

meaningful gun safety measures in this body.

This is done so despite overwhelming support among mothers, fathers, sisters, brothers, aunts, uncles, grandmothers across this great country of ours to pass sensible measures: child safety locks, closing the loophole on background checks at gun shows, banning the importation of the high capacity ammunition clips.

This is legislation that was passed in the Senate, a bipartisan piece of legislation, a compromise piece of legislation. We are asking that the Conference Committee on Juvenile Justice which takes up the issue of gun safety please meet, do something, respond to the will of the people in this country. In fact, it is a conference committee that has met one time, one time; no debate, no discussion, no clarity of thought on what direction we take on gun safety measures in this country.

No one here is grandstanding. No one here is saying, let us not have a piece of legislation because what we want to do is to keep this issue around. That is not why we were sent here. We were sent here to do the people's business in the people's House.

Every single day 13 children die from gunfire in this country. It is wrong. That is why we had the clock, as a way to say the days, the hours, the seconds, the minutes are being ticked off and our kids are dying. Guns are getting into the hands of criminals and children. It is wrong.

If we are not going to do anything about it in this final day, these final days of the 106th session, we commit to the American public that we will spend every single day, minute, hour, and second of the next year of this session working hard to pass gun safety legislation in this country to protect our families and protect our children.

Mr. OWENS. Mr. Speaker, I am optimistic about gun safety passing, and it is because of the gentlewomen here.

Mr. Speaker, I yield to the gentlewoman from New York (Mrs. MCCARTHY).

Mrs. MCCARTHY of New York. Mr. Speaker, hopefully we will bring this issue up next year and work for it and get it passed.

Mr. Speaker, I also want to address some of the things said earlier in this Chamber and try and set the record straight. Number one, there is an awful lot of us that do not want this to be a political issue.

I personally do not think it should be a political issue. To me, it is not a Republican or a Democratic issue, it is the issue of the American people. That is why we had the clock, the Columbine clock, to remind people, because there has unfortunately been that terrible incident that woke up the American people to the gun violence that we sit here and talk about.

I of all people certainly do know what it is to remember the violence in

this country. In a couple of weeks, it will be the 6th year anniversary of the Long Island Railroad Massacre, where my husband was killed and a number of my neighbors were killed, and my son was injured, and an awful lot of people were injured on that.

We do not want the American people to forget the pain that is left with so many victims, so we here in Congress are trying to stop future pain to our children and to American citizens.

It can be taken off the table as far as a political issue. Let us all meet together at a conference. That is all we have been asking for. We are hearing this and that. I am on the conferees, and we have not met.

I have to tell the Members, if the NRA amendment had passed in this House, it was more than just being imperfect, it was dangerous. If the NRA amendment had been law over the first 6 months of 1999, 17,000 people who were stopped by our current background check system would now be armed. In fact, if the 24-hour policy had been in effect, we know of cases where murderers, rapists, and kidnapers would be walking around with guns.

This has nothing to do with second amendment rights, this has to do with keeping guns out of the hands of criminals. That is what we are supposed to do. But fortunately, and I will say this, Republicans and Democrats did work together, and together we prevented the NRA amendment from becoming law.

I think that is important here, because when we speak to the people, the American people, and it does not matter whether they are Republicans or Democrats, they want something done. That is what this House is supposed to be doing.

That is why we had the Columbine clock, to remind the American people that we still have time to do something before we leave. I know there are many of us that are willing to work through Thanksgiving, through Christmas, to make sure that our citizens are safe.

We have all tried to work in a bipartisan manner. We certainly have had people on both sides of the aisle support my amendment, which would have closed the gun show loophole, made sure that criminals and especially children do not get their hands on guns. I think that is what we have to do.

We should have passed safety reform in this Congress, real gun safety reform that keeps the guns out of the hands of felons. That is what we did not do in this Congress, and I am sorry for that, because each day that we have not done something we continue to lose victims across this country. We continue to see too much pain. That is not what this country is about.

I thank the gentleman from New York (Mr. OWENS) and I thank my colleague, the gentlewoman from Connecticut (Ms. DELAURO), for letting us answer these questions.

Mr. OWENS. Mr. Speaker, I thank my colleagues for joining me.

#### RECESS

The SPEAKER pro tempore (Mr. EWING). Pursuant to clause 12 of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 5 o'clock and 10 minutes p.m.), the House stood in recess subject to the call of the Chair.

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#### AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. DREIER) at 11 o'clock and 2 minutes p.m.

#### TICKET TO WORK AND WORK INCENTIVES IMPROVEMENT ACT OF 1999

Mr. ARMEY submitted the following conference report and statement on the bill (H.R. 1180) to amend the Social Security Act to expand the availability of health care coverage for working individuals with disabilities, to establish a Ticket to Work and Self-Sufficiency Program in the Social Security Administration to provide such individuals with meaningful opportunities to work, and for other purposes:

##### CONFERENCE REPORT (H. REPT. 106-478)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1180), to amend the Social Security Act to expand the availability of health care coverage for working individuals with disabilities, to establish a Ticket to Work and Self-Sufficiency Program in the Social Security Administration to provide such individuals with meaningful opportunities to work, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

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

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

##### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) *SHORT TITLE.*—This Act may be cited as the "Ticket to Work and Work Incentives Improvement Act of 1999".

(b) *TABLE OF CONTENTS.*—The table of contents is as follows:

Sec. 1. *Short title; table of contents.*

Sec. 2. *Findings and purposes.*

*TITLE I—TICKET TO WORK AND SELF-SUFFICIENCY AND RELATED PROVISIONS*  
*Subtitle A—Ticket to Work and Self-Sufficiency*  
 Sec. 101. *Establishment of the Ticket to Work and Self-Sufficiency Program.*

*Subtitle B—Elimination of Work Disincentives*  
 Sec. 111. *Work activity standard as a basis for review of an individual's disabled status.*

Sec. 112. *Expedited reinstatement of disability benefits.*

Subtitle C—Work Incentives Planning, Assistance, and Outreach

- Sec. 121. Work incentives outreach program.  
Sec. 122. State grants for work incentives assistance to disabled beneficiaries.

TITLE II—EXPANDED AVAILABILITY OF HEALTH CARE SERVICES

- Sec. 201. Expanding State options under the medicaid program for workers with disabilities.  
Sec. 202. Extending medicare coverage for OASDI disability benefit recipients.  
Sec. 203. Grants to develop and establish State infrastructures to support working individuals with disabilities.  
Sec. 204. Demonstration of coverage under the medicaid program of workers with potentially severe disabilities.  
Sec. 205. Election by disabled beneficiaries to suspend medigap insurance when covered under a group health plan.

TITLE III—DEMONSTRATION PROJECTS AND STUDIES

- Sec. 301. Extension of disability insurance program demonstration project authority.  
Sec. 302. Demonstration projects providing for reductions in disability insurance benefits based on earnings.  
Sec. 303. Studies and reports.

TITLE IV—MISCELLANEOUS AND TECHNICAL AMENDMENTS

- Sec. 401. Technical amendments relating to drug addicts and alcoholics.  
Sec. 402. Treatment of prisoners.  
Sec. 403. Revocation by members of the clergy of exemption from social security coverage.  
Sec. 404. Additional technical amendment relating to cooperative research or demonstration projects under titles II and XVI.  
Sec. 405. Authorization for State to permit annual wage reports.  
Sec. 406. Assessment on attorneys who receive their fees via the Social Security Administration.  
Sec. 407. Extension of authority of State medicaid fraud control units.  
Sec. 408. Climate database modernization.  
Sec. 409. Special allowance adjustment for student loans.  
Sec. 410. Schedule for payments under SSI state supplementation agreements.  
Sec. 411. Bonus commodities.  
Sec. 412. Simplification of definition of foster child under EIC.  
Sec. 413. Delay of effective date of organ procurement and transplantation network final rule.

TITLE V—TAX RELIEF EXTENSION ACT OF 1999

- Sec. 500. Short title of title.  
    Subtitle A—Extensions  
Sec. 501. Allowance of nonrefundable personal credits against regular and minimum tax liability.  
Sec. 502. Research credit.  
Sec. 503. Subpart F exemption for active financing income.  
Sec. 504. Taxable income limit on percentage depletion for marginal production.  
Sec. 505. Work opportunity credit and welfare-to-work credit.  
Sec. 506. Employer-provided educational assistance.  
Sec. 507. Extension and modification of credit for producing electricity from certain renewable resources.  
Sec. 508. Extension of duty-free treatment under Generalized System of Preferences.

- Sec. 509. Extension of credit for holders of qualified zone academy bonds.

- Sec. 510. Extension of first-time homebuyer credit for District of Columbia.

- Sec. 511. Extension of expensing of environmental remediation costs.

- Sec. 512. Temporary increase in amount of rum excise tax covered over to Puerto Rico and Virgin Islands.

Subtitle B—Other Time-Sensitive Provisions

- Sec. 521. Advance pricing agreements treated as confidential taxpayer information.

- Sec. 522. Authority to postpone certain tax-related deadlines by reason of Y2K failures.

- Sec. 523. Inclusion of certain vaccines against streptococcus pneumoniae to list of taxable vaccines.

- Sec. 524. Delay in effective date of requirement for approved diesel or kerosene terminals.

- Sec. 525. Production flexibility contract payments.

Subtitle C—Revenue Offsets

PART I—GENERAL PROVISIONS

- Sec. 531. Modification of estimated tax safe harbor.

- Sec. 532. Clarification of tax treatment of income and loss on derivatives.

- Sec. 533. Expansion of reporting of cancellation of indebtedness income.

- Sec. 534. Limitation on conversion of character of income from constructive ownership transactions.

- Sec. 535. Treatment of excess pension assets used for retiree health benefits.

- Sec. 536. Modification of installment method and repeal of installment method for accrual method taxpayers.

- Sec. 537. Denial of charitable contribution deduction for transfers associated with split-dollar insurance arrangements.

- Sec. 538. Distributions by a partnership to a corporate partner of stock in another corporation.

PART II—PROVISIONS RELATING TO REAL ESTATE INVESTMENT TRUSTS

SUBPART A—TREATMENT OF INCOME AND SERVICES PROVIDED BY TAXABLE REIT SUBSIDIARIES

- Sec. 541. Modifications to asset diversification test.

- Sec. 542. Treatment of income and services provided by taxable REIT subsidiaries.

- Sec. 543. Taxable REIT subsidiary.

- Sec. 544. Limitation on earnings stripping.

- Sec. 545. 100 percent tax on improperly allocated amounts.

- Sec. 546. Effective date.

- Sec. 547. Study relating to taxable REIT subsidiaries.

SUBPART B—HEALTH CARE REITS

- Sec. 551. Health care REITs.

SUBPART C—CONFORMITY WITH REGULATED INVESTMENT COMPANY RULES

- Sec. 556. Conformity with regulated investment company rules.

SUBPART D—CLARIFICATION OF EXCEPTION FROM IMPERMISSIBLE TENANT SERVICE INCOME

- Sec. 561. Clarification of exception for independent operators.

SUBPART E—MODIFICATION OF EARNINGS AND PROFITS RULES

- Sec. 566. Modification of earnings and profits rules.

SUBPART F—MODIFICATION OF ESTIMATED TAX RULES

- Sec. 571. Modification of estimated tax rules for closely held real estate investment trusts.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress makes the following findings:

(1) It is the policy of the United States to provide assistance to individuals with disabilities to lead productive work lives.

(2) Health care is important to all Americans.

(3) Health care is particularly important to individuals with disabilities and special health care needs who often cannot afford the insurance available to them through the private market, are uninsurable by the plans available in the private sector, and are at great risk of incurring very high and economically devastating health care costs.

(4) Americans with significant disabilities often are unable to obtain health care insurance that provides coverage of the services and supports that enable them to live independently and enter or rejoin the workforce. Personal assistance services (such as attendant services, personal assistance with transportation to and from work, reader services, job coaches, and related assistance) remove many of the barriers between significant disability and work. Coverage for such services, as well as for prescription drugs, durable medical equipment, and basic health care are powerful and proven tools for individuals with significant disabilities to obtain and retain employment.

(5) For individuals with disabilities, the fear of losing health care and related services is one of the greatest barriers keeping the individuals from maximizing their employment, earning potential, and independence.

(6) Social Security Disability Insurance and Supplemental Security Income beneficiaries risk losing medicare or medicaid coverage that is linked to their cash benefits, a risk that is an equal, or greater, work disincentive than the loss of cash benefits associated with working.

(7) Individuals with disabilities have greater opportunities for employment than ever before, aided by important public policy initiatives such as the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), advancements in public understanding of disability, and innovations in assistive technology, medical treatment, and rehabilitation.

(8) Despite such historic opportunities and the desire of millions of disability recipients to work and support themselves, fewer than one-half of one percent of Social Security Disability Insurance and Supplemental Security Income beneficiaries leave the disability rolls and return to work.

(9) In addition to the fear of loss of health care coverage, beneficiaries cite financial disincentives to work and earn income and lack of adequate employment training and placement services as barriers to employment.

(10) Eliminating such barriers to work by creating financial incentives to work and by providing individuals with disabilities real choice in obtaining the services and technology they need to find, enter, and maintain employment can greatly improve their short and long-term financial independence and personal well-being.

(11) In addition to the enormous advantages such changes promise for individuals with disabilities, redesigning government programs to help individuals with disabilities return to work may result in significant savings and extend the life of the Social Security Disability Insurance Trust Fund.

(12) If only an additional one-half of one percent of the current Social Security Disability Insurance and Supplemental Security Income recipients were to cease receiving benefits as a result of employment, the savings to the Social Security Trust Funds and to the Treasury in cash assistance would total \$3,500,000,000 over the worklife of such individuals, far exceeding the cost of providing incentives and services needed

to assist them in entering work and achieving financial independence to the best of their abilities.

(b) **PURPOSES.**—The purposes of this Act are as follows:

(1) To provide health care and employment preparation and placement services to individuals with disabilities that will enable those individuals to reduce their dependency on cash benefit programs.

(2) To encourage States to adopt the option of allowing individuals with disabilities to purchase medicaid coverage that is necessary to enable such individuals to maintain employment.

(3) To provide individuals with disabilities the option of maintaining medicare coverage while working.

(4) To establish a return to work ticket program that will allow individuals with disabilities to seek the services necessary to obtain and retain employment and reduce their dependency on cash benefit programs.

### **TITLE I—TICKET TO WORK AND SELF-SUFFICIENCY AND RELATED PROVISIONS**

#### **Subtitle A—Ticket to Work and Self-Sufficiency**

#### **SEC. 101. ESTABLISHMENT OF THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM.**

(a) **IN GENERAL.**—Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by adding at the end the following new section:

##### **“THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM**

“**SEC. 1148. (a) IN GENERAL.**—The Commissioner shall establish a Ticket to Work and Self-Sufficiency Program, under which a disabled beneficiary may use a ticket to work and self-sufficiency issued by the Commissioner in accordance with this section to obtain employment services, vocational rehabilitation services, or other support services from an employment network which is of the beneficiary's choice and which is willing to provide such services to such beneficiary.

“(b) **TICKET SYSTEM.**—

“(1) **DISTRIBUTION OF TICKETS.**—The Commissioner may issue a ticket to work and self-sufficiency to disabled beneficiaries for participation in the Program.

“(2) **ASSIGNMENT OF TICKETS.**—A disabled beneficiary holding a ticket to work and self-sufficiency may assign the ticket to any employment network of the beneficiary's choice which is serving under the Program and is willing to accept the assignment.

“(3) **TICKET TERMS.**—A ticket issued under paragraph (1) shall consist of a document which evidences the Commissioner's agreement to pay (as provided in paragraph (4)) an employment network, which is serving under the Program and to which such ticket is assigned by the beneficiary, for such employment services, vocational rehabilitation services, and other support services as the employment network may provide to the beneficiary.

“(4) **PAYMENTS TO EMPLOYMENT NETWORKS.**—The Commissioner shall pay an employment network under the Program in accordance with the outcome payment system under subsection (h)(2) or under the outcome-milestone payment system under subsection (h)(3) (whichever is elected pursuant to subsection (h)(1)). An employment network may not request or receive compensation for such services from the beneficiary.

“(c) **STATE PARTICIPATION.**—

“(1) **IN GENERAL.**—Each State agency administering or supervising the administration of the State plan approved under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.) may elect to participate in the Program as an employment network with respect to a disabled beneficiary. If the State agency does elect to

participate in the Program, the State agency also shall elect to be paid under the outcome payment system or the outcome-milestone payment system in accordance with subsection (h)(1). With respect to a disabled beneficiary that the State agency does not elect to have participate in the Program, the State agency shall be paid for services provided to that beneficiary under the system for payment applicable under section 222(d) and subsections (d) and (e) of section 1615. The Commissioner shall provide for periodic opportunities for exercising such elections.

“(2) **EFFECT OF PARTICIPATION BY STATE AGENCY.**—

“(A) **STATE AGENCIES PARTICIPATING.**—In any case in which a State agency described in paragraph (1) elects under that paragraph to participate in the Program, the employment services, vocational rehabilitation services, and other support services which, upon assignment of tickets to work and self-sufficiency, are provided to disabled beneficiaries by the State agency acting as an employment network shall be governed by plans for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.).

“(B) **STATE AGENCIES ADMINISTERING MATERNAL AND CHILD HEALTH SERVICES PROGRAMS.**—Subparagraph (A) shall not apply with respect to any State agency administering a program under title V of this Act.

“(3) **AGREEMENTS BETWEEN STATE AGENCIES AND EMPLOYMENT NETWORKS.**—State agencies and employment networks shall enter into agreements regarding the conditions under which services will be provided when an individual is referred by an employment network to a State agency for services. The Commissioner shall establish by regulations the timeframe within which such agreements must be entered into and the mechanisms for dispute resolution between State agencies and employment networks with respect to such agreements.

“(d) **RESPONSIBILITIES OF THE COMMISSIONER.**—

“(1) **SELECTION AND QUALIFICATIONS OF PROGRAM MANAGERS.**—The Commissioner shall enter into agreements with 1 or more organizations in the private or public sector for service as a program manager to assist the Commissioner in administering the Program. Any such program manager shall be selected by means of a competitive bidding process, from among organizations in the private or public sector with available expertise and experience in the field of vocational rehabilitation or employment services.

“(2) **TENURE, RENEWAL, AND EARLY TERMINATION.**—Each agreement entered into under paragraph (1) shall provide for early termination upon failure to meet performance standards which shall be specified in the agreement and which shall be weighted to take into account any performance in prior terms. Such performance standards shall include—

“(A) measures for ease of access by beneficiaries to services; and

“(B) measures for determining the extent to which failures in obtaining services for beneficiaries fall within acceptable parameters, as determined by the Commissioner.

“(3) **PRECLUSION FROM DIRECT PARTICIPATION IN DELIVERY OF SERVICES IN OWN SERVICE AREA.**—Agreements under paragraph (1) shall preclude—

“(A) direct participation by a program manager in the delivery of employment services, vocational rehabilitation services, or other support services to beneficiaries in the service area covered by the program manager's agreement; and

“(B) the holding by a program manager of a financial interest in an employment network or service provider which provides services in a geographic area covered under the program manager's agreement.

“(4) **SELECTION OF EMPLOYMENT NETWORKS.**—

“(A) **IN GENERAL.**—The Commissioner shall select and enter into agreements with employment networks for service under the Program. Such employment networks shall be in addition to State agencies serving as employment networks pursuant to elections under subsection (c).

“(B) **ALTERNATE PARTICIPANTS.**—In any State where the Program is being implemented, the Commissioner shall enter into an agreement with any alternate participant that is operating under the authority of section 222(d)(2) in the State as of the date of the enactment of this section and chooses to serve as an employment network under the Program.

“(5) **TERMINATION OF AGREEMENTS WITH EMPLOYMENT NETWORKS.**—The Commissioner shall terminate agreements with employment networks for inadequate performance, as determined by the Commissioner.

“(6) **QUALITY ASSURANCE.**—The Commissioner shall provide for such periodic reviews as are necessary to provide for effective quality assurance in the provision of services by employment networks. The Commissioner shall solicit and consider the views of consumers and the program manager under which the employment networks serve and shall consult with providers of services to develop performance measurements. The Commissioner shall ensure that the results of the periodic reviews are made available to beneficiaries who are prospective service recipients as they select employment networks. The Commissioner shall ensure that the periodic surveys of beneficiaries receiving services under the Program are designed to measure customer service satisfaction.

“(7) **DISPUTE RESOLUTION.**—The Commissioner shall provide for a mechanism for resolving disputes between beneficiaries and employment networks, between program managers and employment networks, and between program managers and providers of services. The Commissioner shall afford a party to such a dispute a reasonable opportunity for a full and fair review of the matter in dispute.

“(e) **PROGRAM MANAGERS.**—

“(1) **IN GENERAL.**—A program manager shall conduct tasks appropriate to assist the Commissioner in carrying out the Commissioner's duties in administering the Program.

“(2) **RECRUITMENT OF EMPLOYMENT NETWORKS.**—A program manager shall recruit, and recommend for selection by the Commissioner, employment networks for service under the Program. The program manager shall carry out such recruitment and provide such recommendations, and shall monitor all employment networks serving in the Program in the geographic area covered under the program manager's agreement, to the extent necessary and appropriate to ensure that adequate choices of services are made available to beneficiaries. Employment networks may serve under the Program only pursuant to an agreement entered into with the Commissioner under the Program incorporating the applicable provisions of this section and regulations thereunder, and the program manager shall provide and maintain assurances to the Commissioner that payment by the Commissioner to employment networks pursuant to this section is warranted based on compliance by such employment networks with the terms of such agreement and this section. The program manager shall not impose numerical limits on the number of employment networks to be recommended pursuant to this paragraph.

“(3) **FACILITATION OF ACCESS BY BENEFICIARIES TO EMPLOYMENT NETWORKS.**—A program manager shall facilitate access by beneficiaries to employment networks. The program manager shall ensure that each beneficiary is allowed changes in employment networks without being deemed to have rejected services under

the Program. When such a change occurs, the program manager shall reassign the ticket based on the choice of the beneficiary. Upon the request of the employment network, the program manager shall make a determination of the allocation of the outcome or milestone-outcome payments based on the services provided by each employment network. The program manager shall establish and maintain lists of employment networks available to beneficiaries and shall make such lists generally available to the public. The program manager shall ensure that all information provided to disabled beneficiaries pursuant to this paragraph is provided in accessible formats.

“(4) ENSURING AVAILABILITY OF ADEQUATE SERVICES.—The program manager shall ensure that employment services, vocational rehabilitation services, and other support services are provided to beneficiaries throughout the geographic area covered under the program manager's agreement, including rural areas.

“(5) REASONABLE ACCESS TO SERVICES.—The program manager shall take such measures as are necessary to ensure that sufficient employment networks are available and that each beneficiary receiving services under the Program has reasonable access to employment services, vocational rehabilitation services, and other support services. Services provided under the Program may include case management, work incentives planning, supported employment, career planning, career plan development, vocational assessment, job training, placement, follow-up services, and such other services as may be specified by the Commissioner under the Program. The program manager shall ensure that such services are available in each service area.

“(f) EMPLOYMENT NETWORKS.—

“(1) QUALIFICATIONS FOR EMPLOYMENT NETWORKS.—

“(A) IN GENERAL.—Each employment network serving under the Program shall consist of an agency or instrumentality of a State (or a political subdivision thereof) or a private entity, that assumes responsibility for the coordination and delivery of services under the Program to individuals assigning to the employment network tickets to work and self-sufficiency issued under subsection (b).

“(B) ONE-STOP DELIVERY SYSTEMS.—An employment network serving under the Program may consist of a one-stop delivery system established under subtitle B of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2811 et seq.).

“(C) COMPLIANCE WITH SELECTION CRITERIA.—No employment network may serve under the Program unless it meets and maintains compliance with both general selection criteria (such as professional and educational qualifications, where applicable) and specific selection criteria (such as substantial expertise and experience in providing relevant employment services and supports).

“(D) SINGLE OR ASSOCIATED PROVIDERS ALLOWED.—An employment network shall consist of either a single provider of such services or of an association of such providers organized so as to combine their resources into a single entity. An employment network may meet the requirements of subsection (e)(4) by providing services directly, or by entering into agreements with other individuals or entities providing appropriate employment services, vocational rehabilitation services, or other support services.

“(2) REQUIREMENTS RELATING TO PROVISION OF SERVICES.—Each employment network serving under the Program shall be required under the terms of its agreement with the Commissioner to—

“(A) serve prescribed service areas; and

“(B) take such measures as are necessary to ensure that employment services, vocational re-

habilitation services, and other support services provided under the Program by, or under agreements entered into with, the employment network are provided under appropriate individual work plans that meet the requirements of subsection (g).

“(3) ANNUAL FINANCIAL REPORTING.—Each employment network shall meet financial reporting requirements as prescribed by the Commissioner.

“(4) PERIODIC OUTCOMES REPORTING.—Each employment network shall prepare periodic reports, on at least an annual basis, itemizing for the covered period specific outcomes achieved with respect to specific services provided by the employment network. Such reports shall conform to a national model prescribed under this section. Each employment network shall provide a copy of the latest report issued by the employment network pursuant to this paragraph to each beneficiary upon enrollment under the Program for services to be received through such employment network. Upon issuance of each report to each beneficiary, a copy of the report shall be maintained in the files of the employment network. The program manager shall ensure that copies of all such reports issued under this paragraph are made available to the public under reasonable terms.

“(g) INDIVIDUAL WORK PLANS.—

“(1) REQUIREMENTS.—Each employment network shall—

“(A) take such measures as are necessary to ensure that employment services, vocational rehabilitation services, and other support services provided under the Program by, or under agreements entered into with, the employment network are provided under appropriate individual work plans that meet the requirements of subparagraph (C);

“(B) develop and implement each such individual work plan, in partnership with each beneficiary receiving such services, in a manner that affords such beneficiary the opportunity to exercise informed choice in selecting an employment goal and specific services needed to achieve that employment goal;

“(C) ensure that each individual work plan includes at least—

“(i) a statement of the vocational goal developed with the beneficiary, including, as appropriate, goals for earnings and job advancement;

“(ii) a statement of the services and supports that have been deemed necessary for the beneficiary to accomplish that goal;

“(iii) a statement of any terms and conditions related to the provision of such services and supports; and

“(iv) a statement of understanding regarding the beneficiary's rights under the Program (such as the right to retrieve the ticket to work and self-sufficiency if the beneficiary is dissatisfied with the services being provided by the employment network) and remedies available to the individual, including information on the availability of advocacy services and assistance in resolving disputes through the State grant program authorized under section 1150;

“(D) provide a beneficiary the opportunity to amend the individual work plan if a change in circumstances necessitates a change in the plan; and

“(E) make each beneficiary's individual work plan available to the beneficiary in, as appropriate, an accessible format chosen by the beneficiary.

“(2) EFFECTIVE UPON WRITTEN APPROVAL.—A beneficiary's individual work plan shall take effect upon written approval by the beneficiary or a representative of the beneficiary and a representative of the employment network that, in providing such written approval, acknowledges assignment of the beneficiary's ticket to work and self-sufficiency.

“(h) EMPLOYMENT NETWORK PAYMENT SYS-

“(1) ELECTION OF PAYMENT SYSTEM BY EMPLOYMENT NETWORKS.—

“(A) IN GENERAL.—The Program shall provide for payment authorized by the Commissioner to employment networks under either an outcome payment system or an outcome-milestone payment system. Each employment network shall elect which payment system will be utilized by the employment network, and, for such period of time as such election remains in effect, the payment system so elected shall be utilized exclusively in connection with such employment network (except as provided in subparagraph (B)).

“(B) NO CHANGE IN METHOD OF PAYMENT FOR BENEFICIARIES WITH TICKETS ALREADY ASSIGNED TO THE EMPLOYMENT NETWORKS.—Any election of a payment system by an employment network that would result in a change in the method of payment to the employment network for services provided to a beneficiary who is receiving services from the employment network at the time of the election shall not be effective with respect to payment for services provided to that beneficiary and the method of payment previously selected shall continue to apply with respect to such services.

“(2) OUTCOME PAYMENT SYSTEM.—

“(A) IN GENERAL.—The outcome payment system shall consist of a payment structure governing employment networks electing such system under paragraph (1)(A) which meets the requirements of this paragraph.

“(B) PAYMENTS MADE DURING OUTCOME PAYMENT PERIOD.—The outcome payment system shall provide for a schedule of payments to an employment network, in connection with each individual who is a beneficiary, for each month, during the individual's outcome payment period, for which benefits (described in paragraphs (3) and (4) of subsection (k)) are not payable to such individual because of work or earnings.

“(C) COMPUTATION OF PAYMENTS TO EMPLOYMENT NETWORK.—The payment schedule of the outcome payment system shall be designed so that—

“(i) the payment for each month during the outcome payment period for which benefits (described in paragraphs (3) and (4) of subsection (k)) are not payable is equal to a fixed percentage of the payment calculation base for the calendar year in which such month occurs; and

“(ii) such fixed percentage is set at a percentage which does not exceed 40 percent.

“(3) OUTCOME-MILESTONE PAYMENT SYSTEM.—

“(A) IN GENERAL.—The outcome-milestone payment system shall consist of a payment structure governing employment networks electing such system under paragraph (1)(A) which meets the requirements of this paragraph.

“(B) EARLY PAYMENTS UPON ATTAINMENT OF MILESTONES IN ADVANCE OF OUTCOME PAYMENT PERIODS.—The outcome-milestone payment system shall provide for 1 or more milestones, with respect to beneficiaries receiving services from an employment network under the Program, that are directed toward the goal of permanent employment. Such milestones shall form a part of a payment structure that provides, in addition to payments made during outcome payment periods, payments made prior to outcome payment periods in amounts based on the attainment of such milestones.

“(C) LIMITATION ON TOTAL PAYMENTS TO EMPLOYMENT NETWORK.—The payment schedule of the outcome milestone payment system shall be designed so that the total of the payments to the employment network with respect to each beneficiary is less than, on a net present value basis (using an interest rate determined by the Commissioner that appropriately reflects the cost of funds faced by providers), the total amount to which payments to the employment network

with respect to the beneficiary would be limited if the employment network were paid under the outcome payment system.

“(4) DEFINITIONS.—In this subsection:

“(A) PAYMENT CALCULATION BASE.—The term ‘payment calculation base’ means, for any calendar year—

“(i) in connection with a title II disability beneficiary, the average disability insurance benefit payable under section 223 for all beneficiaries for months during the preceding calendar year; and

“(ii) in connection with a title XVI disability beneficiary (who is not concurrently a title II disability beneficiary), the average payment of supplemental security income benefits based on disability payable under title XVI (excluding State supplementation) for months during the preceding calendar year to all beneficiaries who have attained 18 years of age but have not attained 65 years of age.

“(B) OUTCOME PAYMENT PERIOD.—The term ‘outcome payment period’ means, in connection with any individual who had assigned a ticket to work and self-sufficiency to an employment network under the Program, a period—

“(i) beginning with the first month, ending after the date on which such ticket was assigned to the employment network, for which benefits (described in paragraphs (3) and (4) of subsection (k)) are not payable to such individual by reason of engagement in substantial gainful activity or by reason of earnings from work activity; and

“(ii) ending with the 60th month (consecutive or otherwise), ending after such date, for which such benefits are not payable to such individual by reason of engagement in substantial gainful activity or by reason of earnings from work activity.

“(5) PERIODIC REVIEW AND ALTERATIONS OF PRESCRIBED SCHEDULES.—

“(A) PERCENTAGES AND PERIODS.—The Commissioner shall periodically review the percentage specified in paragraph (2)(C), the total payments permissible under paragraph (3)(C), and the period of time specified in paragraph (4)(B) to determine whether such percentages, such permissible payments, and such period provide an adequate incentive for employment networks to assist beneficiaries to enter the workforce, while providing for appropriate economies. The Commissioner may alter such percentage, such total permissible payments, or such period of time to the extent that the Commissioner determines, on the basis of the Commissioner’s review under this paragraph, that such an alteration would better provide the incentive and economies described in the preceding sentence.

“(B) NUMBER AND AMOUNTS OF MILESTONE PAYMENTS.—The Commissioner shall periodically review the number and amounts of milestone payments established by the Commissioner pursuant to this section to determine whether they provide an adequate incentive for employment networks to assist beneficiaries to enter the workforce, taking into account information provided to the Commissioner by program managers, the Ticket to Work and Work Incentives Advisory Panel established by section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, and other reliable sources. The Commissioner may from time to time alter the number and amounts of milestone payments initially established by the Commissioner pursuant to this section to the extent that the Commissioner determines that such an alteration would allow an adequate incentive for employment networks to assist beneficiaries to enter the workforce. Such alteration shall be based on information provided to the Commissioner by program managers, the Ticket to Work and Work Incentives Advisory Panel established by section 101(f) of the Ticket to Work and Work

Incentives Improvement Act of 1999, or other reliable sources.

“(C) REPORT ON THE ADEQUACY OF INCENTIVES.—The Commissioner shall submit to the Congress not later than 36 months after the date of the enactment of the Ticket to Work and Work Incentives Improvement Act of 1999 a report with recommendations for a method or methods to adjust payment rates under subparagraphs (A) and (B), that would ensure adequate incentives for the provision of services by employment networks of—

“(i) individuals with a need for ongoing support and services;

“(ii) individuals with a need for high-cost accommodations;

“(iii) individuals who earn a subminimum wage; and

“(iv) individuals who work and receive partial cash benefits.

The Commissioner shall consult with the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 during the development and evaluation of the study. The Commissioner shall implement the necessary adjusted payment rates prior to full implementation of the Ticket to Work and Self-Sufficiency Program.

“(i) SUSPENSION OF DISABILITY REVIEWS.—During any period for which an individual is using, as defined by the Commissioner, a ticket to work and self-sufficiency issued under this section, the Commissioner (and any applicable State agency) may not initiate a continuing disability review or other review under section 221 of whether the individual is or is not under a disability or a review under title XVI similar to any such review under section 221.

“(j) AUTHORIZATIONS.—

“(1) PAYMENTS TO EMPLOYMENT NETWORKS.—

“(A) TITLE II DISABILITY BENEFICIARIES.—There are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund each fiscal year such sums as may be necessary to make payments to employment networks under this section. Money paid from the Trust Funds under this section with respect to title II disability beneficiaries who are entitled to benefits under section 223 or who are entitled to benefits under section 202(d) on the basis of the wages and self-employment income of such beneficiaries, shall be charged to the Federal Disability Insurance Trust Fund, and all other money paid from the Trust Funds under this section shall be charged to the Federal Old-Age and Survivors Insurance Trust Fund.

“(B) TITLE XVI DISABILITY BENEFICIARIES.—Amounts authorized to be appropriated to the Social Security Administration under section 1601 (as in effect pursuant to the amendments made by section 301 of the Social Security Amendments of 1972) shall include amounts necessary to carry out the provisions of this section with respect to title XVI disability beneficiaries.

“(2) ADMINISTRATIVE EXPENSES.—The costs of administering this section (other than payments to employment networks) shall be paid from amounts made available for the administration of title II and amounts made available for the administration of title XVI, and shall be allocated among such amounts as appropriate.

“(k) DEFINITIONS.—In this section:

“(1) COMMISSIONER.—The term ‘Commissioner’ means the Commissioner of Social Security.

“(2) DISABLED BENEFICIARY.—The term ‘disabled beneficiary’ means a title II disability beneficiary or a title XVI disability beneficiary.

“(3) TITLE II DISABILITY BENEFICIARY.—The term ‘title II disability beneficiary’ means an individual entitled to disability insurance benefits under section 223 or to monthly insurance bene-

fits under section 202 based on such individual’s disability (as defined in section 223(d)). An individual is a title II disability beneficiary for each month for which such individual is entitled to such benefits.

“(4) TITLE XVI DISABILITY BENEFICIARY.—The term ‘title XVI disability beneficiary’ means an individual eligible for supplemental security income benefits under title XVI on the basis of blindness (within the meaning of section 1614(a)(2)) or disability (within the meaning of section 1614(a)(3)). An individual is a title XVI disability beneficiary for each month for which such individual is eligible for such benefits.

“(5) SUPPLEMENTAL SECURITY INCOME BENEFIT.—The term ‘supplemental security income benefit under title XVI’ means a cash benefit under section 1611 or 1619(a), and does not include a State supplementary payment, administered federally or otherwise.

“(1) REGULATIONS.—Not later than 1 year after the date of the enactment of the Ticket to Work and Work Incentives Improvement Act of 1999, the Commissioner shall prescribe such regulations as are necessary to carry out the provisions of this section.”.

(b) CONFORMING AMENDMENTS.—

(1) AMENDMENTS TO TITLE II.—

(A) Section 221(i) of the Social Security Act (42 U.S.C. 421(i)) is amended by adding at the end the following new paragraph:

“(5) For suspension of reviews under this subsection in the case of an individual using a ticket to work and self-sufficiency, see section 1148(i).”.

(B) Section 222(a) of such Act (42 U.S.C. 422(a)) is repealed.

(C) Section 222(b) of such Act (42 U.S.C. 422(b)) is repealed.

(D) Section 225(b)(1) of such Act (42 U.S.C. 425(b)(1)) is amended by striking “a program of vocational rehabilitation services” and inserting “a program consisting of the Ticket to Work and Self-Sufficiency Program under section 1148 or another program of vocational rehabilitation services, employment services, or other support services”.

(2) AMENDMENTS TO TITLE XVI.—

(A) Section 1615(a) of such Act (42 U.S.C. 1382d(a)) is amended to read as follows:

“SEC. 1615. (a) In the case of any blind or disabled individual who—

“(1) has not attained age 16; and

“(2) with respect to whom benefits are paid under this title,

the Commissioner of Social Security shall make provision for referral of such individual to the appropriate State agency administering the State program under title V.”.

(B) Section 1615(c) of such Act (42 U.S.C. 1382d(c)) is repealed.

(C) Section 1631(a)(6)(A) of such Act (42 U.S.C. 1383(a)(6)(A)) is amended by striking “a program of vocational rehabilitation services” and inserting “a program consisting of the Ticket to Work and Self-Sufficiency Program under section 1148 or another program of vocational rehabilitation services, employment services, or other support services”.

(D) Section 1633(c) of such Act (42 U.S.C. 1383b(c)) is amended—

(i) by inserting “(1)” after “(c)”; and

(ii) by adding at the end the following new paragraph:

“(2) For suspension of continuing disability reviews and other reviews under this title similar to reviews under section 221 in the case of an individual using a ticket to work and self-sufficiency, see section 1148(i).”.

(c) EFFECTIVE DATE.—Subject to subsection (d), the amendments made by subsections (a) and (b) shall take effect with the first month following 1 year after the date of the enactment of this Act.

(d) **GRADUATED IMPLEMENTATION OF PROGRAM.**—

(1) **IN GENERAL.**—Not later than 1 year after the date of the enactment of this Act, the Commissioner of Social Security shall commence implementation of the amendments made by this section (other than paragraphs (1)(C) and (2)(B) of subsection (b)) in graduated phases at phase-in sites selected by the Commissioner. Such phase-in sites shall be selected so as to ensure, prior to full implementation of the Ticket to Work and Self-Sufficiency Program, the development and refinement of referral processes, payment systems, computer linkages, management information systems, and administrative processes necessary to provide for full implementation of such amendments. Subsection (c) shall apply with respect to paragraphs (1)(C) and (2)(B) of subsection (b) without regard to this subsection.

(2) **REQUIREMENTS.**—Implementation of the Program at each phase-in site shall be carried out on a wide enough scale to permit a thorough evaluation of the alternative methods under consideration, so as to ensure that the most efficacious methods are determined and in place for full implementation of the Program on a timely basis.

(3) **FULL IMPLEMENTATION.**—The Commissioner shall ensure that ability to provide tickets and services to individuals under the Program exists in every State as soon as practicable on or after the effective date specified in subsection (c) but not later than 3 years after such date.

(4) **ONGOING EVALUATION OF PROGRAM.**—

(A) **IN GENERAL.**—The Commissioner shall provide for independent evaluations to assess the effectiveness of the activities carried out under this section and the amendments made thereby. Such evaluations shall address the cost-effectiveness of such activities, as well as the effects of this section and the amendments made thereby on work outcomes for beneficiaries receiving tickets to work and self-sufficiency under the Program.

(B) **CONSULTATION.**—Evaluations shall be conducted under this paragraph after receiving relevant advice from experts in the fields of disability, vocational rehabilitation, and program evaluation and individuals using tickets to work and self-sufficiency under the Program and in consultation with the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of this Act, the Comptroller General of the United States, other agencies of the Federal Government, and private organizations with appropriate expertise.

(C) **METHODOLOGY.**—

(i) **IMPLEMENTATION.**—The Commissioner, in consultation with the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of this Act, shall ensure that plans for evaluations and data collection methods under the Program are appropriately designed to obtain detailed employment information.

(ii) **SPECIFIC MATTERS TO BE ADDRESSED.**—Each such evaluation shall address (but is not limited to)—

(I) the annual cost (including net cost) of the Program and the annual cost (including net cost) that would have been incurred in the absence of the Program;

(II) the determinants of return to work, including the characteristics of beneficiaries in receipt of tickets under the Program;

(III) the types of employment services, vocational rehabilitation services, and other support services furnished to beneficiaries in receipt of tickets under the Program who return to work and to those who do not return to work;

(IV) the duration of employment services, vocational rehabilitation services, and other support services furnished to beneficiaries in receipt of tickets under the Program who return to

work and the duration of such services furnished to those who do not return to work and the cost to employment networks of furnishing such services;

(V) the employment outcomes, including wages, occupations, benefits, and hours worked, of beneficiaries who return to work after receiving tickets under the Program and those who return to work without receiving such tickets;

(VI) the characteristics of individuals in possession of tickets under the Program who are not accepted for services and, to the extent reasonably determinable, the reasons for which such beneficiaries were not accepted for services;

(VII) the characteristics of providers whose services are provided within an employment network under the Program;

(VIII) the extent (if any) to which employment networks display a greater willingness to provide services to beneficiaries with a range of disabilities;

(IX) the characteristics (including employment outcomes) of those beneficiaries who receive services under the outcome payment system and of those beneficiaries who receive services under the outcome-milestone payment system;

(X) measures of satisfaction among beneficiaries in receipt of tickets under the Program; and

(XI) reasons for (including comments solicited from beneficiaries regarding) their choice not to use their tickets or their inability to return to work despite the use of their tickets.

(D) **PERIODIC EVALUATION REPORTS.**—Following the close of the third and fifth fiscal years ending after the effective date under subsection (c), and prior to the close of the seventh fiscal year ending after such date, the Commissioner shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report containing the Commissioner's evaluation of the progress of activities conducted under the provisions of this section and the amendments made thereby. Each such report shall set forth the Commissioner's evaluation of the extent to which the Program has been successful and the Commissioner's conclusions on whether or how the Program should be modified. Each such report shall include such data, findings, materials, and recommendations as the Commissioner may consider appropriate.

(5) **EXTENT OF STATE'S RIGHT OF FIRST REFUSAL IN ADVANCE OF FULL IMPLEMENTATION OF AMENDMENTS IN SUCH STATE.**—

(A) **IN GENERAL.**—In the case of any State in which the amendments made by subsection (a) have not been fully implemented pursuant to this subsection, the Commissioner shall determine by regulation the extent to which—

(i) the requirement under section 222(a) of the Social Security Act (42 U.S.C. 422(a)) for prompt referrals to a State agency; and

(ii) the authority of the Commissioner under section 222(d)(2) of such Act (42 U.S.C. 422(d)(2)) to provide vocational rehabilitation services in such State by agreement or contract with other public or private agencies, organizations, institutions, or individuals, shall apply in such State.

(B) **EXISTING AGREEMENTS.**—Nothing in subparagraph (A) or the amendments made by subsection (a) shall be construed to limit, impede, or otherwise affect any agreement entered into pursuant to section 222(d)(2) of the Social Security Act (42 U.S.C. 422(d)(2)) before the date of the enactment of this Act with respect to services provided pursuant to such agreement to beneficiaries receiving services under such agreement as of such date, except with respect to services (if any) to be provided after 3 years after the effective date provided in subsection (c).

(e) **SPECIFIC REGULATIONS REQUIRED.**—

(1) **IN GENERAL.**—The Commissioner of Social Security shall prescribe such regulations as are necessary to implement the amendments made by this section.

(2) **SPECIFIC MATTERS TO BE INCLUDED IN REGULATIONS.**—The matters which shall be addressed in such regulations shall include—

(A) the form and manner in which tickets to work and self-sufficiency may be distributed to beneficiaries pursuant to section 1148(b)(1) of the Social Security Act;

(B) the format and wording of such tickets, which shall incorporate by reference any contractual terms governing service by employment networks under the Program;

(C) the form and manner in which State agencies may elect participation in the Ticket to Work and Self-Sufficiency Program pursuant to section 1148(c)(1) of such Act and provision for periodic opportunities for exercising such elections;

(D) the status of State agencies under section 1148(c)(1) of such Act at the time that State agencies exercise elections under that section;

(E) the terms of agreements to be entered into with program managers pursuant to section 1148(d) of such Act, including—

(i) the terms by which program managers are precluded from direct participation in the delivery of services pursuant to section 1148(d)(3) of such Act;

(ii) standards which must be met by quality assurance measures referred to in paragraph (6) of section 1148(d) of such Act and methods of recruitment of employment networks utilized pursuant to paragraph (2) of section 1148(e) of such Act; and

(iii) the format under which dispute resolution will operate under section 1148(d)(7) of such Act;

(F) the terms of agreements to be entered into with employment networks pursuant to section 1148(d)(4) of such Act, including—

(i) the manner in which service areas are specified pursuant to section 1148(f)(2)(A) of such Act;

(ii) the general selection criteria and the specific selection criteria which are applicable to employment networks under section 1148(f)(1)(C) of such Act in selecting service providers;

(iii) specific requirements relating to annual financial reporting by employment networks pursuant to section 1148(f)(3) of such Act; and

(iv) the national model to which periodic outcomes reporting by employment networks must conform under section 1148(f)(4) of such Act;

(G) standards which must be met by individual work plans pursuant to section 1148(g) of such Act;

(H) standards which must be met by payment systems required under section 1148(h) of such Act, including—

(i) the form and manner in which elections by employment networks of payment systems are to be exercised pursuant to section 1148(h)(1)(A) of such Act;

(ii) the terms which must be met by an outcome payment system under section 1148(h)(2) of such Act;

(iii) the terms which must be met by an outcome-milestone payment system under section 1148(h)(3) of such Act;

(iv) any revision of the percentage specified in paragraph (2)(C) of section 1148(h) of such Act or the period of time specified in paragraph (4)(B) of such section 1148(h) of such Act; and

(v) annual oversight procedures for such systems; and

(I) procedures for effective oversight of the Program by the Commissioner of Social Security, including periodic reviews and reporting requirements.

(f) **THE TICKET TO WORK AND WORK INCENTIVES ADVISORY PANEL.**—



(1) **ESTABLISHMENT.**—There is established within the Social Security Administration a panel to be known as the “Ticket to Work and Work Incentives Advisory Panel” (in this subsection referred to as the “Panel”).

(2) **DUTIES OF PANEL.**—It shall be the duty of the Panel to—

(A) advise the President, the Congress, and the Commissioner of Social Security on issues related to work incentives programs, planning, and assistance for individuals with disabilities, including work incentive provisions under titles II, XI, XVI, XVIII, and XIX of the Social Security Act (42 U.S.C. 401 et seq., 1301 et seq., 1381 et seq., 1395 et seq., 1396 et seq.); and

(B) with respect to the Ticket to Work and Self-Sufficiency Program established under section 1148 of such Act—

(i) advise the Commissioner of Social Security with respect to establishing phase-in sites for such Program and fully implementing the Program thereafter, the refinement of access of disabled beneficiaries to employment networks, payment systems, and management information systems, and advise the Commissioner whether such measures are being taken to the extent necessary to ensure the success of the Program;

(ii) advise the Commissioner regarding the most effective designs for research and demonstration projects associated with the Program or conducted pursuant to section 302 of this Act;

(iii) advise the Commissioner on the development of performance measurements relating to quality assurance under section 1148(d)(6) of the Social Security Act; and

(iv) furnish progress reports on the Program to the Commissioner and each House of Congress.

(3) **MEMBERSHIP.**—

(A) **NUMBER AND APPOINTMENT.**—The Panel shall be composed of 12 members as follows:

(i) 4 members appointed by the President, not more than 2 of whom may be of the same political party;

(ii) 2 members appointed by the Speaker of the House of Representatives, in consultation with the Chairman of the Committee on Ways and Means of the House of Representatives;

(iii) 2 members appointed by the minority leader of the House of Representatives, in consultation with the ranking member of the Committee on Ways and Means of the House of Representatives;

(iv) 2 members appointed by the majority leader of the Senate, in consultation with the Chairman of the Committee on Finance of the Senate; and

(v) 2 members appointed by the minority leader of the Senate, in consultation with the ranking member of the Committee on Finance of the Senate.

(B) **REPRESENTATION.**—

(i) **IN GENERAL.**—The members appointed under subparagraph (A) shall have experience or expert knowledge as a recipient, provider, employer, or employee in the fields of, or related to, employment services, vocational rehabilitation services, and other support services.

(ii) **REQUIREMENT.**—At least one-half of the members appointed under subparagraph (A) shall be individuals with disabilities, or representatives of individuals with disabilities, with consideration given to current or former title II disability beneficiaries or title XVI disability beneficiaries (as such terms are defined in section 1148(k) of the Social Security Act (as added by subsection (a))).

(C) **TERMS.**—

(i) **IN GENERAL.**—Each member shall be appointed for a term of 4 years (or, if less, for the remaining life of the Panel), except as provided in clauses (ii) and (iii). The initial members shall be appointed not later than 90 days after the date of the enactment of this Act.

(ii) **TERMS OF INITIAL APPOINTEES.**—Of the members first appointed under each clause of subparagraph (A), as designated by the appointing authority for each such clause—

(I) one-half of such members shall be appointed for a term of 2 years; and

(II) the remaining members shall be appointed for a term of 4 years.

(iii) **VACANCIES.**—Any member appointed to fill a vacancy occurring before the expiration of the term for which the member’s predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member’s term until a successor has taken office. A vacancy in the Panel shall be filled in the manner in which the original appointment was made.

(D) **BASIC PAY.**—Members shall each be paid at a rate, and in a manner, that is consistent with guidelines established under section 7 of the Federal Advisory Committee Act (5 U.S.C. App.).

(E) **TRAVEL EXPENSES.**—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(F) **QUORUM.**—8 members of the Panel shall constitute a quorum but a lesser number may hold hearings.

(G) **CHAIRPERSON.**—The Chairperson of the Panel shall be designated by the President. The term of office of the Chairperson shall be 4 years.

(H) **MEETINGS.**—The Panel shall meet at least quarterly and at other times at the call of the Chairperson or a majority of its members.

(4) **DIRECTOR AND STAFF OF PANEL; EXPERTS AND CONSULTANTS.**—

(A) **DIRECTOR.**—The Panel shall have a Director who shall be appointed by the Chairperson, and paid at a rate, and in a manner, that is consistent with guidelines established under section 7 of the Federal Advisory Committee Act (5 U.S.C. App.).

(B) **STAFF.**—Subject to rules prescribed by the Commissioner of Social Security, the Director may appoint and fix the pay of additional personnel as the Director considers appropriate.

(C) **EXPERTS AND CONSULTANTS.**—Subject to rules prescribed by the Commissioner of Social Security, the Director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(D) **STAFF OF FEDERAL AGENCIES.**—Upon request of the Panel, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Panel to assist it in carrying out its duties under this Act.

(5) **POWERS OF PANEL.**—

(A) **HEARINGS AND SESSIONS.**—The Panel may, for the purpose of carrying out its duties under this subsection, hold such hearings, sit and act at such times and places, and take such testimony and evidence as the Panel considers appropriate.

(B) **POWERS OF MEMBERS AND AGENTS.**—Any member or agent of the Panel may, if authorized by the Panel, take any action which the Panel is authorized to take by this section.

(C) **MAILS.**—The Panel may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(6) **REPORTS.**—

(A) **INTERIM REPORTS.**—The Panel shall submit to the President and the Congress interim reports at least annually.

(B) **FINAL REPORT.**—The Panel shall transmit a final report to the President and the Congress not later than eight years after the date of the enactment of this Act. The final report shall contain a detailed statement of the findings and conclusions of the Panel, together with its rec-

ommendations for legislation and administrative actions which the Panel considers appropriate.

(7) **TERMINATION.**—The Panel shall terminate 30 days after the date of the submission of its final report under paragraph (6)(B).

(8) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the general fund of the Treasury, as appropriate, such sums as are necessary to carry out this subsection.

**Subtitle B—Elimination of Work Disincentives**  
**SEC. 111. WORK ACTIVITY STANDARD AS A BASIS FOR REVIEW OF AN INDIVIDUAL’S DISABLED STATUS.**

(a) **IN GENERAL.**—Section 221 of the Social Security Act (42 U.S.C. 421) is amended by adding at the end the following new subsection:

“(m)(1) In any case where an individual entitled to disability insurance benefits under section 223 or to monthly insurance benefits under section 202 based on such individual’s disability (as defined in section 223(d)) has received such benefits for at least 24 months—

“(A) no continuing disability review conducted by the Commissioner may be scheduled for the individual solely as a result of the individual’s work activity;

“(B) no work activity engaged in by the individual may be used as evidence that the individual is no longer disabled; and

“(C) no cessation of work activity by the individual may give rise to a presumption that the individual is unable to engage in work.

“(2) An individual to which paragraph (1) applies shall continue to be subject to—

“(A) continuing disability reviews on a regularly scheduled basis that is not triggered by work; and

“(B) termination of benefits under this title in the event that the individual has earnings that exceed the level of earnings established by the Commissioner to represent substantial gainful activity.”

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect on January 1, 2002.

**SEC. 112. EXPEDITED REINSTATEMENT OF DISABILITY BENEFITS.**

(a) **OASDI BENEFITS.**—Section 223 of the Social Security Act (42 U.S.C. 423) is amended—

(1) by redesignating subsection (i) as subsection (j); and

(2) by inserting after subsection (h) the following new subsection:

“Reinstatement of Entitlement

“(i)(1)(A) Entitlement to benefits described in subparagraph (B)(i)(I) shall be reinstated in any case where the Commissioner determines that an individual described in subparagraph (B) has filed a request for reinstatement meeting the requirements of paragraph (2)(A) during the period prescribed in subparagraph (C). Reinstatement of such entitlement shall be in accordance with the terms of this subsection.

“(B) An individual is described in this subparagraph if—

“(i) prior to the month in which the individual files a request for reinstatement—

“(I) the individual was entitled to benefits under this section or section 202 on the basis of disability pursuant to an application filed therefor; and

“(II) such entitlement terminated due to the performance of substantial gainful activity;

“(ii) the individual is under a disability and the physical or mental impairment that is the basis for the finding of disability is the same as (or related to) the physical or mental impairment that was the basis for the finding of disability that gave rise to the entitlement described in clause (i); and

“(iii) the individual’s disability renders the individual unable to perform substantial gainful activity.

“(C)(i) Except as provided in clause (ii), the period prescribed in this subparagraph with respect to an individual is 60 consecutive months beginning with the month following the most recent month for which the individual was entitled to a benefit described in subparagraph (B)(i)(I) prior to the entitlement termination described in subparagraph (B)(i)(II).

“(ii) In the case of an individual who fails to file a reinstatement request within the period prescribed in clause (i), the Commissioner may extend the period if the Commissioner determines that the individual had good cause for the failure to so file.

“(2)(A)(i) A request for reinstatement shall be filed in such form, and containing such information, as the Commissioner may prescribe.

“(ii) A request for reinstatement shall include express declarations by the individual that the individual meets the requirements specified in clauses (ii) and (iii) of paragraph (1)(B).

“(B) A request for reinstatement filed in accordance with subparagraph (A) may constitute an application for benefits in the case of any individual who the Commissioner determines is not entitled to reinstated benefits under this subsection.

“(3) In determining whether an individual meets the requirements of paragraph (1)(B)(ii), the provisions of subsection (f) shall apply.

“(4)(A)(i) Subject to clause (ii), entitlement to benefits reinstated under this subsection shall commence with the benefit payable for the month in which a request for reinstatement is filed.

“(ii) An individual whose entitlement to a benefit for any month would have been reinstated under this subsection had the individual filed a request for reinstatement before the end of such month shall be entitled to such benefit for such month if such request for reinstatement is filed before the end of the twelfth month immediately succeeding such month.

“(B)(i) Subject to clauses (ii) and (iii), the amount of the benefit payable for any month pursuant to the reinstatement of entitlement under this subsection shall be determined in accordance with the provisions of this title.

“(ii) For purposes of computing the primary insurance amount of an individual whose entitlement to benefits under this section is reinstated under this subsection, the date of onset of the individual’s disability shall be the date of onset used in determining the individual’s most recent period of disability arising in connection with such benefits payable on the basis of an application.

“(iii) Benefits under this section or section 202 payable for any month pursuant to a request for reinstatement filed in accordance with paragraph (2) shall be reduced by the amount of any provisional benefit paid to such individual for such month under paragraph (7).

“(C) No benefit shall be payable pursuant to an entitlement reinstated under this subsection to an individual for any month in which the individual engages in substantial gainful activity.

“(D) The entitlement of any individual that is reinstated under this subsection shall end with the benefits payable for the month preceding whichever of the following months is the earliest:

“(i) The month in which the individual dies.

“(ii) The month in which the individual attains retirement age.

“(iii) The third month following the month in which the individual’s disability ceases.

“(5) Whenever an individual’s entitlement to benefits under this section is reinstated under this subsection, entitlement to benefits payable on the basis of such individual’s wages and self-

employment income may be reinstated with respect to any person previously entitled to such benefits on the basis of an application if the Commissioner determines that such person satisfies all the requirements for entitlement to such benefits except requirements related to the filing of an application. The provisions of paragraph (4) shall apply to the reinstated entitlement of any such person to the same extent that they apply to the reinstated entitlement of such individual.

“(6) An individual to whom benefits are payable under this section or section 202 pursuant to a reinstatement of entitlement under this subsection for 24 months (whether or not consecutive) shall, with respect to benefits so payable after such twenty-fourth month, be deemed for purposes of paragraph (1)(B)(i)(I) and the determination, if appropriate, of the termination month in accordance with subsection (a)(1) of this section, or subsection (d)(1), (e)(1), or (f)(1) of section 202, to be entitled to such benefits on the basis of an application filed therefor.

“(7)(A) An individual described in paragraph (1)(B) who files a request for reinstatement in accordance with the provisions of paragraph (2)(A) shall be entitled to provisional benefits payable in accordance with this paragraph, unless the Commissioner determines that the individual does not meet the requirements of paragraph (1)(B)(i) or that the individual’s declaration under paragraph (2)(A)(ii) is false. Any such determination by the Commissioner shall be final and not subject to review under subsection (b) or (g) of section 205.

“(B) The amount of a provisional benefit for a month shall equal the amount of the last monthly benefit payable to the individual under this title on the basis of an application increased by an amount equal to the amount, if any, by which such last monthly benefit would have been increased as a result of the operation of section 215(i).

“(C)(i) Provisional benefits shall begin with the month in which a request for reinstatement is filed in accordance with paragraph (2)(A).

“(ii) Provisional benefits shall end with the earliest of—

“(I) the month in which the Commissioner makes a determination regarding the individual’s entitlement to reinstated benefits;

“(II) the fifth month following the month described in clause (i);

“(III) the month in which the individual performs substantial gainful activity; or

“(IV) the month in which the Commissioner determines that the individual does not meet the requirements of paragraph (1)(B)(i) or that the individual’s declaration made in accordance with paragraph (2)(A)(ii) is false.

“(D) In any case in which the Commissioner determines that an individual is not entitled to reinstated benefits, any provisional benefits paid to the individual under this paragraph shall not be subject to recovery as an overpayment unless the Commissioner determines that the individual knew or should have known that the individual did not meet the requirements of paragraph (1)(B).”

(b) SSI BENEFITS.—

(1) IN GENERAL.—Section 1631 of the Social Security Act (42 U.S.C. 1383) is amended by adding at the end the following new subsection:

“Reinstatement of Eligibility on the Basis of Blindness or Disability

“(p)(1)(A) Eligibility for benefits under this title shall be reinstated in any case where the Commissioner determines that an individual described in subparagraph (B) has filed a request for reinstatement meeting the requirements of paragraph (2)(A) during the period prescribed in subparagraph (C). Reinstatement of eligibility shall be in accordance with the terms of this subsection.

“(B) An individual is described in this subparagraph if—

“(i) prior to the month in which the individual files a request for reinstatement—

“(I) the individual was eligible for benefits under this title on the basis of blindness or disability pursuant to an application filed therefor; and

“(II) the individual thereafter was ineligible for such benefits due to earned income (or earned and unearned income) for a period of 12 or more consecutive months;

“(ii) the individual is blind or disabled and the physical or mental impairment that is the basis for the finding of blindness or disability is the same as (or related to) the physical or mental impairment that was the basis for the finding of blindness or disability that gave rise to the eligibility described in clause (i);

“(iii) the individual’s blindness or disability renders the individual unable to perform substantial gainful activity; and

“(iv) the individual satisfies the nonmedical requirements for eligibility for benefits under this title.

“(C)(i) Except as provided in clause (ii), the period prescribed in this subparagraph with respect to an individual is 60 consecutive months beginning with the month following the most recent month for which the individual was eligible for a benefit under this title (including section 1619) prior to the period of ineligibility described in subparagraph (B)(i)(II).

“(ii) In the case of an individual who fails to file a reinstatement request within the period prescribed in clause (i), the Commissioner may extend the period if the Commissioner determines that the individual had good cause for the failure to so file.

“(2)(A)(i) A request for reinstatement shall be filed in such form, and containing such information, as the Commissioner may prescribe.

“(ii) A request for reinstatement shall include express declarations by the individual that the individual meets the requirements specified in clauses (ii) through (iv) of paragraph (1)(B).

“(B) A request for reinstatement filed in accordance with subparagraph (A) may constitute an application for benefits in the case of any individual who the Commissioner determines is not eligible for reinstated benefits under this subsection.

“(3) In determining whether an individual meets the requirements of paragraph (1)(B)(ii), the provisions of section 1614(a)(4) shall apply.

“(4)(A) Eligibility for benefits reinstated under this subsection shall commence with the benefit payable for the month following the month in which a request for reinstatement is filed.

“(B)(i) Subject to clause (ii), the amount of the benefit payable for any month pursuant to the reinstatement of eligibility under this subsection shall be determined in accordance with the provisions of this title.

“(ii) The benefit under this title payable for any month pursuant to a request for reinstatement filed in accordance with paragraph (2) shall be reduced by the amount of any provisional benefit paid to such individual for such month under paragraph (7).

“(C) Except as otherwise provided in this subsection, eligibility for benefits under this title reinstated pursuant to a request filed under paragraph (2) shall be subject to the same terms and conditions as eligibility established pursuant to an application filed therefor.

“(5) Whenever an individual’s eligibility for benefits under this title is reinstated under this subsection, eligibility for such benefits shall be reinstated with respect to the individual’s spouse if such spouse was previously an eligible spouse of the individual under this title and the Commissioner determines that such spouse satisfies all the requirements for eligibility for such



benefits except requirements related to the filing of an application. The provisions of paragraph (4) shall apply to the reinstated eligibility of the spouse to the same extent that they apply to the reinstated eligibility of such individual.

“(6) An individual to whom benefits are payable under this title pursuant to a reinstatement of eligibility under this subsection for twenty-four months (whether or not consecutive) shall, with respect to benefits so payable after such twenty-fourth month, be deemed for purposes of paragraph (1)(B)(i)(I) to be eligible for such benefits on the basis of an application filed therefor.

“(7)(A) An individual described in paragraph (1)(B) who files a request for reinstatement in accordance with the provisions of paragraph (2)(A) shall be eligible for provisional benefits payable in accordance with this paragraph, unless the Commissioner determines that the individual does not meet the requirements of paragraph (1)(B)(i) or that the individual's declaration under paragraph (2)(A)(ii) is false. Any such determination by the Commissioner shall be final and not subject to review under paragraph (1) or (3) of subsection (c).

“(B)(i) Except as otherwise provided in clause (ii), the amount of a provisional benefit for a month shall equal the amount of the monthly benefit that would be payable to an eligible individual under this title with the same kind and amount of income.

“(ii) If the individual has a spouse who was previously an eligible spouse of the individual under this title and the Commissioner determines that such spouse satisfies all the requirements of section 1614(b) except requirements related to the filing of an application, the amount of a provisional benefit for a month shall equal the amount of the monthly benefit that would be payable to an eligible individual and eligible spouse under this title with the same kind and amount of income.

“(C)(i) Provisional benefits shall begin with the month following the month in which a request for reinstatement is filed in accordance with paragraph (2)(A).

“(ii) Provisional benefits shall end with the earliest of—

“(I) the month in which the Commissioner makes a determination regarding the individual's eligibility for reinstated benefits;

“(II) the fifth month following the month for which provisional benefits are first payable under clause (i); or

“(III) the month in which the Commissioner determines that the individual does not meet the requirements of paragraph (1)(B)(i) or that the individual's declaration made in accordance with paragraph (2)(A)(ii) is false.

“(D) In any case in which the Commissioner determines that an individual is not eligible for reinstated benefits, any provisional benefits paid to the individual under this paragraph shall not be subject to recovery as an overpayment unless the Commissioner determines that the individual knew or should have known that the individual did not meet the requirements of paragraph (1)(B).

“(8) For purposes of this subsection other than paragraph (7), the term ‘benefits under this title’ includes State supplementary payments made pursuant to an agreement under section 1616(a) of this Act or section 212(b) of Public Law 93-66.”.

**(2) CONFORMING AMENDMENTS.—**

(A) Section 1631(j)(1) of such Act (42 U.S.C. 1383(j)(1)) is amended by striking the period and inserting “, or has filed a request for reinstatement of eligibility under subsection (p)(2) and been determined to be eligible for reinstatement.”.

(B) Section 1631(j)(2)(A)(i)(I) of such Act (42 U.S.C. 1383(j)(2)(A)(i)(I)) is amended by insert-

ing “(other than pursuant to a request for reinstatement under subsection (p))” after “eligible”.

**(c) EFFECTIVE DATE.—**

(1) **IN GENERAL.—**The amendments made by this section shall take effect on the first day of the thirteenth month beginning after the date of the enactment of this Act.

(2) **LIMITATION.—**No benefit shall be payable under title II or XVI on the basis of a request for reinstatement filed under section 223(i) or 1631(p) of the Social Security Act (42 U.S.C. 423(i), 1383(p)) before the effective date described in paragraph (1).

**Subtitle C—Work Incentives Planning, Assistance, and Outreach**

**SEC. 121. WORK INCENTIVES OUTREACH PROGRAM.**

Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.), as amended by section 101 of this Act, is amended by adding after section 1148 the following new section:

**“WORK INCENTIVES OUTREACH PROGRAM**

**“SEC. 1149. (a) ESTABLISHMENT.—**

“(1) **IN GENERAL.—**The Commissioner, in consultation with the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, shall establish a community-based work incentives planning and assistance program for the purpose of disseminating accurate information to disabled beneficiaries on work incentives programs and issues related to such programs.

“(2) **GRANTS, COOPERATIVE AGREEMENTS, CONTRACTS, AND OUTREACH.—**Under the program established under this section, the Commissioner shall—

“(A) establish a competitive program of grants, cooperative agreements, or contracts to provide benefits planning and assistance, including information on the availability of protection and advocacy services, to disabled beneficiaries, including individuals participating in the Ticket to Work and Self-Sufficiency Program established under section 1148, the program established under section 1619, and other programs that are designed to encourage disabled beneficiaries to work;

“(B) conduct directly, or through grants, cooperative agreements, or contracts, ongoing outreach efforts to disabled beneficiaries (and to the families of such beneficiaries) who are potentially eligible to participate in Federal or State work incentive programs that are designed to assist disabled beneficiaries to work, including—

“(i) preparing and disseminating information explaining such programs; and

“(ii) working in cooperation with other Federal, State, and private agencies and nonprofit organizations that serve disabled beneficiaries, and with agencies and organizations that focus on vocational rehabilitation and work-related training and counseling;

“(C) establish a corps of trained, accessible, and responsive work incentives specialists within the Social Security Administration who will specialize in disability work incentives under titles II and XVI for the purpose of disseminating accurate information with respect to inquiries and issues relating to work incentives to—

“(i) disabled beneficiaries;

“(ii) benefit applicants under titles II and XVI; and

“(iii) individuals or entities awarded grants under subparagraphs (A) or (B); and

“(D) provide—

“(i) training for work incentives specialists and individuals providing planning assistance described in subparagraph (C); and

“(ii) technical assistance to organizations and entities that are designed to encourage disabled beneficiaries to return to work.

“(3) **COORDINATION WITH OTHER PROGRAMS.—**The responsibilities of the Commissioner established under this section shall be coordinated with other public and private programs that provide information and assistance regarding rehabilitation services and independent living supports and benefits planning for disabled beneficiaries including the program under section 1619, the plans for achieving self-support program (PASS), and any other Federal or State work incentives programs that are designed to assist disabled beneficiaries, including educational agencies that provide information and assistance regarding rehabilitation, school-to-work programs, transition services (as defined in, and provided in accordance with, the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.)), a one-stop delivery system established under subtitle B of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2811 et seq.), and other services.

**“(b) CONDITIONS.—**

**“(1) SELECTION OF ENTITIES.—**

“(A) **APPLICATION.—**An entity shall submit an application for a grant, cooperative agreement, or contract to provide benefits planning and assistance to the Commissioner at such time, in such manner, and containing such information as the Commissioner may determine is necessary to meet the requirements of this section.

“(B) **STATEWIDENESS.—**The Commissioner shall ensure that the planning, assistance, and information described in paragraph (2) shall be available on a statewide basis.

**“(C) ELIGIBILITY OF STATES AND PRIVATE ORGANIZATIONS.—**

“(i) **IN GENERAL.—**The Commissioner may award a grant, cooperative agreement, or contract under this section to a State or a private agency or organization (other than Social Security Administration Field Offices and the State agency administering the State medicaid program under title XIX, including any agency or entity described in clause (ii), that the Commissioner determines is qualified to provide the planning, assistance, and information described in paragraph (2)).

“(ii) **AGENCIES AND ENTITIES DESCRIBED.—**The agencies and entities described in this clause are the following:

“(I) Any public or private agency or organization (including Centers for Independent Living established under title VII of the Rehabilitation Act of 1973 (29 U.S.C. 796 et seq.), protection and advocacy organizations, client assistance programs established in accordance with section 112 of the Rehabilitation Act of 1973 (29 U.S.C. 732), and State Developmental Disabilities Councils established in accordance with section 124 of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6024)) that the Commissioner determines satisfies the requirements of this section.

“(II) The State agency administering the State program funded under part A of title IV.

“(D) **EXCLUSION FOR CONFLICT OF INTEREST.—**The Commissioner may not award a grant, cooperative agreement, or contract under this section to any entity that the Commissioner determines would have a conflict of interest if the entity were to receive a grant, cooperative agreement, or contract under this section.

“(2) **SERVICES PROVIDED.—**A recipient of a grant, cooperative agreement, or contract to provide benefits planning and assistance shall select individuals who will act as planners and provide information, guidance, and planning to disabled beneficiaries on the—

“(A) availability and interrelation of any Federal or State work incentives programs designed to assist disabled beneficiaries that the individual may be eligible to participate in;

“(B) adequacy of any health benefits coverage that may be offered by an employer of the individual and the extent to which other health

benefits coverage may be available to the individual; and

“(C) availability of protection and advocacy services for disabled beneficiaries and how to access such services.

“(3) AMOUNT OF GRANTS, COOPERATIVE AGREEMENTS, OR CONTRACTS.—

“(A) BASED ON POPULATION OF DISABLED BENEFICIARIES.—Subject to subparagraph (B), the Commissioner shall award a grant, cooperative agreement, or contract under this section to an entity based on the percentage of the population of the State where the entity is located who are disabled beneficiaries.

“(B) LIMITATIONS.—

“(i) PER GRANT.—No entity shall receive a grant, cooperative agreement, or contract under this section for a fiscal year that is less than \$50,000 or more than \$300,000.

“(ii) TOTAL AMOUNT FOR ALL GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—The total amount of all grants, cooperative agreements, and contracts awarded under this section for a fiscal year may not exceed \$23,000,000.

“(4) ALLOCATION OF COSTS.—The costs of carrying out this section shall be paid from amounts made available for the administration of title II and amounts made available for the administration of title XVI, and shall be allocated among those amounts as appropriate.

“(c) DEFINITIONS.—In this section:

“(1) COMMISSIONER.—The term ‘Commissioner’ means the Commissioner of Social Security.

“(2) DISABLED BENEFICIARY.—The term ‘disabled beneficiary’ has the meaning given that term in section 1148(k)(2).

“(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section \$23,000,000 for each of the fiscal years 2000 through 2004.”

**SEC. 122. STATE GRANTS FOR WORK INCENTIVES ASSISTANCE TO DISABLED BENEFICIARIES.**

Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.), as amended by section 121 of this Act, is amended by adding after section 1149 the following new section:

**“STATE GRANTS FOR WORK INCENTIVES ASSISTANCE TO DISABLED BENEFICIARIES**

“SEC. 1150. (a) IN GENERAL.—Subject to subsection (c), the Commissioner may make payments in each State to the protection and advocacy system established pursuant to part C of title I of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.) for the purpose of providing services to disabled beneficiaries.

“(b) SERVICES PROVIDED.—Services provided to disabled beneficiaries pursuant to a payment made under this section may include—

“(1) information and advice about obtaining vocational rehabilitation and employment services; and

“(2) advocacy or other services that a disabled beneficiary may need to secure or regain gainful employment.

“(c) APPLICATION.—In order to receive payments under this section, a protection and advocacy system shall submit an application to the Commissioner, at such time, in such form and manner, and accompanied by such information and assurances as the Commissioner may require.

“(d) AMOUNT OF PAYMENTS.—

“(1) IN GENERAL.—Subject to the amount appropriated for a fiscal year for making payments under this section, a protection and advocacy system shall not be paid an amount that is less than—

“(A) in the case of a protection and advocacy system located in a State (including the District of Columbia and Puerto Rico) other than Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, the greater of—

“(i) \$100,000; or

“(ii)  $\frac{1}{3}$  of 1 percent of the amount available for payments under this section; and

“(B) in the case of a protection and advocacy system located in Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, \$50,000.

“(2) INFLATION ADJUSTMENT.—For each fiscal year in which the total amount appropriated to carry out this section exceeds the total amount appropriated to carry out this section in the preceding fiscal year, the Commissioner shall increase each minimum payment under subparagraphs (A) and (B) of paragraph (1) by a percentage equal to the percentage increase in the total amount so appropriated to carry out this section.

“(e) ANNUAL REPORT.—Each protection and advocacy system that receives a payment under this section shall submit an annual report to the Commissioner and the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 on the services provided to individuals by the system.

“(f) FUNDING.—

“(1) ALLOCATION OF PAYMENTS.—Payments under this section shall be made from amounts made available for the administration of title II and amounts made available for the administration of title XVI, and shall be allocated among those amounts as appropriate.

“(2) CARRYOVER.—Any amounts allotted for payment to a protection and advocacy system under this section for a fiscal year shall remain available for payment to or on behalf of the protection and advocacy system until the end of the succeeding fiscal year.

“(g) DEFINITIONS.—In this section:

“(1) COMMISSIONER.—The term ‘Commissioner’ means the Commissioner of Social Security.

“(2) DISABLED BENEFICIARY.—The term ‘disabled beneficiary’ has the meaning given that term in section 1148(k)(2).

“(3) PROTECTION AND ADVOCACY SYSTEM.—The term ‘protection and advocacy system’ means a protection and advocacy system established pursuant to part C of title I of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.).

“(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section \$7,000,000 for each of the fiscal years 2000 through 2004.”

**TITLE II—EXPANDED AVAILABILITY OF HEALTH CARE SERVICES**

**SEC. 201. EXPANDING STATE OPTIONS UNDER THE MEDICAID PROGRAM FOR WORKERS WITH DISABILITIES.**

(a) IN GENERAL.—

(1) STATE OPTION TO ELIMINATE INCOME, ASSETS, AND RESOURCE LIMITATIONS FOR WORKERS WITH DISABILITIES BUYING INTO MEDICAID.—Section 1902(a)(10)(A)(ii) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended—

(A) in subclause (XIII), by striking “or” at the end;

(B) in subclause (XIV), by adding “or” at the end; and

(C) by adding at the end the following new subclause:

“(XV) who, but for earnings in excess of the limit established under section 1905(q)(2)(B), would be considered to be receiving supplemental security income, who is at least 16, but less than 65, years of age, and whose assets, resources, and earned or unearned income (or both) do not exceed such limitations (if any) as the State may establish;”

(2) STATE OPTION TO PROVIDE OPPORTUNITY FOR EMPLOYED INDIVIDUALS WITH A MEDICALLY IMPROVED DISABILITY TO BUY INTO MEDICAID.—

(A) ELIGIBILITY.—Section 1902(a)(10)(A)(ii) of the Social Security Act (42 U.S.C.

1396a(a)(10)(A)(ii)), as amended by paragraph (1), is amended—

(i) in subclause (XIV), by striking “or” at the end;

(ii) in subclause (XV), by adding “or” at the end; and

(iii) by adding at the end the following new subclause:

“(XVI) who are employed individuals with a medically improved disability described in section 1905(v)(1) and whose assets, resources, and earned or unearned income (or both) do not exceed such limitations (if any) as the State may establish, but only if the State provides medical assistance to individuals described in subclause (XV);”

(B) DEFINITION OF EMPLOYED INDIVIDUALS WITH A MEDICALLY IMPROVED DISABILITY.—Section 1905 of the Social Security Act (42 U.S.C. 1396d) is amended by adding at the end the following new subsection:

“(v)(1) The term ‘employed individual with a medically improved disability’ means an individual who—

“(A) is at least 16, but less than 65, years of age;

“(B) is employed (as defined in paragraph (2));

“(C) ceases to be eligible for medical assistance under section 1902(a)(10)(A)(ii)(XV) because the individual, by reason of medical improvement, is determined at the time of a regularly scheduled continuing disability review to no longer be eligible for benefits under section 223(d) or 1614(a)(3); and

“(D) continues to have a severe medically determinable impairment, as determined under regulations of the Secretary.

“(2) For purposes of paragraph (1), an individual is considered to be ‘employed’ if the individual—

“(A) is earning at least the applicable minimum wage requirement under section 6 of the Fair Labor Standards Act (29 U.S.C. 206) and working at least 40 hours per month; or

“(B) is engaged in a work effort that meets substantial and reasonable threshold criteria for hours of work, wages, or other measures, as defined by the State and approved by the Secretary.”

(C) CONFORMING AMENDMENT.—Section 1905(a) of such Act (42 U.S.C. 1396d(a)) is amended in the matter preceding paragraph (1)—

(i) in clause (x), by striking “or” at the end;

(ii) in clause (xi), by adding “or” at the end; and

(iii) by inserting after clause (xi), the following new clause:

“(xi) employed individuals with a medically improved disability (as defined in subsection (v)).”

(3) STATE AUTHORITY TO IMPOSE INCOME-RELATED PREMIUMS AND COST-SHARING.—Section 1916 of such Act (42 U.S.C. 1396o) is amended—

(A) in subsection (a), by striking “The State plan” and inserting “Subject to subsection (g), the State plan”; and

(B) by adding at the end the following new subsection:

“(g) With respect to individuals provided medical assistance only under subclause (XV) or (XVI) of section 1902(a)(10)(A)(ii)—

“(1) a State may (in a uniform manner for individuals described in either such subclause)—

“(A) require such individuals to pay premiums or other cost-sharing charges set on a sliding scale based on income that the State may determine; and

“(B) require payment of 100 percent of such premiums for such year in the case of such an individual who has income for a year that exceeds 250 percent of the income official poverty line (referred to in subsection (c)(1)) applicable

to a family of the size involved, except that in the case of such an individual who has income for a year that does not exceed 450 percent of such poverty line, such requirement may only apply to the extent such premiums do not exceed 7.5 percent of such income; and

“(2) such State shall require payment of 100 percent of such premiums for a year by such an individual whose adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986) for such year exceeds \$75,000, except that a State may choose to subsidize such premiums by using State funds which may not be federally matched under this title. In the case of any calendar year beginning after 2000, the dollar amount specified in paragraph (2) shall be increased in accordance with the provisions of section 215(i)(2)(A)(ii).”

(4) PROHIBITION AGAINST SUPPLANTATION OF STATE FUNDS AND STATE FAILURE TO MAINTAIN EFFORT.—Section 1903(i) of such Act (42 U.S.C. 1396b(i)) is amended—

(A) by striking the period at the end of paragraph (19) and inserting “; or”; and

(B) by inserting after such paragraph the following new paragraph:

“(20) with respect to amounts expended for medical assistance provided to an individual described in subclause (XV) or (XVI) of section 1902(a)(10)(A)(ii) for a fiscal year unless the State demonstrates to the satisfaction of the Secretary that the level of State funds expended for such fiscal year for programs to enable working individuals with disabilities to work (other than for such medical assistance) is not less than the level expended for such programs during the most recent State fiscal year ending before the date of the enactment of this paragraph.”

(b) CONFORMING AMENDMENTS.—Section 1903(f)(4) of the Social Security Act (42 U.S.C. 1396b(f)(4)) is amended in the matter preceding subparagraph (A) by inserting “1902(a)(10)(A)(ii)(XV), 1902(a)(10)(A)(ii)(XVI),” before “1905(p)(1)”.

(c) GAO REPORT.—Not later than 3 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress regarding the amendments made by this section that examines—

(1) the extent to which higher health care costs for individuals with disabilities at higher income levels deter employment or progress in employment;

(2) whether such individuals have health insurance coverage or could benefit from the State option established under such amendments to provide a medicaid buy-in; and

(3) how the States are exercising such option, including—

(A) how such States are exercising the flexibility afforded them with regard to income disregards;

(B) what income and premium levels have been set;

(C) the degree to which States are subsidizing premiums above the dollar amount specified in section 1916(g)(2) of the Social Security Act (42 U.S.C. 1396o(g)(2)); and

(D) the extent to which there exists any crowd-out effect.

(d) EFFECTIVE DATE.—The amendments made by this section apply to medical assistance for items and services furnished on or after October 1, 2000.

**SEC. 202. EXTENDING MEDICARE COVERAGE FOR OASDI DISABILITY BENEFIT RECIPIENTS.**

(a) IN GENERAL.—The next to last sentence of section 226(b) of the Social Security Act (42 U.S.C. 426) is amended by striking “24” and inserting “78”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective on and after October 1, 2000.

(c) GAO REPORT.—Not later than 5 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress that—

(1) examines the effectiveness and cost of the amendment made by subsection (a);

(2) examines the necessity and effectiveness of providing continuation of medicare coverage under section 226(b) of the Social Security Act (42 U.S.C. 426(b)) to individuals whose annual income exceeds the contribution and benefit base (as determined under section 230 of such Act (42 U.S.C. 430));

(3) examines the viability of providing the continuation of medicare coverage under such section 226(b) based on a sliding scale premium for individuals whose annual income exceeds such contribution and benefit base;

(4) examines the viability of providing the continuation of medicare coverage under such section 226(b) based on a premium buy-in by the beneficiary's employer in lieu of coverage under private health insurance;

(5) examines the interrelation between the use of the continuation of medicare coverage under such section 226(b) and the use of private health insurance coverage by individuals during the extended period; and

(6) recommends such legislative or administrative changes relating to the continuation of medicare coverage for recipients of social security disability benefits as the Comptroller General determines are appropriate.

**SEC. 203. GRANTS TO DEVELOP AND ESTABLISH STATE INFRASTRUCTURES TO SUPPORT WORKING INDIVIDUALS WITH DISABILITIES.**

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall award grants described in subsection (b) to States to support the design, establishment, and operation of State infrastructures that provide items and services to support working individuals with disabilities.

(2) APPLICATION.—In order to be eligible for an award of a grant under this section, a State shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary shall require.

(3) DEFINITION OF STATE.—In this section, the term “State” means each of the 50 States, the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(b) GRANTS FOR INFRASTRUCTURE AND OUTREACH.—

(1) IN GENERAL.—Out of the funds appropriated under subsection (e), the Secretary shall award grants to States to—

(A) support the establishment, implementation, and operation of the State infrastructures described in subsection (a); and

(B) conduct outreach campaigns regarding the existence of such infrastructures.

(2) ELIGIBILITY FOR GRANTS.—

(A) IN GENERAL.—No State may receive a grant under this subsection unless the State demonstrates to the satisfaction of the Secretary that the State makes personal assistance services available under the State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) to the extent necessary to enable individuals with disabilities to remain employed, including individuals described in section 1902(a)(10)(A)(ii)(XIII) of such Act (42 U.S.C. 1396a(a)(10)(A)(ii)(XIII)) if the State has elected to provide medical assistance under such plan to such individuals.

(B) DEFINITIONS.—In this section:

(i) EMPLOYED.—The term “employed” means—

(I) earning at least the applicable minimum wage requirement under section 6 of the Fair

Labor Standards Act (29 U.S.C. 206) and working at least 40 hours per month; or

(II) being engaged in a work effort that meets substantial and reasonable threshold criteria for hours of work, wages, or other measures, as defined and approved by the Secretary.

(ii) PERSONAL ASSISTANCE SERVICES.—The term “personal assistance services” means a range of services, provided by 1 or more persons, designed to assist an individual with a disability to perform daily activities on and off the job that the individual would typically perform if the individual did not have a disability. Such services shall be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

(3) DETERMINATION OF AWARDS.—

(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall develop a methodology for awarding grants to States under this section for a fiscal year in a manner that—

(i) rewards States for their efforts in encouraging individuals described in paragraph (2)(A) to be employed; and

(ii) does not provide a State that has not elected to provide medical assistance under title XIX of the Social Security Act to individuals described in section 1902(a)(10)(A)(ii)(XIII) of that Act (42 U.S.C. 1396a(a)(10)(A)(ii)(XIII)) with proportionally more funds for a fiscal year than a State that has exercised such election.

(B) AWARD LIMITS.—

(i) MINIMUM AWARDS.—

(1) IN GENERAL.—Subject to subclause (II), no State with an approved application under this section shall receive a grant for a fiscal year that is less than \$500,000.

(II) PRO RATA REDUCTIONS.—If the funds appropriated under subsection (e) for a fiscal year are not sufficient to pay each State with an application approved under this section the minimum amount described in subclause (I), the Secretary shall pay each such State an amount equal to the pro rata share of the amount made available.

(ii) MAXIMUM AWARDS.—

(1) STATES THAT ELECTED OPTIONAL MEDICAID ELIGIBILITY.—No State that has an application that has been approved under this section and that has elected to provide medical assistance under title XIX of the Social Security Act to individuals described in section 1902(a)(10)(A)(ii)(XIII) of such Act (42 U.S.C. 1396a(a)(10)(A)(ii)(XIII)) shall receive a grant for a fiscal year that exceeds 10 percent of the total expenditures by the State (including the reimbursed Federal share of such expenditures) for medical assistance provided under such title for such individuals, as estimated by the State and approved by the Secretary.

(II) OTHER STATES.—The Secretary shall determine, consistent with the limit described in subclause (I), a maximum award limit for a grant for a fiscal year for a State that has an application that has been approved under this section but that has not elected to provide medical assistance under title XIX of the Social Security Act to individuals described in section 1902(a)(10)(A)(ii)(XIII) of that Act (42 U.S.C. 1396a(a)(10)(A)(ii)(XIII)).

(c) AVAILABILITY OF FUNDS.—

(1) FUNDS AWARDED TO STATES.—Funds awarded to a State under a grant made under this section for a fiscal year shall remain available until expended.

(2) FUNDS NOT AWARDED TO STATES.—Funds not awarded to States in the fiscal year for which they are appropriated shall remain available in succeeding fiscal years for awarding by the Secretary.

(d) ANNUAL REPORT.—A State that is awarded a grant under this section shall submit an annual report to the Secretary on the use of funds provided under the grant. Each report shall include the percentage increase in the number of

title II disability beneficiaries, as defined in section 1148(k)(3) of the Social Security Act (as added by section 101(a) of this Act) in the State, and title XVI disability beneficiaries, as defined in section 1148(k)(4) of the Social Security Act (as so added) in the State who return to work.

(e) APPROPRIATION.—

(1) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to make grants under this section—

- (A) for fiscal year 2001, \$20,000,000;
- (B) for fiscal year 2002, \$25,000,000;
- (C) for fiscal year 2003, \$30,000,000;
- (D) for fiscal year 2004, \$35,000,000;
- (E) for fiscal year 2005, \$40,000,000; and
- (F) for each of fiscal years 2006 through 2011, the amount appropriated for the preceding fiscal year increased by the percentage increase (if any) in the Consumer Price Index for All Urban Consumers (United States city average) for the preceding fiscal year.

(2) BUDGET AUTHORITY.—This subsection constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment of the amounts appropriated under paragraph (1).

(f) RECOMMENDATION.—Not later than October 1, 2010, the Secretary, in consultation with the Ticket to Work and Work Incentives Advisory Panel established by section 101(f) of this Act, shall submit a recommendation to the Committee on Commerce of the House of Representatives and the Committee on Finance of the Senate regarding whether the grant program established under this section should be continued after fiscal year 2011.

**SEC. 204. DEMONSTRATION OF COVERAGE UNDER THE MEDICAID PROGRAM OF WORKERS WITH POTENTIALLY SEVERE DISABILITIES.**

(a) STATE APPLICATION.—A State may apply to the Secretary of Health and Human Services (in this section referred to as the “Secretary”) for approval of a demonstration project (in this section referred to as a “demonstration project”) under which up to a specified maximum number of individuals who are workers with a potentially severe disability (as defined in subsection (b)(1)) are provided medical assistance equal to—

(1) that provided under section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) to individuals described in section 1902(a)(10)(A)(ii)(XIII) of that Act (42 U.S.C. 1396a(a)(10)(A)(ii)(XIII)); or

(2) in the case of a State that has not elected to provide medical assistance under that section to such individuals, such medical assistance as the Secretary determines is an appropriate equivalent to the medical assistance described in paragraph (1).

(b) WORKER WITH A POTENTIALLY SEVERE DISABILITY DEFINED.—For purposes of this section—

(1) IN GENERAL.—The term “worker with a potentially severe disability” means, with respect to a demonstration project, an individual who—

(A) is at least 16, but less than 65, years of age;

(B) has a specific physical or mental impairment that, as defined by the State under the demonstration project, is reasonably expected, but for the receipt of items and services described in section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)), to become blind or disabled (as defined under section 1614(a) of the Social Security Act (42 U.S.C. 1382c(a))); and

(C) is employed (as defined in paragraph (2)).

(2) DEFINITION OF EMPLOYED.—An individual is considered to be “employed” if the individual—

(A) is earning at least the applicable minimum wage requirement under section 6 of the Fair

Labor Standards Act (29 U.S.C. 206) and working at least 40 hours per month; or

(B) is engaged in a work effort that meets substantial and reasonable threshold criteria for hours of work, wages, or other measures, as defined under the demonstration project and approved by the Secretary.

(c) APPROVAL OF DEMONSTRATION PROJECTS.—

(1) IN GENERAL.—Subject to paragraph (3), the Secretary shall approve applications under subsection (a) that meet the requirements of paragraph (2) and such additional terms and conditions as the Secretary may require. The Secretary may waive the requirement of section 1902(a)(1) of the Social Security Act (42 U.S.C. 1396a(a)(1)) to allow for sub-State demonstrations.

(2) TERMS AND CONDITIONS OF DEMONSTRATION PROJECTS.—The Secretary may not approve a demonstration project under this section unless the State provides assurances satisfactory to the Secretary that the following conditions are or will be met:

(A) MAINTENANCE OF STATE EFFORT.—Federal funds paid to a State pursuant to this section must be used to supplement, but not supplant, the level of State funds expended for workers with potentially severe disabilities under programs in effect for such individuals at the time the demonstration project is approved under this section.

(B) INDEPENDENT EVALUATION.—The State provides for an independent evaluation of the project.

(3) LIMITATIONS ON FEDERAL FUNDING.—

(A) APPROPRIATION.—

(i) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to carry out this section—

- (I) \$42,000,000 for each of fiscal years 2001 through 2004, and
- (II) \$41,000,000 for each of fiscal years 2005 and 2006.

(ii) BUDGET AUTHORITY.—Clause (i) constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment of the amounts appropriated under clause (i).

(B) LIMITATION ON PAYMENTS.—In no case may—

(i) the aggregate amount of payments made by the Secretary to States under this section exceed \$250,000,000;

(ii) the aggregate amount of payments made by the Secretary to States for administrative expenses relating to annual reports required under subsection (d) exceed \$2,000,000 of such \$250,000,000; or

(iii) payments be provided by the Secretary for a fiscal year after fiscal year 2009.

(C) FUNDS ALLOCATED TO STATES.—The Secretary shall allocate funds to States based on their applications and the availability of funds. Funds allocated to a State under a grant made under this section for a fiscal year shall remain available until expended.

(D) FUNDS NOT ALLOCATED TO STATES.—Funds not allocated to States in the fiscal year for which they are appropriated shall remain available in succeeding fiscal years for allocation by the Secretary using the allocation formula established under this section.

(E) PAYMENTS TO STATES.—The Secretary shall pay to each State with a demonstration project approved under this section, from its allocation under subparagraph (C), an amount for each quarter equal to the Federal medical assistance percentage (as defined in section 1905(b) of the Social Security Act (42 U.S.C. 1395d(b)) of expenditures in the quarter for medical assistance provided to workers with a potentially severe disability.

(d) ANNUAL REPORT.—A State with a demonstration project approved under this section

shall submit an annual report to the Secretary on the use of funds provided under the grant. Each report shall include enrollment and financial statistics on—

(1) the total population of workers with potentially severe disabilities served by the demonstration project; and

(2) each population of such workers with a specific physical or mental impairment described in subsection (b)(1)(B) served by such project.

(e) RECOMMENDATION.—Not later than October 1, 2004, the Secretary shall submit a recommendation to the Committee on Commerce of the House of Representatives and the Committee on Finance of the Senate regarding whether the demonstration project established under this section should be continued after fiscal year 2006.

(f) STATE DEFINED.—In this section, the term “State” has the meaning given such term for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

**SEC. 205. ELECTION BY DISABLED BENEFICIARIES TO SUSPEND MEDIGAP INSURANCE WHEN COVERED UNDER A GROUP HEALTH PLAN.**

(a) IN GENERAL.—Section 1882(q) of the Social Security Act (42 U.S.C. 1395ss(q)) is amended—

(1) in paragraph (5)(C), by inserting “or paragraph (6)” after “this paragraph”; and

(2) by adding at the end the following new paragraph:

“(6) Each medicare supplemental policy shall provide that benefits and premiums under the policy shall be suspended at the request of the policyholder if the policyholder is entitled to benefits under section 226(b) and is covered under a group health plan (as defined in section 1862(b)(1)(A)(v)). If such suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, such policy shall be automatically reinstated (effective as of the date of such loss of coverage) under terms described in subsection (n)(6)(A)(ii) as of the loss of such coverage if the policyholder provides notice of loss of such coverage within 90 days after the date of such loss.”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply with respect to requests made after the date of the enactment of this Act.

**TITLE III—DEMONSTRATION PROJECTS AND STUDIES**

**SEC. 301. EXTENSION OF DISABILITY INSURANCE PROGRAM DEMONSTRATION PROJECT AUTHORITY.**

(a) EXTENSION OF AUTHORITY.—Title II of the Social Security Act (42 U.S.C. 401 et seq.) is amended by adding at the end the following new section:

“DEMONSTRATION PROJECT AUTHORITY

“SEC. 234. (a) AUTHORITY.—

“(1) IN GENERAL.—The Commissioner of Social Security (in this section referred to as the ‘Commissioner’) shall develop and carry out experiments and demonstration projects designed to determine the relative advantages and disadvantages of—

“(A) various alternative methods of treating the work activity of individuals entitled to disability insurance benefits under section 223 or to monthly insurance benefits under section 202 based on such individual’s disability (as defined in section 223(d)), including such methods as a reduction in benefits based on earnings, designed to encourage the return to work of such individuals;

“(B) altering other limitations and conditions applicable to such individuals (including lengthening the trial work period (as defined in section 222(c)), altering the 24-month waiting period for hospital insurance benefits under section 226, altering the manner in which the program under this title is administered, earlier referral of such individuals for rehabilitation, and

greater use of employers and others to develop, perform, and otherwise stimulate new forms of rehabilitation); and

“(C) implementing sliding scale benefit offsets using variations in—

“(i) the amount of the offset as a proportion of earned income;

“(ii) the duration of the offset period; and

“(iii) the method of determining the amount of income earned by such individuals,

to the end that savings will accrue to the Trust Funds, or to otherwise promote the objectives or facilitate the administration of this title.

“(2) **AUTHORITY FOR EXPANSION OF SCOPE.**—The Commissioner may expand the scope of any such experiment or demonstration project to include any group of applicants for benefits under the program established under this title with impairments that reasonably may be presumed to be disabling for purposes of such demonstration project, and may limit any such demonstration project to any such group of applicants, subject to the terms of such demonstration project which shall define the extent of any such presumption.

“(b) **REQUIREMENTS.**—The experiments and demonstration projects developed under subsection (a) shall be of sufficient scope and shall be carried out on a wide enough scale to permit a thorough evaluation of the alternative methods under consideration while giving assurance that the results derived from the experiments and projects will obtain generally in the operation of the disability insurance program under this title without committing such program to the adoption of any particular system either locally or nationally.

“(c) **AUTHORITY TO WAIVE COMPLIANCE WITH BENEFITS REQUIREMENTS.**—In the case of any experiment or demonstration project conducted under subsection (a), the Commissioner may waive compliance with the benefit requirements of this title and the requirements of section 1148 as they relate to the program established under this title, and the Secretary may (upon the request of the Commissioner) waive compliance with the benefits requirements of title XVIII, insofar as is necessary for a thorough evaluation of the alternative methods under consideration. No such experiment or project shall be actually placed in operation unless at least 90 days prior thereto a written report, prepared for purposes of notification and information only and containing a full and complete description thereof, has been transmitted by the Commissioner to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate. Periodic reports on the progress of such experiments and demonstration projects shall be submitted by the Commissioner to such committees. When appropriate, such reports shall include detailed recommendations for changes in administration or law, or both, to carry out the objectives stated in subsection (a).

“(d) **REPORTS.**—

“(1) **INTERIM REPORTS.**—On or before June 9 of each year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate an annual interim report on the progress of the experiments and demonstration projects carried out under this subsection together with any related data and materials that the Commissioner may consider appropriate.

“(2) **TERMINATION AND FINAL REPORT.**—The authority under the preceding provisions of this section (including any waiver granted pursuant to subsection (c)) shall terminate 5 years after the date of the enactment of this Act. Not later than 90 days after the termination of any experiment or demonstration project carried out under this section, the Commissioner shall submit to the Committee on Ways and Means of the

House of Representatives and to the Committee on Finance of the Senate a final report with respect to that experiment or demonstration project.”.

(b) **CONFORMING AMENDMENTS; TRANSFER OF PRIOR AUTHORITY.**—

(1) **CONFORMING AMENDMENTS.**—

(A) **REPEAL OF PRIOR AUTHORITY.**—Paragraphs (1) through (4) of subsection (a) and subsection (c) of section 505 of the Social Security Disability Amendments of 1980 (42 U.S.C. 1310 note) are repealed.

(B) **CONFORMING AMENDMENT REGARDING FUNDING.**—Section 201(k) of the Social Security Act (42 U.S.C. 401(k)) is amended by striking “section 505(a) of the Social Security Disability Amendments of 1980” and inserting “section 234”.

(2) **TRANSFER OF PRIOR AUTHORITY.**—With respect to any experiment or demonstration project being conducted under section 505(a) of the Social Security Disability Amendments of 1980 (42 U.S.C. 1310 note) as of the date of the enactment of this Act, the authority to conduct such experiment or demonstration project (including the terms and conditions applicable to the experiment or demonstration project) shall be treated as if that authority (and such terms and conditions) had been established under section 234 of the Social Security Act, as added by subsection (a).

**SEC. 302. DEMONSTRATION PROJECTS PROVIDING FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS.**

(a) **AUTHORITY.**—The Commissioner of Social Security shall conduct demonstration projects for the purpose of evaluating, through the collection of data, a program for title II disability beneficiaries (as defined in section 1148(k)(3) of the Social Security Act) under which benefits payable under section 223 of such Act, or under section 202 of such Act based on the beneficiary's disability, are reduced by \$1 for each \$2 of the beneficiary's earnings that is above a level to be determined by the Commissioner. Such projects shall be conducted at a number of localities which the Commissioner shall determine is sufficient to adequately evaluate the appropriateness of national implementation of such a program. Such projects shall identify reductions in Federal expenditures that may result from the permanent implementation of such a program.

(b) **SCOPE AND SCALE AND MATTERS TO BE DETERMINED.**—

(1) **IN GENERAL.**—The demonstration projects developed under subsection (a) shall be of sufficient duration, shall be of sufficient scope, and shall be carried out on a wide enough scale to permit a thorough evaluation of the project to determine—

(A) the effects, if any, of induced entry into the project and reduced exit from the project;

(B) the extent, if any, to which the project being tested is affected by whether it is in operation in a locality within an area under the administration of the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act; and

(C) the savings that accrue to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and other Federal programs under the project being tested.

The Commissioner shall take into account advice provided by the Ticket to Work and Work Incentives Advisory Panel pursuant to section 101(f)(2)(B)(ii) of this Act.

(2) **ADDITIONAL MATTERS.**—The Commissioner shall also determine with respect to each project—

(A) the annual cost (including net cost) of the project and the annual cost (including net cost) that would have been incurred in the absence of the project;

(B) the determinants of return to work, including the characteristics of the beneficiaries who participate in the project; and

(C) the employment outcomes, including wages, occupations, benefits, and hours worked, of beneficiaries who return to work as a result of participation in the project.

The Commissioner may include within the matters evaluated under the project the merits of trial work periods and periods of extended eligibility.

(c) **WAIVERS.**—The Commissioner may waive compliance with the benefit provisions of title II of the Social Security Act (42 U.S.C. 401 et seq.), and the Secretary of Health and Human Services may waive compliance with the benefit requirements of title XVIII of such Act (42 U.S.C. 1395 et seq.), insofar as is necessary for a thorough evaluation of the alternative methods under consideration. No such project shall be actually placed in operation unless at least 90 days prior thereto a written report, prepared for purposes of notification and information only and containing a full and complete description thereof, has been transmitted by the Commissioner to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate. Periodic reports on the progress of such projects shall be submitted by the Commissioner to such committees. When appropriate, such reports shall include detailed recommendations for changes in administration or law, or both, to carry out the objectives stated in subsection (a).

(d) **INTERIM REPORTS.**—Not later than 2 years after the date of the enactment of this Act, and annually thereafter, the Commissioner of Social Security shall submit to the Congress an interim report on the progress of the demonstration projects carried out under this subsection together with any related data and materials that the Commissioner of Social Security may consider appropriate.

(e) **FINAL REPORT.**—The Commissioner of Social Security shall submit to the Congress a final report with respect to all demonstration projects carried out under this section not later than 1 year after their completion.

(f) **EXPENDITURES.**—Expenditures made for demonstration projects under this section shall be made from the Federal Disability Insurance Trust Fund and the Federal Old-Age and Survivors Insurance Trust Fund, as determined appropriate by the Commissioner of Social Security, and from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, as determined appropriate by the Secretary of Health and Human Services, to the extent provided in advance in appropriation Acts.

**SEC. 303. STUDIES AND REPORTS.**

(a) **STUDY BY GENERAL ACCOUNTING OFFICE OF EXISTING DISABILITY-RELATED EMPLOYMENT INCENTIVES.**—

(1) **STUDY.**—As soon as practicable after the date of the enactment of this Act, the Comptroller General of the United States shall undertake a study to assess existing tax credits and other disability-related employment incentives under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and other Federal laws. In such study, the Comptroller General shall specifically address the extent to which such credits and other incentives would encourage employers to hire and retain individuals with disabilities.

(2) **REPORT.**—Not later than 3 years after the date of the enactment of this Act, the Comptroller General shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report presenting the results of the Comptroller General's study conducted pursuant to this subsection, together with such recommendations for legislative or administrative

changes as the Comptroller General determines are appropriate.

(b) **STUDY BY GENERAL ACCOUNTING OFFICE OF EXISTING COORDINATION OF THE DI AND SSI PROGRAMS AS THEY RELATE TO INDIVIDUALS ENTERING OR LEAVING CONCURRENT ENTITLEMENT.**—

(1) **STUDY.**—As soon as practicable after the date of the enactment of this Act, the Comptroller General of the United States shall undertake a study to evaluate the coordination under current law of the disability insurance program under title II of the Social Security Act (42 U.S.C. 401 et seq.) and the supplemental security income program under title XVI of such Act (42 U.S.C. 1381 et seq.), as such programs relate to individuals entering or leaving concurrent entitlement under such programs. In such study, the Comptroller General shall specifically address the effectiveness of work incentives under such programs with respect to such individuals and the effectiveness of coverage of such individuals under titles XVIII and XIX of such Act (42 U.S.C. 1395 et seq., 1396 et seq.).

(2) **REPORT.**—Not later than 3 years after the date of the enactment of this Act, the Comptroller General shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report presenting the results of the Comptroller General's study conducted pursuant to this subsection, together with such recommendations for legislative or administrative changes as the Comptroller General determines are appropriate.

(c) **STUDY BY GENERAL ACCOUNTING OFFICE OF THE IMPACT OF THE SUBSTANTIAL GAINFUL ACTIVITY LIMIT ON RETURN TO WORK.**—

(1) **STUDY.**—As soon as practicable after the date of the enactment of this Act, the Comptroller General of the United States shall undertake a study of the substantial gainful activity level applicable as of that date to recipients of benefits under section 223 of the Social Security Act (42 U.S.C. 423) and under section 202 of such Act (42 U.S.C. 402) on the basis of a recipient having a disability, and the effect of such level as a disincentive for those recipients to return to work. In the study, the Comptroller General also shall address the merits of increasing the substantial gainful activity level applicable to such recipients of benefits and the rationale for not yearly indexing that level to inflation.

(2) **REPORT.**—Not later than 2 years after the date of the enactment of this Act, the Comptroller General shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report presenting the results of the Comptroller General's study conducted pursuant to this subsection, together with such recommendations for legislative or administrative changes as the Comptroller General determines are appropriate.

(d) **REPORT ON DISREGARDS UNDER THE DI AND SSI PROGRAMS.**—Not later than 90 days after the date of the enactment of this Act, the Commissioner of Social Security shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report that—

(1) identifies all income, assets, and resource disregards (imposed under statutory or regulatory authority) that are applicable to individuals receiving benefits under title II or XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.);

(2) with respect to each such disregard—

(A) specifies the most recent statutory or regulatory modification of the disregard; and

(B) recommends whether further statutory or regulatory modification of the disregard would be appropriate; and

(3) with respect to the disregard described in section 1612(b)(7) of such Act (42 U.S.C.

1382a(b)(7)) (relating to grants, scholarships, or fellowships received for use in paying the cost of tuition and fees at any educational (including technical or vocational education) institution)—

(A) identifies the number of individuals receiving benefits under title XVI of such Act (42 U.S.C. 1381 et seq.) who have attained age 22 and have not had any portion of any grant, scholarship, or fellowship received for use in paying the cost of tuition and fees at any educational (including technical or vocational education) institution excluded from their income in accordance with that section;

(B) recommends whether the age at which such grants, scholarships, or fellowships are excluded from income for purposes of determining eligibility under title XVI of such Act (42 U.S.C. 1381 et seq.) should be increased to age 25; and

(C) recommends whether such disregard should be expanded to include any such grant, scholarship, or fellowship received for use in paying the cost of room and board at any such institution.

(e) **STUDY BY THE GENERAL ACCOUNTING OFFICE OF SOCIAL SECURITY ADMINISTRATION'S DISABILITY INSURANCE PROGRAM DEMONSTRATION AUTHORITY.**—

(1) **STUDY.**—As soon as practicable after the date of the enactment of this Act, the Comptroller General of the United States shall undertake a study to assess the results of the Social Security Administration's efforts to conduct disability demonstrations authorized under prior law as well as under section 234 of the Social Security Act (as added by section 301 of this Act).

(2) **REPORT.**—Not later than 5 years after the date of the enactment of this Act, the Comptroller General shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report presenting the results of the Comptroller General's study conducted pursuant to this section, together with a recommendation as to whether the demonstration authority authorized under section 234 of the Social Security Act (as added by section 301 of this Act) should be made permanent.

#### TITLE IV—MISCELLANEOUS AND TECHNICAL AMENDMENTS

##### SEC. 401. TECHNICAL AMENDMENTS RELATING TO DRUG ADDICTS AND ALCOHOLICS.

(a) **CLARIFICATION RELATING TO THE EFFECTIVE DATE OF THE DENIAL OF SOCIAL SECURITY DISABILITY BENEFITS TO DRUG ADDICTS AND ALCOHOLICS.**—Section 105(a)(5) of the Contract with America Advancement Act of 1996 (42 U.S.C. 405 note) is amended—

(1) in subparagraph (A), by striking “by the Commissioner of Social Security” and “by the Commissioner”; and

(2) by adding at the end the following new subparagraph:

“(D) For purposes of this paragraph, an individual's claim, with respect to benefits under title II based on disability, which has been denied in whole before the date of the enactment of this Act, may not be considered to be finally adjudicated before such date if, on or after such date—

“(i) there is pending a request for either administrative or judicial review with respect to such claim; or

“(ii) there is pending, with respect to such claim, a readjudication by the Commissioner of Social Security pursuant to relief in a class action or implementation by the Commissioner of a court remand order.

“(E) Notwithstanding the provisions of this paragraph, with respect to any individual for whom the Commissioner of Social Security does not perform the entitlement redetermination before the date prescribed in subparagraph (C), the Commissioner shall perform such entitlement

redetermination in lieu of a continuing disability review whenever the Commissioner determines that the individual's entitlement is subject to redetermination based on the preceding provisions of this paragraph, and the provisions of section 223(f) shall not apply to such redetermination.”

(b) **CORRECTION TO EFFECTIVE DATE OF PROVISIONS CONCERNING REPRESENTATIVE PAYEES AND TREATMENT REFERRALS OF SOCIAL SECURITY BENEFICIARIES WHO ARE DRUG ADDICTS AND ALCOHOLICS.**—Section 105(a)(5)(B) of the Contract with America Advancement Act of 1996 (42 U.S.C. 405 note) is amended to read as follows:

“(B) The amendments made by paragraphs (2) and (3) shall take effect on July 1, 1996, with respect to any individual—

“(i) whose claim for benefits is finally adjudicated on or after the date of the enactment of this Act; or

“(ii) whose entitlement to benefits is based upon an entitlement redetermination made pursuant to subparagraph (C).”

(c) **EFFECTIVE DATES.**—The amendments made by this section shall take effect as if included in the enactment of section 105 of the Contract with America Advancement Act of 1996 (Public Law 104-121; 110 Stat. 852 et seq.).

##### SEC. 402. TREATMENT OF PRISONERS.

(a) **IMPLEMENTATION OF PROHIBITION AGAINST PAYMENT OF TITLE II BENEFITS TO PRISONERS.**—

(1) **IN GENERAL.**—Section 202(x)(3) of the Social Security Act (42 U.S.C. 402(x)(3)) is amended—

(A) by inserting “(A)” after “(3)”; and

(B) by adding at the end the following new subparagraph:

“(B)(i) The Commissioner shall enter into an agreement under this subparagraph with any interested State or local institution comprising a jail, prison, penal institution, or correctional facility, or comprising any other institution a purpose of which is to confine individuals as described in paragraph (1)(A)(ii). Under such agreement—

“(I) the institution shall provide to the Commissioner, on a monthly basis and in a manner specified by the Commissioner, the names, Social Security account numbers, dates of birth, confinement commencement dates, and, to the extent available to the institution, such other identifying information concerning the individuals confined in the institution as the Commissioner may require for the purpose of carrying out paragraph (1) and other provisions of this title; and

“(II) the Commissioner shall pay to the institution, with respect to information described in subclause (I) concerning each individual who is confined therein as described in paragraph (1)(A), who receives a benefit under this title for the month preceding the first month of such confinement, and whose benefit under this title is determined by the Commissioner to be not payable by reason of confinement based on the information provided by the institution, \$400 (subject to reduction under clause (ii)) if the institution furnishes the information to the Commissioner within 30 days after the date such individual's confinement in such institution begins, or \$200 (subject to reduction under clause (ii)) if the institution furnishes the information after 30 days after such date but within 90 days after such date.

“(ii) The dollar amounts specified in clause (i)(II) shall be reduced by 50 percent if the Commissioner is also required to make a payment to the institution with respect to the same individual under an agreement entered into under section 1611(e)(1)(I).

“(iii) There are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as appropriate, such sums



as may be necessary to enable the Commissioner to make payments to institutions required by clause (i)(II).

“(iv) The Commissioner shall maintain, and shall provide on a reimbursable basis, information obtained pursuant to agreements entered into under this paragraph to any agency administering a Federal or federally-assisted cash, food, or medical assistance program for eligibility and other administrative purposes under such program.”.

(2) CONFORMING AMENDMENTS TO THE PRIVACY ACT.—Section 552a(a)(8)(B) of title 5, United States Code, is amended—

(A) in clause (vi), by striking “or” at the end;

(B) in clause (vii), by adding “or” at the end; and

(C) by adding at the end the following new clause:

“(viii) matches performed pursuant to section 202(x)(3) or 1611(e)(1) of the Social Security Act (42 U.S.C. 402(x)(3), 1382(e)(1));”.

(3) CONFORMING AMENDMENTS TO TITLE XVI.—

(A) Section 1611(e)(1)(I)(i)(I) of the Social Security Act (42 U.S.C. 1382(e)(1)(I)(i)(I)) is amended by striking “; and” and inserting “and the other provisions of this title; and”.

(B) Section 1611(e)(1)(I)(ii)(II) of such Act (42 U.S.C. 1382(e)(1)(I)(ii)(II)) is amended by striking “is authorized to provide, on a reimbursable basis,” and inserting “shall maintain, and shall provide on a reimbursable basis.”.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to individuals whose period of confinement in an institution commences on or after the first day of the fourth month beginning after the month in which this Act is enacted.

(b) ELIMINATION OF TITLE II REQUIREMENT THAT CONFINEMENT STEM FROM CRIME PUNISHABLE BY IMPRISONMENT FOR MORE THAN 1 YEAR.—

(1) IN GENERAL.—Section 202(x)(1)(A) of the Social Security Act (42 U.S.C. 402(x)(1)(A)) is amended—

(A) in the matter preceding clause (i), by striking “during which” and inserting “ending with or during or beginning with or during a period of more than 30 days throughout all of which”;

(B) in clause (i), by striking “an offense punishable by imprisonment for more than 1 year (regardless of the actual sentence imposed)” and inserting “a criminal offense”; and

(C) in clause (ii)(I), by striking “an offense punishable by imprisonment for more than 1 year” and inserting “a criminal offense”.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to individuals whose period of confinement in an institution commences on or after the first day of the fourth month beginning after the month in which this Act is enacted.

(c) CONFORMING TITLE XVI AMENDMENTS.—

(1) 50 PERCENT REDUCTION IN TITLE XVI PAYMENT IN CASE INVOLVING COMPARABLE TITLE II PAYMENT.—Section 1611(e)(1)(I) of the Social Security Act (42 U.S.C. 1382(e)(1)(I)) is amended—

(A) in clause (i)(II), by inserting “(subject to reduction under clause (ii))” after “\$400” and after “\$200”;

(B) by redesignating clauses (ii) and (iii) as clauses (iii) and (iv) respectively; and

(C) by inserting after clause (i) the following new clause:

“(ii) The dollar amounts specified in clause (i)(II) shall be reduced by 50 percent if the Commissioner is also required to make a payment to the institution with respect to the same individual under an agreement entered into under section 202(x)(3)(B).”.

(2) EXPANSION OF CATEGORIES OF INSTITUTIONS ELIGIBLE TO ENTER INTO AGREEMENTS WITH THE COMMISSIONER.—Section 1611(e)(1)(I)(i) of such

Act (42 U.S.C. 1382(e)(1)(I)(i)) is amended in the matter preceding subclause (I) by striking “institution” and all that follows through “section 202(x)(1)(A),” and inserting “institution comprising a jail, prison, penal institution, or correctional facility, or with any other interested State or local institution a purpose of which is to confine individuals as described in section 202(x)(1)(A)(ii).”.

(3) ELIMINATION OF OVERLY BROAD EXEMPTION.—Section 1611(e)(1)(I)(iii) of such Act (42 U.S.C. 1382(e)(1)(I)(iii)) (as redesignated by paragraph (1)(B)) is amended further—

(A) by striking “(I) The provisions” and all that follows through “(II);” and

(B) by striking “eligibility purposes” and inserting “eligibility and other administrative purposes under such program”.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall take effect as if included in the enactment of section 203(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193; 110 Stat. 2186). The reference to section 202(x)(1)(A)(ii) of the Social Security Act in section 1611(e)(1)(I)(i) of the Social Security Act, as amended by paragraph (2) of this subsection, shall be deemed a reference to such section 202(x)(1)(A)(i) of such Act as amended by subsection (b)(1)(C) of this section.

(d) CONTINUED DENIAL OF BENEFITS TO SEX OFFENDERS REMAINING CONFINED TO PUBLIC INSTITUTIONS UPON COMPLETION OF PRISON TERM.—

(1) IN GENERAL.—Section 202(x)(1)(A) of the Social Security Act (42 U.S.C. 402(x)(1)(A)) is amended—

(A) in clause (i), by striking “or” at the end;

(B) in clause (ii)(IV), by striking the period and inserting “, or”; and

(C) by adding at the end the following new clause:

“(iii) immediately upon completion of confinement as described in clause (i) pursuant to conviction of a criminal offense an element of which is sexual activity, is confined by court order in an institution at public expense pursuant to a finding that the individual is a sexually dangerous person or a sexual predator or a similar finding.”.

(2) CONFORMING AMENDMENT.—Section 202(x)(1)(B)(ii) of such Act (42 U.S.C. 402(x)(1)(B)(ii)) is amended by striking “clause (ii)” and inserting “clauses (ii) and (iii)”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to benefits for months ending after the date of the enactment of this Act.

**SEC. 403. REVOCATION BY MEMBERS OF THE CLERGY OF EXEMPTION FROM SOCIAL SECURITY COVERAGE.**

(a) IN GENERAL.—Notwithstanding section 1402(e)(4) of the Internal Revenue Code of 1986, any exemption which has been received under section 1402(e)(1) of such Code by a duly ordained, commissioned, or licensed minister of a church, a member of a religious order, or a Christian Science practitioner, and which is effective for the taxable year in which this Act is enacted, may be revoked by filing an application therefor (in such form and manner, and with such official, as may be prescribed by the Commissioner of Internal Revenue), if such application is filed no later than the due date of the Federal income tax return (including any extension thereof) for the applicant’s second taxable year beginning after December 31, 1999. Any such revocation shall be effective (for purposes of chapter 2 of the Internal Revenue Code of 1986 and title II of the Social Security Act (42 U.S.C. 401 et seq.)), as specified in the application, either with respect to the applicant’s first taxable year beginning after December 31, 1999, or with respect to the applicant’s second taxable

year beginning after such date, and for all succeeding taxable years; and the applicant for any such revocation may not thereafter again file application for an exemption under such section 1402(e)(1). If the application is filed after the due date of the applicant’s Federal income tax return for a taxable year and is effective with respect to that taxable year, it shall include or be accompanied by payment in full of an amount equal to the total of the taxes that would have been imposed by section 1401 of the Internal Revenue Code of 1986 with respect to all of the applicant’s income derived in that taxable year which would have constituted net earnings from self-employment for purposes of chapter 2 of such Code (notwithstanding paragraphs (4) and (5) of section 1402(c)) except for the exemption under section 1402(e)(1) of such Code.

(b) EFFECTIVE DATE.—Subsection (a) shall apply with respect to service performed (to the extent specified in such subsection) in taxable years beginning after December 31, 1999, and with respect to monthly insurance benefits payable under title II on the basis of the wages and self-employment income of any individual for months in or after the calendar year in which such individual’s application for revocation (as described in such subsection) is effective (and lump-sum death payments payable under such title on the basis of such wages and self-employment income in the case of deaths occurring in or after such calendar year).

**SEC. 404. ADDITIONAL TECHNICAL AMENDMENT RELATING TO COOPERATIVE RESEARCH OR DEMONSTRATION PROJECTS UNDER TITLES II AND XVI.**

(a) IN GENERAL.—Section 1110(a)(3) of the Social Security Act (42 U.S.C. 1310(a)(3)) is amended by striking “title XVI” and inserting “title II or XVI”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the enactment of the Social Security Independence and Program Improvements Act of 1994 (Public Law 103-296; 108 Stat. 1464).

**SEC. 405. AUTHORIZATION FOR STATE TO PERMIT ANNUAL WAGE REPORTS.**

(a) IN GENERAL.—Section 1137(a)(3) of the Social Security Act (42 U.S.C. 1320b-7(a)(3)) is amended by inserting before the semicolon the following: “, and except that in the case of wage reports with respect to domestic service employment, a State may permit employers (as so defined) that make returns with respect to such employment on a calendar year basis pursuant to section 3510 of the Internal Revenue Code of 1986 to make such reports on an annual basis”.

(b) TECHNICAL AMENDMENTS.—Section 1137(a)(3) of the Social Security Act (42 U.S.C. 1320b-7(a)(3)) is amended—

(1) by striking “(as defined in section 453A(a)(2)(B)(iii))”; and

(2) by inserting “(as defined in section 453A(a)(2)(B))” after “employers”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to wage reports required to be submitted on and after the date of the enactment of this Act.

**SEC. 406. ASSESSMENT ON ATTORNEYS WHO RECEIVE THEIR FEES VIA THE SOCIAL SECURITY ADMINISTRATION.**

(a) ASSESSMENT ON ATTORNEYS.—

(1) IN GENERAL.—Section 206 of the Social Security Act (42 U.S.C. 406) is amended by adding at the end the following new subsection:

“(d) ASSESSMENT ON ATTORNEYS.—

“(1) IN GENERAL.—Whenever a fee for services is required to be certified for payment to an attorney from a claimant’s past-due benefits pursuant to subsection (a)(4) or (b)(1), the Commissioner shall impose on the attorney an assessment calculated in accordance with paragraph (2).

**“(2) AMOUNT.—**

“(A) The amount of an assessment under paragraph (1) shall be equal to the product obtained by multiplying the amount of the representative’s fee that would be required to be so certified by subsection (a)(4) or (b)(1) before the application of this subsection, by the percentage specified in subparagraph (B).

“(B) The percentage specified in this subparagraph is—

“(i) for calendar years before 2001, 6.3 percent, and

“(ii) for calendar years after 2000, such percentage rate as the Commissioner determines is necessary in order to achieve full recovery of the costs of determining and certifying fees to attorneys from the past-due benefits of claimants, but not in excess of 6.3 percent.

“(3) COLLECTION.—The Commissioner may collect the assessment imposed on an attorney under paragraph (1) by offset from the amount of the fee otherwise required by subsection (a)(4) or (b)(1) to be certified for payment to the attorney from a claimant’s past-due benefits.

“(4) PROHIBITION ON CLAIMANT REIMBURSEMENT.—An attorney subject to an assessment under paragraph (1) may not, directly or indirectly, request or otherwise obtain reimbursement for such assessment from the claimant whose claim gave rise to the assessment.

“(5) DISPOSITION OF ASSESSMENTS.—Assessments on attorneys collected under this subsection shall be credited to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as appropriate.

“(6) AUTHORIZATION OF APPROPRIATIONS.—The assessments authorized under this section shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Amounts so appropriated are authorized to remain available until expended, for administrative expenses in carrying out this title and related laws.”.

**(2) CONFORMING AMENDMENTS.—**

(A) Section 206(a)(4)(A) of such Act (42 U.S.C. 406(a)(4)(A)) is amended by inserting “and subsection (d)” after “subparagraph (B)”.

(B) Section 206(b)(1)(A) of such Act (42 U.S.C. 406(b)(1)(A)) is amended by inserting “, but subject to subsection (d) of this section” after “section 205(i)”.

(b) ELIMINATION OF 15-DAY WAITING PERIOD FOR PAYMENT OF FEES.—Section 206(a)(4) of such Act (42 U.S.C. 406(a)(4)), as amended by subsection (a)(2)(A) of this section, is amended—

(1) by striking “(4)(A)” and inserting “(4)”;

(2) by striking “subparagraph (B) and”; and

(3) by striking subparagraph (B).

**(c) GAO STUDY AND REPORT.—**

(1) STUDY.—The Comptroller General of the United States shall conduct a study that—

(A) examines the costs incurred by the Social Security Administration in administering the provisions of subsection (a)(4) and (b)(1) of section 206 of the Social Security Act (42 U.S.C. 406) and itemizes the components of such costs, including the costs of determining fees to attorneys from the past-due benefits of claimants before the Commissioner of Social Security and of certifying such fees;

(B) identifies efficiencies that the Social Security Administration could implement to reduce such costs;

(C) examines the feasibility and advisability of linking the payment of, or the amount of, the assessment under section 206(d) of the Social Security Act (42 U.S.C. 406(d)) to the timeliness of the payment of the fee to the attorney as certified by the Commissioner of Social Security pursuant to subsection (a)(4) or (b)(1) of section 206 of such Act (42 U.S.C. 406);

(D) determines whether the provisions of subsection (a)(4) and (b)(1) of section 206 of such

Act (42 U.S.C. 406) should be applied to claimants under title XVI of such Act (42 U.S.C. 1381 et seq.);

(E) determines the feasibility and advisability of stating fees under section 206(d) of such Act (42 U.S.C. 406(d)) in terms of a fixed dollar amount as opposed to a percentage;

(F) determines whether the dollar limit specified in section 206(a)(2)(A)(ii)(II) of such Act (42 U.S.C. 406(a)(2)(A)(ii)(II)) should be raised; and

(G) determines whether the assessment on attorneys required under section 206(d) of such Act (42 U.S.C. 406(d)) (as added by subsection (a)(1) of this section) impairs access to legal representation for claimants.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the study conducted under paragraph (1), together with any recommendations for legislation that the Comptroller General determines to be appropriate as a result of such study.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply in the case of any attorney with respect to whom a fee for services is required to be certified for payment from a claimant’s past-due benefits pursuant to subsection (a)(4) or (b)(1) of section 206 of the Social Security Act after the later of—

(1) December 31, 1999, or

(2) the last day of the first month beginning after the month in which this Act is enacted.

**SEC. 407. EXTENSION OF AUTHORITY OF STATE MEDICAID FRAUD CONTROL UNITS.**

(a) EXTENSION OF AUTHORITY TO INVESTIGATE AND PROSECUTE FRAUD IN OTHER FEDERAL HEALTH CARE PROGRAMS.—Section 1903(q)(3) of the Social Security Act (42 U.S.C. 1396b(q)(3)) is amended—

(1) by inserting “(A)” after “in connection with”; and

(2) by striking “title.” and inserting “title; and (B) upon the approval of the Inspector General of the relevant Federal agency, any aspect of the provision of health care services and activities of providers of such services under any Federal health care program (as defined in section 1128B(f)(1)), if the suspected fraud or violation of law in such case or investigation is primarily related to the State plan under this title.”.

(b) RECOUPMENT OF FUNDS.—Section 1903(q)(5) of such Act (42 U.S.C. 1396b(q)(5)) is amended—

(1) by inserting “or under any Federal health care program (as so defined)” after “plan”; and

(2) by adding at the end the following: “All funds collected in accordance with this paragraph shall be credited exclusively to, and available for expenditure under, the Federal health care program (including the State plan under this title) that was subject to the activity that was the basis for the collection.”.

(c) EXTENSION OF AUTHORITY TO INVESTIGATE AND PROSECUTE RESIDENT ABUSE IN NON-MEDICAID BOARD AND CARE FACILITIES.—Section 1903(q)(4) of such Act (42 U.S.C. 1396b(q)(4)) is amended to read as follows:

“(4)(A) The entity has—

“(i) procedures for reviewing complaints of abuse or neglect of patients in health care facilities which receive payments under the State plan under this title;

“(ii) at the option of the entity, procedures for reviewing complaints of abuse or neglect of patients residing in board and care facilities; and

“(iii) procedures for acting upon such complaints under the criminal laws of the State or for referring such complaints to other State agencies for action.

“(B) For purposes of this paragraph, the term ‘board and care facility’ means a residential set-

ting which receives payment (regardless of whether such payment is made under the State plan under this title) from or on behalf of two or more unrelated adults who reside in such facility, and for whom one or both of the following is provided:

“(i) Nursing care services provided by, or under the supervision of, a registered nurse, licensed practical nurse, or licensed nursing assistant.

“(ii) A substantial amount of personal care services that assist residents with the activities of daily living, including personal hygiene, dressing, bathing, eating, toileting, ambulation, transfer, positioning, self-medication, body care, travel to medical services, essential shopping, meal preparation, laundry, and housework.”.

(d) EFFECTIVE DATE.—The amendments made by this section take effect on the date of the enactment of this Act.

**SEC. 408. CLIMATE DATABASE MODERNIZATION.**

Notwithstanding any other provision of law, the National Oceanic and Atmospheric Administration (NOAA) shall contract for its multi-year program for climate database modernization and utilization in accordance with NIH Image World Contract #263-96-D-0323 and Task Order #56-DKNE-9-98303 which were awarded as a result of fair and open competition conducted in response to NOAA’s solicitation IW SOW 1082.

**SEC. 409. SPECIAL ALLOWANCE ADJUSTMENT FOR STUDENT LOANS.**

(a) AMENDMENT.—Section 438(b)(2) of the Higher Education Act of 1965 (20 U.S.C. 1087-1(b)(2)) is amended—

(1) in subparagraph (A), by striking “(G), and (H)” and inserting “(G), (H), and (I)”;

(2) in subparagraph (B)(iv), by striking “(G), or (H)” and inserting “(G), (H), or (I)”;

(3) in subparagraph (C)(ii), by striking “(G) and (H)” and inserting “(G), (H), and (I)”;

(4) in the heading of subparagraph (H), by striking “JULY 1, 2003” and inserting “JANUARY 1, 2000”;

(5) in subparagraph (H), by striking “July 1, 2003,” each place it appears and inserting “January 1, 2000,”; and

(6) by inserting after subparagraph (H) the following new subparagraph:

“(I) LOANS DISBURSED ON OR AFTER JANUARY 1, 2000, AND BEFORE JULY 1, 2003.—

“(i) IN GENERAL.—Notwithstanding subparagraphs (G) and (H), but subject to paragraph (4) and clauses (ii), (iii), and (iv) of this subparagraph, and except as provided in subparagraph (B), the special allowance paid pursuant to this subsection on loans for which the first disbursement is made on or after January 1, 2000, and before July 1, 2003, shall be computed—

“(I) by determining the average of the bond equivalent rates of the quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H-15 (or its successor) for such 3-month period;

“(II) by subtracting the applicable interest rates on such loans from such average bond equivalent rate;

“(III) by adding 2.34 percent to the resultant percent; and

“(IV) by dividing the resultant percent by 4.

“(ii) IN SCHOOL AND GRACE PERIOD.—In the case of any loan for which the first disbursement is made on or after January 1, 2000, and before July 1, 2003, and for which the applicable rate of interest is described in section 427A(k)(2), clause (i)(III) of this subparagraph shall be applied by substituting ‘1.74 percent’ for ‘2.34 percent’.

“(iii) PLUS LOANS.—In the case of any loan for which the first disbursement is made on or after January 1, 2000, and before July 1, 2003, and for which the applicable rate of interest is described in section 427A(k)(3), clause (i)(III) of

this subparagraph shall be applied by substituting "2.64 percent" for "2.34 percent", subject to clause (v) of this subparagraph.

"(iv) CONSOLIDATION LOANS.—In the case of any consolidation loan for which the application is received by an eligible lender on or after January 1, 2000, and before July 1, 2003, and for which the applicable interest rate is determined under section 427A(k)(4), clause (i)(III) of this subparagraph shall be applied by substituting "2.64 percent" for "2.34 percent", subject to clause (vi) of this subparagraph.

"(v) LIMITATION ON SPECIAL ALLOWANCES FOR PLUS LOANS.—In the case of PLUS loans made under section 428B and first disbursed on or after January 1, 2000, and before July 1, 2003, for which the interest rate is determined under section 427A(k)(3), a special allowance shall not be paid for such loan during any 12-month period beginning on July 1 and ending on June 30 unless, on the June 1 preceding such July 1—

"(I) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1 (as determined by the Secretary for purposes of such section); plus

"(II) 3.1 percent, exceeds 9.0 percent.

"(vi) LIMITATION ON SPECIAL ALLOWANCES FOR CONSOLIDATION LOANS.—In the case of consolidation loans made under section 428C and for which the application is received on or after January 1, 2000, and before July 1, 2003, for which the interest rate is determined under section 427A(k)(4), a special allowance shall not be paid for such loan during any 3-month period ending March 31, June 30, September 30, or December 31 unless—

"(I) the average of the bond equivalent rates of the quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H-15 (or its successor) for such 3-month period; plus

"(II) 2.64 percent, exceeds the rate determined under section 427A(k)(4)."

(b) EFFECTIVE DATE.—Subparagraph (I) of section 438(b)(2) of the Higher Education Act of 1965 (20 U.S.C. 1087-1(b)(2)) as added by subsection (a) of this section shall apply with respect to any payment pursuant to such section with respect to any 3-month period beginning on or after January 1, 2000, for loans for which the first disbursement is made after such date.

#### SEC. 410. SCHEDULE FOR PAYMENTS UNDER SSI STATE SUPPLEMENTATION AGREEMENTS.

(a) SCHEDULE FOR SSI SUPPLEMENTATION PAYMENTS.—

(1) IN GENERAL.—Section 1616(d) of the Social Security Act (42 U.S.C. 1382e(d)) is amended—

(A) in paragraph (1), by striking "at such times and in such installments as may be agreed upon between the Commissioner of Social Security and such State" and inserting "in accordance with paragraph (5)"; and

(B) by adding at the end the following new paragraph:

"(5)(A)(i) Any State which has entered into an agreement with the Commissioner of Social Security under this section shall remit the payments and fees required under this subsection with respect to monthly benefits paid to individuals under this title no later than—

"(I) the business day preceding the date that the Commissioner pays such monthly benefits; or

"(II) with respect to such monthly benefits paid for the month that is the last month of the State's fiscal year, the fifth business day following such date.

"(ii) The Commissioner may charge States a penalty in an amount equal to 5 percent of the payment and the fees due if the remittance is received after the date required by clause (i).

"(B) The Cash Management Improvement Act of 1990 shall not apply to any payments or fees required under this subsection that are paid by a State before the date required by subparagraph (A)(i).

"(C) Notwithstanding subparagraph (A)(i), the Commissioner may make supplementary payments on behalf of a State with funds appropriated for payment of benefits under this title, and subsequently to be reimbursed for such payments by the State at such times as the Commissioner and State may agree. Such authority may be exercised only if extraordinary circumstances affecting a State's ability to make payment when required by subparagraph (A)(i) are determined by the Commissioner to exist."

(2) AMENDMENT TO SECTION 212.—Section 212 of Public Law 93-66 (42 U.S.C. 1382 note) is amended—

(A) in subsection (b)(3)(A), by striking "at such times and in such installments as may be agreed upon between the Secretary and the State" and inserting "in accordance with subparagraph (E)";

(B) by adding at the end of subsection (b)(3) the following new subparagraph:

"(E)(i) Any State which has entered into an agreement with the Commissioner of Social Security under this section shall remit the payments and fees required under this paragraph with respect to monthly benefits paid to individuals under title XVI of the Social Security Act no later than—

"(I) the business day preceding the date that the Commissioner pays such monthly benefits; or

"(II) with respect to such monthly benefits paid for the month that is the last month of the State's fiscal year, the fifth business day following such date.

"(ii) The Cash Management Improvement Act of 1990 shall not apply to any payments or fees required under this paragraph that are paid by a State before the date required by clause (i).

"(iii) Notwithstanding clause (i), the Commissioner may make supplementary payments on behalf of a State with funds appropriated for payment of supplemental security income benefits under title XVI of the Social Security Act, and subsequently to be reimbursed for such payments by the State at such times as the Commissioner and State may agree. Such authority may be exercised only if extraordinary circumstances affecting a State's ability to make payment when required by clause (i) are determined by the Commissioner to exist."; and

(C) by striking "Secretary of Health, Education, and Welfare" and "Secretary" each place such term appear and inserting "Commissioner of Social Security".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to payments and fees arising under an agreement between a State and the Commissioner of Social Security under section 1616 of the Social Security Act (42 U.S.C. 1382e) or under section 212 of Public Law 93-66 (42 U.S.C. 1382 note) with respect to monthly benefits paid to individuals under title XVI of the Social Security Act for months after September 2009 (October 2009 in the case of a State with a fiscal year that coincides with the Federal fiscal year), without regard to whether the agreement has been modified to reflect such amendments or the Commissioner has promulgated regulations implementing such amendments.

#### SEC. 411. BONUS COMMODITIES.

Section 6(e)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(e)(1)) is amended—

(1) by striking "in the form of commodity assistance" and inserting "in the form of—

"(A) commodity assistance";

(2) by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(B) during the period beginning October 1, 2000, and ending September 30, 2009, commodities provided by the Secretary under any provision of law."

#### SEC. 412. SIMPLIFICATION OF DEFINITION OF FOSTER CHILD UNDER EIC.

(a) IN GENERAL.—Section 32(c)(3)(B)(iii) of the Internal Revenue Code of 1986 (defining eligible foster child) is amended by redesignating subclauses (I) and (II) as subclauses (II) and (III), respectively, and by inserting before subclause (II), as so redesignated, the following:

"(I) is a brother, sister, stepbrother, or step-sister of the taxpayer (or a descendant of any such relative) or is placed with the taxpayer by an authorized placement agency,"

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1999.

#### SEC. 413. DELAY OF EFFECTIVE DATE OF ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK FINAL RULE.

(a) IN GENERAL.—The final rule entitled "Organ Procurement and Transplantation Network", promulgated by the Secretary of Health and Human Services on April 2, 1998 (63 Fed. Reg. 16295 et seq.) (relating to part 121 of title 42, Code of Federal Regulations), together with the amendments to such rules promulgated on October 20, 1999 (64 Fed. Reg. 56649 et seq.) shall not become effective before the expiration of the 90-day period beginning on the date of the enactment of this Act.

(b) NOTICE AND REVIEW.—For purposes of subsection (a):

(1) Not later than 3 days after the date of the enactment of this Act, the Secretary of Health and Human Services (referred to in this subsection as the "Secretary") shall publish in the Federal Register a notice providing that the period within which comments on the final rule may be submitted to the Secretary is 60 days after the date of such publication of the notice.

(2) Not later than 21 days after the expiration of such 60-day period, the Secretary shall complete the review of the comments submitted pursuant to paragraph (1) and shall amend the final rule with any revisions appropriate according to the review by the Secretary of such comments. The final rule may be in the form of amendments to the rule referred to in subsection (a) that was promulgated on April 2, 1998, and in the form of amendments to the rule referred to in such subsection that was promulgated on October 20, 1999.

#### TITLE V—TAX RELIEF EXTENSION ACT OF 1999

##### SEC. 500. SHORT TITLE OF TITLE.

This title may be cited as the "Tax Relief Extension Act of 1999".

##### Subtitle A—Extensions

#### SEC. 501. ALLOWANCE OF NONREFUNDABLE PERSONAL CREDITS AGAINST REGULAR AND MINIMUM TAX LIABILITY.

(a) IN GENERAL.—Subsection (a) of section 26 of the Internal Revenue Code of 1986 (relating to limitation based on amount of tax) is amended to read as follows:

"(a) LIMITATION BASED ON AMOUNT OF TAX.—

"(1) IN GENERAL.—The aggregate amount of credits allowed by this subpart for the taxable year shall not exceed the excess (if any) of—

"(A) the taxpayer's regular tax liability for the taxable year, over

"(B) the tentative minimum tax for the taxable year (determined without regard to the alternative minimum tax foreign tax credit).

For purposes of subparagraph (B), the taxpayer's tentative minimum tax for any taxable year beginning during 1999 shall be treated as being zero."

"(2) SPECIAL RULE FOR 2000 AND 2001.—For purposes of any taxable year beginning during

2000 or 2001, the aggregate amount of credits allowed by this subpart for the taxable year shall not exceed the sum of—

“(A) the taxpayer’s regular tax liability for the taxable year reduced by the foreign tax credit allowable under section 27(a), and

“(B) the tax imposed by section 55(a) for the taxable year.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 24(d)(2) of such Code is amended by striking “1998” and inserting “2001”.

(2) Section 904(h) of such Code is amended by adding at the end the following: “This subsection shall not apply to taxable years beginning during 2000 or 2001.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

#### SEC. 502. RESEARCH CREDIT.

(a) EXTENSION.—

(1) IN GENERAL.—Paragraph (1) of section 41(h) of the Internal Revenue Code of 1986 (relating to termination) is amended—

(A) by striking “June 30, 1999” and inserting “June 30, 2004”, and

(B) by striking the material following subparagraph (B).

(2) TECHNICAL AMENDMENT.—Subparagraph (D) of section 45C(b)(1) of such Code is amended by striking “June 30, 1999” and inserting “June 30, 2004”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts paid or incurred after June 30, 1999.

(b) INCREASE IN PERCENTAGES UNDER ALTERNATIVE INCREMENTAL CREDIT.—

(1) IN GENERAL.—Subparagraph (A) of section 41(c)(4) of such Code is amended—

(A) by striking “1.65 percent” and inserting “2.65 percent”,

(B) by striking “2.2 percent” and inserting “3.2 percent”, and

(C) by striking “2.75 percent” and inserting “3.75 percent”.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after June 30, 1999.

(c) EXTENSION OF RESEARCH CREDIT TO RESEARCH IN PUERTO RICO AND THE POSSESSIONS OF THE UNITED STATES.—

(1) IN GENERAL.—Subsections (c)(6) and (d)(4)(F) of section 41 of such Code (relating to foreign research) are each amended by inserting “, the Commonwealth of Puerto Rico, or any possession of the United States” after “United States”.

(2) DENIAL OF DOUBLE BENEFIT.—Section 280C(c)(1) of such Code is amended by inserting “or credit” after “deduction” each place it appears.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts paid or incurred after June 30, 1999.

(d) SPECIAL RULE.—

(1) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, the credit determined under section 41 of such Code which is otherwise allowable under such Code—

(A) shall not be taken into account prior to October 1, 2000, to the extent such credit is attributable to the first suspension period, and

(B) shall not be taken into account prior to October 1, 2001, to the extent such credit is attributable to the second suspension period.

On or after the earliest date that an amount of credit may be taken into account, such amount may be taken into account through the filing of an amended return, an application for expedited refund, an adjustment of estimated taxes, or other means allowed by such Code.

(2) SUSPENSION PERIODS.—For purposes of this subsection—

(A) the first suspension period is the period beginning on July 1, 1999, and ending on September 30, 2000, and

(B) the second suspension period is the period beginning on October 1, 2000, and ending on September 30, 2001.

(3) EXPEDITED REFUNDS.—

(A) IN GENERAL.—If there is an overpayment of tax with respect to a taxable year by reason of paragraph (1), the taxpayer may file an application for a tentative refund of such overpayment. Such application shall be in such manner and form, and contain such information, as the Secretary may prescribe.

(B) DEADLINE FOR APPLICATIONS.—Subparagraph (A) shall apply only to an application filed before the date which is 1 year after the close of the suspension period to which the application relates.

(C) ALLOWANCE OF ADJUSTMENTS.—Not later than 90 days after the date on which an application is filed under this paragraph, the Secretary shall—

(i) review the application,

(ii) determine the amount of the overpayment, and

(iii) apply, credit, or refund such overpayment, in a manner similar to the manner provided in section 6411(b) of such Code.

(D) CONSOLIDATED RETURNS.—The provisions of section 6411(c) of such Code shall apply to an adjustment under this paragraph in such manner as the Secretary may provide.

(4) CREDIT ATTRIBUTABLE TO SUSPENSION PERIOD.—

(A) IN GENERAL.—For purposes of this subsection, in the case of a taxable year which includes a portion of the suspension period, the amount of credit determined under section 41 of such Code for such taxable year which is attributable to such period is the amount which bears the same ratio to the amount of credit determined under such section 41 for such taxable year as the number of months in the suspension period which are during such taxable year bears to the number of months in such taxable year.

(B) WAIVER OF ESTIMATED TAX PENALTIES.—No addition to tax shall be made under section 6654 or 6655 of such Code for any period before July 1, 1999, with respect to any underpayment of tax imposed by such Code to the extent such underpayment was created or increased by reason of subparagraph (A).

(5) SECRETARY.—For purposes of this subsection, the term “Secretary” means the Secretary of the Treasury (or such Secretary’s delegate).

#### SEC. 503. SUBPART F EXEMPTION FOR ACTIVE FINANCING INCOME.

(a) IN GENERAL.—Sections 953(e)(10) and 954(h)(9) of the Internal Revenue Code of 1986 (relating to application) are each amended—

(1) by striking “the first taxable year” and inserting “taxable years”,

(2) by striking “January 1, 2000” and inserting “January 1, 2002”, and

(3) by striking “within which such” and inserting “within which any such”.

(b) TECHNICAL AMENDMENT.—Paragraph (10) of section 953(e) of such Code is amended by adding at the end the following new sentence: “If this subsection does not apply to a taxable year of a foreign corporation beginning after December 31, 2001 (and taxable years of United States shareholders ending with or within such taxable year), then, notwithstanding the preceding sentence, subsection (a) shall be applied to such taxable years in the same manner as it would if the taxable year of the foreign corporation began in 1998.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1999.

#### SEC. 504. TAXABLE INCOME LIMIT ON PERCENTAGE DEPLETION FOR MARGINAL PRODUCTION.

(a) IN GENERAL.—Subparagraph (H) of section 613A(c)(6) of the Internal Revenue Code of 1986

(relating to temporary suspension of taxable limit with respect to marginal production) is amended by striking “January 1, 2000” and inserting “January 1, 2002”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1999.

#### SEC. 505. WORK OPPORTUNITY CREDIT AND WELFARE-TO-WORK CREDIT.

(a) TEMPORARY EXTENSION.—Sections 51(c)(4)(B) and 51A(f) of the Internal Revenue Code of 1986 (relating to termination) are each amended by striking “June 30, 1999” and inserting “December 31, 2001”.

(b) CLARIFICATION OF FIRST YEAR OF EMPLOYMENT.—Paragraph (2) of section 51(i) of such Code is amended by striking “during which he was not a member of a targeted group”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who begin work for the employer after June 30, 1999.

#### SEC. 506. EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE.

(a) IN GENERAL.—Subsection (d) of section 127 of the Internal Revenue Code of 1986 (relating to termination) is amended by striking “May 31, 2000” and inserting “December 31, 2001”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to courses beginning after May 31, 2000.

#### SEC. 507. EXTENSION AND MODIFICATION OF CREDIT FOR PRODUCING ELECTRICITY FROM CERTAIN RENEWABLE RESOURCES.

(a) EXTENSION AND MODIFICATION OF PLACED-IN-SERVICE RULES.—Paragraph (3) of section 45(c) of the Internal Revenue Code of 1986 is amended to read as follows:

“(3) QUALIFIED FACILITY.—

“(A) WIND FACILITY.—In the case of a facility using wind to produce electricity, the term ‘qualified facility’ means any facility owned by the taxpayer which is originally placed in service after December 31, 1993, and before January 1, 2002.

“(B) CLOSED-LOOP BIOMASS FACILITY.—In the case of a facility using closed-loop biomass to produce electricity, the term ‘qualified facility’ means any facility owned by the taxpayer which is originally placed in service after December 31, 1992, and before January 1, 2002.

“(C) POULTRY WASTE FACILITY.—In the case of a facility using poultry waste to produce electricity, the term ‘qualified facility’ means any facility of the taxpayer which is originally placed in service after December 31, 1999, and before January 1, 2002.”.

(b) EXPANSION OF QUALIFIED ENERGY RESOURCES.—

(1) IN GENERAL.—Section 45(c)(1) of such Code (defining qualified energy resources) is amended by striking “and” at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting “, and”, and by adding at the end the following new subparagraph:

“(C) poultry waste.”.

(2) DEFINITION.—Section 45(c) of such Code is amended by adding at the end the following new paragraph:

“(4) POULTRY WASTE.—The term ‘poultry waste’ means poultry manure and litter, including wood shavings, straw, rice hulls, and other bedding material for the disposition of manure.”.

(c) SPECIAL RULES.—Section 45(d) of such Code (relating to definitions and special rules) is amended by adding at the end the following new paragraphs:

“(6) CREDIT ELIGIBILITY IN THE CASE OF GOVERNMENT-OWNED FACILITIES USING POULTRY WASTE.—In the case of a facility using poultry waste to produce electricity and owned by a governmental unit, the person eligible for the

credit under subsection (a) is the lessee or the operator of such facility.

“(7) CREDIT NOT TO APPLY TO ELECTRICITY SOLD TO UTILITIES UNDER CERTAIN CONTRACTS.—

“(A) IN GENERAL.—The credit determined under subsection (a) shall not apply to electricity—

“(i) produced at a qualified facility described in paragraph (3)(A) which is placed in service by the taxpayer after June 30, 1999, and

“(ii) sold to a utility pursuant to a contract originally entered into before January 1, 1987 (whether or not amended or restated after that date).

“(B) EXCEPTION.—Subparagraph (A) shall not apply if—

“(i) the prices for energy and capacity from such facility are established pursuant to an amendment to the contract referred to in subparagraph (A)(ii),

“(ii) such amendment provides that the prices set forth in the contract which exceed avoided cost prices determined at the time of delivery shall apply only to annual quantities of electricity (prorated for partial years) which do not exceed the greater of—

“(I) the average annual quantity of electricity sold to the utility under the contract during calendar years 1994, 1995, 1996, 1997, and 1998, or

“(II) the estimate of the annual electricity production set forth in the contract, or, if there is no such estimate, the greatest annual quantity of electricity sold to the utility under the contract in any of the calendar years 1996, 1997, or 1998, and

“(iii) such amendment provides that energy and capacity in excess of the limitation in clause (ii) may be—

“(I) sold to the utility only at prices that do not exceed avoided cost prices determined at the time of delivery, or

“(II) sold to a third party subject to a mutually agreed upon advance notice to the utility. For purposes of this subparagraph, avoided cost prices shall be determined as provided for in 18 CFR 292.304(d)(1) or any successor regulation.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

**SEC. 508. EXTENSION OF DUTY-FREE TREATMENT UNDER GENERALIZED SYSTEM OF PREFERENCES.**

(a) IN GENERAL.—Section 505 of the Trade Act of 1974 (19 U.S.C. 2465) is amended by striking “June 30, 1999” and inserting “September 30, 2001”.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section applies to articles entered on or after the date of the enactment of this Act.

(2) RETROACTIVE APPLICATION FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS.—

(A) GENERAL RULE.—Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, and subject to paragraph (3), any entry—

(i) of an article to which duty-free treatment under title V of the Trade Act of 1974 would have applied if such entry had been made on July 1, 1999, and such title had been in effect on July 1, 1999, and

(ii) that was made—

(I) after June 30, 1999, and

(II) before the date of enactment of this Act, shall be liquidated or reliquidated as free of duty, and the Secretary of the Treasury shall refund any duty paid with respect to such entry.

(B) ENTRY.—As used in this paragraph, the term “entry” includes a withdrawal from warehouse for consumption.

(3) REQUESTS.—Liquidation or reliquidation may be made under paragraph (2) with respect to an entry only if a request therefore is filed

with the Customs Service, within 180 days after the date of enactment of this Act, that contains sufficient information to enable the Customs Service—

(A) to locate the entry, or

(B) to reconstruct the entry if it cannot be located.

**SEC. 509. EXTENSION OF CREDIT FOR HOLDERS OF QUALIFIED ZONE ACADEMY BONDS.**

(a) IN GENERAL.—Section 1397E(e)(1) of the Internal Revenue Code of 1986 (relating to national limitation) is amended by striking “and 1999” and inserting “, 1999, 2000, and 2001”.

(b) LIMITATION ON CARRYOVER PERIODS.—Paragraph (4) of section 1397E(e) of such Code is amended by adding at the end the following flush sentences:

“Any carryforward of a limitation amount may be carried only to the first 2 years (3 years for carryforwards from 1998 or 1999) following the unused limitation year. For purposes of the preceding sentence, a limitation amount shall be treated as used on a first-in first-out basis.”

**SEC. 510. EXTENSION OF FIRST-TIME HOME-BUYER CREDIT FOR DISTRICT OF COLUMBIA.**

Section 1400C(i) of the Internal Revenue Code of 1986 is amended by striking “2001” and inserting “2002”.

**SEC. 511. EXTENSION OF EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS.**

Section 198(h) of the Internal Revenue Code of 1986 is amended by striking “2000” and inserting “2001”.

**SEC. 512. TEMPORARY INCREASE IN AMOUNT OF RUM EXCISE TAX COVERED OVER TO PUERTO RICO AND VIRGIN ISLANDS.**

(a) IN GENERAL.—Section 7652(f)(1) of the Internal Revenue Code of 1986 (relating to limitation on cover over of tax on distilled spirits) is amended to read as follows:

“(1) \$10.50 (\$13.25 in the case of distilled spirits brought into the United States after June 30, 1999, and before January 1, 2002), or”.

(b) SPECIAL COVER OVER TRANSFER RULES.—Notwithstanding section 7652 of the Internal Revenue Code of 1986, the following rules shall apply with respect to any transfer before October 1, 2000, of amounts relating to the increase in the cover over of taxes by reason of the amendment made by subsection (a):

(1) INITIAL TRANSFER OF INCREMENTAL INCREASE IN COVER OVER.—The Secretary of the Treasury shall, within 15 days after the date of the enactment of this Act, transfer an amount equal to the lesser of—

(A) the amount of such increase otherwise required to be covered over after June 30, 1999, and before the date of the enactment of this Act, or

(B) \$20,000,000.

(2) TRANSFER OF INCREMENTAL INCREASE FOR FISCAL YEAR 2001.—The Secretary of the Treasury shall on October 1, 2000, transfer an amount equal to the excess of—

(A) the amount of such increase otherwise required to be covered over after June 30, 1999, and before October 1, 2000, over

(B) the amount of the transfer described in paragraph (1).

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on July 1, 1999.

**Subtitle B—Other Time-Sensitive Provisions**

**SEC. 521. ADVANCE PRICING AGREEMENTS TREATED AS CONFIDENTIAL TAXPAYER INFORMATION.**

(a) IN GENERAL.—

(1) TREATMENT AS RETURN INFORMATION.—Paragraph (2) of section 6103(b) of the Internal Revenue Code of 1986 (defining return information) is amended by striking “and” at the end of subparagraph (A), by inserting “and” at the

end of subparagraph (B), and by inserting after subparagraph (B) the following new subparagraph:

“(C) any advance pricing agreement entered into by a taxpayer and the Secretary and any background information related to such agreement or any application for an advance pricing agreement.”.

(2) EXCEPTION FROM PUBLIC INSPECTION AS WRITTEN DETERMINATION.—Paragraph (1) of section 6110(b) of such Code (defining written determination) is amended by adding at the end the following new sentence: “Such term shall not include any advance pricing agreement entered into by a taxpayer and the Secretary and any background information related to such agreement or any application for an advance pricing agreement.”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

**(b) ANNUAL REPORT REGARDING ADVANCE PRICING AGREEMENTS.—**

(1) IN GENERAL.—Not later than 90 days after the end of each calendar year, the Secretary of the Treasury shall prepare and publish a report regarding advance pricing agreements.

(2) CONTENTS OF REPORT.—The report shall include the following for the calendar year to which such report relates:

(A) Information about the structure, composition, and operation of the advance pricing agreement program office.

(B) A copy of each model advance pricing agreement.

(C) The number of—

(i) applications filed during such calendar year for advance pricing agreements;

(ii) advance pricing agreements executed cumulatively to date and during such calendar year;

(iii) renewals of advance pricing agreements issued;

(iv) pending requests for advance pricing agreements;

(v) pending renewals of advance pricing agreements;

(vi) for each of the items in clauses (ii) through (v), the number that are unilateral, bilateral, and multilateral, respectively;

(vii) advance pricing agreements revoked or canceled, and the number of withdrawals from the advance pricing agreement program; and

(viii) advance pricing agreements finalized or renewed by industry.

(D) General descriptions of—

(i) the nature of the relationships between the related organizations, trades, or businesses covered by advance pricing agreements;

(ii) the covered transactions and the business functions performed and risks assumed by such organizations, trades, or businesses;

(iii) the related organizations, trades, or businesses whose prices or results are tested to determine compliance with transfer pricing methodologies prescribed in advance pricing agreements;

(iv) methodologies used to evaluate tested parties and transactions and the circumstances leading to the use of those methodologies;

(v) critical assumptions made and sources of comparables used;

(vi) comparable selection criteria and the rationale used in determining such criteria;

(vii) the nature of adjustments to comparables or tested parties;

(viii) the nature of any ranges agreed to, including information regarding when no range was used and why, when interquartile ranges were used, and when there was a statistical narrowing of the comparables;

(ix) adjustment mechanisms provided to rectify results that fall outside of the agreed upon advance pricing agreement range;

(x) the various term lengths for advance pricing agreements, including rollback years, and the number of advance pricing agreements with each such term length;

(xi) the nature of documentation required; and

(xii) approaches for sharing of currency or other risks.

(E) Statistics regarding the amount of time taken to complete new and renewal advance pricing agreements.

(F) A detailed description of the Secretary of the Treasury's efforts to ensure compliance with existing advance pricing agreements.

(3) **CONFIDENTIALITY.**—The reports required by this subsection shall be treated as authorized by the Internal Revenue Code of 1986 for purposes of section 6103 of such Code, but the reports shall not include information—

(A) which would not be permitted to be disclosed under section 6110(c) of such Code if such report were a written determination as defined in section 6110 of such Code, or

(B) which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

(4) **FIRST REPORT.**—The report for calendar year 1999 shall include prior calendar years after 1990.

(c) **REGULATIONS.**—The Secretary of the Treasury or the Secretary's delegate shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 6103(b)(2)(C), and the last sentence of section 6110(b)(1), of the Internal Revenue Code of 1986, as added by this section.

**SEC. 522. AUTHORITY TO POSTPONE CERTAIN TAX-RELATED DEADLINES BY REASON OF Y2K FAILURES.**

(a) **IN GENERAL.**—In the case of a taxpayer determined by the Secretary of the Treasury (or the Secretary's delegate) to be affected by a Y2K failure, the Secretary may disregard a period of up to 90 days in determining, under the internal revenue laws, in respect of any tax liability (including any interest, penalty, additional amount, or addition to the tax) of such taxpayer—

(1) whether any of the acts described in paragraph (1) of section 7508(a) of the Internal Revenue Code of 1986 (without regard to the exceptions in parentheses in subparagraphs (A) and (B)) were performed within the time prescribed therefor, and

(2) the amount of any credit or refund.

(b) **APPLICABILITY OF CERTAIN RULES.**—For purposes of this section, rules similar to the rules of subsections (b) and (e) of section 7508 of the Internal Revenue Code of 1986 shall apply.

**SEC. 523. INCLUSION OF CERTAIN VACCINES AGAINST STREPTOCOCCUS PNEUMONIAE TO LIST OF TAXABLE VACCINES.**

(a) **INCLUSION OF VACCINES.**—

(1) **IN GENERAL.**—Section 4132(a)(1) of the Internal Revenue Code of 1986 (defining taxable vaccine) is amended by adding at the end the following new subparagraph:

“(L) Any conjugate vaccine against streptococcus pneumoniae.”.

(2) **EFFECTIVE DATE.**—

(A) **SALES.**—The amendment made by this subsection shall apply to vaccine sales after the date of the enactment of this Act, but shall not take effect if subsection (b) does not take effect.

(B) **DELIVERIES.**—For purposes of subparagraph (A), in the case of sales on or before the date described in such subparagraph for which delivery is made after such date, the delivery date shall be considered the sale date.

(b) **VACCINE TAX AND TRUST FUND AMENDMENTS.**—

(1) Sections 1503 and 1504 of the Vaccine Injury Compensation Program Modification Act (and the amendments made by such sections) are hereby repealed.

(2) Subparagraph (A) of section 9510(c)(1) of such Code is amended by striking “August 5, 1997” and inserting “December 31, 1999”.

(3) The amendments made by this subsection shall take effect as if included in the provisions of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 to which they relate.

(c) **REPORT.**—Not later than January 31, 2000, the Comptroller General of the United States shall prepare and submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the operation of the Vaccine Injury Compensation Trust Fund and on the adequacy of such Fund to meet future claims made under the Vaccine Injury Compensation Program.

**SEC. 524. DELAY IN EFFECTIVE DATE OF REQUIREMENT FOR APPROVED DIESEL OR KEROSENE TERMINALS.**

Paragraph (2) of section 1032(f) of the Taxpayer Relief Act of 1997 is amended by striking “July 1, 2000” and inserting “January 1, 2002”.

**SEC. 525. PRODUCTION FLEXIBILITY CONTRACT PAYMENTS.**

Any option to accelerate the receipt of any payment under a production flexibility contract which is payable under the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7200 et seq.), as in effect on the date of the enactment of this Act, shall be disregarded in determining the taxable year for which such payment is properly includible in gross income for purposes of the Internal Revenue Code of 1986.

**Subtitle C—Revenue Offsets  
PART I—GENERAL PROVISIONS**

**SEC. 531. MODIFICATION OF ESTIMATED TAX SAFE HARBOR.**

(a) **IN GENERAL.**—The table contained in clause (i) of section 6654(d)(1)(C) of the Internal Revenue Code of 1986 (relating to limitation on use of preceding year's tax) is amended by striking the items relating to 1999 and 2000 and inserting the following new items:

“1999 ..... 108.6  
2000 ..... 110”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply with respect to any installment payment for taxable years beginning after December 31, 1999.

**SEC. 532. CLARIFICATION OF TAX TREATMENT OF INCOME AND LOSS ON DERIVATIVES.**

(a) **IN GENERAL.**—Section 1221 of the Internal Revenue Code of 1986 (defining capital assets) is amended—

(1) by striking “For purposes” and inserting the following:

“(a) **IN GENERAL.**—For purposes”.

(2) by striking the period at the end of paragraph (5) and inserting a semicolon, and

(3) by adding at the end the following:

“(6) any commodities derivative financial instrument held by a commodities derivatives dealer, unless—

“(A) it is established to the satisfaction of the Secretary that such instrument has no connection to the activities of such dealer as a dealer, and

“(B) such instrument is clearly identified in such dealer's records as being described in subparagraph (A) before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe);

“(7) any hedging transaction which is clearly identified as such before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe); or

“(8) supplies of a type regularly used or consumed by the taxpayer in the ordinary course of a trade or business of the taxpayer.”.

“(b) **DEFINITIONS AND SPECIAL RULES.**—

“(1) **COMMODITIES DERIVATIVE FINANCIAL INSTRUMENTS.**—For purposes of subsection (a)(6)—

“(A) **COMMODITIES DERIVATIVES DEALER.**—The term ‘commodities derivatives dealer’ means a person which regularly offers to enter into, assume, offset, assign, or terminate positions in commodities derivative financial instruments with customers in the ordinary course of a trade or business.

“(B) **COMMODITIES DERIVATIVE FINANCIAL INSTRUMENT.**—

“(i) **IN GENERAL.**—The term ‘commodities derivative financial instrument’ means any contract or financial instrument with respect to commodities (other than a share of stock in a corporation, a beneficial interest in a partnership or trust, a note, bond, debenture, or other evidence of indebtedness, or a section 1256 contract (as defined in section 1256(b)), the value or settlement price of which is calculated by or determined by reference to a specified index.

“(ii) **SPECIFIED INDEX.**—The term ‘specified index’ means any one or more or any combination of—

“(I) a fixed rate, price, or amount, or

“(II) a variable rate, price, or amount,

which is based on any current, objectively determinable financial or economic information with respect to commodities which is not within the control of any of the parties to the contract or instrument and is not unique to any of the parties' circumstances.

“(2) **HEDGING TRANSACTION.**—

“(A) **IN GENERAL.**—For purposes of this section, the term ‘hedging transaction’ means any transaction entered into by the taxpayer in the normal course of the taxpayer's trade or business primarily—

“(i) to manage risk of price changes or currency fluctuations with respect to ordinary property which is held or to be held by the taxpayer,

“(ii) to manage risk of interest rate or price changes or currency fluctuations with respect to borrowings made or to be made, or ordinary obligations incurred or to be incurred, by the taxpayer, or

“(iii) to manage such other risks as the Secretary may prescribe in regulations.

“(B) **TREATMENT OF NONIDENTIFICATION OR IMPROPER IDENTIFICATION OF HEDGING TRANSACTIONS.**—Notwithstanding subsection (a)(7), the Secretary shall prescribe regulations to properly characterize any income, gain, expense, or loss arising from a transaction—

“(i) which is a hedging transaction but which was not identified as such in accordance with subsection (a)(7), or

“(ii) which was so identified but is not a hedging transaction.

“(3) **REGULATIONS.**—The Secretary shall prescribe such regulations as are appropriate to carry out the purposes of paragraph (6) and (7) of subsection (a) in the case of transactions involving related parties.”.

(b) **MANAGEMENT OF RISK.**—

(1) Section 475(c)(3) of such Code is amended by striking “reduces” and inserting “manages”.

(2) Section 871(h)(4)(C)(iv) of such Code is amended by striking “to reduce” and inserting “to manage”.

(3) Clauses (i) and (ii) of section 988(d)(2)(A) of such Code are each amended by striking “to reduce” and inserting “to manage”.

(4) Paragraph (2) of section 1256(e) of such Code is amended to read as follows:

“(2) **DEFINITION OF HEDGING TRANSACTION.**—

For purposes of this subsection, the term ‘hedging transaction’ means any hedging transaction (as defined in section 1221(b)(2)(A)) if, before the close of the day on which such transaction was entered into (or such earlier time as the Secretary may prescribe by regulations), the taxpayer clearly identifies such transaction as being a hedging transaction.”.



**(c) CONFORMING AMENDMENTS.—**

(1) Each of the following sections of such Code are amended by striking “section 1221” and inserting “section 1221(a)”:

- (A) Section 170(e)(3)(A).
- (B) Section 170(e)(4)(B).
- (C) Section 367(a)(3)(B)(i).
- (D) Section 818(c)(3).
- (E) Section 865(i)(1).
- (F) Section 1092(a)(3)(B)(ii)(II).
- (G) Subparagraphs (C) and (D) of section 1231(b)(1).
- (H) Section 1234(a)(3)(A).

(2) Each of the following sections of such Code are amended by striking “section 1221(1)” and inserting “section 1221(a)(1)”:

- (A) Section 198(c)(1)(A)(i).
- (B) Section 263A(b)(2)(A).
- (C) Clauses (i) and (iii) of section 267(f)(3)(B).
- (D) Section 341(d)(3).
- (E) Section 543(a)(1)(B)(ii).
- (F) Section 751(d)(1).
- (G) Section 775(c).
- (H) Section 856(c)(2)(D).
- (I) Section 856(c)(3)(C).
- (J) Section 856(e)(1).
- (K) Section 856(j)(2)(B).
- (L) Section 857(b)(4)(B)(i).
- (M) Section 857(b)(6)(B)(iii).
- (N) Section 864(c)(4)(B)(iii).
- (O) Section 864(d)(3)(A).
- (P) Section 864(d)(6)(A).
- (Q) Section 954(c)(1)(B)(iii).
- (R) Section 995(b)(1)(C).
- (S) Section 1017(b)(3)(E)(i).
- (T) Section 1362(d)(3)(C)(ii).
- (U) Section 4662(c)(2)(C).
- (V) Section 7704(c)(3).
- (W) Section 7704(d)(1)(D).
- (X) Section 7704(d)(1)(G).
- (Y) Section 7704(d)(5).

(3) Section 818(b)(2) of such Code is amended by striking “section 1221(2)” and inserting “section 1221(a)(2)”.

(4) Section 1397B(e)(2) of such Code is amended by striking “section 1221(4)” and inserting “section 1221(a)(4)”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after the date of the enactment of this Act.

**SEC. 533. EXPANSION OF REPORTING OF CANCELLATION OF INDEBTEDNESS INCOME.**

(a) **IN GENERAL.**—Paragraph (2) of section 6050P(c) of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by striking “and” at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting “, and”, and by inserting after subparagraph (C) the following new subparagraph:

“(D) any organization a significant trade or business of which is the lending of money.”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to discharges of indebtedness after December 31, 1999.

**SEC. 534. LIMITATION ON CONVERSION OF CHARACTER OF INCOME FROM CONSTRUCTIVE OWNERSHIP TRANSACTIONS.**

(a) **IN GENERAL.**—Part IV of subchapter P of chapter 1 of the Internal Revenue Code of 1986 (relating to special rules for determining capital gains and losses) is amended by inserting after section 1259 the following new section:

**“SEC. 1260. GAINS FROM CONSTRUCTIVE OWNERSHIP TRANSACTIONS.**

“(a) **IN GENERAL.**—If the taxpayer has gain from a constructive ownership transaction with respect to any financial asset and such gain would (without regard to this section) be treated as a long-term capital gain—

“(1) such gain shall be treated as ordinary income to the extent that such gain exceeds the net underlying long-term capital gain, and

“(2) to the extent such gain is treated as a long-term capital gain after the application of paragraph (1), the determination of the capital gain rate (or rates) applicable to such gain under section 1(h) shall be determined on the basis of the respective rate (or rates) that would have been applicable to the net underlying long-term capital gain.

**“(b) INTEREST CHARGE ON DEFERRAL OF GAIN RECOGNITION.—**

“(1) **IN GENERAL.**—If any gain is treated as ordinary income for any taxable year by reason of subsection (a)(1), the tax imposed by this chapter for such taxable year shall be increased by the amount of interest determined under paragraph (2) with respect to each prior taxable year during any portion of which the constructive ownership transaction was open. Any amount payable under this paragraph shall be taken into account in computing the amount of any deduction allowable to the taxpayer for interest paid or accrued during such taxable year.

“(2) **AMOUNT OF INTEREST.**—The amount of interest determined under this paragraph with respect to a prior taxable year is the amount of interest which would have been imposed under section 6601 on the underpayment of tax for such year which would have resulted if the gain (which is treated as ordinary income by reason of subsection (a)(1)) had been included in gross income in the taxable years in which it accrued (determined by treating the income as accruing at a constant rate equal to the applicable Federal rate as in effect on the day the transaction closed). The period during which such interest shall accrue shall end on the due date (without extensions) for the return of tax imposed by this chapter for the taxable year in which such transaction closed.

“(3) **APPLICABLE FEDERAL RATE.**—For purposes of paragraph (2), the applicable Federal rate is the applicable Federal rate determined under section 1274(d) (compounded semiannually) which would apply to a debt instrument with a term equal to the period the transaction was open.

“(4) **NO CREDITS AGAINST INCREASE IN TAX.**—Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining—

“(A) the amount of any credit allowable under this chapter, or

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

“(c) **FINANCIAL ASSET.**—For purposes of this section—

“(1) **IN GENERAL.**—The term ‘financial asset’ means—

“(A) any equity interest in any pass-thru entity, and

“(B) to the extent provided in regulations—

“(i) any debt instrument, and

“(ii) any stock in a corporation which is not a pass-thru entity.

“(2) **PASS-THRU ENTITY.**—For purposes of paragraph (1), the term ‘pass-thru entity’ means—

“(A) a regulated investment company,

“(B) a real estate investment trust,

“(C) an S corporation,

“(D) a partnership,

“(E) a trust,

“(F) a common trust fund,

“(G) a passive foreign investment company (as defined in section 1297 without regard to subsection (e) thereof),

“(H) a foreign personal holding company,

“(I) a foreign investment company (as defined in section 1246(b)), and

“(J) a REMIC.

“(d) **CONSTRUCTIVE OWNERSHIP TRANSACTION.**—For purposes of this section—

“(1) **IN GENERAL.**—The taxpayer shall be treated as having entered into a constructive ownership transaction with respect to any financial asset if the taxpayer—

“(A) holds a long position under a notional principal contract with respect to the financial asset,

“(B) enters into a forward or futures contract to acquire the financial asset,

“(C) is the holder of a call option, and is the grantor of a put option, with respect to the financial asset and such options have substantially equal strike prices and substantially contemporaneous maturity dates, or

“(D) to the extent provided in regulations prescribed by the Secretary, enters into one or more other transactions (or acquires one or more positions) that have substantially the same effect as a transaction described in any of the preceding subparagraphs.

“(2) **EXCEPTION FOR POSITIONS WHICH ARE MARKED TO MARKET.**—This section shall not apply to any constructive ownership transaction if all of the positions which are part of such transaction are marked to market under any provision of this title or the regulations thereunder.

“(3) **LONG POSITION UNDER NOTIONAL PRINCIPAL CONTRACT.**—A person shall be treated as holding a long position under a notional principal contract with respect to any financial asset if such person—

“(A) has the right to be paid (or receive credit for) all or substantially all of the investment yield (including appreciation) on such financial asset for a specified period, and

“(B) is obligated to reimburse (or provide credit for) all or substantially all of any decline in the value of such financial asset.

“(4) **FORWARD CONTRACT.**—The term ‘forward contract’ means any contract to acquire in the future (or provide or receive credit for the future value of) any financial asset.

“(e) **NET UNDERLYING LONG-TERM CAPITAL GAIN.**—For purposes of this section, in the case of any constructive ownership transaction with respect to any financial asset, the term ‘net underlying long-term capital gain’ means the aggregate net capital gain that the taxpayer would have had if—

“(1) the financial asset had been acquired for fair market value on the date such transaction was opened and sold for fair market value on the date such transaction was closed, and

“(2) only gains and losses that would have resulted from the deemed ownership under paragraph (1) were taken into account.

The amount of the net underlying long-term capital gain with respect to any financial asset shall be treated as zero unless the amount thereof is established by clear and convincing evidence.

“(f) **SPECIAL RULE WHERE TAXPAYER TAKES DELIVERY.**—Except as provided in regulations prescribed by the Secretary, if a constructive ownership transaction is closed by reason of taking delivery, this section shall be applied as if the taxpayer had sold all the contracts, options, or other positions which are part of such transaction for fair market value on the closing date. The amount of gain recognized under the preceding sentence shall not exceed the amount of gain treated as ordinary income under subsection (a). Proper adjustments shall be made in the amount of any gain or loss subsequently realized for gain recognized and treated as ordinary income under this subsection.

“(g) **REGULATIONS.**—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

“(1) to permit taxpayers to mark to market constructive ownership transactions in lieu of applying this section, and

“(2) to exclude certain forward contracts which do not convey substantially all of the economic return with respect to a financial asset.”.

(b) CLERICAL AMENDMENT.—The table of sections for part IV of subchapter P of chapter 1 of such Code is amended by adding at the end the following new item:

“Sec. 1260. Gains from constructive ownership transactions.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after July 11, 1999.

**SEC. 535. TREATMENT OF EXCESS PENSION ASSETS USED FOR RETIREE HEALTH BENEFITS.**

(a) EXTENSION.—

(1) IN GENERAL.—Paragraph (5) of section 420(b) of the Internal Revenue Code of 1986 (relating to expiration) is amended by striking “in any taxable year beginning after December 31, 2000” and inserting “made after December 31, 2005”.

(2) CONFORMING AMENDMENTS.—

(A) Section 101(e)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(e)(3)) is amended by striking “January 1, 1995” and inserting “the date of the enactment of the Tax Relief Extension Act of 1999”.

(B) Section 403(c)(1) of such Act (29 U.S.C. 1103(c)(1)) is amended by striking “January 1, 1995” and inserting “the date of the enactment of the Tax Relief Extension Act of 1999”.

(C) Paragraph (13) of section 408(b) of such Act (29 U.S.C. 1108(b)(13)) is amended—

(i) by striking “in a taxable year beginning before January 1, 2001” and inserting “made before January 1, 2006”, and

(ii) by striking “January 1, 1995” and inserting “the date of the enactment of the Tax Relief Extension Act of 1999”.

(b) APPLICATION OF MINIMUM COST REQUIREMENTS.—

(1) IN GENERAL.—Paragraph (3) of section 420(c) of the Internal Revenue Code of 1986 is amended to read as follows:

“(3) MINIMUM COST REQUIREMENTS.—

“(A) IN GENERAL.—The requirements of this paragraph are met if each group health plan or arrangement under which applicable health benefits are provided provides that the applicable employer cost for each taxable year during the cost maintenance period shall not be less than the higher of the applicable employer costs for each of the 2 taxable years immediately preceding the taxable year of the qualified transfer.

“(B) APPLICABLE EMPLOYER COST.—For purposes of this paragraph, the term ‘applicable employer cost’ means, with respect to any taxable year, the amount determined by dividing—

“(i) the qualified current retiree health liabilities of the employer for such taxable year determined—

“(I) without regard to any reduction under subsection (e)(1)(B), and

“(II) in the case of a taxable year in which there was no qualified transfer, in the same manner as if there had been such a transfer at the end of the taxable year, by

“(ii) the number of individuals to whom coverage for applicable health benefits was provided during such taxable year.

“(C) ELECTION TO COMPUTE COST SEPARATELY.—An employer may elect to have this paragraph applied separately with respect to individuals eligible for benefits under title XVIII of the Social Security Act at any time during the taxable year and with respect to individuals not so eligible.

“(D) COST MAINTENANCE PERIOD.—For purposes of this paragraph, the term ‘cost maintenance period’ means the period of 5 taxable years beginning with the taxable year in which the qualified transfer occurs. If a taxable year is

in two or more overlapping cost maintenance periods, this paragraph shall be applied by taking into account the highest applicable employer cost required to be provided under subparagraph (A) for such taxable year.

“(E) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to prevent an employer who significantly reduces retiree health coverage during the cost maintenance period from being treated as satisfying the minimum cost requirement of this subsection.”.

(2) CONFORMING AMENDMENTS.—

(A) Clause (iii) of section 420(b)(1)(C) of such Code is amended by striking “benefits” and inserting “cost”.

(B) Subparagraph (D) of section 420(e)(1) of such Code is amended by striking “and shall not be subject to the minimum benefit requirements of subsection (c)(3)” and inserting “or in calculating applicable employer cost under subsection (c)(3)(B)”.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to qualified transfers occurring after the date of the enactment of this Act.

(2) TRANSITION RULE.—If the cost maintenance period for any qualified transfer after the date of the enactment of this Act includes any portion of a benefit maintenance period for any qualified transfer on or before such date, the amendments made by subsection (b) shall not apply to such portion of the cost maintenance period (and such portion shall be treated as a benefit maintenance period).

**SEC. 536. MODIFICATION OF INSTALLMENT METHOD AND REPEAL OF INSTALLMENT METHOD FOR ACCRUAL METHOD TAXPAYERS.**

(a) REPEAL OF INSTALLMENT METHOD FOR ACCRUAL BASIS TAXPAYERS.—

(1) IN GENERAL.—Subsection (a) of section 453 of the Internal Revenue Code of 1986 (relating to installment method) is amended to read as follows:

“(a) USE OF INSTALLMENT METHOD.—

“(1) IN GENERAL.—Except as otherwise provided in this section, income from an installment sale shall be taken into account for purposes of this title under the installment method.

“(2) ACCRUAL METHOD TAXPAYER.—The installment method shall not apply to income from an installment sale if such income would be reported under an accrual method of accounting without regard to this section. The preceding sentence shall not apply to a disposition described in subparagraph (A) or (B) of subsection (1)(2).”.

(2) CONFORMING AMENDMENTS.—Sections 453(d)(1), 453(i)(1), and 453(k) of such Code are each amended by striking “(a)” each place it appears and inserting “(a)(1)”.

(b) MODIFICATION OF PLEDGE RULES.—Paragraph (4) of section 453A(d) of such Code (relating to pledges, etc., of installment obligations) is amended by adding at the end the following: “A payment shall be treated as directly secured by an interest in an installment obligation to the extent an arrangement allows the taxpayer to satisfy all or a portion of the indebtedness with the installment obligation.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or other dispositions occurring on or after the date of the enactment of this Act.

**SEC. 537. DENIAL OF CHARITABLE CONTRIBUTION DEDUCTION FOR TRANSFERS ASSOCIATED WITH SPLIT-DOLLAR LIFE INSURANCE ARRANGEMENTS.**

(a) IN GENERAL.—Subsection (f) of section 170 of the Internal Revenue Code of 1986 (relating to disallowance of deduction in certain cases and special rules) is amended by adding at the end the following new paragraph:

“(10) SPLIT-DOLLAR LIFE INSURANCE, ANNUITY, AND ENDOWMENT CONTRACTS.—

“(A) IN GENERAL.—Nothing in this section or in section 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 shall be construed to allow a deduction, and no deduction shall be allowed, for any transfer to or for the use of an organization described in subsection (c) if in connection with such transfer—

“(i) the organization directly or indirectly pays, or has previously paid, any premium on any personal benefit contract with respect to the transferor, or

“(ii) there is an understanding or expectation that any person will directly or indirectly pay any premium on any personal benefit contract with respect to the transferor.

“(B) PERSONAL BENEFIT CONTRACT.—For purposes of subparagraph (A), the term ‘personal benefit contract’ means, with respect to the transferor, any life insurance, annuity, or endowment contract if any direct or indirect beneficiary under such contract is the transferor, any member of the transferor’s family, or any other person (other than an organization described in subsection (c)) designated by the transferor.

“(C) APPLICATION TO CHARITABLE REMAINDER TRUSTS.—In the case of a transfer to a trust referred to in subparagraph (E), references in subparagraphs (A) and (F) to an organization described in subsection (c) shall be treated as a reference to such trust.

“(D) EXCEPTION FOR CERTAIN ANNUITY CONTRACTS.—If, in connection with a transfer to or for the use of an organization described in subsection (c), such organization incurs an obligation to pay a charitable gift annuity (as defined in section 501(m)) and such organization purchases any annuity contract to fund such obligation, persons receiving payments under the charitable gift annuity shall not be treated for purposes of subparagraph (B) as indirect beneficiaries under such contract if—

“(i) such organization possesses all of the incidents of ownership under such contract,

“(ii) such organization is entitled to all the payments under such contract, and

“(iii) the timing and amount of payments under such contract are substantially the same as the timing and amount of payments to each such person under such obligation (as such obligation is in effect at the time of such transfer).

“(E) EXCEPTION FOR CERTAIN CONTRACTS HELD BY CHARITABLE REMAINDER TRUSTS.—A person shall not be treated for purposes of subparagraph (B) as an indirect beneficiary under any life insurance, annuity, or endowment contract held by a charitable remainder annuity trust or a charitable remainder unitrust (as defined in section 664(d)) solely by reason of being entitled to any payment referred to in paragraph (1)(A) or (2)(A) of section 664(d) if—

“(i) such trust possesses all of the incidents of ownership under such contract, and

“(ii) such trust is entitled to all the payments under such contract.

“(F) EXCISE TAX ON PREMIUMS PAID.—

“(i) IN GENERAL.—There is hereby imposed on any organization described in subsection (c) an excise tax equal to the premiums paid by such organization on any life insurance, annuity, or endowment contract if the payment of premiums on such contract is in connection with a transfer for which a deduction is not allowable under subparagraph (A), determined without regard to when such transfer is made.

“(ii) PAYMENTS BY OTHER PERSONS.—For purposes of clause (i), payments made by any other person pursuant to an understanding or expectation referred to in subparagraph (A) shall be treated as made by the organization.

“(iii) REPORTING.—Any organization on which tax is imposed by clause (i) with respect

to any premium shall file an annual return which includes—

“(I) the amount of such premiums paid during the year and the name and TIN of each beneficiary under the contract to which the premium relates, and

“(II) such other information as the Secretary may require.

The penalties applicable to returns required under section 6033 shall apply to returns required under this clause. Returns required under this clause shall be furnished at such time and in such manner as the Secretary shall by forms or regulations require.

“(iv) CERTAIN RULES TO APPLY.—The tax imposed by this subparagraph shall be treated as imposed by chapter 42 for purposes of this title other than subchapter B of chapter 42.

“(G) SPECIAL RULE WHERE STATE REQUIRES SPECIFICATION OF CHARITABLE GIFT ANNUITY IN CONTRACT.—In the case of an obligation to pay a charitable gift annuity referred to in subparagraph (D) which is entered into under the laws of a State which requires, in order for the charitable gift annuity to be exempt from insurance regulation by such State, that each beneficiary under the charitable gift annuity be named as a beneficiary under an annuity contract issued by an insurance company authorized to transact business in such State, the requirements of clauses (i) and (ii) of subparagraph (D) shall be treated as met if—

“(i) such State law requirement was in effect on February 8, 1999,

“(ii) each such beneficiary under the charitable gift annuity is a bona fide resident of such State at the time the obligation to pay a charitable gift annuity is entered into, and

“(iii) the only persons entitled to payments under such contract are persons entitled to payments as beneficiaries under such obligation on the date such obligation is entered into.

“(H) MEMBER OF FAMILY.—For purposes of this paragraph, an individual's family consists of the individual's grandparents, the grandparents of such individual's spouse, the lineal descendants of such grandparents, and any spouse of such a lineal descendant.

“(I) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations to prevent the avoidance of such purposes.”.

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this section, the amendment made by this section shall apply to transfers made after February 8, 1999.

(2) EXCISE TAX.—Except as provided in paragraph (3) of this subsection, section 170(f)(10)(F) of the Internal Revenue Code of 1986 (as added by this section) shall apply to premiums paid after the date of the enactment of this Act.

(3) REPORTING.—Clause (iii) of such section 170(f)(10)(F) shall apply to premiums paid after February 8, 1999 (determined as if the tax imposed by such section applies to premiums paid after such date).

**SEC. 538. DISTRIBUTIONS BY A PARTNERSHIP TO A CORPORATE PARTNER OF STOCK IN ANOTHER CORPORATION.**

(a) IN GENERAL.—Section 732 of the Internal Revenue Code of 1986 (relating to basis of distributed property other than money) is amended by adding at the end the following new subsection:

“(f) CORRESPONDING ADJUSTMENT TO BASIS OF ASSETS OF A DISTRIBUTED CORPORATION CONTROLLED BY A CORPORATE PARTNER.—

“(1) IN GENERAL.—If—

“(A) a corporation (hereafter in this subsection referred to as the ‘corporate partner’) receives a distribution from a partnership of stock in another corporation (hereafter in this sub-

section referred to as the ‘distributed corporation’),

“(B) the corporate partner has control of the distributed corporation immediately after the distribution or at any time thereafter, and

“(C) the partnership's adjusted basis in such stock immediately before the distribution exceeded the corporate partner's adjusted basis in such stock immediately after the distribution,

then an amount equal to such excess shall be applied to reduce (in accordance with subsection (c)) the basis of property held by the distributed corporation at such time (or, if the corporate partner does not control the distributed corporation at such time, at the time the corporate partner first has such control).

“(2) EXCEPTION FOR CERTAIN DISTRIBUTIONS BEFORE CONTROL ACQUIRED.—Paragraph (1) shall not apply to any distribution of stock in the distributed corporation if—

“(A) the corporate partner does not have control of such corporation immediately after such distribution, and

“(B) the corporate partner establishes to the satisfaction of the Secretary that such distribution was not part of a plan or arrangement to acquire control of the distributed corporation.

“(3) LIMITATIONS ON BASIS REDUCTION.—

“(A) IN GENERAL.—The amount of the reduction under paragraph (1) shall not exceed the amount by which the sum of the aggregate adjusted bases of the property and the amount of money of the distributed corporation exceeds the corporate partner's adjusted basis in the stock of the distributed corporation.

“(B) REDUCTION NOT TO EXCEED ADJUSTED BASIS OF PROPERTY.—No reduction under paragraph (1) in the basis of any property shall exceed the adjusted basis of such property (determined without regard to such reduction).

“(4) GAIN RECOGNITION WHERE REDUCTION LIMITED.—If the amount of any reduction under paragraph (1) (determined after the application of paragraph (3)(A)) exceeds the aggregate adjusted bases of the property of the distributed corporation—

“(A) such excess shall be recognized by the corporate partner as long-term capital gain, and

“(B) the corporate partner's adjusted basis in the stock of the distributed corporation shall be increased by such excess.

“(5) CONTROL.—For purposes of this subsection, the term ‘control’ means ownership of stock meeting the requirements of section 1504(a)(2).

“(6) INDIRECT DISTRIBUTIONS.—For purposes of paragraph (1), if a corporation acquires (other than in a distribution from a partnership) stock the basis of which is determined (by reason of being distributed from a partnership) in whole or in part by reference to subsection (a)(2) or (b), the corporation shall be treated as receiving a distribution of such stock from a partnership.

“(7) SPECIAL RULE FOR STOCK IN CONTROLLED CORPORATION.—If the property held by a distributed corporation is stock in a corporation which the distributed corporation controls, this subsection shall be applied to reduce the basis of the property of such controlled corporation. This subsection shall be reapplied to any property of any controlled corporation which is stock in a corporation which it controls.

“(8) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations to avoid double counting and to prevent the abuse of such purposes.”.

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section shall apply to distributions made after July 14, 1999.

(2) PARTNERSHIPS IN EXISTENCE ON JULY 14, 1999.—In the case of a corporation which is a

partner in a partnership as of July 14, 1999, the amendment made by this section shall apply to any distribution made (or treated as made) to such partner from such partnership after June 30, 2001, except that this paragraph shall not apply to any distribution after the date of the enactment of this Act unless the partner makes an election to have this paragraph apply to such distribution on the partner's return of Federal income tax for the taxable year in which such distribution occurs.

**PART II—PROVISIONS RELATING TO REAL ESTATE INVESTMENT TRUSTS**

**Subpart A—Treatment of Income and Services Provided by Taxable REIT Subsidiaries**

**SEC. 541. MODIFICATIONS TO ASSET DIVERSIFICATION TEST.**

(a) IN GENERAL.—Subparagraph (B) of section 856(c)(4) of the Internal Revenue Code of 1986 is amended to read as follows:

“(B)(i) not more than 25 percent of the value of its total assets is represented by securities (other than those includible under subparagraph (A)),

“(ii) not more than 20 percent of the value of its total assets is represented by securities of 1 or more taxable REIT subsidiaries, and

“(iii) except with respect to a taxable REIT subsidiary and securities includible under subparagraph (A)—

“(I) not more than 5 percent of the value of its total assets is represented by securities of any one issuer,

“(II) the trust does not hold securities possessing more than 10 percent of the total voting power of the outstanding securities of any one issuer, and

“(III) the trust does not hold securities having a value of more than 10 percent of the total value of the outstanding securities of any one issuer.”.

(b) EXCEPTION FOR STRAIGHT DEBT SECURITIES.—Subsection (c) of section 856 of such Code is amended by adding at the end the following new paragraph:

“(7) STRAIGHT DEBT SAFE HARBOR IN APPLYING PARAGRAPH (4).—Securities of an issuer which are straight debt (as defined in section 1361(c)(5) without regard to subparagraph (B)(iii) thereof) shall not be taken into account in applying paragraph (4)(B)(ii)(III) if—

“(A) the issuer is an individual, or

“(B) the only securities of such issuer which are held by the trust or a taxable REIT subsidiary of the trust are straight debt (as so defined), or

“(C) the issuer is a partnership and the trust holds at least a 20 percent profits interest in the partnership.”.

**SEC. 542. TREATMENT OF INCOME AND SERVICES PROVIDED BY TAXABLE REIT SUBSIDIARIES.**

(a) INCOME FROM TAXABLE REIT SUBSIDIARIES NOT TREATED AS IMPERMISSIBLE TENANT SERVICE INCOME.—Clause (i) of section 856(d)(7)(C) of the Internal Revenue Code of 1986 (relating to exceptions to impermissible tenant service income) is amended by inserting “or through a taxable REIT subsidiary of such trust” after “income”.

(b) CERTAIN INCOME FROM TAXABLE REIT SUBSIDIARIES NOT EXCLUDED FROM RENTS FROM REAL PROPERTY.—

(1) IN GENERAL.—Subsection (d) of section 856 of such Code (relating to rents from real property defined) is amended by adding at the end the following new paragraphs:

“(8) SPECIAL RULE FOR TAXABLE REIT SUBSIDIARIES.—For purposes of this subsection, amounts paid to a real estate investment trust by a taxable REIT subsidiary of such trust shall not be excluded from rents from real property by reason of paragraph (2)(B) if the requirements of either of the following subparagraphs are met:

“(A) LIMITED RENTAL EXCEPTION.—The requirements of this subparagraph are met with respect to any property if at least 90 percent of the leased space of the property is rented to persons other than taxable REIT subsidiaries of such trust and other than persons described in section 856(d)(2)(B). The preceding sentence shall apply only to the extent that the amounts paid to the trust as rents from real property (as defined in paragraph (1) without regard to paragraph (2)(B)) from such property are substantially comparable to such rents made by the other tenants of the trust's property for comparable space.

“(B) EXCEPTION FOR CERTAIN LODGING FACILITIES.—The requirements of this subparagraph are met with respect to an interest in real property which is a qualified lodging facility leased by the trust to a taxable REIT subsidiary of the trust if the property is operated on behalf of such subsidiary by a person who is an eligible independent contractor.

“(9) ELIGIBLE INDEPENDENT CONTRACTOR.—For purposes of paragraph (8)(B)—

“(A) IN GENERAL.—The term ‘eligible independent contractor’ means, with respect to any qualified lodging facility, any independent contractor if, at the time such contractor enters into a management agreement or other similar service contract with the taxable REIT subsidiary to operate the facility, such contractor (or any related person) is actively engaged in the trade or business of operating qualified lodging facilities for any person who is not a related person with respect to the real estate investment trust or the taxable REIT subsidiary.

“(B) SPECIAL RULES.—Solely for purposes of this paragraph and paragraph (8)(B), a person shall not fail to be treated as an independent contractor with respect to any qualified lodging facility by reason of any of the following:

“(i) The taxable REIT subsidiary bears the expenses for the operation of the facility pursuant to the management agreement or other similar service contract.

“(ii) The taxable REIT subsidiary receives the revenues from the operation of such facility, net of expenses for such operation and fees payable to the operator pursuant to such agreement or contract.

“(iii) The real estate investment trust receives income from such person with respect to another property that is attributable to a lease of such other property to such person that was in effect as of the later of—

“(I) January 1, 1999, or

“(II) the earliest date that any taxable REIT subsidiary of such trust entered into a management agreement or other similar service contract with such person with respect to such qualified lodging facility.

“(C) RENEWALS, ETC., OF EXISTING LEASES.—For purposes of subparagraph (B)(iii)—

“(i) a lease shall be treated as in effect on January 1, 1999, without regard to its renewal after such date, so long as such renewal is pursuant to the terms of such lease as in effect on whichever of the dates under subparagraph (B)(iii) is the latest, and

“(ii) a lease of a property entered into after whichever of the dates under subparagraph (B)(iii) is the latest shall be treated as in effect on such date if—

“(I) on such date, a lease of such property from the trust was in effect, and

“(II) under the terms of the new lease, such trust receives a substantially similar or lesser benefit in comparison to the lease referred to in subclause (I).

“(D) QUALIFIED LODGING FACILITY.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘qualified lodging facility’ means any lodging facility unless wagering activities are conducted at or in connec-

tion with such facility by any person who is engaged in the business of accepting wagers and who is legally authorized to engage in such business at or in connection with such facility.

“(ii) LODGING FACILITY.—The term ‘lodging facility’ means a hotel, motel, or other establishment more than one-half of the dwelling units in which are used on a transient basis.

“(iii) CUSTOMARY AMENITIES AND FACILITIES.—The term ‘lodging facility’ includes customary amenities and facilities operated as part of, or associated with, the lodging facility so long as such amenities and facilities are customary for other properties of a comparable size and class owned by other owners unrelated to such real estate investment trust.

“(E) OPERATE INCLUDES MANAGE.—References in this paragraph to operating a property shall be treated as including a reference to managing the property.

“(F) RELATED PERSON.—Persons shall be treated as related to each other if such persons are treated as a single employer under subsection (a) or (b) of section 52.”.

(2) CONFORMING AMENDMENT.—Subparagraph (B) of section 856(d)(2) of such Code is amended by inserting “except as provided in paragraph (8),” after “(B)”.

(3) DETERMINING RENTS FROM REAL PROPERTY.—

(A)(i) Paragraph (1) of section 856(d) of such Code is amended by striking “adjusted bases” each place it occurs and inserting “fair market values”.

(ii) The amendment made by this subparagraph shall apply to taxable years beginning after December 31, 2000.

(B)(i) Clause (i) of section 856(d)(2)(B) of such Code is amended by striking “number” and inserting “value”.

(ii) The amendment made by this subparagraph shall apply to amounts received or accrued in taxable years beginning after December 31, 2000, except for amounts paid pursuant to leases in effect on July 12, 1999, or pursuant to a binding contract in effect on such date and at all times thereafter.

#### SEC. 543. TAXABLE REIT SUBSIDIARY.

(a) IN GENERAL.—Section 856 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(1) TAXABLE REIT SUBSIDIARY.—For purposes of this part—

“(1) IN GENERAL.—The term ‘taxable REIT subsidiary’ means, with respect to a real estate investment trust, a corporation (other than a real estate investment trust) if—

“(A) such trust directly or indirectly owns stock in such corporation, and

“(B) such trust and such corporation jointly elect that such corporation shall be treated as a taxable REIT subsidiary of such trust for purposes of this part.

Such an election, once made, shall be irrevocable unless both such trust and corporation consent to its revocation. Such election, and any revocation thereof, may be made without the consent of the Secretary.

“(2) 35 PERCENT OWNERSHIP IN ANOTHER TAXABLE REIT SUBSIDIARY.—The term ‘taxable REIT subsidiary’ includes, with respect to any real estate investment trust, any corporation (other than a real estate investment trust) with respect to which a taxable REIT subsidiary of such trust owns directly or indirectly—

“(A) securities possessing more than 35 percent of the total voting power of the outstanding securities of such corporation, or

“(B) securities having a value of more than 35 percent of the total value of the outstanding securities of such corporation.

The preceding sentence shall not apply to a qualified REIT subsidiary (as defined in subsection (i)(2)). The rule of section 856(c)(7) shall apply for purposes of subparagraph (B).

“(3) EXCEPTIONS.—The term ‘taxable REIT subsidiary’ shall not include—

“(A) any corporation which directly or indirectly operates or manages a lodging facility or a health care facility, and

“(B) any corporation which directly or indirectly provides to any other person (under a franchise, license, or otherwise) rights to any brand name under which any lodging facility or health care facility is operated.

Subparagraph (B) shall not apply to rights provided to an eligible independent contractor to operate or manage a lodging facility if such rights are held by such corporation as a franchisee, licensee, or in a similar capacity and such lodging facility is either owned by such corporation or is leased to such corporation from the real estate investment trust.

“(4) DEFINITIONS.—For purposes of paragraph (3)—

“(A) LODGING FACILITY.—The term ‘lodging facility’ has the meaning given to such term by paragraph (9)(D)(ii).

“(B) HEALTH CARE FACILITY.—The term ‘health care facility’ has the meaning given to such term by subsection (e)(6)(D)(ii).”.

(b) CONFORMING AMENDMENT.—Paragraph (2) of section 856(i) of such Code is amended by adding at the end the following new sentence: “Such term shall not include a taxable REIT subsidiary.”.

#### SEC. 544. LIMITATION ON EARNINGS STRIPPING.

Paragraph (3) of section 163(j) of the Internal Revenue Code of 1986 (relating to limitation on deduction for interest on certain indebtedness) is amended by striking “and” at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting “, and”, and by adding at the end the following new subparagraph:

“(C) any interest paid or accrued (directly or indirectly) by a taxable REIT subsidiary (as defined in section 856(l)) of a real estate investment trust to such trust.”.

#### SEC. 545. 100 PERCENT TAX ON IMPROPERLY ALLOCATED AMOUNTS.

(a) IN GENERAL.—Subsection (b) of section 857 of the Internal Revenue Code of 1986 (relating to method of taxation of real estate investment trusts and holders of shares or certificates of beneficial interest) is amended by redesignating paragraphs (7) and (8) as paragraphs (8) and (9), respectively, and by inserting after paragraph (6) the following new paragraph:

“(7) INCOME FROM REDETERMINED RENTS, REDETERMINED DEDUCTIONS, AND EXCESS INTEREST.—

“(A) IMPOSITION OF TAX.—There is hereby imposed for each taxable year of the real estate investment trust a tax equal to 100 percent of re-determined rents, re-determined deductions, and excess interest.

“(B) REDETERMINED RENTS.—

“(i) IN GENERAL.—The term ‘re-determined rents’ means rents from real property (as defined in subsection 856(d)) the amount of which would (but for subparagraph (E)) be reduced on distribution, apportionment, or allocation under section 482 to clearly reflect income as a result of services furnished or rendered by a taxable REIT subsidiary of the real estate investment trust to a tenant of such trust.

“(ii) EXCEPTION FOR CERTAIN SERVICES.—Clause (i) shall not apply to amounts received directly or indirectly by a real estate investment trust for services described in paragraph (1)(B) or (7)(C)(i) of section 856(d).

“(iii) EXCEPTION FOR DE MINIMIS AMOUNTS.—Clause (i) shall not apply to amounts described in section 856(d)(7)(A) with respect to a property to the extent such amounts do not exceed the one percent threshold described in section 856(d)(7)(B) with respect to such property.

“(iv) EXCEPTION FOR COMPARABLY PRICED SERVICES.—Clause (i) shall not apply to any

service rendered by a taxable REIT subsidiary of a real estate investment trust to a tenant of such trust if—

“(I) such subsidiary renders a significant amount of similar services to persons other than such trust and tenants of such trust who are unrelated (within the meaning of section 856(d)(8)(F)) to such subsidiary, trust, and tenants, but

“(II) only to the extent the charge for such service so rendered is substantially comparable to the charge for the similar services rendered to persons referred to in subclause (I).

“(v) EXCEPTION FOR CERTAIN SEPARATELY CHARGED SERVICES.—Clause (i) shall not apply to any service rendered by a taxable REIT subsidiary of a real estate investment trust to a tenant of such trust if—

“(I) the rents paid to the trust by tenants (leasing at least 25 percent of the net leasable space in the trust's property) who are not receiving such service from such subsidiary are substantially comparable to the rents paid by tenants leasing comparable space who are receiving such service from such subsidiary, and

“(II) the charge for such service from such subsidiary is separately stated.

“(vi) EXCEPTION FOR CERTAIN SERVICES BASED ON SUBSIDIARY'S INCOME FROM THE SERVICES.—Clause (i) shall not apply to any service rendered by a taxable REIT subsidiary of a real estate investment trust to a tenant of such trust if the gross income of such subsidiary from such service is not less than 150 percent of such subsidiary's direct cost in furnishing or rendering the service.

“(vii) EXCEPTIONS GRANTED BY SECRETARY.—The Secretary may waive the tax otherwise imposed by subparagraph (A) if the trust establishes to the satisfaction of the Secretary that rents charged to tenants were established on an arms' length basis even though a taxable REIT subsidiary of the trust provided services to such tenants.

“(C) REDETERMINED DEDUCTIONS.—The term ‘redetermined deductions’ means deductions (other than redetermined rents) of a taxable REIT subsidiary of a real estate investment trust if the amount of such deductions would (but for subparagraph (E)) be decreased on distribution, apportionment, or allocation under section 482 to clearly reflect income as between such subsidiary and such trust.

“(D) EXCESS INTEREST.—The term ‘excess interest’ means any deductions for interest payments by a taxable REIT subsidiary of a real estate investment trust to such trust to the extent that the interest payments are in excess of a rate that is commercially reasonable.

“(E) COORDINATION WITH SECTION 482.—The imposition of tax under subparagraph (A) shall be in lieu of any distribution, apportionment, or allocation under section 482.

“(F) REGULATORY AUTHORITY.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph. Until the Secretary prescribes such regulations, real estate investment trusts and their taxable REIT subsidiaries may base their allocations on any reasonable method.”.

(b) AMOUNT SUBJECT TO TAX NOT REQUIRED TO BE DISTRIBUTED.—Subparagraph (E) of section 857(b)(2) of such Code (relating to real estate investment trust taxable income) is amended by striking “paragraph (5)” and inserting “paragraphs (5) and (7)”.

#### SEC. 546. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this subpart shall apply to taxable years beginning after December 31, 2000.

(b) TRANSITIONAL RULES RELATED TO SECTION 541.—

(1) EXISTING ARRANGEMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendment made

by section 541 shall not apply to a real estate investment trust with respect to—

(i) securities of a corporation held directly or indirectly by such trust on July 12, 1999,

(ii) securities of a corporation held by an entity on July 12, 1999, if such trust acquires control of such entity pursuant to a written binding contract in effect on such date and at all times thereafter before such acquisition,

(iii) securities received by such trust (or a successor) in exchange for, or with respect to, securities described in clause (i) or (ii) in a transaction in which gain or loss is not recognized, and

(iv) securities acquired directly or indirectly by such trust as part of a reorganization (as defined in section 368(a)(1) of the Internal Revenue Code of 1986) with respect to such trust if such securities are described in clause (i), (ii), or (iii) with respect to any other real estate investment trust.

(B) NEW TRADE OR BUSINESS OR SUBSTANTIAL NEW ASSETS.—Subparagraph (A) shall cease to apply to securities of a corporation as of the first day after July 12, 1999, on which such corporation engages in a substantial new line of business, or acquires any substantial asset, other than—

(i) pursuant to a binding contract in effect on such date and at all times thereafter before the acquisition of such asset,

(ii) in a transaction in which gain or loss is not recognized by reason of section 1031 or 1033 of the Internal Revenue Code of 1986, or

(iii) in a reorganization (as so defined) with another corporation the securities of which are described in paragraph (1)(A) of this subsection.

(C) LIMITATION ON TRANSITION RULES.—Subparagraph (A) shall cease to apply to securities of a corporation held, acquired, or received, directly or indirectly, by a real estate investment trust as of the first day after July 12, 1999, on which such trust acquires any additional securities of such corporation other than—

(i) pursuant to a binding contract in effect on July 12, 1999, and at all times thereafter, or

(ii) in a reorganization (as so defined) with another corporation the securities of which are described in paragraph (1)(A) of this subsection.

(2) TAX-FREE CONVERSION.—If—

(A) at the time of an election for a corporation to become a taxable REIT subsidiary, the amendment made by section 541 does not apply to such corporation by reason of paragraph (1), and

(B) such election first takes effect before January 1, 2004, such election shall be treated as a reorganization qualifying under section 368(a)(1)(A) of such Code.

#### SEC. 547. STUDY RELATING TO TAXABLE REIT SUBSIDIARIES.

The Secretary of the Treasury shall conduct a study to determine how many taxable REIT subsidiaries are in existence and the aggregate amount of taxes paid by such subsidiaries. The Secretary shall submit a report to the Congress describing the results of such study.

#### Subpart B—Health Care REITs

##### SEC. 551. HEALTH CARE REITS.

(a) SPECIAL FORECLOSURE RULE FOR HEALTH CARE PROPERTIES.—Subsection (e) of section 856 of the Internal Revenue Code of 1986 (relating to special rules for foreclosure property) is amended by adding at the end the following new paragraph:

“(6) SPECIAL RULE FOR QUALIFIED HEALTH CARE PROPERTIES.—For purposes of this subsection—

“(A) ACQUISITION AT EXPIRATION OF LEASE.—The term ‘foreclosure property’ shall include any qualified health care property acquired by a real estate investment trust as the result of the termination of a lease of such property (other

than a termination by reason of a default, or the imminence of a default, on the lease).

“(B) GRACE PERIOD.—In the case of a qualified health care property which is foreclosure property solely by reason of subparagraph (A), in lieu of applying paragraphs (2) and (3)—

“(i) the qualified health care property shall cease to be foreclosure property as of the close of the second taxable year after the taxable year in which such trust acquired such property, and

“(ii) if the real estate investment trust establishes to the satisfaction of the Secretary that an extension of the grace period in clause (i) is necessary to the orderly leasing or liquidation of the trust's interest in such qualified health care property, the Secretary may grant one or more extensions of the grace period for such qualified health care property.

Any such extension shall not extend the grace period beyond the close of the 6th year after the taxable year in which such trust acquired such qualified health care property.

“(C) INCOME FROM INDEPENDENT CONTRACTORS.—For purposes of applying paragraph (4)(C) with respect to qualified health care property which is foreclosure property by reason of subparagraph (A) or paragraph (1), income derived or received by the trust from an independent contractor shall be disregarded to the extent such income is attributable to—

“(i) any lease of property in effect on the date the real estate investment trust acquired the qualified health care property (without regard to its renewal after such date so long as such renewal is pursuant to the terms of such lease as in effect on such date), or

“(ii) any lease of property entered into after such date if—

“(I) on such date, a lease of such property from the trust was in effect, and

“(II) under the terms of the new lease, such trust receives a substantially similar or lesser benefit in comparison to the lease referred to in subclause (I).

“(D) QUALIFIED HEALTH CARE PROPERTY.—

“(i) IN GENERAL.—The term ‘qualified health care property’ means any real property (including interests therein), and any personal property incident to such real property, which—

“(I) is a health care facility, or

“(II) is necessary or incidental to the use of a health care facility.

“(ii) HEALTH CARE FACILITY.—For purposes of clause (i), the term ‘health care facility’ means a hospital, nursing facility, assisted living facility, congregate care facility, qualified continuing care facility (as defined in section 7872(g)(4)), or other licensed facility which extends medical or nursing or ancillary services to patients and which, immediately before the termination, expiration, default, or breach of the lease of or mortgage secured by such facility, was operated by a provider of such services which was eligible for participation in the medicare program under title XVIII of the Social Security Act with respect to such facility.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2000.

#### Subpart C—Conformity With Regulated Investment Company Rules

##### SEC. 556. CONFORMITY WITH REGULATED INVESTMENT COMPANY RULES.

(a) DISTRIBUTION REQUIREMENT.—Clauses (i) and (ii) of section 857(a)(1)(A) of the Internal Revenue Code of 1986 (relating to requirements applicable to real estate investment trusts) are each amended by striking “95 percent (90 percent for taxable years beginning before January 1, 1980)” and inserting “90 percent”.

(b) IMPOSITION OF TAX.—Clause (i) of section 857(b)(5)(A) of such Code (relating to imposition of tax in case of failure to meet certain requirements) is amended by striking “95 percent (90

percent in the case of taxable years beginning before January 1, 1980)" and inserting "90 percent".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

**Subpart D—Clarification of Exception From Impermissible Tenant Service Income**

**SEC. 561. CLARIFICATION OF EXCEPTION FOR INDEPENDENT OPERATORS.**

(a) IN GENERAL.—Paragraph (3) of section 856(d) of the Internal Revenue Code of 1986 (relating to independent contractor defined) is amended by adding at the end the following flush sentence:

"In the event that any class of stock of either the real estate investment trust or such person is regularly traded on an established securities market, only persons who own, directly or indirectly, more than 5 percent of such class of stock shall be taken into account as owning any of the stock of such class for purposes of applying the 35 percent limitation set forth in subparagraph (B) (but all of the outstanding stock of such class shall be considered outstanding in order to compute the denominator for purpose of determining the applicable percentage of ownership)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2000.

**Subpart E—Modification of Earnings and Profits Rules**

**SEC. 566. MODIFICATION OF EARNINGS AND PROFITS RULES.**

(a) RULES FOR DETERMINING WHETHER REGULATED INVESTMENT COMPANY HAS EARNINGS AND PROFITS FROM NON-RIC YEAR.—

(1) IN GENERAL.—Subsection (c) of section 852 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(3) DISTRIBUTIONS TO MEET REQUIREMENTS OF SUBSECTION (a)(2)(B).—Any distribution which is made in order to comply with the requirements of subsection (a)(2)(B)—

"(A) shall be treated for purposes of this subsection and subsection (a)(2)(B) as made from earnings and profits which, but for the distribution, would result in a failure to meet such requirements (and allocated to such earnings on a first-in, first-out basis), and

"(B) to the extent treated under subparagraph (A) as made from accumulated earnings and profits, shall not be treated as a distribution for purposes of subsection (b)(2)(D) and section 855."

(2) CONFORMING AMENDMENT.—Subparagraph (A) of section 857(d)(3) of such Code is amended to read as follows:

"(A) shall be treated for purposes of this subsection and subsection (a)(2)(B) as made from earnings and profits which, but for the distribution, would result in a failure to meet such requirements (and allocated to such earnings on a first-in, first-out basis), and".

(b) CLARIFICATION OF APPLICATION OF REIT SPILLOVER DIVIDEND RULES TO DISTRIBUTIONS TO MEET QUALIFICATION REQUIREMENT.—Subparagraph (B) of section 857(d)(3) of such Code is amended by inserting before the period "and section 858".

(c) APPLICATION OF DEFICIENCY DIVIDEND PROCEDURES.—Paragraph (1) of section 852(e) of such Code is amended by adding at the end the following new sentence: "If the determination under subparagraph (A) is solely as a result of the failure to meet the requirements of subsection (a)(2), the preceding sentence shall also apply for purposes of applying subsection (a)(2) to the non-RIC year and the amount referred to in paragraph (2)(A)(i) shall be the portion of the accumulated earnings and profits which resulted in such failure."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 2000.

**Subpart F—Modification of Estimated Tax Rules**

**SEC. 571. MODIFICATION OF ESTIMATED TAX RULES FOR CLOSELY HELD REAL ESTATE INVESTMENT TRUSTS.**

(a) IN GENERAL.—Subsection (e) of section 6655 of the Internal Revenue Code of 1986 (relating to estimated tax by corporations) is amended by adding at the end the following new paragraph:

"(5) TREATMENT OF CERTAIN REIT DIVIDENDS.—

"(A) IN GENERAL.—Any dividend received from a closely held real estate investment trust by any person which owns (after application of subsections (d)(5) and (1)(3)(B) of section 856) 10 percent or more (by vote or value) of the stock or beneficial interests in the trust shall be taken into account in computing annualized income installments under paragraph (2) in a manner similar to the manner under which partnership income inclusions are taken into account.

"(B) CLOSELY HELD REIT.—For purposes of subparagraph (A), the term 'closely held real estate investment trust' means a real estate investment trust with respect to which 5 or fewer persons own (after application of subsections (d)(5) and (1)(3)(B) of section 856) 50 percent or more (by vote or value) of the stock or beneficial interests in the trust."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to estimated tax payments due on or after December 15, 1999.

And the Senate agree to the same.

BILL ARCHER,  
TOM BLILEY,  
DICK ARMEY,

Managers on the Part of the House.

W.V. ROTH, Jr.,  
TRENT LOTT,

Managers on the Part of the Senate.

**JOINT EXPLANATION STATEMENT OF THE COMMITTEE OF CONFERENCE**

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1180) to amend the Social Security Act to expand the availability of health care coverage for working individuals with disabilities, to establish a Ticket to Work and Self-Sufficiency Program in the Social Security Administration to provide such individuals with meaningful opportunities to work, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

**THE TICKET TO WORK AND WORK INCENTIVES IMPROVEMENT ACT OF 1999 EXPLANATION OF THE CONFERENCE AGREEMENT**

**Short Title**

Present law

No provision.

House bill

The "Ticket to Work and Work Incentives Improvement Act of 1999"

Senate amendment

The "Work Incentives Improvement Act of 1999"

Conference agreement

The Senate recedes to the House.

**Long Title**

Present law

No provision.

House bill

To amend the Social Security Act to expand the availability of health care coverage for working individuals with disabilities, to establish a Ticket to Work and Self-Sufficiency Program in the Social Security Administration to provide such individuals with meaningful opportunities to work, and for other purposes.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

**Findings and Purposes**

Present law

No provision.

House bill

No provision.

Senate amendment

Makes a number of findings related to the importance of health care for especially individuals with disabilities, the difficulties they often experience in obtaining proper health care coverage under current program rules, the resulting limited departures from benefit rolls due to recipients' fears of losing coverage, and the potential program savings from providing them better access to coverage if they return to work.

The Senate amendment describes as its purposes to provide individuals with disabilities: (1) health care and employment preparation and placement services to reduce their dependency on cash benefits; (2) Medicaid coverage (through incentives to States to allow them to purchase it) needed to maintain employment; (3) the option of maintaining Medicare coverage while working; and (4) return to work tickets allowing them access to services needed to obtain and retain employment and reduce dependence on cash benefits.

Conference agreement

The House recedes to the Senate with the modification that additional findings are added that address employment opportunities and financial disincentives.

**Title I. Ticket to Work and Self-Sufficiency and Related Provisions**

**Establishment of the Ticket to Work and Self-Sufficiency Program**

**1. Ticket System**

Present law

The Commissioner is required to promptly refer individuals applying for Social Security disability insurance (SSDI) or Supplemental Security Income (SSI) benefits for necessary vocational rehabilitation (VR) services to State vocational rehabilitation (VR) agencies. State VR agencies are established pursuant to Title I of the Rehabilitation Act of 1973, as amended. A State VR agency is reimbursed for the costs of VR services to SSDI and SSI beneficiaries with a single payment after the beneficiary performs "substantial gainful activity" (i.e.,



had earnings in excess of \$700 per month) for a continuous period of at least nine months. The Social Security Administration (SSA) has also established an "alternate participant program" in regulation where private or other public agencies are eligible to receive reimbursement from SSA for providing VR and related services to SSDI and SSI beneficiaries. To participate in the alternate participant program, a beneficiary must first be referred to, and declined by, a State VR agency. Such private and public agencies are reimbursed according to the same procedures as State VR agencies.

#### House bill

The House bill creates a Ticket to Work and Self-Sufficiency program. Under the program, the Commissioner of Social Security is authorized to provide SSDI and disabled SSI beneficiaries with a "ticket" which they may use to obtain employment services, VR services, and other support services (e.g., assistive technology) from an employment network (that is, provider of services) of their choice to enable them to enter the workforce.

Employment networks may include both State VR agencies and private and other public providers. Employment networks would be prohibited from seeking additional compensation from beneficiaries. The bill provides State VR agencies with the option of participating in the program as an employment network or remaining in the current law reimbursement system, including the option to elect either payment method on a case-by-case basis. Services provided by State VR agencies participating in the program would be governed by plans for VR services approved under Title I of the Rehabilitation Act. The Commissioner would issue regulations regarding the relationship between State VR agencies and other employment networks. It is intended that the agreements would be broad-based, rather than case-by-case agreements. The Commissioner is also required to issue regulations to address other implementation issues, including distribution of tickets to beneficiaries.

The bill requires the program to be phased in at sites selected by the Commissioner beginning no later than 1 year after enactment. The program would be fully implemented as soon as practicable, but not later than 3 years after the program begins.

#### Senate amendment

Similar provision, except adds a section on special requirements applicable to cross-referral of ticket holders to certain State agencies.

#### Conference agreement

The Senate recedes to the House.

#### 2. Program Managers

##### Present law

No provision. (See description of present law under "1. Ticket System" above.)

##### House bill

The Commissioner is required to contract with "program managers," i.e., one or more organizations in the private or public sector with expertise and experience in the field of vocational rehabilitation or employment services through a competitive bidding process, to assist the Social Security Administration to administer the program. Agreements between SSA and program managers shall include performance standards, including measures of access of beneficiaries to services. Program managers would be precluded from providing services in their own service area.

Program managers would recruit and recommend employment networks to the Com-

missioner, ensure adequate availability of services to beneficiaries and provide assurances to SSA that employment networks are complying with terms of their agreement. In addition, program managers would provide for changes in employment networks by beneficiaries.

##### Senate amendment

Similar provision, except the Senate amendment places an additional restriction on changes in employment networks by specifying that ticket holders may elect such changes only "for good cause, as determined by the Commissioner." In addition, the Senate amendment does not specify that when changes in employment networks occur the program manager is to (1) reassign the ticket based on the choice of the beneficiary and (2) make a determination regarding the allocation of payments to each employment network.

##### Conference agreement

The Senate recedes to the House.

#### 3. Employment Networks

##### Present law

No provision. (See description of present law under "1. Ticket System" above.)

##### House bill

Employment networks consist of a single provider (public or private) or an association of providers which would assume responsibility for the coordination and delivery of services. Employment networks may include a one-stop delivery system established under Title I of the Workforce Investment Act of 1998. Employment networks are required to demonstrate specific expertise and experience and provide an array of services under the program. The Commissioner would select and enter into agreements with employment networks, provide periodic quality assurance reviews of employment networks, and establish a method for resolving disputes between beneficiaries and employment networks. Employment networks would meet financial reporting requirements as prescribed by the Commissioner, and prepare periodic performance reports which would be provided to beneficiaries holding a ticket and made available to the public.

Employment networks and beneficiaries would together develop an individual employment plan for each beneficiary that provides for informed choice in selecting an employment goal and specific services needed to achieve that goal. A beneficiary's written plan would take effect upon written approval by the beneficiary or beneficiary's representative.

##### Senate amendment

Identical provision regarding qualification, requirements, and reporting involving employment networks. Similar provision regarding individual employment plans, except that the Senate amendment does not require the statement of vocational goals to include "as appropriate, goals for earnings and job advancement."

##### Conference agreement

The Senate recedes to the House.

#### 4. Payment to Employment Networks

##### Present law

No provision. (See description of present law under "1. Ticket System" above.)

##### House bill

The bill authorizes payment to employment networks for outcomes and long-term results through one of two payment systems, each designed to encourage maximum participation by providers to serve beneficiaries:

The outcome payment system would provide payment to employment networks up to 40 percent of the average monthly disability benefit for each month benefits are not payable to the beneficiary due to work, not to exceed 60 months.

The outcome-milestone payment system is similar to the outcome payment system, except it would provide for early payment(s) based on the achievement of one or more milestones directed towards the goal of permanent employment. To ensure the cost-effectiveness of the program, the total amount payable to a service provider under the outcome-milestone payment system must be less than the total amount that would have been payable under the outcome payment system.

The Commissioner is required to periodically review both payment systems and may alter the percentages, milestones, or payment periods to ensure that employment networks have adequate incentive to assist beneficiaries in entering the workforce. In addition, the Commissioner is required to submit a report to Congress with recommendations for methods to adjust payment rates to ensure adequate incentives for the provision of services to individuals with special needs.

The bill requires the Commissioner to report to Congress within 3 years on the adequacy of program incentives for employment networks to provide services to "high risk" beneficiaries.

The bill authorizes transfers from the Social Security Trust Funds to carry out these provisions for Social Security beneficiaries, and authorizes appropriations to the Social Security Administration to carry out these provisions for SSI recipients.

##### Senate amendment

Similar provision, except that the Senate amendment:

Does not require the Commissioner to report to Congress within 3 years on the adequacy of program incentives for employment networks to provide services to "high risk" beneficiaries;

Provides for "Allocation of Costs" to employment networks from the Trust Funds for services rendered (rather than authorizing such amounts be transferred as in the House bill); and

Provides for specific treatment of the costs associated with dually-entitled individuals (that is, individuals receiving both SSI and SSDI benefits).

##### Conference agreement

The Senate recedes to the House.

#### 5. Evaluation

##### Present law

No provision. (See description of present law under "1. Ticket System" above.)

##### House bill

The Commissioner is required to design and conduct a series of evaluations to assess the cost-effectiveness and outcomes of the program. The Commissioner is required to periodically provide to the Congress a detailed report of the program's progress, success, and any modifications needed.

##### Senate amendment

Similar provision, except the Senate amendment does not require evaluations to address the characteristics of ticket holders who are not accepted for services and reasons they were not accepted.

##### Conference agreement

The conference agreement follows the House bill and the Senate amendment with

the modification that the Commissioner is required to provide for independent evaluations of program effectiveness.

#### 6. Advisory Panel

##### *Present law*

No provision. (See description of present law under "1. Ticket System" above.)

##### *House bill*

The bill establishes a Ticket to Work and Work Incentives Advisory Panel consisting of experts representing consumers, providers of services, employers, and employees, at least one-half of whom are individuals with disabilities or representatives of individuals with disabilities. The Advisory Panel is to be composed of twelve members appointed as follows:

Four by the President, not more than two of whom may be of the same political party;

Two by the Speaker of the House of Representatives, in consultation with the Chairman of the Committee on Ways and Means;

Two by the Minority Leader of the House of Representatives, in consultation with ranking minority member of the Committee on Ways and Means;

Two by the Majority Leader of the Senate, in consultation with the Chairman of the Committee on Finance; and

Two members would be appointed by the Minority Leader of the Senate, in consultation with the ranking minority member of the Committee on Finance.

The Panel is to advise the Commissioner and report to the Congress on program implementation including such issues as the establishment of pilot sites, refinements to the program, and the design of program evaluations.

##### *Senate amendment*

Similar provision, except the Senate amendment:

Names the panel the Work Incentives Advisory Panel;

Does not specify that, of the 4 members of the panel appointed by the President, "not more than 2 . . . may be of the same political party";

Provides that the Commissioner, as opposed to the President under the House bill, is to designate whether panel members' initial terms will be 2 or 4 years;

Specifies that "all members appointed to the panel shall have experience or expert knowledge of" several work and disability-related fields, whereas the House bill requires that "at least 8" shall have such experience or knowledge, with at least 2 "representing the interests of" each of the following groups: service recipients, service providers, employers, and employees;

Provides that the Director of the Advisory Panel is to be appointed by the Commissioner in the Senate amendment (compared with by the Advisory Panel in the House bill); and

Provides that the costs of the Panel "shall be paid from amounts made available" for administration of the Title II and Title XVI programs under the Senate amendment (compared with the House bill, which authorizes such amounts from the OASI and DI trust funds and from the general fund of the Treasury for this purpose).

##### *Conference agreement*

The conference agreement follows the House bill, except that all 12 Panel members would be required to have experience or expert knowledge as a recipient, provider, employer, or employee. The agreement is based on the expectation that individuals with disabilities, as opposed to representatives of in-

dividuals with disabilities, would be appointed as Panel members whenever possible. In addition, the terms of initial appointment would be set by the individual making the appointment, with each individual making appointments designating one-half of appointees for a term of 4 years and the other half for a term of 2 years. The conference agreement also provides that the Director of the Panel would be appointed by the Chairperson of the Advisory Panel.

#### **Work Activity Standard as a Basis for Review of an Individual's Disabled Status**

##### *Present law*

Eligibility for Social Security disability insurance (SSDI) cash benefits requires an applicant to meet certain criteria, including the presence of a disability that renders the individual unable to engage in substantial gainful activity. Substantial gainful activity is defined as work that results in earnings exceeding an amount set in regulations (\$700 per month, as of July 1, 1999). Continuing disability reviews (CDRs) are conducted by the Social Security Administration (SSA) to determine whether an individual remains disabled and thus eligible for continued benefits. CDRs may be triggered by evidence of recovery from disability, including return to work. SSA is also required to conduct periodic CDRs every 3 years for beneficiaries with a nonpermanent disability, and at times determined by the Commissioner for beneficiaries with a permanent disability.

##### *House bill*

The bill establishes the standard that CDRs for long-term SSDI beneficiaries (i.e., those receiving disability benefits for at least 24 months) be limited to periodic CDRs. SSA would continue to evaluate work activity to determine whether eligibility for cash benefits continued, but a return to work would not trigger a review of the beneficiary's impairment to determine whether it continued to be disabling. This provision is effective January 1, 2003.

##### *Senate amendment*

Similar provision, except Senate amendment is effective upon enactment.

##### *Conference agreement*

The conference agreement follows the House bill and the Senate amendment, except that the provision would be effective January 1, 2002.

#### **Expedited Reinstatement of Disability Benefits**

##### *Present law*

Individuals entitled to Social Security disability insurance (SSDI) benefits may receive expedited reinstatement of benefits following termination of benefits because of work activity any time during a 36-month extended period of eligibility. That is, benefits may be reinstated without the need for a new application and disability determination. Otherwise, the Commissioner of Social Security must make a new determination of disability before a claimant can reestablish entitlement to disability benefits.

##### *House bill*

The bill establishes that an individual: (1) whose entitlement to SSDI benefits had been terminated on the basis of work activity following completion of an extended period of eligibility; or (2) whose eligibility for SSI benefits (including special SSI eligibility status under section 1619(b) of the Social Security Act) had been terminated following suspension of those benefits for 12 consecutive months on account of excess income resulting from work activity, may request re-

instatement of those benefits without filing a new application. The individual must have become unable to continue working due to his or her medical condition and must file a reinstatement request within the 60-month period following the month of such termination.

While the Commissioner is making a determination pertaining to a reinstatement request, the individual would be eligible for provisional benefits (cash benefits and Medicare or Medicaid, as appropriate) for a period of not more than 6 months. If the Commissioner makes a favorable determination, such individual's prior entitlement to benefits would be reinstated, as would be the prior benefits of his or her dependents who continue to meet the entitlement criteria. If the Commissioner makes an unfavorable determination, provisional benefits would end, but the provisional benefits already paid would not be considered an overpayment. This provision is effective one year after enactment.

##### *Senate amendment*

Identical provision.

##### *Conference agreement*

The conference agreement follows the House bill and the Senate amendment.

#### **Work Incentives Outreach Program**

##### *Present law*

The Social Security Administration prepares and distributes educational materials on work incentives for individuals receiving Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) benefits, including on the Internet. Social Security personnel in its 1,300 field offices are available to answer questions about work incentives. Work incentives currently include: exclusions for impairment-related work expenses; trial work periods during which an individual may continue to receive cash benefits; a 36-month extended period of eligibility during which cash benefits can be reinstated at any time; continued eligibility for Medicaid and/or Medicare; continued payment of benefits while a beneficiary is enrolled in a vocational rehabilitation program; and plans for achieving self-support (PASS).

##### *House bill*

The Commissioner of Social Security is required to establish a community-based work incentives planning and assistance program for the purpose of disseminating accurate information to individuals on work incentives. Under this program, the Commissioner is required to:

Establish a program of grants, cooperative agreements, or contracts to provide benefits planning and assistance (including protection and advocacy services) to individuals with disabilities and outreach to individuals with disabilities who are potentially eligible for work incentive programs; and

Establish a corps of work incentive specialists located within the Social Security Administration.

The Commissioner is required to determine the qualifications of agencies eligible for grants, cooperative agreements, or contracts. Social Security Administration field offices and State Medicaid agencies are deemed ineligible. Eligible organizations may include Centers for Independent Living, protection and advocacy organizations, and client assistance programs (established in accordance with the Rehabilitation Act of 1973, as amended); State Developmental Disabilities Councils (established in accordance

with the Developmental Disabilities Assistance and Bill of Rights Act); and State welfare agencies (funded under Title IV-A of the Social Security Act).

Annual appropriations would not exceed \$23 million for fiscal years 2000–2004. The provision would be effective on enactment. The grant amount in each State would be based on the number of beneficiaries in the State, subject to certain limits.

*Senate amendment*

Identical provision.

*Conference agreement*

The conference agreement follows the House bill and the Senate amendment.

**State Grants for Work Incentives Assistance to Disabled Beneficiaries**

*Present law*

Grants to States to provide assistance to individuals with disabilities are authorized under the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.). Such assistance includes information on and referral to programs and services and legal, administrative, and other appropriate remedies to ensure access to services.

*House bill*

The Commissioner of Social Security is authorized to make grants to existing protection and advocacy programs authorized by the States under the Developmental Disabilities Assistance and Bill of Rights Act. Services would include information and advice about obtaining vocational rehabilitation, employment services, advocacy, and other services a Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) beneficiary may need to secure or regain gainful employment, including applying for and receiving work incentives.

Appropriation would not exceed \$7 million for each of the fiscal years 2000–2004. The provision would be effective upon enactment.

*Senate amendment*

Identical provision.

*Conference agreement*

The conference agreement follows the House bill and the Senate amendment.

**Title II. Expanded Availability of Health Care Services**

**Expanding State Options Under the Medicaid Program for Workers with Disabilities**

*Present law*

Most States are required to provide Medicaid coverage for disabled individuals who are eligible for Supplemental Security Income (SSI). Individuals are considered disabled if they are unable to engage in substantial gainful activity (defined in Federal regulations as earnings of \$700 per month) due to a medically determinable physical or mental impairment which is expected to result in death, or which has lasted or can be expected to last for at least 12 months. Eleven States link Medicaid eligibility to disability definitions which may be more restrictive than SSI criteria.

Eligibility for SSI is determined by certain federally-established income and resource standards. Individuals are eligible for SSI if their “countable” income falls below the Federal maximum monthly SSI benefit (\$500 for an individual, and \$751 for couples in 1999). Not all income is counted for SSI purposes. Excluded from income are the first \$20 of any monthly income (i.e., either unearned, such as social security and other pension benefits, or earned) and the first \$65 of monthly earned income plus one-half of the remaining earnings. The Federal limit on re-

sources is \$2,000 for an individual, and \$3,000 for couples. Certain resources are not counted, including an individual’s home, and the first \$4,500 of the current market value of an automobile.

In addition, States must provide Medicaid coverage for certain individuals under 65 who are working. These persons are referred to as “qualified severely impaired individuals” under age 65. These are disabled and blind individuals whose earnings reach or exceed the basic SSI benefit standard, with disregards as determined by the States. (The current threshold for earnings is \$1,085 per month.) This special eligibility status applies as long as the individual:

Continues to be blind or have a disabling impairment;

Except for earnings, continues to meet all the other requirements for SSI eligibility;

Would be seriously inhibited from continuing or obtaining employment if Medicaid eligibility were to end; and

Has earnings that are not sufficient to provide a reasonable equivalent of benefits from SSI, State supplemental payments (if provided by the State), Medicaid, and publicly funded attendant care that would have been available in the absence of those earnings.

A recent change in law allowed States to increase the income limit for Medicaid coverage of disabled individuals. The Balanced Budget Act of 1997 (P.L.105-33) allowed States to elect to provide Medicaid coverage to disabled persons who otherwise meet SSI eligibility criteria but have income up to 250 percent of the Federal poverty guidelines. Beneficiaries under the more liberal income limit may “buy into” Medicaid by paying premium costs. Premiums are set on a sliding scale based on an individual’s income, as established by the State.

*House bill*

The bill allows States to establish one new optional Medicaid eligibility category: they may provide coverage to individuals with disabilities, aged 16 through 64, who are employed, and who cease to be eligible for Medicaid because their medical condition has improved, and are therefore determined to no longer be eligible for SSI and/or SSDI, but who continue to have a severe medically determinable impairment as defined by regulations of the Secretary of HHS. In addition, States could establish limits on assets, resources, and earned or unearned income for this group that differ from the federal requirements. In order to opt to cover this group, states must provide Medicaid coverage to individuals with disabilities whose income is no more than 250 percent of the federal poverty level, and who would be eligible for SSI, except for earnings.

Individuals would be considered to be employed if they earn at least the Federal minimum wage and work at least 40 hours per month, or are engaged in work that meets criteria for work hours, wages, or other measures established by the State and approved by the Secretary of Health and Human Services (HHS).

Individuals covered under this new option could “buy into” Medicaid coverage by paying premiums or other cost-sharing charges on a sliding fee scale based on their income, as established by the State.

The bill requires that in order to receive federal funds, States must maintain the level of expenditures they expended in the most recent fiscal year prior to enactment of this provision to enable working individuals with disabilities to work.

*Senate amendment*

Allows States to establish one or two new optional Medicaid eligibility categories:

States would have the option to cover individuals with disabilities (aged 16–64) who, except for earnings, would be eligible for SSI. In addition, States could establish limits on assets, resources and earned or unearned income that differ from the federal requirements.

If States provide Medicaid coverage to individuals described in (1) above, they may also provide coverage to the following: Employed persons with disabilities whose medical condition has improved, as described above in the House bill.

Individuals covered under these options could “buy in” to Medicaid coverage by paying premiums or other cost-sharing charges on a sliding-fee scale based on income. The State would be required to make premium or other cost-sharing charges the same for both these two new eligibility groups. States may require individuals with incomes above 250 percent of the federal poverty level to pay the full premium cost. In the case of individuals with incomes between 250 percent and 450 percent of the poverty level, premiums may not exceed 7.5 percent of income. States must require individuals with incomes above \$75,000 per year to pay all of the premium costs. States may choose to subsidize premium costs for such individuals, but they may not use federal matching funds to do so.

*Conference agreement*

House recedes to Senate to include the Senate-passed Medicaid buy-in option, allowing States to permit working individuals with incomes above 250 percent of the Federal poverty level to buy-in to the Medicaid program. The conference agreement provides for an effective date of October 1, 2000.

**Extending Medicare Coverage for OASDI Disability Benefit Recipients**

*Present law*

Social Security Disability Insurance (SSDI) beneficiaries are allowed to test their ability to work for at least nine months without affecting their disability or Medicare benefits. Disability payments stop when a beneficiary has monthly earnings at or above the substantial gainful activity level (\$700) after the 9-month period. If the beneficiary remains disabled but continues working, Medicare can continue for an additional 39 months, for a total of 48 months of coverage.

*House bill*

Effective October 1, 2000, the bill provides for continued Medicare Part A coverage for 6 years beyond the current limit.

The bill requires the General Accounting Office (GAO) to submit a report to Congress (no later than 5 years after enactment) that examines the effectiveness and cost of extending Medicare Part A coverage to working disabled persons without charging them a premium; the necessity and effectiveness of providing the continuation of Medicare coverage to disabled individuals with incomes above the Social Security taxable wage base (\$72,600); the use of a sliding-scale premium for high-income disabled individuals; the viability of an employer buy-in to Medicare; the interrelation between the use of continuation of Medicare coverage and private health insurance coverage; and that recommends whether the Medicare coverage extension should continue beyond the extended period provided under the bill.

*Senate amendment*

The amendment provides that during the 6-year period following enactment of the bill, disabled Social Security beneficiaries who engage in substantial gainful activity

would be eligible for Medicare Part A coverage. Medicare Part A coverage could continue indefinitely after the termination of the 6-year period following enactment of the bill for any individual who is enrolled in the Medicare Part A program for the month that ends the 6-year period, without requiring the beneficiaries to pay premiums. It also provides for conforming amendments to facilitate this change.

The Senate amendment does not require GAO to examine the viability of an employer buy-in to Medicare.

*Conference agreement*

The Senate recedes to the House, but instead of the 6-year extension beyond current law in the House bill, the agreement includes a 4½ year extension.

**Grants to Develop and Establish State Infrastructures to Support Working Individuals with Disabilities**

*Present law*

No provision.

*House bill*

The bill requires the Secretary of HHS to award grants to States to design, establish and operate infrastructures that provide items and services to support working individuals with disabilities, and to conduct outreach campaigns to inform them about the infrastructures. States would be eligible for these grants under the following conditions:

They must provide Medicaid coverage to employed individuals with disabilities whose income does not exceed 250 percent of the Federal poverty level and who would be eligible for Supplemental Security Income (SSI), except for earnings; and

They must provide personal assistance services to assist individuals eligible under the bill to remain employed (that is, earn at least the Federal minimum wage and work at least 40 hours per month, or engage in work that meets criteria for work hours, wages, or other measures established by the State and approved by the Secretary of HHS).

Personal assistance services refers to a range of services provided by one or more persons to assist individuals with disabilities to perform daily activities on and off the job. These services would be designed to increase individuals' control in life.

The Secretary of HHS is required to develop a formula for the award of infrastructure grants. The formula must provide special consideration to States that extend Medicaid coverage to persons who cease to be eligible for SSDI and SSI because of an improvement in their medical condition, but who still have a severe medically determinable impairment and are employed.

Grant amounts to States must be a minimum of \$500,000 per year, and may be up to a maximum of 15 percent of Federal and State Medicaid expenditures for individuals with disabilities whose income does not exceed 250 percent of the Federal poverty level and who would be eligible for SSI, except for earnings; and for individuals who cease to be eligible for Medicaid because of medical improvement.

States would be required to submit an annual report to the Secretary on the use of grant funds. In addition, the report must indicate the percent increase in the number of SSDI and SSI beneficiaries who return to work.

For developing State infrastructure grants, the bill authorizes the following amount for: FY2000, \$20 million; FY2001, \$25 million; FY2002, \$30 million; FY2003, \$35 million; FY2004, \$40 million; and FY2005-10, the

amount of appropriations for the preceding fiscal year plus the percent increase in the CPI for All Urban Consumers for the preceding fiscal year. The bill stipulates budget authority in advance of appropriations.

The Secretary of HHS, in consultation with the Ticket to Work and Work Incentives Advisory Panel established by the bill, is required to make a recommendation by October 1, 2009, to the Committee on Commerce in the House and the Committee on Finance in the Senate regarding whether the grant program should be continued after FY 2010.

*Senate amendment*

Similar provision, except for the following:

States would be eligible for infrastructure grants if they provide Medicaid coverage to individuals with disabilities whose income except for earnings, would make them eligible for SSI, and who meet State-established limits on assets, resources and earned or unearned income;

Special consideration for developing the formula for distribution of infrastructure grants is to be given to States that provide Medicaid benefits to individuals who cease to be eligible for SSDI and SSI because of an improvement in their medical condition, but who have a severe medically determinable impairment and are employed; and The name of the advisory panel is the Work Incentives Advisory Panel.

*Conference agreement*

State participation in the grant programs would be de-linked from adoption of Medicaid optional eligibility categories. Furthermore, the maximum award section would be amended to reflect that delinking. States that do not choose to take up the optional Medicaid eligibility category permitting expansion to individuals with disabilities with incomes up to 250 percent of poverty would be subject to a maximum grant award established by a methodology developed by the Secretary consistent with the limit applied to states that do take up the option. For those states who do take up the option, the maximum will be 10 percent, rather than the 15 percent included in the House and Senate passed bills. These provisions would be effective October 1, 2000, with funding of: FY2001, \$20 million; FY2002, \$25 million; FY2003, \$30 million; FY2004, \$35 million; FY2005, \$40 million; and FY2006-11, the amount of appropriations for the preceding fiscal year plus the percent increase in the CPI for All Urban Consumers for the preceding fiscal year.

The conferees encourage states to exercise the option to permit disabled workers to buy into Medicaid. Providing a Medicaid buy-in option will encourage disabled individuals to return to work without fear of losing their existing health coverage. While election of the Medicaid buy-in option is not a condition of eligibility for infrastructure grants under this section, the conferees urge the Secretary to award such grants with preference for states exercising the buy-in option. Such grants may be used to help finance other State programs facilitating a return to work by disabled individuals, thereby supplementing the Medicaid buy-in benefit as well as other work incentives provided by this Act.

**Demonstration of Coverage under the Medicaid Program of Workers with Potentially Severe Disabilities**

*Present law*

No provision.

*House bill*

The Secretary of HHS is required to approve applications from States to establish

demonstration programs that would provide medical assistance equal to that provided under Medicaid for disabled persons age 16-64 who are "workers with a potentially severe disability." These are individuals who meet a State's definition of physical or mental impairment, who are employed, and who are reasonably expected to meet SSI's definition of blindness or disability if they did not receive Medicaid services.

The Secretary is required to approve demonstration programs if the State meets the following requirements:

The State has elected to provide Medicaid coverage to individuals with disabilities whose income does not exceed 250 percent of the Federal poverty level and who would be eligible for SSI, except for their earnings;

Federal funds are used to supplement State funds used for workers with potentially severe disabilities at the time the demonstration is approved; and

The State conducts an independent evaluation of the demonstration program.

The bill allows the Secretary to approve demonstration programs that operate on a sub-State basis.

For purposes of the demonstration, individuals would be considered to be employed if they earn at least the Federal minimum wage and work at least 40 hours per month, or are engaged in work that meets threshold criteria for work hours, wages, or other measures as defined by the demonstration project and approved by the Secretary.

The bill authorizes \$56 million for the 5-year period beginning FY2000. The bill prohibits any further payments to States beginning in FY2006.

Unexpended funds from previous years may be spent in subsequent years, but only through FY2005. The Secretary is required to allocate funds to States based on their applications and the availability of funds. Funds awarded to States would equal their Federal medical assistance percentage (FMAP) of expenditures for medical assistance to workers with a potentially severe disability.

The Secretary of HHS is required to make a recommendation by October 1, 2002, to the Committee on Commerce in the House and the Committee on Finance in the Senate regarding whether the grant program should be continued after FY2003.

*Senate amendment*

Similar provision, except for the following:

requires States to provide Medicaid coverage to individuals with disabilities whose income except for earnings, would make them eligible for SSI, and who meet State-established limits on assets, resources and earned or unearned income;

authorizes \$72 million for FY 2000, \$74 million for FY 2001, \$78 million for FY2002, and \$81 million for FY 2003;

limits payments to States to no more than \$300 million and prohibits payments beginning in FY2006;

requires States with an approved demonstration to submit an annual report to the Secretary, including data on the total number of persons served by the project, and the number who are "workers with a potentially severe disability." The aggregate amount of payments to States for administrative expenses related to annual reports may not exceed \$5 million.

*Conference agreement*

The conference agreement would authorize the demonstration at \$250 million over 6 years, and eligibility for demonstration funds would be delinked from adoption of Medicaid optional eligibility categories.

These provisions would be effective October 1, 2000. In addition, the House recedes to the Senate on the inclusion on the annual report. The limitation on administrative expenses is reduced to \$2 million. States' definitions of workers with potentially severe disabilities can include individuals with a potentially severe disability that can be traced to congenital birth defects as well as diseases or injuries developed or incurred through illness or accident in childhood or adulthood.

#### **Election by Disabled Beneficiaries to Suspend Medigap Insurance when Covered under a Group Health Plan**

##### *Present law*

No provision.

##### *House bill*

The bill requires Medigap supplemental insurance plans to provide that benefits and premiums of such plans be suspended at the policyholder's request if the policyholder is entitled to Medicare Part A benefits as a disabled individual and is covered under a group health plan (offered by an employer with 20 or more employees). If suspension occurs and the policyholder loses coverage under the group health plan, the Medigap policy is required to be automatically reinstated (as of the date of loss of group coverage) if the policyholder provides notice of the loss of such coverage within 90 days of the date of losing group coverage.

##### *Senate amendment*

Identical provision.

##### *Conference agreement*

The conference agreement follows the House bill and the Senate amendment.

#### **Title III. Demonstration Projects and Studies Extension of Disability Insurance Program Demonstration Project Authority**

##### *Present law*

Section 505 of the Social Security Disability Amendments of 1980, as amended, (42 U.S.C. 1310) provides the Commissioner of Social Security authority to conduct certain demonstration projects. The Commissioner may initiate experiments and demonstration projects to test ways to encourage Social Security Disability Insurance (SSDI) beneficiaries to return to work, and may waive compliance with certain benefit requirements in connection with these projects. This demonstration authority expired on June 9, 1996.

##### *House bill*

Effective as of the date of enactment, the bill extends the demonstration authority for 5 years, and includes authority for demonstration projects involving applicants as well as beneficiaries.

##### *Senate amendment*

The Senate amendment provides for permanent demonstration authority.

##### *Conference agreement*

The Senate recedes to the House.

#### **Demonstration Projects Providing for Reductions in Disability Insurance Benefits Based on Earnings**

##### *Present law*

No provision.

##### *House bill*

The bill would require the Commissioner of Social Security to conduct a demonstration project under which payments to Social Security disability insurance (SSDI) beneficiaries would be reduced \$1 for every \$2 of beneficiary earnings. The Commissioner would be required to annually report to the

Congress on the progress of this demonstration project.

##### *Senate amendment*

Identical provision.

##### *Conference agreement*

The conference agreement follows the House bill and the Senate amendment.

#### **Studies and Reports**

##### *Present law*

No provision

##### *House bill*

#### **1. GAO Report of Existing Disability-Related Employment Incentives**

The bill would direct the General Accounting Office (GAO) to assess the value of existing tax credits and disability-related employment initiatives under the Americans with Disabilities Act and other Federal laws. The report is to be submitted within 3 years to the Senate Committee on Finance and the House Committee on Ways & Means.

#### **2. GAO Report of Existing Coordination of the DI and SSI Programs as They Relate to Individuals Entering or Leaving Concurrent Entitlement**

The bill would direct the General Accounting Office (GAO) to evaluate the coordination under current law of work incentives for individuals eligible for both Social Security disability insurance (SSDI) and Supplemental Security Income (SSI). The report is to be submitted within 3 years to the Senate Committee on Finance and the House Committee on Ways & Means.

#### **3. GAO Report on the Impact of the Substantial Gainful Activity Limit on Return to Work**

The bill would direct the General Accounting Office (GAO) to examine substantial gainful activity limit as a disincentive for return to work. The report is to be submitted within 2 years to the Senate Committee on Finance and the House Committee on Ways & Means.

#### **4. Report on Disregards Under the DI and SSI Programs**

The bill would direct the Commissioner of Social Security to identify all income disregards under the Social Security disability insurance (SSDI) and Supplemental Security Income (SSI) programs; to specify the most recent statutory or regulatory change in each disregard; the current value of any disregard if the disregard had been indexed for inflation; recommend any further changes; and to report certain additional information and recommendations on disregards related to grants, scholarships, or fellowships used in attending any educational institution. The report is to be submitted within 90 days to the Senate Committee on Finance and the House Committee on Ways & Means.

#### **5. GAO Report on SSA's Demonstration Authority**

The bill would direct GAO to assess the Social Security Administration's (SSA) efforts to conduct disability demonstrations and to make a recommendation as to whether SSA's disability demonstration authority should be made permanent. The report is to be submitted within 5 years to the Senate Committee on Finance and the House Committee on Ways and Means.

##### *Senate amendment*

Similar provision, but does not include the GAO report on SSA's demonstration authority.

##### *Conference agreement*

The Senate recedes to the House.

#### **Title IV. Miscellaneous and Technical Amendments**

#### **Technical Amendments Relating to Drug Addicts and Alcoholics**

##### *Present law*

Public Law 104-121 included amendments to the SSDI and SSI disability programs providing that no individual could be considered to be disabled if alcoholism or drug addiction would otherwise be a contributing factor material to the determination of disability. The effective date for all new and pending applications was the date of enactment (March 29, 1996). For those whose claim had been finally adjudicated before the date of enactment, the amendments would apply commencing with benefits for months beginning on or after January 1, 1997. Individuals receiving benefits due to drug addiction or alcoholism can reapply for benefits based on another impairment. If the individual applied within 120 days after the date of enactment, the Commissioner is required to complete the entitlement redetermination by January 1, 1997.

Public Law 104-121 provided for the appointment of representative payees for recipients allowed benefits due to another impairment who also have drug addiction or alcoholism conditions, and the referral of those individuals for treatment.

##### *House bill*

The bill clarifies that the meaning of the term "final adjudication" includes a pending request for administrative or judicial review or a pending readjudication pursuant to class action or court remand. The bill also clarifies that if the Commissioner does not perform the entitlement redetermination before January 1, 1997, that entitlement redetermination must be performed in lieu of a continuing disability review.

The provision also corrects an anomaly that currently excludes all those allowed benefits (due to another impairment) before March 29, 1996, and redetermined before July 1, 1996, from the requirement that a representative payee be appointed and that the beneficiary be referred for treatment.

The amendments are effective as though they had been included in the enactment of Section 105 of Public Law 104-121 on March 29, 1996.

##### *Senate amendment*

Identical provision.

##### *Conference agreement*

The conference agreement follows the House bill and the Senate amendment.

#### **Treatment of Prisoners**

#### **1. Implementation of Prohibition Against Payment of Title II Benefits to Prisoners**

##### *Present law*

Current law prohibits prisoners from receiving Old Age, Survivors and Disability (OASDI) benefits while incarcerated if they are convicted of any crime punishable by imprisonment of more than 1 year. Federal, State, county or local prisons are required to make available, upon written request, the name and Social Security account number of any individual so convicted who is confined in a penal institution or correctional facility.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, commonly referred to as the welfare reform law, requires the Commissioner to make agreements with any interested State or local institution to provide monthly the names, Social Security account numbers, confinement dates, dates of birth, and other identifying information of residents who are SSI recipients. The Commissioner is required to pay

the institution \$400 for each SSI recipient who becomes ineligible as a result if the information is provided within 30 days of incarceration, and \$200 if the information is furnished after 30 days but within 90 days. P.L. 104-193 requires the Commissioner to study the desirability, feasibility, and cost of establishing a system for courts to directly furnish SSA with information regarding court orders affecting SSI recipients, and requiring that State and local jails, prisons, and other institutions that enter into contracts with the Commissioner to furnish the information by means of an electronic or similar data exchange system.

The Commissioner is authorized to provide, on a reimbursable basis, information obtained pursuant to these agreements to any Federal or federally-assisted cash, food, or medical assistance program for the purpose of determining program eligibility.

#### House bill

The House bill amends prisoner provisions in the welfare reform law to include recipients of OASDI benefits in the prisoner reporting system.

The bill requires the Commissioner to enter into an agreement with any interested State or local correctional institution to provide monthly the names, Social Security account numbers, confinement dates, dates of birth, and other identifying information regarding prisoners who receive OASDI benefits. Certain requirements for computer matching agreements would not apply. For each eligible individual who becomes ineligible as a result, the Commissioner would pay the institution an amount up to \$400 if the information is provided within 30 days of incarceration, and up to \$200 if provided after 30 days but within 90 days.

Payments to correctional institutions would be reduced by 50 percent for multiple reports on the same individual who receives both SSI and OASDI benefits. Payments made to the correctional institution would be made from OASI or DI Trust Funds, as appropriate.

The Commissioner is required to provide on a reimbursable basis information obtained pursuant to these agreements to any Federal or federally-assisted cash, food, or medical assistance program for the purpose of determining program eligibility.

These amendments are effective for prisoners whose confinement begins on or after the first day of the fourth month after the month of enactment.

#### Senate amendment

Similar provision, except the Senate amendment:

Authorizes, rather than requires, the Commissioner to provide information obtained under this provision to be shared with other Federal and federally-assisted agencies;

Limits the uses of this information to "eligibility purposes" not including "other administrative purposes" as provided in the House bill; and

Does not include conforming amendments.

#### Conference agreement

The Senate recedes to the House.

## 2. Elimination of Title II Requirement That Confinement Stem From Crime Punishable by Imprisonment For More Than 1 Year

#### Present law

The Social Security Act bars payment of OASDI benefits to prisoners convicted of any crime punishable by imprisonment of more than one year and to those who are institutionalized because they are found guilty but

insane. In addition, the law stipulates that no monthly benefits shall be paid to any person for any month during which the person is an inmate.

#### House bill

This House bill broadens the prohibition of OASDI benefits to prisoners to be identical to those that apply to SSI benefits. In addition, it replaces "an offense punishable by imprisonment for more than 1 year" with "a criminal offense," and includes benefits payable to persons confined to: (1) a penal institution; or (2) other institution if found guilty but insane, regardless of the total duration of the confinement. An exception would be made for prisoners incarcerated for less than 30 days. The provision is effective for prisoners whose confinement begins on or after the first day of the fourth month after the month of enactment.

#### Senate amendment

Similar provision, except restrictions would apply during months throughout which the criminal was incarcerated, rather than in any month during which the criminal was incarcerated as in the House bill. In addition, does not exempt prisoners convicted of crimes punishable by imprisonment of less than 30 days.

#### Conference agreement

The Senate recedes to the House.

## 3. Conforming Title XVI Amendments

#### Present law

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 required the Commissioner of Social Security to enter into an agreement with any interested State or local institution (defined as a jail, prison, other correctional facility, or institution where the individual is confined due to a court order) under which the institution shall provide monthly the names, Social Security numbers, dates of birth, confinement dates, and other identifying information of prisoners. The Commissioner must pay to the institution for each eligible individual who becomes ineligible for SSI \$400 if the information is provided within 30 days of the individual's becoming an inmate. The payment is \$200 if the information is furnished after 30 days but within 90 days.

#### House bill

The amendment is designed to clarify the provision in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 that, in cases in which an inmate receives benefits under both the SSI and Social Security programs, payments to correctional facilities would be restricted to \$400 or \$200, depending on when the report is furnished. The amendment also expands the categories of institutions eligible to report incarceration of prisoners. This provision is effective as of the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 on August 22, 1996.

#### Senate amendment

Similar provision, but limits the uses of this information to "eligibility purposes" not including "other administrative purposes" as provided in the House bill.

#### Conference agreement

The Senate recedes to the House.

## 4. Continued Denial of Benefits to Sex Offenders Remaining Confined to Public Institutions Upon Completion of Prison Terms

#### Present Law

No provision.

#### House bill

The bill prohibits OASDI payments to sex offenders who, on completion of a prison

term, remain confined in a public institution pursuant to a court finding that they continue to be sexually dangerous to others. The provision applies to benefits for months ending after the date of enactment.

#### Senate amendment

Identical provision.

#### Conference agreement

The conference agreement follows the House bill and the Senate amendment.

## Revocation by Members of the Clergy of Exemption From Social Security Coverage

#### Present law

Practicing members of the clergy are automatically covered by Social Security as self-employed workers unless they file for an exemption from Social Security coverage within a period ending with the due date of the tax return for the second taxable year (not necessarily consecutive) in which they begin performing their ministerial services. Members of the clergy seeking the exemption must file statements with their church, order, or licensing or ordaining body stating their opposition to the acceptance of Social Security benefits on religious principles. If elected, this exemption is irrevocable.

#### House bill

The House bill provides a 2-year "open season," beginning January 1, 2000, for members of the clergy who want to revoke their exemption from Social Security. This decision to join Social Security would be irrevocable. A member of the clergy choosing such coverage would become subject to self-employment taxes and his or her subsequent earnings would be credited for Social Security (and Medicare) benefit purposes. The provision is effective January 1, 2000, for a period of 2 years.

#### Senate amendment

Identical provision.

#### Conference agreement

The conference agreement follows the House bill and the Senate amendment.

## Additional Technical Amendment Relating to Cooperative Research or Demonstration Projects Under Titles II and XVI

#### Present law

Current law authorizes Title XVI funding for making grants to States and public and other organizations for paying part of the cost of cooperative research or demonstration projects.

#### House bill

The provision clarifies current law to include agreements or grants concerning Title II of the Social Security Act and is effective as of August 15, 1994.

#### Senate amendment

Identical provision.

#### Conference agreement

The conference agreement follows the House bill and the Senate amendment.

## Authorization for States to Permit Annual Wage Reports

#### Present law

The Social Security Domestic Employment Reform Act of 1994 (P.L. 103-387) changed certain Social Security and Medicare tax rules. Specifically, the Act provided that domestic service employers (that is, individuals employing maids, gardeners, babysitters, and the like) would no longer owe taxes for any domestic employee who earned less than \$1,000 per year from the employer. In addition, the Act simplified certain reporting requirements. Domestic employers



were no longer required to file quarterly returns regarding Social Security and Medicare taxes, nor the annual Federal Unemployment Tax Act (FUTA) return. Instead, all Federal reporting was consolidated on an annual Schedule H filed at the same time as the employer's personal income tax return.

*House bill*

The provision allows States the option of permitting domestic service employers to file annual rather than quarterly wage reports pursuant to section 1137 of the Social Security Act, which provides for an income and eligibility verification system (IEVS) for certain public benefits. This provision is effective as of the date of enactment.

*Senate amendment*

Identical provision.

*Conference agreement*

The conference agreement follows the House bill and the Senate amendment.

**Assessment on Attorneys Who Receive Fees Via the Social Security Administration**

*Present law*

The Commissioner of Social Security, using one of two processes, authorizes the fee that may be charged by an attorney or non-attorney to represent a claimant in administrative proceedings for Social Security, SSI, or Part B Black Lung benefits.

Under the fee agreement process, the representative and claimant submit a signed agreement reflecting the amount of the fee before the date of a favorable decision, and the agreement usually will be approved by the Commissioner if the specified fee does not exceed the lesser of 25 percent of the claimant's past-due benefits or \$4,000. The Commissioner then issues a notice of the maximum fee the representative can charge based on the approved agreement.

Under the fee petition process, the representative submits an itemized list of services and fees after a decision has been issued. The Commissioner will issue a notice of the fees that are approved or disapproved after reviewing the extent and types of services performed, the complexity of the case, and the amount of time spent by the representative on the case.

The Social Security Act and Social Security regulations provide that a representative may not charge or collect, directly or indirectly, a fee in any amount not approved by the Social Security Administration (SSA) or a Federal court. The statute and regulations further provide that SSA may suspend or disqualify from further practice before SSA a representative who breaks the rules governing representatives.

Under programs authorized under title II of the Social Security Act, in favorable decisions in which the claimant is represented by an attorney, the Commissioner must withhold and certify direct payment to the attorney, out of the claimant's past-due benefits, an amount equal to the smaller of: (1) 25 percent of the past-due benefits, or (2) the fee authorized by the Commissioner under either the fee petition or fee agreement process. This payment provision does not apply to SSI benefits and an attorney must look to the SSI beneficiary for payment of the fee. In addition, it does not apply to fees requested by non-attorney representatives.

The costs associated with approving, determining, processing, withholding, and certifying direct payment of attorney fees are currently absorbed in SSA's administrative budget.

*House bill*

The bill requires the Commissioner of Social Security to recover from attorneys' fees

the cost of administering the process used to certify payment of attorneys fees. The assessment would be withheld from the amount payable to the attorney and the attorney would be prohibited from recovering the assessment from the beneficiary. The provision specifies an assessment of 6.3 percent of the approved attorney's fee for FY2000. After FY2000, the percentage would be adjusted by the Commissioner as necessary to achieve full recovery of the costs associated with certifying fees to attorneys.

The provision is applicable to fees required to be certified for payment after December 31, 1999, or the last day of the first month beginning after the month of enactment, whichever is later.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill with the modification that, for calendar years after 2000, the assessment would be set at a rate to achieve full recovery of the costs of determining, processing, withholding, and distributing payment of fees to attorneys, but shall not exceed 6.3 percent of the attorney's fee. The conferees expect that the Commissioner of Social Security will take into account in determining the cost to the Social Security Administration the processing, withholding, and distributing of payments of fees to attorneys. The agreement contemplates ongoing Congressional oversight of the attorney fee assessment process through hearings and requires a study by the General Accounting Office (GAO) to examine the costs of administering the attorney fee provisions with specific estimates of the costs of processing, withholding, and distributing of payment of fees. GAO would also explore the feasibility and advisability of a fixed fee as opposed to an assessment based on a percentage of the attorney's fee and would determine whether the assessment impairs access to representation for applicants. GAO would be required to make recommendations regarding efficiencies that the Commissioner could implement to reduce the cost of determining and certifying fees, the feasibility of linking the collection of the assessment to the timeliness of the payment of fees to attorneys, and the advisability of extending attorney fee disbursement to the Supplemental Security Income program. The agreement also eliminates the requirement that the Commissioner may not certify a fee before the end of the 15-day waiting period, but does not affect any beneficiary's right of appeal.

The authority is provided to the SSA to decrease the user fee assessment, and accordingly it should be decreased to take into account any administrative savings associated with technological improvements or administrative efficiencies implemented by the SSA or if the GAO finds that actual administrative expenses are less than reported by the SSA. The SSA should devote special attention to GAO recommendations related to program improvements or administrative efficiencies.

In addition, the Congress and the Committees of jurisdiction should reconsider the assessment promptly if the GAO finds that such a fee in any way impairs or impacts beneficiaries' ability to obtain and secure legal representation.

**Prevention of Fraud and Abuse Associated with Certain Payments Under the Medicaid Program**

*Present law*

Under the Individuals with Disabilities Education Act (IDEA), public schools must

provide children with disabilities with a free and appropriate public education in the least restrictive educational setting, including special education and health-related services according to their individualized education program (IEP). In order to assist schools in meeting this obligation, under certain circumstances States may turn to Medicaid as a payer for health-related services such as occupational therapy, speech therapy, and physical therapy. Under certain conditions, school districts may directly bill their State Medicaid program for health-related services provided to disabled children enrolled in Medicaid. In addition, a school district may utilize a community-based organization to provide health-related services to disabled children enrolled in Medicaid.

In May of 1999, the Health Care Financing Administration (HCFA) clarified federal policies with respect to reimbursement for school-based health services under Medicaid in three areas: (1) bundled rates for medical services provided to Medicaid-eligible children in schools; (2) Federal matching payments for school health-related transportation services; and (3) school health-related administrative activities.

*House bill*

The bill stipulates that Medicaid payments for school-based services and related administrative costs are not to be made unless certain conditions are met. First, individual items and services may not be bundled unless payment is made under a methodology approved by the Secretary of Health and Human Services (HHS). Similarly, fee-for-service payment for individual items and services and administrative expenses is permitted only when payment does not exceed amounts paid to other entities for the same items, services, or administrative expenses, or is made in accordance with an alternative arrangement approved by the Secretary. This provision also codifies HCFA's policies on transportation services in effect as of May 1999. Finally, the provision delineates specific conditions under which payments for Medicaid covered items, services and administrative expenses can be made when a public agency such as a school district contracts with an entity to conduct claims processing functions.

The bill requires coordination between states, managed care entities and schools related to provision of and payment for Medicaid services provided in school settings. The provision would ensure that local school agencies are able to recoup an appropriate amount of federal financial match when they make expenditures for services for these Medicaid eligible children. Finally, the provision specifies that the Administrator of HCFA, in consultation with State Medicaid and education agencies and local school systems, will develop and implement a uniform methodology for administrative claims made by schools.

*Senate amendment*

No provision.

*Conference agreement*

The House recedes to the Senate.

**Extension of Authority of State Medicaid Fraud Control Units**

*Present law*

Medicaid Fraud Control Units established by State governments as entities separate from the State's Medicaid agency are authorized to investigate and refer for prosecution Medicaid fraud as well as patient abuse in facilities that participate in the Medicaid program.

*House bill*

The bill permits State Medicaid Fraud Control Units to investigate fraud related to any Federal health care program, subject to the approval of the appropriate Inspector General, if the suspected fraud is related to Medicaid fraud. Funds that are recovered would be returned to the relevant Federal health care program or the Medicaid program. Fraud control units would be permitted to investigate patient abuse in non-Medicaid residential health care facilities.

*Senate amendment*

No provision.

*Conference agreement*

The Senate recedes to the House.

**Climate Database Modernization***Present law*

No provision.

*House bill*

No provision.

*Senate amendment*

No provision.

*Conference agreement*

Notwithstanding any other provision of law, the National Oceanic and Atmospheric Administration (NOAA) shall contract for its multi-year program for climate database modernization and utilization in accordance with NIH Image World Contract #263-96-D-0323 and Task Order #56-DKNE-9-98303 which were awarded as a result of fair and open competition conducted in response to NOAA's solicitation IW SOW 1082.

**Special Allowance Adjustment for Student Loans***Present law*

Under the Higher Education Act of 1965, the special allowance paid to lenders for participation in the Federal Family Education Loan Program is pegged to the rate for 91-day Treasury bills.

*House bill*

The bill changes the index for the special allowance from 91-day Treasury bills to that for 3-month commercial paper and would be applicable for payment with respect to any 3-month period beginning on or after January 1, 2000, for loans for which the first disbursement is made after such date.

*Senate amendment*

No provision.

*Conference agreement*

The Senate recedes to the House. In receding to the House on the provision, the conferees wish to note that the Higher Education Act reauthorization (P.L. 105-244) required the establishment of a study group to design and conduct a study to identify and evaluate means of establishing a market mechanism for the delivery of Title IV loans. Not fewer than three different mechanisms were to be identified and evaluated by this group which was to report to the Congress no later than May 15, 2001. The conferees wish to note that the Chairman and Ranking Member of the Committee on Education and the Workforce and the Chairman and Ranking Member of the House Subcommittee on Postsecondary Education, Training and Life Long Learning have endorsed the change to the lender yield calculation on student loans contained in the bill. The proposal would change lender yields from January 1, 2000 through June 30, 2003 at which time the House Education and the Workforce Committee and the Senate Health, Education, Labor, and Pension Committee can appropriately review this item during the consid-

eration of the Higher Education Act reauthorization.

**Schedule for Payments Under SSI State Supplemental Agreements***Present law*

States may supplement the federal Supplemental Security Income (SSI) payment. The Social Security Administration (SSA) administers this state supplement payment for 26 States. Under current regulations, States must reimburse SSA within 5 business days after the monthly supplement payment has been made by SSA.

*House bill*

No provision.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement would change the date for remitting reimbursement by the States to no later than the business day preceding the date SSA pays the monthly benefit. For the payment for the last month of the State's fiscal year, States shall remit the reimbursement by the fifth business day following the date SSA pays the monthly benefit. The agreement also provides for a penalty of 5 percent of the payment and fees due if the payment is received after the specified dates. This provision is effective for monthly benefits paid for months after September 2009 (October 2009 for States with fiscal years that coincide with the Federal fiscal year).

**Bonus Commodities Related to the National School Lunch Act***Present law*

In the School Lunch program, schools are entitled to federal food commodity assistance for each meal they serve. Commodity assistance must equal a specific amount per meal, about 15 cents a meal in the 1999-2000 school year. In addition, when all school lunch program aid (cash and commodities) are added together, the value of commodities purchased to meet the per-meal (15-cent) entitlement—so-called entitlement commodities—must equal 12 percent of the total cash and commodity aid provided. If not, the Agriculture Department is required to buy additional commodities to meet the 12 percent requirement.

The Agriculture Department appropriations laws for fiscal years 1999 and 2000 changed this 12 percent rule temporarily. They require that any commodities acquired by the Agriculture Department for farm support reasons, and then donated to schools in the school lunch program (so-called bonus commodities), be counted when judging whether the 12 percent requirement has been met.

*House bill*

No provision.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement would apply the provisions incorporated in the Agriculture Department appropriations laws for fiscal years 1999 and 2000 to fiscal years 2001 through 2009.

**Simplification of Foster Child Definition Under Earned Income Credit***Present law*

For purposes of the earned income credit ("EIC"), qualifying children may include foster children who reside with the taxpayer for a full year, if the taxpayer cares for the foster children as the taxpayer's own children.

(Code sec. 32(c)(3)(B)(iii)). All EIC qualifying children (including foster children) must either be under the age of 19 (24 if a full-time student) or permanently and totally disabled. There is no requirement that the foster child either be (1) placed in the household by a foster care agency or (2) a relative of the taxpayer.

*House bill*

NO PROVISION.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

For purposes of the EIC, a foster child is defined as a child who (1) is cared for by the taxpayer as if he or she were the taxpayer's own child, (2) has the same principal place of abode as the taxpayer for the taxpayer's entire taxable year, and (3) either is the taxpayer's brother, sister, stepbrother, step-sister, or descendant (including an adopted child) of any such relative, or was placed in the taxpayer's home by an agency of a State or one of its political subdivisions or by a tax-exempt child placement agency licensed by a State.

**Delay of Effective Date of Organ Procurement and Transplantation Network Final Rule***Present law*

No provision.

*House bill*

No provision.

*Senate amendment*

No provision.

*Conference agreement*

The final rule entitled "Organ Procurement and Transplantation Network", promulgated by the Secretary of Health and Human Services on April 2, 1998, together with the amendments to such rules promulgated on October 20, 1999 shall not become effective before the expiration of the 90-day period beginning on the date of enactment of this Act.

**LEGISLATIVE BACKGROUND**

H.R. 1180, the "Ticket to Work and Work Incentives Improvement Act of 1999," was passed by the House on October 19, 1999. In the Senate, the provisions of S. 331 (the "Work Incentives Improvement Act of 1999"), with an amendment, were substituted, and the bill, as amended, passed the Senate on October 21, 1999. The conference agreement to H.R. 1180 contains provisions to amend the Social Security Act to expand the availability of health care coverage for working individuals with disabilities. Provisions of H.R. 2923 ("Extension of Expiring Provisions"),<sup>1</sup> as approved by the Ways and Means Committee on September 28, 1999, and S. 1792, (the "Tax Relief Extension Act of 1999"),<sup>2</sup> as passed by the Senate on October 29, 1999, are included in the conference agreement to H.R. 1180.

**I. EXTENSION OF EXPIRED AND EXPIRING TAX PROVISIONS****A. Extend Minimum Tax Relief for Individuals (secs. 24 and 26 of the Code)***Present Law*

Present law provides for certain non-refundable personal tax credits (i.e., the dependent care credit, the credit for the elderly

<sup>1</sup>The provisions of H.R. 2923 were reported by the House Committee on Ways and Means on September 28, 1999 (H. Rept. 106-344).

<sup>2</sup>The provisions of S. 1792 were reported by the Senate Committee on Finance on October 26, 1999 (S. Rept. 106-201).

and disabled, the adoption credit, the child tax credit, the credit for interest on certain home mortgages, the HOPE Scholarship and Lifetime Learning credits, and the D.C. homebuyer's credit). Except for taxable years beginning during 1998, these credits are allowed only to the extent that the individual's regular income tax liability exceeds the individual's tentative minimum tax, determined without regard to the minimum tax foreign tax credit. For taxable years beginning during 1998, these credits are allowed to the extent of the full amount of the individual's regular tax (without regard to the tentative minimum tax).

An individual's tentative minimum tax is an amount equal to (1) 26 percent of the first \$175,000 (\$87,500 in the case of a married individual filing a separate return) of alternative minimum taxable income ("AMTI") in excess of a phased-out exemption amount and (2) 28 percent of the remaining AMTI. The maximum tax rates on net capital gain used in computing the tentative minimum tax are the same as under the regular tax. AMTI is the individual's taxable income adjusted to take account of specified preferences and adjustments. The exemption amounts are: (1) \$45,000 in the case of married individuals filing a joint return and surviving spouses; (2) \$33,750 in the case of other unmarried individuals; and (3) \$22,500 in the case of married individuals filing a separate return, estates and trusts. The exemption amounts are phased out by an amount equal to 25 percent of the amount by which the individual's AMTI exceeds (1) \$150,000 in the case of married individuals filing a joint return and surviving spouses, (2) \$112,500 in the case of other unmarried individuals, and (3) \$75,000 in the case of married individuals filing separate returns or an estate or a trust. These amounts are not indexed for inflation.

For families with three or more qualifying children, a refundable child credit is provided, up to the amount by which the liability for social security taxes exceeds the amount of the earned income credit (sec. 24(d)). For taxable years beginning after 1998, the refundable child credit is reduced by the amount of the individual's minimum tax liability (i.e., the amount by which the tentative minimum tax exceeds the regular tax liability).

#### House Bill

No provision. H.R. 2923, as approved by the Committee on Ways and Means, makes permanent the provision that allows an individual to offset the entire regular tax liability (without regard to the minimum tax) by the personal nonrefundable credits.

H.R. 2923 repeals the present-law provision that reduces the refundable child credit by the amount of an individual's minimum tax.

*Effective date.*—The provisions of H.R. 2923 are effective for taxable years beginning after December 31, 1998.

#### Senate Amendment

No provision. S. 1792, as passed by the Senate, contains the same provisions as H.R. 2923, except that the provisions apply only to taxable years beginning in 1999 and 2000.

#### Conference Agreement

The conference agreement extends the provision that allows the nonrefundable credits to offset the individual's regular tax liability in full (as opposed to only the amount by which the regular tax exceeds the tentative minimum tax) to taxable years beginning in 1999. For taxable years beginning in 2000 and 2001 the personal nonrefundable credits may

offset both the regular tax and the minimum tax.<sup>3</sup>

Under the conference agreement, the refundable child credit will not be reduced by the amount of an individual's minimum tax in taxable years beginning in 1999, 2000, and 2001.

#### B. Extend Research and Experimentation Tax Credit and Increase Rates for the Alternative Incremental Research Credit (sec. 41 of the Code)

##### Present Law

Section 41 provides for a research tax credit equal to 20 percent of the amount by which a taxpayer's qualified research expenditures for a taxable year exceeded its base amount for that year. The research tax credit expired and generally does not apply to amounts paid or incurred after June 30, 1999.

Except for certain university basic research payments made by corporations, the research tax credit applies only to the extent that the taxpayer's qualified research expenditures for the current taxable year exceed its base amount. The base amount for the current year generally is computed by multiplying the taxpayer's "fixed-base percentage" by the average amount of the taxpayer's gross receipts for the four preceding years. If a taxpayer both incurred qualified research expenditures and had gross receipts during each of at least three years from 1984 through 1988, then its "fixed-base percentage" is the ratio that its total qualified research expenditures for the 1984–1988 period bears to its total gross receipts for that period (subject to a maximum ratio of .16). All other taxpayers (so-called "start-up firms") are assigned a fixed-base percentage of 3 percent. Expenditures attributable to research that is conducted outside the United States do not enter into the credit computation.

Taxpayers are allowed to elect an alternative incremental research credit regime. If a taxpayer elects to be subject to this alternative regime, the taxpayer is assigned a three-tiered fixed-base percentage (that is lower than the fixed-base percentage otherwise applicable under present law) and the credit rate likewise is reduced. Under the alternative credit regime, a credit rate of 1.65 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of 1 percent (i.e., the base amount equals 1 percent of the taxpayer's average gross receipts for the four preceding years) but do not exceed a base amount computed by using a fixed-base percentage of 1.5 percent. A credit rate of 2.2 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of 1.5 percent but do not exceed a base amount computed by using a fixed-base percentage of 2 percent. A credit rate of 2.75 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of 2 percent. An election to be subject to this alternative incremental credit regime may be made for any taxable year beginning after June 30, 1996, and such an election applies to that taxable year and all subsequent years (in the event that the credit subsequently is extended by Congress) unless revoked with the consent of the Secretary of the Treasury.

<sup>3</sup>The foreign tax credit will be allowed before the personal credits in computing the regular tax for these years.

#### House Bill

No provision. However, H.R. 2923, as approved by the Committee on Ways and Means, extends the research tax credit for five years—i.e., generally, for the period July 1, 1999, through June 30, 2004.

In addition, the provision increases the credit rate applicable under the alternative incremental research credit one percentage point per step, that is from 1.65 percent to 2.65 percent when a taxpayer's current-year research expenses exceed a base amount of 1 percent but do not exceed a base amount of 1.5 percent; from 2.2 percent to 3.2 percent when a taxpayer's current-year research expenses exceed a base amount of 1.5 percent but do not exceed a base amount of 2 percent; and from 2.75 percent to 3.75 percent when a taxpayer's current-year research expenses exceed a base amount of 2 percent.

Research tax credits that are attributable to the period beginning on July 1, 1999, and ending on September 30, 2000, may not be taken into account in determining any amount required to be paid for any purpose under the Internal Revenue Code prior to October 1, 2000. On or after October 1, 2000, such credits may be taken into account through the filing of an amended return, an application for expedited refund, an adjustment of estimated taxes, or other means that is allowed by the Code.

*Effective date.*—The extension of the research credit is effective for qualified research expenditures paid or incurred during the period July 1, 1999, through June 30, 2004. The increase in the credit rate under the alternative incremental research credit is effective for taxable years beginning after June 30, 1999. Estimated tax penalties will be waived for the period before July 1, 1999, with respect to any underpayment that is created by reason of the rule allocating research credits to a period based on the ratio of months in such period to the months in the taxable year.

#### Senate Amendment

No provision. However, S. 1792, as passed by the Senate, extends the research tax credit for 18 months—i.e., generally, for the period July 1, 1999, through December 31, 2000.

In addition, S. 1792 increases the credit rate applicable under the alternative incremental research credit one percentage point per step, that is, identical to the H.R. 2923.

Lastly, S. 1792 expands the definition of qualified research to include research undertaken in Puerto Rico and possessions of the United States. However, any employee compensation or other expense claimed for computation of the research credit may not also be claimed for the purpose of any credit allowable under sec. 30A ("Puerto Rico economic activity credit") or under sec. 936 ("Puerto Rico and possession tax credit").

*Effective date.*—The extension of the research credit is effective for qualified research expenditures paid or incurred during the period July 1, 1999, through December 31, 2000. The increase in the credit rate under the alternative incremental research credit is effective for taxable years beginning after June 30, 1999. The expansion of qualified research to include research undertaken in any possession of the United States is effective for qualified research expenditures paid or incurred beginning after June 30, 1999.

#### Conference Agreement

The conference agreement includes the provision of H.R. 2923 by extending the research credit through June 30, 2004.

In addition, the conference agreement follows H.R. 2923 and S. 1792 by increasing the

credit rate applicable under the alternative incremental research credit by one percentage point per step.

The conference agreement follows S. 1792 by expanding the definition of qualified research to include research undertaken in Puerto Rico and possessions of the United States.

Research tax credits that are attributable to the period beginning on July 1, 1999, and ending on September 30, 2000, may not be taken into account in determining any amount required to be paid for any purpose under the Internal Revenue Code prior to October 1, 2000. On or after October 1, 2000, such credits may be taken into account through the filing of an amended return, an application for expedited refund, an adjustment of estimated taxes, or other means that are allowed by the Code. The prohibition on taking credits attributable to the period beginning on July 1, 1999, and ending on September 30, 2000, into account as payments prior to October 1, 2000, extends to the determination of any penalty or interest under the Code. For example, the amount of tax required to be shown on a return that is due prior to October 1, 2000 (excluding extensions) may not be reduced by any such credits. In addition, the conferees clarify that deductions under section 174 are reduced by credits allowable under section 41 as under present law, not withstanding the delay in taking the credit into account created by this provision.

Similarly, research tax credits that are attributable to the period beginning October 1, 2000, and ending on September 30, 2001, may not be taken into account in determining any amount required to be paid for any purpose under the Internal Revenue Code prior to October 1, 2001. On or after October 1, 2001, such credits may be taken into account through the filing of an amended return, an application for expedited refund, an adjustment of estimated taxes, or other means that are allowed by the Code. Likewise, the prohibition on taking credits attributable to the period beginning on October 1, 2000, and ending on September 30, 2001, into account as payments prior to October 1, 2001, extends to the determination of any penalty or interest under the Code.

In extending the research credit, the conferees are concerned that the definition of qualified research be administered in a manner that is consistent with the intent Congress has expressed in enacting and extending the research credit. The conferees urge the Secretary to consider carefully the comments he has and may receive regarding the proposed regulations relating to the computation of the credit under section 41(c) and the definition of qualified research under section 41(d), particularly regarding the "common knowledge" standard. The conferees further note the rapid pace of technological advance, especially in service-related industries, and urge the Secretary to consider carefully the comments he has and may receive in promulgating regulations in connection with what constitutes "internal use" with regard to software expenditures. The conferees also observe that software research, that otherwise satisfies the requirements of section 41, which is undertaken to support the provision of a service, should not be deemed "internal use" solely because the business component involves the provision of a service.

The conferees wish to reaffirm that qualified research is research undertaken for the purpose of discovering new information which is technological in nature. For purposes of applying this definition, new infor-

mation is information that is new to the taxpayer, is not freely available to the general public, and otherwise satisfies the requirements of section 41. Employing existing technologies in a particular field or relying on existing principles of engineering or science is qualified research, if such activities are otherwise undertaken for purposes of discovering information and satisfy the other requirements under section 41.

The conferees also are concerned about unnecessary and costly taxpayer record keeping burdens and reaffirm that eligibility for the credit is not intended to be contingent on meeting unreasonable record keeping requirements.

*Effective date.*—The extension of the research credit is effective for qualified research expenditures paid or incurred during the period July 1, 1999, through June 30, 2004. The increase in the credit rate under the alternative incremental research credit is effective for taxable years beginning after June 30, 1999.

### C. Extend Exceptions under Subpart F for Active Financing Income (secs. 953 and 954 of the Code)

#### Present Law

Under the subpart F rules, 10-percent U.S. shareholders of a controlled foreign corporation ("CFC") are subject to U.S. tax currently on certain income earned by the CFC, whether or not such income is distributed to the shareholders. The income subject to current inclusion under the subpart F rules includes, among other things, foreign personal holding company income and insurance income. In addition, 10-percent U.S. shareholders of a CFC are subject to current inclusion with respect to their shares of the CFC's foreign base company services income (i.e., income derived from services performed for a related person outside the country in which the CFC is organized).

Foreign personal holding company income generally consists of the following: (1) dividends, interest, royalties, rents, and annuities; (2) net gains from the sale or exchange of (a) property that gives rise to the preceding types of income, (b) property that does not give rise to income, and (c) interests in trusts, partnerships, and REMICs; (3) net gains from commodities transactions; (4) net gains from foreign currency transactions; (5) income that is equivalent to interest; (6) income from notional principal contracts; and (7) payments in lieu of dividends.

Insurance income subject to current inclusion under the subpart F rules includes any income of a CFC attributable to the issuing or reinsuring of any insurance or annuity contract in connection with risks located in a country other than the CFC's country of organization. Subpart F insurance income also includes income attributable to an insurance contract in connection with risks located within the CFC's country of organization, as the result of an arrangement under which another corporation receives a substantially equal amount of consideration for insurance of other-country risks. Investment income of a CFC that is allocable to any insurance or annuity contract related to risks located outside the CFC's country of organization is taxable as subpart F insurance income (Prop. Treas. Reg. sec. 1.953-1(a)).

Temporary exceptions from foreign personal holding company income, foreign base company services income, and insurance income apply for subpart F purposes for certain income that is derived in the active conduct of a banking, financing, or similar business, or in the conduct of an insurance busi-

ness (so-called "active financing income"). These exceptions are applicable only for taxable years beginning in 1999.<sup>4</sup>

With respect to income derived in the active conduct of a banking, financing, or similar business, a CFC is required to be predominantly engaged in such business and to conduct substantial activity with respect to such business in order to qualify for the exceptions. In addition, certain nexus requirements apply, which provide that income derived by a CFC or a qualified business unit ("QBU") of a CFC from transactions with customers is eligible for the exceptions if, among other things, substantially all of the activities in connection with such transactions are conducted directly by the CFC or QBU in its home country, and such income is treated as earned by the CFC or QBU in its home country for purposes of such country's tax laws. Moreover, the exceptions apply to income derived from certain cross border transactions, provided that certain requirements are met. Additional exceptions from foreign personal holding company income apply for certain income derived by a securities dealer within the meaning of section 475 and for gain from the sale of active financing assets.

In the case of insurance, in addition to a temporary exception from foreign personal holding company income for certain income of a qualifying insurance company with respect to risks located within the CFC's country of creation or organization, certain temporary exceptions from insurance income and from foreign personal holding company income apply for certain income of a qualifying branch of a qualifying insurance company with respect to risks located within the home country of the branch, provided certain requirements are met under each of the exceptions. Further, additional temporary exceptions from insurance income and from foreign personal holding company income apply for certain income of certain CFCs or branches with respect to risks located in a country other than the United States, provided that the requirements for these exceptions are met.

#### House Bill

No provision, but H.R. 2923, as approved by the Committee on Ways and Means, extends for five years the present-law temporary exceptions from subpart F foreign personal holding company income, foreign base company services income, and insurance income for certain income that is derived in the active conduct of a banking, financing, or similar business, or in the conduct of an insurance business.

*Effective date.*—The provision is effective for taxable years of foreign corporations beginning after December 31, 1999, and before January 1, 2005, and for taxable years of U.S. shareholders with or within which such taxable years of such foreign corporations end.

#### Senate Amendment

No provision, but S. 1792, as passed by the Senate, extends for one year the present-law temporary exceptions from subpart F foreign personal holding company income, foreign base company services income, and insurance income for certain income that is derived in the active conduct of a banking, financing, or similar business, or in the conduct of an insurance business.

<sup>4</sup>Temporary exceptions from the subpart F provisions for certain active financing income applied only for taxable years beginning in 1998. Those exceptions were extended and modified as part of the present-law provision.

*Effective date.*—The provision is effective only for taxable years of foreign corporations beginning in 2000, and for taxable years of U.S. shareholders with or within which such taxable years of such foreign corporations end.

#### Conference Agreement

The conference agreement includes the provision in H.R. 2923 and S. 1792, with a modification to the effective date. The provision in the conference agreement extends for two years the present-law temporary exceptions from subpart F foreign personal holding company income, foreign base company services income, and insurance income for certain income that is derived in the active conduct of a banking, financing, or similar business, or in the conduct of an insurance business.

The conference agreement clarifies that if the temporary exception from subpart F insurance income does not apply for a taxable year beginning after December 31, 2001, section 953(a) is to be applied to such taxable year in the same manner as it would for a taxable year beginning in 1998 (i.e., under the law in effect before amendments to section 953(a) were made in 1998).<sup>5</sup> Thus, for future periods in which the temporary exception relating to insurance income is not in effect, the same-country exception from subpart F insurance income applies as under prior law.

*Effective date.*—The provision is effective for taxable years of foreign corporations beginning after December 31, 1999, and before January 1, 2002, and for taxable years of U.S. shareholders with or within which such taxable years of such foreign corporations end.

#### D. Extend Suspension of Net Income Limitation on Percentage Depletion from Marginal Oil and Gas Wells (sec. 613A of the Code)

##### Present Law

The Code permits taxpayers to recover their investments in oil and gas wells through depletion deductions. In the case of certain properties, the deductions may be determined using the percentage depletion method. Among the limitations that apply in calculating percentage depletion deductions is a restriction that, for oil and gas properties, the amount deducted may not exceed 100 percent of the net income from that property in any year (sec. 613(a)).

Special percentage depletion rules apply to oil and gas production from "marginal" properties (sec. 613A(c)(6)). Marginal production is defined as domestic crude oil and natural gas production from stripper well property or from property substantially all of the production from which during the calendar year is heavy oil. Stripper well property is property from which the average daily production is 15 barrel equivalents or less, determined by dividing the average daily production of domestic crude oil and domestic natural gas from producing wells on the property for the calendar year by the number of wells. Heavy oil is domestic crude oil with a weighted average gravity of 20 degrees API or less (corrected to 60 degrees Fahrenheit). Under one such special rule, the 100-percent-of-net-income limitation does not apply to domestic oil and gas production from marginal properties during taxable years beginning after December 31, 1997, and before January 1, 2000.

<sup>5</sup>For the 1998 amendments, see the Tax and Trade Relief Extension Act of 1998, Division J, Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999, Pub. L. No. 105-277, sec. 1005(b), 112 Stat. 2681 (1998).

#### House Bill

No provision, but H.R. 2923, as approved by the Committee on Ways and Means, extends the present-law suspension of the 100-percent-of-net-income limitation with respect to oil and gas production from marginal wells to include taxable years beginning after December 31, 1999, and before January 1, 2005.

#### Senate Amendment

No provision, but S. 1792, as passed by the Senate, extends the present-law suspension of the 100-percent-of-net-income limitation with respect to oil and gas production from marginal wells to include taxable years beginning after December 31, 1999, and before January 1, 2001.

#### Conference Agreement

The conference agreement includes H.R. 2923 and S. 1792, with a modification providing an extension period through taxable years beginning before January 1, 2002.

#### E. Extend the Work Opportunity Tax Credit (sec. 51 of the Code)

##### Present Law

##### In general

The work opportunity tax credit ("WOTC"), which expired on June 30, 1999, was available on an elective basis for employers hiring individuals from one or more of eight targeted groups. The credit equals 40 percent (25 percent for employment of 400 hours or less) of qualified wages. Generally, qualified wages are wages attributable to service rendered by a member of a targeted group during the one-year period beginning with the day the individual began work for the employer.

The maximum credit per employee is \$2,400 (40% of the first \$6,000 of qualified first-year wages). With respect to qualified summer youth employees, the maximum credit is \$1,200 (40 percent of the first \$3,000 of qualified first-year wages).

The employer's deduction for wages is reduced by the amount of the credit.

##### Targeted groups eligible for the credit

The eight targeted groups are: (1) families eligible to receive benefits under the Temporary Assistance for Needy Families (TANF) Program; (2) high-risk youth; (3) qualified ex-felons; (4) vocational rehabilitation referrals; (5) qualified summer youth employees; (6) qualified veterans; (7) families receiving food stamps; and (8) persons receiving certain Supplemental Security Income (SSI) benefits.

##### Minimum employment period

No credit is allowed for wages paid to employees who work less than 120 hours in the first year of employment.

##### Expiration date

The credit is effective for wages paid or incurred to a qualified individual who began work for an employer before July 1, 1999.

#### House Bill

No provision. However, H.R. 2923, as approved by the Committee on Ways and Means, extends the work opportunity tax credit for 30 months (through December 31, 2001) and clarifies the definition of first year of employment for purposes of the WOTC. H.R. 2923 also directs the Secretary of the Treasury to expedite procedures to allow taxpayers to satisfy their WOTC filing requirements (e.g., Form 8850) by electronic means.

*Effective date.*—The provision is effective for wages paid or incurred to qualified individuals who begin work for the employer on

or after July 1, 1999, and before January 1, 2002.

#### Senate Amendment

No provision. However, S. 1792, as passed by the Senate, extends the work opportunity tax credit for 18 months (through December 31, 2000) and clarifies the definition of first year of employment for purposes of the WOTC.

*Effective date.*—The provision is effective for wages paid or incurred to qualified individuals who begin work for the employer on or after July 1, 1999, and before January 1, 2001.

#### Conference Agreement

The conference agreement provides for a 30-month extension of the work opportunity tax credit. The conference agreement also includes the clarification of the definition of first year of employment for purposes of the WOTC that is included in H.R. 2923 and S. 1792. Finally, the conferees also direct the Secretary of the Treasury to expedite the use of electronic filing of requests for certification under the credit. They believe that participation in the program by businesses should not be discouraged by the requirement that such forms (i.e., the Form 8850) be submitted in paper form.

*Effective date.*—The provision is effective for wages paid or incurred to qualified individuals who begin work for the employer on or after July 1, 1999, and before January 1, 2002.

#### F. Extend the Welfare-To-Work Tax Credit (sec. 51A of the Code)

##### Present Law

The Code provides to employers a tax credit on the first \$20,000 of eligible wages paid to qualified long-term family assistance (AFDC or its successor program) recipients during the first two years of employment. The credit is 35 percent of the first \$10,000 of eligible wages in the first year of employment and 50 percent of the first \$10,000 of eligible wages in the second year of employment. The maximum credit is \$8,500 per qualified employee.

Qualified long-term family assistance recipients are: (1) members of a family that has received family assistance for at least 18 consecutive months ending on the hiring date; (2) members of a family that has received family assistance for a total of at least 18 months (whether or not consecutive) after the date of enactment of this credit if they are hired within 2 years after the date that the 18-month total is reached; and (3) members of a family who are no longer eligible for family assistance because of either Federal or State time limits, if they are hired within 2 years after the Federal or State time limits made the family ineligible for family assistance.

Eligible wages include cash wages paid to an employee plus amounts paid by the employer for the following: (1) educational assistance excludable under a section 127 program (or that would be excludable but for the expiration of sec. 127); (2) health plan coverage for the employee, but not more than the applicable premium defined under section 4980B(f)(4); and (3) dependent care assistance excludable under section 129.

The welfare to work credit is effective for wages paid or incurred to a qualified individual who begins work for an employer on or after January 1, 1998, and before July 1, 1999.

#### House Bill

No provision. However, H.R. 2923, as approved by the Committee on Ways and Means, extends the welfare-to-work tax credit for 30 months.

*Effective date.*—The provision extends the welfare-to-work credit effective for wages paid or incurred to a qualified individual who begins work for an employer on or after July 1, 1999, and before January 1, 2002.

#### Senate Amendment

No provision. However, S. 1792, as passed by the Senate, extends the welfare-to-work tax credit for 18 months.

*Effective date.*—The provision extends the welfare-to-work credit effective for wages paid or incurred to a qualified individual who begins work for an employer on or after July 1, 1999, and before January 1, 2001.

#### Conference Agreement

The conference agreement provides for a 30-month extension of the welfare-to-work tax credit.

*Effective date.*—The provision is effective for wages paid or incurred to a qualified individual who begins work for an employer on or after July 1, 1999, and before January 1, 2002.

### G. Extend Exclusion for Employer-Provided Educational Assistance (sec. 127 of the Code)

#### Present Law

Educational expenses paid by an employer for the employer's employees are generally deductible to the employer.

Employer-paid educational expenses are excludable from the gross income and wages of an employee if provided under a section 127 educational assistance plan or if the expenses qualify as a working condition fringe benefit under section 132. Section 127 provides an exclusion of \$5,250 annually for employer-provided educational assistance. The exclusion expired with respect to graduate courses June 30, 1996. With respect to undergraduate courses, the exclusion for employer-provided educational assistance expires with respect to courses beginning on or after June 1, 2000.

In order for the exclusion to apply, certain requirements must be satisfied. The educational assistance must be provided pursuant to a separate written plan of the employer. The educational assistance program must not discriminate in favor of highly compensated employees. In addition, not more than 5 percent of the amounts paid or incurred by the employer during the year for educational assistance under a qualified educational assistance plan can be provided for the class of individuals consisting of more than 5-percent owners of the employer (and their spouses and dependents).

Educational expenses that do not qualify for the section 127 exclusion may be excludable from income as a working condition fringe benefit.<sup>6</sup> In general, education qualifies as a working condition fringe benefit if the employee could have deducted the education expenses under section 162 if the employee paid for the education. In general, education expenses are deductible by an individual under section 162 if the education (1) maintains or improves a skill required in a trade or business currently engaged in by the taxpayer, or (2) meets the express requirements of the taxpayer's employer, applicable law or regulations imposed as a condition of continued employment. However, education expenses are generally not deductible if they relate to certain minimum educational requirements or to education or training that enables a taxpayer to begin working in a new trade or business.<sup>7</sup>

<sup>6</sup>These rules also apply in the event that section 127 expires and is not reinstated.

<sup>7</sup>In the case of an employee, education expenses (if not reimbursed by the employer) may be claimed as

#### House Bill

No provision.

#### Senate Amendment

No provision. However, S. 1792 as passed by the Senate reinstates the exclusion for employer-provided educational assistance for graduate-level courses, and extends the exclusion, as applied to both undergraduate and graduate-level courses, through 2000. The provision in S. 1792 is effective with respect to undergraduate courses beginning after May 31, 2000, and before January 1, 2001. The provision is effective with respect to graduate-level courses beginning after December 31, 1999, and before January 1, 2001.

#### Conference Agreement

The conference agreement provides that the present-law exclusion for employer-provided educational assistance is extended through December 31, 2001.

*Effective date.*—The provision is effective with respect to courses beginning after May 31, 2000, and before January 1, 2002.

### H. Extend and Modify Tax Credit for Electricity Produced by Wind and Closed-Loop Biomass Facilities (sec. 45 of the Code)

#### Present Law

An income tax credit is allowed for the production of electricity from either qualified wind energy or qualified "closed-loop" biomass facilities (sec. 45). The credit applies to electricity produced by a qualified wind energy facility placed in service after December 31, 1993, and before July 1, 1999, and to electricity produced by a qualified closed-loop biomass facility placed in service after December 31, 1992, and before July 1, 1999. The credit is allowable for production during the 10-year period after a facility is originally placed in service.

Closed-loop biomass is the use of plant matter, where the plants are grown for the sole purpose of being used to generate electricity. It does not include the use of waste materials (including, but not limited to, scrap wood, manure, and municipal or agricultural waste). The credit also is not available to taxpayers who use standing timber to produce electricity. In order to claim the credit, a taxpayer must own the facility and sell the electricity produced by the facility to an unrelated party.

#### House Bill

No provision.

#### Senate Amendment

No provision, but S. 1792, as passed by the Senate, extends the present-law tax credit for electricity produced by wind and closed-loop biomass for facilities placed in service after June 30, 1999, and before December 31, 2000. S. 1792 also modifies the tax credit to include electricity produced from poultry litter, for facilities placed in service after December 31, 1999, and before December 31, 2000. The credit further is expanded to include electricity produced from landfill gas, for electricity produced from facilities placed in service after December 31, 1999, and before December 31, 2000.

Finally, the credit is expanded to include electricity produced from certain other biomass (in addition to closed-loop biomass and poultry waste). This additional biomass is defined as solid, nonhazardous, cellulose waste material which is segregated from

an itemized deduction only if such expenses, along with other miscellaneous deductions, exceed 2 percent of the taxpayer's AGI. The 2-percent floor limitation is disregarded in determining whether an item is excludable as a working condition fringe benefit.

other waste materials and which is derived from forest resources, but not including old-growth timber. The term also includes urban sources such as waste pallets, crates, manufacturing and construction wood waste, and tree trimmings, or agricultural sources (including grain, orchard tree crops, vineyard legumes, sugar, and other crop by-products or residues. The term does not include unsegregated municipal solid waste or paper that commonly is recycled.

In the case of both closed-loop biomass and this additional biomass, the credit applies to electricity produced after December 31, 1999, from facilities that are placed in service before January 1, 2003 (including facilities placed in service before the date of enactment of this provision), and the credit is allowed for production attributable to biomass produced at facilities that are co-fired with coal.

#### Conference Agreement

The conference agreement includes S. 1792, with modifications. First, the extension is limited to electricity from facilities using present-law qualified sources (wind and closed-loop biomass) and from poultry waste facilities (placed in service after December 31, 1999). Second, in the case of all three fuel sources, the extension is limited to facilities placed in service before January 1, 2002. Third, the conference agreement does not include the provisions of the Senate amendment allowing co-firing of closed-loop biomass facilities. Fourth, the conference agreement includes the provisions of the Senate amendment clarifying wind facilities eligible for the credit.

### I. Extend Duty-Free Treatment Under Generalized System of Preferences (GSP)

Title V of the Trade Act of 1974, as amended, grants authority to the President to provide duty-free treatment on imports of eligible articles from designated beneficiary developing countries (BDCs), subject to certain conditions and limitations. To qualify for GSP privileges, each beneficiary country is subject to various mandatory and discretionary eligibility criteria. Import sensitive products are ineligible for GSP. Section 505 (a) of the Trade Act of 1974, as amended, provides that no duty-free treatment under Title V shall remain in effect after June 30, 1999.

#### House Bill

No provision.

#### Senate Amendment

No provision. The Senate amendment to H.R. 434, which passed the Senate on November 3, 1999, reauthorizes GSP retroactively for five years to terminate on June 30, 2004. It also provides that, notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, the entry (a) of any article to which duty-free treatment under Title V of the Trade Act of 1974 would have applied if such entry had been made on June 30, 1999, and (b) that was made after June 30, 1999, and before the date of enactment of this Act, shall be liquidated or reliquidated as free of duty and the Secretary of the Treasury shall refund any duty paid, upon proper request filed with the appropriate customs officer, within 180 days after the date of enactment of this Act.

#### Conference Agreement

The conference agreement would reauthorize the GSP program for 27 months, to expire on September 30, 2001. The proposal provides for refunds, upon request of the importer, of any duty paid between June 30, 1999 and the effective date of this Act. All entries between the effective date of this Act and September 30, 2001 would enter duty-free.



**J. Extend Authority to Issue Qualified Zone Academy Bonds (sec. 1397E of the Code)**

*Present Law*

**Tax-exempt bonds**

Interest on State and local governmental bonds generally is excluded from gross income for Federal income tax purposes if the proceeds of the bonds are used to finance direct activities of these governmental units, including the financing of public schools (sec. 103).

**Qualified zone academy bonds**

As an alternative to traditional tax-exempt bonds, certain States and local governments are given the authority to issue "qualified zone academy bonds." A total of \$400 million of qualified zone academy bonds is authorized to be issued in each of 1998 and 1999. The \$400 million aggregate bond cap is allocated each year to the States according to their respective populations of individuals below the poverty line. Each State, in turn, allocates the credit to qualified zone academies within such State. A State may carry over any unused allocation into subsequent years.

Certain financial institutions that hold qualified zone academy bonds are entitled to a nonrefundable tax credit in an amount equal to a credit rate multiplied by the face amount of the bond (sec. 1397E). A taxpayer holding a qualified zone academy bond on the credit allowance date is entitled to a credit. The credit is includable in gross income (as if it were a taxable interest payment on the bond), and may be claimed against regular income tax and AMT liability.

The Treasury Department sets the credit rate at a rate estimated to allow issuance of qualified zone academy bonds without discount and without interest cost to the issuer. The maximum term of the bond is determined by the Treasury Department, so that the present value of the obligation to repay the bond is 50 percent of the face value of the bond.

"Qualified zone academy bonds" are defined as any bond issued by a State or local government, provided that (1) at least 95 percent of the proceeds are used for the purpose of renovating, providing equipment to, developing course materials for use at, or training teachers and other school personnel in a "qualified zone academy" and (2) private entities have promised to contribute to the qualified zone academy certain equipment, technical assistance or training, employee services, or other property or services with a value equal to at least 10 percent of the bond proceeds.

A school is a "qualified zone academy" if (1) the school is a public school that provides education and training below the college level, (2) the school operates a special academic program in cooperation with businesses to enhance the academic curriculum and increase graduation and employment rates, and (3) either (a) the school is located in one of the 31 designated empowerment zones or one of the 95 enterprise communities designated under Code section 1391, or (b) it is reasonably expected that at least 35 percent of the students at the school will be eligible for free or reduced-cost lunches under the school lunch program established under the National School Lunch Act.

*House Bill*

No provision.

*Senate Amendment*

No provision.

*Conference Agreement*

The conference agreement authorizes up to \$400 million of qualified zone academy bonds

to be issued in each of calendar years 2000 and 2001. Unused QZAB authority arising in 1998 and 1999 may be carried forward by the State or local government entity to which it is (or was) allocated for up to three years after the year in which the authority originally arose. Unused QZAB authority arising in 2000 and 2001 may be carried forward for two years after the year in which it arises. Each issuer is deemed to use the oldest QZAB authority which has been allocated to it first when new bonds are issued.

*Effective date.*—The provision is effective on the date of enactment.

**K. Extend the Tax Credit for First-Time D.C. Homebuyers (sec. 1400C of the Code)**

*Present Law*

**In general**

First-time homebuyers of a principal residence in the District of Columbia are eligible for a nonrefundable tax credit of up to \$5,000 of the amount of the purchase price. The \$5,000 maximum credit applies both to individuals and married couples. Married individuals filing separately can claim a maximum credit of \$2,500 each. The credit phases out for individual taxpayers with adjusted gross income between \$70,000 and \$90,000 (\$110,000–\$130,000 for joint filers). For purposes of eligibility, "first-time homebuyer" means any individual if such individual did not have a present ownership interest in a principal residence in the District of Columbia in the one year period ending on the date of the purchase of the residence to which the credit applies.

**Expiration date**

The credit is scheduled to expire for residences purchased after December 31, 2000.

*House Bill*

No provision.

*Senate Amendment*

No provision.

*Conference Agreement*

The conference agreement provides for a one-year extension of the tax credit for first-time D.C. homebuyers, so that it applies to residences purchased on or before December 31, 2001.

*Effective date.*—The provision is effective for residences purchased after December 31, 2000 and before January 1, 2002.

**L. Extend Expensing of Environmental Remediation Expenditures (sec. 198 of the Code)**

*Present Law*

Taxpayers can elect to treat certain environmental remediation expenditures that would otherwise be chargeable to capital account as deductible in the year paid or incurred (sec. 198). The deduction applies for both regular and alternative minimum tax purposes. The expenditure must be incurred in connection with the abatement or control of hazardous substances at a qualified contaminated site.

A "qualified contaminated site" generally is any property that (1) is held for use in a trade or business, for the production of income, or as inventory; (2) is certified by the appropriate State environmental agency to be located within a targeted area; and (3) contains (or potentially contains) a hazardous substance (so-called "brownfields"). Targeted areas are defined as: (1) empowerment zones and enterprise communities as designated under present law; (2) sites announced before February, 1997, as being subject to one of the 76 Environmental Protection Agency ("EPA") Brownfields Pilots; (3) any population census tract with a poverty rate of 20 percent or more; and (4) certain in-

dustrial and commercial areas that are adjacent to tracts described in (3) above. However, sites that are identified on the national priorities list under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 cannot qualify as targeted areas.

Eligible expenditures are those paid or incurred before January 1, 2001.

*House Bill*

No provision.

*Senate Amendment*

No provision. However, S. 1792, as passed by the Senate, eliminates the targeted area requirement, thereby, expanding eligible sites to include any site containing (or potentially containing) a hazardous substance that is certified by the appropriate State environmental agency, but not those sites that are identified on the national priorities list under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

*Effective date.*—The provision to expand the class of eligible sites is effective for expenditures paid or incurred after December 31, 1999.

*Conference Agreement*

The conference agreement extends present-law expiration date for sec. 198 to include those expenditures paid or incurred before January 1, 2002.

*Effective date.*—The provision to extend the expiration date is effective upon the date of enactment.

**M. TEMPORARY INCREASE IN AMOUNT OF RUM EXCISE TAX THAT IS COVERED OVER TO PUERTO RICO AND THE U.S. VIRGIN ISLANDS (SEC. 7652 OF THE CODE)**

*Present Law*

A \$13.50 per proof gallon<sup>8</sup> excise tax is imposed on distilled spirits produced in or imported (or brought) into the United States. The excise tax does not apply to distilled spirits that are exported from the United States or to distilled spirits that are consumed in U.S. possessions (e.g., Puerto Rico and the Virgin Islands).

The Internal Revenue Code provides for coverover (payment) of \$10.50 per proof gallon of the excise tax imposed on rum imported (or brought) into the United States (without regard to the country of origin) to Puerto Rico and the Virgin Islands. During the five-year period ending on September 30, 1998, the amount covered over was \$11.30 per proof gallon. This temporary increase was enacted in 1993 as transitional relief accompanying a reduction in certain tax benefits for corporations operating in Puerto Rico and the Virgin Islands.

Amounts covered over to Puerto Rico and the Virgin Islands are deposited into the treasuries of the two possessions for use as those possessions determine.

*House Bill*

No provision, but H.R. 984, as approved by the Committee on Ways and Means, increases from \$10.50 to \$13.50 per proof gallon the amount of excise taxes collected on rum brought into the United States that is covered over to Puerto Rico and the U.S. Virgin Islands. H.R. 984 further provides that \$0.50 per proof gallon of the amount covered over to Puerto Rico will be transferred to the Puerto Rico Conservation Trust, a private, non-profit section 501(c)(3) organization operating in Puerto Rico.

*Effective date.*—The provision is effective for excise taxes collected on rum imported or

<sup>8</sup>A proof gallon is a liquid gallon consisting of 50 percent alcohol.

brought into the United States after June 30, 1999 and before October 1, 1999.

#### Senate Amendment

No provision, but H.R. 434, as passed by the Senate, is the same as the House bill.

#### Conference Agreement

The conference agreement reinstates the rum excise tax coverover at a rate of \$13.25 per proof gallon during the period from July 1, 1999, through December 31, 2001.

The conference agreement includes a special rule for payment of the \$2.75 per proof gallon increase in the coverover rate for Puerto Rico and the Virgin Islands. The special rule applies to payments that otherwise would be made in Fiscal Year 2000. Under this special payment rule, amounts attributable to the increase in the coverover rate that would have been transferred to Puerto Rico and the Virgin Islands after June 30, 1999 and before the date of enactment, will be paid on the date which is 15 days after the date of enactment. However, the total amount of this initial payment (aggregated for both possessions) may not exceed \$20 million.

The next payment to Puerto Rico and the Virgin Islands with respect to the \$2.75 increase in the coverover rate will be made on October 1, 2000. This payment will equal the total amount attributable to the increase that otherwise would have been transferred to Puerto Rico and the Virgin Islands before October 1, 2000 (less the payment of up to \$20 million made 15 days after the date of enactment).

Payments for the remainder of the period through December 31, 2001 will be paid as provided under the present-law rules for the \$10.50 per proof gallon coverover rate.

The special payment rule does not affect payments to Puerto Rico and the Virgin Islands with respect to the present-law \$10.50 per proof gallon coverover rate.

Finally, the conferees note that H.R. 984 and H.R. 434, described above, will be considered by the Congress next year. The conferees intend that the special payment rule for Fiscal Year 2000 will be reviewed when that legislation is considered, and that to the extent possible, the delayed payments will be accelerated, or interest on delayed amounts will be provided.

*Effective date.*—The provision is effective on July 1, 1999.

## II. OTHER TIME-SENSITIVE PROVISIONS

### A. Prohibit Disclosure of APAs and APA Background Files (secs. 6103 and 6110 of the Code)

#### Present Law

#### Section 6103

Under section 6103, returns and return information are confidential and cannot be disclosed unless authorized by the Internal Revenue Code.

The Code defines return information broadly. Return information includes:

A taxpayer's identity, the nature, source or amount of income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments;

Whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing; or

Any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this

title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense.<sup>9</sup>

#### Section 6110 and the Freedom of Information Act

With certain exceptions, section 6110 makes the text of any written determination the IRS issues available for public inspection. A written determination is any ruling, determination letter, technical advice memorandum, or Chief Counsel advice. Once the IRS makes the written determination publicly available, the background file documents associated with such written determination are available for public inspection upon written request. The Code defines "background file documents" as any written material submitted in support of the request. Background file documents also include any communications between the IRS and persons outside the IRS concerning such written determination that occur before the IRS issues the determination.

Before making them available for public inspection, section 6110 requires the IRS to delete specific categories of sensitive information from the written determination and background file documents.<sup>10</sup> It also provides judicial and administrative procedures to resolve disputes over the scope of the information the IRS will disclose. In addition, Congress has also wholly exempted certain matters from section 6110's public disclosure requirements.<sup>11</sup> Any part of a written determination or background file that is not disclosed under section 6110 constitutes "return information."<sup>12</sup>

The Freedom of Information Act (FOIA) lists categories of information that a federal agency must make available for public inspection.<sup>13</sup> It establishes a presumption that agency records are accessible to the public. The FOIA, however, also provides nine exemptions from public disclosure. One of those exemptions is for matters specifically exempted from disclosure by a statute other than the FOIA if the exempting statute meets certain requirements.<sup>14</sup> Section 6103

<sup>9</sup> Sec. 6103(b)(2)(A).

<sup>10</sup> Sec. 6110(c) provides for the deletion of identifying information, trade secrets, confidential commercial and financial information and other material.

<sup>11</sup> Sec. 6110(l).

<sup>12</sup> Sec. 6103(b)(2)(B) ("The term 'return information' means . . . any part of any written determination or any background file document relating to such written determination (as such terms are defined in section 6110(b)) which is not open to public inspection under section 6110").

<sup>13</sup> Unless published promptly and offered for sale, an agency must provide for public inspection and copying: (1) final opinions as well as orders made in the adjudication of cases; (2) statements of policy and interpretations not published in the Federal Register; (3) administrative staff manuals and instructions to staff that affect a member of the public; and (4) agency records which have been or the agency expects to be, the subject of repetitive FOIA requests. 5 U.S.C. sec. 552(a)(2). An agency must also publish in the Federal Register: the organizational structure of the agency and procedures for obtaining information under the FOIA; statements describing the functions of the agency and all formal and informal procedures; rules of procedure, descriptions of forms and statements describing all papers, reports and examinations; rules of general applicability and statements of general policy; and amendments, revisions and repeals of the foregoing. 5 U.S.C. sec. 552(a)(1). All other agency records can be sought by FOIA request; however, some records may be exempt from disclosure.

<sup>14</sup> Exemption 3 of the FOIA provides that an agency is not required to disclose matters that are: (3) specifically exempted from disclosure by statute (other than section 552b of this title) provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular

criteria for withholding or refers to particular types of matters to be withheld; \* \* \* 5 U.S.C. §552(b)(3).

<sup>15</sup> Sec. 6110(m).

<sup>16</sup> BNA v. IRS, Nos. 96-376, 96-2820, and 96-1473 (D.D.C.). The Bureau of National Affairs, Inc. (BNA) publishes matters of interest for use by its subscribers. BNA contends that APAs are not return information as they are prospective in application. Thus at the time they are entered into they do not relate to "the determination of the existence, or possible existence, of liability or amount thereof \* \* \*".

<sup>17</sup> The IRS contended that information received or generated as part of the APA process pertains to a taxpayer's liability and therefore was return information as defined in sec. 6103(b)(2)(A). Thus, the information was subject to section 6103's restrictions on the dissemination of returns and return information. Rev. Proc. 91-22, sec. 11, 1991-1 C.B. 526, 534 and Rev. Proc. 96-53, sec. 12, 1996-2 C.B. 375, 386.

<sup>18</sup> IR 1999-05.

have sought to participate as amici in the lawsuit to block the release of APAs. They are concerned that release under section 6110 could expose them to expensive litigation to defend the deletion of the confidential information from their APAs. They are also concerned that the section 6110 procedures are insufficient to protect the confidentiality of their trade secrets and other financial and commercial information.

#### House Bill

No provision, but H.R. 2923, as approved by the Committee on Ways and Means, amends section 6103 to provide that APAs and related background information are confidential return information under section 6103. Related background information is meant to include: the request for an APA, any material submitted in support of the request, and any communication (written or otherwise) prepared or received by the Secretary in connection with an APA, regardless of when such communication is prepared or received. Protection is not limited to agreements actually executed; it includes material received and generated in the APA process that does not result in an executed agreement.

Further, APAs and related background information are not "written determinations" as that term is defined in section 6110. Therefore, the public inspection requirements of section 6110 do not apply to APAs and related background information. A document's incorporation in a background file, however, is not intended to be grounds for not disclosing an otherwise disclosable document from a source other than a background file.

H.R. 2923 requires that the Treasury Department prepare and publish an annual report on the status of APAs. The annual report is to contain the following information:

Information about the structure, composition, and operation of the APA program office;

A copy of each current model APA;

Statistics regarding the amount of time to complete new and renewal APAs;

The number of APA applications filed during such year;

The number of APAs executed to date and for the year;

The number of APA renewals issued to date and for the year;

The number of pending APA requests;

The number of pending APA renewals;

The number of APAs executed and pending (including renewals and renewal requests) that are unilateral, bilateral and multilateral, respectively;

The number of APAs revoked or canceled, and the number of withdrawals from the APA program, to date and for the year;

The number of finalized new APAs and renewals by industry;<sup>19</sup> and  
General descriptions of:

the nature of the relationships between the related organizations, trades, or businesses covered by APAs;

the related organizations, trades, or businesses whose prices or results are tested to determine compliance with the transfer pricing methodology prescribed in the APA;

the covered transactions and the functions performed and risks assumed by the related organizations, trades or businesses involved; methodologies used to evaluate tested parties and transactions and the circumstances leading to the use of those methodologies; critical assumptions;

sources of comparables;

comparable selection criteria and the rationale used in determining such criteria;

the nature of adjustments to comparables and/or tested parties;

the nature of any range agreed to, including information such as whether no range was used and why, whether an inter-quartile range was used, or whether there was a statistical narrowing of the comparables;

adjustment mechanisms provided to rectify results that fall outside of the agreed upon APA range;

the various term lengths for APAs, including rollback years, and the number of APAs with each such term length;

the nature of documentation required; and approaches for sharing of currency or other risks.

In addition, H.R. 2923 requires the IRS to describe, in each annual report, its efforts to ensure compliance with existing APA agreements. The first report is to cover the period January 1, 1991, through the calendar year including the date of enactment. The Treasury Department cannot include any information in the report which would have been deleted under section 6110(c) if the report were a written determination as defined in section 6110. Additionally, the report cannot include any information which can be associated with or otherwise identify, directly or indirectly, a particular taxpayer. The Secretary is expected to obtain input from taxpayers to ensure proper protection of taxpayer information and, if necessary, utilize its regulatory authority to implement appropriate processes for obtaining this input. For purposes of section 6103, the report requirement is treated as part of Title 26.

While H.R. 2923 statutorily requires an annual report, it is not intended to discourage the Treasury Department from issuing other forms of guidance, such as regulations or revenue rulings, consistent with the confidentiality provisions of the Code.

*Effective date.*—The provision is effective on the date of enactment; accordingly, no APAs, regardless of whether executed before or after enactment, or related background file documents, can be released to the public after the date of enactment. It requires the Treasury Department to publish the first annual report no later than March 30, 2000.

#### Senate Amendment

No provision.

#### Conference Agreement

The conference agreement includes H.R. 2923.

#### B. Authority to Postpone Certain Tax-Related Deadlines by Reason of Year 2000 Failures

##### Present Law

There are no specific provisions in present law that would permit the Secretary of the Treasury to postpone tax-related deadlines by reason of Year 2000 (also known as "Y2K") failures. The Secretary is, however, permitted to postpone tax-related deadlines for other reasons. For example, the Secretary may specify that certain deadlines are postponed for a period of up to 90 days in the case of a taxpayer determined to be affected by a Presidentially declared disaster. The deadlines that may be postponed are the same as are postponed by reason of service in a combat zone. The provision does not apply for purposes of determining interest on any overpayment or underpayment.

The suspension of time applies to the following acts: (1) filing any return of income, estate, or gift tax (except employment and withholding taxes); (2) payment of any income, estate, or gift tax (except employment

and withholding taxes); (3) filing a petition with the Tax Court for a redetermination of deficiency, or for review of a decision rendered by the Tax Court; (4) allowance of a credit or refund of any tax; (5) filing a claim for credit or refund of any tax; (6) bringing suit upon any such claim for credit or refund; (7) assessment of any tax; (8) giving or making any notice or demand for payment of any tax, or with respect to any liability to the United States in respect of any tax; (9) collection of the amount of any liability in respect of any tax; (10) bringing suit by the United States in respect of any liability in respect of any tax; and (11) any other act required or permitted under the internal revenue laws specified in regulations prescribed under section 7508 by the Secretary.

#### House Bill

No provision, but H.R. 2923, as approved by the Committee on Ways and Means, contains a provision permitting the Secretary to postpone, on a taxpayer-by-taxpayer basis, certain tax-related deadlines for a period of up to 90 days in the case of a taxpayer that the Secretary determines to have been affected by an actual Y2K related failure. In order to be eligible for relief, taxpayers must have made good faith, reasonable efforts to avoid any Y2K related failures. The relief will be similar to that granted under the Presidentially declared disaster and combat zone provisions, except that employment and withholding taxes also are eligible for relief. The relief will permit the abatement of both penalties and interest.

The relief may apply to the following acts: (1) filing of any return of income, estate, or gift tax, including employment and withholding taxes; (2) payment of any income, estate, or gift tax, including employment and withholding taxes; (3) filing a petition with the Tax Court; (4) allowance of a credit or refund of any tax; (5) filing a claim for credit or refund of any tax; (6) bringing suit upon any such claim for credit or refund; (7) assessment of any tax; (8) giving or making any notice or demand for payment of any tax, or with respect to any liability to the United States in respect of any tax; (9) collection of the amount of any liability in respect of any tax; (10) bringing suit by the United States in respect of any liability in respect of any tax; and (11) any other act required or permitted under the internal revenue laws specified or prescribed by the Secretary. The provision is effective on the date of enactment.

#### Senate Amendment

No provision.

#### Conference Agreement

The conference agreement includes the provision in H.R. 2923.

#### C. Add Certain Vaccines Against Streptococcus Pneumoniae to the List of Taxable Vaccines (secs. 4131 and 4132 of the Code)

##### Present Law

A manufacturer's excise tax is imposed at the rate of 75 cents per dose (sec. 4131) on the following vaccines recommended for routine administration to children: diphtheria, pertussis, tetanus, measles, mumps, rubella, polio, HIB (haemophilus influenza type B), hepatitis B, varicella (chicken pox), and rotavirus gastroenteritis. The tax applied to any vaccine that is a combination of vaccine components equals 75 cents times the number of components in the combined vaccine.

Amounts equal to net revenues from this excise tax are deposited in the Vaccine Injury Compensation Trust Fund ("Vaccine Trust Fund") to finance compensation

<sup>19</sup>This information was previously released in IRS Publication 3218, "IRS Report on Application and Administration of I.R.C. Section 482."

awards under the Federal Vaccine Injury Compensation Program for individuals who suffer certain injuries following administration of the taxable vaccines. This program provides a substitute Federal, "no fault" insurance system for the State-law tort and private liability insurance systems otherwise applicable to vaccine manufacturers and physicians. All persons immunized after September 30, 1988, with covered vaccines must pursue compensation under this Federal program before bringing civil tort actions under State law.

#### House Bill

No provision. However, H.R. 2923, as approved by the Committee on Ways and Means, adds any conjugate vaccine against streptococcus pneumoniae to the list of taxable vaccines. The bill also changes an incorrect effective date enacted in Public Law 105-277 and makes certain other conforming amendments to expenditure purposes to enable certain payments to be made from the Trust Fund.

In addition, the bill directs the General Accounting Office ("GAO") to report to the House Committee on Ways and Means and the Senate Committee on Finance on the operation and management of expenditures from the Vaccine Trust Fund and to advise the Committees on the adequacy of the Vaccine Trust Fund to meet future claims under the Federal Vaccine Injury Compensation Program. The GAO is directed to report its findings to the House Committee on Ways and Means and the Senate Committee on Finance not later than December 31, 1999.

**Effective date.**—The provision is effective for vaccine purchases beginning on the day after the date on which the Centers for Disease Control make final recommendation for routine administration of conjugated streptococcus pneumoniae vaccines to children.

#### Senate Amendment

No provision. However, S. 1792, as passed by the Senate, contains a provision identical to that of H.R. 2923 except that S. 1792 directs the GAO to report its findings to the House Committee on Ways and Means and the Senate Committee on Finance by January 31, 2000.

**Effective date.**—The provision is effective for vaccine purchases beginning on the day after the date on which the Centers for Disease Control make final recommendation for routine administration of conjugated streptococcus pneumoniae vaccines to children. The addition of conjugate streptococcus pneumoniae vaccines to the list of taxable vaccines is contingent upon the inclusion in this legislation of the modifications to Public Law 105-277.

#### Conference Agreement

The conference agreement includes the provision of H.R. 2923 and S. 1792 in adding any conjugate vaccine against streptococcus pneumoniae to the list of taxable vaccines. In addition, the conference agreement follows H.R. 2923 and S. 1792 by changing the effective date enacted in Public Law 105-277 and certain other conforming amendments to expenditure purposes to enable certain payments to be made from the Trust Fund.

The conference report follows S. 1792 by directing that the GAO report its findings to the House Committee on Ways and Means and the Senate Committee on Finance not later than January 31, 2000.

**Effective date.**—The provision is effective for vaccine sales beginning on the day after the date of enactment. No floor stocks tax is to be collected for amounts held for sale on that date. For sales on or before that date

for which delivery is made after such date, the delivery date is deemed to be the sale date. The addition of conjugate streptococcus pneumoniae vaccines to the list of taxable vaccines is contingent upon the inclusion in this legislation of the modifications to Public Law 105-277.

#### D. Delay Requirement that Registered Motor Fuels Terminals Offer Dyed Fuel as a Condition of Registration (sec. 4121 of the Code)

##### Present Law

Excise taxes are imposed on highway motor fuels, including gasoline, diesel fuel, and kerosene, to finance the Highway Trust Fund programs. Subject to limited exceptions, these taxes are imposed on all such fuels when they are removed from registered pipeline or barge terminal facilities, with any tax-exemptions being accomplished by means of refunds to consumers of the fuel.<sup>20</sup> One such exception allows removal of diesel fuel without payment of tax if the fuel is destined for a nontaxable use (e.g., use as heating oil) and is indelibly dyed.

Terminal facilities are not permitted to receive and store non-tax-paid motor fuels unless they are registered with the Internal Revenue Service. Under present law, a prerequisite to registration is that if the terminal offers for sale diesel fuel, it must offer both dyed and undyed diesel fuel. Similarly, if the terminal offers for sale kerosene, it must offer both dyed and undyed kerosene. This "dyed-fuel mandate" was enacted in 1997, to be effective on July 1, 1998. Subsequently, the effective date was delayed until July 1, 2000.

##### House Bill

No provision.

##### Senate Amendment

No provision, but S. 1792, as passed by the Senate, delays the effective date of the dyed-fuel mandate for an additional six months, through December 31, 2000. No other changes are made to the present highway motor fuels excise tax rules.

##### Conference Agreement

The conference agreement includes S. 1792 with a modification delaying the effective date of the dyeing mandate until January 1, 2002.

#### E. Provide That Federal Production Payments to Farmers Are Taxable in the Year Received

##### Present Law

A taxpayer generally is required to include an item in income no later than the time of its actual or constructive receipt, unless such amount properly is accounted for in a different period under the taxpayer's method of accounting. If a taxpayer has an unrestricted right to demand the payment of an amount, the taxpayer is in constructive receipt of that amount whether or not the taxpayer makes the demand and actually receives the payment.

The Federal Agriculture Improvement and Reform Act of 1996 (the "FAIR Act") provides for production flexibility contracts between certain eligible owners and producers and the Secretary of Agriculture. These contracts generally cover crop years from 1996 through 2002. Annual payments are made under such contracts at specific times during the Federal government's fiscal year. Sec-

tion 112(d)(2) of the FAIR Act provides that one-half of each annual payment is to be made on either December 15 or January 15 of the fiscal year, at the option of the recipient.<sup>21</sup> The remaining one-half of the annual payment must be made no later than September 30 of the fiscal year. The Emergency Farm Financial Relief Act of 1998 added section 112(d)(3) to the FAIR Act which provides that all payments for fiscal year 1999 are to be paid at such time or times during fiscal year 1999 as the recipient may specify. Thus, the one-half of the annual amount that would otherwise be required to be paid no later than September 30, 1999 can be specified for payment in calendar year 1998.

These options potentially would have resulted in the constructive receipt (and thus inclusion in income) of the payments to which they relate at the time they could have been exercised, whether or not they were in fact exercised. However, section 2012 of the Tax and Trade Relief Extension Act of 1998 provided that the time a production flexibility contract payment under the FAIR Act properly is includible in income is to be determined without regard to either option, effective for production flexibility contract payments made under the FAIR Act in taxable years ending after December 31, 1995.

##### House Bill

No provision. However, the conference agreement to H.R. 2488 includes a provision to disregard any unexercised option to accelerate the receipt of any payment under a production flexibility contract which is payable under the FAIR Act, as in effect on the date of enactment of the provision, in determining the taxable year in which such payment is properly included in gross income. Options to accelerate payments that are enacted in the future are covered by this rule, providing the payment to which they relate is mandated by the FAIR Act as in effect on the date of enactment of this Act.

The provision in H.R. 2488 does not delay the inclusion of any amount in gross income beyond the taxable period in which the amount is received.

**Effective date.**—The provision in H.R. 2488 is effective on the date of enactment.

##### Senate Amendment

No provision.

##### Conference Agreement

The conference agreement includes the provision in the conference agreement to H.R. 2488.

### III. REVENUE OFFSET PROVISIONS

#### A. Modification of Individual Estimated Tax Safe Harbor (sec. 6654 of the Code)

##### Present Law

Under present law, an individual taxpayer generally is subject to an addition to tax for any underpayment of estimated tax. An individual generally does not have an underpayment of estimated tax if he or she makes timely estimated tax payments at least equal to: (1) 90 percent of the tax shown on the current year's return or (2) 100 percent of the prior year's tax. For taxpayers with a prior year's AGI above \$150,000,<sup>22</sup> however, the rule that allows payment of 100 percent of prior year's tax is modified. Those taxpayers with AGI above \$150,000 generally must make estimated payments based on either (1) 90 percent of the tax shown on the

<sup>20</sup>Tax is imposed before that point if the motor fuel is transferred (other than in bulk) from a refinery or if the fuel is sold to an unregistered party while still held in the refinery or bulk distribution system (e.g., in a pipeline or terminal facility).

<sup>21</sup>This rule applies to fiscal years after 1996. For fiscal year 1996, this payment was to be made not later than 30 days after the production flexibility contract was entered into.

<sup>22</sup>\$75,000 for married taxpayers filing separately.

current year's return or (2) 110 percent of the prior year's tax.

For taxpayers with a prior year's AGI above \$150,000, the prior year's tax safe harbor is modified for estimated tax payments made for taxable years through 2002. For such taxpayers making estimated tax payments based on prior year's tax, payments must be made based on 105 percent of prior year's tax for taxable years beginning in 1999, 106 percent of prior year's tax for taxable years beginning in 2000 and 2001, and 112 percent of prior year's tax for taxable years beginning in 2002.

#### House Bill

No provision, however H.R. 2923, as approved by the Committee on Ways and Means, provides that taxpayers with prior year's AGI above \$150,000 who make estimated tax payments based on prior year's tax must do so based on 108.5 percent of prior year's tax for estimated tax payments made for taxable year 2000.

*Effective date.*—The provision is effective for estimated payments made for taxable years beginning after December 31, 1999, and before January 1, 2001.

#### Senate Amendment

No provision, however, S. 1792, as passed by the Senate, provides that for taxable years taxpayers with prior year's AGI above \$150,000 who make estimated tax payments based on prior year's tax must do so based on 110.5 percent of prior year's tax for estimated tax payments based on prior year's tax must do so based on 112 percent of prior year's tax for estimated tax payments made for taxable year 2004.

*Effective date.*—The provision is effective for estimated payments made for taxable years beginning after December 31, 1999, and before January 1, 2001.

#### Conference Agreement

The conference agreement includes the provision in H.R. 2923 and the provision in S. 1792 with modifications. Taxpayers with prior year's AGI above \$150,000 who make estimated tax payments based on prior year's tax must do so based on 108.6 percent of prior year's tax for estimated tax payments made for taxable year 2000. Taxpayers with prior year's AGI above \$150,000 who make estimated tax payments based on prior year's tax must do so based on 110 percent of prior year's tax for estimated tax payments made for taxable year 2001. The modified safe harbor percentage is not changed for estimated tax payments made for any taxable years other than 2000 and 2001.

*Effective date.*—The provision is effective for estimated tax payments made for taxable years beginning after December 31, 1999, and before January 1, 2002.

#### B. Clarify the Tax Treatment of Income and Losses on Derivatives (sec. 1221 of the Code)

##### Present Law

Capital gain treatment applies to gain on the sale or exchange of a capital asset. Capital assets include property other than (1) stock in trade or other types of assets includible in inventory, (2) property used in a trade or business that is real property or property subject to depreciation, (3) accounts or notes receivable acquired in the ordinary course of a trade or business, (4) certain copyrights (or similar property), and (5) U.S. government publications. Gain or loss on such assets generally is treated as ordinary, rather than capital, gain or loss. Certain other Code sections also treat gains or losses as ordinary. For example, the gains or losses of securities dealers or certain elect-

ing commodities dealers or electing traders in securities or commodities that are subject to "mark-to-market" accounting are treated as ordinary (sec. 475).

Treasury regulations (which were finalized in 1994) require ordinary character treatment for most business hedges and provide timing rules requiring that gains or losses on hedging transactions be taken into account in a manner that matches the income or loss from the hedged item or items. The regulations apply to hedges that meet a standard of "risk reduction" with respect to ordinary property held (or to be held) or certain liabilities incurred (or to be incurred) by the taxpayer and that meet certain identification and other requirements (Treas. Reg. sec. 1.1221-2).

#### House Bill

No provision.

#### Senate Amendment

No provision, but S. 1792, as passed by the Senate, adds three categories to the list of assets the gain or loss on which is treated as ordinary (sec. 1221). The new categories are: (1) commodities derivative financial instruments held by commodities derivatives dealers; (2) hedging transactions; and (3) supplies of a type regularly consumed by the taxpayer in the ordinary course of a taxpayer's trade or business. In defining a hedging transaction, S. 1792 generally codifies the approach taken by the Treasury regulations, but modifies the rules. The "risk reduction" standard of the regulations is broadened to "risk management" with respect to ordinary property held (or to be held) or certain liabilities incurred (or to be incurred), and S. 1792 provides that the definition of a hedging transaction includes a transaction entered into primarily to manage such other risks as the Secretary may prescribe in regulations.

*Effective date.*—The provision in S. 1792 is effective for any instrument held, acquired or entered into, any transaction entered into, and supplies held or acquired on or after the date of enactment.

#### Conference Agreement

The conference agreement includes the provision in S. 1792.

#### C. Expand Reporting of Cancellation of Indebtedness Income (sec. 6050P of the Code)

##### Present Law

Under section 61(a)(12), a taxpayer's gross income includes income from the discharge of indebtedness. Section 6050P requires "applicable entities" to file information returns with the Internal Revenue Service (IRS) regarding any discharge of indebtedness of \$600 or more.

The information return must set forth the name, address, and taxpayer identification number of the person whose debt was discharged, the amount of debt discharged, the date on which the debt was discharged, and any other information that the IRS requires to be provided. The information return must be filed in the manner and at the time specified by the IRS. The same information also must be provided to the person whose debt is discharged by January 31 of the year following the discharge.

"Applicable entities" include: (1) the Federal Deposit Insurance Corporation (FDIC), the Resolution Trust Corporation (RTC), the National Credit Union Administration, and any successor or subunit of any of them; (2) any financial institution (as described in sec. 581 (relating to banks) or sec. 591(a) (relating to savings institutions)); (3) any credit union; (4) any corporation that is a direct or indirect subsidiary of an entity described in

(2) or (3) which, by virtue of being affiliated with such entity, is subject to supervision and examination by a Federal or State agency regulating such entities; and (5) an executive, judicial, or legislative agency (as defined in 31 U.S.C. sec. 3701(a)(4)).

Failures to file correct information returns with the IRS or to furnish statements to taxpayers with respect to these discharges of indebtedness are subject to the same general penalty that is imposed with respect to failures to provide other types of information returns. Accordingly, the penalty for failure to furnish statements to taxpayers is generally \$50 per failure, subject to a maximum of \$100,000 for any calendar year. These penalties are not applicable if the failure is due to reasonable cause and not to willful neglect.

#### House Bill

No provision.

#### Senate Amendment

No provision, but S.1792, as passed by the Senate, requires information reporting on indebtedness discharged by any organization a significant trade or business of which is the lending of money (such as finance companies and credit card companies whether or not affiliated with financial institutions).

*Effective date.*—The provision is effective with respect to discharges of indebtedness after December 31, 1999.

#### Conference Agreement

The conference agreement includes the provision in S. 1792.

#### D. Limit Conversion of Character of Income From Constructive Ownership Transactions (new sec. 1260 of the Code)

##### Present Law

The maximum individual income tax rate on ordinary income and short-term capital gain is 39.6 percent, while the maximum individual income tax rate on long-term capital gain generally is 20 percent. Long-term capital gain means gain from the sale or exchange of a capital asset held more than one year. For this purpose, gain from the termination of a right with respect to property which would be a capital asset in the hands of the taxpayer is treated as capital gain.<sup>23</sup>

A pass-thru entity (such as a partnership) generally is not subject to Federal income tax. Rather, each owner includes its share of a pass-thru entity's income, gain, loss, deduction or credit in its taxable income. Generally, the character of the item is determined at the entity level and flows through to the owners. Thus, for example, the treatment of an item of income by a partnership as ordinary income, short-term capital gain, or long-term capital gain retains its character when reported by each of the partners.

Investors may enter into forward contracts, notional principal contracts, and other similar arrangements with respect to property that provides the investor with the same or similar economic benefits as owning the property directly but with potentially different tax consequences (as to the character and timing of any gain).

#### House Bill

No provision.

#### Senate Amendment

No provision, but S. 1792, as passed by the Senate, includes a provision that limits the amount of long-term capital gain a taxpayer could recognize from certain derivative contracts ("constructive ownership transactions") with respect to certain financial

<sup>23</sup>Section 1234A, as amended by the Taxpayer Relief Act of 1997.

assets. The amount of long-term capital gain is limited to the amount of such gain the taxpayer would have recognized if the taxpayer held the financial asset directly during the term of the derivative contract. Any gain in excess of this amount is treated as ordinary income. An interest charge is imposed on the amount of gain that is treated as ordinary income. The provision does not alter the tax treatment of the long-term capital gain that is not treated as ordinary income.

A taxpayer is treated as having entered into a constructive ownership transaction if the taxpayer (1) holds a long position under a notional principal contract with respect to the financial asset, (2) enters into a forward contract to acquire the financial asset, (3) is the holder of a call option, and the grantor of a put option, with respect to a financial asset, and the options have substantially equal strike prices and substantially contemporaneous maturity dates, or (4) to the extent provided in regulations, enters into one or more transactions, or acquires one or more other positions, that have substantially the same effect of replicating the economic benefits of direct ownership of a financial asset without a significant change in the risk-reward profile with respect to the underlying transaction.<sup>24</sup>

A "financial asset" is defined as (1) any equity interest in a pass-thru entity, and (2) to the extent provided in regulations, any debt instrument and any stock in a corporation that is not a pass-thru entity. A "pass-thru entity" refers to (1) a regulated investment company, (2) a real estate investment trust, (3) a real estate mortgage investment conduit, (4) an S corporation, (5) a partnership, (6) a trust, (7) a common trust fund, (8) a passive foreign investment company,<sup>25</sup> (9) a foreign personal holding company, and (10) a foreign investment company.

The amount of recharacterized gain is calculated as the excess of the amount of long-term capital gain the taxpayer would have had absent this provision over the "net underlying long-term capital gain" attributable to the financial asset. The net underlying long-term capital gain is the amount of net capital gain the taxpayer would have realized if it had acquired the financial asset for its fair market value on the date the constructive ownership transaction was opened and sold the financial asset on the date the transaction was closed (only taking into account gains and losses that would have resulted from a deemed ownership of the financial asset).<sup>26</sup> The long-term capital gains rate on the net underlying long-term capital gain is determined by reference to the individual capital gains rates in section 1(h).

*Example 1:* On January 1, 2000, Taxpayer enters into a three-year notional principal contract (a constructive ownership transaction) with a securities dealer whereby, on the settlement date, the dealer agrees to pay Taxpayer the amount of any increase in the notional value of an interest in an investment partnership (the financial asset). After three

years, the value of the notional principal contract increased by \$200,000, of which \$150,000 is attributable to ordinary income and net short-term capital gain (\$50,000 is attributable to net long-term capital gains). The amount of the net underlying long-term capital gains is \$50,000, and the amount of gain that is recharacterized as ordinary income is \$150,000 (the excess of \$200,000 of long-term gain over the \$50,000 of net underlying long-term capital gain).

An interest charge is imposed on the underpayment of tax for each year that the constructive ownership transaction was open. The interest charge is the amount of interest that would be imposed under section 6601 had the recharacterized gain been included in the taxpayer's gross income during the term of the constructive ownership transaction. The recharacterized gain is treated as having accrued such that the gain in each successive year is equal to the gain in the prior year increased by a constant growth rate<sup>27</sup> during the term of the constructive ownership transaction.

*Example 2:* Same facts as in *example 1*, and assume the applicable Federal rate on December 31, 2002, is six percent. For purposes of calculating the interest charge, Taxpayer must allocate the \$150,000 of recharacterized ordinary income to the three year-term of the constructive ownership transaction as follows: \$47,116.47 is allocated to year 2000, \$49,943.46 is allocated to year 2001, and \$52,940.07 is allocated to year 2002.

A taxpayer is treated as holding a long position under a notional principal contract with respect to a financial asset if the person (1) has the right to be paid (or receive credit for) all or substantially all of the investment yield (including appreciation) on the financial asset for a specified period, and (2) is obligated to reimburse (or provide credit for) all or substantially all of any decline in the value of the financial asset. A forward contract is a contract to acquire in the future (or provide or receive credit for the future value of) any financial asset.

If the constructive ownership transaction is closed by reason of taking delivery of the underlying financial asset, the taxpayer is treated as having sold the contract, option, or other position that is part of the transaction for its fair market value on the closing date. However, the amount of gain that is recognized as a result of having taken delivery is limited to the amount of gain that is treated as ordinary income by reason of this provision (with appropriate basis adjustments for such gain).

The provision does not apply to any constructive ownership transaction if all of the positions that are part of the transaction are marked to market under the Code or regulations. The Treasury Department is authorized to prescribe regulations as necessary to carry out the purposes of the provision, including to (1) permit taxpayers to mark to market constructive ownership transactions in lieu of the provision, and (2) exclude certain forward contracts that do not convey substantially all of the economic return with respect to a financial asset.

No inference is intended as to the proper treatment of a constructive ownership transaction entered into prior to the effective date of this provision.

*Effective date.*—The provision applies to transactions entered into on or after July 12, 1999. For this purpose, a contract, option or any other arrangement that is entered into

or exercised on or after July 12, 1999, which extends or otherwise modifies the terms of a transaction entered into prior to such date is treated as a transaction entered into on or after July 12, 1999.

#### Conference Agreement

The conference agreement includes the provision in S. 1792 with a clarification regarding the effective date. The provision applies to transactions entered into on or after July 12, 1999. For this purpose, it is expected that a contract, option or any other arrangement that is entered into or exercised on or after July 12, 1999, which extends or otherwise modifies the terms of a transaction entered into prior to such date will be treated as a transaction entered into on or after July 12, 1999, unless a party to the transaction other than the taxpayer has, as of July 12, 1999, the exclusive right to extend the terms of the transaction, and the length of such extension does not exceed the first business day following a period of five years from the original termination date under the transaction.

#### E. Treatment of Excess Pension Assets Used for Retiree Health Benefits (sec. 420 of the Code, and secs. 101, 403, and 408 of ERISA)

##### Present Law

Defined benefit pension plan assets generally may not revert to an employer prior to the termination of the plan and the satisfaction of all plan liabilities. A reversion prior to plan termination may constitute a prohibited transaction and may result in disqualification of the plan. Certain limitations and procedural requirements apply to a reversion upon plan termination. Any assets that revert to the employer upon plan termination are includible in the gross income of the employer and subject to an excise tax. The excise tax rate, which may be as high as 50 percent of the reversion, varies depending upon whether or not the employer maintains a replacement plan or makes certain benefit increases. Upon plan termination, the accrued benefits of all plan participants are required to be 100-percent vested.

A pension plan may provide medical benefits to retired employees through a section 401(h) account that is a part of such plan. A qualified transfer of excess assets of a defined benefit pension plan (other than a multiemployer plan) into a section 401(h) account that is a part of such plan does not result in plan disqualification and is not treated as a reversion to the employer or a prohibited transaction. Therefore, the transferred assets are not includible in the gross income of the employer and are not subject to the excise tax on reversions.

Qualified transfers are subject to amount and frequency limitations, use requirements, deduction limitations, vesting requirements and minimum benefit requirements. Excess assets transferred in a qualified transfer may not exceed the amount reasonably estimated to be the amount that the employer will pay out of such account during the taxable year of the transfer for qualified current retiree health liabilities. No more than one qualified transfer with respect to any plan may occur in any taxable year.

The transferred assets (and any income thereon) must be used to pay qualified current retiree health liabilities (either directly or through reimbursement) for the taxable year of the transfer. Transferred amounts generally must benefit all pension plan participants, other than key employees, who are entitled upon retirement to receive retiree medical benefits through the section 401(h) account. Retiree health benefits of key employees may not be paid (directly or indirectly) out of transferred assets. Amounts

<sup>24</sup> It is not expected that leverage in a constructive ownership transaction would change the risk-reward profile with respect to the underlying transaction.

<sup>25</sup> For this purpose, a passive foreign investment company includes an investment company that is also a controlled foreign corporation.

<sup>26</sup> A taxpayer must establish the amount of the net underlying long-term capital gain with clear and convincing evidence; otherwise, the amount is deemed to be zero. To the extent that the economic positions of the taxpayer and the counterparty do not equally offset each other, the amount of the net underlying long-term capital gain may be difficult to establish.

<sup>27</sup> The accrual rate is the applicable Federal rate on the day the transaction closed.



not used to pay qualified current retiree health liabilities for the taxable year of the transfer are to be returned at the end of the taxable year to the general assets of the plan. These amounts are not includible in the gross income of the employer, but are treated as an employer reversion and are subject to a 20-percent excise tax.

No deduction is allowed for (1) a qualified transfer of excess pension assets into a section 401(h) account, (2) the payment of qualified current retiree health liabilities out of transferred assets (and any income thereon) or (3) a return of amounts not used to pay qualified current retiree health liabilities to the general assets of the pension plan.

In order for the transfer to be qualified, accrued retirement benefits under the pension plan generally must be 100-percent vested as if the plan terminated immediately before the transfer.

The minimum benefit requirement requires each group health plan under which applicable health benefits are provided to provide substantially the same level of applicable health benefits for the taxable year of the transfer and the following 4 taxable years. The level of benefits that must be maintained is based on benefits provided in the year immediately preceding the taxable year of the transfer. Applicable health benefits are health benefits or coverage that are provided to (1) retirees who, immediately before the transfer, are entitled to receive such benefits upon retirement and who are entitled to pension benefits under the plan and (2) the spouses and dependents of such retirees.

The provision permitting a qualified transfer of excess pension assets to pay qualified current retiree health liabilities expires for taxable years beginning after December 31, 2000.<sup>28</sup>

#### House Bill

No provision.

#### Senate Amendment

No provision. However, S. 1792, as passed by the Senate, extends the present-law provision permitting qualified transfers of excess defined benefit pension plan assets to provide retiree health benefits under a section 401(h) account through September 30, 2009.<sup>29</sup> In addition, the present-law minimum benefit requirement is replaced by the minimum cost requirement that applied to qualified transfers before December 9, 1994, to section 401(h) accounts. Therefore, each group health plan or arrangement under which applicable health benefits are provided is required to provide a minimum dollar level of retiree health expenditures for the taxable year of the transfer and the following 4 taxable years. The minimum dollar level is the higher of the applicable employer costs for each of the 2 taxable years immediately preceding the taxable year of the transfer. The applicable employer cost for a taxable year is deter-

mined by dividing the employer's qualified current retiree health liabilities by the number of individuals to whom coverage for applicable health benefits was provided during the taxable year.

*Effective date.*—S. 1792, as passed by the Senate, is effective with respect to qualified transfers of excess defined benefit pension plan assets to section 401(h) accounts after December 31, 2000, and before October 1, 2009. The modification of the minimum benefit requirement is effective with respect to transfers after the date of enactment. In addition, S. 1792 contains a transition rule regarding the minimum cost requirement. Under this rule, an employer must satisfy the minimum benefit requirement with respect to a qualified transfer that occurs after the date of enactment during the portion of the cost maintenance period of such transfer that overlaps the benefit maintenance period of a qualified transfer that occurs on or before the date of enactment. For example, suppose an employer (with a calendar year taxable year) made a qualified transfer in 1998. The minimum benefit requirement must be satisfied for calendar years 1998, 1999, 2000, 2001, and 2002. Suppose the employer also makes a qualified transfer in 2000. Then, the employer is required to satisfy the minimum benefit requirement in 2000, 2001, and 2002, and is required to satisfy the minimum cost requirement in 2003 and 2004.

#### Conference Agreement

The conference agreement extends the present-law provision permitting qualified transfers of excess defined benefit pension plan assets to provide retiree health benefits under a section 401(h) account through December 31, 2005.<sup>30</sup> The modification of the minimum benefit requirement is effective with respect to transfers after the date of enactment. The Secretary of the Treasury is directed to prescribe such regulations as may be necessary to prevent an employer who significantly reduces retiree health coverage during the cost maintenance period from being treated as satisfying the minimum cost requirement. In addition, the conference agreement contains a transition rule regarding the minimum cost requirement. Under this rule, an employer must satisfy the minimum benefit requirement with respect to a qualified transfer that occurs after the date of enactment during the portion of the cost maintenance period of such transfer that overlaps the benefit maintenance period of a qualified transfer that occurs on or before the date of enactment. For example, suppose an employer (with a calendar year taxable year) made a qualified transfer in 1998. The minimum benefit requirement must be satisfied for calendar years 1998, 1999, 2000, 2001, and 2002. Suppose the employer also makes a qualified transfer in 2000. Then, the employer is required to satisfy the minimum benefit requirement in 2000, 2001, and 2002, and is required to satisfy the minimum cost requirement in 2003 and 2004.

*Effective date.*—The conference agreement is effective with respect to qualified transfers of excess defined benefit pension plan assets to section 401(h) accounts after December 31, 2000, and before January 1, 2006. The modification of the minimum benefit requirement is effective with respect to transfers after the date of enactment. In addition, the conference agreement contains a transition rule regarding the minimum cost requirement. Under this rule, an employer

must satisfy the minimum benefit requirement with respect to a qualified transfer that occurs after the date of enactment during the portion of the cost maintenance period of such transfer that overlaps the benefit maintenance period of a qualified transfer that occurs on or before the date of enactment. For example, suppose an employer (with a calendar year taxable year) made a qualified transfer in 1998. The minimum benefit requirement must be satisfied for calendar years 1998, 1999, 2000, 2001, and 2002. Suppose the employer also makes a qualified transfer in 2000. Then, the employer is required to satisfy the minimum benefit requirement in 2000, 2001, and 2002, and is required to satisfy the minimum cost requirement in 2003 and 2004.

#### F. Modify Installment Method and Prohibit its Use by Accrual Method Taxpayers (sections 453 and 453A of the Code)

##### Present Law

An accrual method taxpayer is generally required to recognize income when all the events have occurred that fix the right to the receipt of the income and the amount of the income can be determined with reasonable accuracy. The installment method of accounting provides an exception to this general principle of income recognition by allowing a taxpayer to defer the recognition of income from the disposition of certain property until payment is received. Sales to customers in the ordinary course of business are not eligible for the installment method, except for sales of property that is used or produced in the trade or business of farming and sales of timeshares and residential lots if an election to pay interest under section 453(1)(2)(B) is made.

A pledge rule provides that if an installment obligation is pledged as security for any indebtedness, the net proceeds<sup>31</sup> of such indebtedness are treated as a payment on the obligation, triggering the recognition of income. Actual payments received on the installment obligation subsequent to the receipt of the loan proceeds are not taken into account until such subsequent payments exceed the loan proceeds that were treated as payments. The pledge rule does not apply to sales of property used or produced in the trade or business of farming, to sales of timeshares and residential lots where the taxpayer elects to pay interest under section 453(1)(2)(B), or to dispositions where the sales price does not exceed \$150,000.

An additional rule requires the payment of interest on the deferred tax that is attributable to most large installment sales.

##### House Bill

No provision.

##### Senate Amendment

No provision, but S. 1792, as passed by the Senate, generally prohibits the use of the installment method of accounting for dispositions of property that would otherwise be reported for Federal income tax purposes using an accrual method of accounting and modifies the installment sale pledge rule to provide that entering into any arrangement that gives the taxpayer the right to satisfy an obligation with an installment note will be treated in the same manner as the direct pledge of the installment note.

#### Prohibition on the use of the installment method for accrual method dispositions

S. 1792 generally prohibits the use of the installment method of accounting for dispositions of property that would otherwise

<sup>28</sup>Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), provides that plan participants, the Secretaries of Treasury and the Department of Labor, the plan administrator, and each employee organization representing plan participants must be notified 60 days before a qualified transfer of excess assets to a retiree health benefits account occurs (ERISA sec. 103(e)). ERISA also provides that a qualified transfer is not a prohibited transaction under ERISA (ERISA sec. 408(b)(13)) or a prohibited reversion of assets to the employer (ERISA sec. 403(c)(1)). For purposes of these provisions, a qualified transfer is generally defined as a transfer pursuant to section 420 of the Internal Revenue Code, as in effect on January 1, 1995.

<sup>29</sup>S. 1792 modifies the corresponding provisions of ERISA.

<sup>30</sup>The conference agreement modifies the corresponding provisions of ERISA.

<sup>31</sup>The net proceeds equal the gross loan proceeds less the direct expenses of obtaining the loan.

be reported for Federal income tax purposes using an accrual method of accounting. The provision does not change present law regarding the availability of the installment method for dispositions of property used or produced in the trade or business of farming. The provision also does not change present law regarding the availability of the installment method for dispositions of timeshares or residential lots if the taxpayer elects to pay interest under section 453(1).

The provision does not change the ability of a cash method taxpayer to use the installment method. For example, a cash method individual owns all of the stock of a closely held accrual method corporation. This individual sells his stock for cash, a ten year note, and a percentage of the gross revenues of the company for next ten years. The provision does not change the ability of this individual to use the installment method in reporting the gain on the sale of the stock.

#### **Modifications to the pledge rule**

S. 1792 modifies the pledge rule to provide that entering into any arrangement that gives the taxpayer the right to satisfy an obligation with an installment note will be treated in the same manner as the direct pledge of the installment note. For example, a taxpayer disposes of property for an installment note. The disposition is properly reported using the installment method. The taxpayer only recognizes gain as it receives the deferred payment. However, were the taxpayer to pledge the installment note as security for a loan, it would be required to treat the proceeds of such loan as a payment on the installment note, and recognize the appropriate amount of gain. Under the provision, the taxpayer would also be required to treat the proceeds of a loan as payment on the installment note to the extent the taxpayer had the right to "put" or repay the loan by transferring the installment note to the taxpayer's creditor. Other arrangements that have a similar effect would be treated in the same manner.

The modification of the pledge rule applies only to installment sales where the pledge rule of present law applies. Accordingly, the provision does not apply to (1) installment method sales made by a dealer in timeshares and residential lots where the taxpayer elects to pay interest under section 453(1)(2)(B), (2) sales of property used or produced in the trade or business of farming, or (3) dispositions where the sales price does not exceed \$150,000, since such sales are not subject to the pledge rule under present law.

**Effective date.**—The provision is effective for sales or other dispositions entered into on or after the date of enactment.

#### **Conference Agreement**

The conference agreement includes the provision in S. 1792.

#### **G. Denial of Charitable Contribution Deduction for Transfers Associated with**

Split-dollar Insurance Arrangements (new sec. 501(c)(28) of the Code)

##### **Present Law**

Under present law, in computing taxable income, a taxpayer who itemizes deductions generally is allowed to deduct charitable contributions paid during the taxable year. The amount of the deduction allowable for a taxable year with respect to any charitable contribution depends on the type of property contributed, the type of organization to which the property is contributed, and the income of the taxpayer (secs. 170(b) and 170(e)). A charitable contribution is defined to mean a contribution or gift to or for the

use of a charitable organization or certain other entities (sec. 170(c)). The term "contribution or gift" is not defined by statute, but generally is interpreted to mean a voluntary transfer of money or other property without receipt of adequate consideration and with donative intent. If a taxpayer receives or expects to receive a quid pro quo in exchange for a transfer to charity, the taxpayer may be able to deduct the excess of the amount transferred over the fair market value of any benefit received in return, provided the excess payment is made with the intention of making a gift.<sup>32</sup>

In general, no charitable contribution deduction is allowed for a transfer to charity of less than the taxpayer's entire interest (i.e., a partial interest) in any property (sec. 170(f)(3)). In addition, no deduction is allowed for any contribution of \$250 or more unless the taxpayer obtains a contemporaneous written acknowledgment from the donee organization that includes a description and good faith estimate of the value of any goods or services provided by the donee organization to the taxpayer in consideration, whole or part, for the taxpayer's contribution (sec. 170(f)(8)).

#### **House Bill**

No provision.

#### **Senate Amendment**

##### **Deduction denial**

No provision. However, S. 1792, as passed by the Senate, contains a provision<sup>33</sup> that restates present law to provide that no charitable contribution deduction is allowed for purposes of Federal tax, for a transfer to or for the use of an organization described in section 170(c) of the Internal Revenue Code, if in connection with the transfer (1) the organization directly or indirectly pays, or has previously paid, any premium on any "personal benefit contract" with respect to the transferor, or (2) there is an understanding or expectation that any person will directly or indirectly pay any premium on any "personal benefit contract" with respect to the transferor. It is intended that an organization be considered as indirectly paying premiums if, for example, another person pays premiums on its behalf.

A personal benefit contract with respect to the transferor is any life insurance, annuity, or endowment contract, if any direct or indirect beneficiary under the contract is the transferor, any member of the transferor's family, or any other person (other than a section 170(c) organization) designated by the transferor. For example, such a beneficiary would include a trust having a direct or indirect beneficiary who is the transferor or any member of the transferor's family, and would include an entity that is controlled by the transferor or any member of the transferor's family. It is intended that a beneficiary under the contract include any beneficiary under any side agreement relating to the contract. If a transferor contributes a life insurance contract to a section 170(c) organization and designates one or more section 170(c) organizations as the sole beneficiaries under the contract, generally, it is not intended that the deduction denial rule under the provision apply. If, however, there is an outstanding loan under the contract upon the transfer of the contract, then the transferor is considered as a beneficiary.

The fact that a contract also has other direct or indirect beneficiaries (persons who are not the transferor or a family member, or designated by the transferor) does not prevent it from being a personal benefit contract. The provision is not intended to affect situations in which an organization pays premiums under a legitimate fringe benefit plan for employees.

It is intended that a person be considered as an indirect beneficiary under a contract if, for example, the person receives or will receive any economic benefit as a result of amounts paid under or with respect to the contract. For this purpose, as described below, an indirect beneficiary is not intended to include a person that benefits exclusively under a bona fide charitable gift annuity (within the meaning of sec. 501(m)).

In the case of a charitable gift annuity, if the charitable organization purchases an annuity contract issued by an insurance company to fund its obligation to pay the charitable gift annuity, a person receiving payments under the charitable gift annuity is not treated as an indirect beneficiary, provided certain requirements are met. The requirements are that (1) the charitable organization possess all of the incidents of ownership (within the meaning of Treas. Reg. sec. 20.2042-1(c)) under the annuity contract purchased by the charitable organization; (2) the charitable organization be entitled to all the payments under the contract; and (3) the timing and amount of payments under the contract be substantially the same as the timing and amount of payments to each person under the organization's obligation under the charitable gift annuity (as in effect at the time of the transfer to the charitable organization).

Under the provision, an individual's family consists of the individual's grandparents, the grandparents of the individual's spouse, the lineal descendants of such grandparents, and any spouse of such a lineal descendant.

In the case of a charitable gift annuity obligation that is issued under the laws of a State that requires, in order for the charitable gift annuity to be exempt from insurance regulation by that State, that each beneficiary under the charitable gift annuity be named as a beneficiary under an annuity contract issued by an insurance company authorized to transact business in that State, then the foregoing requirements (1) and (2) are treated as if they are met, provided that certain additional requirements are met. The additional requirements are that the State law requirement was in effect on February 8, 1999, each beneficiary under the charitable gift annuity is a bona fide resident of the State at the time the charitable gift annuity was issued, the only persons entitled to payments under the annuity contract issued by the insurance company are persons entitled to payments under the charitable gift annuity when it was issued, and (as required by clause (iii) of subparagraph (D) of the provision) the timing and amount of payments under the annuity contract to each person are substantially the same as the timing and amount of payments to the person under the charitable gift annuity (as in effect at the time of the transfer to the charitable organization).

In the case of a charitable remainder annuity trust or charitable remainder unitrust (as defined in section 664(d)) that holds a life insurance, endowment or annuity contract issued by an insurance company, a person is not treated as an indirect beneficiary under the contract held by the trust, solely by reason of being a recipient of an annuity or

<sup>32</sup>United States v. American Bar Endowment, 477 U.S. 105 (1986). Treas. Reg. sec. 1.170A-1(h).

<sup>33</sup>The provision is similar to H.R. 630, introduced by Mr. Archer and Mr. Rangel (106th Cong., 1st Sess.).

unitrust amount paid by the trust, provided that the trust possesses all of the incidents of ownership under the contract and is entitled to all the payments under such contract. No inference is intended as to the applicability of other provisions of the Code with respect to the acquisition by the trust of a life insurance, endowment or annuity contract, or the appropriateness of such an investment by a charitable remainder trust.

Nothing in the provision is intended to suggest that a life insurance, endowment, or annuity contract would be a personal benefit contract, solely because an individual who is a recipient of an annuity or unitrust amount paid by a charitable remainder annuity trust or charitable remainder unitrust uses such a payment to purchase a life insurance, endowment or annuity contract, and a beneficiary under the contract is the recipient, a member of his or her family, or another person he or she designates.

#### **Excise tax**

The provision imposes on any organization described in section 170(c) of the Code an excise tax, equal to the amount of the premiums paid by the organization on any life insurance, annuity, or endowment contract, if the premiums are paid in connection with a transfer for which a deduction is not allowable under the deduction denial rule of the provision (without regard to when the transfer to the charitable organization was made). The excise tax does not apply if all of the direct and indirect beneficiaries under the contract (including any related side agreement) are organizations described in section 170(c). Under the provision, payments are treated as made by the organization, if they are made by any other person pursuant to an understanding or expectation of payment. The excise tax is to be applied taking into account rules ordinarily applicable to excise taxes in chapter 41 or 42 of the Code (e.g., statute of limitation rules).

#### **Reporting**

The provision requires that the charitable organization annually report the amount of premiums that is paid during the year and that is subject to the excise tax imposed under the provision, and the name and taxpayer identification number of each beneficiary under the life insurance, annuity or endowment contract to which the premiums relate, as well as other information required by the Secretary of the Treasury. For this purpose, it is intended that a beneficiary include any beneficiary under any side agreement to which the section 170(c) organization is a party (or of which it is otherwise aware). Penalties applicable to returns required under Code section 6033 apply to returns under this reporting requirement. Returns required under this provision are to be furnished at such time and in such manner as the Secretary shall by forms or regulations require.

#### **Regulations**

The provision provides for the promulgation of regulations necessary or appropriate to carry out the purposes of the provisions, including regulations to prevent the avoidance of the purposes of the provision. For example, it is intended that regulations prevent avoidance of the purposes of the provision by inappropriate or improper reliance on the limited exceptions provided for certain beneficiaries under bona fide charitable gift annuities and for certain noncharitable recipients of an annuity or unitrust amount paid by a charitable remainder trust.

#### **Effective date**

The deduction denial provision applies to transfers after February 8, 1999 (as provided

in H.R. 630). The excise tax provision applies to premiums paid after the date of enactment. The reporting provision applies to premiums paid after February 8, 1999 (determined as if the excise tax imposed under the provision applied to premiums paid after that date).

No inference is intended that a charitable contribution deduction is allowed under present law with respect to a charitable split-dollar insurance arrangement. The provision does not change the rules with respect to fraud or criminal or civil penalties under present law; thus, actions constituting fraud or that are subject to penalties under present law would still constitute fraud or be subject to the penalties after enactment of the provision.

#### **Conference Agreement**

The conference agreement includes the provision in S. 1792.

#### **H. Distributions by a Partnership to a Corporate Partner of Stock in Another Corporation (sec. 732 of the Code)**

##### **Present Law**

Present law generally provides that no gain or loss is recognized on the receipt by a corporation of property distributed in complete liquidation of another corporation in which it holds 80 percent of the stock (by vote and value) (sec. 332). The basis of property received by a corporate distributee in the distribution in complete liquidation of the 80-percent-owned subsidiary is a carryover basis, i.e., the same as the basis in the hands of the subsidiary (provided no gain or loss is recognized by the liquidating corporation with respect to the distributed property) (sec. 334(b)).

Present law provides two different rules for determining a partner's basis in distributed property, depending on whether or not the distribution is in liquidation of the partner's interest in the partnership. Generally, a substituted basis rule applies to property distributed to a partner in liquidation. Thus, the basis of property distributed in liquidation of a partner's interest is equal to the partner's adjusted basis in its partnership interest (reduced by any money distributed in the same transaction) (sec. 732(b)).

By contrast, generally, a carryover basis rule applies to property distributed to a partner other than in liquidation of its partnership interest, subject to a cap (sec. 732(a)). Thus, in a non-liquidating distribution, the distributee partner's basis in the property is equal to the partnership's adjusted basis in the property immediately before the distribution, but not to exceed the partner's adjusted basis in its partnership interest (reduced by any money distributed in the same transaction). In a non-liquidating distribution, the partner's basis in its partnership interest is reduced by the amount of the basis to the distributee partner of the property distributed and is reduced by the amount of any money distributed (sec. 733).

If corporate stock is distributed by a partnership to a corporate partner with a low basis in its partnership interest, the basis of the stock is reduced in the hands of the partner so that the stock basis equals the distributee partner's adjusted basis in its partnership interest. No comparable reduction is made in the basis of the corporation's assets, however. The effect of reducing the stock basis can be negated by a subsequent liquidation of the corporation under section 332.<sup>34</sup>

<sup>34</sup>In a similar situation involving the purchase of stock of a subsidiary corporation as replacement property following an involuntary conversion, the

#### **House Bill**

No provision.

#### **Senate Amendment**

##### **In general**

No provision. However, S. 1792, as passed by the Senate, contains a provision that provides for a basis reduction to assets of a corporation, if stock in that corporation is distributed by a partnership to a corporate partner. The reduction applies if, after the distribution, the corporate partner controls the distributed corporation.

##### **Amount of the basis reduction**

Under the provision, the amount of the reduction in basis of property of the distributed corporation generally equals the amount of the excess of (1) the partnership's adjusted basis in the stock of the distributed corporation immediately before the distribution, over (2) the corporate partner's basis in that stock immediately after the distribution.

The provision limits the amount of the basis reduction in two respects. First, the amount of the basis reduction may not exceed the amount by which (1) the sum of the aggregate adjusted bases of the property and the amount of money of the distributed corporation exceeds (2) the corporate partner's adjusted basis in the stock of the distributed corporation. Thus, for example, if the distributed corporation has cash of \$300 and other property with a basis of \$600 and the corporate partner's basis in the stock of the distributed corporation is \$400, then the amount of the basis reduction could not exceed \$500 (i.e.,  $(\$300 + \$600) - \$400 = \$500$ ).

Second, the amount of the basis reduction may not exceed the adjusted basis of the property of the distributed corporation. Thus, the basis of property (other than money) of the distributed corporation could not be reduced below zero under the provision, even though the total amount of the basis reduction would otherwise be greater.

The provision provides that the corporate partner recognizes long-term capital gain to the extent the amount of the basis reduction exceeds the basis of the property (other than money) of the distributed corporation. In addition, the corporate partner's adjusted basis in the stock of the distribution is increased in the same amount. For example, if the amount of the basis reduction were \$400, and the distributed corporation has money of \$200 and other property with an adjusted basis of \$300, then the corporate partner would recognize a \$100 capital gain under the provision. The corporate partner's basis in the stock of the distributed corporation is also increased by \$100 in this example, under the provision.

The basis reduction is allocated among assets of the controlled corporation in accordance with the rules provided under section 732(c).

##### **Partnership distributions resulting in control**

The basis reduction generally applies with respect to a partnership distribution of stock if the corporate partner controls the distributed corporation immediately after the distribution or at any time thereafter. For this purpose, the term control means ownership of stock meeting the requirements of section 1504(a)(2) (generally, an 80-percent vote and value requirement).

The provision applies to reduce the basis of any property held by the distributed corporation immediately after the distribution,

Code generally requires the basis of the assets held by the subsidiary to be reduced to the extent that the basis of the stock in the replacement corporation itself is reduced (sec. 1033).

or, if the corporate partner does not control the distributed corporation at that time, then at the time the corporate partner first has such control. The provision does not apply to any distribution if the corporate partner does not have control of the distributed corporation immediately after the distribution and establishes that the distribution was not part of a plan or arrangement to acquire control.

For purposes of the provision, if a corporation acquires (other than in a distribution from a partnership) stock the basis of which is determined (by reason of being distributed from a partnership) in whole or in part by reference to section 732(a)(2) or (b), then the corporation is treated as receiving a distribution of stock from a partnership. For example, if a partnership distributes property other than stock (such as real estate) to a corporate partner, and that corporate partner contributes the real estate to another corporation in a section 351 transaction, then the stock received in the section 351 transaction is not treated as distributed by a partnership, and the basis reduction under this provision does not apply. As another example, if a partnership distributes stock to two corporate partners, neither of which have control of the distributed corporation, and the two corporate partners merge and the survivor obtains control of the distributed corporation, the stock of the distributed corporation that is acquired as a result of the merger is treated as received in a partnership distribution; the basis reduction rule of the provision applies.

In the case of tiered corporations, a special rule provides that if the property held by a distributed corporation is stock in a corporation that the distributed corporation controls, then the provision is applied to reduce the basis of the property of that controlled corporation. The provision is also reapplied to any property of any controlled corporation that is stock in a corporation that it controls. Thus, for example, if stock of a controlled corporation is distributed to a corporate partner, and the controlled corporation has a subsidiary, the amount of the basis reduction allocable to stock of the subsidiary is applied again to reduce the basis of the assets of the subsidiary, under the special rule.

The provision also provides for regulations, including regulations to avoid double counting and to prevent the abuse of the purposes of the provision. It is intended that regulations prevent the avoidance of the purposes of the provision through the use of tiered partnerships.

#### **Effective date**

The provision is effective for distributions made after July 14, 1999, except that in the case of a corporation that is a partner in a partnership on July 14, 1999, the provision is effective for distributions by that partnership to the corporation after the date of enactment.

#### **Conference Agreement**

The conference agreement includes the provision of S. 1792, with a modification to the effective date.

**Effective date.**—The provision is effective generally for distributions made after July 14, 1999. However, in the case of a corporation that is a partner in a partnership as of July 14, 1999, the provision is effective for any distribution made (or treated as made) to that partner from that partnership after June 30, 2001. In the case of any such distribution after the date of enactment and before July 1, 2001, the rule of the preceding sentence

does not apply unless that partner makes an election to have the rule apply to the distribution on the partner's return of Federal income tax for the taxable year in which the distribution occurs.

No inference is intended that distributions that are not subject to the provision achieve a particular tax result under present law, and no inference is intended that enactment of the provision limits the application of tax rules or principles under present or prior law.

### **I. Treatment of Real Estate Investment Trusts (REITs)**

#### **1. Provisions relating to REITs (secs. 852, 856, and 857 of the Code)**

##### **Present Law**

A real estate investment trust ("REIT") is an entity that receives most of its income from passive real-estate related investments and that essentially receives pass-through treatment for income that is distributed to shareholders.

If an electing entity meets the requirements for REIT status, the portion of its income that is distributed to the investors each year generally is taxed to the investors without being subjected to a tax at the REIT level. In general, a REIT must derive its income from passive sources and not engage in any active trade or business.

A REIT must satisfy a number of tests on a year by year basis that relate to the entity's (1) organizational structure; (2) source of income; (3) nature of assets; and (4) distribution of income. Under the source-of-income tests, at least 95 percent of its gross income generally must be derived from rents from real property, dividends, interest, and certain other passive sources (the "95 percent test"). In addition, at least 75 percent of its gross income generally must be from real estate sources, including rents from real property and interest on mortgages secured by real property. For purposes of the 95 and 75 percent tests, qualified income includes amounts received from certain "foreclosure property," treated as such for 3 years after the property is acquired by the REIT in foreclosure after a default (or imminent default) on a lease of such property or on indebtedness which such property secured.

In general, for purposes of the 95 percent and 75 percent tests, rents from real property do not include amounts for services to tenants or for managing or operating real property. However, there are some exceptions. Qualified rents include amounts received for services that are "customarily furnished or rendered" in connection with the rental of real property, so long as the services are furnished through an independent contractor from whom the REIT does not derive any income. Amounts received for services that are not "customarily furnished or rendered" are not qualified rents.

An independent contractor is defined as a person who does not own, directly or indirectly, more than 35 percent of the shares of the REIT. Also, no more than 35 percent of the total shares of stock of an independent contractor (or of the interests in assets or net profits, if not a corporation) can be owned directly or indirectly by persons owning 35 percent or more of the interests in the REIT. In addition, a REIT cannot derive any income from an independent contractor.

Rents for certain personal property leased in connection with real property are treated as rents from real property if the adjusted basis of the personal property does not exceed 15 percent of the aggregate adjusted bases of the real and the personal property.

Rents from real property do not include amounts received from any corporation if the REIT owns 10 percent or more of the voting power or of the total number of shares of all classes of stock of such corporation. Similarly, in the case of other entities, rents are not qualified if the REIT owns 10 percent or more in the assets or net profits of such person.

At the close of each quarter of the taxable year, at least 75 percent of the value of total REIT assets must be represented by real estate assets, cash and cash items, and Government securities. Also, a REIT cannot own securities (other than Government securities and certain real estate assets) in an amount greater than 25 percent of the value of REIT assets. In addition, it cannot own securities of any one issuer representing more than 5 percent of the total value of REIT assets or more than 10 percent of the voting securities of any corporate issuer. Securities for purposes of these rules are defined by reference to the Investment Company Act of 1940.<sup>35</sup>

Under an exception to the ownership rule, a REIT is permitted to have a wholly owned subsidiary corporation, but the assets and items of income and deduction of such corporation are treated as those of the REIT, and thus can affect the qualification of the REIT under the income and asset tests.

A REIT generally is required to distribute 95 percent of its income before the end of its taxable year, as deductible dividends paid to shareholders. This rule is similar to a rule for regulated investment companies ("RICs") that requires distribution of 90 percent of income. Both REITs and RICs can make certain "deficiency dividends" after the close of the taxable year, and have these treated as made before the end of the year. The regulations applicable to REITs state that a distribution will be treated as a "deficiency dividend" (and, thus, as made before the end of the prior taxable year) only to the extent the earnings and profits for that year exceed the amount of distributions actually made during the taxable year.<sup>36</sup>

A REIT that has been or has combined with a C corporation<sup>37</sup> will be disqualified if, as of the end of its taxable year, it has accumulated earnings and profits from a non-REIT year. A similar rule applies to regulated investment companies ("RICs"). In the case of a REIT, any distribution made in order to comply with this requirement is treated as being first from pre-REIT accumulated earnings and profits. RICs do not have a similar ordering rule.

In the case of a RIC, any distribution made within a specified period after determination that the investment company did not qualify as a RIC for the taxable year will be treated as applying to the RIC for the non-REIT year, "for purposes of applying [the earnings and profits rule that forbids a RIC to have non-REIT earnings and profits] to subsequent taxable years." The REIT rules do not specify any particular separate treatment of distributions made after the end of the taxable year for purposes of the earnings and profits rule. Treasury regulations under the REIT provisions state that "distribution procedures similar to those \* \* \* for regulated investment companies apply to non-REIT

<sup>35</sup> 15 U.S.C. 80a-1 and following. See Code section 856(c)(5)(F).

<sup>36</sup> Treas. Reg. sec. 1.858-1(b)(2).

<sup>37</sup> A "C corporation" is a corporation that is subject to taxation under the rules of subchapter C of the Internal Revenue Code, which generally provides for a corporate level tax on corporate income. Thus, a C corporation is not a pass-through entity. Earnings and profits of a C corporation, when distributed to shareholders, are taxed to the shareholders as dividends.

earnings and profits of a real estate investment trust.”<sup>38</sup>

**House Bill**

No provision.

**Senate Amendment**

No provision, but S. 1792, as passed by the Senate, provides as follows:

**Investment limitations and taxable REIT subsidiaries**

*General rule.*—Under the provision, a REIT generally cannot own more than 10 percent of the total value of securities of a single issuer, in addition to the present law rule that a REIT cannot own more than 10 percent of the outstanding voting securities of a single issuer. In addition, no more than 20 percent of the value of a REIT’s assets can be represented by securities of the taxable REIT subsidiaries that are permitted under the bill.

*Exception for safe-harbor debt.*—For purposes of the new 10-percent value test, securities are generally defined to exclude safe harbor debt owned by a REIT (as defined for purposes of sec. 1361(c)(5)(B)(i) and (ii)) if the issuer is an individual, or if the REIT (and any taxable REIT subsidiary of such REIT) owns no other securities of the issuer. However, in the case of a REIT that owns securities of a partnership, safe harbor debt is excluded from the definition of securities only if the REIT owns at least 20-percent or more of the profits interest in the partnership. The purpose of the partnership rule requiring a 20 percent profits interest is to assure that if the partnership produces income that would be disqualified income to the REIT, the REIT will be treated as receiving a significant portion of that income directly through its partnership interest, even though it also may derive qualified interest income through its safe harbor debt interest.

*Exception for taxable REIT subsidiaries.*—An exception to the limitations on ownership of securities of a single issuer applies in the case of a “taxable REIT subsidiary” that meets certain requirements. To qualify as a taxable REIT subsidiary, both the REIT and the subsidiary corporation must join in an election. In addition, any corporation (other than a REIT or a qualified REIT subsidiary under section 856(i) that does not properly elect with the REIT to be a taxable REIT subsidiary) of which a taxable REIT subsidiary owns, directly or indirectly, more than 35 percent of the vote or value is automatically treated as a taxable REIT subsidiary.

Securities (as defined in the Investment Company Act of 1940) of taxable REIT subsidiaries could not exceed 20 percent of the total value of a REIT’s assets.

A taxable REIT subsidiary can engage in certain business activities that under present law could disqualify the REIT because, but for the proposal, the taxable REIT subsidiary’s activities and relationship with the REIT could prevent certain income from qualifying as rents from real property. Specifically, the subsidiary can provide services to tenants of REIT property (even if such services were not considered services customarily furnished in connection with the rental of real property), and can manage or operate properties, generally for third parties, without causing amounts received or accrued directly or indirectly by the REIT for such activities to fail to be treated as rents from real property. However, rents paid to a REIT generally are not qualified rents if the REIT owns more than 10 percent

of the value, (as well as of the vote) of a corporation paying the rents. The only exceptions are for rents that are paid by taxable REIT subsidiaries and that also meet a limited rental exception (where 90 percent of space is leased to third parties at comparable rents) and an exception for rents from certain lodging facilities (operated by an independent contractor).

However, the subsidiary cannot directly or indirectly operate or manage a lodging or healthcare facility. Nevertheless, it can lease a qualified lodging facility (e.g., a hotel) from the REIT (provided no gambling revenues were derived by the hotel or on its premises); and the rents paid are treated as rents from real property so long as the lodging facility was operated by an independent contractor for a fee. The subsidiary can bear all expenses of operating the facility and receive all the net revenues, minus the independent contractor’s fee.

For purposes of the rule that an independent contractor may operate a qualified lodging facility, an independent contractor will qualify so long as, at the time it enters into the management agreement with the taxable REIT subsidiary, it is actively engaged in the trade or business of operating qualified lodging facilities for any person who is not related to the REIT or the taxable REIT subsidiary. The REIT may receive income from such an independent contractor with respect to certain pre-existing leases.

Also, the subsidiary generally cannot provide to any person rights to any brand name under which hotels or healthcare facilities are operated. An exception applies to rights provided to an independent contractor to operate or manage a lodging facility, if the rights are held by the subsidiary as licensee or franchisee, and the lodging facility is owned by the subsidiary or leased to it by the REIT.

Interest paid by a taxable REIT subsidiary to the related REIT is subject to the earnings stripping rules of section 163(j). Thus the taxable REIT subsidiary cannot deduct interest in any year that would exceed 50 percent of the subsidiary’s adjusted gross income.

If any amount of interest, rent, or other deductions of the taxable REIT subsidiary for amounts paid to the REIT is determined to be other than at arm’s length (“redetermined” items), an excise tax of 100 percent is imposed on the portion that was excessive. “Safe harbors” are provided for certain rental payments where (1) the amounts are de minimis, (2) there is specified evidence that charges to unrelated parties are substantially comparable, (3) certain charges for services from the taxable REIT subsidiary are separately stated, or (4) the subsidiary’s gross income from the service is not less than 150 percent of the subsidiary’s direct cost in furnishing the service.

In determining whether rents are arm’s length rents, the fact that such rents do not meet the requirements of the specified safe harbors shall not be taken into account. In addition, rent received by a REIT shall not fail to qualify as rents from real property by reason of the fact that all or any portion of such rent is redetermined for purposes of the excise tax.

The Treasury Department is to conduct a study to determine how many taxable REIT subsidiaries are in existence and the aggregate amount of taxes paid by such subsidiaries and shall submit a report to the Congress describing the results of such study.

**Health Care REITS**

The provision permits a REIT to own and operate a health care facility for at least two

years, and treat it as permitted “foreclosure” property, if the facility is acquired by the termination or expiration of a lease of the property. Extensions of the 2 year period can be granted.

**Conformity with regulated investment company rules**

Under the provision, the REIT distribution requirements are modified to conform to the rules for regulated investment companies. Specifically, a REIT is required to distribute only 90 percent, rather than 95 percent, of its income.

**Definition of independent contractor**

If any class of stock of the REIT or the person being tested as an independent contractor is regularly traded on an established securities market, only persons who directly or indirectly own 5 percent or more of such class of stock shall be counted in determining whether the 35 percent ownership limitations have been exceeded.

**Modification of earnings and profits rules for RICs and REITs**

The rule allowing a RIC to make a distribution after a determination that it had failed RIC status, and thus meet the requirement of no non-RIC earnings and profits in subsequent years, is modified to clarify that, when the sole reason for the determination is that the RIC had non-RIC earnings and profits in the initial year (i.e. because it was determined not to have distributed all C corporation earnings and profits), the procedure would apply to permit RIC qualification in the initial year to which such determination applied, in addition to subsequent years.

The RIC earnings and profits rules are also modified to provide an ordering rule similar to the REIT rule, treating a distribution to meet the requirement of no non-RIC earnings and profits as coming first from the earliest earnings and profits accumulated in any year for which the RIC did not qualify as a RIC. In addition, the REIT deficiency dividend rules are modified to take account of this ordering rule.

**Provision regarding rental income from certain personal property**

The provision modifies the present law rule that permits certain rents from personal property to be treated as real estate rental income if such personal property does not exceed 15 percent of the aggregate of real and personal property. The provision replaces the present law comparison of the adjusted bases of properties with a comparison based on fair market values.

*Effective date.*—The provision is effective for taxable years beginning after December 31, 2000. The provision with respect to modification of earnings and profits rules is effective for distributions after December 31, 2000.

In the case of the provisions relating to permitted ownership of securities of an issuer, special transition rules apply. The new rules forbidding a REIT to own more than 10 percent of the value of securities of a single issuer do not apply to a REIT with respect to securities held directly or indirectly by such REIT on July 12, 1999, or acquired pursuant to the terms of written binding contract in effect on that date and at all times thereafter until the acquisition.

Also, securities received in a tax-free exchange or reorganization, with respect to or in exchange for such grandfathered securities would be grandfathered. The grandfathering of such securities ceases to apply if the REIT acquires additional securities of that issuer after that date, other than pursuant to a binding contract in effect on that

<sup>38</sup>Treas. Reg. sec. 1.857-11(c).

date and at all times thereafter, or in a reorganization with another corporation the securities of which are grandfathered.

This transition also ceases to apply to securities of a corporation as of the first day after July 12, 1999 on which such corporation engages in a substantial new line of business, or acquires any substantial asset, other than pursuant to a binding contract in effect on such date and at all times thereafter, or in a reorganization or transaction in which gain or loss is not recognized by reason of section 1031 or 1033 of the Code. If a corporation makes an election to become a taxable REIT subsidiary, effective before January 1, 2004 and at a time when the REIT's ownership is grandfathered under these rules, the election is treated as a reorganization under section 368(a)(1)(A) of the Code.

The new 10 percent of value limitation for purposes of defining qualified rents is effective for taxable years beginning after December 31, 2000. There is an exception for rents paid under a lease or pursuant to a binding contract in effect on July 12, 1999 and at all times thereafter.

**Conference Agreement**

The conference agreement includes the provision in S. 1792. The conference agreement clarifies the RIC and REIT earnings and profits ordering rules in the case of a distribution to meet the requirements that there be no non-RIC or non-REIT earnings and profits in any year.

Both the RIC and REIT earnings and profits rules are modified to provide a more specific ordering rule, similar to the present-law REIT rule. The new ordering rule treats a distribution to meet the requirement of no non-RIC or non-REIT earnings and profits as coming, on a first-in, first-out basis, from earnings and profits which, if not distrib-

uted, would result in a failure to meet such requirement. Thus, such earnings and profits are deemed distributed first from earnings and profits that would cause such a failure, starting with the earliest RIC or REIT year for which such failure would occur.

**2. Modify estimated tax rules for closely held REITs (sec. 6655 of the Code)**

**Present Law**

If a person has a direct interest or a partnership interest in income-producing assets (such as securities generally, or mortgages) that produce income throughout the year, that person's estimated tax payments must reflect the quarterly amounts expected from the asset.

However, a dividend distribution of earnings from a REIT is considered for estimated tax purposes when the dividend is paid. Some corporations have established closely held REITs that hold property (e.g. mortgages) that if held directly by the controlling entity would produce income throughout the year. The REIT may make a single distribution for the year, timed such that it need not be taken into account under the estimated tax rules as early as would be the case if the assets were directly held by the controlling entity. The controlling entity thus defers the payment of estimated taxes.

**House Bill**

No provision.

**Senate Amendment**

No provision, but S. 1792, as passed by the Senate, provides that in the case of a REIT that is closely held, any person owning at least 10 percent of the vote or value of the REIT is required to accelerate the recognition of year-end dividends attributable to the closely held REIT, for purposes of such person's estimated tax payments. A closely

held REIT is defined as one in which at least 50 percent of the vote or value is owed by five or fewer persons. Attribution rules apply to determine ownership.

No inference is intended regarding the treatment of any transaction prior to the effective date.

*Effective date.*—The provision is effective for estimated tax payments due on or after November 15, 1999.

**Conference Agreement**

The conference agreement includes the provision in S. 1792, effective for estimated tax payments due on or after December 15, 1999.

**TAX COMPLEXITY ANALYSIS**

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the "IRS Reform Act") requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the House Committee on Ways and Means, the Senate Committee on Finance, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code and that have widespread applicability to individuals or small businesses.

**ESTIMATED BUDGET EFFECTS OF THE REVENUE PROVISIONS INCLUDED IN THE CONFERENCE AGREEMENT FOR H.R. 1180<sup>1</sup>**

(Fiscal years 2000–2009, in millions of dollars)

Provision	Effective	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2000–2004	2000–2009
<b>The "Tax Relief Extension Act of 1999"</b>													
<b>I. Extension of Expiring Provisions</b>													
A. Treatment of Nonrefundable Personal Credits Under the Alternative Individual Minimum Tax (through 12/31/01).	tybi 1999	–972	–977	–943								–2,892	–2,892
Research Tax Credit, and Increase AIC Rates by 1 Percentage Point, and Expand to Puerto Rico and the Other Possessions; Delay Claiming of Credit <sup>2</sup> (through 6/30/04).	(3)		–1,661	–4,082	–2,541	–2,242	–1,343	–708	–386	–150	–26	–10,526	–2,892
C. Exemption from Subpart F for Active Financing Income (through 12/31/01).	tyba 12/31/99	–187	–785	–744								–1,716	–1,716
D. Suspension of 100% Net Income Limitation for Marginal Properties (through 12/31/01).	tyba 12/31/99	–23	–35	–12								–71	–71
E. Work Opportunity Tax Credit (through 12/31/01).	wpoifbwa 6/30/99	–229	–321	–293	–151	–58	–19	–3				–1,051	–1,073
F. Welfare-to-Work Tax Credit (through 12/31/01).	wpoifbwa 6/20/99	–49	–77	–79	–47	–19	–7	–2				–272	–281
G. Extension of Employer Provided Educational Assistance for Undergraduate Courses (through 12/31/01).	cba 5/31/00	–134	–318	–132								–584	–584
H. Extend and Modify Tax Credit for Electricity Produced From Wind and Closed-Loop Biomass Facilities—credit to include electricity produced from poultry waste (through 12/31/01).	(4)	–9	–25	–33	–33	–34	–35	–36	–37	–38	–38	–135	–318
I. Reauthorization of Generalized System of Preferences (through 9/30/01 <sup>(5)</sup> ).	7/1/99	–438	–360									–798	–798
J. Extend Qualified Zone Academy Bond Program (3-year carryforward for 1998 and 1999 authority; 2-year carryforward thereafter) (through 12/31/01).	tybi 2000	–3	–11	–20	–28	–30	–30	–30	–30	–30	–30	–92	–242
K. Extend the \$5,000 Credit for First-Time Homebuyers in the District of Columbia (through 12/31/01).	1/1/01			–5	–15	(6)	(6)	(6)	(6)	(6)	(6)	–20	–20
L. Extend Brownfields Environmental Remediation (through 12/31/01).	DOE	11	–43	–59	–20	–2	–1	2	5	6	8	–114	–93
M. Increase Amount of Rum Excise Tax That is Covered Over to Puerto Rico and the U.S. Virgin Islands (from \$10.50 per proof gallon to \$13.25 per proof gallon) (through 12/31/01) <sup>(5)(7)</sup> .	(8)	–20	–115	–15								–150	–150
<b>Total of Extension of Expiring Provisions</b> .....		<b>–2,053</b>	<b>–4,733</b>	<b>–6,427</b>	<b>–2,820</b>	<b>–2,385</b>	<b>–1,435</b>	<b>–777</b>	<b>–448</b>	<b>–212</b>	<b>–86</b>	<b>–18,421</b>	<b>–150</b>
<b>II. Other Time-Sensitive Revenue Provisions</b>													
A. Prohibit Disclosure of Advance Pricing Agreements (APAs) and Related Information; Require the IRS to Submit to Congress an Annual Report of Such Agreements.	DOE												No Revenue Effect



ESTIMATED BUDGET EFFECTS OF THE REVENUE PROVISIONS INCLUDED IN THE CONFERENCE AGREEMENT FOR H.R. 1180<sup>1</sup>—Continued

[Fiscal years 2000–2009, in millions of dollars]

Provision	Effective	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2000–2004	2005–2009
B. Authority to Postpone Certain Tax-Related Deadlines by Reason of Year 2000 Failures.	DOE												
Negligible Revenue Effect													
C. Add the Streptococcus Pneumoniae Vaccine to the List of Taxable Vaccines in the Federal Vaccine Insurance Program; Study of Program.	sbda DOE	4	7	9	10	10	10	10	10	10	11	39	91
D. Delay the Requirement that Registered Motor Fuels Terminals Offer Dyed Kerosene as a Condition of Registration (through 12/31/01).	DOE												
Negligible Revenue Effect													
E. Provide that Federal Farm Production Payments are Taxable in the Year of Receipt.	DOE												
Negligible Revenue Effect													
<b>Total of Other Time-Sensitive Revenue Provisions.</b>		<b>4</b>	<b>7</b>	<b>9</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>11</b>	<b>39</b>	<b>91</b>
<b>III. Revenue Offset Provisions</b>													
A. Modify Individual Estimated Tax Safe Harbor to 108.6% for Tax Year 2000 and 110% for Tax Year 2001.	tyba 12/31/99	1,560	840	–2,400									
B. Clarify the Tax Treatment of Income and Losses from Derivatives.	DOE	( <sup>9</sup> )	1	1	1	1	1	1	1	1	1	4	9
C. Information Reporting on Cancellation of Indebtedness by Non-Bank Financial Institutions.	coia 12/31/99		7	7	7	7	7	7	7	7	7	28	63
D. Prevent the Conversion of Ordinary Income or Short-Term Capital Gains into Income Eligible for Long-Term Capital Gain Rates.	teio/a 7/12/99	15	45	47	49	51	54	58	62	66	70	207	517
E. Allow Employers to Transfer Excess Defined Benefit Plan Assets to a Special Account for Health Benefits of Retirees (through 12/31/05).	tmi tyba 12/31/00		19	38	39	40	43	23				136	200
F. Repeal Installment Method for Most Accrual Basis Taxpayers; Adjust Pledge Rules.	iso/a DOE	477	677	406	257	72	8	21	35	48	62	1,889	2,063
G. Deny Deduction and Impose Excise Tax With Respect to Charitable Split-Dollar Life Insurance Arrangements.	( <sup>10</sup> )												
Negligible Revenue Effect													
H. Distributions by a Partnership to a Corporate Partner of Stock in Another Corporation.	( <sup>11</sup> )	2	4	7	10	10	10	10	10	10	10	33	83
I. Real Estate Investment Trust (REIT) Provisions.													
1. Impose 10% vote or value test .....	tyba 12/31/00		2	8	8	8	9	9	9	10	10	26	73
2. Treatment of income and services provided by taxable REIT subsidiaries, with 20% asset limitation.	tyba 12/31/00		50	131	44	19	–9	–39	–72	–107	–146	244	–129
3. Personal property treatment for determining rents from real property for REITs.	tyba 12/31/00		–1	–1	–1	–1	–1	–1	–1	–1	–1	–3	–7
4. Special foreclosure rule for health care REITs.	tyba 12/31/00												
Negligible Revenue Effect													
5. Conformity with RIC 90% distribution rules.	tyba 12/31/00		1	1	1	1	1	1	1	1	1	3	5
6. Clarification of definition of independent operators for REITs.	tyba 12/31/00												
Negligible Revenue Effect													
7. Modification of earnings and profits rules.	da 12/31/00		–6	–3	–3	–3	–4	–4	–4	–4	–4	–16	–35
8. Modify estimated tax rules for closely-owned REIT dividends.	epdo/a 12/15/99	40	1	1	1	1	1	1	1	1	1	45	52
<b>Total of Revenue Offset Provisions .....</b>		<b>2,094</b>	<b>1,640</b>	<b>–1,757</b>	<b>413</b>	<b>206</b>	<b>120</b>	<b>87</b>	<b>49</b>	<b>32</b>	<b>11</b>	<b>2,596</b>	<b>2,894</b>
<b>Net total .....</b>		<b>45</b>	<b>–3,086</b>	<b>–8,175</b>	<b>–2,397</b>	<b>–2,169</b>	<b>–1,305</b>	<b>–680</b>	<b>–389</b>	<b>–170</b>	<b>–64</b>	<b>–15,786</b>	<b>–18,392</b>

<sup>1</sup> Another Title of H.R. 1180 contains an additional revenue provision that modifies the definition of an eligible foster child for purposes of the earned income credit: Effective—tyba 12/31/99; 2000—2; 2001—36; 2002—38; 2003—38; 2004—39; 2005—40; 2006—41; 2007—42; 2008—43; 2009—43; 2000–04—153; 2000–09—362.

<sup>2</sup> For expenses incurred after 6/30/99 and before 10/1/00, credit cannot be claimed until after 9/30/00. For expenses incurred after 9/30/00 and before 10/1/01, credit cannot be claimed until after 9/30/01.

<sup>3</sup> Extension of credit effective for expenses incurred after 6/30/99; increase in AIC rates effective for taxable years beginning after 6/30/99; expansion of the credit to include U.S. possessions effective for expenditures paid or incurred beginning after 6/30/99.

<sup>4</sup> For wind and closed-loop biomass, provision applies to production from facilities placed in service after 6/30/99 and before 1/1/02; for poultry waste, provision applies to production from facilities placed in service after 12/31/99 and before 1/1/02.

<sup>5</sup> Estimate provided by the Congressional Budget Office.

<sup>6</sup> Loss of less than \$500,000.

<sup>7</sup> A special rule applies to the payment of the \$2.75 increase in the cover-over rate for periods before 10/1/00.

<sup>8</sup> Effective for rum imported into the United States after 6/30/99.

<sup>9</sup> Gain of less than \$500,000.

<sup>10</sup> Effective for transfers made after 2/8/99 and for premiums paid after the date of enactment.

<sup>11</sup> Effective 7/14/99 (except with respect to partnerships in existence on 7/14/99, the provision is effective 6/30/01).

Legend for "Effective" column: cba = courses beginning after; coia = cancellation of indebtedness after; da = distributions after; DOE = date of enactment; epdo/a = estimated payments due on or after; iso/a = installment sales on or after; sbda = sales beginning the day after; teio/a = transactions entered into on or after; tmi = transfers made in; tyba = taxable years beginning after; tybi = taxable years beginning in; wpoifbwa = wages paid or incurred for individuals beginning work after.

Note.—Details may not add to totals due to rounding.

Source: Joint Committee on Taxation.

BILL ARCHER,  
TOM BLILEY,  
DICK ARMEY,  
*Managers on the Part of the House.*

W.V. ROTH, JR.,  
TRENT LOTT,  
*Managers on the Part of the Senate.*

Accordingly (at 11 o'clock and 3 minutes p.m.), the House stood in recess subject to the call of the Chair.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12 of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 3 o'clock and 7 minutes a.m.), the House stood in recess subject to the call of the Chair.

□ 0305

RECESS

The SPEAKER pro tempore. Pursuant to clause 12 of rule I, the Chair declares the House in recess subject to the call of the Chair.

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. DREIER) at 3 o'clock and 5 minutes a.m.