subsection (c)(1)(A) for the network area in which the treatment is provided) for its necessary and proper administrative costs incurred in carrying out its responsibilities under subsection (c)(2)."

42 USC 1395rr note. (2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to treatment furnished on or after January 1, 1987.

(k) PROTOCOLS ON REUSE OF DIALYSIS FILTERS AND OTHER DIALYSIS SUPPLIES.—

(1) **ESTABLISHMENT OF PROTOCOLS.**—Paragraph (7) of subsection (f) of section 1881 of the Social Security Act is amended to read as follows: 42 USC 1395rr.

“(7)(A) The Secretary shall establish protocols on standards and conditions for the reuse of dialyzer filters for those facilities and providers which voluntarily elect to reuse such filters.

“(B) With respect to dialysis services furnished on or after January 1, 1988, no dialysis facility may reuse dialysis supplies (other than dialyzer filters) unless the Secretary has established a protocol with respect to the reuse of such supplies and the facility follows the protocol so established.

“(C) The Secretary shall incorporate protocols established under this paragraph, and the requirement of subparagraph (B), into the requirements for facilities prescribed under subsection (b)(1)(A) and failure to follow such a protocol or requirement subjects such a facility to denial of participation in the program established under this section and to denial of payment for dialysis treatment not furnished in compliance with such a protocol or in violation of such requirement.”.

(2) **DEADLINE.**—The Secretary of Health and Human Services shall establish the protocols described in section 1881(f)(7)(A) of the Social Security Act by not later than October 1, 1987. 42 USC 1395rr note.

(1) **EFFECTIVE DATE FOR CERTAIN AMENDMENTS.**—The amendments made by subsections (e), (f), and (g) shall apply to network administrative organizations designated for network areas established under the amendment made by subsection (d)(1). 42 USC 1395rr note.

SEC. 9336. VISION CARE.

(a) **DEFINING SERVICES AN OPTOMETRIST CAN PROVIDE.**—Clause (4) of section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)) is amended to read as follows: “(4) a doctor of optometry, but only with respect to the provision of items or services described in subsection (s) which he is legally authorized to perform as a doctor of optometry by the State in which he performs them, or”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to services furnished on or after April 1, 1987. 42 USC 1395x note.

SEC. 9337. OCCUPATIONAL THERAPY SERVICES.

(a) **COVERAGE.**—Subparagraph (C) of section 1832(a)(2) of the Social Security Act (42 U.S.C. 1395k(a)(2)) is amended to read as follows:

“(C) outpatient physical therapy services (other than services to which the second sentence of section 1861(p) applies) and outpatient occupational therapy services (other than services to which such sentence applies through the operation of section 1861(g));”.

(b) **LIMITATION ON PAYMENTS.**—Section 1833(g) of such Act (42 U.S.C. 1395l(g)) is amended—

(1) by striking “next to last sentence” and inserting “second sentence”, and

(2) by adding at the end thereof the following new sentence: “In the case of outpatient occupational therapy services which are described in the second sentence of section 1861(p) through the operation of section 1861(g), with respect to expenses incurred in any calendar year, no more than \$500 shall be consid-

ered as incurred expenses for purposes of subsections (a) and (b)."

(c) **CERTIFICATION STANDARD.**—(1) Section 1835(a)(2)(C) of such Act (42 U.S.C. 1395n(a)(2)(C)) is amended—

(A) by inserting "or outpatient occupational therapy services" after "outpatient physical therapy services",

(B) in clause (i), by inserting "or occupational therapy services, respectively," after "physical therapy services", and

(C) in clause (ii), by inserting "or qualified occupational therapist, respectively," after "qualified physical therapist".

(2) The second sentence of section 1835(a) of such Act and section 1866(e) of such Act (42 U.S.C. 1395n(a), 1395cc(e)) are each amended—

(A) by inserting "(or meets the requirements of such section through the operation of section 1861(g))" after "1861(p)(4)(A)" and after "1861(p)(4)(B)", and

(B) by inserting "or (through the operation of section 1861(g)) with respect to the furnishing of outpatient occupational therapy services" after "(as therein defined)".

(d) **DEFINITION AND INCLUSION WITH OTHER PART B SERVICES.**—(1) Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended by inserting after subsection (f) the following new subsection:

"OUTPATIENT OCCUPATIONAL THERAPY SERVICES

"(g) The term 'outpatient occupational therapy services' has the meaning given the term 'outpatient physical therapy services' in subsection (p), except that 'occupational' shall be substituted for 'physical' each place it appears therein."

(2) Section 1861(s)(2)(D) of such Act (42 U.S.C. 1395x(s)(2)(D)) is amended by inserting "and outpatient occupational therapy services" after "outpatient physical therapy services".

(3) Section 1861(v)(5)(A) of such Act (42 U.S.C. 1395x(v)(5)(A)) is amended by inserting "(including through the operation of section 1861(g))" after "section 1861(p)".

(e) **EFFECTIVE DATE.**—The amendments made by this section shall apply to expenses incurred for outpatient occupational therapy services furnished on or after July 1, 1987.

SEC. 9338. SERVICES OF A PHYSICIAN ASSISTANT.

(a) **SERVICES COVERED.**—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)), as amended by section 9335(c)(1) of this subtitle, is amended—

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

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

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

"(K)(i) services which would be physicians' services if furnished by a physician (as defined in subsection (r)(1)) and which are performed by a physician assistant (as defined in subsection (aa)(3)) under the supervision of a physician (as so defined) in a hospital, skilled nursing facility, or intermediate care facility (as defined in section 1905(c)) or as an assistant at surgery and which the physician assistant is legally authorized to perform by the State in which the services are performed, and

"(ii) such services and supplies furnished as an incident to such services as would be covered under subparagraph (A) if furnished as an incident to a physician's professional service;"

42 USC 1395k
note.

42 USC 1396d.

(b) DETERMINATION OF PAYMENT AMOUNT.—Section 1842(b) of such Act (42 U.S.C. 1395u(b)), as amended by section 9333(b), is amended by adding at the end the following new paragraph:

“(12)(A) With respect to services described in section 1861(s)(2)(K) (relating to a physician assistant acting under the supervision of a physician)—

42 USC 1395x.

“(i) payment under this part may only be made on an assignment-related basis; and

“(ii) the prevailing charges determined under paragraph (3) shall not exceed—

“(I) in the case of services performed as an assistant at surgery, 65 percent of the amount that would otherwise be recognized if performed by a physician who is serving as an assistant at surgery, or

“(II) in other cases, the applicable percentage (as defined in subparagraph (B)) of the prevailing charge rate determined for such services performed by physicians who are not specialists.

“(B) In subparagraph (A)(ii)(II), the term ‘applicable percentage’ means—

“(i) 75 percent in the case of services performed (other than as an assistant at surgery) in a hospital, and

“(ii) 85 percent in the case of other services.

“(C) Except for deductible and coinsurance amounts applicable under section 1833, any person who knowingly and willfully presents, or causes to be presented, to an individual enrolled under this part a bill or request for payment for services described in section 1861(s)(2)(K) in violation of subparagraph (A)(i) is subject to a civil monetary penalty of not to exceed \$2,000 for each such bill or request. Such a penalty shall be imposed in the same manner as civil monetary penalties are imposed under section 1128A with respect to actions described in subsection (a) of that section.”

Ante, p. 2014.

(c) PAYMENT TO EMPLOYER.—The first sentence of section 1842(b)(6) of such Act (42 U.S.C. 1395u(b)(6)) is amended—

(1) by striking “except that payment may be made (A)(i)” and inserting “except that (A) payment may be made (i)”;

(2) by striking “or (B)” and by inserting “(B) payment may be made”; and

(3) by inserting before the period at the end the following: “, and (C) in the case of services described in section 1861(s)(2)(K) payment shall be made to the employer of the physician assistant involved”.

Ante, pp. 2003, 2008.

(d) REDUCTION IN PAYMENT TO AVOID DUPLICATE PAYMENT.—Notwithstanding any other provision of law, the Secretary of Health and Human Services may reduce the amount of payments otherwise made to hospitals and skilled nursing facilities under title XVIII of the Social Security Act, so as to eliminate estimated duplicate payments for historical or current costs attributable to services described in section 1861(s)(2)(K) of such Act (for which payment may be made under the amendments made by this section).

Health care facilities.
42 USC 1395x note.

42 USC 1395.

(e) STUDY OF PAYMENT RATES.—The Secretary shall report to Congress, by not later than April 1, 1988, concerning adjustments to the amount of payment made, under part B of title XVIII of the Social Security Act, for services described in section 1861(s)(2)(K) of such Act, to ensure that the amount of such payments reflects the approximate cost of furnishing the services, taking into account

Reports.
42 USC 1395x note.
42 USC 1395j.

compensation costs and overhead and supervision costs attributable to physician assistants.

42 USC 1395x
note.

(f) **EFFECTIVE DATE.**—The amendments made by this section shall apply to services furnished on or after January 1, 1987.

SEC. 9339. PAYMENT FOR CLINICAL DIAGNOSTIC LABORATORY TESTS.

(a) **TREATMENT OF HOSPITAL OUTPATIENT LABORATORIES.**—

(1) **IN GENERAL.**—Section 1833(h) of the Social Security Act (42 U.S.C. 1395l(h)) is amended—

(A) in paragraph (1)(B), by striking “hospital laboratory” and inserting “qualified hospital laboratory (as defined in subparagraph (D))”,

(B) in paragraph (1)(C)—

(i) in the first sentence, by striking “hospital laboratory” and inserting “qualified hospital laboratory (as defined in subparagraph (D))”, and by striking “, and ending on December 31, 1987”, and

(ii) by striking the second sentence;

(C) by adding at the end of paragraph (1) the following new subparagraph:

“(D) In this subsection, the term ‘qualified hospital laboratory’ means a hospital laboratory which provides some clinical diagnostic laboratory tests 24 hours a day in order to serve a hospital emergency room which is available to provide services 24 hours a day and 7 days a week.”; and

(D) in paragraph (2), by striking “hospital laboratory” and inserting “qualified hospital laboratory (as defined in paragraph (1)(D))”.

42 USC 1395l
note.

(2) **EFFECTIVE DATE.**—The amendments made by this subsection apply to clinical diagnostic laboratory tests performed on or after January 1, 1987.

(b) **DELAYING FOR 2 YEARS REQUIREMENT OF NATIONAL FEE SCHEDULE.**—

(1) **IN GENERAL.**—Section 1833(h)(1)(B) of such Act is amended by striking “1987” and “1988” and inserting “1989” and “1990”, respectively.

(2) **CONFORMING AMENDMENT.**—Section 1833(h)(2) of such Act is amended by striking “(or, effective January 1, 1988, for the United States)”.

42 USC 1395l
note.

(3) **REPORT.**—The Secretary of Health and Human Services shall report to Congress, by not later than April 1, 1988, on the advisability and feasibility of, and methodology for, establishing national fee schedules for payment for clinical diagnostic laboratory tests under section 1833(h) of the Social Security Act.

(c) **PAYMENT FOR TIME AND TRAVEL COSTS TO COLLECT SAMPLES FROM CERTAIN IMMOBILE BENEFICIARIES.**—

(1) **IN GENERAL.**—Section 1833(h)(3) of such Act is amended—

(A) by inserting “(A)” after “provide for and establish”, and

(B) by inserting before the period at the end the following: “, and (B) a fee to cover the transportation and personnel expenses for trained personnel to travel to the location of an individual to collect the sample, except that such a fee may be provided only with respect to an individual who is homebound or an inpatient in an inpatient facility (other than a hospital)”.

- (2) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall apply to samples collected on or after January 1, 1987. 42 USC 1395f note.
- (d) **STATE STANDARDS FOR DIRECTORS OF CLINICAL LABORATORIES.**— 42 USC 1395f note.
- (1) **IN GENERAL.**—If a State (as defined for purposes of title XVIII of the Social Security Act) provides for the licensing or other standards with respect to the operation of clinical laboratories (including such laboratories in hospitals) in the State under which such a laboratory may be directed by an individual with certain qualifications, nothing in such title shall be construed as authorizing the Secretary of Health and Human Services to require such a laboratory, as a condition of payment or participation under such title, to be directed by an individual with other qualifications. 42 USC 1395.
- (2) **EFFECTIVE DATE.**—Paragraph (1) shall take effect on January 1, 1987.
- (e) **EXTENSION OF MORATORIUM ON LABORATORY PAYMENT DEMONSTRATION.**—Section 9204(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by striking "January 1, 1987" and inserting "January 1, 1988". 42 USC 1395www note. Ante, p. 177.

SEC. 9340. PAYMENT FOR PARENTERAL AND ENTERAL NUTRITION SUPPLIES AND EQUIPMENT.

The Secretary of Health and Human Services shall apply the sixth sentence of section 1842(b)(3) of the Social Security Act to payment—

- (1) for enteral nutrition nutrients, supplies, and equipment and parenteral nutrition supplies and equipment furnished on or after January 1, 1987, and
- (2) for parenteral nutrition nutrients furnished on or after October 1, 1987. 42 USC 1395u note.

SEC. 9341. CHANGING MEDICARE APPEAL RIGHTS.

(a) **REVIEW OF PART B DETERMINATIONS.**—(1) Section 1869 of the Social Security Act (42 U.S.C. 1395ff) is amended—

- (A) by inserting "or part B" in subsection (a) after "amount of benefits under part A",
- (B) by inserting "or part B" in subsection (b)(1)(C) after "part A",
- (C) by amending paragraph (2) of subsection (b) to read as follows:

"(2) Notwithstanding paragraph (1)(C), in the case of a claim arising—

"(A) under part A, a hearing shall not be available to an individual under paragraph (1)(C) if the amount in controversy is less than \$100 and judicial review shall not be available to the individual under that paragraph if the amount in controversy is less than \$1,000; or

"(B) under part B, a hearing shall not be available to an individual under paragraph (1)(C) if the amount in controversy is less than \$500 and judicial review shall not be available to the individual under that paragraph if the aggregate amount in controversy is less than \$1,000.

In determining the amount in controversy, the Secretary, under regulations, shall allow two or more claims to be aggregated if the claims involve the delivery of similar or related services to the same individual or involve common issues of law and fact arising from services furnished to two or more individuals.", and

Regulations.
Claims.

(D) by adding at the end the following new paragraphs:
 “(3) Review of any national coverage determination under section 1862(a)(1) respecting whether or not a particular type or class of items or services is covered under this title shall be subject to the following limitations:

“(A) Such a determination shall not be reviewed by any administrative law judge.

“(B) Such a determination shall not be held unlawful or set aside on the ground that a requirement of chapter 5 of title 5, United States Code, or section 1871(b), relating to publication in the Federal Register or opportunity for public comment, was not satisfied.

“(C) In any case in which a court determines that the record is incomplete or otherwise lacks adequate information to support the validity of the determination, it shall remand the matter to the Secretary for additional proceedings to supplement the record and the court may not determine that an item or service is covered except upon review of the supplemented record.

“(4) A regulation or instruction which relates to a method for determining the amount of payment under part B and which was initially issued before January 1, 1981, shall not be subject to judicial review.”

(2) Section 1842(b)(3)(C) of such Act (42 U.S.C. 1395u(b)(3)(C)) is amended by striking “\$100 or more” and inserting “at least \$100, but not more than \$500”.

(3) Section 1879(d) of such Act (42 U.S.C. 1395pp(d)) is amended by striking “section 1869(b)” and all that follows through “part B)” and inserting “sections 1869(b) and 1842(b)(3)(C) (as may be applicable)”.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall apply to items and services furnished on or after January 1, 1987.

SEC. 9342. ALZHEIMER'S DISEASE DEMONSTRATION PROJECTS.

(a) **DEMONSTRATION PROJECTS.**—The Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall conduct at least 5 (and not more than 10) demonstration projects to determine the effectiveness, cost, and impact on health status and functioning of providing comprehensive services for individuals entitled to benefits under title XVIII of the Social Security Act (in this section referred to as “medicare beneficiaries”) who are victims of Alzheimer's disease or related disorders.

(b) **SERVICES UNDER DEMONSTRATION PROJECTS.**—The services provided under demonstration projects must be designed to meet the specific needs of Alzheimer's disease patients and may include—

- (1) case management services,
- (2) home and community-based services,
- (3) mental health services,
- (4) outpatient drug therapy,
- (5) respite care and other supportive services and counseling for family,
- (6) adult day care services, and
- (7) other in-home services.

(c) **CONDUCT OF PROJECTS.**—The demonstration projects shall—

- (1) each be conducted over a period of 3 years;
- (2) provide each medicare beneficiary with a comprehensive medical and mental status evaluation upon entering the project and at discharge;

42 USC 1395y.

5 USC 500 *et seq.*
ante, p. 2017.

Records.

42 USC 1395ff.
 42 USC 1395ff
 note.

42 USC 1395b-1
 note.

42 USC 1395.

(3) be conducted by an entity which either directly or by contract is able to provide such comprehensive evaluations and the additional services (described in subsection (b)) covered by the project;

Contracts.

(4) be conducted in sites which are chosen so as to be geographically diverse and located in States with a high proportion of medicare beneficiaries and in areas readily accessible to a significant number of medicare beneficiaries; and

State and local governments.

(5) involve community outreach efforts at each site to enroll the maximum number of medicare beneficiaries in each project.

(d) **EVALUATION AND REPORTS.**—The Secretary shall provide for an evaluation of the demonstration projects and shall submit to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

(1) a preliminary report during the third year of the projects, which report shall include a description of the sites at which the projects are being conducted and the services being provided at the different sites, and

(2) a final report upon completion of the projects, which report shall include recommendations for appropriate legislative changes.

(f) **FUNDING.**—Expenditures (not to exceed \$40,000,000 for the projects and \$2,000,000 for the evaluation of the projects) made for the demonstration projects shall be made from the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act). Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section.

Grants.
Contracts.

42 USC 1395t.

(g) **WAIVER OF MEDICARE REQUIREMENTS.**—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act to the extent and for the period the Secretary finds necessary for the conduct of the demonstration projects.

42 USC 1395.

SEC. 9343. PAYMENTS FOR AMBULATORY SURGERY.

(a) **AMOUNTS PAYABLE; ANNUAL UPDATING.**—

(1)(A) Section 1833(a)(4) of the Social Security Act (42 U.S.C. 1395l(a)(4)) is amended to read as follows:

“(4) in the case of facility services described in section 1832(a)(2)(F), and outpatient hospital facility services furnished in connection with surgical procedures specified by the Secretary pursuant to section 1833(i)(1)(A), the applicable amount as determined under paragraph (2) or (3) of subsection (i).”

Health care facilities.
42 USC 1395k.

(B) Section 1833(i) of such Act (42 U.S.C. 1395l(i)) is amended by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and inserting after paragraph (2) the following new paragraph:

“(3)(A) The aggregate amount of the payments to be made under this part for outpatient hospital facility services furnished in connection with surgical procedures specified under paragraph (1)(A) in a cost reporting period shall be equal to the lesser of—

Health care facilities.

“(i) the amount determined with respect to such services under subsection (a)(2)(B); or

“(ii) the blend amount (described in subparagraph (B)).

“(B)(i) The blend amount for a cost reporting period is the sum of—

“(I) the cost proportion (as defined in clause (ii)(I)) of the amount described in subparagraph (A)(i), and

“(II) the ASC proportion (as defined in clause (ii)(II)) of 80 percent of the standard overhead amount payable with respect to the same surgical procedure as if it were provided in an ambulatory surgical center in the same area, as determined under paragraph (2)(A).

“(ii) In this paragraph:

“(I) The term ‘cost proportion’ means 75 percent for cost reporting periods beginning in fiscal year 1988, and 50 percent for other cost reporting periods.

“(II) The term ‘ASC proportion’ means 25 percent for cost reporting periods beginning in fiscal year 1988, and 50 percent for other cost reporting periods.”.

42 USC 1395l.

(2) CONFORMING AMENDMENT.—Section 1833(b)(3) of such Act is amended by striking “or (i)(4)” and inserting in lieu thereof “or (i)(5)”.

(b) UPDATING ASC RATES.—

(1) RATE UPDATE.—Subparagraphs (A) and (B) of section 1833(i)(2) of such Act are each amended by striking “shall be reviewed periodically” and inserting in lieu thereof “shall be reviewed and updated not later than July 1, 1987, and annually thereafter”.

(2) ASC LIST UPDATE.—Section 1833(i)(1) of such Act is amended by adding at the end (after and below subparagraph (B)) the following:

“The lists of procedures established under subparagraphs (A) and (B) shall be reviewed and updated not less often than every 2 years.”.

(c) PREVENTING UNBUNDLING OF HOSPITAL OUTPATIENT SERVICES.—

(1) Section 1862(a)(14) of such Act (42 U.S.C. 1395y(a)(14)) is amended by striking “inpatient” and inserting “patient”.

(2) Section 1866(a)(1)(H) of such Act (42 U.S.C. 1395cc(a)(1)(H)) is amended—

(A) by striking “inpatient hospital”, and

(B) by striking “an inpatient” and inserting “a patient”.

(3) Section 1866 of such Act (42 U.S.C. 1395cc) is further amended by adding at the end the following new subsection:

“(g) Except as permitted under subsection (a)(2), any person who knowingly and willfully presents, or causes to be presented, a bill or request for payment for a hospital outpatient service for which payment may be made under part B and such bill or request violates an arrangement under subsection (a)(1)(H), is subject to a civil monetary penalty of not to exceed \$2,000. Such a penalty shall be imposed in the same manner as civil monetary penalties are imposed under section 1128A with respect to actions described in subsection (a) of that section.”.

Health care facilities.

Ante, pp. 2003, 2008.

(d) PRO REVIEW.—

(1) Section 1154(a)(1) of the Social Security Act (42 U.S.C. 1320c-3(a)(1)) is amended by inserting “and subject to the requirements of subsection (d)” after “subject to the terms of the contract”.

(2) Section 1154 of such Act is amended by adding at the end the following new subsection:

"(d) Each contract under this part shall require that the utilization and quality control peer review organization's review responsibility pursuant to subsection (a)(1) will include review of all ambulatory surgical procedures specified pursuant to section 1833(i)(1)(A) which are performed in the area, or, at the discretion of the Secretary (and except as provided in section 1164(b)(4)) a sample of such procedures."

Contracts.

42 USC 1395f.

42 USC
1320c-13.

(e) COINSURANCE AND DEDUCTIBLE TO APPLY WITHOUT REGARD TO SETTING OF AMBULATORY SURGERY.—

(1) Clauses (i) and (ii) of section 1832(a)(2)(F) of the Social Security Act (42 U.S.C. 1395k(a)(2)(F)) are each amended by inserting "standard overhead" before "amount".

(2)(A) Section 1833(b) of such Act (42 U.S.C. 1395l(b)) is amended by striking paragraph (3) and redesignating paragraphs (4) and (5) as paragraphs (3) and (4).

(B) Subparagraphs (A) and (B) of section 1833(i)(2) of such Act are each amended by inserting "80 percent of" before "a standard overhead amount".

(f) DEVELOPMENT OF PROSPECTIVE PAYMENT METHODOLOGY FOR OUTPATIENT HOSPITAL SERVICES.—Section 1135 of the Social Security Act (42 U.S.C. 1320b-5) is amended by adding at the end the following new subsection:

"(d)(1) The Secretary shall develop a fully prospective payment system for ambulatory surgical procedures performed on patients in hospitals on an outpatient basis.

"(2) The system shall, to the extent practicable, provide for an all-inclusive payment rate for ambulatory surgical procedures performed on patients in hospitals on an outpatient basis, which rate encompasses payment for facility services and all medical and other health services, other than physicians' services, commonly furnished in connection with such procedures.

"(3) The system shall provide for appropriate payment rates with respect to such procedures.

"(4) Such rates shall take into account at least the following considerations:

"(A) The costs of hospitals providing ambulatory surgical procedures.

"(B) The costs under this title of payment for such procedures performed in ambulatory surgical centers.

"(C) The extent to which any differences in such costs are justifiable.

"(5) The Secretary shall submit to Congress—

"(A) an interim report on the development of the system by April 1, 1988, and

"(B) a final report on such system by April 1, 1989.

The report under subparagraph (B) shall include recommendations concerning the implementation of the payment system for ambulatory surgical procedures performed on or after October 1, 1989.

"(6)(A) The Secretary shall develop a model system for the payment for outpatient hospital services other than ambulatory surgery.

"(B) The Secretary shall submit to Congress a report on the model payment system under subparagraph (A) by January 1, 1991."

Reports.

(g) REPORTING OF OPD SERVICES USING HCPCS.—Not later than July 1, 1987, each fiscal intermediary which processes claims under part B of title XVIII of the Social Security Act shall require hospitals, as a condition of payment for outpatient hospital services

Reports.

Claims.
42 USC 1395u
note.
42 USC 1395j.

under that part, to report claims for payment for such services under such part using a HCFA Common Procedure Coding System.

42 USC 1395l
note.

(h) EFFECTIVE DATES.—

(1) The amendments made by subsection (a)(1) shall apply to cost reporting periods beginning on or after October 1, 1987.

(2) The amendments made by subsections (b)(1) and (d) shall apply to services furnished after June 30, 1987.

(3) The Secretary of Health and Human Services shall first provide, under the amendment made by subsection (b)(2), for the review and update of procedure lists within 6 months after the date of the enactment of this Act.

Contracts.

(4) The amendments made by subsection (c) shall apply to contracts entered into or renewed after January 1, 1987.

SEC. 9314. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PART B.

(a) ADDITIONAL MEMBERS FOR PHYSICIAN PAYMENT REVIEW COMMISSION.—

42 USC 1395w-1
note.

(1) 2 ADDITIONAL MEMBERS.—Section 1845(a)(2) of the Social Security Act (42 U.S.C. 1395w-1(a)(2)) is amended by striking "11 individuals" and inserting "13 individuals".

(2) APPOINTMENT OF ADDITIONAL MEMBERS.—The Director of the Congressional Office of Technology Assessment shall appoint the two additional members of the Physician Payment Review Commission, as required by the amendment made by paragraph (1), no later than 60 days after the date of the enactment of this Act, for terms of 3 years, except that the Director may provide initially for such terms as will insure that (on a continuing basis) the terms of no more than five members expire in any one year.

(b) EFFECTIVE DATE OF VOLUNTARY DISENROLLMENT FROM MEDICARE.—

42 USC 1395q.

(1) IN GENERAL.—The second and sixth sentences of section 1838(b) of the Social Security Act (42 U.S.C. 1395p(b)) are each amended by striking "calendar quarter following the calendar quarter" and inserting "month following the month".

42 USC 1395q
note.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to notices filed on or after July 1, 1987.

42 USC 1395j.

(c) STUDY ON PROSPECTIVE PAYMENT OF RADIOLOGY, ANESTHESIA, AND PATHOLOGY SERVICES TO HOSPITAL INPATIENTS.—The Secretary of Health and Human Services shall study and report to Congress by July 1, 1987, concerning the design and implementation of a prospective payment system for payment, under part B of title XVIII of the Social Security, for radiology, anesthesia, and pathology services furnished to hospital inpatients. Such report shall include data, from a representative sample, showing, for discharges classified within each diagnosis-related group, the distribution of total reasonable charges and costs for each inpatient discharge for such services.

42 USC 1395b-1
note.

Ante, p. 194.

(d) PREVENTIVE HEALTH SERVICES DEMONSTRATION PROGRAM.—Effective as if included in section 9314 of the Consolidated Omnibus Budget Reconciliation Act of 1985 when such section was enacted, such section is amended—

Rural areas.

(1) in subsection (c)(2), by inserting "(at least one of which shall serve a rural area)" after "five sites", and

(2) by striking the last sentence of subsection (f) and inserting the following: "Funding for the administrative costs of the

demonstration program shall not exceed \$5,900,000 over the duration of the program.”.

PART 4—IMPROVED REVIEW OF QUALITY BY PEER REVIEW ORGANIZATIONS

SEC. 9351. PRO REVIEW OF HOSPITAL DENIAL NOTICES.

(a) IN GENERAL.—Section 1154 of the Social Security Act (42 U.S.C. 1320c-3), as amended by section 9343(d)(2) of this subtitle, is amended by adding at the end the following new subsection:

“(e)(1) If—

“(A) a hospital has determined that a patient no longer requires inpatient hospital care, and

“(B) the attending physician has agreed with the hospital’s determination,

the hospital may provide the patient (or the patient’s representative) with a notice (meeting conditions prescribed by the Secretary under section 1879) of the determination.

“(2) If—

“(A) a hospital has determined that a patient no longer requires inpatient hospital care, but

“(B) the attending physician has not agreed with the hospital’s determination,

the hospital may request the appropriate peer review organization to review under subsection (a) the validity of the hospital’s determination.

“(3)(A) If a patient (or a patient’s representative)—

“(i) has received a notice under paragraph (1), and

“(ii) requests the appropriate peer review organization to review the determination,

then, the organization shall conduct a review under subsection (a) of the validity of the hospital’s determination and shall provide notice (by telephone and in writing) to the patient or representative and the hospital and attending physician involved of the results of the review. Such review shall be conducted regardless of whether or not the hospital will charge for continued hospital care or whether or not the patient will be liable for payment for such continued care.

“(B) If a patient (or a patient’s representative) requests a review under subparagraph (A) while the patient is still an inpatient in the hospital and not later than noon of the first working day after the date the patient receives the notice under paragraph (1), then—

“(i) the hospital shall provide to the appropriate peer review organization the records required to review the determination by the close of business of such first working day, and

“(ii) the peer review organization must provide the notice under subparagraph (A) by not later than one full working day after the date the organization has received the request and such records.

“(4) If—

“(A) a request is made under paragraph (3)(A) not later than noon of the first working day after the date the patient (or patient’s representative) receives the notice under paragraph (1), and

“(B) the conditions described in section 1879(a)(2) with respect to the patient or representative are met,

Health care facilities.

Ante, p. 1991.

Records.

the hospital may not charge the patient for inpatient hospital services furnished before noon of the day after the date the patient or representative receives notice of the peer review organization's decision.

"(5) In any review conducted under paragraph (2) or (3), the organization shall solicit the views of the patient involved (or the patient's representative)."

42 USC 1320c-3
note.

(b) **EFFECTIVE DATE.**—(1) Except as provided in paragraph (2), the amendment made by subsection (a) shall apply to denial notices furnished by hospitals to individuals on or after the first day of the first month that begins more than 30 days after the date of the enactment of this Act.

(2) Section 1154(e)(4) of the Social Security Act (as added by the amendment made by subsection (a)) shall take effect on the date of the enactment of this Act.

SEC. 9352. PRO REVIEW OF INPATIENT HOSPITAL SERVICES AND EARLY READMISSION CASES.

(a) **TIMELY PROVISION OF HOSPITAL INFORMATION.**—(1) Section 1153 of the Social Security Act (42 U.S.C. 1320c-2) is amended by adding at the end the following new subsection:

42 USC 1320c-3.

"(g) The Secretary shall provide that fiscal intermediaries furnish to peer review organizations, each month on a timely basis, data necessary to initiate the review process under section 1154(a) on a timely basis. If the Secretary determines that a fiscal intermediary is unable to furnish such data on a timely basis, the Secretary shall require the hospital to do so."

Contracts.

42 USC 1320c.

(2) Section 1816(a) of such Act (42 U.S.C. 1395h(a)) is amended by adding at the end the following: "As used in this title and part B of title XI, the term 'fiscal intermediary' means an agency or organization with a contract under this section."

Ante, p. 196.

(b) **REQUIRING REVIEW OF EARLY READMISSION CASES.**—Section 1154(a) of such Act (42 U.S.C. 1320c-3(a)), as amended by section 9401(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by adding at the end the following new paragraph:

"(13) Notwithstanding paragraph (4), the organization shall perform the review described in paragraph (1) with respect to early readmission cases to determine if the previous inpatient hospital services and the post-hospital services met professionally recognized standards of health care. Such reviews may be performed on a sample basis if the organization and the Secretary determine it to be appropriate. In this paragraph, an 'early readmission case' is a case in which an individual, after discharge from a hospital, is readmitted to a hospital less than 31 days after the date of the most recent previous discharge."

42 USC 1320c-2
note.

(c) **EFFECTIVE DATES.**—(1) The Secretary of Health and Human Services shall implement the amendment made by subsection (a) not later than 6 months after the date of the enactment of this Act.

Contracts.
42 USC 1320c-3
note.

(2) The amendment made by subsection (b) shall apply to contracts entered into or renewed on or after January 1, 1987, except that in applying such amendment before January 1, 1989, the term "post-hospital services" does not include physicians' services, other than physicians' services furnished in a hospital, other inpatient facility, ambulatory surgical center, or rural health clinic.

SEC. 9353. PRO REVIEW OF QUALITY OF CARE.

(a) **REQUIRING PRO REVIEW OF QUALITY OF CARE.**—

(1) **ALLOCATION OF FUNDS FOR QUALITY CARE REVIEW.**—Section 1154(a)(4) of the Social Security Act (42 U.S.C. 1320c-3(a)(4)) is amended by adding at the end the following: “Each peer review organization shall provide that a reasonable proportion of its activities are involved with reviewing, under paragraph (1)(B), the quality of services and that a reasonable allocation of such activities is made among the different cases and settings (including post-acute-care settings, ambulatory settings, and health maintenance organizations). In establishing such allocation, the organization shall consider (i) whether there is reason to believe that there is a particular need for reviews of particular cases or settings because of previous problems regarding quality of care, (ii) the cost of such reviews and the likely yield of such reviews in terms of number and seriousness of quality of care problems likely to be discovered as a result of such reviews, and (iii) the availability and adequacy of alternative quality review and assurance mechanisms.”.

(2) **REQUIRING REVIEW OF HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS.**—Such section is further amended—

(A) by inserting “(A)” after “(4)”;

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

“(B) The contract of each organization shall provide for the review of services (including both inpatient and outpatient services) provided by eligible organizations pursuant to a contract under section 1876 for the purpose of determining whether the quality of such services meets professionally recognized standards of health care, including whether appropriate health care services have not been provided or have been provided in inappropriate settings. The previous sentence shall not apply with respect to a contract year if another entity has been awarded a contract under subparagraph (C).”;

(C) by adding at the end of such subparagraph the following: “Under the contract the level of effort expended by the organization on reviews under this subparagraph shall be equivalent, on a per enrollee basis, to the level of effort expended by the organization on utilization and quality reviews performed with respect to individuals not enrolled with an eligible organization.”; and

(D) by adding at the end the following additional new subparagraph:

“(C) The Secretary may provide, by contract under competitive procurement procedures on a State-by-State basis in up to 25 States, for the review described in subparagraph (B) by an appropriate entity (which may be a peer review organization described in that subparagraph). In selecting among States in which to conduct such competitive procurement procedures, the Secretary may not select States which, as a group, have more than 50 percent of the total number of individuals enrolled with eligible organizations under section 1876. Under a contract with an entity under this subparagraph—

“(i) the entity must be, or must meet all the requirements under section 1152 to be, a utilization and quality control peer review organization,

“(ii) the contract must meet the requirement of section 1153(b)(3), and

Contracts.

42 USC 1395mm.

Contracts.

Contracts.
State and local
governments.

42 USC 1320c-1.

42 USC 1320c-2.

“(iii) the level of effort expended under the contract shall be, to the extent practicable, not less than the level of effort that would otherwise be required under the third sentence of subparagraph (B) if this subparagraph did not apply.”

(3) IDENTIFICATION OF METHODS FOR IDENTIFYING CASES OF SUBSTANDARD CARE.—Section 1154 of such Act (42 U.S.C. 1320c-3), as amended by sections 9343(d)(2) and 9351(a), is amended by adding at the end the following new subsection:

“(f) The Secretary, in consultation with appropriate experts, shall identify methods that would be available to assist peer review organizations (under subsection (a)(4)) in identifying those cases which are more likely than others to be associated with a quality of services which does not meet professionally recognized standards of health care.”

42 USC 1320c-3
note.

42 USC 1320c.

(4) SMALL-AREA ANALYSIS.—The Secretary of Health and Human Services shall provide, to at least 12 utilization and quality control peer review organizations with contracts under part B of title XI of the Social Security Act, data and data processing assistance to allow each of these organizations to review and analyze small-area variations, in the service area of the organization, in the utilization of hospital and other health care services for which payment is made under title XVIII of such Act.

42 USC 1395.
42 USC 1320c-3
note.

(5) CONFORMING AMENDMENT.—Section 9405 of the Consolidated Omnibus Budget Reconciliation Act of 1986 is amended by striking “January” and inserting “April”.

Contracts.

42 USC 1320c-3
note.

(6) EFFECTIVE DATES.—(A)(i) Except as provided in clause (ii), the amendments made by paragraphs (1) and (2)(D) shall apply to contracts as of January 1, 1987.

(ii) The amendment made by paragraph (1) shall not be construed as requiring, before January 1, 1989, the review of physicians' services, other than physicians' services furnished in a hospital, other inpatient facility, ambulatory surgical center, or rural health clinic.

Contracts.

(B) The amendment made by paragraph (2)(B) shall apply to contracts as of April 1, 1987.

(C) The amendment made by paragraph (2)(C) shall apply to review activities conducted by organizations on or after January 1, 1988.

(D) The amendment made by paragraph (3) becomes effective on the date of the enactment of this Act.

(b) REQUIRING CONSUMER REPRESENTATIVE ON PEER REVIEW BOARDS.—

(1) IN GENERAL.—Section 1152 of such Act (42 U.S.C. 1320c-1) is amended—

(A) by striking “and” at the end of paragraph (1),

(B) by striking the period at the end of paragraph (2) and inserting “; and”, and

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

“(3) has at least one individual who is a representative of consumers on its governing body.”

Contracts.

42 USC 1320c-1
note.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to contracts entered into or renewed on or after January 1, 1987.

(c) IMPROVING PEER REVIEW RESPONSIVENESS TO BENEFICIARY COMPLAINTS.—

(1) **APPROPRIATE REVIEW OF COMPLAINTS REQUIRED.**—Section 1154(a) of such Act (42 U.S.C. 1320c-3(a)), as amended by section 9352(b), is further amended by adding at the end the following new paragraph:

“(14) The organization shall conduct an appropriate review of all written complaints about the quality of services (for which payment may otherwise be made under title XVIII) not meeting professionally recognized standards of health care, if the complaint is filed with the organization by an individual entitled to benefits for such services under such title (or a person acting on the individual's behalf). The organization shall inform the individual (or representative) of the organization's final disposition of the complaint. Before the organization concludes that the quality of services does not meet professionally recognized standards of health care, the organization must provide the practitioner or person concerned with reasonable notice and opportunity for discussion.”

42 USC 1395.

(2) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall apply to complaints received on or after the first day of the first month that begins more than 9 months after the date of the enactment of this Act.

42 USC 1320c-3 note.

(d) **SHARING OF INFORMATION BY PEER REVIEW ORGANIZATIONS.**—

(1) **IN GENERAL.**—Subparagraph (C) of section 1160(b)(1) of such Act (42 U.S.C. 1320c-9(b)(1)) is amended to read as follows:

“(C) to assist appropriate State agencies recognized by the Secretary as having responsibility for licensing or certification of providers or practitioners or to assist national accreditation bodies acting pursuant to section 1865 in accrediting providers for purposes of meeting the conditions described in title XVIII, which data and information shall be provided by the peer review organization to any such agency or body at the request of such agency or body relating to a specific case or to a possible pattern of substandard care, but only to the extent that such data and information are required by the agency or body to carry out its respective function which is within the jurisdiction of the agency or body under State law or under section 1865.”

State and local governments.

42 USC 1395bb.

(2) **EFFECTIVE DATE.**—The amendments made by paragraph (1) shall apply to requests for data and information made on and after the end of the 6-month period beginning on the date of the enactment of this Act.

42 USC 1320c-9 note.

(e) **FUNDING OF ADDITIONAL PRO ACTIVITIES.**—

(1) **THROUGH AGREEMENTS WITH HOSPITALS, SKILLED NURSING FACILITIES, AND HOME HEALTH AGENCIES.**—Section 1866(a) of such Act (42 U.S.C. 1395cc(a)) is amended—

(A) in paragraph (1)(F)—

(i) by redesignating clauses (i), (ii), and (iii), as subclauses (I), (II), and (III), respectively,

(ii) by inserting “(i)” after “(F)”, and

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

“(ii) in the case of hospitals, skilled nursing facilities, and home health agencies, to maintain an agreement with a utilization and quality control peer review organization (which has a contract with the Secretary under part B of title XI for the area in which the hospital, facility, or agency is located) to perform the functions described in paragraph (4)(A);” and

Contracts.

42 USC 1320c.

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

42 USC 1320c-3.

"(4)(A) Under the agreement required under paragraph (1)(F)(ii), the peer review organization must perform functions (other than those covered under an agreement under paragraph (1)(F)(i)) under the third sentence of section 1154(a)(4)(A) and under section 1154(a)(14) with respect to services, furnished by the hospital, facility, or agency involved, for which payment may be made under this title.

"(B) For purposes of payment under this title, the cost of such an agreement to the hospital, facility, or agency shall be considered a cost incurred by such hospital, facility, or agency in providing covered services under this title and shall be paid directly by the Secretary to the peer review organization on behalf of such hospital, facility, or agency in accordance with a schedule established by the Secretary.

"(C) Such payments—

"(i) shall be transferred in appropriate proportions from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and

42 USC 1320c.

"(ii) shall not be less in the aggregate for hospitals, facilities, and agencies for a fiscal year than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting the activities described in subparagraph (A) with respect to such hospitals, facilities, or agencies under part B of title XI."

(2) THROUGH AGREEMENTS WITH HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS.—Section 1876(i) of such Act (42 U.S.C. 1395mm(i)), as amended by section 9312(f) of this subtitle, is amended by adding at the end the following new paragraph:

42 USC 1395cc.

"(7)(A) Except as provided under section 1154(a)(4)(C), each risk-sharing contract with an eligible organization under this section shall provide that the organization will maintain an agreement with a utilization and quality control peer review organization (which has a contract with the Secretary under part B of title XI for the area in which the eligible organization is located) under which the peer review organization will perform functions under section 1154(a)(4)(B) and section 1154(a)(14) (other than those performed under contracts described in section 1866(a)(1)(F)) with respect to services, furnished by the eligible organization, for which payment may be made under this title.

"(B) For purposes of payment under this title, the cost of such agreement to the eligible organization shall be considered a cost incurred by a provider of services in providing covered services under this title and shall be paid directly by the Secretary to the peer review organization on behalf of such eligible organization in accordance with a schedule established by the Secretary.

"(C) Such payments—

"(i) shall be transferred in appropriate proportions from the Federal Hospital Insurance Trust Fund and from the Supplementary Medical Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and

“(ii) shall not be less in the aggregate for such organizations for a fiscal year than the amounts the Secretary determines to be sufficient to cover the costs of such organizations’ conducting activities described in subparagraph (A) with respect to such eligible organizations under part B of title XI.”.

42 USC 1320c.

(3) EFFECTIVE DATE.—

(A) HOSPITALS, SKILLED NURSING FACILITIES, AND HOME HEALTH AGENCIES.—The amendments made by paragraph (1) shall apply to provider agreements as of October 1, 1987.

42 USC 1395cc note.

(B) HMOs AND CMPS.—The amendment made by paragraph (2) shall apply to risk-sharing contracts with eligible organizations, under section 1876 of the Social Security Act, as of April 1, 1987.

Contracts.
42 USC 1395mm note.
42 USC 1395mm.

Subtitle E—Medicaid and Maternal and Child Health

TABLE OF CONTENTS OF SUBTITLE

PART 1—COVERAGE OF INDIVIDUALS

- Sec. 9401. Optional coverage for poor pregnant women, infants, and children.
- Sec. 9402. Optional coverage of elderly and disabled poor for all medicaid benefits.
- Sec. 9403. Optional coverage of poor medicare beneficiaries for medicare cost-sharing expenses.
- Sec. 9404. Medicaid eligibility for qualified severely impaired individuals.
- Sec. 9405. Clarification of eligibility of homeless individuals.
- Sec. 9406. Payment for aliens under medicaid.
- Sec. 9407. Optional presumptive eligibility period for pregnant women.
- Sec. 9408. Respiratory care services for ventilator-dependent individuals.

PART 2—PROVISION OF SERVICES UNDER WAIVER AUTHORITY

- Sec. 9411. Permitting States to offer home and community-based services to certain low-income individuals.
- Sec. 9412. Waiver authority for chronically mentally ill and frail elderly.
- Sec. 9413. Continuation of “Case-Managed Medical Care for Nursing Home Patients” demonstration project.
- Sec. 9414. New Jersey respite care pilot project.
- Sec. 9415. Inapplicability of Paperwork Reduction Act.

PART 3—PAYMENTS

- Sec. 9421. Holding States harmless in fiscal year 1987 against a decrease in the Federal medical assistance percentage.
- Sec. 9422. Waiver of certain requirements.

PART 4—OTHER QUALITY AND EFFICIENCY MEASURES

- Sec. 9431. Independent quality review of HMO services.
- Sec. 9432. State utilization review systems.
- Sec. 9433. Clarification of flexibility for State medicaid payment systems for inpatient services.
- Sec. 9434. Financial disclosure requirements for HMOs; civil money penalties.
- Sec. 9435. COBRA technical corrections and clarifications relating to the medicaid program.
- Sec. 9436. Payment for certain long-term care patients in hospitals.

PART 5—MATERNAL AND CHILD HEALTH

- Sec. 9441. Authorization and allotment of additional funds.
- Sec. 9442. Maternal and child health and adoption clearinghouse.
- Sec. 9443. Collection of data relating to adoption and foster care.

PART 1—COVERAGE OF INDIVIDUALS

SEC. 9401. OPTIONAL COVERAGE OF POOR PREGNANT WOMEN, INFANTS, AND CHILDREN.

(a) CREATION OF NEW OPTIONAL CATEGORICALLY NEEDY GROUP.—Section 1902(a)(10)(A)(ii) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended—

(1) by striking “, or” at the end of subclause (VII) and inserting a semicolon,

(2) by inserting “or” at the end of subclause (VIII), and

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

“(IX) subject to subsection (1)(4), who are described in subsection (1)(I);”.

(b) DESCRIPTION OF GROUP.—Section 1902 of such Act is amended by inserting after subsection (k) the following new subsection:

“(1)(I) Individuals described in this paragraph are—

“(A) women during pregnancy (and during the 60-day period beginning on the last day of the pregnancy),

“(B) infants under one year of age,

“(C) children who have attained one year of age but have not attained two years of age,

“(D) children who have attained two years of age but have not attained three years of age,

“(E) children who have attained three years of age but have not attained four years of age, and

“(F) children who have attained four years of age but have not yet attained five years of age,

who are not described in subsection (a)(10)(A)(i), whose family income does not exceed the income level established by the State under paragraph (2) for a family size equal to the size of the family, including the woman, infant, or child.

“(2) For purposes of paragraph (1), the State shall establish an income level which is a percentage (not more than 100 percent) of the nonfarm income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

“(3) Notwithstanding subsection (a)(17), for individuals who are eligible for medical assistance because of subsection (a)(10)(A)(ii)(IX)—

“(A) application of a resource standard shall be at the option of the State;

“(B) any resource standard or methodology that is applied with respect to an individual described in subparagraph (A) of paragraph (1) may not be more restrictive than the resource standard or methodology that is applied under title XVI;

“(C) any resource standard or methodology that is applied with respect to an individual described in subparagraph (B), (C), (D), (E), or (F) of paragraph (1) may not be more restrictive than the corresponding methodology that is applied under the State plan under part A of title IV;

“(D) the income standard to be applied is the income standard established under paragraph (2); and

“(E) family income shall be determined in accordance with the methodology employed under the State plan under part A

State and local
governments.

42 USC 9902.

42 USC 1381.

42 USC 601.

or E of title IV, and costs incurred for medical care or for any other type of remedial care shall not be taken into account. Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17), require or permit such treatment for other individuals. 42 USC 670.

“(4)(A) A State plan may not elect the option of furnishing medical assistance to individuals described in subsection (a)(10)(A)(ii)(IX) unless the State has in effect, under its plan established under part A of title IV, payment levels that are not less than the payment levels in effect under its plan on April 17, 1986.

State and local governments.

“(B)(i) A State may not elect, under subsection (a)(10)(A)(ii)(IX), to cover only individuals described in paragraph (1)(A) or to cover only individuals described in paragraph (1)(B).

“(ii) A State may not elect, under subsection (a)(10)(A)(ii)(IX), to cover individuals described in subparagraph (C), (D), (E), or (F) of paragraph (1) unless the State has elected, under such subsection, to cover individuals described in the preceding subparagraphs of such paragraph.”.

(c) LIMITED BENEFITS FOR NEWLY ELIGIBLE PREGNANT WOMEN.—Section 1902(a)(10) of such Act (42 U.S.C. 1396a(a)(10)) is amended, in the matter after subparagraph (D)—

(1) by striking “and” before “(VI)”, and

(2) by inserting before the semicolon at the end the following: “, and (VII) the medical assistance made available to an individual described in subsection (1)(1)(A) who is eligible for medical assistance only because of subparagraph (A)(ii)(IX) shall be limited to medical assistance for services related to pregnancy (including prenatal, delivery, and postpartum services) and to other conditions which may complicate pregnancy”.

(d) CONTINUATION OF MEDICAL ASSISTANCE FOR CERTAIN PREGNANT WOMEN DURING PREGNANCY AND FOR CERTAIN INFANTS AND CHILDREN RECEIVING INPATIENT SERVICES.—Section 1902(e) of such Act (42 U.S.C. 1396a(e)) is amended by adding at the end the following new paragraphs:

“(6) At the option of a State, if a State plan provides medical assistance for individuals under subsection (a)(10)(A)(ii)(IX), the plan may provide that any woman described in such subsection and subsection (1)(1)(A) shall continue to be treated as an individual described in subsection (a)(10)(A)(ii)(IX) without regard to any change in income of the family of which she is a member until the end of the 60-day period beginning on the last day of her pregnancy.

State and local governments.

“(7) If a State plan provides medical assistance for individuals under subsection (a)(10)(A)(ii)(IX), in the case of an infant or child described in subparagraph (B), (C), (D), (E), or (F) of subsection (1)(1)—

“(A) who is receiving inpatient services for which medical assistance is provided on the date the infant or child attains the maximum age with respect to which coverage is provided under the State plan for such individuals, and

“(B) who, but for attaining such age, would remain eligible for medical assistance under such subsection, the infant or child shall continue to be treated as an individual described in subsection (a)(10)(A)(ii)(IX) and subsection (1)(1) until the end of the stay for which the inpatient services are furnished.”.

(e) CONFORMING AMENDMENTS.—

(1) Section 1902(a)(17) of such Act (42 U.S.C. 1396(a)(17)) is amended by inserting "except as provided in subsection (l)(3)," after "(17)".

(2) Section 1903(f)(4) of such Act (42 U.S.C. 1396b(f)(4)) is amended by inserting "for any individual described in section 1902(a)(10)(A)(ii)(IX) or" after "as medical assistance".

42 USC 1396a
note.

(f) **EFFECTIVE DATES.**—

(1) Except as provided in paragraph (2), the amendments made by this section shall apply to medical assistance furnished in calendar quarters beginning on or after April 1, 1987.

(2)(A) Subparagraph (C) of section 1902(l)(1) of the Social Security Act, as added by subsection (b) of this section, shall apply to medical assistance furnished in calendar quarters beginning on or after October 1, 1987.

(B) Subparagraph (D) of section 1902(l)(1) of the Social Security Act, as added by subsection (b) of this section, shall apply to medical assistance furnished in calendar quarters beginning on or after October 1, 1988.

(C) Subparagraph (E) of section 1902(l)(1) of the Social Security Act, as added by subsection (b) of this section, shall apply to medical assistance furnished in calendar quarters beginning on or after October 1, 1989.

(D) Subparagraph (F) of section 1902(l)(1) of the Social Security Act, as added by subsection (b) of this section, shall apply to medical assistance furnished in calendar quarters beginning on or after October 1, 1990.

(3) An amendment made by this section shall become effective as provided in paragraph (1) or (2) without regard to whether or not final regulations to carry out such amendment have been promulgated by the applicable date.

SEC. 9402. OPTIONAL COVERAGE OF ELDERLY AND DISABLED POOR FOR ALL MEDICAID BENEFITS.

(a) **CREATION OF NEW OPTIONAL CATEGORICALLY NEEDY GROUPS.**—

(1) **IN GENERAL.**—Subsection (a)(10)(A)(ii) of section 1902 of the Social Security Act (42 U.S.C. 1396a), as amended by section 9401(a) of this subtitle, is amended—

(A) by striking "or" at the end of subclause (VIII),

(B) by striking the semicolon at the end of subclause (IX) and inserting "or", and

(C) by adding at the end the following new subclause:
"(X) subject to subsection (m)(3), who are described in subsection (m)(1);".

(2) **DESCRIPTION OF INDIVIDUALS.**—Section 1902 of such Act is further amended by adding after subsection (l), as added by section 9401(b) of this subtitle, the following new subsection:

"(m)(1) Individuals described in this paragraph are individuals—

"(A) who are 65 years of age or older or are disabled individuals (as determined under section 1614(a)(3)),

"(B) whose income (as determined under section 1612 for purposes of the supplemental security income program) does not exceed an income level established by the State consistent with paragraph (2)(A), and

"(C) whose resources (as determined under section 1613 for purposes of the supplemental security income program) do not exceed (except as provided in paragraph (2)(B)) the maximum

42 USC 1382c.
State and local
governments.
42 USC 1382a.

42 USC 1382b.

amount of resources that an individual may have and obtain benefits under that program.

“(2)(A) The income level established under paragraph (1)(B) may not exceed a percentage (not more than 100 percent) of the nonfarm official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

42 USC 9902.

“(B) In the case of a State that provides medical assistance to individuals not described in subsection (a)(10)(A) and at the State's option, the State may use under paragraph (1)(C) such resource level (which is higher than the level described in that paragraph) as may be applicable with respect to individuals described in paragraph (1)(A) who are not described in subsection (a)(10)(A).”

State and local governments.

(b) **REQUIREMENT OF COVERAGE OF CERTAIN PREGNANT WOMEN AND CHILDREN AND OTHER SPECIAL RULES.**—Section 1902(m) of such Act, as added by subsection (a)(2), is further amended by adding at the end the following new paragraphs:

42 USC 1396a.

“(3) A State plan may not provide coverage for individuals under subsection (a)(10)(A)(ii)(X), unless the plan provides coverage of some or all of the individuals described in subsection (1)(1).

State and local governments.

“(4) Notwithstanding subsection (a)(17), for individuals described in paragraph (1) who are covered under the State plan by virtue of subsection (a)(10)(A)(ii)(X)—

“(A) the income standard to be applied is the income standard described in paragraph (1)(B), and

“(B) except as provided in section 1612(b)(4)(B)(ii), costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

42 USC 1382a.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17), require or permit such treatment for other individuals.”

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to payments to States for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

State and local governments.
42 USC 1396a
note.

SEC. 9403. OPTIONAL COVERAGE OF POOR MEDICARE BENEFICIARIES FOR MEDICARE COST-SHARING EXPENSES.

(a) **ELIGIBILITY OF QUALIFIED MEDICARE BENEFICIARY.**—Section 1902(a)(10) of the Social Security Act (42 U.S.C. 1396a(a)(10)) is amended—

42 USC 1396a.

(1) by striking “and” at the end of subparagraph (C),

(2) by inserting “and” at the end of subparagraph (D), and

(3) by inserting after subparagraph (D) the following new subparagraph:

“(E) at the option of a State, but subject to subsection (m)(3), for making medical assistance available for medicare cost-sharing (as defined in section 1905(p)(3)) for qualified medicare beneficiaries described in section 1905(p)(1);”

State and local governments.

42 USC 1396d.

(b) **QUALIFIED MEDICARE BENEFICIARY DEFINED.**—Section 1905 of such Act (42 U.S.C. 1396d) is amended by adding at the end the following new subsection:

“(p)(1) The term ‘qualified medicare beneficiary’ means an individual—

- 42 USC 1395c.
42 USC 1395i-2.
- State and local governments.
42 USC 1382a.
- 42 USC 1382b.
- 42 USC 9902.
- State and local governments.
- 42 USC 1396a.
- 42 USC 1396d.
- 42 USC 1396o.
- 42 USC 1395i-2.
42 USC 1395e.
42 USC 1395l.
State and local governments.
- 42 USC 1395mm.
- “(A) who is entitled to hospital insurance benefits under part A of title XVIII (including an individual entitled to such benefits pursuant to an enrollment under section 1818),
- “(B) who, but for section 1902(a)(10)(E) and the election of the State, is not eligible for medical assistance under the plan,
- “(C) whose income (as determined under section 1612 for purposes of the supplemental security income program) does not exceed an income level established by the State consistent with paragraph (2)(A), and
- “(D) whose resources (as determined under section 1613 for purposes of the supplemental security income program) do not exceed (except as provided in paragraph (2)(B)) the maximum amount of resources that an individual may have and obtain benefits under that program.
- “(2)(A) The income level established under paragraph (1)(C) may not exceed a percentage (not more than 100 percent) of the nonfarm official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.
- “(B) In the case of a State that provides medical assistance to individuals not described in section 1902(a)(10)(A) and at the State’s option, the State may use under paragraph (1)(D) such resource level (which is higher than the level described in that paragraph) as may be applicable with respect to individuals described in paragraph (1)(A) who are not described in section 1902(a)(10)(A).”
- (c) **LIMITED, MEDICARE GAP-FILLING BENEFITS.**—Section 1902(a)(10) of such Act (42 U.S.C. 1395a(a)(10)), as amended by section 9401(c) of this subtitle and by subsection (a) of this section, is amended, in the matter after subparagraph (E)—
- (1) by striking “and” before “(VII)”, and
- (2) by inserting before the semicolon at the end the following:
- “, and (VIII) the medical assistance made available to a qualified medicare beneficiary described in section 1905(p)(1) shall be limited to medical assistance for medicare cost-sharing (described in section 1905(p)(3)), subject to the provisions of subsection (n) and section 1916(b)”.
- (d) **MEDICARE COST-SHARING DEFINED.**—Section 1905(p) of such Act, as added by subsection (b), is amended by adding at the end the following:
- “(3) The term ‘medicare cost-sharing’ means the following costs incurred with respect to a qualified medicare beneficiary:
- “(A) Premiums under part B and (if applicable) under section 1818.
- “(B) Deductibles and coinsurance described in section 1813.
- “(C) The annual deductible described in section 1833(b).
- “(D) The difference between the amount that is paid under section 1833(a) and the amount that would be paid under such section if any reference to ‘80 percent’ therein were deemed a reference to ‘100 percent’.
- Such term also may include, at the option of a State, premiums for enrollment of a qualified medicare beneficiary with an eligible organization under section 1876.”.
- (e) **PAYMENT AMOUNTS.**—Section 1902 of such Act, as amended by sections 9401(b) and 9402(a)(2) of this subtitle, is further amended by adding at the end the following new subsection:

"(n) In the case of medical assistance furnished under this title for medicare cost-sharing respecting the furnishing of a service or item to a qualified medicare beneficiary, the State plan may provide payment in an amount with respect to the service or item that results in the sum of such payment amount and any amount of payment made under title XVIII with respect to the service or item exceeding the amount that is otherwise payable under the State plan for the item or service for eligible individuals who are not qualified medicare beneficiaries."

State and local governments.

42 USC 1395.

(f) REQUIREMENT OF COVERAGE OF CERTAIN PREGNANT WOMEN AND CHILDREN AND OTHER SPECIAL RULES.—

42 USC 1396a.

(1) REQUIRING COVERAGE OF CERTAIN PREGNANT WOMEN AND CHILDREN AND INCOME STANDARD TO BE USED.—Section 1902(m) of such Act, as added by section 9402(a)(2) of this subtitle, and as amended by section 9402(b) of this subtitle, is amended—

(A) in paragraph (3), by inserting "or coverage under subsection (a)(10)(E)" after "subsection (a)(10)(A)(ii)(IX)", and

(B) by adding at the end the following new paragraph: "(5) Notwithstanding subsection (a)(17), for qualified medicare beneficiaries described in section 1905(p)(1)—

42 USC 1396d.

"(A) the income standard to be applied is the income standard described in section 1905(p)(1)(C), and

"(B) except as provided in section 1612(b)(4)(B)(ii), costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

42 USC 1382a.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17), require or permit such treatment for other individuals."

(2) EFFECTIVE DATE OF BENEFITS.—Section 1902(e) of such Act, as amended by section 9401(d) of this subtitle, is amended by adding at the end the following new paragraph:

"(8) If an individual is determined to be a qualified medicare beneficiary (as defined in section 1905(p)(1)), such determination shall apply to services furnished after the end of the month in which the determination first occurs. For purposes of payment to a State under section 1903(a), such determination shall be considered to be valid for an individual for a period of 12 months, except that a State may provide for such determinations more frequently, but not more frequently than once every 6 months for an individual."

State and local governments.

42 USC 1396b.

(g) CONFORMING AMENDMENTS.—

(1) TREATMENT OF BENEFITS.—Section 1902(a)(10)(C) of such Act (42 U.S.C. 1396a(a)(10)(C)) is amended, in the matter before clause (i), by inserting "or (E)" after "subparagraph (A)".

(2) PAYMENT OF MEDICARE PREMIUMS AND PART A DEDUCTIBLE.—Section 1903(a)(1) of such Act (42 U.S.C. 1396b(a)(1)) is amended—

(A) by inserting "deductible amounts under part A and" after "(including expenditures for",

(B) by inserting "(and, in the case of qualified medicare beneficiaries described in section 1905(p)(1), part A)" after "premiums under part B", and

(C) by striking "or (B)" and inserting "(B) are qualified medicare beneficiaries described in section 1905(p)(1), or (C)".

(3) **TIMING OF BENEFITS.**—Section 1905(a) of such Act (42 U.S.C. 1396d(a)) is amended, in the matter before subdivision (i), by inserting “or, in the case of a qualified medicare beneficiary described in subsection (p)(1), if provided after the month in which the individual becomes such a beneficiary” after “makes application for assistance”.

(4) **COPAYMENTS.**—

(A) Section 1902(a)(15) of such Act (42 U.S.C. 1396a(a)(15)) is amended by inserting “are not qualified medicare beneficiaries (as defined in section 1905(p)(1)) but” after “older who”.

(B) Subsections (a) and (b) of section 1916 of such Act (42 U.S.C. 1396o) are each amended by striking “section 1902(a)(10)(A)” and inserting “subparagraph (A) or (E) of section 1902(a)(10)”.

(h) **EFFECTIVE DATE.**—The amendments made by this section apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 9404. MEDICAID ELIGIBILITY FOR QUALIFIED SEVERELY IMPAIRED INDIVIDUALS.

(a) **AS CATEGORICALLY NEEDY.**—Section 1902(a)(10)(A)(i)(II) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(i)(II)) is amended by inserting “or who are qualified severely impaired individuals (as defined in section 1905(q))” after “title XVI”.

(b) **DESCRIPTION OF QUALIFIED SEVERELY IMPAIRED INDIVIDUALS.**—Section 1905 of such Act (42 U.S.C. 1396d), as amended by section 9403(b) of this subtitle, is amended by adding at the end the following new subsection:

“(q) The term ‘qualified severely impaired individual’ means an individual under age 65—

“(1) who for the month preceding the first month to which this subsection applies to such individual—

“(A) received (i) a payment of supplemental security income benefits under section 1611(b) on the basis of blindness or disability, (ii) a supplementary payment under section 1616 of this Act or under section 212 of Public Law 93-66 on such basis, (iii) a payment of monthly benefits under section 1619(a), or (iv) a supplementary payment under section 1616(c)(3), and

“(B) was eligible for medical assistance under the State plan approved under this title; and

“(2) with respect to whom the Secretary determines that—

“(A) the individual continues to be blind or continues to have the disabling physical or mental impairment on the basis of which he was found to be under a disability and, except for his earnings, continues to meet all non-disability-related requirements for eligibility for benefits under title XVI,

“(B) the income of such individual would not, except for his earnings, be equal to or in excess of the amount which would cause him to be ineligible for payments under section 1611(b) (if he were otherwise eligible for such payments),

42 USC 1396a
note.
42 USC 1396.

42 USC 1382.

42 USC 1382e.
42 USC 1382
note.
42 USC 1382h.

State and local
governments.

42 USC 1381.

"(C) the lack of eligibility for benefits under this title would seriously inhibit his ability to continue or obtain employment, and

"(D) the individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the benefits under title XVI (including any federally administered State supplementary payments), this title, and publicly funded attendant care services (including personal care assistance) that would be available to him in the absence of such earnings.

State and local governments.

42 USC 1381.

In the case of an individual who is eligible for medical assistance pursuant to section 1619(b) in June, 1987, the individual shall be a qualified severely impaired individual for so long as such individual meets the requirements of paragraph (2)."

42 USC 1382h.

(c) **EFFECTIVE DATE.**—(1) The amendments made by this section apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1987, without regard to whether regulations to implement such amendments are promulgated by such date.

42 USC 1396a note.

42 USC 1396.

(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 this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

State and local governments.

SEC. 9405. CLARIFICATION OF ELIGIBILITY OF HOMELESS INDIVIDUALS.

Section 1902(b)(2) of the Social Security Act (42 U.S.C. 1396a(b)(2)) is amended by inserting before the semicolon the following: "regardless of whether or not the residence is maintained permanently or at a fixed address".

SEC. 9406. PAYMENT FOR ALIENS UNDER MEDICAID.

(a) **IN GENERAL.**—Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended by adding at the end thereof the following new subsection:

"(v)(1) Notwithstanding the preceding provisions of this section, except as provided in paragraph (2), no payment may be made to a State under this section for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

State and local governments.

"(2) Payment shall be made under this section for care and services that are furnished to an alien described in paragraph (1) only if—

"(A) such care and services are necessary for the treatment of an emergency medical condition of the alien, and

"(B) such alien otherwise meets the eligibility requirements for medical assistance under the State plan approved under this title (other than the requirement of the receipt of aid or assistance under title IV, supplemental security income benefits under title XVI, or a State supplementary payment).

42 USC 601.

42 USC 1381.

"(3) For purposes of this subsection, the term 'emergency medical condition' means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

"(A) placing the patient's health in serious jeopardy,

"(B) serious impairment to bodily functions, or

"(C) serious dysfunction of any bodily organ or part."

State and local
governments.

(b) CONFORMING AMENDMENT.—Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended by adding at the end thereof the following new sentence: "Notwithstanding paragraph (10)(B) or any other provision of this subsection, a State plan shall provide medical assistance with respect to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law only in accordance with section 1903(v)."

42 USC 1396a
note.

(c) EFFECTIVE DATE.—

(1) Except as provided in paragraph (2), the amendments made by this section shall apply to medical assistance furnished to aliens on or after January 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

42 USC 1396.

(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 requirement imposed by the amendment made in subsection (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 such additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

SEC. 9407. OPTIONAL PRESUMPTIVE ELIGIBILITY PERIOD FOR PREGNANT WOMEN.

(a) STATE OPTION.—Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended—

(1) by striking "and" at the end of paragraph (45),

(2) by striking the period at the end of paragraph (46) and inserting in lieu thereof "; and", and

(3) by adding at the end the following:

"(47) at the option of the State, provide for making ambulatory prenatal care available to pregnant women during a presumptive eligibility period in accordance with section 1920."

(b) PRESUMPTIVE ELIGIBILITY.—Title XIX of the Social Security Act is amended by redesignating section 1920 as section 1921 and inserting after section 1919 the following new section:

42 USC 1396s.

"PRESUMPTIVE ELIGIBILITY FOR PREGNANT WOMEN

42 USC 1396r-1.

"SEC. 1920. (a) A State plan approved under section 1902 may provide for making ambulatory prenatal care available to a pregnant woman during a presumptive eligibility period.

"(b) For purposes of this section—

"(1) the term 'presumptive eligibility period' means, with respect to a pregnant woman, the period that—

“(A) begins with the date on which a qualified provider determines, on the basis of preliminary information, that the family income of the woman does not exceed the applicable income level of eligibility under the State plan, and

“(B) ends with (and includes) the earlier of—

“(i) the day on which a determination is made with respect to the eligibility of the woman for medical assistance under the State plan,

“(ii) the day that is 45 days after the date on which the provider makes the determination referred to in subparagraph (A), or

“(iii) in the case of a woman who does not file an application for medical assistance within 14 calendar days after the date on which the provider makes the determination referred to in subparagraph (A), the fourteenth calendar day after such determination is made; and

“(2) the term ‘qualified provider’ means any provider that—

“(A) is eligible for payments under a State plan approved under this title,

“(B) provides services of the type described in subparagraph (A) or (B) of section 1905(a)(2) or in section 1905(a)(9),

42 USC 1396d.

“(C) is determined by the State agency to be capable of making determinations of the type described in paragraph (1)(A), and

“(D)(i) receives funds under—

“(I) section 329 or section 330 of the Public Health Service Act, or

42 USC 254b,
254c.

“(II) title V of this Act;

42 USC 701.

“(ii) participates in a program established under—

“(I) section 17 of the Child Nutrition Act of 1966, or

42 USC 1786.

“(II) section 4(a) of the Agriculture and Consumer Protection Act of 1973; or

42 USC 1446a.

“(iii) participates in a State perinatal program.

“(c)(1) The State agency shall provide qualified providers with—

“(A) such forms as are necessary for a pregnant woman to make application for medical assistance under the State plan, and

“(B) information on how to assist such women in completing and filing such forms.

“(2) A qualified provider that determines under subsection (b)(1)(A) that a pregnant woman is presumptively eligible for medical assistance under a State plan shall—

“(A) notify the State agency of the determination within 5 working days after the date on which determination is made, and

“(B) inform the woman at the time the determination is made that she is required to make application for medical assistance under the State plan within 14 calendar days after the date on which the determination is made.

“(3) A pregnant woman who is determined by a qualified provider to be presumptively eligible for medical assistance under a State plan shall make application for medical assistance under such plan within 14 calendar days after the date on which the determination is made.

“(d) Notwithstanding any other provision of this title, ambulatory prenatal care that—

“(1) is furnished to a pregnant woman—

“(A) during a presumptive eligibility period,

“(B) by a qualified provider; and

“(2) is included in the care and services covered by a State plan;

42 USC 1396b.

shall be treated as medical assistance provided by such plan for purposes of section 1903.”

(c) CONFORMING CHANGE.—Section 1903(u)(1)(D) of such Act (42 U.S.C. 1396b(u)(1)(D)) is amended by adding at the end the following:

“(v) In determining the amount of erroneous excess payments, there shall not be included any erroneous payments made for ambulatory prenatal care provided during a presumptive eligibility period (as defined in section 1920(b)(1)).”

Ante, p. 2058.
42 USC 1396b
note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to ambulatory prenatal care furnished in calendar quarters beginning on or after April 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 9408. RESPIRATORY CARE SERVICES FOR VENTILATOR-DEPENDENT INDIVIDUALS.

42 USC 1396a.

(a) REQUIRED SERVICES.—Section 1902(e) of the Social Security Act (42 U.S.C. 1396b(e)), as amended by sections 9401(d) and 9403(f) of this subtitle, is further amended by adding at the end the following new paragraph:

State and local
governments.

“(9)(A) At the option of the State, the plan may include as medical assistance respiratory care services for any individual who—

“(i) is medically dependent on a ventilator for life support at least six hours per day;

“(ii) has been so dependent for at least 30 consecutive days (or the maximum number of days authorized under the State plan, whichever is less) as an inpatient;

Health care
facilities.

“(iii) but for the availability of respiratory care services, would require respiratory care as an inpatient in a hospital, skilled nursing facility, or intermediate care facility, and would be eligible to have payment made for such inpatient care under the State plan;

“(iv) has adequate social support services to be cared for at home; and

“(v) wishes to be cared for at home.

“(B) The requirements of subparagraph (A)(ii) may be satisfied by a continuous stay in one or more hospitals, skilled nursing facilities, or intermediate care facilities.

“(C) For purposes of this paragraph, respiratory care services means services provided on a part-time basis in the home of the individual by a respiratory therapist or other health care professional trained in respiratory therapy (as determined by the State), payment for which is not otherwise included within other items and services furnished to such individual as medical assistance under the plan.”

(b) WAIVER OF COMPARABILITY.—Section 1902(a)(10) of such Act (42 U.S.C. 1396a(a)(10)), as amended by sections 9401(c), 9403(a), and

9403(c) of this subtitle, is further amended, in the matter following subparagraph (E)—

(1) by striking “and” before “(VIII)”;

(2) by inserting before the semicolon at the end thereof the following: “, and (IX) the making available of respiratory care services in accordance with subsection (e)(9) shall not, by reason of this paragraph (10), require the making available of such services, or the making available of such services of the same amount, duration, and scope, to any individuals not included under subsection (e)(9)(A), provided such services are made available (in the same amount, duration, and scope) to all individuals described in such subsection”.

(c) CONFORMING CHANGES.—

(1) Section 1905(a) of the Social Security Act (42 U.S.C. 1395d(a)), as amended by section 1895(c)(3) of the Tax Reform Act of 1986, is further amended—

(A) by striking “and” at the end of paragraph (19),

(B) by redesignating paragraph (20) as paragraph (21), and

(C) by inserting after paragraph (19) the following new paragraph:

“(20) respiratory care services (as defined in section 1902(e)(9)(C)); and”.

(2) Section 1902(j) of the Social Security Act (42 U.S.C. 1396a(j)), as amended by section 1895(c)(3) of the Tax Reform Act of 1986, is amended by striking “(20)” and inserting in lieu thereof “(21)”.

(3) Section 1902(a)(10)(C)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(C)(iv)), as amended by section 1895(c)(3) of the Tax Reform Act of 1986, is amended by striking “through (19)” and inserting in lieu thereof “through (20)”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after the date of the enactment of this Act.

Ante, p. 2931.

Ante, p. 2060.

42 USC 1396a note.

PART 2—PROVISION OF SERVICES UNDER WAIVER AUTHORITY

SEC. 9411. PERMITTING STATES TO OFFER HOME AND COMMUNITY-BASED SERVICES TO CERTAIN LOW-INCOME INDIVIDUALS.

(a) WAIVER AUTHORITY.—

(1) Section 1915(c)(1) of the Social Security Act (42 U.S.C. 1396n(c)(1)) is amended—

(A) by inserting “a hospital or” after “level of care provided in”, and

(B) by striking out all beginning with “or but for” through “State plan” the third place it appears.

(2) Section 1915(c)(2)(B) of such Act is amended—

(A) in clause (i) by striking “skilled nursing facility or” and inserting in lieu thereof “inpatient hospital, skilled nursing facility, or”, and

(B) in the matter following clause (iii) by inserting “inpatient hospital,” after “need for”.

(3) Section 1915(c)(7) of such Act is amended to read as follows:

“(7) In making estimates under paragraph (2)(D) in the case of a waiver that applies only to individuals with a particular illness or

Health care facilities.

condition who are inpatients in hospitals or in skilled nursing or intermediate care facilities, the State may determine the average per capita expenditure that would have been made in a fiscal year for those individuals under the State plan separately from the expenditures for other individuals who are inpatients of those respective facilities."

State and local
governments.
AIDS.
42 USC 1396n.

(b) **PROVIDING CASE MANAGEMENT SERVICES TO PATIENTS WITH CERTAIN CONDITIONS.**—Section 1915(g)(1) of such Act is amended by adding at the end the following: "A State may limit the provision of case management services under this subsection to individuals with acquired immune deficiency syndrome (AIDS), or with AIDS-related conditions, or with either, and a State may limit the provision of case management services under this subsection to individuals with chronic mental illness."

Ante, pp. 203,
204.
42 USC 1396a.

(c) **WAIVER OF COMPARABILITY REQUIREMENT.**—The first sentence of section 1915(c)(3) of such Act is amended by striking all that follows "statewide" and inserting "and section 1902(a)(10)(B) (relating to comparability)."

(d) **PROVIDING CERTAIN OTHER SERVICES TO PATIENTS WITH CHRONIC MENTAL ILLNESS.**—Section 1915(c)(4)(B) of such Act is amended by inserting before the period at the end the following: "and for day treatment or other partial hospitalization services, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness".

42 USC 1396n
note.

(e) **EFFECTIVE DATE.**—The amendments made by this section shall apply to applications for waivers (or renewals thereof) approved on or after the date of the enactment of this Act.

SEC. 9412. WAIVER AUTHORITY FOR CHRONICALLY MENTALLY ILL AND FRAIL ELDERLY.

(a) **CHRONICALLY MENTALLY ILL DEMONSTRATION PROGRAM.**—

State and local
governments.
42 USC 1396.

(1) The Secretary of Health and Human Services may, in accordance with this subsection, waive certain provisions of title XIX of the Social Security Act in order to allow States to implement demonstration programs to improve the continuity, quality, and cost-effectiveness of mental health services available to chronically mentally ill medicaid beneficiaries.

(2) A waiver shall be granted under this subsection with respect to a demonstration program only if—

Grants.

(A) the demonstration program has been awarded a grant from the Robert Wood Johnson Foundation and the Department of Housing and Urban Development under their "Program for the Chronically Mentally Ill",

(B) the State provides assurances satisfactory to the Secretary that under such waiver—

(i) the average per capita expenditure estimated by the State in any fiscal year for medical assistance for mental health services provided with respect to individuals covered under the program does not exceed 100 percent of the average per capita expenditure that the State reasonably estimates would have been made in that fiscal year for expenditures under the State plan for such services for such individuals if the waiver had not been granted, and

(ii) there will be no reduction or limitation in benefits to a medicaid beneficiary under the program.

(3) The authority under this subsection extends only to the following, as they relate to the provision of mental health services:

(A) A waiver of the requirements of sections 1902(a)(1), 1902(a)(10)(B), 1902(a)(23), and 1902(a)(30) and clauses (i) and (ii) of section 1903(m)(2) of the Social Security Act.

42 USC 1396a,
1396b.

(B) Including as "medical assistance" under the State plan case management services with respect to mentally ill patients, habilitation services (as defined in section 1915(c)(5) of such Act), day treatment or other partial hospitalization services, residential services (other than room and board), psychosocial rehabilitation services, clinic services (whether or not furnished in a facility), and such other services as the State may request and the Secretary may approve for individuals covered under the demonstration project.

42 USC 1396n.

(4)(A) A waiver under this subsection shall be for an initial term of three years which may be extended for an additional two-year term. The request of a State for extension of such a waiver shall be deemed granted unless the Secretary denies such request in writing within 90 days after the date of its submission to the Secretary.

(B) The authority to approve a waiver under this subsection extends only during the five-year period beginning on October 1, 1986.

(5) Subsections (c)(6) and (e)(1) of section 1915 of the Social Security Act shall apply to a waiver under this subsection in the same manner as they apply to a waiver under that section.

(6) The Secretary shall report, not later than January 1, 1993, to Congress on the cost, accessibility, utilization, and quality of services provided under waivers granted under this subsection.

Reports.

(b) FRAIL ELDERLY DEMONSTRATION PROJECT WAIVERS.—

(1) The Secretary of Health and Human Services shall grant waivers of certain requirements of titles XVIII and XIX of the Social Security Act to not more than 10 public or nonprofit private community-based organizations to enable such organizations to provide comprehensive health care services on a capitated basis to frail elderly patients at risk of institutionalization.

42 USC 1395,
1396.

(2)(A) Except as provided in subparagraph (B), the terms and conditions of a waiver granted pursuant to this subsection shall be substantially the same as the terms and conditions of the On Lok waiver (referred to in section 603(c) of the Social Security Amendments of 1983 and extended by section 9220 of the Consolidated Omnibus Budget Reconciliation Act of 1985).

42 USC 1395b-1
notes.
Ante, p. 183.
Grants.

(B) In order to receive a waiver under this subsection, an organization must be awarded a grant from the Robert Wood Johnson Foundation.

(C) Subject to subparagraph (B), any waiver granted pursuant to this subsection shall be for an initial period of 3 years. The Secretary may extend such waiver beyond such initial period for so long as the Secretary finds that the organization complies with the terms and conditions described in subparagraphs (A) and (B).

SEC. 9413. CONTINUATION OF "CASE-MANAGED MEDICAL CARE FOR NURSING HOME PATIENTS" DEMONSTRATION PROJECT.

Massachusetts.

42 USC 1395,
1396.

42 USC 1315.

(a) **APPROVAL OF APPLICATION.**—The Secretary of Health and Human Services shall approve any application for a waiver of any requirement of title XVIII or XIX of the Social Security Act necessary to provide for continuation, from July 1, 1987, through June 30, 1989, of the "Case-Managed Medical Care for Nursing Home Patients" demonstration project (#95-P-98346/1-01) carried out pursuant to section 222 of the Social Security Amendments of 1972, section 402 of the Social Security Amendments of 1967, and section 1115 of the Social Security Act by the Department of Public Welfare, Commonwealth of Massachusetts.

(b) **TERMS AND CONDITIONS.**—The Secretary's approval of an application (or renewal of an application) under subsection (a) shall be on the same terms and conditions as applied to the demonstration project on July 1, 1986.

SEC. 9414. NEW JERSEY RESPITE CARE PILOT PROJECT.

Handicapped
persons.
Aged persons.

(a) **ESTABLISHMENT.**—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into an agreement with the State of New Jersey (in this section referred to as the "State") for the purpose of conducting a pilot project (in this section referred to as the "project") under title XIX of the Social Security Act for providing respite care services for elderly and disabled individuals in order to determine the extent to which—

(1) the provision of necessary respite care services to individuals at risk of institutionalization will delay or avert the need for institutional care, and

(2) respite care services enhance and sustain the role of the family in providing long-term care services for elderly and disabled individuals at risk of institutionalization.

Contracts.

(b) **CONDITIONS.**—The agreement with the Secretary under this section shall—

State and local
governments.

(1) provide that the project shall be administered by a State health services agency designated for such purpose by the Governor (which may be the State agency administering or responsible for the administration of the State plan for medical assistance under title XIX of the Social Security Act),

42 USC 1396.

(2) provide that if the project imposes any cost sharing requirements on participants who are eligible for benefits under title XIX of the Social Security Act, such requirements shall be imposed only in accordance with the provisions of section 1916 of such Act,

42 USC 1396o.

(3) provide for a system of review to assure that respite care services are provided only to individuals reasonably determined to be in need of such services, and

(4) meet such other requirements as the Secretary may establish for the proper and efficient implementation of the project.

(c) **DEFINITION.**—For purposes of this section, the term "respite care services" shall include—

(1) short-term and intermittent—

(A) companion or sitter services (paid as well as volunteer),

(B) homemaker and personal-care services,

(C) adult day care, and

(D) inpatient care in a hospital, a skilled nursing facility, or an intermediate care facility (not to exceed a total of 14 days for any individual); and

(2) peer support and training for family caregivers (using informal support groups and organized counseling).

(d) **PAYMENTS.**—The agreement under this section shall be entered into between the Secretary and the State agency designated by the Governor. Under such agreement the Secretary shall pay to the State, as in additional payment under section 1903 of the Social Security Act for each quarter, an amount equal to 50 percent of the reasonable costs incurred by such State during such quarter in providing respite care services under the project for elderly and disabled individuals who are eligible for medical assistance under the State plan approved under title XIX of such Act (or who would be eligible if coverage under such plan was as broad as allowed under Federal law). The Federal payment shall not exceed \$1,000,000 for fiscal year 1987, and \$2,000,000 for each of the fiscal years 1988, 1989, and 1990. No payments shall be made pursuant to this section for any fiscal year beginning after September 30, 1990.

(e) **DURATION.**—The project under this section shall be of a maximum duration of four years, plus an additional time period of up to six months for final evaluation and reporting.

(f) **REPORTS.**—The State shall arrange for an independent evaluation of the project and shall transmit the evaluation to the Secretary not more than six months after the conclusion of project.

(g) **PROVISIONS SUBJECT TO WAIVER.**—At the request of the State, the Secretary shall waive the following provisions of title XIX of the Social Security Act as they relate to the pilot project: section 1902(a)(1), section 1902(a)(10)(B), section 1902(a)(13), and section 1902(a)(30). The Secretary may not waive any other provision of such title with respect to the pilot project.

Contracts.
State and local
governments.
Aged persons.
Handicapped
persons.
42 USC 1396b.

42 USC 1396.

Reports.

42 USC 1396a.

SEC. 9415. INAPPLICABILITY OF PAPERWORK REDUCTION ACT.

Notwithstanding any other provision of law, chapter 35 of title 44, United States Code, shall not apply to information required to carry out any provision of this part or the amendments made by this part.

44 USC 3501 *et*
seq.

PART 3—PAYMENTS

SEC. 9421. HOLDING STATES HARMLESS IN FISCAL YEAR 1987 AGAINST A DECREASE IN THE FEDERAL MEDICAL ASSISTANCE PERCENTAGE.

(a) **IN GENERAL.**—Section 9528 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by adding at the end the following new subsection:

42 USC 1301
note.
Ante, p. 1972.

“(c) **HOLD HARMLESS PROVISION.**—Notwithstanding subsection (b), for calendar quarters occurring during fiscal year 1987 and only for purposes of making payment to a State under section 1903 of the Social Security Act, the amendments made by subsection (a) shall not apply to a State if the effect of the applying the amendments would be to reduce the amount of payment made to the State under that section.”

42 USC 1396b.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall be effective as though it had been included in the Consolidated Omnibus Budget Reconciliation Act of 1985 at the time of its enactment.

42 USC 1301
note.
Ante, p. 82.

SEC. 9422. WAIVER OF CERTAIN REQUIREMENTS.

Notwithstanding the three-month limitation set forth in sections 1902(a)(34) and 1905(a) of the Social Security Act, payment may be

South Carolina.
42 USC 1396a,
1396d.

42 USC 1396.

made under title XIX of such Act with respect to care and services provided by the Medical University of South Carolina, after September 30, 1984, and before July 1, 1985, to individuals—

42 USC 1396a.

Women.

State and local governments.

(1) who are not described in section 1902(a)(10)(A) of such Act, (2) who, upon application, would have been eligible as individuals under the age of 18 or pregnant women, for medical assistance under the State plan approved under such title at the time such care and services were provided, and

(3) who, not later than six months after the date of the enactment of this Act, are determined by the State agency administering or supervising the administration of such plan to have been so eligible.

PART 4—OTHER QUALITY AND EFFICIENCY MEASURES

SEC. 9431. INDEPENDENT QUALITY REVIEW OF HMO SERVICES.

(a) **IN GENERAL.**—Section 1902(a)(30) of the Social Security Act (42 U.S.C. 1396a(a)(30)) is amended—

Contracts.

State and local governments.

42 USC 1320c.

42 USC 1396b.

(1) by inserting “and” at the end of subparagraph (B), and (2) by adding at the end the following new subparagraph:

“(C) provide a utilization and quality control peer review organization (under part B of title XI) or a private accreditation body to conduct (on an annual basis) an independent, external review of the quality of services furnished under each contract under section 1903(m), with the results of such review made available to the State and, upon request, to the Secretary, the Inspector General in the Department of Health and Human Services, and the Comptroller General.”

(b) **CONFORMING AMENDMENTS.**—(1) Section 1902(d) of such Act (42 U.S.C. 1396a(d)) is amended by inserting “(including quality review functions described in subsection (a)(30)(C))” after “medical or utilization review functions”.

(2) Section 1903(a)(3)(C) of such Act (42 U.S.C. 1396b(a)(3)(C)) is amended by inserting “or quality review” after “medical and utilization review”.

42 USC 1396a note.

(c) **EFFECTIVE DATE.**—The amendments made by this section apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 9432. STATE UTILIZATION REVIEW SYSTEMS.

Health care facilities.

42 USC 1396a note.

(a) **IN GENERAL.**—The Secretary of Health and Human Services (in this section referred to as the “Secretary”) may not, during the period beginning with the date of the enactment of this Act and ending with the date that is 180 days after the day on which the report required by subsection (b) is submitted to the Congress, publish final or interim final regulations requiring a State plan approved under title XIX of the Social Security Act to include a program requiring second surgical opinions or a program of in-patient hospital preadmission review.

42 USC 1396.

(b) **REPORT.**—

(1) The Secretary shall report to Congress, by not later than October 1, 1988, for each State in a representative sample of States—

(A) the identity of those procedures which are high volume or high cost procedures among patients who are covered under the State medicaid plan,

(B) the payment rates under those plans for such procedures, and the aggregate annual payment amounts made under such plans for such procedures (including the Federal share of such payment amounts),

(C) the rate at which each such procedure is performed on medicaid patients and (to the extent that data are available) comparisons to the rate at which such procedure is performed on patients of comparable age who are not medicaid patients,

(D) with respect to each such procedure—

(i) the number of board certified or board eligible physicians in the State who provide care and services to medicaid patients and who perform the procedure, and

Health care professionals.

(ii) in the case of a State with a mandatory second surgical opinion program in operation, the number of physicians described in clause (i) who provide second opinions (of the type described in section 1164 of the Social Security Act) for the procedure at prevailing payment rates under the State medicaid plan, and

Ante, p. 196.

(E) in the case of a State with a mandatory second surgical opinion program or a program of inpatient hospital preadmission review in operation, a description of—

Health care facilities.

(i) the extent to which such program impedes access to necessary care and services, and

(ii) the measures that the State has taken to address such impediments, particularly in rural areas.

Rural areas.

(2) Such report shall also include a list of those surgical procedures which the Secretary believes meet the following criteria and for which a mandatory second opinion program under medicaid plans may be appropriate:

(A) The procedure is one which generally can be postponed without undue risk to the patient.

(B) The procedure is a high volume procedure among patients who are covered under State medicaid plans or is a high cost procedure.

(C) The procedure has a comparatively high rate of nonconfirmation upon examination by another qualified physician, there is substantial geographic variation in the rates of performance of the procedure, or there are other reasons why requiring second opinions for 100 percent of such procedures would be cost effective.

Health care professionals.

(3) The representative sample of States required to be included in the report shall include States with mandatory second surgical opinion programs in operation, States with programs of inpatient hospital preadmission review in operation, and States with neither such program in operation.

Health care facilities.

(4) In this subsection, the term "medicaid plan" means a State plan approved under title XIX of the Social Security Act.

42 USC 1396.

(c) *Study.*—

(1) The Secretary shall conduct a study of the utilization of selected medical treatments and surgical procedures by medicaid beneficiaries in order to assess the appropriateness, necessity, and effectiveness of such treatments and procedures.

(2) The study shall analyze the extent to which there is significant variation in the rate of utilization by medicaid bene-

ficiaries of selected treatments and procedures for different geographic areas within States and among States.

(3) The study shall also identify underutilized, medically necessary treatments and procedures for which—

(A) a failure to furnish could have an adverse effect on health status, and

(B) the rate of utilization by medicaid beneficiaries is significantly less than the rate for comparable, age-adjusted populations.

(4) The study shall be coordinated, to the extent practicable, with the research program established pursuant to section 1875(c) of the Social Security Act, with particular regard to the relationship of the variations described in paragraph (2) to patient outcomes.

(5) The Secretary shall report the results of the study to the Congress not later than January 1, 1990.

Research and
development.
Ante, p. 2066.

SEC. 9433. CLARIFICATION OF FLEXIBILITY FOR STATE MEDICAID PAYMENT SYSTEMS FOR INPATIENT SERVICES.

(a) IN GENERAL.—Section 2173 of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35, 95 Stat. 809) is amended by adding at the end the following new subsection:

“(d) Section 1902 of such Act is further amended by inserting before subsection (i) the following new subsection:

“(h) Nothing in this title (including subsections (a)(13) and (a)(30) of this section) shall be construed as authorizing the Secretary to limit the amount of payment adjustments that may be made under a plan under this title with respect to hospitals that serve a disproportionate number of low-income patients with special needs.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply as though it was included in the enactment of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35).

42 USC 1396a.

42 USC 1396a.

Health care
facilities.

Disadvantaged
persons.

42 USC 1396a
note.

95 Stat. 357.

SEC. 9434. FINANCIAL DISCLOSURE REQUIREMENTS FOR HMOS; CIVIL MONEY PENALTIES.

(a) DISCLOSURE OF INTERLOCKING RELATIONSHIPS.—

(1) Section 1903(m) of the Social Security Act (42 U.S.C. 1396b(m)) is amended—

(A) in paragraph (2)(A)—

(i) by striking “and” at the end of clause (vi),

(ii) by striking the period at the end of clause (vii) and inserting “, and”, and

(iii) by adding after clause (vii) the following new clause:

“(viii) such contract provides for disclosure of information in accordance with section 1124 and paragraph (4) of this subsection.”; and

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

“(4)(A) Each health maintenance organization which is not a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act) must report to the State and, upon request, to the Secretary, the Inspector General of the Department of Health and Human Services, and the Comptroller General a description of transactions between the organization and a party in interest (as defined in section 1318(b) of such Act), including the following transactions:

Contracts.

42 USC 1320a-3.

Reports.

42 USC 300e-9.

42 USC 300e-17.

"(i) Any sale or exchange, or leasing of any property between the organization and such a party.

Gifts and property.

"(ii) Any furnishing for consideration of goods, services (including management services), or facilities between the organization and such a party, but not including salaries paid to employees for services provided in the normal course of their employment.

"(iii) Any lending of money or other extension of credit between the organization and such a party.

The State or Secretary may require that information reported respecting an organization which controls, or is controlled by, or is under common control with, another entity be in the form of a consolidated financial statement for the organization and such entity.

State and local governments.

"(B) Each organization shall make the information reported pursuant to subparagraph (A) available to its enrollees upon reasonable request."

(2) Section 1903(m)(2)(A)(iii) of the Social Security Act (42 U.S.C. 1396b(m)(2)(A)(iii)) is amended by inserting before the semicolon the following: "and under which the Secretary must provide prior approval for contracts providing for expenditures in excess of \$100,000".

Contracts.

(3)(A) The amendments made by paragraph (1) shall take effect 6 months after the date of the enactment of this Act.

Effective date.
Contracts.
42 USC 1396b note.

(B) The amendment made by paragraph (2) shall take effect on the date of the enactment of this Act and shall apply to contracts entered into, renewed, or extended after the end of the 30-day period beginning on the date of the enactment of this Act.

(b) CIVIL MONEY PENALTIES.—Section 1903(m) of the Social Security Act, as amended by subsection (a), is further amended by adding at the end the following new paragraph:

"(5)(A) Any entity with a contract under this subsection that fails substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under such contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals, is subject to a civil money penalty of not more than \$10,000 for each such failure.

Contracts.

"(B) The provisions of section 1128A (other than subsection (a)) shall apply to a civil money penalty under subparagraph (A) in the same manner as they apply to a civil money penalty under that section."

Ante, pp. 2003, 2008.

SEC. 9435. COBRA TECHNICAL CORRECTIONS AND CLARIFICATIONS RELATING TO THE MEDICAID PROGRAM.

(a) MAINTENANCE INCOME STANDARDS.—Section 9502(j)(4) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by striking out "on or after" and inserting in lieu thereof "before, on, or after".

42 USC 1396n note.
Ante, p. 202.

(b) HOSPICE CARE FOR DUAL ELIGIBLES.—

(1) Section 1902(a)(13)(D) of the Social Security Act, as amended by sections 9505(c)(1) and 9509(a)(4) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by inserting before the first semicolon the following: "and for payment of amounts under section 1905(o)(3)".

42 USC 1396a.
Ante, pp. 208, 211.
42 USC 1396d.

Ante, p. 208.

State and local
governments.

42 USC 1395c.

42 USC 1395d.

42 USC 1396a.

42 USC 1395e.

42 USC 1396a
note.

Ante, p. 210.

Handicapped
persons.

Ante, pp. 208,
210.

Ante, p. 212.

42 USC 1396b
note.

Ante, p. 2931.

(2) Section 1905(o) of the Social Security Act, as amended by section 9505(a)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by adding at the end the following new paragraph:

"(3) In the case of a State which elects not to provide medical assistance for hospice care, but provides medical assistance for skilled nursing or intermediate care facility services with respect to an individual—

"(A) who is residing in a skilled nursing or intermediate care facility and is receiving medical assistance for services in such facility under the plan,

"(B) who is entitled to benefits under part A of title XVIII and has elected, under section 1812(d), to receive hospice care under such part, and

"(C) with respect to whom the hospice program under such title and the skilled nursing or intermediate care facility have entered into a written agreement under which the program takes full responsibility for the professional management of the individual's hospice care and the facility agrees to provide room and board to the individual, instead of any payment otherwise made under the plan with respect to the facility's services, the State shall provide for payment to the hospice program of an amount equal to the amounts allocated under the plan for room and board in the facility, in accordance with the rates established under section 1902(a)(13), and, if the individual is an individual described in section 1902(a)(10)(A), shall provide for payment of any coinsurance amounts imposed under section 1813(a)(4). For purposes of this paragraph and section 1902(a)(13)(D), the term 'room and board' includes performance of personal care services, including assistance in activities of daily living, in socializing activities, administration of medication, maintaining the cleanliness of a resident's room, and supervising and assisting in the use of durable medical equipment and prescribed therapies."

(c) **MEDICAID QUALIFYING TRUSTS.**—Section 9506 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by adding at the end the following new subsection:

"(c) **EXCEPTION.**—The amendment made by subsection (a) shall not apply to any trust or initial trust decree established prior to April 7, 1986, solely for the benefit of a mentally retarded individual who resides in an intermediate care facility for the mentally retarded."

(d) **EFFECTIVE DATES.**—

(1) Sections 9505(e) and 9508(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 are each amended by inserting before the period at the end the following: ", without regard to whether or not regulations to carry out the amendments have been promulgated by that date".

(2) Sections 9510(b) and 9511(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 are each amended by inserting before the period at the end the following: ", without regard to whether or not regulations to carry out the amendment have been promulgated by that date".

(e) **HEALTH INSURING ORGANIZATIONS.**—Section 9517(c)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended by section 1895(c)(4) of the Tax Reform Act of 1986, is amended by adding at the end the following new subparagraph:

"(D) Nothing in section 1903(m)(1)(A) of the Social Security Act shall be construed as requiring a health-insuring organization to be organized under the health maintenance organization laws of a State."

State and local
governments.
42 USC 1396b.

(f) **EFFECTIVE DATE.**—The amendments made by this section shall be effective as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

42 USC 1396a
note.

Ante, p. 82.

SEC. 9436. PAYMENT FOR CERTAIN LONG-TERM CARE PATIENTS IN HOSPITALS.

(a) **IN GENERAL.**—In the case of a State which received a waiver under the authority of section 402(b) of the Social Security Amendments of 1967 with respect to payment methodology for inpatient hospital services under title XVIII and XIX of the Social Security Act during the 3-year period beginning January 1, 1983, notwithstanding section 1902(a)(13) of such Act, the State may pay under title XIX of such Act for hospital patients receiving services at an inappropriate level of care at the rate for hospital patients receiving an appropriate level of care if the Secretary of Health and Human Services determines that a sufficient number of hospital beds have been decertified in the State to reduce the payments to hospitals under such title in the State by amount equal to or greater than the amount by which payments to hospitals under such title in such State will increase as a result of the payment of such higher rates for patients receiving inappropriate levels of care.

State and local
governments.
42 USC 1395b-1.
42 USC 1395,
1396.
42 USC 1396a.

(b) **EFFECTIVE PERIOD.**—Subsection (a) shall apply to payments for services furnished during the 3-year period beginning January 1, 1986, after the date the Secretary makes the determination described in that subsection.

PART 5—MATERNAL AND CHILD HEALTH

SEC. 9441. AUTHORIZATION AND ALLOTMENT OF ADDITIONAL FUNDS.

(a) **ADDITIONAL FUNDS.**—Section 501(a) of the Social Security Act (42 U.S.C. 701(a)) is amended by striking "\$478,000,000 for fiscal year 1984" and inserting "\$553,000,000 for fiscal year 1987, \$557,000,000 for fiscal year 1988, and \$561,000,000 for fiscal year 1989".

(b) **ALLOTMENT OF ADDITIONAL APPROPRIATIONS.**—Section 502 of such Act (42 U.S.C. 702) is amended—

(1) in subsection (a)(1) by striking "amount appropriated under section 501(a)" and inserting in lieu thereof "amounts appropriated under section 501(a) for a fiscal year that are not in excess of \$478,000,000";

(2) in subsection (b)—
(A) by inserting "that are not in excess of \$478,000,000" after "fiscal year" the first place it appears, and

(B) by striking paragraph (3); and

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

"(c)(1) Of the amounts appropriated for a fiscal year in excess of \$478,000,000, an amount equal to 7 percent for fiscal year 1987, 8 percent for fiscal year 1988, and 9 percent for fiscal year 1989 shall be retained by the Secretary for the purpose of carrying out (through grants, contracts, or otherwise) projects for the screening of newborns for sickle-cell anemia and other genetic disorders. The provisions of paragraph (3) of subsection (a) shall apply to projects authorized by this paragraph to the same extent as such provisions apply to projects authorized under such subsection.

Grants.
Contracts.

"(2)(A) Of the amounts appropriated for a fiscal year in excess of \$478,000,000 that remain after the Secretary has retained the applicable amount (if any) for such fiscal year under paragraph (1), an amount equal to 33½ percent shall be retained and allotted in the same manner as the amounts retained and allotted under subsections (a) and (b).

Research and
development.

"(B) The amounts retained by the Secretary under this paragraph shall be used for the purpose of carrying out (through grants, contracts, or otherwise) special projects of regional or national significance, training, and research to promote access to primary health services for children and community-based service networks and case management services for children with special health care needs.

State and local
governments.

"(C) The amounts allotted to the States under this paragraph shall be used to develop primary health services demonstration programs and projects for children and to promote the development of community-based service networks and case management services for children with special health care needs.

"(D) For purposes of this paragraph—

"(i) the term 'primary health services' includes—

"(I) any assessment, diagnosis, or treatment service provided on an outpatient basis that is designed to promote the health, to prevent the development of disease or disability, or to treat an illness or other health condition, of a child, and

"(II) any service designed to promote the access of children to high quality, continuous, and comprehensive primary health services, including case management;

"(ii) the term 'community-based service network for children with special health care needs' means a network of coordinated, high-quality services that is located in or near the home communities of children with special health care needs in order to improve the health status, functioning, and well-being of such children;

"(iii) the term 'case management services' means services to promote the effective and efficient organization and utilization of resources to assure access to necessary comprehensive services for children and their families; and

"(iv) the term 'comprehensive services' includes early identification and intervention services, diagnostic and evaluation services, treatment services, rehabilitation services, family support services, and special education services.

"(3) Of the amounts appropriated for a fiscal year in excess of \$478,000,000 that remain after the Secretary has retained the applicable amount (if any) for such fiscal year under paragraph (1), an amount equal to 66½ percent shall be retained and allotted in the same manner and for the same purposes as the amounts retained and allotted under subsections (a) and (b).

State and local
governments.

"(d)(1) To the extent that all the funds appropriated under this title for a fiscal year are not otherwise allotted to States either because all the States have not qualified for such allotments under section 505 for the fiscal year or because some States have indicated in their descriptions of activities under section 505 that they do not intend to use the full amount of such allotments, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this paragraph.

"(2) To the extent that all the funds appropriated under this title for a fiscal year are not otherwise allotted to States because some State allotments are offset under section 506(b)(2), such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this paragraph."

42 USC 706.

SEC. 9442. MATERNAL AND CHILD HEALTH AND ADOPTION CLEARINGHOUSE.

The Secretary of Health and Human Services shall establish, either directly or by grant or contract, a National Adoption Information Clearinghouse. The Clearinghouse shall—

Grants.
Contracts.
42 USC 679a.

(1) collect, compile, and maintain information obtained from available research, studies, and reports by public and private agencies, institutions, or individuals concerning all aspects of infant adoption and adoption of children with special needs;

(2) compile, maintain, and periodically revise directories of information concerning—

Women.
Education.
State and local
governments.

- (A) crisis pregnancy centers,
- (B) shelters and residences for pregnant women,
- (C) training programs on adoption,
- (D) educational programs on adoption,
- (E) licensed adoption agencies,
- (F) State laws relating to adoption,
- (G) intercountry adoption, and

(H) any other information relating to adoption for pregnant women, infertile couples, adoptive parents, unmarried individuals who want to adopt children, individuals who have been adopted, birth parents who have placed a child for adoption, adoption agencies, social workers, counselors, or other individuals who work in the adoption field;

(3) disseminate the information compiled and maintained pursuant to paragraph (1) and the directories compiled and maintained pursuant to paragraph (2); and

(4) upon the establishment of an adoption and foster care data collection system pursuant to section 479 of the Social Security Act, disseminate the data and information made available through that system.

Infra.

SEC. 9443. COLLECTION OF DATA RELATING TO ADOPTION AND FOSTER CARE.

Part E of title IV of the Social Security Act, as amended by section 1883(b)(10) of the Tax Reform Act of 1986, is further amended by adding at the end thereof the following new section:

"COLLECTION OF DATA RELATING TO ADOPTION AND FOSTER CARE

"SEC. 479. (a)(1) Not later than 90 days after the date of the enactment of this subsection, the Secretary shall establish an Advisory Committee on Adoption and Foster Care Information (in this section referred to as the 'Advisory Committee') to study the various methods of establishing, administering, and financing a system for the collection of data with respect to adoption and foster care in the United States.

42 USC 679.

"(2) The study required by paragraph (1) shall—

"(A) identify the types of data necessary to—

"(i) assess (on a continuing basis) the incidence, characteristics, and status of adoption and foster care in the United States, and

"(ii) develop appropriate national policies with respect to adoption and foster care;

"(B) evaluate the feasibility and appropriateness of collecting data with respect to privately arranged adoptions and adoptions arranged through private agencies without assistance from public child welfare agencies;

"(C) assess the validity of various methods of collecting data with respect to adoption and foster care; and

"(D) evaluate the financial and administrative impact of implementing each such method.

Reports.

"(3) Not later than October 1, 1987, the Advisory Committee shall submit to the Secretary and the Congress a report setting forth the results of the study required by paragraph (1) and evaluating and making recommendations with respect to the various methods of establishing, administering, and financing a system for the collection of data with respect to adoption and foster care in the United States.

"(4)(A) Subject to subparagraph (B), the membership and organization of the Advisory Committee shall be determined by the Secretary.

State and local governments.

"(B) The membership of the Advisory Committee shall include representatives of—

"(i) private, nonprofit organizations with an interest in child welfare (including organizations that provide foster care and adoption services),

"(ii) organizations representing State and local governmental agencies with responsibility for foster care and adoption services,

"(iii) organizations representing State and local governmental agencies with responsibility for the collection of health and social statistics,

"(iv) organizations representing State and local judicial bodies with jurisdiction over family law,

"(v) Federal agencies responsible for the collection of health and social statistics, and

"(vi) organizations and agencies involved with privately arranged or international adoptions.

"(5) After the date of the submission of the report required by paragraph (3), the Advisory Committee shall cease to exist.

Reports.

"(b)(1)(A) Not later than July 1, 1988, the Secretary shall submit to the Congress a report that—

"(i) proposes a method of establishing, administering, and financing a system for the collection of data relating to adoption and foster care in the United States,

"(ii) evaluates the feasibility and appropriateness of collecting data with respect to privately arranged adoptions and adoptions arranged through private agencies without assistance from public child welfare agencies, and

"(iii) evaluates the impact of the system proposed under clause (i) on the agencies with responsibility for implementing it.

Reports.

"(B) The report required by subparagraph (A) shall—

"(i) specify any changes in law that will be necessary to implement the system proposed under subparagraph (A)(i), and

“(ii) describe the type of system that will be implemented under paragraph (2) in the absence of such changes.

“(2) Not later than December 31, 1988, the Secretary shall promulgate final regulations providing for the implementation of—

Regulations.

“(A) the system proposed under paragraph (1)(A)(i), or

“(B) if the changes in law specified pursuant to paragraph (1)(B)(i) have not been enacted, the system described in paragraph (1)(B)(ii).

Such regulations shall provide for the full implementation of the system not later than October 1, 1991.

“(c) Any data collection system developed and implemented under this section shall—

“(1) avoid unnecessary diversion of resources from agencies responsible for adoption and foster care;

“(2) assure that any data that is collected is reliable and consistent over time and among jurisdictions through the use of uniform definitions and methodologies;

“(3) provide comprehensive national information with respect to—

“(A) the demographic characteristics of adoptive and foster children and their biological and adoptive or foster parents,

“(B) the status of the foster care population (including the number of children in foster care, length of placement, type of placement, availability for adoption, and goals for ending or continuing foster care),

“(C) the number and characteristics of—

“(i) children placed in or removed from foster care, and

“(ii) children adopted or with respect to whom adoptions have been terminated, and

“(D) the extent and nature of assistance provided by Federal, State, and local adoption and foster care programs and the characteristics of the children with respect to whom such assistance is provided; and

State and local governments.

“(4) utilize appropriate requirements and incentives to ensure that the system functions reliably throughout the United States.”

Subtitle F—Provision Relating to Access to Health Care

Sec. 9501. Continuation coverage for retirees in cases of bankruptcies.

SEC. 9501. CONTINUATION COVERAGE FOR RETIREES IN CASES OF BANKRUPTCIES.

(a) LOSS OF COVERAGE OF RETIREE THROUGH BANKRUPTCY AS QUALIFYING EVENT.—

(1) IRC AMENDMENT.—Paragraph (3) of section 162(k) of the Internal Revenue Code of 1986 (relating to qualifying event with respect to continuation coverage requirements under group health plans) is amended by adding at the end the following:

Post, p. 2095.
26 USC 162.

“(F) A proceeding in a case under title 11, United States Code, commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

Employment and unemployment.

In the case of an event described in subparagraph (F), a loss of coverage includes a substantial elimination of coverage with

respect to a qualified beneficiary described in paragraph (7)(B)(iv) within one year before or after the date of commencement of the proceeding."

(2) ERISA AMENDMENT.—Section 603 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1163) is amended by adding at the end the following:

Employment
and
unemployment.

"(6) A proceeding in a case under title 11, United States Code, commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

Post, p. 2077.

In the case of an event described in paragraph (6), a loss of coverage includes a substantial elimination of coverage with respect to a qualified beneficiary described in section 607(3)(C) within one year before or after the date of commencement of the proceeding."

(b) PERIOD OF CONTINUATION COVERAGE.—

(1) LIFE OF COVERED EMPLOYEE OR WIDOW AND ADDITIONAL 36 MONTHS FOR SURVIVING SPOUSE AND DEPENDENTS.—

Post, p. 2095;
26 USC 162.

(A) IRC AMENDMENTS.—Clause (i) of section 162(k)(2)(B) of the Internal Revenue Code of 1986 (relating to maximum period), as amended by section 1895(d)(2)(A) of the Tax Reform Act of 1986, is amended—

(i) in subclause (II), by inserting "(other than a qualifying event described in paragraph (3)(F))" after "qualifying event" the first place it appears,

(ii) in subclause (III), by inserting "or (3)(F)" after "(3)(B)",

(iii) by redesignating subclause (III) as subclause (IV), and

(iv) by inserting after subclause (II) the following new subclause:

"(III) SPECIAL RULE FOR CERTAIN BANKRUPTCY PROCEEDINGS.—In the case of a qualifying event described in paragraph (3)(F) (relating to bankruptcy proceedings), the date of the death of the covered employee or qualified beneficiary (described in paragraph (7)(B)(iv)(III)), or in the case of the surviving spouse or dependent children of the covered employee, 36 months after the date of the death of the covered employee."

Post, p. 2095;
29 USC 1162.

(B) ERISA AMENDMENTS.—Subparagraph (A) of section 602(2) of the Employee Retirement Income Security Act of 1974 (relating to maximum period), as amended by section 1895(d)(2)(B) of the Tax Reform Act of 1986, is amended—

(i) in clause (ii), by inserting "(other than a qualifying event described in section 603(6))" after "qualifying event" the first place it appears,

(ii) in clause (iii), by inserting "or 603(6)" after "603(2)",

(iii) by redesignating clause (iii) as clause (iv), and

(iv) by inserting after clause (ii) the following new clause:

"(iii) SPECIAL RULE FOR CERTAIN BANKRUPTCY PROCEEDINGS.—In the case of a qualifying event described in 603(6) (relating to bankruptcy proceedings), the date of the death of the covered employee or qualified beneficiary (described in section 607(3)(C)(iii)), or in the case of the surviving spouse or dependent children

of the covered employee, 36 months after the date of the death of the covered employee."

(2) COVERAGE NOT LOST UPON ENTITLEMENT TO MEDICARE BENEFITS.—

(A) IRC AMENDMENT.—Subclause (II) of section 162(k)(2)(B)(iv) of the Internal Revenue Code of 1986 (relating to reemployment or medicare eligibility) is amended by inserting "in the case of a qualified beneficiary other than a qualified beneficiary described in paragraph (7)(B)(iv)," before "entitled".

26 USC 162.

(B) ERISA AMENDMENT.—Clause (ii) of section 602(2)(D) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1162(2)(D)) is amended by inserting "in the case of a qualified beneficiary other than a qualified beneficiary described in section 607(3)(C)," before "entitled".

Infra.

(c) DEFINITION OF QUALIFIED BENEFICIARY MODIFIED IN REORGANIZATION CASES.—

(1) IRC AMENDMENT.—Section 162(k)(7)(B) of the Internal Revenue Code of 1986, as amended by section 1895(d)(7) of the Tax Reform Act of 1986 (relating to special rule for termination and reduced employment in definition of qualified beneficiary), is amended by adding at the end the following new clause:

Post, p. 2095.

"(iv) SPECIAL RULE FOR RETIREES AND WIDOWS.—In the case of a qualifying event described in paragraph (3)(F), the term 'qualified beneficiary' includes a covered employee who had retired on or before the date of substantial elimination of coverage and any other individual who, on the day before such qualifying event, is a beneficiary under the plan—

"(I) as the spouse of the covered employee,

"(II) as the dependent child of the employee, or

"(III) as the surviving spouse of the covered employee."

(2) ERISA AMENDMENT.—Section 607(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167(3)) (relating to special rule for termination and reduced employment in definition of qualified beneficiary) is amended by adding at the end the following new subparagraph:

"(C) SPECIAL RULE FOR RETIREES AND WIDOWS.—In the case of a qualifying event described in section 603(6), the term 'qualified beneficiary' includes a covered employee who had retired on or before the date of substantial elimination of coverage and any other individual who, on the day before such qualifying event, is a beneficiary under the plan—

Ante, p. 2076.

"(i) as the spouse of the covered employee,

"(ii) as the dependent child of the employee, or

"(iii) as the surviving spouse of the covered employee."

(d) NOTICE.—

(1) IRC AMENDMENT.—Subparagraphs (B) and (D)(i) of section 162(k)(6) of the Internal Revenue Code of 1986 (relating to notice requirements) are amended by striking "or (D)" each place it appears and inserting in lieu thereof "(D), or (F)".

Post, p. 2095.

(2) ERISA AMENDMENT.—Paragraphs (2) and (4)(A) of section 606 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1166) (relating to notice requirements) are amended by

striking "or (4)" each place it appears and inserting in lieu thereof "(4), or (6)".

26 USC 162 note.

(e) **EFFECTIVE DATE.**—

Ante, p. 222.

(1) **IN GENERAL.**—The amendments made by this section shall take effect as if included in title X of the Consolidated Omnibus Budget Reconciliation Act of 1985.

Ante, pp. 222, 227.

(2) **TREATMENT OF CERTAIN BANKRUPTCY PROCEEDINGS.**—Notwithstanding paragraph (1), section 10001(e) of the Consolidated Omnibus Budget Reconciliation Act of 1985, and section 10002(d) of such Act, the amendments made by this section and by sections 10001 and 10002 of such Act shall apply in the case of plan years ending during the 12-month period beginning July 1, 1986, but only with respect to—

Ante, p. 2095.

Ante, p. 2076.

(A) a qualifying event described in section 162(k)(3)(F) of the Internal Revenue Code of 1986 or section 603(6) of the Employee Retirement Income Security Act of 1974, and
(B) a qualifying event described in section 162(k)(3)(A) of the Internal Revenue Code of 1986 or section 603(1) of the Employee Retirement Income Security Act of 1974 relating to the death of a retired employee occurring after the date of the qualifying event described in subparagraph (A).

(3) **TREATMENT OF CURRENT RETIREES.**—Section 162(k)(3)(F) of the Internal Revenue Code of 1986 and section 603(6) of the Employee Retirement Income Security Act of 1974 apply to covered employees who retired before, on, or after the date of the enactment of this Act.

Ante, p. 230.

Ante, p. 2077.

Post, p. 2095;
26 USC 162.

(4) **NOTICE.**—In the case of a qualifying event described in section 603(6) of the Employee Retirement Income Security Act of 1974 that occurred before the date of the enactment of this Act, the notice required under section 606(2) of such Act (and under section 162(k)(6)(B) of the Internal Revenue Code of 1986) with respect to such event shall be provided no later than 30 days after the date of the enactment of this Act.

Approved October 21, 1986.

LEGISLATIVE HISTORY—H.R. 5300 (S. 2706) (S. 2799):

HOUSE REPORTS: No. 99-727 (Comm. on the Budget) and No. 99-1012 (Comm. of Conference).

SENATE REPORTS: No. 99-348 accompanying S. 2706 (Comm. on the Budget) and No. 99-479 accompanying S. 2799 (Comm. on Environment and Public Works).

CONGRESSIONAL RECORD, Vol. 132 (1986):

Sept. 17-19, S. 2706 considered and passed Senate.

Sept. 24, H.R. 5300 considered and passed House.

Sept. 25, considered and passed Senate, amended, in lieu of S. 2706.

Sept. 27, S. 2799 considered and passed Senate.

Oct. 17, House and Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 22 (1986):

Oct. 21, Presidential statement.