

In the Senate of the United States,

April 23, 1996.

Resolved, That the bill from the House of Representatives (H.R. 3103) entitled “An Act to amend the Internal Revenue Code of 1986 to improve portability and continuity of health insurance coverage in the group and individual markets, to combat waste, fraud, and abuse in health insurance and health care delivery, to promote the use of medical savings accounts, to improve access to long-term care services and coverage, to simplify the administration of health insurance, and for other purposes”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

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

2 (a) *SHORT TITLE.*—*This Act may be cited as the*
3 *“Health Insurance Reform Act of 1996”.*

4 (b) *TABLE OF CONTENTS.*—*The table of contents for*
5 *this Act is as follows:*

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—HEALTH CARE ACCESS, PORTABILITY, AND
RENEWABILITY

Subtitle A—Group Market Rules

- Sec. 101. Guaranteed availability of health coverage.*
- Sec. 102. Guaranteed renewability of health coverage.*
- Sec. 103. Portability of health coverage and limitation on preexisting condition exclusions.*
- Sec. 104. Special enrollment periods.*
- Sec. 105. Disclosure of information.*

Subtitle B—Individual Market Rules

- Sec. 110. Individual health plan portability.*
- Sec. 111. Guaranteed renewability of individual health coverage.*
- Sec. 112. State flexibility in individual market reforms.*
- Sec. 113. Definition.*

Subtitle C—COBRA Clarifications

- Sec. 121. COBRA clarifications.*

Subtitle D—Private Health Plan Purchasing Cooperatives

- Sec. 131. Private health plan purchasing cooperatives.*

TITLE II—APPLICATION AND ENFORCEMENT OF STANDARDS

- Sec. 201. Applicability.*
- Sec. 202. Enforcement of standards.*

TITLE III—MISCELLANEOUS PROVISIONS

- Sec. 301. HMOs allowed to offer plans with deductibles to individuals with medical savings accounts.*
- Sec. 302. Health coverage availability study.*
- Sec. 303. Reimbursement of telemedicine.*
- Sec. 304. Sense of the Committee concerning medicare.*
- Sec. 305. Parity for mental health services.*
- Sec. 306. Waiver of foreign country residence requirement with respect to international medical graduates.*
- Sec. 307. Organ and tissue donation information included with income tax refund payments.*
- Sec. 308. Sense of the Senate regarding adequate health care coverage for all children and pregnant women.*
- Sec. 309. Sense of the Senate regarding available treatments.*
- Sec. 310. Medical volunteers.*
- Sec. 311. Effective date.*
- Sec. 312. Severability.*

TITLE IV—TAX-RELATED HEALTH PROVISIONS

- Sec. 400. Short title; amendment of 1986 Code.*

Subtitle A—Increase in Deduction for Health Insurance Costs of Self-Employed Individuals

Sec. 401. Increase in self-employed individuals' deduction for health insurance costs.

Subtitle B—Long-Term Care Provisions

CHAPTER 1—LONG-TERM CARE SERVICES AND CONTRACTS

SUBCHAPTER A—GENERAL PROVISIONS

- Sec. 411. Treatment of long-term care insurance.*
- Sec. 412. Qualified long-term care services treated as medical care.*
- Sec. 413. Certain exchanges of life insurance contracts for qualified long-term care insurance contracts not taxable.*
- Sec. 414. Exception from penalty tax for amounts withdrawn from certain retirement plans for qualified long-term care insurance.*
- Sec. 415. Reporting requirements.*

SUBCHAPTER B—CONSUMER PROTECTION PROVISIONS

- Sec. 421. Policy requirements.*
- Sec. 422. Requirements for issuers of long-term care insurance policies.*
- Sec. 423. Coordination with State requirements.*
- Sec. 424. Effective dates.*

CHAPTER 2—TREATMENT OF ACCELERATED DEATH BENEFITS

- Sec. 431. Treatment of accelerated death benefits by recipient.*
- Sec. 432. Tax treatment of companies issuing qualified accelerated death benefit riders.*

Subtitle C—High-Risk Pools

- Sec. 451. Exemption from income tax for State-sponsored organizations providing health coverage for high-risk individuals.*

Subtitle D—Penalty-Free IRA Distributions

- Sec. 461. Distributions from certain plans may be used without penalty to pay financially devastating medical expenses.*

Subtitle E—Revenue Offsets

CHAPTER 1—TREATMENT OF INDIVIDUALS WHO EXPATRIATE

- Sec. 471. Revision of tax rules on expatriation.*
- Sec. 472. Information on individuals expatriating.*
- Sec. 473. Report on tax compliance by United States citizens and residents living abroad.*

CHAPTER 2—COMPANY-OWNED INSURANCE

- Sec. 495. Denial of deduction for interest on loans with respect to company-owned insurance.*

TITLE V—HEALTH CARE FRAUD AND ABUSE PREVENTION

- Sec. 500. Amendments.*

Subtitle A—Fraud and Abuse Control Program

- Sec. 501. Fraud and abuse control program.*
- Sec. 502. Medicare integrity program.*
- Sec. 503. Beneficiary incentive programs.*
- Sec. 504. Application of certain health anti-fraud and abuse sanctions to fraud and abuse against Federal health care programs.*
- Sec. 505. Guidance regarding application of health care fraud and abuse sanctions.*

Subtitle B—Revisions to Current Sanctions for Fraud and Abuse

- Sec. 511. Mandatory exclusion from participation in medicare and State health care programs.*
- Sec. 512. Establishment of minimum period of exclusion for certain individuals and entities subject to permissive exclusion from medicare and State health care programs.*
- Sec. 513. Permissive exclusion of individuals with ownership or control interest in sanctioned entities.*
- Sec. 514. Sanctions against practitioners and persons for failure to comply with statutory obligations.*
- Sec. 515. Intermediate sanctions for medicare health maintenance organizations.*
- Sec. 516. Additional exceptions to anti-kickback penalties for risk-sharing arrangements.*
- Sec. 517. Effective date.*

Subtitle C—Data Collection and Miscellaneous Provisions

- Sec. 521. Establishment of the health care fraud and abuse data collection program.*

Subtitle D—Civil Monetary Penalties

- Sec. 531. Social Security Act civil monetary penalties.*

Subtitle E—Amendments to Criminal Law

- Sec. 541. Health care fraud.*
- Sec. 542. Forfeitures for Federal health care offenses.*
- Sec. 543. Injunctive relief relating to Federal health care offenses.*
- Sec. 544. False statements.*
- Sec. 545. Obstruction of criminal investigations of Federal health care offenses.*
- Sec. 546. Theft or embezzlement.*
- Sec. 547. Laundering of monetary instruments.*
- Sec. 548. Authorized investigative demand procedures.*

TITLE VI—INTERNAL REVENUE CODE AND OTHER PROVISIONS

- Sec. 600. References.*

Subtitle A—Foreign Trust Tax Compliance

- Sec. 601. Improved information reporting on foreign trusts.*
- Sec. 602. Modifications of rules relating to foreign trusts having one or more United States beneficiaries.*
- Sec. 603. Foreign persons not to be treated as owners under grantor trust rules.*
- Sec. 604. Information reporting regarding foreign gifts.*

Sec. 605. Modification of rules relating to foreign trusts which are not grantor trusts.

Sec. 606. Residence of estates and trusts, etc.

Subtitle B—Repeal of Bad Debt Reserve Method for Thrift Savings Associations

Sec. 611. Repeal of bad debt reserve method for Thrift Savings Associations.

Subtitle C—Other Provisions

Sec. 621. Extension of medicare secondary payor provisions.

Sec. 622. Annual adjustment factors for operating costs only; restraint on rent increases.

Sec. 623. Foreclosure avoidance and borrower assistance.

1 **SEC. 2. DEFINITIONS.**

2 *As used in this Act:*

3 (1) *BENEFICIARY.*—*The term “beneficiary” has*
 4 *the meaning given such term under section 3(8) of the*
 5 *Employee Retirement Income Security Act of 1974*
 6 *(29 U.S.C. 1002(8)).*

7 (2) *EMPLOYEE.*—*The term “employee” has the*
 8 *meaning given such term under section 3(6) of the*
 9 *Employee Retirement Income Security Act of 1974*
 10 *(29 U.S.C. 1002(6)).*

11 (3) *EMPLOYER.*—*The term “employer” has the*
 12 *meaning given such term under section 3(5) of the*
 13 *Employee Retirement Income Security Act of 1974*
 14 *(29 U.S.C. 1002(5)), except that such term shall in-*
 15 *clude only employers of two or more employees.*

16 (4) *EMPLOYEE HEALTH BENEFIT PLAN.*—

17 (A) *IN GENERAL.*—*The term “employee*
 18 *health benefit plan” means any employee welfare*
 19 *benefit plan, governmental plan, or church plan*

1 *(as defined under paragraphs (1), (32), and (33)*
2 *of section 3 of the Employee Retirement Income*
3 *Security Act of 1974 (29 U.S.C. 1002 (1), (32),*
4 *and (33))), or any health benefit plan under sec-*
5 *tion 5(e) of the Peace Corps Act (22 U.S.C.*
6 *2504(e)), that provides or pays for health bene-*
7 *fits (such as provider and hospital benefits) for*
8 *participants and beneficiaries whether—*

9 *(i) directly;*

10 *(ii) through a group health plan of-*
11 *fered by a health plan issuer as defined in*
12 *paragraph (8); or*

13 *(iii) otherwise.*

14 *(B) RULE OF CONSTRUCTION.—An em-*
15 *ployee health benefit plan shall not be construed*
16 *to be a group health plan, an individual health*
17 *plan, or a health plan issuer.*

18 *(C) ARRANGEMENTS NOT INCLUDED.—Such*
19 *term does not include the following, or any com-*
20 *bination thereof:*

21 *(i) Coverage only for accident, or dis-*
22 *ability income insurance, or any combina-*
23 *tion thereof.*

1 (ii) Medicare supplemental health in-
2 surance (as defined under section
3 1882(g)(1) of the Social Security Act).

4 (iii) Coverage issued as a supplement
5 to liability insurance.

6 (iv) Liability insurance, including
7 general liability insurance and automobile
8 liability insurance.

9 (v) Workers compensation or similar
10 insurance.

11 (vi) Automobile medical payment in-
12 surance.

13 (vii) Coverage for a specified disease or
14 illness.

15 (viii) Hospital or fixed indemnity in-
16 surance.

17 (ix) Short-term limited duration insur-
18 ance.

19 (x) Credit-only, dental-only, or vision-
20 only insurance.

21 (xi) A health insurance policy provid-
22 ing benefits only for long-term care, nursing
23 home care, home health care, community-
24 based care, or any combination thereof.

25 (5) FAMILY.—

1 (A) *IN GENERAL.*—The term “family”
2 means an individual, the individual’s spouse,
3 and the child of the individual (if any).

4 (B) *CHILD.*—For purposes of subparagraph
5 (A), the term “child” means any individual who
6 is a child within the meaning of section
7 151(c)(3) of the Internal Revenue Code of 1986.

8 (6) *GROUP HEALTH PLAN.*—

9 (A) *IN GENERAL.*—The term “group health
10 plan” means any contract, policy, certificate or
11 other arrangement offered by a health plan is-
12 suer to a group purchaser that provides or pays
13 for health benefits (such as provider and hospital
14 benefits) in connection with an employee health
15 benefit plan.

16 (B) *ARRANGEMENTS NOT INCLUDED.*—Such
17 term does not include the following, or any com-
18 bination thereof:

19 (i) Coverage only for accident, or dis-
20 ability income insurance, or any combina-
21 tion thereof.

22 (ii) Medicare supplemental health in-
23 surance (as defined under section
24 1882(g)(1) of the Social Security Act).

1 (iii) Coverage issued as a supplement
2 to liability insurance.

3 (iv) Liability insurance, including
4 general liability insurance and automobile
5 liability insurance.

6 (v) Workers compensation or similar
7 insurance.

8 (vi) Automobile medical payment in-
9 surance.

10 (vii) Coverage for a specified disease or
11 illness.

12 (viii) Hospital or fixed indemnity in-
13 surance.

14 (ix) Short-term limited duration insur-
15 ance.

16 (x) Credit-only, dental-only, or vision-
17 only insurance.

18 (xi) A health insurance policy provid-
19 ing benefits only for long-term care, nursing
20 home care, home health care, community-
21 based care, or any combination thereof.

22 (7) GROUP PURCHASER.—The term “group pur-
23 chaser” means any person (as defined under para-
24 graph (9) of section 3 of the Employee Retirement In-
25 come Security Act of 1974 (29 U.S.C. 1002(9)) or en-

1 *tity that purchases or pays for health benefits (such*
2 *as provider or hospital benefits) on behalf of two or*
3 *more participants or beneficiaries in connection with*
4 *an employee health benefit plan. A health plan pur-*
5 *chasing cooperative established under section 131*
6 *shall not be considered to be a group purchaser.*

7 (8) *HEALTH PLAN ISSUER.*—*The term “health*
8 *plan issuer” means any entity that is licensed (prior*
9 *to or after the date of enactment of this Act) by a*
10 *State to offer a group health plan or an individual*
11 *health plan.*

12 (9) *PARTICIPANT.*—*The term “participant” has*
13 *the meaning given such term under section 3(7) of the*
14 *Employee Retirement Income Security Act of 1974*
15 *(29 U.S.C. 1002(7)).*

16 (10) *PLAN SPONSOR.*—*The term “plan sponsor”*
17 *has the meaning given such term under section*
18 *3(16)(B) of the Employee Retirement Income Security*
19 *Act of 1974 (29 U.S.C. 1002(16)(B)).*

20 (11) *SECRETARY.*—*The term “Secretary”, unless*
21 *specifically provided otherwise, means the Secretary*
22 *of Labor.*

23 (12) *STATE.*—*The term “State” means each of*
24 *the several States, the District of Columbia, Puerto*
25 *Rico, the United States Virgin Islands, Guam, Amer-*

1 *ican Samoa, and the Commonwealth of the Northern*
2 *Mariana Islands.*

3 ***TITLE I—HEALTH CARE ACCESS,***
4 ***PORTABILITY, AND RENEW-***
5 ***ABILITY***

6 ***Subtitle A—Group Market Rules***

7 ***SEC. 101. GUARANTEED AVAILABILITY OF HEALTH COV-***
8 ***ERAGE.***

9 *(a) IN GENERAL.—*

10 *(1) NONDISCRIMINATION.—Except as provided in*
11 *subsection (b), section 102 and section 103—*

12 *(A) a health plan issuer offering a group*
13 *health plan may not decline to offer whole group*
14 *coverage to a group purchaser desiring to pur-*
15 *chase such coverage; and*

16 *(B) an employee health benefit plan or a*
17 *health plan issuer offering a group health plan*
18 *may establish, under the terms of such plan, eli-*
19 *gibility, enrollment, or premium contribution re-*
20 *quirements for individual participants or bene-*
21 *ficiaries, except that such requirements shall not*
22 *be based on health status, medical condition,*
23 *claims experience, receipt of health care, medical*
24 *history, evidence of insurability (including con-*

1 *ditions arising out of acts of domestic violence),*
2 *genetic information, or disability.*

3 *(2) HEALTH PROMOTION AND DISEASE PREVEN-*
4 *TION.—Nothing in this subsection shall prevent an*
5 *employee health benefit plan or a health plan issuer*
6 *from establishing premium discounts or modifying*
7 *otherwise applicable copayments or deductibles in re-*
8 *turn for adherence to programs of health promotion*
9 *and disease prevention.*

10 *(b) APPLICATION OF CAPACITY LIMITS.—*

11 *(1) IN GENERAL.—Subject to paragraph (2), a*
12 *health plan issuer offering a group health plan may*
13 *cease offering coverage to group purchasers under the*
14 *plan if—*

15 *(A) the health plan issuer ceases to offer*
16 *coverage to any additional group purchasers;*
17 *and*

18 *(B) the health plan issuer can demonstrate*
19 *to the applicable certifying authority (as defined*
20 *in section 202(d)), if required, that its financial*
21 *or provider capacity to serve previously covered*
22 *participants and beneficiaries (and additional*
23 *participants and beneficiaries who will be ex-*
24 *pected to enroll because of their affiliation with*
25 *a group purchaser or such previously covered*

1 *participants or beneficiaries) will be impaired if*
2 *the health plan issuer is required to offer cov-*
3 *erage to additional group purchasers.*

4 *Such health plan issuer shall be prohibited from offer-*
5 *ing coverage after a cessation in offering coverage*
6 *under this paragraph for a 6-month period or until*
7 *the health plan issuer can demonstrate to the applica-*
8 *ble certifying authority (as defined in section 202(d))*
9 *that the health plan issuer has adequate capacity,*
10 *whichever is later.*

11 (2) *FIRST-COME-FIRST-SERVED.*—*A health plan*
12 *issuer offering a group health plan is only eligible to*
13 *exercise the limitations provided for in paragraph (1)*
14 *if the health plan issuer offers coverage to group pur-*
15 *chasers under such plan on a first-come-first-served*
16 *basis or other basis established by a State to ensure*
17 *a fair opportunity to enroll in the plan and avoid*
18 *risk selection.*

19 (c) *CONSTRUCTION.*—

20 (1) *MARKETING OF GROUP HEALTH PLANS.*—
21 *Nothing in this section shall be construed to prevent*
22 *a State from requiring health plan issuers offering*
23 *group health plans to actively market such plans.*

24 (2) *INVOLUNTARY OFFERING OF GROUP HEALTH*
25 *PLANS.*—*Nothing in this section shall be construed to*

1 *require a health plan issuer to involuntarily offer*
2 *group health plans in a particular market or to re-*
3 *quire a health plan issuer to involuntarily issue a*
4 *group health plan to a group health plan purchaser*
5 *in a particular market if the group health plan was*
6 *specifically designed for a different market. For the*
7 *purposes of this paragraph, the term “market” means*
8 *either the large employer market or the small em-*
9 *ployer market (as defined under applicable State law,*
10 *or if not so defined, an employer with more than one*
11 *employee and not more than 50 employees).*

12 **SEC. 102. GUARANTEED RENEWABILITY OF HEALTH COV-**
13 **ERAGE.**

14 (a) *IN GENERAL.*—

15 (1) *GROUP PURCHASER.*—*Subject to subsections*
16 *(b) and (c), a group health plan shall be renewed or*
17 *continued in force by a health plan issuer at the op-*
18 *tion of the group purchaser, except that the require-*
19 *ment of this subparagraph shall not apply in the case*
20 *of—*

21 (A) *the nonpayment of premiums or con-*
22 *tributions by the group purchaser in accordance*
23 *with the terms of the group health plan or where*
24 *the health plan issuer has not received timely*
25 *premium payments;*

1 (B) fraud or misrepresentation of material
2 fact on the part of the group purchaser;

3 (C) the termination of the group health
4 plan in accordance with subsection (b); or

5 (D) the failure of the group purchaser to
6 meet contribution or participation requirements
7 in accordance with paragraph (3).

8 (2) *PARTICIPANT*.—Subject to subsections (b)
9 and (c), coverage under an employee health benefit
10 plan or group health plan shall be renewed or contin-
11 ued in force, if the group purchaser elects to continue
12 to provide coverage under such plan, at the option of
13 the participant (or beneficiary where such right exists
14 under the terms of the plan or under applicable law),
15 except that the requirement of this paragraph shall
16 not apply in the case of—

17 (A) the nonpayment of premiums or con-
18 tributions by the participant or beneficiary in
19 accordance with the terms of the employee health
20 benefit plan or group health plan or where such
21 plan has not received timely premium payments;

22 (B) fraud or misrepresentation of material
23 fact on the part of the participant or beneficiary
24 relating to an application for coverage or claim
25 for benefits;

1 (C) the termination of the employee health
2 benefit plan or group health plan;

3 (D) loss of eligibility for continuation cov-
4 erage as described in part 6 of subtitle B of title
5 I of the Employee Retirement Income Security
6 Act of 1974 (29 U.S.C. 1161 et seq.); or

7 (E) failure of a participant or beneficiary
8 to meet requirements for eligibility for coverage
9 under an employee health benefit plan or group
10 health plan that are not prohibited by this Act.

11 (3) *RULES OF CONSTRUCTION.*—Nothing in this
12 subsection, nor in section 101(a), shall be construed
13 to—

14 (A) preclude a health plan issuer from es-
15 tablishing employer contribution rules or group
16 participation rules for group health plans as al-
17 lowed under applicable State law;

18 (B) preclude a plan defined in section 3(37)
19 of the Employee Retirement Income Security Act
20 of 1974 (29 U.S.C. 1102(37)) from establishing
21 employer contribution rules or group participa-
22 tion rules; or

23 (C) permit individuals to decline coverage
24 under an employee health benefit plan if such
25 right is not otherwise available under such plan.

1 **(b) TERMINATION OF GROUP HEALTH PLANS.—**

2 **(1) PARTICULAR TYPE OF GROUP HEALTH PLAN**
3 **NOT OFFERED.—***In any case in which a health plan*
4 *issuer decides to discontinue offering a particular*
5 *type of group health plan, a group health plan of such*
6 *type may be discontinued by the health plan issuer*
7 *only if—*

8 **(A)** *the health plan issuer provides notice to*
9 *each group purchaser covered under a group*
10 *health plan of this type (and participants and*
11 *beneficiaries covered under such group health*
12 *plan) of such discontinuation at least 90 days*
13 *prior to the date of the discontinuation of such*
14 *plan;*

15 **(B)** *the health plan issuer offers to each*
16 *group purchaser covered under a group health*
17 *plan of this type, the option to purchase any*
18 *other group health plan currently being offered*
19 *by the health plan issuer; and*

20 **(C)** *in exercising the option to discontinue*
21 *a group health plan of this type and in offering*
22 *one or more replacement plans, the health plan*
23 *issuer acts uniformly without regard to the*
24 *health status or insurability of participants or*
25 *beneficiaries covered under the group health*

1 *plan, or new participants or beneficiaries who*
2 *may become eligible for coverage under the group*
3 *health plan.*

4 (2) *DISCONTINUANCE OF ALL GROUP HEALTH*
5 *PLANS.—*

6 (A) *IN GENERAL.—In any case in which a*
7 *health plan issuer elects to discontinue offering*
8 *all group health plans in a State, a group health*
9 *plan may be discontinued by the health plan is-*
10 *suer only if—*

11 (i) *the health plan issuer provides no-*
12 *tice to the applicable certifying authority*
13 *(as defined in section 202(d)) and to each*
14 *group purchaser (and participants and*
15 *beneficiaries covered under such group*
16 *health plan) of such discontinuation at least*
17 *180 days prior to the date of the expiration*
18 *of such plan; and*

19 (ii) *all group health plans issued or de-*
20 *livered for issuance in the State are discon-*
21 *tinued and coverage under such plans is not*
22 *renewed.*

23 (B) *APPLICATION OF PROVISIONS.—The*
24 *provisions of this paragraph and paragraph (3)*

1 *may be applied separately by a health plan is-*
2 *suer—*

3 *(i) to all group health plans offered to*
4 *small employers (as defined under applica-*
5 *ble State law, or if not so defined, an em-*
6 *ployer with not more than 50 employees); or*

7 *(ii) to all other group health plans of-*
8 *fered by the health plan issuer in the State.*

9 (3) *PROHIBITION ON MARKET REENTRY.—In the*
10 *case of a discontinuation under paragraph (2), the*
11 *health plan issuer may not provide for the issuance*
12 *of any group health plan in the market sector (as de-*
13 *scribed in paragraph (2)(B)) in which issuance of*
14 *such group health plan was discontinued in the State*
15 *involved during the 5-year period beginning on the*
16 *date of the discontinuation of the last group health*
17 *plan not so renewed.*

18 (c) *TREATMENT OF NETWORK PLANS.—*

19 (1) *GEOGRAPHIC LIMITATIONS.—A network plan*
20 *(as defined in paragraph (2)) may deny continued*
21 *participation under such plan to participants or*
22 *beneficiaries who neither live, reside, nor work in an*
23 *area in which such network plan is offered, but only*
24 *if such denial is applied uniformly, without regard to*

1 *health status or the insurability of particular partici-*
2 *pants or beneficiaries.*

3 (2) *NETWORK PLAN.*—As used in paragraph (1),
4 *the term “network plan” means an employee health*
5 *benefit plan or a group health plan that arranges for*
6 *the financing and delivery of health care services to*
7 *participants or beneficiaries covered under such plan,*
8 *in whole or in part, through arrangements with pro-*
9 *viders.*

10 (d) *COBRA COVERAGE.*—Nothing in subsection
11 (a)(2)(E) or subsection (c) shall be construed to affect any
12 right to COBRA continuation coverage as described in part
13 6 of subtitle B of title I of the Employee Retirement Income
14 Security Act of 1974 (29 U.S.C. 1161 et seq.).

15 **SEC. 103. PORTABILITY OF HEALTH COVERAGE AND LIMITA-**
16 **TION ON PREEXISTING CONDITION EXCLU-**
17 **SIONS.**

18 (a) *IN GENERAL.*—An employee health benefit plan or
19 a health plan issuer offering a group health plan may, with
20 respect to a participant or beneficiary, impose a limitation
21 or exclusion of benefits, otherwise available under the terms
22 of the plan only if—

23 (1) *such limitation or exclusion is a limitation*
24 *or exclusion of benefits relating to the treatment of a*
25 *preexisting condition; and*

1 (2) *such limitation or exclusion extends for a pe-*
2 *riod of not more than 12 months after the date of en-*
3 *rollment in the plan.*

4 (b) *CREDITING OF PREVIOUS QUALIFYING COV-*
5 *ERAGE.—*

6 (1) *IN GENERAL.—Subject to paragraph (4), an*
7 *employee health benefit plan or a health plan issuer*
8 *offering a group health plan shall provide that if a*
9 *participant or beneficiary is in a period of previous*
10 *qualifying coverage as of the date of enrollment under*
11 *such plan, any period of exclusion or limitation of*
12 *coverage with respect to a preexisting condition shall*
13 *be reduced by 1 month for each month in which the*
14 *participant or beneficiary was in the period of pre-*
15 *vious qualifying coverage. With respect to a partici-*
16 *part or beneficiary described in subsection (e)(2)(A)*
17 *who maintains continuous coverage, no limitation or*
18 *exclusion of benefits relating to treatment of a pre-*
19 *existing condition may be applied to a child within*
20 *the child's first 12 months of life or within 12 months*
21 *after the placement of a child for adoption.*

22 (2) *DISCHARGE OF DUTY.—An employee health*
23 *benefit plan shall provide documentation of coverage*
24 *to participants and beneficiaries whose coverage is*
25 *terminated under the plan. Pursuant to regulations*

1 *promulgated by the Secretary, the duty of an em-*
2 *ployee health benefit plan to verify previous qualify-*
3 *ing coverage with respect to a participant or bene-*
4 *ficiary is effectively discharged when such employee*
5 *health benefit plan provides documentation to a par-*
6 *ticipant or beneficiary that includes the following in-*
7 *formation:*

8 *(A) the dates that the participant or bene-*
9 *ficiary was covered under the plan; and*

10 *(B) the benefits and cost-sharing arrange-*
11 *ment available to the participant or beneficiary*
12 *under such plan.*

13 *An employee health benefit plan shall retain the docu-*
14 *mentation provided to a participant or beneficiary*
15 *under subparagraphs (A) and (B) for at least the 12-*
16 *month period following the date on which the partici-*
17 *part or beneficiary ceases to be covered under the*
18 *plan. Upon request, an employee health benefit plan*
19 *shall provide a second copy of such documentation to*
20 *such participant or beneficiary within the 12-month*
21 *period following the date of such ineligibility.*

22 *(3) DEFINITIONS.—As used in this section:*

23 *(A) PREVIOUS QUALIFYING COVERAGE.—*
24 *The term “previous qualifying coverage” means*
25 *the period beginning on the date—*

1 (i) a participant or beneficiary is en-
2 rolled under an employee health benefit
3 plan or a group health plan, and ending on
4 the date the participant or beneficiary is
5 not so enrolled; or

6 (ii) an individual is enrolled under an
7 individual health plan (as defined in sec-
8 tion 113) or under a public or private
9 health plan established under Federal or
10 State law, and ending on the date the indi-
11 vidual is not so enrolled;

12 for a continuous period of more than 30 days
13 (without regard to any waiting period).

14 (B) *LIMITATION OR EXCLUSION OF BENE-*
15 *FITS RELATING TO TREATMENT OF A PREEXIST-*
16 *ING CONDITION.*—The term “limitation or exclu-
17 sion of benefits relating to treatment of a pre-
18 existing condition” means a limitation or exclu-
19 sion of benefits imposed on an individual based
20 on a preexisting condition of such individual.

21 (4) *EFFECT OF PREVIOUS COVERAGE.*—An em-
22 ployee health benefit plan or a health plan issuer of-
23 fering a group health plan may impose a limitation
24 or exclusion of benefits relating to the treatment of a
25 preexisting condition, subject to the limits in sub-

1 *section (a), only to the extent that such service or ben-*
2 *efit was not previously covered under the group health*
3 *plan, employee health benefit plan, or individual*
4 *health plan in which the participant or beneficiary*
5 *was enrolled immediately prior to enrollment in the*
6 *plan involved.*

7 *(c) LATE ENROLLEES.—Except as provided in section*
8 *104, with respect to a participant or beneficiary enrolling*
9 *in an employee health benefit plan or a group health plan*
10 *during a time that is other than the first opportunity to*
11 *enroll during an enrollment period of at least 30 days, cov-*
12 *erage with respect to benefits or services relating to the*
13 *treatment of a preexisting condition in accordance with*
14 *subsections (a) and (b) may be excluded, except the period*
15 *of such exclusion may not exceed 18 months beginning on*
16 *the date of coverage under the plan.*

17 *(d) AFFILIATION PERIODS.—With respect to a partici-*
18 *part or beneficiary who would otherwise be eligible to re-*
19 *ceive benefits under an employee health benefit plan or a*
20 *group health plan but for the operation of a preexisting con-*
21 *dition limitation or exclusion, if such plan does not utilize*
22 *a limitation or exclusion of benefits relating to the treat-*
23 *ment of a preexisting condition, such plan may impose an*
24 *affiliation period on such participant or beneficiary not to*
25 *exceed 60 days (or in the case of a late participant or bene-*

1 *ficiary described in subsection (c), 90 days) from the date*
2 *on which the participant or beneficiary would otherwise be*
3 *eligible to receive benefits under the plan. An employee*
4 *health benefit plan or a health plan issuer offering a group*
5 *health plan may also use alternative methods to address ad-*
6 *verse selection as approved by the applicable certifying au-*
7 *thority (as defined in section 202(d)). During such an af-*
8 *filiation period, the plan may not be required to provide*
9 *health care services or benefits and no premium shall be*
10 *charged to the participant or beneficiary.*

11 *(e) PREEXISTING CONDITION.—*

12 *(1) IN GENERAL.—For purposes of this section,*
13 *the term “preexisting condition” means a condition,*
14 *regardless of the cause of the condition, for which*
15 *medical advice, diagnosis, care, or treatment was rec-*
16 *ommended or received within the 6-month period end-*
17 *ing on the day before the effective date of the coverage*
18 *(without regard to any waiting period).*

19 *(2) BIRTH, ADOPTION AND PREGNANCY EX-*
20 *CLUDED.—The term “preexisting condition” does not*
21 *apply to—*

22 *(A) an individual who, within 30 days of*
23 *the date of the birth or placement for adoption*
24 *of a child (as determined under section*
25 *609(c)(3)(B) of the Employee Retirement Income*

1 *Security Act of 1974 (29 U.S.C. 1169(c)(3)(B)),*
2 *was covered under the plan; or*
3 *(B) pregnancy.*

4 *(f) STATE FLEXIBILITY.—Nothing in this section shall*
5 *be construed to preempt State laws that—*

6 *(1) require health plan issuers to impose a limi-*
7 *tation or exclusion of benefits relating to the treat-*
8 *ment of a preexisting condition for periods that are*
9 *shorter than those provided for under this section; or*

10 *(2) allow individuals, participants, and bene-*
11 *ficiaries to be considered to be in a period of previous*
12 *qualifying coverage if such individual, participant, or*
13 *beneficiary experiences a lapse in coverage that is*
14 *greater than the 30-day period provided for under*
15 *subsection (b)(3); or*

16 *(3) require health plan issuers to have a lookback*
17 *period that is shorter than the period described in*
18 *subsection (e)(1);*

19 *unless such laws are preempted by section 514 of the Em-*
20 *ployee Retirement Income Security Act of 1974 (29 U.S.C.*
21 *1144).*

22 **SEC. 104. SPECIAL ENROLLMENT PERIODS.**

23 *In the case of a participant, beneficiary or family*
24 *member who—*

1 (1) through marriage, separation, divorce, death,
2 birth or placement of a child for adoption, experiences
3 a change in family composition affecting eligibility
4 under a group health plan, individual health plan, or
5 employee health benefit plan;

6 (2) experiences a change in employment status,
7 as described in section 603(2) of the Employee Retirement
8 Income Security Act of 1974 (29 U.S.C.
9 1163(2)), that causes the loss of eligibility for coverage,
10 other than COBRA continuation coverage
11 under a group health plan, individual health plan, or
12 employee health benefit plan; or

13 (3) experiences a loss of eligibility under a group
14 health plan, individual health plan, or employee
15 health benefit plan because of a change in the employment
16 status of a family member;

17 each employee health benefit plan and each group health
18 plan shall provide for a special enrollment period extending
19 for a reasonable time after such event that would permit
20 the participant to change the individual or family basis
21 of coverage or to enroll in the plan if coverage would have
22 been available to such individual, participant, or beneficiary
23 but for failure to enroll during a previous enrollment
24 period. Such a special enrollment period shall ensure
25 that a child born or placed for adoption shall be deemed

1 *to be covered under the plan as of the date of such birth*
2 *or placement for adoption if such child is enrolled within*
3 *30 days of the date of such birth or placement for adoption.*

4 **SEC. 105. DISCLOSURE OF INFORMATION.**

5 *(a) DISCLOSURE OF INFORMATION BY HEALTH PLAN*
6 *ISSUERS.—*

7 *(1) IN GENERAL.—In connection with the offer-*
8 *ing of any group health plan to a small employer (as*
9 *defined under applicable State law, or if not so de-*
10 *defined, an employer with not more than 50 employees),*
11 *a health plan issuer shall make a reasonable disclo-*
12 *sure to such employer, as part of its solicitation and*
13 *sales materials, of—*

14 *(A) the provisions of such group health plan*
15 *concerning the health plan issuer's right to*
16 *change premium rates and the factors that may*
17 *affect changes in premium rates;*

18 *(B) the provisions of such group health plan*
19 *relating to renewability of coverage;*

20 *(C) the provisions of such group health plan*
21 *relating to any preexisting condition provision;*
22 *and*

23 *(D) descriptive information about the bene-*
24 *fits and premiums available under all group*
25 *health plans for which the employer is qualified.*

1 *Information shall be provided to small employers*
2 *under this paragraph in a manner determined to be*
3 *understandable by the average small employer, and*
4 *shall be sufficiently accurate and comprehensive to*
5 *reasonably inform small employers, participants and*
6 *beneficiaries of their rights and obligations under the*
7 *group health plan.*

8 (2) *EXCEPTION.—With respect to the require-*
9 *ment of paragraph (1), any information that is pro-*
10 *prietary and trade secret information under applica-*
11 *ble law shall not be subject to the disclosure require-*
12 *ments of such paragraph.*

13 (3) *CONSTRUCTION.—Nothing in this subsection*
14 *shall be construed to preempt State reporting and dis-*
15 *closure requirements to the extent that such require-*
16 *ments are not preempted under section 514 of the*
17 *Employee Retirement Income Security Act of 1974*
18 *(29 U.S.C. 1144).*

19 (b) *DISCLOSURE OF INFORMATION TO PARTICIPANTS*
20 *AND BENEFICIARIES.—*

21 (1) *IN GENERAL.—Section 104(b)(1) of the Em-*
22 *ployee Retirement Income Security Act of 1974 (29*
23 *U.S.C. 1024(b)(1)) is amended in the matter follow-*
24 *ing subparagraph (B)—*

1 (A) by striking “102(a)(1),” and inserting
2 “102(a)(1) that is not a material reduction in
3 covered services or benefits provided,”; and

4 (B) by adding at the end thereof the follow-
5 ing new sentences: “If there is a modification or
6 change described in section 102(a)(1) that is a
7 material reduction in covered services or benefits
8 provided, a summary description of such modi-
9 fication or change shall be furnished to partici-
10 pants not later than 60 days after the date of the
11 adoption of the modification or change. In the
12 alternative, the plan sponsors may provide such
13 description at regular intervals of not more than
14 90 days. The Secretary shall issue regulations
15 within 180 days after the date of enactment of
16 the Health Insurance Reform Act of 1996, pro-
17 viding alternative mechanisms to delivery by
18 mail through which employee health benefit
19 plans may notify participants of material reduc-
20 tions in covered services or benefits.”.

21 (2) *PLAN DESCRIPTION AND SUMMARY.*—Section
22 102(b) of the Employee Retirement Income Security
23 Act of 1974 (29 U.S.C. 1022(b)) is amended—

24 (A) by inserting “including the office or
25 title of the individual who is responsible for ap-

1 *proving or denying claims for coverage of bene-*
2 *fits” after “type of administration of the plan”;*

3 *(B) by inserting “including the name of the*
4 *organization responsible for financing claims”*
5 *after “source of financing of the plan”; and*

6 *(C) by inserting “including the office, con-*
7 *tact, or title of the individual at the Department*
8 *of Labor through which participants may seek*
9 *assistance or information regarding their rights*
10 *under this Act and the Health Insurance Reform*
11 *Act of 1996 with respect to health benefits that*
12 *are not offered through a group health plan.”*
13 *after “benefits under the plan”.*

14 ***Subtitle B—Individual Market***
15 ***Rules***

16 ***SEC. 110. INDIVIDUAL HEALTH PLAN PORTABILITY.***

17 *(a) LIMITATION ON REQUIREMENTS.—*

18 *(1) IN GENERAL.—Except as provided in sub-*
19 *sections (c) and (d), a health plan issuer described in*
20 *paragraph (3) may not, with respect to an eligible in-*
21 *dividual (described in subsection (b)) desiring to en-*
22 *roll in an individual health plan—*

23 *(A) decline to offer coverage to, or deny en-*
24 *rollment of, such individual; or*

1 (B) impose a limitation or exclusion of ben-
2 efits, otherwise available under such plan, for
3 which coverage was available under the group
4 health plan or employee health benefit plan in
5 which the individual was previously enrolled.

6 (2) HEALTH PROMOTION AND DISEASE PREVEN-
7 TION.—Nothing in this subsection shall be construed
8 to prevent a health plan issuer offering an individual
9 health plan from establishing premium discounts or
10 modifying otherwise applicable copayments or
11 deductibles in return for adherence to programs of
12 health promotion or disease prevention.

13 (3) HEALTH PLAN ISSUER.—A health plan is-
14 suer described in this paragraph is a health plan is-
15 suer that issues or renews individual health plans.

16 (4) PREMIUMS.—Nothing in this subsection shall
17 be construed to affect the determination of a health
18 plan issuer as to the amount of the premium payable
19 under an individual health plan under applicable
20 State law.

21 (b) DEFINITION OF ELIGIBLE INDIVIDUAL.—As used
22 in subsection (a)(1), the term “eligible individual” means
23 an individual who—

24 (1) was a participant or beneficiary enrolled
25 under one or more group health plans or employee

1 *health benefit plans for not less than 18 months*
2 *(without a lapse of more than 30 days) immediately*
3 *prior to the date on which such individual applies for*
4 *enrollment in the individual health plan;*

5 *(2) is not eligible for coverage under a group*
6 *health plan or an employee health benefit plan;*

7 *(3) has not had coverage terminated under a*
8 *group health plan or employee health benefit plan for*
9 *failure to make required premium payments or con-*
10 *tributions, or for fraud or misrepresentation of mate-*
11 *rial fact; and*

12 *(4) has, if applicable, elected coverage and ex-*
13 *hausted the maximum period of coverage as described*
14 *in section 602(2)(A) of the Employee Retirement In-*
15 *come Security Act of 1974 (29 U.S.C. 1162(2)(A)) or*
16 *under a State program providing an extension of*
17 *such coverage.*

18 *(c) APPLICATION OF CAPACITY LIMITS.—*

19 *(1) IN GENERAL.—Subject to paragraph (2), a*
20 *health plan issuer offering coverage to individuals*
21 *under an individual health plan may cease enrolling*
22 *individuals under the plan if—*

23 *(A) the health plan issuer ceases to enroll*
24 *any new individuals; and*

1 (B) the health plan issuer can demonstrate
2 to the applicable certifying authority (as defined
3 in section 202(d)), if required, that its financial
4 or provider capacity to serve previously covered
5 individuals will be impaired if the health plan
6 issuer is required to enroll additional individ-
7 uals.

8 Such a health plan issuer shall be prohibited from of-
9 fering coverage after a cessation in offering coverage
10 under this paragraph for a 6-month period or until
11 the health plan issuer can demonstrate to the applica-
12 ble certifying authority (as defined in section 202(d))
13 that the health plan issuer has adequate capacity,
14 whichever is later.

15 (2) *FIRST-COME-FIRST-SERVED.*—A health plan
16 issuer offering coverage to individuals under an indi-
17 vidual health plan is only eligible to exercise the limi-
18 tations provided for in paragraph (1) if the health
19 plan issuer provides for enrollment of individuals
20 under such plan on a first-come-first-served basis or
21 other basis established by a State to ensure a fair op-
22 portunity to enroll in the plan and avoid risk selec-
23 tion.

24 (d) *MARKET REQUIREMENTS.*—

1 (1) *IN GENERAL.*—*The provisions of subsection*
2 *(a) shall not be construed to require that a health*
3 *plan issuer offering group health plans to group pur-*
4 *chasers offer individual health plans to individuals.*

5 (2) *CONVERSION POLICIES.*—*A health plan is-*
6 *ssuer offering group health plans to group purchasers*
7 *under this Act shall not be deemed to be a health plan*
8 *issuer offering an individual health plan solely be-*
9 *cause such health plan issuer offers a conversion pol-*
10 *icy.*

11 (3) *MARKETING OF PLANS.*—*Nothing in this sec-*
12 *tion shall be construed to prevent a State from requir-*
13 *ing health plan issuers offering coverage to individ-*
14 *uals under an individual health plan to actively mar-*
15 *ket such plan.*

16 (4) *CONSTRUCTION.*—*Nothing in this Act shall*
17 *be construed to require that a State replace or dissolve*
18 *high risk pools or other similar State mechanisms*
19 *which are designed to provide individuals in such*
20 *State with access to health benefits.*

21 **SEC. 111. GUARANTEED RENEWABILITY OF INDIVIDUAL**
22 **HEALTH COVERAGE.**

23 (a) *IN GENERAL.*—*Subject to subsections (b) and (c),*
24 *coverage for individuals under an individual health plan*
25 *shall be renewed or continued in force by a health plan is-*

1 *suer at the option of the individual, except that the require-*
2 *ment of this subsection shall not apply in the case of—*

3 *(1) the nonpayment of premiums or contribu-*
4 *tions by the individual in accordance with the terms*
5 *of the individual health plan or where the health plan*
6 *issuer has not received timely premium payments;*

7 *(2) fraud or misrepresentation of material fact*
8 *on the part of the individual; or*

9 *(3) the termination of the individual health plan*
10 *in accordance with subsection (b).*

11 *(b) TERMINATION OF INDIVIDUAL HEALTH PLANS.—*

12 *(1) PARTICULAR TYPE OF INDIVIDUAL HEALTH*
13 *PLAN NOT OFFERED.—In any case in which a health*
14 *plan issuer decides to discontinue offering a particu-*
15 *lar type of individual health plan to individuals, an*
16 *individual health plan may be discontinued by the*
17 *health plan issuer only if—*

18 *(A) the health plan issuer provides notice to*
19 *each individual covered under the plan of such*
20 *discontinuation at least 90 days prior to the*
21 *date of the expiration of the plan;*

22 *(B) the health plan issuer offers to each in-*
23 *dividual covered under the plan the option to*
24 *purchase any other individual health plan cur-*

1 rently being offered by the health plan issuer to
2 individuals; and

3 (C) in exercising the option to discontinue
4 the individual health plan and in offering one or
5 more replacement plans, the health plan issuer
6 acts uniformly without regard to the health sta-
7 tus or insurability of particular individuals.

8 (2) *DISCONTINUANCE OF ALL INDIVIDUAL*
9 *HEALTH PLANS.*—In any case in which a health plan
10 issuer elects to discontinue all individual health plans
11 in a State, an individual health plan may be discon-
12 tinued by the health plan issuer only if—

13 (A) the health plan issuer provides notice to
14 the applicable certifying authority (as defined in
15 section 202(d)) and to each individual covered
16 under the plan of such discontinuation at least
17 180 days prior to the date of the discontinuation
18 of the plan; and

19 (B) all individual health plans issued or de-
20 livered for issuance in the State are discontinued
21 and coverage under such plans is not renewed.

22 (3) *PROHIBITION ON MARKET REENTRY.*—In the
23 case of a discontinuation under paragraph (2), the
24 health plan issuer may not provide for the issuance
25 of any individual health plan in the State involved

1 *during the 5-year period beginning on the date of the*
2 *discontinuation of the last plan not so renewed.*

3 *(c) TREATMENT OF NETWORK PLANS.—*

4 *(1) GEOGRAPHIC LIMITATIONS.—A health plan*
5 *issuer which offers a network plan (as defined in*
6 *paragraph (2)) may deny continued participation*
7 *under the plan to individuals who neither live, reside,*
8 *nor work in an area in which the individual health*
9 *plan is offered, but only if such denial is applied uni-*
10 *formly, without regard to health status or the insur-*
11 *ability of particular individuals.*

12 *(2) NETWORK PLAN.—As used in paragraph (1),*
13 *the term “network plan” means an individual health*
14 *plan that arranges for the financing and delivery of*
15 *health care services to individuals covered under such*
16 *health plan, in whole or in part, through arrange-*
17 *ments with providers.*

18 **SEC. 112. STATE FLEXIBILITY IN INDIVIDUAL MARKET RE-**
19 **FORMS.**

20 *(a) ADOPTION OF ALTERNATIVE MECHANISMS.—*

21 *(1) IN GENERAL.—A State, in accordance with*
22 *this section, may adopt alternative mechanisms (pub-*
23 *lic or private) that are designed to provide access to*
24 *affordable health benefits for individuals meeting the*
25 *requirements of sections 110(b) and 111 (such as*

1 *mechanisms providing for guaranteed issue, open en-*
2 *rollment by one or more health plan issuers, high-risk*
3 *pools, mandatory conversion policies, or any com-*
4 *bination thereof).*

5 (2) *PROCEDURE FOR STATE ELECTION.—If, not*
6 *later than 6 months after the date of enactment of this*
7 *Act, the Governor of a State notifies the Secretary of*
8 *Health and Human Services that—*

9 (A) *the State has adopted an alternative*
10 *mechanism that achieves the goals of sections 110*
11 *and 111; or*

12 (B) *the State intends to implement an al-*
13 *ternative mechanism that is designed to achieve*
14 *the goals of sections 110 and 111;*

15 *such State alternative mechanism shall, except as pro-*
16 *vided in paragraphs (3) and (4), apply in lieu of the*
17 *standards described in sections 110 and 111.*

18 (3) *NONAPPLICATION OF MECHANISM.—A State*
19 *alternative mechanism adopted under paragraph (1)*
20 *shall be presumed to achieve the goals of sections 110*
21 *and 111 and shall apply in lieu of such sections, un-*
22 *less the Secretary of Health and Human Services, in*
23 *consultation with the Governor and Insurance Com-*
24 *missioner or chief insurance regulatory official of the*

1 *State, finds that the State alternative mechanism*
2 *fails to—*

3 *(A) offer coverage to those individuals who*
4 *meet the requirements of sections 110(b) and*
5 *111;*

6 *(B) prohibit a limitation or exclusion of*
7 *benefits relating to treatment of a preexisting*
8 *condition that was covered under the previous*
9 *group health plan or employee health benefit*
10 *plan of an individual who meets the require-*
11 *ments of sections 110(b) and 111;*

12 *(C) offer individuals who meet the require-*
13 *ments of sections 110(b) and 111 a choice of in-*
14 *dividual health plans, including at least one*
15 *plan comparable to comprehensive plans offered*
16 *in the individual market in such State or a plan*
17 *comparable to a standard option plan available*
18 *under the group or individual health insurance*
19 *laws of such State; or*

20 *(D) except as provided in paragraph (4),*
21 *implement a risk spreading mechanism, cross*
22 *subsidy mechanism, risk adjustment mechanism,*
23 *rating limitation or other mechanism (such as*
24 *mechanisms described in the NAIC Model Health*
25 *Plan for Uninsurable Individuals Act) designed*

1 to reduce the variation among the cost of such
2 plans and other individual health plans offered
3 by the carrier or available in such State.

4 (4) *CHOICE OF PLANS.*—The Secretary of Health
5 and Human Services shall waive the requirement in
6 subparagraph (D) of paragraph (3) with respect to a
7 State if individuals who meet the requirements of sec-
8 tions 110(b) and 111 in such State are provided with
9 a choice of all individual health plans otherwise
10 available in the individual market.

11 (5) *FUTURE ADOPTION OF MECHANISMS.*—With
12 respect to a State that implements an alternative
13 mechanism under paragraph (1) after the period re-
14 ferred to in paragraph (2)—

15 (A) the State shall provide notice to the Sec-
16 retary that such alternative mechanism achieves
17 the goals of sections 110 and 111;

18 (B) the State alternative mechanism shall
19 apply in lieu of sections 110 and 111;

20 (C) except as provided in subsections (d)
21 and (e), the Secretary may make a determina-
22 tion as provided for in paragraph (3); and

23 (D) the procedures described in subsection
24 (c) shall apply.

1 (b) *TIMEFRAME FOR SECRETARIAL DETERMINA-*
2 *TION.—*

3 (1) *IN GENERAL.—With respect to a State elec-*
4 *tion under subsection (a)(2)(B), the Secretary of*
5 *Health and Human Services shall not make a deter-*
6 *mination under subsection (a)(3) until the expiration*
7 *of the 12-month period beginning on the date on*
8 *which such notification is made, or until January 1,*
9 *1998, whichever is later.*

10 (2) *RULE APPLICABLE TO CERTAIN STATES.—*
11 *With respect to a State that makes an election under*
12 *subsection (a)(2)(B) and that has a legislature that*
13 *does not meet within the 12-month period beginning*
14 *on the date of enactment of this Act, the Secretary of*
15 *Health and Human Services shall not make a deter-*
16 *mination under subsection (a) prior to January 1,*
17 *1999.*

18 (c) *NOTICE TO STATE.—If the Secretary of Health and*
19 *Human Services determines that a State alternative mecha-*
20 *nism fails to meet the criteria described in subsection (a)(3),*
21 *or that such mechanism is no longer being implemented,*
22 *the Secretary of Health and Human Services shall notify*
23 *the Governor of such State of such preliminary determina-*
24 *tion and permit the State a reasonable opportunity in*
25 *which to modify the alternative mechanism or to adopt an-*

1 *other mechanism that is designed to meet the goals of sec-*
2 *tions 110 and 111. If, after an opportunity to modify such*
3 *State alternative mechanism, the mechanism fails to meet*
4 *the criteria described in subsection (a)(3), the Secretary*
5 *shall notify the Governor of such State that sections 110*
6 *and 111 shall apply in the State.*

7 *(d) ADOPTION OF NAIC MODEL.—If, not later than*
8 *9 months after the date of enactment of this Act—*

9 *(1) the National Association of Insurance Com-*
10 *missioners (hereafter referred to as the “NAIC”),*
11 *through a process which the Secretary of Health and*
12 *Human Services determines has included consultation*
13 *with representatives of the insurance industry and*
14 *consumer groups, has adopted a model act or acts in-*
15 *cluding provisions addressing portability from a*
16 *group health plan or employee health benefit plan*
17 *into the individual health insurance market; and*

18 *(2) the Secretary of Health and Human Services*
19 *determines, within 30 days of the adoption of such*
20 *NAIC model act or acts, that such act or acts comply*
21 *with the goals of sections 110 and 111;*

22 *a State that elects to adopt such model act or acts shall*
23 *be deemed to have met the requirements of sections 110 and*
24 *111 and shall not be subject to a determination under sub-*
25 *section (a)(3).*

1 (e) *STATE HIGH RISK POOLS DEEMED IN COMPLI-*
2 *ANCE.—If the Governor of a State notifies the Secretary of*
3 *Health and Human Services in a timeframe consistent with*
4 *either subsection (a)(2) or (a)(5) that such State has a high*
5 *risk pool open to those individuals meeting the requirements*
6 *of sections 110(b) and 111, that limits preexisting condition*
7 *waiting periods consistent with section 110(a)(1)(B) and*
8 *that with respect to premium rates and covered benefits is*
9 *consistent with standards included in the NAIC Model*
10 *Health Plan for Uninsurable Individuals Act, such State*
11 *high risk pool shall be deemed to have met the requirements*
12 *of sections 110 and 111 and shall not be subject to a deter-*
13 *mination under subsection (a)(3).*

14 **SEC. 113. DEFINITION.**

15 (a) *IN GENERAL.—As used in this title, the term “in-*
16 *dividual health plan” means any contract, policy, certifi-*
17 *cate or other arrangement offered to individuals by a health*
18 *plan issuer that provides or pays for health benefits (such*
19 *as provider and hospital benefits) and that is not a group*
20 *health plan under section 2(6).*

21 (b) *ARRANGEMENTS NOT INCLUDED.—Such term does*
22 *not include the following, or any combination thereof:*

23 (1) *Coverage only for accident, or disability in-*
24 *come insurance, or any combination thereof.*

1 (2) Medicare supplemental health insurance (as
2 defined under section 1882(g)(1) of the Social Secu-
3 rity Act).

4 (3) Coverage issued as a supplement to liability
5 insurance.

6 (4) Liability insurance, including general liabil-
7 ity insurance and automobile liability insurance.

8 (5) Workers' compensation or similar insurance.

9 (6) Automobile medical payment insurance.

10 (7) Coverage for a specified disease or illness.

11 (8) Hospital or fixed indemnity insurance.

12 (9) Short-term limited duration insurance.

13 (10) Credit-only, dental-only, or vision-only in-
14 surance.

15 (11) A health insurance policy providing benefits
16 only for long-term care, nursing home care, home
17 health care, community-based care, or any combina-
18 tion thereof.

19 **Subtitle C—COBRA Clarifications**

20 **SEC. 121. COBRA CLARIFICATIONS.**

21 (a) PUBLIC HEALTH SERVICE ACT.—

22 (1) PERIOD OF COVERAGE.—Section 2202(2) of
23 the Public Health Service Act (42 U.S.C. 300bb–2(2))
24 is amended—

25 (A) in subparagraph (A)—

1 (i) by transferring the sentence imme-
2 diately preceding clause (iv) so as to appear
3 immediately following such clause (iv); and

4 (ii) in the last sentence (as so trans-
5 ferred)—

6 (I) by inserting “; or a bene-
7 ficiary-family member of the individ-
8 ual,” after “an individual”; and

9 (II) by striking “at the time of a
10 qualifying event described in section
11 2203(2)” and inserting “at any time
12 during the initial 18-month period of
13 continuing coverage under this title”;

14 (B) in subparagraph (D)(i), by inserting
15 before “; or” the following: “, except that the ex-
16 clusion or limitation contained in this clause
17 shall not be considered to apply to a plan under
18 which a preexisting condition or exclusion does
19 not apply to an individual otherwise eligible for
20 continuation coverage under this section because
21 of the provision of the Health Insurance Reform
22 Act of 1996”; and

23 (C) in subparagraph (E), by striking “at
24 the time of a qualifying event described in sec-
25 tion 2203(2)” and inserting “at any time during

1 *the initial 18-month period of continuing cov-*
2 *erage under this title”.*

3 (2) *NOTICES.*—Section 2206(3) of the Public
4 Health Service Act (42 U.S.C. 300bb–6(3)) is amend-
5 ed by striking “at the time of a qualifying event de-
6 scribed in section 2203(2)” and inserting “at any
7 time during the initial 18-month period of continuing
8 coverage under this title”.

9 (3) *BIRTH OR ADOPTION OF A CHILD.*—Section
10 2208(3)(A) of the Public Health Service Act (42
11 U.S.C. 300bb–8(3)(A)) is amended by adding at the
12 end thereof the following new flush sentence:

13 “Such term shall also include a child who is born to
14 or placed for adoption with the covered employee dur-
15 ing the period of continued coverage under this title.”.

16 (b) *EMPLOYEE RETIREMENT INCOME SECURITY ACT*
17 *OF 1974.*—

18 (1) *PERIOD OF COVERAGE.*—Section 602(2) of
19 the Employee Retirement Income Security Act of
20 1974 (29 U.S.C. 1162(2)) is amended—

21 (A) in the last sentence of subparagraph

22 (A)—

23 (i) by inserting “, or a beneficiary-
24 family member of the individual,” after “an
25 individual”; and

1 (ii) by striking “at the time of a quali-
2 fying event described in section 603(2)” and
3 inserting “at any time during the initial
4 18-month period of continuing coverage
5 under this part”;

6 (B) in subparagraph (D)(i), by inserting
7 before “; or” the following: “, except that the ex-
8 clusion or limitation contained in this clause
9 shall not be considered to apply to a plan under
10 which a preexisting condition or exclusion does
11 not apply to an individual otherwise eligible for
12 continuation coverage under this section because
13 of the provision of the Health Insurance Reform
14 Act of 1996”; and

15 (C) in subparagraph (E), by striking “at
16 the time of a qualifying event described in sec-
17 tion 603(2)” and inserting “at any time during
18 the initial 18-month period of continuing cov-
19 erage under this part”.

20 (2) NOTICES.—Section 606(3) of the Employee
21 Retirement Income Security Act of 1974 (29 U.S.C.
22 1166(3)) is amended by striking “at the time of a
23 qualifying event described in section 603(2)” and in-
24 serting “at any time during the initial 18-month pe-
25 riod of continuing coverage under this part”.

1 (3) *BIRTH OR ADOPTION OF A CHILD.*—Section
2 607(3)(A) of the Employee Retirement Income Secu-
3 rity Act of 1974 (29 U.S.C. 1167(3)) is amended by
4 adding at the end thereof the following new flush sen-
5 tence:

6 “Such term shall also include a child who is born to
7 or placed for adoption with the covered employee dur-
8 ing the period of continued coverage under this
9 part.”.

10 (c) *INTERNAL REVENUE CODE OF 1986.*—

11 (1) *PERIOD OF COVERAGE.*—Section
12 4980B(f)(2)(B) of the Internal Revenue Code of 1986
13 is amended—

14 (A) in the last sentence of clause (i) by
15 striking “at the time of a qualifying event de-
16 scribed in paragraph (3)(B)” and inserting “at
17 any time during the initial 18-month period of
18 continuing coverage under this section”;

19 (B) in clause (iv)(I), by inserting before “,
20 or” the following: “, except that the exclusion or
21 limitation contained in this subclause shall not
22 be considered to apply to a plan under which a
23 preexisting condition or exclusion does not apply
24 to an individual otherwise eligible for continu-
25 ation coverage under this subsection because of

1 *the provision of the Health Insurance Reform*
2 *Act of 1995”; and*

3 *(C) in clause (v), by striking “at the time*
4 *of a qualifying event described in paragraph*
5 *(3)(B)” and inserting “at any time during the*
6 *initial 18-month period of continuing coverage*
7 *under this section”.*

8 (2) *NOTICES.*—*Section 4980B(f)(6)(C) of the In-*
9 *ternal Revenue Code of 1986 is amended by striking*
10 *“at the time of a qualifying event described in para-*
11 *graph (3)(B)” and inserting “at any time during the*
12 *initial 18-month period of continuing coverage under*
13 *this section”.*

14 (3) *BIRTH OR ADOPTION OF A CHILD.*—*Section*
15 *4980B(g)(1)(A) of the Internal Revenue Code of 1986*
16 *is amended by adding at the end thereof the following*
17 *new flush sentence:*

18 *“Such term shall also include a child who*
19 *is born to or placed for adoption with the*
20 *covered employee during the period of con-*
21 *tinued coverage under this section.”.*

22 (d) *EFFECTIVE DATE.*—*The amendments made by this*
23 *section shall apply to qualifying events occurring on or*
24 *after the date of the enactment of this Act for plan years*
25 *beginning after December 31, 1997.*

1 (e) *NOTIFICATION OF CHANGES.*—Not later than 60
2 days prior to the date on which this section becomes effec-
3 tive, each group health plan (covered under title XXII of
4 the Public Health Service Act, part 6 of subtitle B of title
5 I of the Employee Retirement Income Security Act of 1974,
6 and section 4980B(f) of the Internal Revenue Code of 1986)
7 shall notify each qualified beneficiary who has elected con-
8 tinuation coverage under such title, part or section of the
9 amendments made by this section.

10 ***Subtitle D—Private Health Plan***
11 ***Purchasing Cooperatives***

12 ***SEC. 131. PRIVATE HEALTH PLAN PURCHASING COOPERA-***
13 ***TIVES.***

14 (a) *DEFINITION.*—As used in this Act, the term “health
15 plan purchasing cooperative” means a group of employees
16 or a group of individuals and employers that, on a vol-
17 untary basis and in accordance with this section, form a
18 cooperative for the purpose of purchasing individual health
19 plans or group health plans offered by health plan issuers.

20 (b) *CERTIFICATION.*—

21 (1) *REQUIREMENT.*—If a group described in sub-
22 section (a), desires to form a health plan purchasing
23 cooperative in accordance with this section and such
24 group appropriately notifies the State and the Sec-
25 retary of such desire, the State, upon a determination

1 *that such group meets the requirements of this section,*
2 *shall certify the group as a health plan purchasing*
3 *cooperative. The State shall make a determination of*
4 *whether such group meets the requirements of this sec-*
5 *tion in a timely fashion and shall oversee the oper-*
6 *ations of such cooperative in order to ensure contin-*
7 *ued compliance with the requirements of this section.*
8 *Each such cooperative shall also be registered with the*
9 *Secretary.*

10 (2) *STATE REFUSAL TO CERTIFY.—*

11 (A) *IN GENERAL.—If a State fails to imple-*
12 *ment a program for certifying health plan pur-*
13 *chasing cooperatives in accordance with the*
14 *standards under this Act, the Secretary shall cer-*
15 *tify and oversee the operations of such coopera-*
16 *tives in such State.*

17 (B) *EXCEPTION.—The Secretary shall not*
18 *certify a health plan purchasing cooperative de-*
19 *scribed in this section if, upon the submission of*
20 *an application by the State to the Secretary, the*
21 *Secretary determines that under a State law in*
22 *effect on the date of enactment of this Act, all*
23 *small employers have a means readily available*
24 *that ensures—*

1 (i) that individuals and employees
2 have a choice of multiple, unaffiliated
3 health plan issuers;

4 (ii) that health plan coverage is subject
5 to State premium rating requirements that
6 are not based on the factors described in
7 subsection (f)(3) and that contains a man-
8 datory minimum loss ratio; and

9 (iii) that comparative health plan ma-
10 terials are disseminated consistent with sub-
11 section (e)(1)(D);

12 and that otherwise meets the objectives of this
13 Act.

14 (3) *INTERSTATE COOPERATIVES.*—For purposes
15 of this section, a health plan purchasing cooperative
16 operating in more than one State shall be certified by
17 the State in which the cooperative is domiciled. States
18 may enter into cooperative agreements for the purpose
19 of overseeing the operation of such cooperatives. For
20 purposes of this subsection, a cooperative shall be con-
21 sidered to be domiciled in the State in which most of
22 the members of the cooperative reside.

23 (c) *BOARD OF DIRECTORS.*—

24 (1) *IN GENERAL.*—Each health plan purchasing
25 cooperative shall be governed by a Board of Directors

1 *that shall be responsible for ensuring the performance*
2 *of the duties of the cooperative under this section. The*
3 *Board shall be composed of a broad cross-section of*
4 *representatives of employers, employees, and individ-*
5 *uals participating in the cooperative.*

6 (2) *LIMITATION ON COMPENSATION.—A health*
7 *plan purchasing cooperative may not provide com-*
8 *ensation to members of the Board of Directors. The*
9 *cooperative may provide reimbursements to such*
10 *members for the reasonable and necessary expenses in-*
11 *curred by the members in the performance of their du-*
12 *ties as members of the Board.*

13 (d) *MEMBERSHIP AND MARKETING AREA.—*

14 (1) *MEMBERSHIP.—A health plan purchasing*
15 *cooperative may establish limits on the maximum size*
16 *of employers who may become members of the cooper-*
17 *ative, and may determine whether to permit individ-*
18 *uals to become members. Upon the establishment of*
19 *such membership requirements, the cooperative shall,*
20 *except as provided in subparagraph (B), accept all*
21 *employers (or individuals) residing within the area*
22 *served by the cooperative who meet such requirements*
23 *as members on a first come, first-served basis, or on*
24 *another basis established by the State to ensure equi-*
25 *table access to the cooperative.*

1 (2) *MARKETING AREA.*—A State may establish
2 rules regarding the geographic area that must be
3 served by health plan purchasing cooperatives to en-
4 sure that cooperatives do not discriminate on the
5 basis of the health status or insurability of the popu-
6 lations that reside in the area served. A State may
7 not use such rules to arbitrarily limit the number of
8 health plan purchasing cooperatives.

9 (e) *DUTIES AND RESPONSIBILITIES.*—

10 (1) *IN GENERAL.*—A health plan purchasing co-
11 operative shall—

12 (A) objectively evaluate potential health
13 plan issuers and enter into agreements with mul-
14 tiple, unaffiliated health plan issuers, except that
15 the requirement of this subparagraph shall not
16 apply in regions (such as remote or frontier
17 areas) in which compliance with such require-
18 ment is not possible;

19 (B) enter into agreements with employers
20 and individuals who become members of the co-
21 operative;

22 (C) participate in any program of risk-ad-
23 justment or reinsurance, or any similar pro-
24 gram, that is established by the State;

1 (D) prepare and disseminate comparative
2 health plan materials (including information
3 about cost, quality, benefits, and other informa-
4 tion concerning group health plans and individ-
5 ual health plans offered through the cooperative);

6 (E) broadly solicit and actively market to
7 all eligible employers and individuals residing
8 within the service area; and

9 (F) act as an ombudsman for group health
10 plan or individual health plan enrollees.

11 (2) *PERMISSIBLE ACTIVITIES.*—A health plan
12 purchasing cooperative may perform such other func-
13 tions as necessary to further the purposes of this Act,
14 including—

15 (A) collecting and distributing premiums
16 and performing other administrative functions;

17 (B) collecting and analyzing surveys of en-
18 rollee satisfaction;

19 (C) charging membership fee to enrollees
20 (such fees may not be based on health status)
21 and charging participation fees to health plan
22 issuers;

23 (D) cooperating with (or accepting as mem-
24 bers) employers who provide health benefits di-

1 *rectly to participants and beneficiaries only for*
2 *the purpose of negotiating with providers; and*

3 *(E) negotiating with health care providers*
4 *and health plan issuers.*

5 *(f) LIMITATIONS ON COOPERATIVE ACTIVITIES.—A*
6 *health plan purchasing cooperative shall not—*

7 *(1) perform any activity relating to the licensing*
8 *of health plan issuers;*

9 *(2) assume financial risk directly or indirectly*
10 *on behalf of members of a health plan purchasing co-*
11 *operative relating to any group health plan or indi-*
12 *vidual health plan;*

13 *(3) establish eligibility, enrollment, or premium*
14 *contribution requirements for individual participants*
15 *or beneficiaries based on health status, medical condi-*
16 *tion, claims experience, receipt of health care, medical*
17 *history, evidence of insurability, genetic information,*
18 *or disability;*

19 *(4) operate on a for-profit or other basis where*
20 *the legal structure of the cooperative permits profits*
21 *to be made and not returned to the members of the*
22 *cooperative, except that a for-profit health plan pur-*
23 *chasing cooperative may be formed by a nonprofit or-*
24 *ganization or organizations—*

1 (A) in which membership in such organiza-
2 tion is not based on health status, medical condi-
3 tion, claims experience, receipt of health care,
4 medical history, evidence of insurability, genetic
5 information, or disability; and

6 (B) that accepts as members all employers
7 or individuals on a first-come, first-served basis,
8 subject to any established limit on the maximum
9 size of an employer that may become a member;
10 or

11 (5) perform any other activities that conflict or
12 are inconsistent with the performance of its duties
13 under this Act.

14 (g) CONFLICT OF INTEREST.—

15 (1) PROHIBITION.—No individual, partnership,
16 or corporation shall serve on the board of a health
17 plan purchasing cooperative, be employed by such a
18 cooperative, receive compensation from such a cooper-
19 ative, or initiate or finance such a cooperative if such
20 individual, partnership, or corporation—

21 (A) fails to discharge the duties and respon-
22 sibilities of such individual, partnership or cor-
23 poration in a manner that is solely in the inter-
24 est of the members of the cooperative; or

1 (B) derives personal benefit (other than in
2 the form of ordinary compensation received)
3 from the sale of, or has a financial interest in,
4 health plans, services or products sold by or dis-
5 tributed through that cooperative.

6 (2) *CONTRACTS WITH THIRD PARTIES.*—Nothing
7 in paragraph (1) shall be construed to prohibit the
8 board of directors of a health plan purchasing cooper-
9 ative, or its officers, at the initiative and under this
10 direction of the board, from contracting with third
11 parties to provide administrative, marketing,
12 consultive, or other services to the cooperative.

13 (h) *LIMITED PREEMPTION OF CERTAIN STATE*
14 *LAWS.*—

15 (1) *IN GENERAL.*—With respect to a health plan
16 purchasing cooperative that meets the requirements of
17 this section, State fictitious group laws shall be pre-
18 empted.

19 (2) *HEALTH PLAN ISSUERS.*—

20 (A) *RATING.*—Except as provided in sub-
21 paragraph (B), a health plan issuer offering a
22 group health plan or individual health plan
23 through a health plan purchasing cooperative
24 that meets the requirements of this section shall
25 comply with all State rating requirements that

1 *would otherwise apply if the health plan were of-*
2 *fered outside of the cooperative.*

3 (B) *EXCEPTION.*—*A State shall permit a*
4 *health plan issuer to reduce premium rates nego-*
5 *tiated with a health plan purchasing cooperative*
6 *that meets the requirements of this section to re-*
7 *fect savings derived from administrative costs,*
8 *marketing costs, profit margins, economies of*
9 *scale, or other factors, except that any such re-*
10 *duction in premium rates may not be based on*
11 *the health status, demographic factors, industry*
12 *type, duration, or other indicators of health risk*
13 *of the members of the cooperative.*

14 (C) *BENEFITS.*—*Except as provided in sub-*
15 *paragraph (D), a health plan issuer offering a*
16 *group health plan or individual health plan*
17 *through a health plan purchasing cooperative*
18 *shall comply with all State mandated benefit*
19 *laws that require the offering of any services,*
20 *category of care, or services of any class or type*
21 *of provider.*

22 (D) *EXCEPTION.*—*In those States that have*
23 *enacted laws authorizing the issuance of alter-*
24 *native benefit plans to small employers, health*
25 *plan issuers may offer such alternative benefit*

1 *plans through a health plan purchasing coopera-*
2 *tive that meets the requirements of this section.*

3 *(i) RULES OF CONSTRUCTION.—Nothing in this sec-*
4 *tion shall be construed to—*

5 *(1) require that a State organize, operate, or oth-*
6 *erwise create health plan purchasing cooperatives;*

7 *(2) otherwise require the establishment of health*
8 *plan purchasing cooperatives;*

9 *(3) require individuals, plan sponsors, or em-*
10 *ployers to purchase group health plans or individual*
11 *health plans through a health plan purchasing coopera-*
12 *tive;*

13 *(4) preempt a State from requiring licensure for*
14 *individuals who are involved in directly supplying*
15 *advice or selling health plans on behalf of a purchas-*
16 *ing cooperative;*

17 *(5) require that a health plan purchasing coopera-*
18 *tive be the only type of purchasing arrangement per-*
19 *mitted to operate in a State;*

20 *(6) confer authority upon a State that the State*
21 *would not otherwise have to regulate health plan issu-*
22 *ers or employee health benefits plans;*

23 *(7) confer authority upon a State (or the Federal*
24 *Government) that the State (or Federal Government)*
25 *would not otherwise have to regulate group purchas-*

1 *ing arrangements, coalitions, association plans, or*
2 *other similar entities that do not desire to become a*
3 *health plan purchasing cooperative in accordance*
4 *with this section; or*

5 *(8) except as specifically provided otherwise in*
6 *this subsection, prevent the application of State laws*
7 *and regulations otherwise applicable to health plan*
8 *issuers offering group health plans or individual*
9 *health plans through a health plan purchasing cooper-*
10 *ative.*

11 *(j) APPLICATION OF ERISA.—For purposes of enforce-*
12 *ment only, the requirements of parts 4 and 5 of subtitle*
13 *B of title I of the Employee Retirement Income Security*
14 *Act of 1974 (29 U.S.C. 1101) shall apply to a health plan*
15 *purchasing cooperative as if such plan were an employee*
16 *welfare benefit plan.*

17 **TITLE II—APPLICATION AND** 18 **ENFORCEMENT OF STANDARDS**

19 **SEC. 201. APPLICABILITY.**

20 *(a) CONSTRUCTION.—*

21 *(1) ENFORCEMENT.—*

22 *(A) IN GENERAL.—A requirement or stand-*
23 *ard imposed under this Act on a group health*
24 *plan or individual health plan offered by a*
25 *health plan issuer shall be deemed to be a re-*

1 *quirement or standard imposed on the health*
2 *plan issuer. Such requirements or standards*
3 *shall be enforced by the State insurance commis-*
4 *sioner for the State involved or the official or of-*
5 *icials designated by the State to enforce the re-*
6 *quirements of this Act. In the case of a group*
7 *health plan offered by a health plan issuer in*
8 *connection with an employee health benefit plan,*
9 *the requirements or standards imposed under*
10 *this Act shall be enforced with respect to the*
11 *health plan issuer by the State insurance com-*
12 *missioner for the State involved or the official or*
13 *officials designated by the State to enforce the re-*
14 *quirements of this Act.*

15 *(B) LIMITATION.—Except as provided in*
16 *subsection (c), the Secretary shall not enforce the*
17 *requirements or standards of this Act as they re-*
18 *late to health plan issuers, group health plans, or*
19 *individual health plans. In no case shall a State*
20 *enforce the requirements or standards of this Act*
21 *as they relate to employee health benefit plans.*

22 *(2) PREEMPTION OF STATE LAW.—Nothing in*
23 *this Act shall be construed to prevent a State from es-*
24 *tablishing, implementing, or continuing in effect*
25 *standards and requirements—*

1 (A) not prescribed in this Act; or

2 (B) related to the issuance, renewal, or
3 portability of health insurance or the establish-
4 ment or operation of group purchasing arrange-
5 ments, that are consistent with, and are not in
6 direct conflict with, this Act and provide greater
7 protection or benefit to participants, bene-
8 ficiaries or individuals.

9 (b) *RULE OF CONSTRUCTION.*—Nothing in this Act
10 shall be construed to affect or modify the provisions of sec-
11 tion 514 of the Employee Retirement Income Security Act
12 of 1974 (29 U.S.C. 1144).

13 (c) *CONTINUATION.*—Nothing in this Act shall be con-
14 strued as requiring a group health plan or an employee
15 health benefit plan to provide benefits to a particular par-
16 ticipant or beneficiary, to all participants or beneficiaries,
17 or to any class or group of participants or beneficiaries,
18 in excess of or other than those provided under the terms
19 of such plan.

20 **SEC. 202. ENFORCEMENT OF STANDARDS.**

21 (a) *HEALTH PLAN ISSUERS.*—Each State shall require
22 that each group health plan and individual health plan is-
23 sued, sold, renewed, offered for sale or operated in such
24 State by a health plan issuer meet the standards established
25 under this Act pursuant to an enforcement plan filed by

1 *the State with the Secretary. A State shall submit such in-*
2 *formation as required by the Secretary demonstrating effec-*
3 *tive implementation of the State enforcement plan.*

4 (b) *EMPLOYEE HEALTH BENEFIT PLANS.*—*With re-*
5 *spect to employee health benefit plans, the Secretary shall*
6 *enforce the reform standards established under this Act in*
7 *the same manner as provided for under sections 502, 504,*
8 *506, and 510 of the Employee Retirement Income Security*
9 *Act of 1974 (29 U.S.C. 1132, 1134, 1136, and 1140). The*
10 *civil penalties contained in paragraphs (1) and (2) of sec-*
11 *tion 502(c) of such Act (29 U.S.C. 1132(c)(1) and (2)) shall*
12 *apply to any information required by the Secretary to be*
13 *disclosed and reported under this section.*

14 (c) *FAILURE TO IMPLEMENT PLAN.*—*In the case of the*
15 *failure of a State to substantially enforce the standards and*
16 *requirements set forth in this Act with respect to group*
17 *health plans and individual health plans as provided for*
18 *under the State enforcement plan filed under subsection (a),*
19 *the Secretary, in consultation with the Secretary of Health*
20 *and Human Services, shall implement an enforcement plan*
21 *meeting the standards of this Act in such State. In the case*
22 *of a State that fails to substantially enforce the standards*
23 *and requirements set forth in this Act, each health plan is-*
24 *suer operating in such State shall be subject to civil enforce-*
25 *ment as provided for under sections 502, 504, 506, and 510*

1 *of the Employee Retirement Income Security Act of 1974*
2 *(29 U.S.C. 1132, 1134, 1136, and 1140). The civil penalties*
3 *contained in paragraphs (1) and (2) of section 502(c) of*
4 *such Act (29 U.S.C. 1132(c)(1) and (2)) shall apply to any*
5 *information required by the Secretary to be disclosed and*
6 *reported under this section.*

7 *(d) APPLICABLE CERTIFYING AUTHORITY.—As used in*
8 *this title, the term “applicable certifying authority” means,*
9 *with respect to—*

10 *(1) health plan issuers, the State insurance com-*
11 *missioner or official or officials designated by the*
12 *State to enforce the requirements of this Act for the*
13 *State involved; and*

14 *(2) an employee health benefit plan, the Sec-*
15 *retary.*

16 *(e) REGULATIONS.—The Secretary may promulgate*
17 *such regulations as may be necessary or appropriate to*
18 *carry out this Act.*

19 *(f) TECHNICAL AMENDMENT.—Section 508 of the Em-*
20 *ployee Retirement Income Security Act of 1974 (29 U.S.C.*
21 *1138) is amended by inserting “and under the Health In-*
22 *surance Reform Act of 1996” before the period.*

1 **TITLE III—MISCELLANEOUS**
2 **PROVISIONS**

3 **SEC. 301. HMOS ALLOWED TO OFFER PLANS WITH**
4 **DEDUCTIBLES TO INDIVIDUALS WITH MEDI-**
5 **CAL SAVINGS ACCOUNTS.**

6 (a) *IN GENERAL.*—Section 1301(b) of the Public
7 Health Service Act (42 U.S.C. 300e(b)) is amended by add-
8 ing at the end the following new paragraph:

9 “(6)(A) *If a member certifies that a medical sav-*
10 *ings account has been established for the benefit of*
11 *such member, a health maintenance organization*
12 *may, at the request of such member reduce the basic*
13 *health services payment otherwise determined under*
14 *paragraph (1) by requiring the payment of a deduct-*
15 *ible by the member for basic health services.*

16 “(B) *For purposes of this paragraph, the term*
17 *‘medical savings account’ means an account which,*
18 *by its terms, allows the deposit of funds and the use*
19 *of such funds and income derived from the investment*
20 *of such funds for the payment of the deductible de-*
21 *scribed in subparagraph (A).”.*

22 (b) *MEDICAL SAVINGS ACCOUNTS.*—*It is the sense of*
23 *the Committee on Labor and Human Resources of the Sen-*
24 *ate that the establishment of medical savings accounts, in-*
25 *cluding those defined in section 1301(b)(6)(B) of the Public*

1 *Health Service Act (42 U.S.C. 300e(b)(6)(B)), should be en-*
2 *couraged as part of any health insurance reform legislation*
3 *passed by the Senate through the use of tax incentives relat-*
4 *ing to contributions to, the income growth of, and the quali-*
5 *fied use of, such accounts.*

6 *(c) SENSE OF THE SENATE.—It is the sense of the Sen-*
7 *ate that the Congress should take measures to further the*
8 *purposes of this Act, including any necessary changes to*
9 *the Internal Revenue Code of 1986 to encourage groups and*
10 *individuals to obtain health coverage, and to promote ac-*
11 *cess, equity, portability, affordability, and security of health*
12 *benefits.*

13 **SEC. 302. HEALTH COVERAGE AVAILABILITY STUDY.**

14 *(a) IN GENERAL.—The Secretary of Health and*
15 *Human Services, in consultation with the Secretary, rep-*
16 *resentatives of State officials, consumers, and other rep-*
17 *resentatives of individuals and entities that have expertise*
18 *in health insurance and employee benefits, shall conduct a*
19 *three-part study, and prepare and submit reports, in ac-*
20 *cordance with this section.*

21 *(b) EVALUATION OF AVAILABILITY.—Not later than*
22 *January 1, 1998, the Secretary of Health and Human Serv-*
23 *ices shall prepare and submit to the appropriate committees*
24 *of Congress a report, concerning—*

1 (1) *an evaluation, based on the experience of*
2 *States, expert opinions, and such additional data as*
3 *may be available, of the various mechanisms used to*
4 *ensure the availability of reasonably priced health*
5 *coverage to employers purchasing group coverage and*
6 *to individuals purchasing coverage on a non-group*
7 *basis; and*

8 (2) *whether standards that limit the variation in*
9 *premiums will further the purposes of this Act.*

10 (c) *EVALUATION OF EFFECTIVENESS.*—*Not later than*
11 *January 1, 1999, the Secretary of Health and Human Serv-*
12 *ices shall prepare and submit to the appropriate committees*
13 *of Congress a report, concerning the effectiveness of the pro-*
14 *visions of this Act and the various State laws, in ensuring*
15 *the availability of reasonably priced health coverage to em-*
16 *ployers purchasing group coverage and individuals pur-*
17 *chasing coverage on a non-group basis.*

18 (d) *EVALUATION OF ACCESS AND CHOICE.*—*Not later*
19 *than June 1, 1998, the Secretary of Health and Human*
20 *Services shall prepare and submit to the appropriate com-*
21 *mittees of Congress a report concerning—*

22 (1) *an evaluation of the extent to which patients*
23 *have direct access to, and choice of, health care pro-*
24 *vider, including specialty providers, within a network*
25 *of providers, as well as the opportunity to utilize pro-*

1 *viders outside of the network, under the various types*
2 *of coverage offered under the provisions of this Act;*

3 *(2) an evaluation of the cost to the insurer of*
4 *providing out-of-network access to providers, and the*
5 *feasibility of providing out-of-network access in all*
6 *health plans offered under provisions of this Act; and*

7 *(3) an evaluation of the percent of premium dol-*
8 *lar utilized for medical care and administration of*
9 *the various types of coverage offered, including cov-*
10 *erage which permits out-of-network access and choice*
11 *of provider, under provisions of this Act.*

12 **SEC. 303. REIMBURSEMENT OF TELEMEDICINE.**

13 *The Health Care Financing Administration is directed*
14 *to complete their ongoing study of reimbursement of all tele-*
15 *medicine services and submit a report to Congress with a*
16 *proposal for reimbursement of fee-for-service medicine by*
17 *March 1, 1997. The report shall utilize data compiled from*
18 *the current demonstration projects already under review*
19 *and gather data from other ongoing telemedicine networks.*
20 *This report shall include an analysis of the cost of services*
21 *provided via telemedicine.*

1 **SEC. 304. SENSE OF THE COMMITTEE CONCERNING MEDI-**
2 **CARE.**

3 (a) *FINDINGS.*—*The Committee on Labor and Human*
4 *Resources of the Senate finds that the Public Trustees of*
5 *Medicare concluded in their 1995 Annual Report that—*

6 (1) *the Medicare program is clearly*
7 *unsustainable in its present form;*

8 (2) *“the Hospital Insurance Trust Fund, which*
9 *pays inpatient hospital expenses, will be able to pay*
10 *benefits for only about 7 years and is severely out of*
11 *financial balance in the long range”;* and

12 (3) *the Public Trustees “strongly recommend*
13 *that the crisis presented by the financial condition of*
14 *the Medicare trust fund be urgently addressed on a*
15 *comprehensive basis, including a review of the*
16 *programs’s financing methods, benefit provisions, and*
17 *delivery mechanisms”.*

18 (b) *SENSE OF THE COMMITTEE.*—*It is the Sense of the*
19 *Committee on Labor and Human Resources of the Senate*
20 *that the Senate should take measures necessary to reform*
21 *the Medicare program, to provide increased choice for sen-*
22 *iors, and to respond to the findings of the Public Trustees*
23 *by protecting the short-term solvency and long-term sus-*
24 *tainability of the Medicare program.*

1 **SEC. 305. PARITY FOR MENTAL HEALTH SERVICES.**

2 (a) *PROHIBITION.*—An employee health benefit plan,
3 or a health plan issuer offering a group health plan or an
4 individual health plan, shall not impose treatment limita-
5 tions or financial requirements on the coverage of mental
6 health services if similar limitations or requirements are
7 not imposed on coverage for services for other conditions.

8 (b) *RULE OF CONSTRUCTION.*—Nothing in subsection
9 (a) shall be construed as prohibiting an employee health
10 benefit plan, or a health plan issuer offering a group health
11 plan or an individual health plan, from requiring
12 preadmission screening prior to the authorization of serv-
13 ices covered under the plan or from applying other limita-
14 tions that restrict coverage for mental health services to
15 those services that are medically necessary.

16 **SEC. 306. WAIVER OF FOREIGN COUNTRY RESIDENCE RE-**
17 **QUIREMENT WITH RESPECT TO INTER-**
18 **NATIONAL MEDICAL GRADUATES.**

19 (a) *EXTENSION OF WAIVER PROGRAM.*—Section
20 220(c) of the Immigration and Nationality Technical Cor-
21 rections Act of 1994 (8 U.S.C. 1182 note) is amended by
22 striking “June 1, 1996” and inserting “June 1, 2002”.

23 (b) *CONDITIONS ON FEDERALLY REQUESTED WAIV-*
24 *ERS.*—Section 212(e) of the Immigration and Nationality
25 Act (8 U.S.C. 1184(e)) is amended by inserting after “ex-
26 cept that in the case of a waiver requested by a State De-

1 *partment of Public Health or its equivalent” the following:*
2 *“or in the case of a waiver requested by an interested Unit-*
3 *ed States Government agency on behalf of an alien described*
4 *in clause (iii)”.*

5 *(c) RESTRICTIONS ON FEDERALLY REQUESTED WAIV-*
6 *ERS.—Section 214(k) (8 U.S.C. 1184(k)) is amended to*
7 *read as follows:*

8 *“(k)(1) In the case of a request by an interested State*
9 *agency or by an interested United States Government agen-*
10 *cy for a waiver of the two-year foreign residence require-*
11 *ment under section 212(e) with respect to an alien described*
12 *in clause (iii) of that section, the Attorney General shall*
13 *not grant such waiver unless—*

14 *“(A) in the case of an alien who is otherwise*
15 *contractually obligated to return to a foreign country,*
16 *the government of such country furnishes the Director*
17 *of the United States Information Agency with a state-*
18 *ment in writing that it has no objection to such waiv-*
19 *er; and*

20 *“(B)(i) in the case of a request by an interested*
21 *State agency—*

22 *“(I) the alien demonstrates a bona fide offer*
23 *of full-time employment, agrees to begin employ-*
24 *ment with the health facility or organization*
25 *named in the waiver application within 90 days*

1 *of receiving such waiver, and agrees to work for*
2 *a total of not less than three years (unless the At-*
3 *torney General determines that extenuating cir-*
4 *cumstances exist, such as closure of the facility*
5 *or hardship to the alien would justify a lesser pe-*
6 *riod of time); and*

7 *“(II) the alien’s employment continues to*
8 *benefit the public interest; or*

9 *“(ii) in the case of a request by an interested*
10 *United States Government agency—*

11 *“(I) the alien demonstrates a bona fide offer*
12 *of full-time employment that has been found to*
13 *be in the public interest, agrees to begin employ-*
14 *ment with the health facility or organization*
15 *named in the waiver application within 90 days*
16 *of receiving such waiver, and agrees to work for*
17 *a total of not less than three years (unless the At-*
18 *torney General determines that extenuating cir-*
19 *cumstances exist, such as closure of the facility*
20 *or hardship to the alien would justify a lesser pe-*
21 *riod of time); and*

22 *“(II) the alien’s employment continues to*
23 *benefit the public interest;*

24 *“(C) in the case of a request by an interested*
25 *State agency, the alien agrees to practice medicine in*

1 *accordance with paragraph (2) for a total of not less*
2 *than three years only in the geographic area or areas*
3 *which are designated by the Secretary of Health and*
4 *Human Services as having a shortage of health care*
5 *professionals; and*

6 *“(D) in the case of a request by an interested*
7 *State agency, the grant of such a waiver would not*
8 *cause the number of waivers allotted for that State for*
9 *that fiscal year to exceed 20.*

10 *“(2)(A) Notwithstanding section 248(2) the Attorney*
11 *General may change the status of an alien that qualifies*
12 *under this subsection and section 212(e) to that of an alien*
13 *described in section 101(a)(15)(H)(i)(b).*

14 *“(B) No person who has obtained a change of status*
15 *under subparagraph (A) and who has failed to fulfill the*
16 *terms of the contract with the health facility or organization*
17 *named in the waiver application shall be eligible to apply*
18 *for an immigrant visa, for permanent residence, or for any*
19 *other change of nonimmigrant status until it is established*
20 *that such person has resided and been physically present*
21 *in the country of his nationality or his last residence for*
22 *an aggregate of at least two years following departure from*
23 *the United States.*

24 *“(3) Notwithstanding any other provisions of this sub-*
25 *section, the two-year foreign residence requirement under*

1 *section 212(e) shall apply with respect to an alien in clause*
2 *(iii) of that section who has not otherwise been accorded*
3 *status under section 101(a)(27)(H)—*

4 *“(A) in the case of a request by an interested*
5 *State agency, if at any time the alien practices medi-*
6 *cine in an area other than an area described in para-*
7 *graph (1)(C); and*

8 *“(B) in the case of a request by an interested*
9 *United States Government agency, if at any time the*
10 *alien engages in employment for a health facility or*
11 *organization not named in the waiver application.”.*

12 **SEC. 307. ORGAN AND TISSUE DONATION INFORMATION IN-**
13 **CLUDED WITH INCOME TAX REFUND PAY-**
14 **MENTS.**

15 *(a) IN GENERAL.—The Secretary of the Treasury shall*
16 *include with any payment of a refund of individual income*
17 *tax made during the period beginning on February 1, 1997,*
18 *and ending on June 30, 1997, a copy of the document de-*
19 *scribed in subsection (b).*

20 *(b) TEXT OF DOCUMENT.—The Secretary of the Treas-*
21 *ury shall, after consultation with the Secretary of Health*
22 *and Human Services and organizations promoting organ*
23 *and tissue (including eye) donation, prepare a document*
24 *suitable for inclusion with individual income tax refund*
25 *payments which—*

1 (1) encourages organ and tissue donation;

2 (2) includes a detachable organ and tissue donor
3 card; and

4 (3) urges recipients to—

5 (A) sign the organ and tissue donor card;

6 (B) discuss organ and tissue donation with
7 family members and tell family members about
8 the recipient's desire to be an organ and tissue
9 donor if the occasion arises; and

10 (C) encourage family members to request or
11 authorize organ and tissue donation if the occa-
12 sion arises.

13 **SEC. 308. SENSE OF THE SENATE REGARDING ADEQUATE**
14 **HEALTH CARE COVERAGE FOR ALL CHILDREN**
15 **AND PREGNANT WOMEN.**

16 (a) *FINDINGS.*—The Senate finds the following:

17 (1) The health care coverage of mothers and chil-
18 dren in the United States is unacceptable, with more
19 than 9,300,000 children and 500,000 expectant moth-
20 ers having no health insurance.

21 (2) Among industrial nations, the United States
22 ranks 1st in wealth but 18th in infant mortality, and
23 14th among such nations in maternal mortality.

24 (3) 22 percent of pregnant women do not have
25 prenatal care in the first trimester, and 22 percent of

1 *all poor children are uninsured, despite the medicaid*
2 *program under title XIX of the Social Security Act.*

3 *(4) Of the 1,100,000 net increase in uninsured*
4 *persons from 1992 to 1993, 84 percent or 922,500*
5 *were children.*

6 *(5) Since 1987, the number of children covered*
7 *by employment based health insurance has decreased,*
8 *and many children lack health insurance despite the*
9 *relative affordability of providing insurance for chil-*
10 *dren.*

11 *(6) Health care coverage for children is relatively*
12 *inexpensive and in 1993 the medicaid program spent*
13 *an average of \$1,012 per child compared to \$8,220*
14 *per elderly adult.*

15 *(7) Uninsured children are generally children of*
16 *lower income workers, who are less likely than higher*
17 *income workers to have health insurance for their*
18 *families because they are less likely to work for a firm*
19 *that offers insurance, and if such insurance is offered,*
20 *it is often too costly for lower income workers to pur-*
21 *chase.*

22 *(8) In 1993, 61 percent of uninsured children*
23 *were in families with at least one parent working full*
24 *time for the entire year the child was uninsured, and*
25 *about 57 percent of uninsured children had a family*

1 *income at or below 150 percent of the Federal poverty*
2 *level.*

3 *(9) If Congress eliminates the Federal guarantee*
4 *of medicaid, an estimated 4,900,000 children may*
5 *lose their guarantee of health care coverage, and those*
6 *same children may be added to the currently projected*
7 *12,600,000 children who will be uninsured by the*
8 *year 2002.*

9 *(10) Studies have shown that uninsured children*
10 *are less likely than insured children to receive needed*
11 *health and preventive care, which can affect their*
12 *health status adversely throughout their lives, with*
13 *such children less likely to have routine doctor visits,*
14 *receive care for injuries, and have a regular source of*
15 *medical care.*

16 *(11) The families of uninsured children are more*
17 *likely to take the children to an emergency room than*
18 *to a private physician or health maintenance organi-*
19 *zation.*

20 *(12) Children without health insurance are less*
21 *likely to be appropriately immunized or receive other*
22 *preventive care for childhood illnesses.*

23 *(13) Ensuring the health of children clearly in-*
24 *creases their chances to become productive members of*
25 *society and averts more serious or more expensive*

1 *health conditions later in life, and ensuring that all*
2 *pregnant women receive competent prenatal care also*
3 *saves social costs.*

4 *(14) Although the United States has made great*
5 *improvements in health care coverage through the*
6 *medicaid program, it is still the only developed na-*
7 *tion that does not ensure that all of its children and*
8 *pregnant women have health care coverage.*

9 *(15) The United States should not accept a sta-*
10 *tus quo in which children in many neighborhoods are*
11 *more likely to have access to drugs and guns than to*
12 *doctors, or accept a status quo in which health care*
13 *is ensured for all prisoners but not for all children.*

14 *(b) SENSE OF THE SENATE.—It is the sense of the Sen-*
15 *ate that the issue of adequate health care for our mothers*
16 *and children is important to the future of the United States,*
17 *and in consideration of the importance of such issue, the*
18 *Senate should pass health care legislation that will ensure*
19 *health care coverage for all of the United States's pregnant*
20 *women and children.*

21 **SEC. 309. SENSE OF THE SENATE REGARDING AVAILABLE**
22 **TREATMENTS.**

23 *It is the sense of the Senate that the Senate finds that*
24 *patients deserve to know the full range of treatments avail-*
25 *able to them and Congress should thoughtfully examine*

1 *these issues to ensure that all patients get the care they de-*
2 *serve.*

3 **SEC. 310. MEDICAL VOLUNTEERS.**

4 (a) *SHORT TITLE.*—*This title may be cited as the*
5 *“Medical Volunteer Act”.*

6 (b) *TORT CLAIM IMMUNITY.*—

7 (1) *GENERAL RULE.*—*A health care professional*
8 *who provides a health care service to a medically un-*
9 *derserved person without receiving compensation for*
10 *such health care service, shall be regarded, for pur-*
11 *poses of any medical malpractice claim that may*
12 *arise in connection with the provision of such service,*
13 *as an employee of the Federal Government for pur-*
14 *poses of the Federal tort claims provisions in title 28,*
15 *United States Code.*

16 (2) *COMPENSATION.*—*For purposes of paragraph*
17 *(1), a health care professional shall be deemed to have*
18 *provided a health care service without compensation*
19 *only if, prior to furnishing a health care service, the*
20 *health care professional—*

21 (A) *agrees to furnish the health care service*
22 *without charge to any person, including any*
23 *health insurance plan or program under which*
24 *the recipient is covered; and*

1 (B) provides the recipient of the health care
2 service with adequate notice (as determined by
3 the Secretary) of the limited liability of the
4 health care professional with respect to the serv-
5 ice.

6 (c) *PREEMPTION.*—The provisions of this section shall
7 preempt any State law to the extent that such law is incon-
8 sistent with such provisions. The provisions of this section
9 shall not preempt any State law that provides greater in-
10 centives or protections to a health care professional render-
11 ing a health care service.

12 (d) *DEFINITIONS.*—For purposes of this section:

13 (1) *HEALTH CARE PROFESSIONAL.*—The term
14 “health care professional” means a person who, at the
15 time the person provides a health care service, is li-
16 censed or certified by the appropriate authorities for
17 practice in a State to furnish health care services.

18 (2) *HEALTH CARE SERVICE.*—The term “health
19 care service” means any medical assistance to the ex-
20 tent it is included in the plan submitted under title
21 XIX of the Social Security Act for the State in which
22 the service was provided.

23 (3) *MEDICALLY UNDERSERVED PERSON.*—The
24 term “medically underserved person” means a person
25 who resides in—

1 (A) a medically underserved area as defined
2 for purposes of determining a medically under-
3 served population under section 330 of the Public
4 Health Service Act (42 U.S.C. 254c); or

5 (B) a health professional shortage area as
6 defined in section 332 of such Act (42 U.S.C.
7 254e);

8 and who receives care in a health care facility sub-
9 stantially comparable to any of those designated in
10 the Federally Supported Health Centers Assistance
11 Act (42 U.S.C. 233 et seq.), as shall be determined in
12 regulations promulgated by the Secretary.

13 (4) *SECRETARY.*—The term “Secretary” means
14 the Secretary of the Department of Health and
15 Human Services.

16 **SEC. 311. EFFECTIVE DATE.**

17 Except as otherwise provided for in this Act, the provi-
18 sions of this Act shall apply as follows:

19 (1) With respect to group health plans, such pro-
20 visions shall apply to plans offered, sold, issued, re-
21 newed, in effect, or operated on or after January 1,
22 1997.

23 (2) With respect to individual health plans, such
24 provisions shall apply to plans offered, sold, issued,
25 renewed, in effect, or operated on or after the date

1 that is 6 months after the date of enactment of this
2 Act, or January 1, 1997, whichever is later.

3 (3) With respect to employee health benefit plans,
4 such provisions shall apply to such plans on the first
5 day of the first plan year beginning on or after Janu-
6 ary 1, 1997.

7 **SEC. 312. SEVERABILITY.**

8 If any provision of this Act or the application of such
9 provision to any person or circumstance is held to be uncon-
10 stitutional, the remainder of this Act and the application
11 of the provisions of such to any person or circumstance shall
12 not be affected thereby.

13 **TITLE IV—TAX-RELATED HEALTH**
14 **PROVISIONS**

15 **SEC. 400. SHORT TITLE; AMENDMENT OF 1986 CODE.**

16 (a) *SHORT TITLE.*—This title may be cited as the
17 “Health Insurance and Long-Term Care Affordability Act
18 of 1996”.

19 (b) *AMENDMENT OF 1986 CODE.*—Except as otherwise
20 expressly provided, whenever in this title an amendment
21 or repeal is expressed in terms of an amendment to, or re-
22 peal of, a section or other provision, the reference shall be
23 considered to be made to a section or other provision of the
24 Internal Revenue Code of 1986.

1 **Subtitle A—Increase in Deduction**
 2 **for Health Insurance Costs of**
 3 **Self-Employed Individuals**

4 **SEC. 401. INCREASE IN SELF-EMPLOYED INDIVIDUALS' DE-**
 5 **DUCTION FOR HEALTH INSURANCE COSTS.**

6 (a) *IN GENERAL.*—Section 162(l) (relating to special
 7 rules for health insurance costs of self-employed individ-
 8 uals) is amended—

9 (1) by striking “30 percent” in paragraph (1)
 10 and inserting “the applicable percentage”, and

11 (2) by adding at the end the following new para-
 12 graph:

13 “(6) *APPLICABLE PERCENTAGE.*—For purposes
 14 of this subsection, the term ‘applicable percentage’
 15 means the percentage determined in accordance with
 16 the following table:

“In the case of taxable years beginning in:	The applicable percentage is:
1997	35
1998	40
1999	45
2000	50
2001	55
2002	60
2003	65
2004	70
2005	75
2006 and thereafter	80.”

17 (b) *EFFECTIVE DATE.*—The amendments made by this
 18 section shall apply to taxable years beginning after Decem-
 19 ber 31, 1996.

1 **Subtitle B—Long-Term Care**
2 **Provisions**

3 **CHAPTER 1—LONG-TERM CARE SERVICES**
4 **AND CONTRACTS**

5 **Subchapter A—General Provisions**

6 **SEC. 411. TREATMENT OF LONG-TERM CARE INSURANCE.**

7 (a) *GENERAL RULE.*—Chapter 79 (relating to defini-
8 tions) is amended by inserting after section 7702A the fol-
9 lowing new section:

10 **“SEC. 7702B. TREATMENT OF QUALIFIED LONG-TERM CARE**
11 **INSURANCE.**

12 “(a) *IN GENERAL.*—For purposes of this title—

13 “(1) a qualified long-term care insurance con-
14 tract shall be treated as an accident and health insur-
15 ance contract,

16 “(2) amounts (other than policyholder dividends,
17 as defined in section 808, or premium refunds) re-
18 ceived under a qualified long-term care insurance
19 contract shall be treated as amounts received for per-
20 sonal injuries and sickness and shall be treated as re-
21 imbursement for expenses actually incurred for medi-
22 cal care (as defined in section 213(d)),

23 “(3) any plan of an employer providing coverage
24 under a qualified long-term care insurance contract

1 *shall be treated as an accident and health plan with*
2 *respect to such coverage,*

3 *“(4) except as provided in subsection (e)(3),*
4 *amounts paid for a qualified long-term care insur-*
5 *ance contract providing the benefits described in sub-*
6 *section (b)(2)(A) shall be treated as payments made*
7 *for insurance for purposes of section 213(d)(1)(D),*
8 *and*

9 *“(5) a qualified long-term care insurance con-*
10 *tract shall be treated as a guaranteed renewable con-*
11 *tract subject to the rules of section 816(e).*

12 *“(b) QUALIFIED LONG-TERM CARE INSURANCE CON-*
13 *TRACT.—For purposes of this title—*

14 *“(1) IN GENERAL.—The term ‘qualified long-*
15 *term care insurance contract’ means any insurance*
16 *contract if—*

17 *“(A) the only insurance protection provided*
18 *under such contract is coverage of qualified long-*
19 *term care services,*

20 *“(B) such contract does not pay or reim-*
21 *burse expenses incurred for services or items to*
22 *the extent that such expenses are reimbursable*
23 *under title XVIII of the Social Security Act or*
24 *would be so reimbursable but for the application*
25 *of a deductible or coinsurance amount,*

1 “(C) such contract is guaranteed renewable,

2 “(D) such contract does not provide for a
3 cash surrender value or other money that can
4 be—

5 “(i) paid, assigned, or pledged as col-
6 lateral for a loan, or

7 “(ii) borrowed,
8 other than as provided in subparagraph (E) or
9 paragraph (2)(C), and

10 “(E) all refunds of premiums, and all pol-
11 icyholder dividends or similar amounts, under
12 such contract are to be applied as a reduction in
13 future premiums or to increase future benefits.

14 “(2) SPECIAL RULES.—

15 “(A) PER DIEM, ETC. PAYMENTS PER-
16 MITTED.—A contract shall not fail to be de-
17 scribed in subparagraph (A) or (B) of paragraph
18 (1) by reason of payments being made on a per
19 diem or other periodic basis without regard to
20 the expenses incurred during the period to which
21 the payments relate.

22 “(B) SPECIAL RULES RELATING TO MEDI-
23 CARE.—

24 “(i) Paragraph (1)(B) shall not apply
25 to expenses which are reimbursable under

1 *title XVIII of the Social Security Act only*
2 *as a secondary payor.*

3 “(ii) *No provision of law shall be con-*
4 *strued or applied so as to prohibit the offer-*
5 *ing of a qualified long-term care insurance*
6 *contract on the basis that the contract co-*
7 *ordinates its benefits with those provided*
8 *under such title.*

9 “(C) *REFUNDS OF PREMIUMS.—Paragraph*
10 *(1)(E) shall not apply to any refund on the*
11 *death of the insured, or on a complete surrender*
12 *or cancellation of the contract, which cannot ex-*
13 *ceed the aggregate premiums paid under the con-*
14 *tract. Any refund on a complete surrender or*
15 *cancellation of the contract shall be includible in*
16 *gross income to the extent that any deduction or*
17 *exclusion was allowable with respect to the pre-*
18 *miums.*

19 “(c) *QUALIFIED LONG-TERM CARE SERVICES.—For*
20 *purposes of this section—*

21 “(1) *IN GENERAL.—The term ‘qualified long-*
22 *term care services’ means necessary diagnostic, pre-*
23 *ventive, therapeutic, curing, treating, mitigating, and*
24 *rehabilitative services, and maintenance or personal*
25 *care services, which—*

1 “(A) are required by a chronically ill indi-
2 vidual, and

3 “(B) are provided pursuant to a plan of
4 care prescribed by a licensed health care practi-
5 tioner.

6 “(2) CHRONICALLY ILL INDIVIDUAL.—

7 “(A) IN GENERAL.—The term ‘chronically
8 ill individual’ means any individual who has
9 been certified by a licensed health care practi-
10 tioner as—

11 “(i) being unable to perform (without
12 substantial assistance from another individ-
13 ual) at least 2 activities of daily living for
14 a period of at least 90 days due to a loss
15 of functional capacity,

16 “(ii) having a level of disability simi-
17 lar (as determined by the Secretary in con-
18 sultation with the Secretary of Health and
19 Human Services) to the level of disability
20 described in clause (i), or

21 “(iii) requiring substantial supervision
22 to protect such individual from threats to
23 health and safety due to severe cognitive im-
24 pairment.

1 *Such term shall not include any individual oth-*
2 *erwise meeting the requirements of the preceding*
3 *sentence unless within the preceding 12-month*
4 *period a licensed health care practitioner has*
5 *certified that such individual meets such require-*
6 *ments.*

7 “(B) *ACTIVITIES OF DAILY LIVING.*—*For*
8 *purposes of subparagraph (A), each of the follow-*
9 *ing is an activity of daily living:*

10 “(i) *Eating.*

11 “(ii) *Toileting.*

12 “(iii) *Transferring.*

13 “(iv) *Bathing.*

14 “(v) *Dressing.*

15 “(vi) *Continence.*

16 *Nothing in this section shall be construed to re-*
17 *quire a contract to take into account all of the*
18 *preceding activities of daily living.*

19 “(3) *MAINTENANCE OR PERSONAL CARE SERV-*
20 *ICES.*—*The term ‘maintenance or personal care serv-*
21 *ices’ means any care the primary purpose of which*
22 *is the provision of needed assistance with any of the*
23 *disabilities as a result of which the individual is a*
24 *chronically ill individual (including the protection*

1 *from threats to health and safety due to severe cog-*
2 *nitive impairment).*

3 “(4) *LICENSED HEALTH CARE PRACTITIONER.*—
4 *The term ‘licensed health care practitioner’ means*
5 *any physician (as defined in section 1861(r)(1) of the*
6 *Social Security Act (42 U.S.C. 1395x(r)(1)) and any*
7 *registered professional nurse, licensed social worker,*
8 *or other individual who meets such requirements as*
9 *may be prescribed by the Secretary.*

10 “(d) *AGGREGATE PAYMENTS IN EXCESS OF LIMITS.*—

11 “(1) *IN GENERAL.*—*If the aggregate amount of*
12 *periodic payments under all qualified long-term care*
13 *insurance contracts with respect to an insured for*
14 *any period exceeds the dollar amount in effect for*
15 *such period under paragraph (3), such excess pay-*
16 *ments shall be treated as made for qualified long-term*
17 *care services only to the extent of the costs incurred*
18 *by the payee (not otherwise compensated for by insur-*
19 *ance or otherwise) for qualified long-term care serv-*
20 *ices provided during such period for such insured.*

21 “(2) *PERIODIC PAYMENTS.*—*For purposes of*
22 *paragraph (1), the term ‘periodic payment’ means*
23 *any payment (whether on a periodic basis or other-*
24 *wise) made without regard to the extent of the costs*

1 *incurred by the payee for qualified long-term care*
2 *services.*

3 “(3) *DOLLAR AMOUNT.*—*The dollar amount in*
4 *effect under this subsection shall be \$175 per day (or*
5 *the equivalent amount in the case of payments on an-*
6 *other periodic basis).*

7 “(4) *INFLATION ADJUSTMENT.*—*In the case of a*
8 *calendar year after 1997, the dollar amount contained*
9 *in paragraph (3) shall be increased at the same time*
10 *and in the same manner as amounts are increased*
11 *pursuant to section 213(d)(11).*

12 “(e) *TREATMENT OF COVERAGE PROVIDED AS PART*
13 *OF A LIFE INSURANCE CONTRACT.*—*Except as otherwise*
14 *provided in regulations prescribed by the Secretary, in the*
15 *case of any long-term care insurance coverage (whether or*
16 *not qualified) provided by a rider on or as a part of a*
17 *life insurance contract—*

18 “(1) *IN GENERAL.*—*This section shall apply as*
19 *if the portion of the contract providing such coverage*
20 *is a separate contract.*

21 “(2) *APPLICATION OF 7702.*—*Section 7702(c)(2)*
22 *(relating to the guideline premium limitation) shall*
23 *be applied by increasing the guideline premium limi-*
24 *tation with respect to a life insurance contract, as of*
25 *any date—*

1 “(A) by the sum of any charges (but not
2 premium payments) against the life insurance
3 contract’s cash surrender value (within the
4 meaning of section 7702(f)(2)(A)) for such cov-
5 erage made to that date under the contract, less

6 “(B) any such charges the imposition of
7 which reduces the premiums paid for the con-
8 tract (within the meaning of section 7702(f)(1)).

9 “(3) APPLICATION OF SECTION 213.—No deduc-
10 tion shall be allowed under section 213(a) for charges
11 against the life insurance contract’s cash surrender
12 value described in paragraph (2), unless such charges
13 are includible in income as a result of the application
14 of section 72(e)(10) and the rider is a qualified long-
15 term care insurance contract under subsection (b).

16 “(4) PORTION DEFINED.—For purposes of this
17 subsection, the term ‘portion’ means only the terms
18 and benefits under a life insurance contract that are
19 in addition to the terms and benefits under the con-
20 tract without regard to the coverage under a qualified
21 long-term care insurance contract.”.

22 (b) RESERVE METHOD.—Clause (iii) of section
23 807(d)(3)(A) is amended by inserting “(other than a quali-
24 fied long-term care insurance contract, as defined in section
25 7702B(b))” after “insurance contract”.

1 (c) *LONG-TERM CARE INSURANCE NOT PERMITTED*
2 *UNDER CAFETERIA PLANS OR FLEXIBLE SPENDING AR-*
3 *RANGEMENTS.—*

4 (1) *CAFETERIA PLANS.—Section 125(f) is*
5 *amended by adding at the end the following new sen-*
6 *tence: “Such term shall not include any long-term*
7 *care insurance contract (as defined in section*
8 *4980C).”.*

9 (2) *FLEXIBLE SPENDING ARRANGEMENTS.—The*
10 *text of section 106 (relating to contributions by em-*
11 *ployer to accident and health plans) is amended to*
12 *read as follows:*

13 “(a) *GENERAL RULE.—Except as otherwise provided*
14 *in this section, gross income of an employee does not include*
15 *employer-provided coverage under an accident or health*
16 *plan.*

17 “(b) *INCLUSION OF LONG-TERM CARE BENEFITS PRO-*
18 *VIDED THROUGH FLEXIBLE SPENDING ARRANGEMENTS.—*

19 “(1) *IN GENERAL.—Effective on and after Janu-*
20 *ary 1, 1997, gross income of an employee shall in-*
21 *clude employer-provided coverage for qualified long-*
22 *term care services (as defined in section 7702B(c)) to*
23 *the extent that such coverage is provided through a*
24 *flexible spending or similar arrangement.*

1 “(2) *FLEXIBLE SPENDING ARRANGEMENT.*—For
2 purposes of this subsection, a flexible spending ar-
3 rangement is a benefit program which provides em-
4 ployees with coverage under which—

5 “(A) specified incurred expenses may be re-
6 imbursed (subject to reimbursement maximums
7 and other reasonable conditions), and

8 “(B) the maximum amount of reimburse-
9 ment which is reasonably available to a partici-
10 pant for such coverage is less than 500 percent
11 of the value of such coverage.

12 *In the case of an insured plan, the maximum amount*
13 *reasonably available shall be determined on the basis*
14 *of the underlying coverage.”.*

15 (d) *CONTINUATION COVERAGE EXCISE TAX NOT TO*
16 *APPLY.*—Subsection (f) of section 4980B is amended by
17 adding at the end the following new paragraph:

18 “(9) *CONTINUATION OF LONG-TERM CARE COV-*
19 *ERAGE NOT REQUIRED.*—A group health plan shall
20 not be treated as failing to meet the requirements of
21 this subsection solely by reason of failing to provide
22 coverage under any qualified long-term care insur-
23 ance contract (as defined in section 7702B(b)).”.

1 (e) AMOUNTS PAID TO SPOUSE OR RELATIVES TREAT-
2 ED AS NOT PAID FOR MEDICAL CARE.—Section 213(d) is
3 amended by adding at the end the following new paragraph:

4 “(10) CERTAIN PAYMENTS TO SPOUSE OR REL-
5 ATIVES TREATED AS NOT PAID FOR MEDICAL CARE.—
6 An amount paid for a qualified long-term care service
7 (as defined in section 7702B(c)) provided to an indi-
8 vidual shall be treated as not paid for medical care
9 if such service is provided—

10 “(A) by the spouse of the individual or a
11 relative (directly or through a partnership, cor-
12 poration, or other entity) unless the spouse or
13 relative is a licensed professional with respect to
14 such services, or

15 “(B) by a corporation or partnership which
16 is related (within the meaning of section 267(b)
17 or 707(b)) to the individual.

18 For purposes of this paragraph, the term ‘relative’
19 means an individual bearing a relationship to the in-
20 dividual which is described in any of paragraphs (1)
21 through (8) of section 152(a). This paragraph shall
22 not apply for purposes of section 105(b) with respect
23 to reimbursements through insurance.”.

1 (f) *CLERICAL AMENDMENT.*—*The table of sections for*
2 *chapter 79 is amended by inserting after the item relating*
3 *to section 7702A the following new item:*

“Sec. 7702B. Treatment of qualified long-term care insurance.”.

4 (g) *EFFECTIVE DATE.*—

5 (1) *IN GENERAL.*—*The amendments made by*
6 *this section shall apply to contracts issued after De-*
7 *cember 31, 1996.*

8 (2) *CONTINUATION OF EXISTING POLICIES.*—*In*
9 *the case of any contract issued before January 1,*
10 *1997, which met the long-term care insurance require-*
11 *ments of the State in which the contract was issued*
12 *at the time the contract was issued—*

13 (A) *such contract shall be treated for pur-*
14 *poses of the Internal Revenue Code of 1986 as a*
15 *qualified long-term care insurance contract (as*
16 *defined in section 7702B(b) of such Code), and*

17 (B) *services provided under, or reimbursed*
18 *by, such contract shall be treated for such pur-*
19 *poses as qualified long-term care services (as de-*
20 *fined in section 7702B(c) of such Code).*

21 (3) *EXCHANGES OF EXISTING POLICIES.*—*If,*
22 *after the date of enactment of this Act and before Jan-*
23 *uary 1, 1998, a contract providing for long-term care*
24 *insurance coverage is exchanged solely for a qualified*
25 *long-term care insurance contract (as defined in sec-*

1 *tion 7702B(b) of such Code), no gain or loss shall be*
2 *recognized on the exchange. If, in addition to a quali-*
3 *fied long-term care insurance contract, money or*
4 *other property is received in the exchange, then any*
5 *gain shall be recognized to the extent of the sum of*
6 *the money and the fair market value of the other*
7 *property received. For purposes of this paragraph, the*
8 *cancellation of a contract providing for long-term*
9 *care insurance coverage and reinvestment of the can-*
10 *cellation proceeds in a qualified long-term care insur-*
11 *ance contract within 60 days thereafter shall be treat-*
12 *ed as an exchange.*

13 *(4) ISSUANCE OF CERTAIN RIDERS PER-*
14 *MITTED.—For purposes of applying sections 101(f),*
15 *7702, and 7702A of the Internal Revenue Code of*
16 *1986 to any contract—*

17 *(A) the issuance of a rider which is treated*
18 *as a qualified long-term care insurance contract*
19 *under section 7702B, and*

20 *(B) the addition of any provision required*
21 *to conform any other long-term care rider to be*
22 *so treated,*
23 *shall not be treated as a modification or material*
24 *change of such contract.*

1 **SEC. 412. QUALIFIED LONG-TERM CARE SERVICES TREATED**
2 **AS MEDICAL CARE.**

3 (a) *GENERAL RULE.*—Paragraph (1) of section 213(d)
4 (defining medical care) is amended by striking “or” at the
5 end of subparagraph (B), by redesignating subparagraph
6 (C) as subparagraph (D), and by inserting after subpara-
7 graph (B) the following new subparagraph:

8 “(C) for qualified long-term care services
9 (as defined in section 7702B(c)), or”.

10 (b) *TECHNICAL AMENDMENTS.*—

11 (1) Subparagraph (D) of section 213(d)(1) (as
12 redesignated by subsection (a)) is amended by strik-
13 ing “subparagraphs (A) and (B)” and inserting “sub-
14 paragraphs (A), (B), and (C)”.

15 (2)(A) Paragraph (1) of section 213(d) is
16 amended by adding at the end the following new flush
17 sentence:

18 “In the case of a qualified long-term care insurance
19 contract (as defined in section 7702B(b)), only eligi-
20 ble long-term care premiums (as defined in para-
21 graph (11)) shall be taken into account under sub-
22 paragraph (D).”.

23 (B) Subsection (d) of section 213 is amended by
24 adding at the end the following new paragraph:

25 “(11) *ELIGIBLE LONG-TERM CARE PREMIUMS.*—

1 “(A) *IN GENERAL.*—For purposes of this
 2 section, the term ‘eligible long-term care pre-
 3 miums’ means the amount paid during a taxable
 4 year for any qualified long-term care insurance
 5 contract (as defined in section 7702B(b)) cover-
 6 ing an individual, to the extent such amount
 7 does not exceed the limitation determined under
 8 the following table:

“In the case of an individual with an attained age before the close of the taxable year of:	The limitation is:
40 or less	\$200
More than 40 but not more than 50	375
More than 50 but not more than 60	750
More than 60 but not more than 70	2,000
More than 70	2,500.

9 “(B) *INDEXING.*—

10 “(i) *IN GENERAL.*—In the case of any
 11 taxable year beginning in a calendar year
 12 after 1997, each dollar amount contained in
 13 subparagraph (A) shall be increased by the
 14 medical care cost adjustment of such
 15 amount for such calendar year. If any in-
 16 crease determined under the preceding sen-
 17 tence is not a multiple of \$10, such increase
 18 shall be rounded to the nearest multiple of
 19 \$10.

20 “(ii) *MEDICAL CARE COST ADJUST-*
 21 *MENT.*—For purposes of clause (i), the med-

1 ical care cost adjustment for any calendar
2 year is the percentage (if any) by which—

3 “(I) the medical care component
4 of the Consumer Price Index (as de-
5 fined in section 1(f)(5)) for August of
6 the preceding calendar year, exceeds

7 “(II) such component for August
8 of 1996.

9 The Secretary shall, in consultation with
10 the Secretary of Health and Human Serv-
11 ices, prescribe an adjustment which the Sec-
12 retary determines is more appropriate for
13 purposes of this paragraph than the adjust-
14 ment described in the preceding sentence,
15 and the adjustment so prescribed shall
16 apply in lieu of the adjustment described in
17 the preceding sentence.”.

18 (3) Paragraph (6) of section 213(d) is amend-
19 ed—

20 (A) by striking “subparagraphs (A) and
21 (B)” and inserting “subparagraphs (A), (B),
22 and (C)”, and

23 (B) by striking “paragraph (1)(C)” in sub-
24 paragraph (A) and inserting “paragraph
25 (1)(D)”.

1 (4) Paragraph (7) of section 213(d) is amended
2 by striking “subparagraphs (A) and (B)” and insert-
3 ing “subparagraphs (A), (B), and (C)”.

4 (c) *EFFECTIVE DATE.*—The amendments made by this
5 section shall apply to taxable years beginning after Decem-
6 ber 31, 1996.

7 **SEC. 413. CERTAIN EXCHANGES OF LIFE INSURANCE CON-**
8 **TRACTS FOR QUALIFIED LONG-TERM CARE**
9 **INSURANCE CONTRACTS NOT TAXABLE.**

10 (a) *IN GENERAL.*—Subsection (a) of section 1035 (re-
11 lating to certain exchanges of insurance contracts) is
12 amended by striking the period at the end of paragraph
13 (3) and inserting “; or”, and by adding at the end the fol-
14 lowing new paragraph:

15 “(4) a contract of life insurance or an endow-
16 ment or annuity contract for a qualified long-term
17 care insurance contract (as defined in section
18 7702B(b)).”.

19 (b) *EFFECTIVE DATE.*—The amendment made by this
20 section shall apply to taxable years beginning after Decem-
21 ber 31, 1997.

1 **SEC. 414. EXCEPTION FROM PENALTY TAX FOR AMOUNTS**
2 **WITHDRAWN FROM CERTAIN RETIREMENT**
3 **PLANS FOR QUALIFIED LONG-TERM CARE IN-**
4 **SURANCE.**

5 (a) *IN GENERAL.*—Paragraph (2) of section 72(t) is
6 amended by adding at the end the following new subpara-
7 graph:

8 “(D) *PREMIUMS FOR QUALIFIED LONG-*
9 *TERM CARE INSURANCE CONTRACTS.*—*Distribu-*
10 *tions to an individual from an individual retire-*
11 *ment plan, or from amounts attributable to em-*
12 *ployer contributions made pursuant to elective*
13 *deferrals described in subparagraph (A) or (C) of*
14 *section 402(g)(3), to the extent such distributions*
15 *do not exceed the premiums for a qualified long-*
16 *term care insurance contract (as defined in sec-*
17 *tion 7702B(b)) for such individual or the spouse*
18 *of such individual. In applying subparagraph*
19 *(B), such premiums shall be treated as amounts*
20 *not paid for medical care.”.*

21 (b) *DISTRIBUTIONS PERMITTED FROM CERTAIN*
22 *PLANS TO PAY LONG-TERM CARE PREMIUMS.*—

23 (1) Section 401(k)(2)(B)(i) is amended by strik-
24 ing “or” at the end of subclause (III), by striking
25 “and” at the end of subclause (IV) and inserting

1 *“or”, and by inserting after subclause (IV) the follow-*
2 *ing new subclause:*

3 *“(V) the date distributions for*
4 *premiums for a long-term care insur-*
5 *ance contract (as defined in section*
6 *7702B(b)) for coverage of such individ-*
7 *ual or the spouse of such individual*
8 *are made, and”.*

9 (2) *Section 403(b)(11) is amended by striking*
10 *“or” at the end of subparagraph (A), by striking the*
11 *period at the end of subparagraph (B) and inserting*
12 *“, or”, and by inserting after subparagraph (B) the*
13 *following new subparagraph:*

14 *“(C) for the payment of premiums for a*
15 *long-term care insurance contract (as defined in*
16 *section 7702B(b)) for coverage of the employee or*
17 *the spouse of the employee.”.*

18 (3) *Subparagraph (A) of section 457(d)(1) is*
19 *amended by striking “or” at the end of clause (ii), by*
20 *striking “and” at the end of clause (iii) and inserting*
21 *“or”, and by inserting after clause (iii) the following*
22 *new clause:*

23 *“(iv) the date distributions for pre-*
24 *miums for a long-term care insurance con-*
25 *tract (as defined in section 7702B(b)) for*

1 coverage of such individual or the spouse of
2 such individual are made, and”.

3 (c) *CONFORMING AMENDMENT.*—Section 72t(2)(B) is
4 amended by striking “subparagraph (A) or (C)” and in-
5 serting “subparagraph (A), (C), or (D))”.

6 (d) *EFFECTIVE DATE.*—The amendments made by this
7 section shall apply to payments and distributions after De-
8 cember 31, 1996.

9 **SEC. 415. REPORTING REQUIREMENTS.**

10 (a) *IN GENERAL.*—Subpart B of part III of subchapter
11 A of chapter 61 is amended by adding at the end the follow-
12 ing new section:

13 **“SEC. 6050Q. CERTAIN LONG-TERM CARE BENEFITS.**

14 “(a) *REQUIREMENT OF REPORTING.*—Any person who
15 pays long-term care benefits shall make a return, according
16 to the forms or regulations prescribed by the Secretary, set-
17 ting forth—

18 “(1) the aggregate amount of such benefits paid
19 by such person to any individual during any cal-
20 endar year, and

21 “(2) the name, address, and TIN of such individ-
22 ual.

23 “(b) *STATEMENTS TO BE FURNISHED TO PERSONS*
24 *WITH RESPECT TO WHOM INFORMATION IS REQUIRED.*—
25 Every person required to make a return under subsection

1 (a) shall furnish to each individual whose name is required
2 to be set forth in such return a written statement showing—

3 “(1) the name of the person making the pay-
4 ments, and

5 “(2) the aggregate amount of long-term care ben-
6 efits paid to the individual which are required to be
7 shown on such return.

8 The written statement required under the preceding sen-
9 tence shall be furnished to the individual on or before Janu-
10 ary 31 of the year following the calendar year for which
11 the return under subsection (a) was required to be made.

12 “(c) LONG-TERM CARE BENEFITS.—For purposes of
13 this section, the term ‘long-term care benefit’ means any
14 amount paid under a long-term care insurance policy
15 (within the meaning of section 4980C(e)).”.

16 (b) PENALTIES.—

17 (1) Subparagraph (B) of section 6724(d)(1) is
18 amended by redesignating clauses (ix) through (xiv)
19 as clauses (x) through (xv), respectively, and by in-
20 sserting after clause (viii) the following new clause:

21 “(ix) section 6050Q (relating to certain
22 long-term care benefits),”.

23 (2) Paragraph (2) of section 6724(d) is amended
24 by redesignating subparagraphs (Q) through (T) as
25 subparagraphs (R) through (U), respectively, and by

1 *inserting after subparagraph (P) the following new*
 2 *subparagraph:*

3 *“(Q) section 6050Q(b) (relating to certain*
 4 *long-term care benefits),”.*

5 *(c) CLERICAL AMENDMENT.—The table of sections for*
 6 *subpart B of part III of subchapter A of chapter 61 is*
 7 *amended by adding at the end the following new item:*

“Sec. 6050Q. Certain long-term care benefits.”.

8 *(d) EFFECTIVE DATE.—The amendments made by this*
 9 *section shall apply to benefits paid after December 31, 1996.*

10 **Subchapter B—Consumer Protection**

11 **Provisions**

12 **SEC. 421. POLICY REQUIREMENTS.**

13 *Section 7702B (as added by section 411) is amended*
 14 *by adding at the end the following new subsection:*

15 *“(f) CONSUMER PROTECTION PROVISIONS.—*

16 *“(1) IN GENERAL.—The requirements of this sub-*
 17 *section are met with respect to any contract if any*
 18 *long-term care insurance policy issued under the con-*
 19 *tract meets—*

20 *“(A) the requirements of the model regula-*
 21 *tion and model Act described in paragraph (2),*

22 *“(B) the disclosure requirement of para-*
 23 *graph (3), and*

24 *“(C) the requirements relating to nonforfeit-*
 25 *ability under paragraph (4).*

1 “(2) *REQUIREMENTS OF MODEL REGULATION*
2 *AND ACT.*—

3 “(A) *IN GENERAL.*—*The requirements of*
4 *this paragraph are met with respect to any pol-*
5 *icy if such policy meets—*

6 “(i) *MODEL REGULATION.*—*The follow-*
7 *ing requirements of the model regulation:*

8 “(I) *Section 7A (relating to guar-*
9 *anteed renewal or noncancellability),*
10 *and the requirements of section 6B of*
11 *the model Act relating to such section*
12 *7A.*

13 “(II) *Section 7B (relating to pro-*
14 *hibitions on limitations and exclu-*
15 *sions).*

16 “(III) *Section 7C (relating to ex-*
17 *ension of benefits).*

18 “(IV) *Section 7D (relating to con-*
19 *tinuation or conversion of coverage).*

20 “(V) *Section 7E (relating to dis-*
21 *continuance and replacement of poli-*
22 *cies).*

23 “(VI) *Section 8 (relating to unin-*
24 *tentional lapse).*

1 “(VII) Section 9 (relating to dis-
2 closure), other than section 9F thereof.

3 “(VIII) Section 10 (relating to
4 prohibitions against post-claims under-
5 writing).

6 “(IX) Section 11 (relating to min-
7 imum standards).

8 “(X) Section 12 (relating to re-
9 quirement to offer inflation protection),
10 except that any requirement for a sig-
11 nature on a rejection of inflation pro-
12 tection shall permit the signature to be
13 on an application or on a separate
14 form.

15 “(XI) Section 23 (relating to pro-
16 hibition against preexisting conditions
17 and probationary periods in replace-
18 ment policies or certificates).

19 “(ii) MODEL ACT.—The following re-
20 quirements of the model Act:

21 “(I) Section 6C (relating to pre-
22 existing conditions).

23 “(II) Section 6D (relating to
24 prior hospitalization).

1 “(B) *DEFINITIONS.*—For purposes of this
2 paragraph—

3 “(i) *MODEL PROVISIONS.*—The terms
4 ‘model regulation’ and ‘model Act’ mean the
5 long-term care insurance model regulation,
6 and the long-term care insurance model Act,
7 respectively, promulgated by the National
8 Association of Insurance Commissioners (as
9 adopted as of January 1993).

10 “(ii) *COORDINATION.*—Any provision
11 of the model regulation or model Act listed
12 under clause (i) or (ii) of subparagraph (A)
13 shall be treated as including any other pro-
14 vision of such regulation or Act necessary to
15 implement the provision.

16 “(3) *DISCLOSURE REQUIREMENT.*—The require-
17 ment of this paragraph is met with respect to any
18 policy if such policy meets the requirements of section
19 4980C(d)(1).

20 “(4) *NONFORFEITURE REQUIREMENTS.*—

21 “(A) *IN GENERAL.*—The requirements of
22 this paragraph are met with respect to any level
23 premium long-term care insurance policy, if the
24 issuer of such policy offers to the policyholder,
25 including any group policyholder, a nonforfeit-

1 *ure provision meeting the requirements of sub-*
2 *paragraph (B).*

3 *“(B) REQUIREMENTS OF PROVISION.—The*
4 *nonforfeiture provision required under subpara-*
5 *graph (A) shall meet the following requirements:*

6 *“(i) The nonforfeiture provision shall*
7 *be appropriately captioned.*

8 *“(ii) The nonforfeiture provision shall*
9 *provide for a benefit available in the event*
10 *of a default in the payment of any pre-*
11 *miums and the amount of the benefit may*
12 *be adjusted subsequent to being initially*
13 *granted only as necessary to reflect changes*
14 *in claims, persistency, and interest as re-*
15 *flected in changes in rates for premium*
16 *paying policies approved by the appro-*
17 *priate State regulatory authority for the*
18 *same policy form.*

19 *“(iii) The nonforfeiture provision shall*
20 *provide at least one of the following:*

21 *“(I) Reduced paid-up insurance.*

22 *“(II) Extended term insurance.*

23 *“(III) Shortened benefit period.*

24 *“(IV) Other similar offerings ap-*
25 *proved by the Secretary.*

1 “(5) *LONG-TERM CARE INSURANCE POLICY DE-*
2 *FINED.*—For purposes of this subsection, the term
3 ‘long-term care insurance policy’ has the meaning
4 given such term by section 4980C(e).”.

5 **SEC. 422. REQUIREMENTS FOR ISSUERS OF LONG-TERM**
6 **CARE INSURANCE POLICIES.**

7 (a) *IN GENERAL.*—Chapter 43 is amended by adding
8 at the end the following new section:

9 **“SEC. 4980C. REQUIREMENTS FOR ISSUERS OF LONG-TERM**
10 **CARE INSURANCE POLICIES.**

11 “(a) *GENERAL RULE.*—There is hereby imposed on
12 any person failing to meet the requirements of subsection
13 (c) or (d) a tax in the amount determined under subsection
14 (b).

15 “(b) *AMOUNT.*—

16 “(1) *IN GENERAL.*—The amount of the tax im-
17 posed by subsection (a) shall be \$100 per policy for
18 each day any requirements of subsection (c) or (d) are
19 not met with respect to each long-term care insurance
20 policy.

21 “(2) *WAIVER.*—In the case of a failure which is
22 due to reasonable cause and not to willful neglect, the
23 Secretary may waive part or all of the tax imposed
24 by subsection (a) to the extent that payment of the tax
25 would be excessive relative to the failure involved.

1 “(c) *RESPONSIBILITIES.*—*The requirements of this*
2 *subsection are as follows:*

3 “(1) *REQUIREMENTS OF MODEL PROVISIONS.*—

4 “(A) *MODEL REGULATION.*—*The following*
5 *requirements of the model regulation must be*
6 *met:*

7 “(i) *Section 13 (relating to application*
8 *forms and replacement coverage).*

9 “(ii) *Section 14 (relating to reporting*
10 *requirements), except that the issuer shall*
11 *also report at least annually the number of*
12 *claims denied during the reporting period*
13 *for each class of business (expressed as a*
14 *percentage of claims denied), other than*
15 *claims denied for failure to meet the wait-*
16 *ing period or because of any applicable pre-*
17 *existing condition.*

18 “(iii) *Section 20 (relating to filing re-*
19 *quirements for marketing).*

20 “(iv) *Section 21 (relating to standards*
21 *for marketing), including inaccurate com-*
22 *pletion of medical histories, other than sec-*
23 *tions 21C(1) and 21C(6) thereof, except*
24 *that—*

1 “(I) in addition to such require-
2 ments, no person shall, in selling or of-
3 fering to sell a long-term care insur-
4 ance policy, misrepresent a material
5 fact; and

6 “(II) no such requirements shall
7 include a requirement to inquire or
8 identify whether a prospective appli-
9 cant or enrollee for long-term care in-
10 surance has accident and sickness in-
11 surance.

12 “(v) Section 22 (relating to appro-
13 priateness of recommended purchase).

14 “(vi) Section 24 (relating to standard
15 format outline of coverage).

16 “(vii) Section 25 (relating to require-
17 ment to deliver shopper’s guide).

18 “(B) MODEL ACT.—The following require-
19 ments of the model Act must be met:

20 “(i) Section 6F (relating to right to re-
21 turn), except that such section shall also
22 apply to denials of applications and any
23 refund shall be made within 30 days of the
24 return or denial.

1 “(ii) Section 6G (relating to outline of
2 coverage).

3 “(iii) Section 6H (relating to require-
4 ments for certificates under group plans).

5 “(iv) Section 6I (relating to policy
6 summary).

7 “(v) Section 6J (relating to monthly
8 reports on accelerated death benefits).

9 “(vi) Section 7 (relating to incontest-
10 ability period).

11 “(C) DEFINITIONS.—For purposes of this
12 paragraph, the terms ‘model regulation’ and
13 ‘model Act’ have the meanings given such terms
14 by section 7702B(f)(2)(B).

15 “(2) DELIVERY OF POLICY.—If an application
16 for a long-term care insurance policy (or for a certifi-
17 cate under a group long-term care insurance policy)
18 is approved, the issuer shall deliver to the applicant
19 (or policyholder or certificateholder) the policy (or
20 certificate) of insurance not later than 30 days after
21 the date of the approval.

22 “(3) INFORMATION ON DENIALS OF CLAIMS.—If
23 a claim under a long-term care insurance policy is
24 denied, the issuer shall, within 60 days of the date of

1 a written request by the policyholder or
2 certificateholder (or representative)—

3 “(A) provide a written explanation of the
4 reasons for the denial, and

5 “(B) make available all information di-
6 rectly relating to such denial.

7 “(d) *DISCLOSURE.*—The requirements of this sub-
8 section are met if the issuer of a long-term care insurance
9 policy discloses in such policy and in the outline of coverage
10 required under subsection (c)(1)(B)(ii) that the policy is in-
11 tended to be a qualified long-term care insurance contract
12 under section 7702B(b).

13 “(e) *LONG-TERM CARE INSURANCE POLICY DE-*
14 *FINED.*—For purposes of this section, the term ‘long-term
15 care insurance policy’ means any product which is adver-
16 tised, marketed, or offered as long-term care insurance.”.

17 (b) *CONFORMING AMENDMENT.*—The table of sections
18 for chapter 43 is amended by adding at the end the follow-
19 ing new item:

 “Sec. 4980C. Requirements for issuers of long-term care insurance policies.”.

20 **SEC. 423. COORDINATION WITH STATE REQUIREMENTS.**

21 Nothing in this subchapter shall prevent a State from
22 establishing, implementing, or continuing in effect stand-
23 ards related to the protection of policyholders of long-term
24 care insurance policies (as defined in section 4980C(e) of
25 the Internal Revenue Code of 1986), if such standards are

1 *not in conflict with or inconsistent with the standards es-*
2 *tablished under such Code.*

3 **SEC. 424. EFFECTIVE DATES.**

4 (a) *IN GENERAL.*—*The provisions of, and amendments*
5 *made by, this subchapter shall apply to contracts issued*
6 *after December 31, 1996. The provisions of section 411(g)*
7 *of this Act (relating to transition rule) shall apply to such*
8 *contracts.*

9 (b) *ISSUERS.*—*The amendments made by section 422*
10 *shall apply to actions taken after December 31, 1996.*

11 **CHAPTER 2—TREATMENT OF**
12 **ACCELERATED DEATH BENEFITS**

13 **SEC. 431. TREATMENT OF ACCELERATED DEATH BENEFITS**
14 **BY RECIPIENT.**

15 (a) *IN GENERAL.*—*Section 101 (relating to certain*
16 *death benefits) is amended by adding at the end the follow-*
17 *ing new subsection:*

18 “(g) *TREATMENT OF CERTAIN ACCELERATED DEATH*
19 *BENEFITS.*—

20 “(1) *IN GENERAL.*—*For purposes of this section,*
21 *the following amounts shall be treated as an amount*
22 *paid by reason of the death of an insured:*

23 “(A) *Any amount received under a life in-*
24 *surance contract on the life of an insured who is*
25 *a terminally ill individual.*

1 “(B) Any amount received under a life in-
2 surance contract on the life of an insured who is
3 a chronically ill individual (as defined in section
4 7702B(c)(2)) but only if such amount is received
5 under a rider or other provision of such contract
6 which is treated as a qualified long-term care in-
7 surance contract under section 7702B.

8 “(2) TREATMENT OF VIATICAL SETTLEMENTS.—

9 “(A) IN GENERAL.—In the case of a life in-
10 surance contract on the life of an insured de-
11 scribed in paragraph (1), if—

12 “(i) any portion of such contract is
13 sold to any viatical settlement provider, or

14 “(ii) any portion of the death benefit is
15 assigned to such a provider,

16 the amount paid for such sale or assignment
17 shall be treated as an amount paid under the life
18 insurance contract by reason of the death of such
19 insured.

20 “(B) VIATICAL SETTLEMENT PROVIDER.—

21 The term ‘viatical settlement provider’ means
22 any person regularly engaged in the trade or
23 business of purchasing, or taking assignments of,
24 life insurance contracts on the lives of insureds
25 described in paragraph (1) if—

1 “(i) such person is licensed for such
2 purposes in the State in which the insured
3 resides, or

4 “(ii) in the case of an insured who re-
5 sides in a State not requiring the licensing
6 of such persons for such purposes—

7 “(I) such person meets the re-
8 quirements of sections 8 and 9 of the
9 Viatical Settlements Model Act of the
10 National Association of Insurance
11 Commissioners, and

12 “(II) meets the requirements of the
13 Model Regulations of the National As-
14 sociation of Insurance Commissioners
15 (relating to standards for evaluation of
16 reasonable payments) in determining
17 amounts paid by such person in con-
18 nection with such purchases or assign-
19 ments.

20 “(3) DEFINITIONS.—For purposes of this sub-
21 section—

22 “(A) TERMINALLY ILL INDIVIDUAL.—The
23 term ‘terminally ill individual’ means an indi-
24 vidual who has been certified by a physician as
25 having an illness or physical condition which

1 “(g) *QUALIFIED ACCELERATED DEATH BENEFIT RID-*
2 *ERS TREATED AS LIFE INSURANCE.*—For purposes of this
3 *part*—

4 “(1) *IN GENERAL.*—Any reference to a life insur-
5 *ance contract shall be treated as including a reference*
6 *to a qualified accelerated death benefit rider on such*
7 *contract.*

8 “(2) *QUALIFIED ACCELERATED DEATH BENEFIT*
9 *RIDERS.*—For purposes of this subsection, the term
10 *‘qualified accelerated death benefit rider’ means any*
11 *rider on a life insurance contract if the only pay-*
12 *ments under the rider are payments meeting the re-*
13 *quirements of section 101(g).*

14 “(3) *EXCEPTION FOR LONG-TERM CARE RID-*
15 *ERS.*—Paragraph (1) shall not apply to any rider
16 *which is treated as a long-term care insurance con-*
17 *tract under section 7702B.”.*

18 (b) *EFFECTIVE DATE.*—

19 (1) *IN GENERAL.*—The amendment made by this
20 *section shall take effect on January 1, 1997.*

21 (2) *ISSUANCE OF RIDER NOT TREATED AS MATE-*
22 *RIAL CHANGE.*—For purposes of applying sections
23 *101(f), 7702, and 7702A of the Internal Revenue Code*
24 *of 1986 to any contract*—

1 (A) the issuance of a qualified accelerated
2 death benefit rider (as defined in section 818(g)
3 of such Code (as added by this Act)), and

4 (B) the addition of any provision required
5 to conform an accelerated death benefit rider to
6 the requirements of such section 818(g),

7 shall not be treated as a modification or material
8 change of such contract.

9 **Subtitle C—High-Risk Pools**

10 **SEC. 451. EXEMPTION FROM INCOME TAX FOR STATE-SPON-**

11 **SORED ORGANIZATIONS PROVIDING HEALTH**

12 **COVERAGE FOR HIGH-RISK INDIVIDUALS.**

13 (a) *IN GENERAL.*—Subsection (c) of section 501 (relat-
14 ing to list of exempt organizations) is amended by adding
15 at the end the following new paragraph:

16 “(26) Any membership organization if—

17 “(A) such organization is established by a
18 State exclusively to provide coverage for medical
19 care (as defined in section 213(d)) on a not-for-
20 profit basis to individuals described in subpara-
21 graph (B) through—

22 “(i) insurance issued by the organiza-
23 tion, or

1 “(ii) a health maintenance organiza-
2 tion under an arrangement with the organi-
3 zation,

4 “(B) the only individuals receiving such
5 coverage through the organization are individ-
6 uals—

7 “(i) who are residents of such State,
8 and

9 “(ii) who, by reason of the existence or
10 history of a medical condition, are unable
11 to acquire medical care coverage for such
12 condition through insurance or from a
13 health maintenance organization or are able
14 to acquire such coverage only at a rate
15 which is substantially in excess of the rate
16 for such coverage through the membership
17 organization,

18 “(C) the composition of the membership in
19 such organization is specified by such State, and

20 “(D) no part of the net earnings of the or-
21 ganization inures to the benefit of any private
22 shareholder or individual.”.

23 (b) *EFFECTIVE DATE.*—The amendment made by this
24 section shall apply to taxable years beginning after Decem-
25 ber 31, 1996.

1 **Subtitle D—Penalty-Free IRA**
2 **Distributions**

3 **SEC. 461. DISTRIBUTIONS FROM CERTAIN PLANS MAY BE**
4 **USED WITHOUT PENALTY TO PAY FINAN-**
5 **CIALLY DEVASTATING MEDICAL EXPENSES.**

6 (a) *IN GENERAL.*—Section 72(t)(3)(A) is amended by
7 striking “(B),”.

8 (b) *PENALTY-FREE DISTRIBUTIONS FOR PAYMENT OF*
9 *HEALTH INSURANCE PREMIUMS OF CERTAIN UNEMPLOYED*
10 *INDIVIDUALS.*—Paragraph (2) of section 72(t), as amended
11 *by section 414, is amended by adding at the end the follow-*
12 *ing new subparagraph:*

13 “(E) *DISTRIBUTIONS TO UNEMPLOYED INDI-*
14 *VIDUALS FOR HEALTH INSURANCE PREMIUMS.*—
15 *Distributions from an individual retirement*
16 *plan to an individual after separation from em-*
17 *ployment—*

18 “(i) *if such individual has received un-*
19 *employment compensation for 12 consecu-*
20 *tive weeks under any Federal or State un-*
21 *employment compensation law by reason of*
22 *such separation,*

23 “(ii) *if such distributions are made*
24 *during any taxable year during which such*

1 unemployment compensation is paid or the
2 succeeding taxable year, and

3 “(iii) to the extent such distributions
4 do not exceed the amount paid during the
5 taxable year for insurance described in sec-
6 tion 213(d)(1)(D) with respect to the indi-
7 vidual and the individual’s spouse and de-
8 pendents (as defined in section 152).

9 To the extent provided in regulations, a self-em-
10 ployed individual shall be treated as meeting the
11 requirements of clause (i) if, under Federal or
12 State law, the individual would have received
13 unemployment compensation but for the fact the
14 individual was self-employed.”.

15 (c) *CONFORMING AMENDMENT.*—Subparagraph (B) of
16 section 72(t)(2), as amended by section 414, is amended by
17 striking “or (D)” and inserting “, (D), or (E)”.

18 (d) *EFFECTIVE DATE.*—The amendments made by this
19 section shall apply to taxable years beginning after Decem-
20 ber 31, 1996.

1 **Subtitle E—Revenue Offsets**

2 **CHAPTER 1—TREATMENT OF**

3 **INDIVIDUALS WHO EXPATRIATE**

4 **SEC. 471. REVISION OF TAX RULES ON EXPATRIATION.**

5 (a) *IN GENERAL.*—Subpart A of part II of subchapter
6 *N* of chapter 1 is amended by inserting after section 877
7 *the following new section:*

8 **“SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.**

9 “(a) *GENERAL RULES.*—For purposes of this sub-
10 *title—*

11 “(1) *MARK TO MARKET.*—Except as provided in
12 *subsection (f), all property of a covered expatriate to*
13 *which this section applies shall be treated as sold on*
14 *the expatriation date for its fair market value.*

15 “(2) *RECOGNITION OF GAIN OR LOSS.*—In the
16 *case of any sale under paragraph (1)—*

17 “(A) *notwithstanding any other provision of*
18 *this title, any gain arising from such sale shall*
19 *be taken into account for the taxable year of the*
20 *sale unless such gain is excluded from gross in-*
21 *come under part III of subchapter B, and*

22 “(B) *any loss arising from such sale shall*
23 *be taken into account for the taxable year of the*
24 *sale to the extent otherwise provided by this title,*

1 *except that section 1091 shall not apply (and*
2 *section 1092 shall apply) to any such loss.*

3 “(3) *EXCLUSION FOR CERTAIN GAIN.*—*The*
4 *amount which would (but for this paragraph) be in-*
5 *cludible in the gross income of any individual by rea-*
6 *son of this section shall be reduced (but not below*
7 *zero) by \$600,000. For purposes of this paragraph, al-*
8 *locable expatriation gain taken into account under*
9 *subsection (f)(2) shall be treated in the same manner*
10 *as an amount required to be includible in gross in-*
11 *come.*

12 “(4) *ELECTION TO CONTINUE TO BE TAXED AS*
13 *UNITED STATES CITIZEN.*—

14 “(A) *IN GENERAL.*—*If an expatriate elects*
15 *the application of this paragraph—*

16 “(i) *this section (other than this para-*
17 *graph) shall not apply to the expatriate, but*

18 “(ii) *the expatriate shall be subject to*
19 *tax under this title, with respect to property*
20 *to which this section would apply but for*
21 *such election, in the same manner as if the*
22 *individual were a United States citizen.*

23 “(B) *LIMITATION ON AMOUNT OF ESTATE,*
24 *GIFT, AND GENERATION-SKIPPING TRANSFER*
25 *TAXES.*—*The aggregate amount of taxes imposed*

1 *under subtitle B with respect to any transfer of*
2 *property by reason of an election under subpara-*
3 *graph (A) shall not exceed the amount of income*
4 *tax which would be due if the property were sold*
5 *for its fair market value immediately before the*
6 *time of the transfer or death (taking into account*
7 *the rules of paragraph (2)).*

8 “(C) *REQUIREMENTS.*—*Subparagraph (A)*
9 *shall not apply to an individual unless the indi-*
10 *vidual—*

11 “(i) *provides security for payment of*
12 *tax in such form and manner, and in such*
13 *amount, as the Secretary may require,*

14 “(ii) *consents to the waiver of any*
15 *right of the individual under any treaty of*
16 *the United States which would preclude as-*
17 *essment or collection of any tax which may*
18 *be imposed by reason of this paragraph,*
19 *and*

20 “(iii) *complies with such other require-*
21 *ments as the Secretary may prescribe.*

22 “(D) *ELECTION.*—*An election under sub-*
23 *paragraph (A) shall apply to all property to*
24 *which this section would apply but for the elec-*
25 *tion and, once made, shall be irrevocable. Such*

1 *election shall also apply to property the basis of*
2 *which is determined in whole or in part by ref-*
3 *erence to the property with respect to which the*
4 *election was made.*

5 “(b) *ELECTION TO DEFER TAX.*—

6 “(1) *IN GENERAL.*—*If the taxpayer elects the ap-*
7 *plication of this subsection with respect to any prop-*
8 *erty—*

9 “(A) *no amount shall be required to be in-*
10 *cluded in gross income under subsection (a)(1)*
11 *with respect to the gain from such property for*
12 *the taxable year of the sale, but*

13 “(B) *the taxpayer’s tax for the taxable year*
14 *in which such property is disposed of shall be in-*
15 *creased by the deferred tax amount with respect*
16 *to the property.*

17 *Except to the extent provided in regulations, subpara-*
18 *graph (B) shall apply to a disposition whether or not*
19 *gain or loss is recognized in whole or in part on the*
20 *disposition.*

21 “(2) *DEFERRED TAX AMOUNT.*—

22 “(A) *IN GENERAL.*—*For purposes of para-*
23 *graph (1), the term ‘deferred tax amount’ means,*
24 *with respect to any property, an amount equal*
25 *to the sum of—*

1 “(i) the difference between the amount
2 of tax paid for the taxable year described in
3 paragraph (1)(A) and the amount which
4 would have been paid for such taxable year
5 if the election under paragraph (1) had not
6 applied to such property, plus

7 “(ii) an amount of interest on the
8 amount described in clause (i) determined
9 for the period—

10 “(I) beginning on the 91st day
11 after the expatriation date, and

12 “(II) ending on the due date for
13 the taxable year described in para-
14 graph (1)(B),

15 by using the rates and method applicable
16 under section 6621 for underpayments of
17 tax for such period.

18 For purposes of clause (ii), the due date is the
19 date prescribed by law (determined without re-
20 gard to extension) for filing the return of the tax
21 imposed by this chapter for the taxable year.

22 “(B) ALLOCATION OF LOSSES.—For pur-
23 poses of subparagraph (A), any losses described
24 in subsection (a)(2)(B) shall be allocated ratably

1 among the gains described in subsection
2 (a)(2)(A).

3 “(3) SECURITY.—

4 “(A) IN GENERAL.—No election may be
5 made under paragraph (1) with respect to any
6 property unless adequate security is provided
7 with respect to such property.

8 “(B) ADEQUATE SECURITY.—For purposes
9 of subparagraph (A), security with respect to
10 any property shall be treated as adequate secu-
11 rity if—

12 “(i) it is a bond in an amount equal
13 to the deferred tax amount under paragraph
14 (2)(A) for the property, or

15 “(ii) the taxpayer otherwise establishes
16 to the satisfaction of the Secretary that the
17 security is adequate.

18 “(4) WAIVER OF CERTAIN RIGHTS.—No election
19 may be made under paragraph (1) unless the tax-
20 payer consents to the waiver of any right under any
21 treaty of the United States which would preclude as-
22 sessment or collection of any tax imposed by reason
23 of this section.

24 “(5) DISPOSITIONS.—For purposes of this sub-
25 section, a taxpayer making an election under this

1 *subsection with respect to any property shall be treat-*
2 *ed as having disposed of such property—*

3 *“(A) immediately before death if such prop-*
4 *erty is held at such time, and*

5 *“(B) at any time the security provided with*
6 *respect to the property fails to meet the require-*
7 *ments of paragraph (3) and the taxpayer does*
8 *not correct such failure within the time specified*
9 *by the Secretary.*

10 *“(6) ELECTIONS.—An election under paragraph*
11 *(1) shall only apply to property described in the elec-*
12 *tion and, once made, is irrevocable. An election may*
13 *be under paragraph (1) with respect to an interest in*
14 *a trust with respect to which gain is required to be*
15 *recognized under subsection (f)(1).*

16 *“(c) COVERED EXPATRIATE.—For purposes of this sec-*
17 *tion—*

18 *“(1) IN GENERAL.—The term ‘covered expatriate’*
19 *means an expatriate—*

20 *“(A) whose average annual net income tax*
21 *(as defined in section 38(c)(1)) for the period of*
22 *5 taxable years ending before the expatriation*
23 *date is greater than \$100,000, or*

24 *“(B) whose net worth as of such date is*
25 *\$500,000 or more.*

1 *If the expatriation date is after 1996, such \$100,000*
2 *and \$500,000 amounts shall be increased by an*
3 *amount equal to such dollar amount multiplied by*
4 *the cost-of-living adjustment determined under section*
5 *1(f)(3) for such calendar year by substituting ‘1995’*
6 *for ‘1992’ in subparagraph (B) thereof. Any increase*
7 *under the preceding sentence shall be rounded to the*
8 *nearest multiple of \$1,000.*

9 “(2) *EXCEPTIONS.—An individual shall not be*
10 *treated as a covered expatriate if—*

11 “(A) *the individual—*

12 “(i) *became at birth a citizen of the*
13 *United States and a citizen of another*
14 *country and, as of the expatriation date,*
15 *continues to be a citizen of, and is taxed as*
16 *a resident of, such other country, and*

17 “(ii) *has been a resident of the United*
18 *States (as defined in section*
19 *7701(b)(1)(A)(ii)) for not more than 8 tax-*
20 *able years during the 15-taxable year period*
21 *ending with the taxable year during which*
22 *the expatriation date occurs, or*

23 “(B)(i) *the individual’s relinquishment of*
24 *United States citizenship occurs before such indi-*
25 *vidual attains age 18½, and*

1 “(ii) the individual has been a resident of
2 the United States (as so defined) for not more
3 than 5 taxable years before the date of relin-
4 quishment.

5 “(d) *PROPERTY TO WHICH SECTION APPLIES.*—For
6 purposes of this section—

7 “(1) *IN GENERAL.*—Except as otherwise provided
8 by the Secretary, this section shall apply to—

9 “(A) any interest in property held by a cov-
10 ered expatriate on the expatriation date the gain
11 from which would be includible in the gross in-
12 come of the expatriate if such interest had been
13 sold for its fair market value on such date in a
14 transaction in which gain is recognized in whole
15 or in part, and

16 “(B) any other interest in a trust to which
17 subsection (f) applies.

18 “(2) *EXCEPTIONS.*—This section shall not apply
19 to the following property:

20 “(A) *UNITED STATES REAL PROPERTY IN-*
21 *TERESTS.*—Any United States real property in-
22 terest (as defined in section 897(c)(1)), other
23 than stock of a United States real property hold-
24 ing corporation which does not, on the expatria-

1 *tion date, meet the requirements of section*
2 *897(c)(2).*

3 *“(B) INTEREST IN CERTAIN RETIREMENT*
4 *PLANS.—*

5 *“(i) IN GENERAL.—Any interest in a*
6 *qualified retirement plan (as defined in sec-*
7 *tion 4974(c)), other than any interest at-*
8 *tributable to contributions which are in ex-*
9 *cess of any limitation or which violate any*
10 *condition for tax-favored treatment.*

11 *“(ii) FOREIGN PENSION PLANS.—*

12 *“(I) IN GENERAL.—Under regula-*
13 *tions prescribed by the Secretary, in-*
14 *terests in foreign pension plans or*
15 *similar retirement arrangements or*
16 *programs.*

17 *“(II) LIMITATION.—The value of*
18 *property which is treated as not sold*
19 *by reason of this subparagraph shall*
20 *not exceed \$500,000.*

21 *“(e) DEFINITIONS.—For purposes of this section—*

22 *“(1) EXPATRIATE.—The term ‘expatriate’*
23 *means—*

24 *“(A) any United States citizen who relin-*
25 *quishes his citizenship, or*

1 “(B) any long-term resident of the United
2 States who—

3 “(i) ceases to be a lawful permanent
4 resident of the United States (within the
5 meaning of section 7701(b)(6)), or

6 “(ii) commences to be treated as a resi-
7 dent of a foreign country under the provi-
8 sions of a tax treaty between the United
9 States and the foreign country and who
10 does not waive the benefits of such treaty
11 applicable to residents of the foreign coun-
12 try.

13 “(2) EXPATRIATION DATE.—The term ‘expatria-
14 tion date’ means—

15 “(A) the date an individual relinquishes
16 United States citizenship, or

17 “(B) in the case of a long-term resident of
18 the United States, the date of the event described
19 in clause (i) or (ii) of paragraph (1)(B).

20 “(3) RELINQUISHMENT OF CITIZENSHIP.—A citi-
21 zen shall be treated as relinquishing his United States
22 citizenship on the earliest of—

23 “(A) the date the individual renounces his
24 United States nationality before a diplomatic or
25 consular officer of the United States pursuant to

1 *paragraph (5) of section 349(a) of the Immigra-*
2 *tion and Nationality Act (8 U.S.C. 1481(a)(5)),*

3 *“(B) the date the individual furnishes to the*
4 *United States Department of State a signed*
5 *statement of voluntary relinquishment of United*
6 *States nationality confirming the performance of*
7 *an act of expatriation specified in paragraph*
8 *(1), (2), (3), or (4) of section 349(a) of the Im-*
9 *migration and Nationality Act (8 U.S.C.*
10 *1481(a)(1)–(4)),*

11 *“(C) the date the United States Department*
12 *of State issues to the individual a certificate of*
13 *loss of nationality, or*

14 *“(D) the date a court of the United States*
15 *Cancels a naturalized citizen’s certificate of natu-*
16 *ralization.*

17 *Subparagraph (A) or (B) shall not apply to any in-*
18 *dividual unless the renunciation or voluntary relin-*
19 *quishment is subsequently approved by the issuance to*
20 *the individual of a certificate of loss of nationality by*
21 *the United States Department of State.*

22 *“(4) LONG-TERM RESIDENT.—*

23 *“(A) IN GENERAL.—The term ‘long-term*
24 *resident’ means any individual (other than a cit-*
25 *izen of the United States) who is a lawful per-*

1 *manent resident of the United States in at least*
2 *8 taxable years during the period of 15 taxable*
3 *years ending with the taxable year during which*
4 *the expatriation date occurs. For purposes of the*
5 *preceding sentence, an individual shall not be*
6 *treated as a lawful permanent resident for any*
7 *taxable year if such individual is treated as a*
8 *resident of a foreign country for the taxable year*
9 *under the provisions of a tax treaty between the*
10 *United States and the foreign country and does*
11 *not waive the benefits of such treaty applicable*
12 *to residents of the foreign country.*

13 *“(B) SPECIAL RULE.—For purposes of sub-*
14 *paragraph (A), there shall not be taken into ac-*
15 *count—*

16 *“(i) any taxable year during which*
17 *any prior sale is treated under subsection*
18 *(a)(1) as occurring, or*

19 *“(ii) any taxable year prior to the tax-*
20 *able year referred to in clause (i).*

21 *“(f) SPECIAL RULES APPLICABLE TO BENEFICIARIES’*
22 *INTERESTS IN TRUST.—*

23 *“(1) IN GENERAL.—Except as provided in para-*
24 *graph (2), if an individual is determined under para-*
25 *graph (3) to hold an interest in a trust—*

1 “(A) the individual shall not be treated as
2 having sold such interest,

3 “(B) such interest shall be treated as a sep-
4 arate share in the trust, and

5 “(C)(i) such separate share shall be treated
6 as a separate trust consisting of the assets alloca-
7 ble to such share,

8 “(ii) the separate trust shall be treated as
9 having sold its assets immediately before the ex-
10 patriation date for their fair market value and
11 as having distributed all of its assets to the indi-
12 vidual as of such time, and

13 “(iii) the individual shall be treated as hav-
14 ing recontributed the assets to the separate trust.
15 Subsection (a)(2) shall apply to any income, gain, or
16 loss of the individual arising from a distribution de-
17 scribed in subparagraph (C)(ii).

18 “(2) SPECIAL RULES FOR INTERESTS IN QUALI-
19 FIED TRUSTS.—

20 “(A) IN GENERAL.—If the trust interest de-
21 scribed in paragraph (1) is an interest in a
22 qualified trust—

23 “(i) paragraph (1) and subsection (a)
24 shall not apply, and

1 “(ii) in addition to any other tax im-
2 posed by this title, there is hereby imposed
3 on each distribution with respect to such in-
4 terest a tax in the amount determined
5 under subparagraph (B).

6 “(B) AMOUNT OF TAX.—The amount of tax
7 under subparagraph (A)(ii) shall be equal to the
8 lesser of—

9 “(i) the highest rate of tax imposed by
10 section 1(e) for the taxable year in which
11 the expatriation date occurs, multiplied by
12 the amount of the distribution, or

13 “(ii) the balance in the deferred tax ac-
14 count immediately before the distribution
15 determined without regard to any increases
16 under subparagraph (C)(ii) after the 30th
17 day preceding the distribution.

18 “(C) DEFERRED TAX ACCOUNT.—For pur-
19 poses of subparagraph (B)(ii)—

20 “(i) OPENING BALANCE.—The opening
21 balance in a deferred tax account with re-
22 spect to any trust interest is an amount
23 equal to the tax which would have been im-
24 posed on the allocable expatriation gain
25 with respect to the trust interest if such

1 *gain had been included in gross income*
2 *under subsection (a).*

3 “(ii) *INCREASE FOR INTEREST.*—*The*
4 *balance in the deferred tax account shall be*
5 *increased by the amount of interest deter-*
6 *mined (on the balance in the account at the*
7 *time the interest accrues), for periods after*
8 *the 90th day after the expatriation date, by*
9 *using the rates and method applicable*
10 *under section 6621 for underpayments of*
11 *tax for such periods.*

12 “(iii) *DECREASE FOR TAXES PRE-*
13 *VIOUSLY PAID.*—*The balance in the tax de-*
14 *ferred account shall be reduced—*

15 “(I) *by the amount of taxes im-*
16 *posed by subparagraph (A) on any dis-*
17 *tribution to the person holding the*
18 *trust interest, and*

19 “(II) *in the case of a person hold-*
20 *ing a nonvested interest, to the extent*
21 *provided in regulations, by the amount*
22 *of taxes imposed by subparagraph (A)*
23 *on distributions from the trust with re-*
24 *spect to nonvested interests not held by*
25 *such person.*

1 “(D) *ALLOCABLE EXPATRIATION GAIN.*—For
2 purposes of this paragraph, the allocable expa-
3 triation gain with respect to any beneficiary’s
4 interest in a trust is the amount of gain which
5 would be allocable to such beneficiary’s vested
6 and nonvested interests in the trust if the bene-
7 ficiary held directly all assets allocable to such
8 interests.

9 “(E) *TAX DEDUCTED AND WITHHELD.*—

10 “(i) *IN GENERAL.*—The tax imposed by
11 subparagraph (A)(ii) shall be deducted and
12 withheld by the trustees from the distribu-
13 tion to which it relates.

14 “(ii) *EXCEPTION WHERE FAILURE TO*
15 *WAIVE TREATY RIGHTS.*—If an amount may
16 not be deducted and withheld under clause
17 (i) by reason of the distributee failing to
18 waive any treaty right with respect to such
19 distribution—

20 “(I) the tax imposed by subpara-
21 graph (A)(ii) shall be imposed on the
22 trust and each trustee shall be person-
23 ally liable for the amount of such tax,
24 and

1 “(II) any other beneficiary of the
2 trust shall be entitled to recover from
3 the distributee the amount of such tax
4 imposed on the other beneficiary.

5 “(F) DISPOSITION.—If a trust ceases to be
6 a qualified trust at any time, a covered expatri-
7 ate disposes of an interest in a qualified trust,
8 or a covered expatriate holding an interest in a
9 qualified trust dies, then, in lieu of the tax im-
10 posed by subparagraph (A)(ii), there is hereby
11 imposed a tax equal to the lesser of—

12 “(i) the tax determined under para-
13 graph (1) as if the expatriation date were
14 the date of such cessation, disposition, or
15 death, whichever is applicable, or

16 “(ii) the balance in the tax deferred ac-
17 count immediately before such date.

18 Such tax shall be imposed on the trust and each
19 trustee shall be personally liable for the amount
20 of such tax and any other beneficiary of the trust
21 shall be entitled to recover from the covered expa-
22 triate or the estate the amount of such tax im-
23 posed on the other beneficiary.

24 “(G) DEFINITIONS AND SPECIAL RULE.—
25 For purposes of this paragraph—

1 “(i) *QUALIFIED TRUST.*—The term
2 ‘qualified trust’ means a trust—

3 “(I) which is organized under,
4 and governed by, the laws of the Unit-
5 ed States or a State, and

6 “(II) with respect to which the
7 trust instrument requires that at least
8 1 trustee of the trust be an individual
9 citizen of the United States or a do-
10 mestic corporation.

11 “(ii) *VESTED INTEREST.*—The term
12 ‘vested interest’ means any interest which,
13 as of the expatriation date, is vested in the
14 beneficiary.

15 “(iii) *NONVESTED INTEREST.*—The
16 term ‘nonvested interest’ means, with re-
17 spect to any beneficiary, any interest in a
18 trust which is not a vested interest. Such
19 interest shall be determined by assuming the
20 maximum exercise of discretion in favor of
21 the beneficiary and the occurrence of all
22 contingencies in favor of the beneficiary.

23 “(iv) *ADJUSTMENTS.*—The Secretary
24 may provide for such adjustments to the
25 bases of assets in a trust or a deferred tax

1 *account, and the timing of such adjust-*
2 *ments, in order to ensure that gain is taxed*
3 *only once.*

4 “(3) *DETERMINATION OF BENEFICIARIES’ INTER-*
5 *EST IN TRUST.—*

6 “(A) *DETERMINATIONS UNDER PARAGRAPH*
7 *(1).—For purposes of paragraph (1), a bene-*
8 *ficiary’s interest in a trust shall be based upon*
9 *all relevant facts and circumstances, including*
10 *the terms of the trust instrument and any letter*
11 *of wishes or similar document, historical pat-*
12 *terns of trust distributions, and the existence of*
13 *and functions performed by a trust protector or*
14 *any similar advisor.*

15 “(B) *OTHER DETERMINATIONS.—For pur-*
16 *poses of this section—*

17 “(i) *CONSTRUCTIVE OWNERSHIP.—If a*
18 *beneficiary of a trust is a corporation, part-*
19 *nership, trust, or estate, the shareholders,*
20 *partners, or beneficiaries shall be deemed to*
21 *be the trust beneficiaries for purposes of this*
22 *section.*

23 “(ii) *TAXPAYER RETURN POSITION.—A*
24 *taxpayer shall clearly indicate on its in-*
25 *come tax return—*

1 “(I) the methodology used to de-
2 termine that taxpayer’s trust interest
3 under this section, and

4 “(II) if the taxpayer knows (or
5 has reason to know) that any other
6 beneficiary of such trust is using a dif-
7 ferent methodology to determine such
8 beneficiary’s trust interest under this
9 section.

10 “(g) *TERMINATION OF DEFERRALS, ETC.*—On the date
11 any property held by an individual is treated as sold under
12 subsection (a), notwithstanding any other provision of this
13 title—

14 “(1) any period during which recognition of in-
15 come or gain is deferred shall terminate, and

16 “(2) any extension of time for payment of tax
17 shall cease to apply and the unpaid portion of such
18 tax shall be due and payable at the time and in the
19 manner prescribed by the Secretary.

20 “(h) *IMPOSITION OF TENTATIVE TAX.*—

21 “(1) *IN GENERAL.*—If an individual is required
22 to include any amount in gross income under sub-
23 section (a) for any taxable year, there is hereby im-
24 posed, immediately before the expatriation date, a tax
25 in an amount equal to the amount of tax which

1 *would be imposed if the taxable year were a short tax-*
2 *able year ending on the expatriation date.*

3 “(2) *DUE DATE.*—*The due date for any tax im-*
4 *posed by paragraph (1) shall be the 90th day after the*
5 *expatriation date.*

6 “(3) *TREATMENT OF TAX.*—*Any tax paid under*
7 *paragraph (1) shall be treated as a payment of the*
8 *tax imposed by this chapter for the taxable year to*
9 *which subsection (a) applies.*

10 “(4) *DEFERRAL OF TAX.*—*The provisions of sub-*
11 *section (b) shall apply to the tax imposed by this sub-*
12 *section to the extent attributable to gain includible in*
13 *gross income by reason of this section.*

14 “(i) *COORDINATION WITH ESTATE AND GIFT*
15 *TAXES.*—*If subsection (a) applies to property held by an*
16 *individual for any taxable year and—*

17 “(1) *such property is includible in the gross es-*
18 *tate of such individual solely by reason of section*
19 *2107, or*

20 “(2) *section 2501 applies to a transfer of such*
21 *property by such individual solely by reason of sec-*
22 *tion 2501(a)(3),*

23 *then there shall be allowed as a credit against the additional*
24 *tax imposed by section 2101 or 2501, whichever is applica-*
25 *ble, solely by reason of section 2107 or 2501(a)(3) an*

1 *amount equal to the increase in the tax imposed by this*
2 *chapter for such taxable year by reason of this section.*

3 “(j) *REGULATIONS.*—*The Secretary shall prescribe*
4 *such regulations as may be necessary or appropriate to*
5 *carry out the purposes of this section, including regula-*
6 *tions—*

7 “(1) *to prevent double taxation by ensuring*
8 *that—*

9 “(A) *appropriate adjustments are made to*
10 *basis to reflect gain recognized by reason of sub-*
11 *section (a) and the exclusion provided by sub-*
12 *section (a)(3), and*

13 “(B) *any gain by reason of a deemed sale*
14 *under subsection (a) of an interest in a corpora-*
15 *tion, partnership, trust, or estate is reduced to*
16 *reflect that portion of such gain which is attrib-*
17 *utable to an interest in a trust which a share-*
18 *holder, partner, or beneficiary is treated as hold-*
19 *ing directly under subsection (f)(3)(B)(i), and*

20 “(2) *which provide for the proper allocation of*
21 *the exclusion under subsection (a)(3) to property to*
22 *which this section applies.*

1 “(k) *CROSS REFERENCE.*—

“For income tax treatment of individuals who terminate United States citizenship, see section 7701(a)(47).”.

2 (b) *INCLUSION IN INCOME OF GIFTS AND INHERITANCES FROM COVERED EXPATRIATES.*—Section 102 (relating to gifts, etc. not included in gross income) is amended
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24

6 “(d) *GIFTS AND INHERITANCES FROM COVERED EXPATRIATES.*—Subsection (a) shall not exclude from gross income the value of any property acquired by gift, bequest, devise, or inheritance from a covered expatriate after the
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24

14 (c) *DEFINITION OF TERMINATION OF UNITED STATES CITIZENSHIP.*—Section 7701(a) is amended by adding at
15 16 17 18 19 20 21 22 23 24

17 “(47) *TERMINATION OF UNITED STATES CITIZENSHIP.*—An individual shall not cease to be treated as
18 19 20 21 22 23 24

22 (d) *CONFORMING AMENDMENTS.*—

23 (1) Section 877 is amended by adding at the end
24 the following new subsection:

1 “(f) *APPLICATION.*—*This section shall not apply to*
2 *any individual who relinquishes (within the meaning of*
3 *section 877A(e)(3)) United States citizenship on or after*
4 *February 6, 1995.*”.

5 (2) *Section 2107(c) is amended by adding at the*
6 *end the following new paragraph:*

7 “(3) *CROSS REFERENCE.*—*For credit against the*
8 *tax imposed by subsection (a) for expatriation tax, see*
9 *section 877A(i).*”.

10 (3) *Section 2501(a)(3) is amended by adding at*
11 *the end the following new flush sentence:*

12 “*For credit against the tax imposed under this section*
13 *by reason of this paragraph, see section 877A(i).*”.

14 (4) *Paragraph (10) of section 7701(b) is amend-*
15 *ed by adding at the end the following new sentence:*

16 “*This paragraph shall not apply to any long-term*
17 *resident of the United States who is an expatriate (as*
18 *defined in section 877A(e)(1)).*”.

19 (e) *CLERICAL AMENDMENT.*—*The table of sections for*
20 *subpart A of part II of subchapter N of chapter 1 is amend-*
21 *ed by inserting after the item relating to section 877 the*
22 *following new item:*

 “*Sec. 877A. Tax responsibilities of expatriation.*”.

23 (f) *EFFECTIVE DATE.*—

24 (1) *IN GENERAL.*—*Except as provided in this*
25 *subsection, the amendments made by this section shall*

1 *apply to expatriates (within the meaning of section*
2 *877A(e) of the Internal Revenue Code of 1986, as*
3 *added by this section) whose expatriation date (as so*
4 *defined) occurs on or after February 6, 1995.*

5 (2) *GIFTS AND BEQUESTS.—Section 102(d) of*
6 *the Internal Revenue Code of 1986 (as added by sub-*
7 *section (b)) shall apply to amounts received from ex-*
8 *patriates (as so defined) whose expatriation date (as*
9 *so defined) occurs on and after February 6, 1995.*

10 (3) *SPECIAL RULES RELATING TO CERTAIN ACTS*
11 *OCCURRING BEFORE FEBRUARY 6, 1995.—In the case*
12 *of an individual who took an act of expatriation spec-*
13 *ified in paragraph (1), (2), (3), or (4) of section*
14 *349(a) of the Immigration and Nationality Act (8*
15 *U.S.C. 1481(a) (1)–(4)) before February 6, 1995, but*
16 *whose expatriation date (as so defined) occurs after*
17 *February 6, 1995—*

18 (A) *the amendment made by subsection (c)*
19 *shall not apply,*

20 (B) *the amendment made by subsection*
21 *(d)(1) shall not apply for any period prior to the*
22 *expatriation date, and*

23 (C) *the other amendments made by this sec-*
24 *tion shall apply as of the expatriation date.*

1 (4) *DUE DATE FOR TENTATIVE TAX.*—The due
2 date under section 877A(h)(2) of such Code shall in
3 no event occur before the 90th day after the date of
4 the enactment of this Act.

5 **SEC. 472. INFORMATION ON INDIVIDUALS EXPATRIATING.**

6 (a) *IN GENERAL.*—Subpart A of part III of subchapter
7 A of chapter 61 is amended by inserting after section 6039E
8 the following new section:

9 **“SEC. 6039F. INFORMATION ON INDIVIDUALS EXPATRIAT-**
10 **ING.**

11 “(a) *REQUIREMENT.*—

12 “(1) *IN GENERAL.*—Notwithstanding any other
13 provision of law, any expatriate (within the meaning
14 of section 877A(e)(1)) shall provide a statement which
15 includes the information described in subsection (b).

16 “(2) *TIMING.*—

17 “(A) *CITIZENS.*—In the case of an expatri-
18 ate described in section 877(e)(1)(A), such state-
19 ment shall be—

20 “(i) provided not later than the expa-
21 triation date (within the meaning of section
22 877A(e)(2)), and

23 “(ii) provided to the person or court
24 referred to in section 877A(e)(3).

1 “(B) *NONCITIZENS.*—*In the case of an ex-*
2 *patriate described in section 877A(e)(1)(B), such*
3 *statement shall be provided to the Secretary with*
4 *the return of tax imposed by chapter 1 for the*
5 *taxable year during which the event described in*
6 *such section occurs.*

7 “(b) *INFORMATION TO BE PROVIDED.*—*Information*
8 *required under subsection (a) shall include—*

9 “(1) *the taxpayer’s TIN,*

10 “(2) *the mailing address of such individual’s*
11 *principal foreign residence,*

12 “(3) *the foreign country in which such individ-*
13 *ual is residing,*

14 “(4) *the foreign country of which such individual*
15 *is a citizen,*

16 “(5) *in the case of an individual having a net*
17 *worth of at least the dollar amount applicable under*
18 *section 877A(c)(1)(B), information detailing the as-*
19 *sets and liabilities of such individual, and*

20 “(6) *such other information as the Secretary*
21 *may prescribe.*

22 “(c) *PENALTY.*—*Any individual failing to provide a*
23 *statement required under subsection (a) shall be subject to*
24 *a penalty for each year during any portion of which such*
25 *failure continues in an amount equal to the greater of—*

1 “(1) 5 percent of the additional tax required to
2 be paid under section 877A for such year, or

3 “(2) \$1,000,

4 unless it is shown that such failure is due to reasonable
5 cause and not to willful neglect.

6 “(d) INFORMATION TO BE PROVIDED TO SEC-
7 RETARY.—Notwithstanding any other provision of law—

8 “(1) any Federal agency or court which collects
9 (or is required to collect) the statement under sub-
10 section (a) shall provide to the Secretary—

11 “(A) a copy of any such statement, and

12 “(B) the name (and any other identifying
13 information) of any individual refusing to com-
14 ply with the provisions of subsection (a),

15 “(2) the Secretary of State shall provide to the
16 Secretary a copy of each certificate as to the loss of
17 American nationality under section 358 of the Immi-
18 gration and Nationality Act which is approved by the
19 Secretary of State, and

20 “(3) the Federal agency primarily responsible for
21 administering the immigration laws shall provide to
22 the Secretary the name of each lawful permanent resi-
23 dent of the United States (within the meaning of sec-
24 tion 7701(b)(6)) whose status as such has been re-

1 voked or has been administratively or judicially de-
2 termined to have been abandoned.

3 Notwithstanding any other provision of law, not later than
4 30 days after the close of each calendar quarter, the Sec-
5 retary shall publish in the Federal Register the name of
6 each individual relinquishing United States citizenship
7 (within the meaning of section 877A(e)(3)) with respect to
8 whom the Secretary receives information under the preced-
9 ing sentence during such quarter.

10 “(e) EXEMPTION.—The Secretary may by regulations
11 exempt any class of individuals from the requirements of
12 this section if the Secretary determines that applying this
13 section to such individuals is not necessary to carry out
14 the purposes of this section.”.

15 (b) CLERICAL AMENDMENT.—The table of sections for
16 such subpart A is amended by inserting after the item relat-
17 ing to section 6039E the following new item:

 “Sec. 6039F. Information on individuals expatriating.”.

18 (c) EFFECTIVE DATE.—The amendments made by this
19 section shall apply to individuals to whom section 877A
20 of the Internal Revenue Code of 1986 applies and whose
21 expatriation date (as defined in section 877A(e)(2)) occurs
22 on or after February 6, 1995, except that no statement shall
23 be required by such amendments before the 90th day after
24 the date of the enactment of this Act.

1 **SEC. 473. REPORT ON TAX COMPLIANCE BY UNITED STATES**
2 **CITIZENS AND RESIDENTS LIVING ABROAD.**

3 *Not later than 90 days after the date of the enactment*
4 *of this Act, the Secretary of the Treasury shall prepare and*
5 *submit to the Committee on Ways and Means of the House*
6 *of Representatives and the Committee on Finance of the*
7 *Senate a report—*

8 *(1) describing the compliance with subtitle A of*
9 *the Internal Revenue Code of 1986 by citizens and*
10 *lawful permanent residents of the United States*
11 *(within the meaning of section 7701(b)(6) of such*
12 *Code) residing outside the United States, and*

13 *(2) recommending measures to improve such*
14 *compliance (including improved coordination between*
15 *executive branch agencies).*

16 **CHAPTER 2—COMPANY-OWNED**
17 **INSURANCE**

18 **SEC. 495. DENIAL OF DEDUCTION FOR INTEREST ON LOANS**
19 **WITH RESPECT TO COMPANY-OWNED INSUR-**
20 **ANCE.**

21 *(a) IN GENERAL.—Paragraph (4) of section 264(a) is*
22 *amended—*

23 *(1) by inserting “, or any endowment or annuity*
24 *contracts owned by the taxpayer covering any indi-*
25 *vidual,” after “the life of any individual”, and*

1 (2) by striking all that follows “carried on by the
2 taxpayer” and inserting a period.

3 (b) *EXCEPTION FOR CONTRACTS RELATING TO KEY*
4 *PERSONS; PERMISSIBLE INTEREST RATES.*—Section 264 is
5 amended—

6 (1) by striking “Any” in subsection (a)(4) and
7 inserting “Except as provided in subsection (d), any”,
8 and

9 (2) by adding at the end the following new sub-
10 section:

11 “(d) *SPECIAL RULES FOR APPLICATION OF SUB-*
12 *SECTION (a)(4).*—

13 “(1) *EXCEPTION FOR KEY PERSONS.*—Subsection
14 (a)(4) shall not apply to any interest paid or accrued
15 on any indebtedness with respect to policies or con-
16 tracts covering an individual who is a key person to
17 the extent that the aggregate amount of such indebted-
18 ness with respect to policies and contracts covering
19 such individual does not exceed \$50,000.

20 “(2) *INTEREST RATE CAP ON KEY PERSONS AND*
21 *PRE-1986 CONTRACTS.*—

22 “(A) *IN GENERAL.*—No deduction shall be
23 allowed by reason of paragraph (1) or the last
24 sentence of subsection (a) with respect to interest
25 paid or accrued for any month to the extent the

1 *amount of such interest exceeds the amount*
2 *which would have been determined if the appli-*
3 *cable rate of interest were used for such month.*

4 “(B) *APPLICABLE RATE OF INTEREST.—For*
5 *purposes of subparagraph (A)—*

6 “(i) *IN GENERAL.—The applicable rate*
7 *of interest for any month is the rate of in-*
8 *terest described as Moody’s Corporate Bond*
9 *Yield Average-Monthly Average Corporates*
10 *as published by Moody’s Investors Service,*
11 *Inc., or any successor thereto, for such*
12 *month.*

13 “(ii) *PRE-1986 CONTRACT.—In the case*
14 *of indebtedness on a contract to which the*
15 *last sentence of subsection (a) applies—*

16 “(I) *which is a contract providing*
17 *a fixed rate of interest, the applicable*
18 *rate of interest for any month shall be*
19 *the Moody’s rate described in clause (i)*
20 *for the month in which the contract*
21 *was purchased, or*

22 “(II) *which is a contract provid-*
23 *ing a variable rate of interest, the ap-*
24 *plicable rate of interest for any month*
25 *in an applicable period shall be such*

1 *Moody's rate for the last month preced-*
2 *ing such period.*

3 *For purposes of subclause (II), the taxpayer*
4 *shall elect an applicable period for such*
5 *contract on its return of tax imposed by*
6 *this chapter for its first taxable year ending*
7 *on or after October 13, 1995. Such applica-*
8 *ble period shall be for any number of*
9 *months (not greater than 12) specified in*
10 *the election and may not be changed by the*
11 *taxpayer without the consent of the Sec-*
12 *retary.*

13 “(3) *KEY PERSON.*—*For purposes of paragraph*
14 *(1), the term ‘key person’ means an officer or 20-per-*
15 *cent owner, except that the number of individuals who*
16 *may be treated as key persons with respect to any*
17 *taxpayer shall not exceed the greater of—*

18 “(A) *5 individuals, or*

19 “(B) *the lesser of 5 percent of the total offi-*
20 *cers and employees of the taxpayer or 10 indi-*
21 *viduals.*

22 “(4) *20-PERCENT OWNER.*—*For purposes of this*
23 *subsection, the term ‘20-percent owner’ means—*

24 “(A) *if the taxpayer is a corporation, any*
25 *person who owns directly 20 percent or more of*

1 *the outstanding stock of the corporation or stock*
2 *possessing 20 percent or more of the total com-*
3 *bined voting power of all stock of the corpora-*
4 *tion, or*

5 *“(B) if the taxpayer is not a corporation,*
6 *any person who owns 20 percent or more of the*
7 *capital or profits interest in the employer.*

8 *“(5) AGGREGATION RULES.—*

9 *“(A) IN GENERAL.—For purposes of para-*
10 *graph (4)(A) and applying the \$50,000 limita-*
11 *tion in paragraph (1)—*

12 *“(i) all members of a controlled group*
13 *shall be treated as 1 taxpayer, and*

14 *“(ii) such limitation shall be allocated*
15 *among the members of such group in such*
16 *manner as the Secretary may prescribe.*

17 *“(B) CONTROLLED GROUP.—For purposes*
18 *of this paragraph, all persons treated as a single*
19 *employer under subsection (a) or (b) of section*
20 *52 or subsection (m) or (o) of section 414 shall*
21 *be treated as members of a controlled group.”.*

22 *(c) EFFECTIVE DATES.—*

23 *(1) IN GENERAL.—The amendments made by*
24 *this section shall apply to interest paid or accrued*
25 *after December 31, 1995.*

1 (2) *TRANSITION RULE FOR EXISTING INDEBTED-*
2 *NESS.*—

3 (A) *IN GENERAL.*—*In the case of—*

4 (i) *indebtedness incurred before Janu-*
5 *ary 1, 1996, or*

6 (ii) *indebtedness incurred before Janu-*
7 *ary 1, 1997 with respect to any contract or*
8 *policy entered into in 1994 or 1995,*

9 *the amendments made by this section shall not*
10 *apply to qualified interest paid or accrued on*
11 *such indebtedness after October 13, 1995, and be-*
12 *fore January 1, 1999.*

13 (B) *QUALIFIED INTEREST.*—*For purposes of*
14 *subparagraph (A), the qualified interest with re-*
15 *spect to any indebtedness for any month is the*
16 *amount of interest which would be paid or ac-*
17 *crued for such month on such indebtedness if—*

18 (i) *in the case of any interest paid or*
19 *accrued after December 31, 1995, indebted-*
20 *ness with respect to no more than 20,000*
21 *insured individuals were taken into ac-*
22 *count, and*

23 (ii) *the lesser of the following rates of*
24 *interest were used for such month:*

1 (I) *The rate of interest specified*
 2 *under the terms of the indebtedness as*
 3 *in effect on October 13, 1995 (and*
 4 *without regard to modification of such*
 5 *terms after such date).*

6 (II) *The applicable percentage*
 7 *rate of interest described as Moody's*
 8 *Corporate Bond Yield Average-Monthly*
 9 *Average Corporates as published by*
 10 *Moody's Investors Service, Inc., or any*
 11 *successor thereto, for such month.*

12 *For purposes of clause (i), all persons treated as*
 13 *a single employer under subsection (a) or (b) of*
 14 *section 52 of the Internal Revenue Code of 1986*
 15 *or subsection (m) or (o) of section 414 of such*
 16 *Code shall be treated as one person.*

17 (C) *APPLICABLE PERCENTAGE.—For pur-*
 18 *poses of subparagraph (B), the applicable per-*
 19 *centage is as follows:*

For calendar year:	The percentage is:
1995	100 percent
1996	90 percent
1997	80 percent
1998	70 percent.

20 (3) *SPECIAL RULE FOR GRANDFATHERED CON-*
 21 *TRACTS.—This section shall not apply to any con-*
 22 *tract purchased on or before June 20, 1986, except*

1 that section 264(d)(2) of the Internal Revenue Code of
2 1986 shall apply to interest paid or accrued after Oc-
3 tober 13, 1995.

4 (d) *SPREAD OF INCOME INCLUSION ON SURRENDER,*
5 *ETC. OF CONTRACTS.*—

6 (1) *IN GENERAL.*—If any amount is received
7 under any life insurance policy or endowment or an-
8 nuity contract described in paragraph (4) of section
9 264(a) of the Internal Revenue Code of 1986—

10 (A) on the complete surrender, redemption,
11 or maturity of such policy or contract during
12 calendar year 1996, 1997, or 1998, or

13 (B) in full discharge during any such cal-
14 endar year of the obligation under the policy or
15 contract which is in the nature of a refund of the
16 consideration paid for the policy or contract,

17 then (in lieu of any other inclusion in gross income)
18 such amount shall be includible in gross income rat-
19 ably over the 4-taxable year period beginning with the
20 taxable year such amount would (but for this para-
21 graph) be includible. The preceding sentence shall
22 only apply to the extent the amount is includible in
23 gross income for the taxable year in which the event
24 described in subparagraph (A) or (B) occurs.

1 (2) *SPECIAL RULES FOR APPLYING SECTION*
2 *264.—A contract shall not be treated as—*

3 (A) *failing to meet the requirement of sec-*
4 *tion 264(c)(1) of the Internal Revenue Code of*
5 *1986, or*

6 (B) *a single premium contract under sec-*
7 *tion 264(b)(1) of such Code,*

8 *solely by reason of an occurrence described in sub-*
9 *paragraph (A) or (B) of paragraph (1) of this sub-*
10 *section or solely by reason of no additional premiums*
11 *being received under the contract by reason of a lapse*
12 *occurring after October 13, 1995.*

13 (3) *SPECIAL RULE FOR DEFERRED ACQUISITION*
14 *COSTS.—In the case of the occurrence of any event de-*
15 *scribed in subparagraph (A) or (B) of paragraph (1)*
16 *of this subsection with respect to any policy or con-*
17 *tract—*

18 (A) *section 848 of the Internal Revenue*
19 *Code of 1986 shall not apply to the unamortized*
20 *balance (if any) of the specified policy acquisi-*
21 *tion expenses attributable to such policy or con-*
22 *tract immediately before the insurance compa-*
23 *ny's taxable year in which such event occurs,*
24 *and*

1 (B) there shall be allowed as a deduction to
2 such company for such taxable year under chap-
3 ter 1 of such Code an amount equal to such
4 unamortized balance.

5 **TITLE V—HEALTH CARE FRAUD**
6 **AND ABUSE PREVENTION**

7 **SEC. 500. AMENDMENTS.**

8 *Except as otherwise specifically provided, whenever in*
9 *this title an amendment is expressed in terms of an amend-*
10 *ment to or repeal of a section or other provision, the ref-*
11 *erence shall be considered to be made to that section or other*
12 *provision of the Social Security Act.*

13 **Subtitle A—Fraud and Abuse**
14 **Control Program**

15 **SEC. 501. FRAUD AND ABUSE CONTROL PROGRAM.**

16 (a) *ESTABLISHMENT OF PROGRAM.*—Title XI (42
17 *U.S.C. 1301 et seq.) is amended by inserting after section*
18 *1128B the following new section:*

19 “*FRAUD AND ABUSE CONTROL PROGRAM*

20 “*SEC. 1128C. (a) ESTABLISHMENT OF PROGRAM.*—

21 “(1) *IN GENERAL.*—Not later than January 1,
22 1997, the Secretary, acting through the Office of the
23 Inspector General of the Department of Health and
24 Human Services, and the Attorney General shall es-
25 tablish a program—

1 “(A) to coordinate Federal, State, and local
2 law enforcement programs to control fraud and
3 abuse with respect to health plans,

4 “(B) to conduct investigations, audits, eval-
5 uations, and inspections relating to the delivery
6 of and payment for health care in the United
7 States,

8 “(C) to facilitate the enforcement of the pro-
9 visions of sections 1128, 1128A, and 1128B and
10 other statutes applicable to health care fraud and
11 abuse,

12 “(D) to provide for the modification and es-
13 tablishment of safe harbors and to issue interpre-
14 tative rulings and special fraud alerts pursuant
15 to section 1128D, and

16 “(E) to provide for the reporting and disclo-
17 sure of certain final adverse actions against
18 health care providers, suppliers, or practitioners
19 pursuant to the data collection system established
20 under section 1128E.

21 “(2) COORDINATION WITH HEALTH PLANS.—In
22 carrying out the program established under para-
23 graph (1), the Secretary and the Attorney General
24 shall consult with, and arrange for the sharing of
25 data with representatives of health plans.

1 “(3) *GUIDELINES.*—

2 “(A) *IN GENERAL.*—*The Secretary and the*
3 *Attorney General shall issue guidelines to carry*
4 *out the program under paragraph (1). The pro-*
5 *visions of sections 553, 556, and 557 of title 5,*
6 *United States Code, shall not apply in the issu-*
7 *ance of such guidelines.*

8 “(B) *INFORMATION GUIDELINES.*—

9 “(i) *IN GENERAL.*—*Such guidelines*
10 *shall include guidelines relating to the fur-*
11 *nishing of information by health plans, pro-*
12 *viders, and others to enable the Secretary*
13 *and the Attorney General to carry out the*
14 *program (including coordination with*
15 *health plans under paragraph (2)).*

16 “(ii) *CONFIDENTIALITY.*—*Such guide-*
17 *lines shall include procedures to assure that*
18 *such information is provided and utilized*
19 *in a manner that appropriately protects the*
20 *confidentiality of the information and the*
21 *privacy of individuals receiving health care*
22 *services and items.*

23 “(iii) *QUALIFIED IMMUNITY FOR PRO-*
24 *VIDING INFORMATION.*—*The provisions of*
25 *section 1157(a) (relating to limitation on*

1 *liability) shall apply to a person providing*
2 *information to the Secretary or the Attor-*
3 *ney General in conjunction with their per-*
4 *formance of duties under this section.*

5 “(4) *ENSURING ACCESS TO DOCUMENTATION.—*
6 *The Inspector General of the Department of Health*
7 *and Human Services is authorized to exercise such*
8 *authority described in paragraphs (3) through (9) of*
9 *section 6 of the Inspector General Act of 1978 (5*
10 *U.S.C. App.) as necessary with respect to the activi-*
11 *ties under the fraud and abuse control program estab-*
12 *lished under this subsection.*

13 “(5) *AUTHORITY OF INSPECTOR GENERAL.—*
14 *Nothing in this Act shall be construed to diminish the*
15 *authority of any Inspector General, including such*
16 *authority as provided in the Inspector General Act of*
17 *1978 (5 U.S.C. App.).*

18 “(b) *ADDITIONAL USE OF FUNDS BY INSPECTOR GEN-*
19 *ERAL.—*

20 “(1) *REIMBURSEMENTS FOR INVESTIGATIONS.—*
21 *The Inspector General of the Department of Health*
22 *and Human Services is authorized to receive and re-*
23 *tain for current use reimbursement for the costs of*
24 *conducting investigations and audits and for mon-*
25 *itoring compliance plans when such costs are ordered*

1 *by a court, voluntarily agreed to by the payor, or otherwise.*
2

3 “(2) *CREDITING.*—*Funds received by the Inspector General under paragraph (1) as reimbursement for costs of conducting investigations shall be deposited to the credit of the appropriation from which initially paid, or to appropriations for similar purposes currently available at the time of deposit, and shall remain available for obligation for 1 year from the date of the deposit of such funds.*
4
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11 “(c) *HEALTH PLAN DEFINED.*—*For purposes of this section, the term ‘health plan’ means a plan or program that provides health benefits, whether directly, through insurance, or otherwise, and includes—*
12
13
14

15 “(1) *a policy of health insurance;*

16 “(2) *a contract of a service benefit organization;*
17 *and*

18 “(3) *a membership agreement with a health maintenance organization or other prepaid health plan.”.*
19
20

21 “(b) *ESTABLISHMENT OF HEALTH CARE FRAUD AND ABUSE CONTROL ACCOUNT IN FEDERAL HOSPITAL INSURANCE TRUST FUND.*—*Section 1817 (42 U.S.C. 1395i) is*
22
23
24 *amended by adding at the end the following new subsection:*

1 “(k) *HEALTH CARE FRAUD AND ABUSE CONTROL AC-*
2 *COUNT.—*

3 “(1) *ESTABLISHMENT.—*There is hereby estab-
4 *lished in the Trust Fund an expenditure account to*
5 *be known as the ‘Health Care Fraud and Abuse Con-*
6 *trol Account’ (in this subsection referred to as the ‘Ac-*
7 *count’).*

8 “(2) *APPROPRIATED AMOUNTS TO TRUST*
9 *FUND.—*

10 “(A) *IN GENERAL.—*There are hereby ap-
11 *propriated to the Trust Fund—*

12 “(i) *such gifts and bequests as may be*
13 *made as provided in subparagraph (B);*

14 “(ii) *such amounts as may be depos-*
15 *ited in the Trust Fund as provided in sec-*
16 *tions 541(b) and 542(c) of the Health Insur-*
17 *ance Reform Act of 1996, and title XI; and*

18 “(iii) *such amounts as are transferred*
19 *to the Trust Fund under subparagraph (C).*

20 “(B) *AUTHORIZATION TO ACCEPT GIFTS.—*
21 *The Trust Fund is authorized to accept on behalf*
22 *of the United States money gifts and bequests*
23 *made unconditionally to the Trust Fund, for the*
24 *benefit of the Account or any activity financed*
25 *through the Account.*

1 “(C) *TRANSFER OF AMOUNTS.*—*The Manag-*
2 *ing Trustee shall transfer to the Trust Fund,*
3 *under rules similar to the rules in section 9601*
4 *of the Internal Revenue Code of 1986, an amount*
5 *equal to the sum of the following:*

6 “(i) *Criminal fines recovered in cases*
7 *involving a Federal health care offense (as*
8 *defined in section 982(a)(6)(B) of title 18,*
9 *United States Code).*

10 “(ii) *Civil monetary penalties and as-*
11 *sessments imposed in health care cases, in-*
12 *cluding amounts recovered under titles XI,*
13 *XVIII, and XXI, and chapter 38 of title 31,*
14 *United States Code (except as otherwise*
15 *provided by law).*

16 “(iii) *Amounts resulting from the for-*
17 *feiture of property by reason of a Federal*
18 *health care offense.*

19 “(iv) *Penalties and damages obtained*
20 *and otherwise creditable to miscellaneous re-*
21 *ceipts of the general fund of the Treasury*
22 *obtained under sections 3729 through 3733*
23 *of title 31, United States Code (known as*
24 *the False Claims Act), in cases involving*
25 *claims related to the provision of health*

1 *care items and services (other than funds*
2 *awarded to a relator, for restitution or oth-*
3 *erwise authorized by law).*

4 “(3) *APPROPRIATED AMOUNTS TO ACCOUNT FOR*
5 *FRAUD AND ABUSE CONTROL PROGRAM, ETC.—*

6 “(A) *DEPARTMENTS OF HEALTH AND*
7 *HUMAN SERVICES AND JUSTICE.—*

8 “(i) *IN GENERAL.—There are hereby*
9 *appropriated to the Account from the Trust*
10 *Fund such sums as the Secretary and the*
11 *Attorney General certify are necessary to*
12 *carry out the purposes described in sub-*
13 *paragraph (C), to be available without fur-*
14 *ther appropriation, in an amount not to ex-*
15 *ceed—*

16 “(I) *for fiscal year 1997,*
17 *\$104,000,000, and*

18 “(II) *for each of the fiscal years*
19 *1998 through 2003, the limit for the*
20 *preceding fiscal year, increased by 15*
21 *percent; and*

22 “(III) *for each fiscal year after*
23 *fiscal year 2003, the limit for fiscal*
24 *year 2003.*

1 “(i) *MEDICARE AND MEDICAID ACTIVITIES.*—For each fiscal year, of the amount
2 appropriated in clause (i), the following
3 amounts shall be available only for the pur-
4 poses of the activities of the Office of the In-
5 spector General of the Department of Health
6 and Human Services with respect to the
7 medicare and medicaid programs—
8

9 “(I) for fiscal year 1997, not less
10 than \$60,000,000 and not more than
11 \$70,000,000;

12 “(II) for fiscal year 1998, not less
13 than \$80,000,000 and not more than
14 \$90,000,000;

15 “(III) for fiscal year 1999, not
16 less than \$90,000,000 and not more
17 than \$100,000,000;

18 “(IV) for fiscal year 2000, not less
19 than \$110,000,000 and not more than
20 \$120,000,000;

21 “(V) for fiscal year 2001, not less
22 than \$120,000,000 and not more than
23 \$130,000,000;

1 “(VI) for fiscal year 2002, not less
2 than \$140,000,000 and not more than
3 \$150,000,000; and

4 “(VII) for each fiscal year after
5 fiscal year 2002, not less than
6 \$150,000,000 and not more than
7 \$160,000,000.

8 “(B) FEDERAL BUREAU OF INVESTIGA-
9 TION.—There are hereby appropriated from the
10 general fund of the United States Treasury and
11 hereby appropriated to the Account for transfer
12 to the Federal Bureau of Investigation to carry
13 out the purposes described in subparagraph
14 (C)(i), to be available without further appropria-
15 tion—

16 “(i) for fiscal year 1997, \$47,000,000;

17 “(ii) for fiscal year 1998, \$56,000,000;

18 “(iii) for fiscal year 1999, \$66,000,000;

19 “(iv) for fiscal year 2000, \$76,000,000;

20 “(v) for fiscal year 2001, \$88,000,000;

21 “(vi) for fiscal year 2002,

22 \$101,000,000; and

23 “(vii) for each fiscal year after fiscal
24 year 2002, \$114,000,000.

1 “(C) *USE OF FUNDS.*—The purposes de-
2 scribed in this subparagraph are to cover the
3 costs (including equipment, salaries and benefits,
4 and travel and training) of the administration
5 and operation of the health care fraud and abuse
6 control program established under section
7 1128C(a), including the costs of—

8 “(i) prosecuting health care matters
9 (through criminal, civil, and administrative
10 proceedings);

11 “(ii) investigations;

12 “(iii) financial and performance au-
13 dits of health care programs and operations;

14 “(iv) inspections and other evalua-
15 tions; and

16 “(v) provider and consumer education
17 regarding compliance with the provisions of
18 title XI.

19 “(4) *APPROPRIATED AMOUNTS TO ACCOUNT FOR*
20 *MEDICARE INTEGRITY PROGRAM.*—

21 “(A) *IN GENERAL.*—There are hereby ap-
22 propriated to the Account from the Trust Fund
23 for each fiscal year such amounts as are nec-
24 essary to carry out the Medicare Integrity Pro-
25 gram under section 1893, subject to subpara-

1 *graph (B) and to be available without further*
2 *appropriation.*

3 “(B) *AMOUNTS SPECIFIED.*—*The amount*
4 *appropriated under subparagraph (A) for a fis-*
5 *cal year is as follows:*

6 “(i) *For fiscal year 1997, such amount*
7 *shall be not less than \$430,000,000 and not*
8 *more than \$440,000,000.*

9 “(ii) *For fiscal year 1998, such*
10 *amount shall be not less than \$490,000,000*
11 *and not more than \$500,000,000.*

12 “(iii) *For fiscal year 1999, such*
13 *amount shall be not less than \$550,000,000*
14 *and not more than \$560,000,000.*

15 “(iv) *For fiscal year 2000, such*
16 *amount shall be not less than \$620,000,000*
17 *and not more than \$630,000,000.*

18 “(v) *For fiscal year 2001, such amount*
19 *shall be not less than \$670,000,000 and not*
20 *more than \$680,000,000.*

21 “(vi) *For fiscal year 2002, such*
22 *amount shall be not less than \$690,000,000*
23 *and not more than \$700,000,000.*

24 “(vii) *For each fiscal year after fiscal*
25 *year 2002, such amount shall be not less*

1 *than \$710,000,000 and not more than*
2 *\$720,000,000.*

3 “(5) *ANNUAL REPORT.*—*The Secretary and the*
4 *Attorney General shall submit jointly an annual re-*
5 *port to Congress on the amount of revenue which is*
6 *generated and disbursed, and the justification for such*
7 *disbursements, by the Account in each fiscal year.”.*

8 **SEC. 502. MEDICARE INTEGRITY PROGRAM.**

9 *(a) ESTABLISHMENT OF MEDICARE INTEGRITY PRO-*
10 *GRAM.*—*Title XVIII is amended by adding at the end the*
11 *following new section:*

12 “*MEDICARE INTEGRITY PROGRAM*

13 “*SEC. 1893. (a) ESTABLISHMENT OF PROGRAM.*—
14 *There is hereby established the Medicare Integrity Program*
15 *(in this section referred to as the ‘Program’) under which*
16 *the Secretary shall promote the integrity of the medicare*
17 *program by entering into contracts in accordance with this*
18 *section with eligible private entities to carry out the activi-*
19 *ties described in subsection (b).*

20 “(b) *ACTIVITIES DESCRIBED.*—*The activities described*
21 *in this subsection are as follows:*

22 “(1) *Review of activities of providers of services*
23 *or other individuals and entities furnishing items and*
24 *services for which payment may be made under this*
25 *title (including skilled nursing facilities and home*
26 *health agencies), including medical and utilization*

1 *review and fraud review (employing similar stand-*
2 *ards, processes, and technologies used by private*
3 *health plans, including equipment and software tech-*
4 *nologies which surpass the capability of the equip-*
5 *ment and technologies used in the review of claims*
6 *under this title as of the date of the enactment of this*
7 *section).*

8 *“(2) Audit of cost reports.*

9 *“(3) Determinations as to whether payment*
10 *should not be, or should not have been, made under*
11 *this title by reason of section 1862(b), and recovery*
12 *of payments that should not have been made.*

13 *“(4) Education of providers of services, bene-*
14 *ficiaries, and other persons with respect to payment*
15 *integrity and benefit quality assurance issues.*

16 *“(5) Developing (and periodically updating) a*
17 *list of items of durable medical equipment in accord-*
18 *ance with section 1834(a)(15) which are subject to*
19 *prior authorization under such section.*

20 *“(c) ELIGIBILITY OF ENTITIES.—An entity is eligible*
21 *to enter into a contract under the Program to carry out*
22 *any of the activities described in subsection (b) if—*

23 *“(1) the entity has demonstrated capability to*
24 *carry out such activities;*

1 “(2) in carrying out such activities, the entity
2 agrees to cooperate with the Inspector General of the
3 Department of Health and Human Services, the At-
4 torney General of the United States, and other law
5 enforcement agencies, as appropriate, in the inves-
6 tigation and deterrence of fraud and abuse in relation
7 to this title and in other cases arising out of such ac-
8 tivities;

9 “(3) the entity complies with such conflict of in-
10 terest standards as are generally applicable to Federal
11 acquisition and procurement;

12 “(4) the entity meets such other requirements as
13 the Secretary may impose; and

14 “(5) in the case of any contract entered into for
15 years prior to 2000, the entity has entered into an
16 agreement under section 1816 or a contract under sec-
17 tion 1842.

18 In the case of the activity described in subsection (b)(5),
19 an entity shall be deemed to be eligible to enter into a con-
20 tract under the Program to carry out the activity if the
21 entity is a carrier with a contract in effect under section
22 1842.

23 “(d) *PROCESS FOR ENTERING INTO CONTRACTS.*—The
24 Secretary shall enter into contracts under the Program in
25 accordance with such procedures as the Secretary shall by

1 *regulation establish, except that such procedures shall in-*
2 *clude the following:*

3 “(1) *Procedures for identifying, evaluating, and*
4 *resolving organizational conflicts of interest that are*
5 *generally applicable to Federal acquisition and pro-*
6 *curement.*

7 “(2) *Competitive procedures must be used when*
8 *entering into new contracts under this section, or at*
9 *any other time considered appropriate by the Sec-*
10 *retary, except that the Secretary may contract with*
11 *entities that are carrying out the activities described*
12 *in this section pursuant to agreements under section*
13 *1816 or contracts under section 1842 in effect on the*
14 *date of the enactment of this section.*

15 “(3) *A contract under this section may be re-*
16 *newed without regard to any provision of law requir-*
17 *ing competition if the contractor has met or exceeded*
18 *the performance requirements established in the cur-*
19 *rent contract.*

20 “(e) *LIMITATION ON CONTRACTOR LIABILITY.—The*
21 *Secretary shall by regulation provide for the limitation of*
22 *a contractor’s liability for actions taken to carry out a con-*
23 *tract under the Program, and such regulation shall, to the*
24 *extent the Secretary finds appropriate, employ the same or*

1 *comparable standards and other substantive and procedural*
2 *provisions as are contained in section 1157.”.*

3 (b) *ELIMINATION OF FI AND CARRIER RESPONSIBIL-*
4 *ITY FOR CARRYING OUT ACTIVITIES SUBJECT TO PRO-*
5 *GRAM.—*

6 (1) *RESPONSIBILITIES OF FISCAL*
7 *INTERMEDIARIES UNDER PART A.—Section 1816 (42*
8 *U.S.C. 1395h) is amended by adding at the end the*
9 *following new subsection:*

10 “(l) *No payment may be made for carrying out any*
11 *activity pursuant to an agreement under this section to the*
12 *extent that the activity is carried out pursuant to a contract*
13 *under the Medicare Integrity Program under section*
14 *1893.”.*

15 (2) *RESPONSIBILITIES OF CARRIERS UNDER*
16 *PART B.—Section 1842(c) (42 U.S.C. 1395u(c)) is*
17 *amended by adding at the end the following new*
18 *paragraph:*

19 “(6) *No payment may be made for carrying out any*
20 *activity pursuant to a contract under this subsection to the*
21 *extent that the activity is carried out pursuant to a contract*
22 *under the Medicare Integrity Program under section 1893.*
23 *The previous sentence shall not apply with respect to the*
24 *activity described in section 1893(b)(5) (relating to prior*

1 *authorization of certain items of durable medical equipment*
2 *under section 1834(a)(15)).”.*

3 **SEC. 503. BENEFICIARY INCENTIVE PROGRAMS.**

4 (a) *CLARIFICATION OF REQUIREMENT TO PROVIDE*
5 *EXPLANATION OF MEDICARE BENEFITS.*—*The Secretary of*
6 *Health and Human Services (in this section referred to as*
7 *the “Secretary”) shall provide an explanation of benefits*
8 *under the medicare program under title XVIII of the Social*
9 *Security Act with respect to each item or service for which*
10 *payment may be made under the program which is fur-*
11 *nished to an individual, without regard to whether or not*
12 *a deductible or coinsurance may be imposed against the in-*
13 *dividual with respect to the item or service.*

14 (b) *PROGRAM TO COLLECT INFORMATION ON FRAUD*
15 *AND ABUSE.*—

16 (1) *ESTABLISHMENT OF PROGRAM.*—*Not later*
17 *than 3 months after the date of the enactment of this*
18 *Act, the Secretary shall establish a program under*
19 *which the Secretary shall encourage individuals to re-*
20 *port to the Secretary information on individuals and*
21 *entities who are engaging or who have engaged in*
22 *acts or omissions which constitute grounds for the im-*
23 *position of a sanction under section 1128, section*
24 *1128A, or section 1128B of the Social Security Act,*
25 *or who have otherwise engaged in fraud and abuse*

1 *against the medicare program for which there is a*
2 *sanction provided under law. The program shall dis-*
3 *courage provision of, and not consider, information*
4 *which is frivolous or otherwise not relevant or mate-*
5 *rial to the imposition of such a sanction.*

6 (2) *PAYMENT OF PORTION OF AMOUNTS COL-*
7 *LECTED.—If an individual reports information to the*
8 *Secretary under the program established under para-*
9 *graph (1) which serves as the basis for the collection*
10 *by the Secretary or the Attorney General of any*
11 *amount of at least \$100 (other than any amount paid*
12 *as a penalty under section 1128B of the Social Secu-*
13 *rity Act), the Secretary may pay a portion of the*
14 *amount collected to the individual (under procedures*
15 *similar to those applicable under section 7623 of the*
16 *Internal Revenue Code of 1986 to payments to indi-*
17 *viduals providing information on violations of such*
18 *Code).*

19 (c) *PROGRAM TO COLLECT INFORMATION ON PROGRAM*
20 *EFFICIENCY.—*

21 (1) *ESTABLISHMENT OF PROGRAM.—Not later*
22 *than 3 months after the date of the enactment of this*
23 *Act, the Secretary shall establish a program under*
24 *which the Secretary shall encourage individuals to*

1 *submit to the Secretary suggestions on methods to im-*
2 *prove the efficiency of the medicare program.*

3 (2) *PAYMENT OF PORTION OF PROGRAM SAV-*
4 *INGS.—If an individual submits a suggestion to the*
5 *Secretary under the program established under para-*
6 *graph (1) which is adopted by the Secretary and*
7 *which results in savings to the program, the Secretary*
8 *may make a payment to the individual of such*
9 *amount as the Secretary considers appropriate.*

10 **SEC. 504. APPLICATION OF CERTAIN HEALTH ANTI-FRAUD**
11 **AND ABUSE SANCTIONS TO FRAUD AND**
12 **ABUSE AGAINST FEDERAL HEALTH CARE**
13 **PROGRAMS.**

14 (a) *IN GENERAL.—Section 1128B (42 U.S.C. 1320a-*
15 *7b) is amended as follows:*

16 (1) *In the heading, by striking “MEDICARE OR*
17 *STATE HEALTH CARE PROGRAMS” and inserting*
18 *“FEDERAL HEALTH CARE PROGRAMS”.*

19 (2) *In subsection (a)(1), by striking “a program*
20 *under title XVIII or a State health care program (as*
21 *defined in section 1128(h))” and inserting “a Federal*
22 *health care program”.*

23 (3) *In subsection (a)(5), by striking “a program*
24 *under title XVIII or a State health care program”*
25 *and inserting “a Federal health care program”.*

1 (4) *In the second sentence of subsection (a)—*

2 (A) *by striking “a State plan approved*
3 *under title XIX” and inserting “a Federal health*
4 *care program”, and*

5 (B) *by striking “the State may at its option*
6 *(notwithstanding any other provision of that*
7 *title or of such plan)” and inserting “the admin-*
8 *istrator of such program may at its option (not-*
9 *withstanding any other provision of such pro-*
10 *gram)”.*

11 (5) *In subsection (b), by striking “title XVIII or*
12 *a State health care program” each place it appears*
13 *and inserting “a Federal health care program”.*

14 (6) *In subsection (c), by inserting “(as defined*
15 *in section 1128(h))” after “a State health care pro-*
16 *gram”.*

17 (7) *By adding at the end the following new sub-*
18 *section:*

19 “(f) *For purposes of this section, the term ‘Federal*
20 *health care program’ means—*

21 “(1) *any plan or program that provides health*
22 *benefits, whether directly, through insurance, or other-*
23 *wise, which is funded directly, in whole or in part,*
24 *by the United States Government (other than the*

1 *health insurance program under chapter 89 of title 5,*
 2 *United States Code); or*

3 *“(2) any State health care program, as defined*
 4 *in section 1128(h).”.*

5 *(b) EFFECTIVE DATE.—The amendments made by this*
 6 *section shall take effect on January 1, 1997.*

7 ***SEC. 505. GUIDANCE REGARDING APPLICATION OF HEALTH***
 8 ***CARE FRAUD AND ABUSE SANCTIONS.***

9 *Title XI (42 U.S.C. 1301 et seq.), as amended by sec-*
 10 *tion 501, is amended by inserting after section 1128C the*
 11 *following new section:*

12 *“GUIDANCE REGARDING APPLICATION OF HEALTH CARE*
 13 *FRAUD AND ABUSE SANCTIONS*

14 *“SEC. 1128D. (a) SOLICITATION AND PUBLICATION OF*
 15 *MODIFICATIONS TO EXISTING SAFE HARBORS AND NEW*
 16 *SAFE HARBORS.—*

17 *“(1) IN GENERAL.—*

18 *“(A) SOLICITATION OF PROPOSALS FOR*
 19 *SAFE HARBORS.—Not later than January 1,*
 20 *1997, and not less than annually thereafter, the*
 21 *Secretary shall publish a notice in the Federal*
 22 *Register soliciting proposals, which will be ac-*
 23 *cepted during a 60-day period, for—*

24 *“(i) modifications to existing safe har-*
 25 *bors issued pursuant to section 14(a) of the*
 26 *Medicare and Medicaid Patient and Pro-*

1 *gram Protection Act of 1987 (42 U.S.C.*
2 *1320a-7b note);*

3 *“(ii) additional safe harbors specifying*
4 *payment practices that shall not be treated*
5 *as a criminal offense under section*
6 *1128B(b) and shall not serve as the basis*
7 *for an exclusion under section 1128(b)(7);*

8 *“(iii) interpretive rulings to be issued*
9 *pursuant to subsection (b); and*

10 *“(iv) special fraud alerts to be issued*
11 *pursuant to subsection (c).*

12 *“(B) PUBLICATION OF PROPOSED MODIFICA-*
13 *TIONS AND PROPOSED ADDITIONAL SAFE HAR-*
14 *BORS.—After considering the proposals described*
15 *in clauses (i) and (ii) of subparagraph (A), the*
16 *Secretary, in consultation with the Attorney*
17 *General, shall publish in the Federal Register*
18 *proposed modifications to existing safe harbors*
19 *and proposed additional safe harbors, if appro-*
20 *priate, with a 60-day comment period. After*
21 *considering any public comments received dur-*
22 *ing this period, the Secretary shall issue final*
23 *rules modifying the existing safe harbors and es-*
24 *tablishing new safe harbors, as appropriate.*

1 “(C) *REPORT.*—*The Inspector General of*
2 *the Department of Health and Human Services*
3 *(in this section referred to as the ‘Inspector Gen-*
4 *eral’)* shall, in an annual report to Congress or
5 *as part of the year-end semiannual report re-*
6 *quired by section 5 of the Inspector General Act*
7 *of 1978 (5 U.S.C. App.), describe the proposals*
8 *received under clauses (i) and (ii) of subpara-*
9 *graph (A) and explain which proposals were in-*
10 *cluded in the publication described in subpara-*
11 *graph (B), which proposals were not included in*
12 *that publication, and the reasons for the rejection*
13 *of the proposals that were not included.*

14 “(2) *CRITERIA FOR MODIFYING AND ESTABLISH-*
15 *ING SAFE HARBORS.*—*In modifying and establishing*
16 *safe harbors under paragraph (1)(B), the Secretary*
17 *may consider the extent to which providing a safe*
18 *harbor for the specified payment practice may result*
19 *in any of the following:*

20 “(A) *An increase or decrease in access to*
21 *health care services.*

22 “(B) *An increase or decrease in the quality*
23 *of health care services.*

24 “(C) *An increase or decrease in patient free-*
25 *dom of choice among health care providers.*

1 “(D) An increase or decrease in competition
2 among health care providers.

3 “(E) An increase or decrease in the ability
4 of health care facilities to provide services in
5 medically underserved areas or to medically un-
6 derserved populations.

7 “(F) An increase or decrease in the cost to
8 Federal health care programs (as defined in sec-
9 tion 1128B(f)).

10 “(G) An increase or decrease in the poten-
11 tial overutilization of health care services.

12 “(H) The existence or nonexistence of any
13 potential financial benefit to a health care pro-
14 fessional or provider which may vary based on
15 their decisions of—

16 “(i) whether to order a health care
17 item or service; or

18 “(ii) whether to arrange for a referral
19 of health care items or services to a particu-
20 lar practitioner or provider.

21 “(I) Any other factors the Secretary deems
22 appropriate in the interest of preventing fraud
23 and abuse in Federal health care programs (as
24 so defined).

25 “(b) INTERPRETIVE RULINGS.—

1 “(1) *IN GENERAL.*—

2 “(A) *REQUEST FOR INTERPRETIVE RUL-*
3 *ING.*—Any person may present, at any time, a
4 request to the Inspector General for a statement
5 of the Inspector General’s current interpretation
6 of the meaning of a specific aspect of the appli-
7 cation of sections 1128A and 1128B (in this sec-
8 tion referred to as an ‘interpretive ruling’).

9 “(B) *ISSUANCE AND EFFECT OF INTERPRE-*
10 *TIVE RULING.*—

11 “(i) *IN GENERAL.*—If appropriate, the
12 Inspector General shall in consultation with
13 the Attorney General, issue an interpretive
14 ruling not later than 90 days after receiv-
15 ing a request described in subparagraph
16 (A). Interpretive rulings shall not have the
17 force of law and shall be treated as an in-
18 terpretive rule within the meaning of sec-
19 tion 553(b) of title 5, United States Code.
20 All interpretive rulings issued pursuant to
21 this clause shall be published in the Federal
22 Register or otherwise made available for
23 public inspection.

24 “(ii) *REASONS FOR DENIAL.*—If the
25 Inspector General does not issue an inter-

1 *pretive ruling in response to a request de-*
2 *scribed in subparagraph (A), the Inspector*
3 *General shall notify the requesting party of*
4 *such decision not later than 60 days after*
5 *receiving such a request and shall identify*
6 *the reasons for such decision.*

7 “(2) *CRITERIA FOR INTERPRETIVE RULINGS.—*

8 *“(A) IN GENERAL.—In determining whether*
9 *to issue an interpretive ruling under paragraph*
10 *(1)(B), the Inspector General may consider—*

11 *“(i) whether and to what extent the re-*
12 *quest identifies an ambiguity within the*
13 *language of the statute, the existing safe*
14 *harbors, or previous interpretive rulings;*
15 *and*

16 *“(ii) whether the subject of the re-*
17 *quested interpretive ruling can be ade-*
18 *quately addressed by interpretation of the*
19 *language of the statute, the existing safe*
20 *harbor rules, or previous interpretive rul-*
21 *ings, or whether the request would require a*
22 *substantive ruling (as defined in section*
23 *552 of title 5, United States Code) not au-*
24 *thorized under this subsection.*

1 “(B) *NO RULINGS ON FACTUAL ISSUES.*—
2 *The Inspector General shall not give an interpre-*
3 *tive ruling on any factual issue, including the*
4 *intent of the parties or the fair market value of*
5 *particular leased space or equipment.*

6 “(c) *SPECIAL FRAUD ALERTS.*—

7 “(1) *IN GENERAL.*—

8 “(A) *REQUEST FOR SPECIAL FRAUD*
9 *ALERTS.*—*Any person may present, at any time,*
10 *a request to the Inspector General for a notice*
11 *which informs the public of practices which the*
12 *Inspector General considers to be suspect or of*
13 *particular concern under the medicare program*
14 *or a State health care program, as defined in*
15 *section 1128(h) (in this subsection referred to as*
16 *a ‘special fraud alert’).*

17 “(B) *ISSUANCE AND PUBLICATION OF SPE-*
18 *CIAL FRAUD ALERTS.*—*Upon receipt of a request*
19 *described in subparagraph (A), the Inspector*
20 *General shall investigate the subject matter of the*
21 *request to determine whether a special fraud*
22 *alert should be issued. If appropriate, the Inspec-*
23 *tor General shall issue a special fraud alert in*
24 *response to the request. All special fraud alerts*

1 *issued pursuant to this subparagraph shall be*
2 *published in the Federal Register.*

3 “(2) *CRITERIA FOR SPECIAL FRAUD ALERTS.*—*In*
4 *determining whether to issue a special fraud alert*
5 *upon a request described in paragraph (1), the In-*
6 *spector General may consider—*

7 “(A) *whether and to what extent the prac-*
8 *tices that would be identified in the special fraud*
9 *alert may result in any of the consequences de-*
10 *scribed in subsection (a)(2); and*

11 “(B) *the volume and frequency of the con-*
12 *duct that would be identified in the special fraud*
13 *alert.”.*

14 ***Subtitle B—Revisions to Current***
15 ***Sanctions for Fraud and Abuse***

16 ***SEC. 511. MANDATORY EXCLUSION FROM PARTICIPATION***
17 ***IN MEDICARE AND STATE HEALTH CARE PRO-***
18 ***GRAMS.***

19 (a) *INDIVIDUAL CONVICTED OF FELONY RELATING TO*
20 *HEALTH CARE FRAUD.*—

21 (1) *IN GENERAL.*—*Section 1128(a) (42 U.S.C.*
22 *1320a–7(a)) is amended by adding at the end the fol-*
23 *lowing new paragraph:*

24 “(3) *FELONY CONVICTION RELATING TO HEALTH*
25 *CARE FRAUD.*—*Any individual or entity that has*

1 *been convicted after the date of the enactment of the*
2 *Health Insurance Reform Act of 1996, under Federal*
3 *or State law, in connection with the delivery of a*
4 *health care item or service or with respect to any act*
5 *or omission in a health care program (other than*
6 *those specifically described in paragraph (1)) oper-*
7 *ated by or financed in whole or in part by any Fed-*
8 *eral, State, or local government agency, of a criminal*
9 *offense consisting of a felony relating to fraud, theft,*
10 *embezzlement, breach of fiduciary responsibility, or*
11 *other financial misconduct.”.*

12 (2) *CONFORMING AMENDMENT.—Paragraph (1)*
13 *of section 1128(b) (42 U.S.C. 1320a–7(b)) is amended*
14 *to read as follows:*

15 “(1) *CONVICTION RELATING TO FRAUD.—Any in-*
16 *dividual or entity that has been convicted after the*
17 *date of the enactment of the Health Insurance Reform*
18 *Act of 1996, under Federal or State law—*

19 “(A) *of a criminal offense consisting of a*
20 *misdemeanor relating to fraud, theft, embezzle-*
21 *ment, breach of fiduciary responsibility, or other*
22 *financial misconduct—*

23 “(i) *in connection with the delivery of*
24 *a health care item or service, or*

1 “(ii) with respect to any act or omis-
2 sion in a health care program (other than
3 those specifically described in subsection
4 (a)(1)) operated by or financed in whole or
5 in part by any Federal, State, or local gov-
6 ernment agency; or

7 “(B) of a criminal offense relating to fraud,
8 theft, embezzlement, breach of fiduciary respon-
9 sibility, or other financial misconduct with re-
10 spect to any act or omission in a program (other
11 than a health care program) operated by or fi-
12 nanced in whole or in part by any Federal,
13 State, or local government agency.”.

14 (b) *INDIVIDUAL CONVICTED OF FELONY RELATING TO*
15 *CONTROLLED SUBSTANCE.—*

16 (1) *IN GENERAL.—*Section 1128(a) (42 U.S.C.
17 1320a–7(a)), as amended by subsection (a), is amend-
18 ed by adding at the end the following new paragraph:

19 “(4) *FELONY CONVICTION RELATING TO CON-*
20 *TROLLED SUBSTANCE.—*Any individual or entity that
21 has been convicted after the date of the enactment of
22 the Health Insurance Reform Act of 1996, under Fed-
23 eral or State law, of a criminal offense consisting of
24 a felony relating to the unlawful manufacture, dis-

1 “(ii) who is an officer or managing em-
2 ployee (as defined in section 1126(b)) of such an
3 entity.

4 “(B) For purposes of subparagraph (A), the term
5 ‘sanctioned entity’ means an entity—

6 “(i) that has been convicted of any offense
7 described in subsection (a) or in paragraph (1),
8 (2), or (3) of this subsection; or

9 “(ii) that has been excluded from participa-
10 tion under a program under title XVIII or under
11 a State health care program.”.

12 **SEC. 514. SANCTIONS AGAINST PRACTITIONERS AND PER-**
13 **SONS FOR FAILURE TO COMPLY WITH STATU-**
14 **TORY OBLIGATIONS.**

15 (a) *MINIMUM PERIOD OF EXCLUSION FOR PRACTI-*
16 *TIONERS AND PERSONS FAILING TO MEET STATUTORY OB-*
17 *LIGATIONS.*—

18 (1) *IN GENERAL.*—*The second sentence of section*
19 *1156(b)(1) (42 U.S.C. 1320c-5(b)(1)) is amended by*
20 *striking “may prescribe)” and inserting “may pre-*
21 *scribe, except that such period may not be less than*
22 *1 year)”.*

23 (2) *CONFORMING AMENDMENT.*—*Section*
24 *1156(b)(2) (42 U.S.C. 1320c-5(b)(2)) is amended by*
25 *striking “shall remain” and inserting “shall (subject*

1 *to the minimum period specified in the second sen-*
2 *tence of paragraph (1)) remain”.*

3 *(b) REPEAL OF “UNWILLING OR UNABLE” CONDITION*
4 *FOR IMPOSITION OF SANCTION.—Section 1156(b)(1) (42*
5 *U.S.C. 1320c-5(b)(1)) is amended—*

6 *(1) in the second sentence, by striking “and de-*
7 *termines” and all that follows through “such obliga-*
8 *tions,”; and*

9 *(2) by striking the third sentence.*

10 **SEC. 515. INTERMEDIATE SANCTIONS FOR MEDICARE**
11 **HEALTH MAINTENANCE ORGANIZATIONS.**

12 *(a) APPLICATION OF INTERMEDIATE SANCTIONS FOR*
13 *ANY PROGRAM VIOLATIONS.—*

14 *(1) IN GENERAL.—Section 1876(i)(1) (42 U.S.C.*
15 *1395mm(i)(1)) is amended by striking “the Secretary*
16 *may terminate” and all that follows and inserting*
17 *“in accordance with procedures established under*
18 *paragraph (9), the Secretary may at any time termi-*
19 *nate any such contract or may impose the intermedi-*
20 *ate sanctions described in paragraph (6)(B) or (6)(C)*
21 *(whichever is applicable) on the eligible organization*
22 *if the Secretary determines that the organization—*

23 *“(A) has failed substantially to carry out*
24 *the contract;*

1 “(B) is carrying out the contract in a man-
2 ner substantially inconsistent with the efficient
3 and effective administration of this section; or

4 “(C) no longer substantially meets the ap-
5 plicable conditions of subsections (b), (c), (e),
6 and (f).”.

7 (2) OTHER INTERMEDIATE SANCTIONS FOR MIS-
8 CELLANEOUS PROGRAM VIOLATIONS.—Section
9 1876(i)(6) (42 U.S.C. 1395mm(i)(6)) is amended by
10 adding at the end the following new subparagraph:

11 “(C) In the case of an eligible organization for which
12 the Secretary makes a determination under paragraph (1)
13 the basis of which is not described in subparagraph (A),
14 the Secretary may apply the following intermediate sanc-
15 tions:

16 “(i) Civil money penalties of not more than
17 \$25,000 for each determination under paragraph (1)
18 if the deficiency that is the basis of the determination
19 has directly adversely affected (or has the substantial
20 likelihood of adversely affecting) an individual cov-
21 ered under the organization’s contract.

22 “(ii) Civil money penalties of not more than
23 \$10,000 for each week beginning after the initiation
24 of procedures by the Secretary under paragraph (9)

1 *during which the deficiency that is the basis of a de-*
2 *termination under paragraph (1) exists.*

3 *“(iii) Suspension of enrollment of individuals*
4 *under this section after the date the Secretary notifies*
5 *the organization of a determination under paragraph*
6 *(1) and until the Secretary is satisfied that the defi-*
7 *ciency that is the basis for the determination has been*
8 *corrected and is not likely to recur.”.*

9 (3) *PROCEDURES FOR IMPOSING SANCTIONS.—*
10 *Section 1876(i) (42 U.S.C. 1395mm(i)) is amended*
11 *by adding at the end the following new paragraph:*

12 *“(9) The Secretary may terminate a contract with an*
13 *eligible organization under this section or may impose the*
14 *intermediate sanctions described in paragraph (6) on the*
15 *organization in accordance with formal investigation and*
16 *compliance procedures established by the Secretary under*
17 *which—*

18 *“(A) the Secretary first provides the organiza-*
19 *tion with the reasonable opportunity to develop and*
20 *implement a corrective action plan to correct the defi-*
21 *ciencies that were the basis of the Secretary’s deter-*
22 *mination under paragraph (1) and the organization*
23 *fails to develop or implement such a plan;*

24 *“(B) in deciding whether to impose sanctions,*
25 *the Secretary considers aggravating factors such as*

1 *whether an organization has a history of deficiencies*
2 *or has not taken action to correct deficiencies the Sec-*
3 *retary has brought to the organization's attention;*

4 *“(C) there are no unreasonable or unnecessary*
5 *delays between the finding of a deficiency and the im-*
6 *position of sanctions; and*

7 *“(D) the Secretary provides the organization*
8 *with reasonable notice and opportunity for hearing*
9 *(including the right to appeal an initial decision) be-*
10 *fore imposing any sanction or terminating the con-*
11 *tract.”.*

12 (4) *CONFORMING AMENDMENTS.—Section*
13 *1876(i)(6)(B) (42 U.S.C. 1395mm(i)(6)(B)) is*
14 *amended by striking the second sentence.*

15 (b) *AGREEMENTS WITH PEER REVIEW ORGANIZA-*
16 *TIONS.—Section 1876(i)(7)(A) (42 U.S.C.*
17 *1395mm(i)(7)(A)) is amended by striking “an agreement”*
18 *and inserting “a written agreement”.*

19 (c) *EFFECTIVE DATE.—The amendments made by this*
20 *section shall apply with respect to contract years beginning*
21 *on or after January 1, 1997.*

1 **SEC. 516. ADDITIONAL EXCEPTIONS TO ANTI-KICKBACK**
2 **PENALTIES FOR RISK-SHARING ARRANGE-**
3 **MENTS.**

4 (a) *IN GENERAL.*—Section 1128B(b)(3) (42 U.S.C.
5 1320a-7b(b)(3)) is amended—

6 (1) by striking “and” at the end of subpara-
7 graph (D);

8 (2) by striking the period at the end of subpara-
9 graph (E) and inserting “; and”; and

10 (3) by adding at the end the following new sub-
11 paragraph:

12 “(F) any remuneration between an organization
13 and an individual or entity providing items or serv-
14 ices pursuant to a written agreement between the or-
15 ganization and the individual or entity if the organi-
16 zation is an eligible organization under section 1876,
17 or if the written agreement places the individual or
18 entity at substantial financial risk for the cost or uti-
19 lization of the items or services, or a combination
20 thereof, which the individual or entity is obligated to
21 provide, whether through a withhold or capitation, or
22 other similar risk arrangements which places the in-
23 dividual or entity at substantial financial risk.”.

24 (b) *REGULATIONS.*—Section 1128B(b) (42 U.S.C.
25 1320a-7b(b)) is amended by adding at the end the following
26 new paragraph:

1 “(1) *IN GENERAL.*—Each Government agency
2 and health plan shall report any final adverse action
3 (not including settlements in which no findings of li-
4 ability have been made) taken against a health care
5 provider, supplier, or practitioner.

6 “(2) *INFORMATION TO BE REPORTED.*—The in-
7 formation to be reported under paragraph (1) in-
8 cludes:

9 “(A) The name and TIN (as defined in sec-
10 tion 7701(a)(41) of the Internal Revenue Code of
11 1986) of any health care provider, supplier, or
12 practitioner who is the subject of a final adverse
13 action.

14 “(B) The name (if known) of any health
15 care entity with which a health care provider,
16 supplier, or practitioner is affiliated or associ-
17 ated.

18 “(C) The nature of the final adverse action
19 and whether such action is on appeal.

20 “(D) A description of the acts or omissions
21 and injuries upon which the final adverse action
22 was based, and such other information as the
23 Secretary determines by regulation is required
24 for appropriate interpretation of information re-
25 ported under this section.

1 “(3) *CONFIDENTIALITY.*—In determining what
2 information is required, the Secretary shall include
3 procedures to assure that the privacy of individuals
4 receiving health care services is appropriately pro-
5 tected.

6 “(4) *TIMING AND FORM OF REPORTING.*—The in-
7 formation required to be reported under this sub-
8 section shall be reported regularly (but not less often
9 than monthly) and in such form and manner as the
10 Secretary prescribes. Such information shall first be
11 required to be reported on a date specified by the Sec-
12 retary.

13 “(5) *TO WHOM REPORTED.*—The information re-
14 quired to be reported under this subsection shall be re-
15 ported to the Secretary.

16 “(c) *DISCLOSURE AND CORRECTION OF INFORMA-*
17 *TION.*—

18 “(1) *DISCLOSURE.*—With respect to the informa-
19 tion about final adverse actions (not including settle-
20 ments in which no findings of liability have been
21 made) reported to the Secretary under this section re-
22 specting a health care provider, supplier, or practi-
23 tioner, the Secretary shall, by regulation, provide
24 for—

1 “(A) disclosure of the information, upon re-
2 quest, to the health care provider, supplier, or li-
3 censed practitioner, and

4 “(B) procedures in the case of disputed ac-
5 curacy of the information.

6 “(2) CORRECTIONS.—Each Government agency
7 and health plan shall report corrections of informa-
8 tion already reported about any final adverse action
9 taken against a health care provider, supplier, or
10 practitioner, in such form and manner that the Sec-
11 retary prescribes by regulation.

12 “(d) ACCESS TO REPORTED INFORMATION.—

13 “(1) AVAILABILITY.—The information in this
14 database shall be available to Federal and State gov-
15 ernment agencies and health plans pursuant to proce-
16 dures that the Secretary shall provide by regulation.

17 “(2) FEES FOR DISCLOSURE.—The Secretary
18 may establish or approve reasonable fees for the dis-
19 closure of information in this database (other than
20 with respect to requests by Federal agencies). The
21 amount of such a fee shall be sufficient to recover the
22 full costs of operating the database. Such fees shall be
23 available to the Secretary or, in the Secretary’s dis-
24 cretion to the agency designated under this section to
25 cover such costs.

1 “(e) *PROTECTION FROM LIABILITY FOR REPORTING.*—
2 *No person or entity, including the agency designated by the*
3 *Secretary in subsection (b)(5) shall be held liable in any*
4 *civil action with respect to any report made as required*
5 *by this section, without knowledge of the falsity of the infor-*
6 *mation contained in the report.*

7 “(f) *COORDINATION WITH NATIONAL PRACTITIONER*
8 *DATA BANK.*—*The Secretary shall implement this section*
9 *in such a manner as to avoid duplication with the report-*
10 *ing requirements established for the National Practitioner*
11 *Data Bank under the Health Care Quality Improvement*
12 *Act of 1986 (42 U.S.C. 11101 et seq.).*

13 “(g) *DEFINITIONS AND SPECIAL RULES.*—*For pur-*
14 *poses of this section:*

15 “(1) *FINAL ADVERSE ACTION.*—

16 “(A) *IN GENERAL.*—*The term ‘final adverse*
17 *action’ includes:*

18 “(i) *Civil judgments against a health*
19 *care provider, supplier, or practitioner in*
20 *Federal or State court related to the deliv-*
21 *ery of a health care item or service.*

22 “(ii) *Federal or State criminal convic-*
23 *tions related to the delivery of a health care*
24 *item or service.*

1 “(iii) Actions by Federal or State
2 agencies responsible for the licensing and
3 certification of health care providers, sup-
4 pliers, and licensed health care practition-
5 ers, including—

6 “(I) formal or official actions,
7 such as revocation or suspension of a
8 license (and the length of any such sus-
9 pension), reprimand, censure or proba-
10 tion,

11 “(II) any other loss of license or
12 the right to apply for, or renew, a li-
13 cense of the provider, supplier, or prac-
14 titioner, whether by operation of law,
15 voluntary surrender, non-renewability,
16 or otherwise, or

17 “(III) any other negative action
18 or finding by such Federal or State
19 agency that is publicly available infor-
20 mation.

21 “(iv) Exclusion from participation in
22 Federal or State health care programs due
23 to program violations.

1 “(v) Any other adjudicated actions or
2 decisions that the Secretary shall establish
3 by regulation.

4 “(B) EXCEPTION.—The term does not in-
5 clude any action with respect to a malpractice
6 claim.

7 “(2) PRACTITIONER.—The terms ‘licensed health
8 care practitioner’, ‘licensed practitioner’, and ‘practi-
9 tioner’ mean, with respect to a State, an individual
10 who is licensed or otherwise authorized by the State
11 to provide health care services (or any individual
12 who, without authority holds himself or herself out to
13 be so licensed or authorized).

14 “(3) GOVERNMENT AGENCY.—The term ‘Govern-
15 ment agency’ shall include:

16 “(A) The Department of Justice.

17 “(B) The Department of Health and
18 Human Services.

19 “(C) Any other Federal agency that either
20 administers or provides payment for the delivery
21 of health care services, including, but not limited
22 to the Department of Defense and the Veterans’
23 Administration.

24 “(D) State law enforcement agencies.

25 “(E) State medicaid fraud control units.

1 “(F) Federal or State agencies responsible
2 for the licensing and certification of health care
3 providers and licensed health care practitioners.

4 “(4) HEALTH PLAN.—The term ‘health plan’ has
5 the meaning given such term by section 1128C(c).

6 “(5) DETERMINATION OF CONVICTION.—For pur-
7 poses of paragraph (1), the existence of a conviction
8 shall be determined under paragraph (4) of section
9 1128(i).”.

10 (b) IMPROVED PREVENTION IN ISSUANCE OF MEDI-
11 CARE PROVIDER NUMBERS.—Section 1842(r) (42 U.S.C.
12 1395u(r)) is amended by adding at the end the following
13 new sentence: “Under such system, the Secretary may im-
14 pose appropriate fees on such physicians to cover the costs
15 of investigation and recertification activities with respect
16 to the issuance of the identifiers.”.

17 **Subtitle D—Civil Monetary**
18 **Penalties**

19 **SEC. 531. SOCIAL SECURITY ACT CIVIL MONETARY PEN-**
20 **ALTIES.**

21 (a) GENERAL CIVIL MONETARY PENALTIES.—Section
22 1128A (42 U.S.C. 1320a–7a) is amended as follows:

23 (1) In the third sentence of subsection (a), by
24 striking “programs under title XVIII” and inserting

1 *“Federal health care programs (as defined in section*
2 *1128B(f)(1))”.*

3 *(2) In subsection (f)—*

4 *(A) by redesignating paragraph (3) as*
5 *paragraph (4); and*

6 *(B) by inserting after paragraph (2) the fol-*
7 *lowing new paragraph:*

8 *“(3) With respect to amounts recovered arising*
9 *out of a claim under a Federal health care program*
10 *(as defined in section 1128B(f)), the portion of such*
11 *amounts as is determined to have been paid by the*
12 *program shall be repaid to the program, and the por-*
13 *tion of such amounts attributable to the amounts re-*
14 *covered under this section by reason of the amend-*
15 *ments made by the Health Insurance Reform Act of*
16 *1996 (as estimated by the Secretary) shall be depos-*
17 *ited into the Federal Hospital Insurance Trust Fund*
18 *pursuant to section 1817(k)(2)(C).”.*

19 *(3) In subsection (i)—*

20 *(A) in paragraph (2), by striking “title V,*
21 *XVIII, XIX, or XX of this Act” and inserting “a*
22 *Federal health care program (as defined in sec-*
23 *tion 1128B(f))”.*

24 *(B) in paragraph (4), by striking “a health*
25 *insurance or medical services program under*

1 *title XVIII or XIX of this Act” and inserting “a*
2 *Federal health care program (as so defined)”*,
3 *and*

4 *(C) in paragraph (5), by striking “title V,*
5 *XVIII, XIX, or XX” and inserting “a Federal*
6 *health care program (as so defined)”*.

7 *(4) By adding at the end the following new sub-*
8 *section:*

9 *“(m)(1) For purposes of this section, with respect to*
10 *a Federal health care program not contained in this Act,*
11 *references to the Secretary in this section shall be deemed*
12 *to be references to the Secretary or Administrator of the de-*
13 *partment or agency with jurisdiction over such program*
14 *and references to the Inspector General of the Department*
15 *of Health and Human Services in this section shall be*
16 *deemed to be references to the Inspector General of the appli-*
17 *cable department or agency.*

18 *“(2)(A) The Secretary and Administrator of the de-*
19 *partments and agencies referred to in paragraph (1) may*
20 *include in any action pursuant to this section, claims with-*
21 *in the jurisdiction of other Federal departments or agencies*
22 *as long as the following conditions are satisfied:*

23 *“(i) The case involves primarily claims submit-*
24 *ted to the Federal health care programs of the depart-*
25 *ment or agency initiating the action.*

1 “(ii) The Secretary or Administrator of the de-
2 partment or agency initiating the action gives notice
3 and an opportunity to participate in the investiga-
4 tion to the Inspector General of the department or
5 agency with primary jurisdiction over the Federal
6 health care programs to which the claims were sub-
7 mitted.

8 “(B) If the conditions specified in subparagraph (A)
9 are fulfilled, the Inspector General of the department or
10 agency initiating the action is authorized to exercise all
11 powers granted under the Inspector General Act of 1978
12 with respect to the claims submitted to the other depart-
13 ments or agencies to the same manner and extent as pro-
14 vided in that Act with respect to claims submitted to such
15 departments or agencies.”.

16 (b) EXCLUDED INDIVIDUAL RETAINING OWNERSHIP
17 OR CONTROL INTEREST IN PARTICIPATING ENTITY.—Sec-
18 tion 1128A(a) (42 U.S.C. 1320a–7a(a)) is amended—

19 (1) by striking “or” at the end of paragraph

20 (1)(D);

21 (2) by striking “, or” at the end of paragraph

22 (2) and inserting a semicolon;

23 (3) by striking the semicolon at the end of para-

24 graph (3) and inserting “; or”; and

1 (4) by inserting after paragraph (3) the follow-
2 ing new paragraph:

3 “(4) in the case of a person who is not an orga-
4 nization, agency, or other entity, is excluded from
5 participating in a program under title XVIII or a
6 State health care program in accordance with this
7 subsection or under section 1128 and who, at the time
8 of a violation of this subsection—

9 “(i) retains a direct or indirect ownership
10 or control interest in an entity that is partici-
11 pating in a program under title XVIII or a
12 State health care program, and who knows or
13 should know of the action constituting the basis
14 for the exclusion; or

15 “(ii) is an officer or managing employee (as
16 defined in section 1126(b)) of such an entity;”.

17 (c) MODIFICATIONS OF AMOUNTS OF PENALTIES AND
18 ASSESSMENTS.—Section 1128A(a) (42 U.S.C. 1320a-
19 7a(a)), as amended by subsection (b), is amended in the
20 matter following paragraph (4)—

21 (1) by striking “\$2,000” and inserting
22 “\$10,000”;

23 (2) by inserting “; in cases under paragraph (4),
24 \$10,000 for each day the prohibited relationship oc-

1 *curs*” after “false or misleading information was
2 given”; and

3 (3) by striking “twice the amount” and inserting
4 “3 times the amount”.

5 (d) CLAIM FOR ITEM OR SERVICE BASED ON INCOR-
6 RECT CODING OR MEDICALLY UNNECESSARY SERVICES.—
7 Section 1128A(a)(1) (42 U.S.C. 1320a–7a(a)(1)), as
8 amended by subsection (b), is amended—

9 (1) in subparagraph (A) by striking “claimed,”
10 and inserting “claimed, including any person who
11 engages in a pattern or practice of presenting or
12 causing to be presented a claim for an item or service
13 that is based on a code that the person knows or
14 should know will result in a greater payment to the
15 person than the code the person knows or should know
16 is applicable to the item or service actually pro-
17 vided,”;

18 (2) in subparagraph (C), by striking “or” at the
19 end;

20 (3) in subparagraph (D), by striking the semi-
21 colon and inserting “, or”; and

22 (4) by inserting after subparagraph (D) the fol-
23 lowing new subparagraph:

1 “(E) is for a medical or other item or serv-
2 ice that a person knows or should know is not
3 medically necessary; or”.

4 (e) *SANCTIONS AGAINST PRACTITIONERS AND PER-*
5 *SONS FOR FAILURE TO COMPLY WITH STATUTORY OBLIGA-*
6 *TIONS.*—Section 1156(b)(3) (42 U.S.C. 1320c-5(b)(3)) is
7 amended by striking “the actual or estimated cost” and in-
8 serting “up to \$10,000 for each instance”.

9 (f) *PROCEDURAL PROVISIONS.*—Section 1876(i)(6) (42
10 U.S.C. 1395mm(i)(6)), as amended by section 515(a)(2), is
11 amended by adding at the end the following new subpara-
12 graph:

13 “(D) The provisions of section 1128A (other than sub-
14 sections (a) and (b)) shall apply to a civil money penalty
15 under subparagraph (B)(i) or (C)(i) in the same manner
16 as such provisions apply to a civil money penalty or pro-
17 ceeding under section 1128A(a).”.

18 (g) *PROHIBITION AGAINST OFFERING INDUCEMENTS*
19 *TO INDIVIDUALS ENROLLED UNDER PROGRAMS OR*
20 *PLANS.*—

21 (1) *OFFER OF REMUNERATION.*—Section
22 1128A(a) (42 U.S.C. 1320a-7a(a)), as amended by
23 subsection (b), is amended—

24 (A) by striking “or” at the end of para-
25 graph (1)(D);

1 (B) by striking the semicolon at the end of
2 paragraph (4) and inserting “; or”; and

3 (C) by inserting after paragraph (4) the fol-
4 lowing new paragraph:

5 “(5) offers to or transfers remuneration to any
6 individual eligible for benefits under title XVIII of
7 this Act, or under a State health care program (as de-
8 fined in section 1128(h)) that such person knows or
9 should know is likely to influence such individual to
10 order or receive from a particular provider, practi-
11 tioner, or supplier any item or service for which pay-
12 ment may be made, in whole or in part, under title
13 XVIII, or a State health care program (as so de-
14 fined);”.

15 (2) REMUNERATION DEFINED.—Section 1128A(i)
16 (42 U.S.C. 1320a–7a(i)) is amended by adding the
17 following new paragraph:

18 “(6) The term ‘remuneration’ includes the waiv-
19 er of coinsurance and deductible amounts (or any
20 part thereof), and transfers of items or services for
21 free or for other than fair market value. The term ‘re-
22 muneration’ does not include—

23 “(A) the waiver of coinsurance and deduct-
24 ible amounts by a person, if—

1 “(i) the waiver is not offered as part of
2 any advertisement or solicitation;

3 “(ii) the person does not routinely
4 waive coinsurance or deductible amounts;
5 and

6 “(iii) the person—

7 “(I) waives the coinsurance and
8 deductible amounts after determining
9 in good faith that the individual is in
10 financial need;

11 “(II) fails to collect coinsurance
12 or deductible amounts after making
13 reasonable collection efforts; or

14 “(III) provides for any permis-
15 sible waiver as specified in section
16 1128B(b)(3) or in regulations issued
17 by the Secretary;

18 “(B) differentials in coinsurance and de-
19 ductible amounts as part of a benefit plan design
20 as long as the differentials have been disclosed in
21 writing to all beneficiaries, third party payers,
22 and providers, to whom claims are presented and
23 as long as the differentials meet the standards as
24 defined in regulations promulgated by the Sec-
25 retary not later than 180 days after the date of

1 *the enactment of the Health Insurance Reform*
2 *Act of 1996; or*

3 “(C) incentives given to individuals to pro-
4 mote the delivery of preventive care as deter-
5 mined by the Secretary in regulations so pro-
6 mulgated.”.

7 (h) *EFFECTIVE DATE.*—*The amendments made by this*
8 *section shall take effect January 1, 1997.*

9 ***Subtitle E—Amendments to***
10 ***Criminal Law***

11 ***SEC. 541. HEALTH CARE FRAUD.***

12 (a) *IN GENERAL.*—

13 (1) *FINES AND IMPRISONMENT FOR HEALTH*
14 *CARE FRAUD VIOLATIONS.*—*Chapter 63 of title 18,*
15 *United States Code, is amended by adding at the end*
16 *the following new section:*

17 ***“§ 1347. Health care fraud***

18 *“Whoever knowingly and willfully executes, or at-*
19 *tempts to execute, a scheme or artifice—*

20 *“(1) to defraud any health care program, in con-*
21 *nection with the delivery of or payment for health*
22 *care benefits, items, or services; or*

23 *“(2) to obtain, by means of false or fraudulent*
24 *pretenses, representations, or promises, any of the*
25 *money or property owned by, or under the custody or*

1 control of, any health care program in connection
2 with the delivery of or payment for health care bene-
3 fits, items, or services;
4 shall be fined under this title or imprisoned not more than
5 10 years, or both. If the violation results in serious bodily
6 injury (as defined in section 1365(g)(3) of this title), such
7 person may be imprisoned for any term of years.”.

8 (2) *CLERICAL AMENDMENT.*—The table of sec-
9 tions at the beginning of chapter 63 of title 18, *Unit-*
10 *ed States Code*, is amended by adding at the end the
11 following:

“1347. Health care fraud.”.

12 (b) *CRIMINAL FINES DEPOSITED IN FEDERAL HOS-*
13 *PITAL INSURANCE TRUST FUND.*—The Secretary of the
14 Treasury shall deposit into the Federal Hospital Insurance
15 Trust Fund pursuant to section 1817(k)(2)(C) of the Social
16 Security Act, as added by section 501(b), an amount equal
17 to the criminal fines imposed under section 1347 of title
18 18, *United States Code* (relating to health care fraud).

19 **SEC. 542. FORFEITURES FOR FEDERAL HEALTH CARE OF-**
20 **FENSES.**

21 (a) *IN GENERAL.*—Section 982(a) of title 18, *United*
22 *States Code*, is amended by adding after paragraph (5) the
23 following new paragraph:

24 “(6)(A) The court, in imposing sentence on a person
25 convicted of a Federal health care offense, shall order the

1 *person to forfeit property, real or personal, that constitutes*
2 *or is derived, directly or indirectly, from gross proceeds*
3 *traceable to the commission of the offense.*

4 “(B) For purposes of this paragraph, the term ‘Federal
5 health care offense’ means a violation of, or a criminal con-
6 spiracy to violate—

7 “(i) section 1347 of this title;

8 “(ii) section 1128B of the Social Security Act;
9 and

10 “(iii) sections 287, 371, 664, 666, 669, 1001,
11 1027, 1341, 1343, 1920, or 1954 of this title if the
12 violation or conspiracy relates to health care fraud.”.

13 (b) CONFORMING AMENDMENT.—Section 982(b)(1)(A)
14 of title 18, United States Code, is amended by inserting
15 “or (a)(6)” after “(a)(1)”.

16 (c) PROPERTY FORFEITED DEPOSITED IN FEDERAL
17 HOSPITAL INSURANCE TRUST FUND.—

18 (1) IN GENERAL.—After the payment of the costs
19 of asset forfeiture has been made, and notwithstand-
20 ing any other provision of law, the Secretary of the
21 Treasury shall deposit into the Federal Hospital In-
22 surance Trust Fund pursuant to section
23 1817(k)(2)(C) of the Social Security Act, as added by
24 section 501(b), an amount equal to the net amount re-
25 alized from the forfeiture of property by reason of a

1 *Federal health care offense pursuant to section*
2 *982(a)(6) of title 18, United States Code.*

3 (2) *COSTS OF ASSET FORFEITURE.*—*For pur-*
4 *poses of paragraph (1), the term “payment of the*
5 *costs of asset forfeiture” means—*

6 (A) *the payment, at the discretion of the At-*
7 *torney General, of any expenses necessary to*
8 *seize, detain, inventory, safeguard, maintain, ad-*
9 *vertise, sell, or dispose of property under seizure,*
10 *detention, or forfeited, or of any other necessary*
11 *expenses incident to the seizure, detention, for-*
12 *feiture, or disposal of such property, including*
13 *payment for—*

14 (i) *contract services,*

15 (ii) *the employment of outside contrac-*
16 *tors to operate and manage properties or*
17 *provide other specialized services necessary*
18 *to dispose of such properties in an effort to*
19 *maximize the return from such properties;*
20 *and*

21 (iii) *reimbursement of any Federal,*
22 *State, or local agency for any expenditures*
23 *made to perform the functions described in*
24 *this subparagraph;*

1 (B) at the discretion of the Attorney Gen-
2 eral, the payment of awards for information or
3 assistance leading to a civil or criminal forfeit-
4 ure involving any Federal agency participating
5 in the Health Care Fraud and Abuse Control Ac-
6 count;

7 (C) the compromise and payment of valid
8 liens and mortgages against property that has
9 been forfeited, subject to the discretion of the At-
10 torney General to determine the validity of any
11 such lien or mortgage and the amount of pay-
12 ment to be made, and the employment of attor-
13 neys and other personnel skilled in State real es-
14 tate law as necessary;

15 (D) payment authorized in connection with
16 remission or mitigation procedures relating to
17 property forfeited; and

18 (E) the payment of State and local property
19 taxes on forfeited real property that accrued be-
20 tween the date of the violation giving rise to the
21 forfeiture and the date of the forfeiture order.

22 **SEC. 543. INJUNCTIVE RELIEF RELATING TO FEDERAL**
23 **HEALTH CARE OFFENSES.**

24 (a) *IN GENERAL.*—Section 1345(a)(1) of title 18,
25 *United States Code*, is amended—

1 (1) by striking “or” at the end of subparagraph

2 (A);

3 (2) by inserting “or” at the end of subparagraph

4 (B); and

5 (3) by adding at the end the following new sub-
6 paragraph:

7 “(C) committing or about to commit a Fed-
8 eral health care offense (as defined in section
9 982(a)(6)(B) of this title);”.

10 (b) *FREEZING OF ASSETS*.—Section 1345(a)(2) of title
11 18, United States Code, is amended by inserting “or a Fed-
12 eral health care offense (as defined in section 982(a)(6)(B))”
13 after “title”.

14 **SEC. 544. FALSE STATEMENTS.**

15 (a) *IN GENERAL*.—Chapter 47 of title 18, United
16 States Code, is amended by adding at the end the following
17 new section:

18 **“§ 1033. False statements relating to health care mat-
19 ters**

20 “Whoever, in any matter involving a health care pro-
21 gram, knowingly and willfully—

22 “(1) falsifies, conceals, or covers up by any trick,
23 scheme, or device a material fact, or

24 “(2) makes any materially false, fictitious, or
25 fraudulent statement or representation, or makes or

1 *uses any materially false writing or document know-*
2 *ing the same to contain any materially false, ficti-*
3 *tious, or fraudulent statement or entry,*
4 *shall be fined under this title or imprisoned not more than*
5 *5 years, or both.”.*

6 *(b) CLERICAL AMENDMENT.—The table of sections at*
7 *the beginning of chapter 47 of title 18, United States Code,*
8 *is amended by adding at the end the following:*

“1033. False statements relating to health care matters.”.

9 **SEC. 545. OBSTRUCTION OF CRIMINAL INVESTIGATIONS OF**
10 **FEDERAL HEALTH CARE OFFENSES.**

11 *(a) IN GENERAL.—Chapter 73 of title 18, United*
12 *States Code, is amended by adding at the end the following*
13 *new section:*

14 **“§ 1518. Obstruction of criminal investigations of Fed-**
15 **eral health care offenses**

16 *“(a) Whoever willfully prevents, obstructs, misleads,*
17 *delays or attempts to prevent, obstruct, mislead, or delay*
18 *the communication of information or records relating to a*
19 *Federal health care offense to a criminal investigator shall*
20 *be fined under this title or imprisoned not more than 5*
21 *years, or both.*

22 *“(b) As used in this section the term ‘Federal health*
23 *care offense’ has the same meaning given such term in sec-*
24 *tion 982(a)(6)(B) of this title.*

1 “(c) As used in this section the term ‘criminal inves-
2 tigator’ means any individual duly authorized by a depart-
3 ment, agency, or armed force of the United States to con-
4 duct or engage in investigations for prosecutions for viola-
5 tions of health care offenses.”.

6 (b) CLERICAL AMENDMENT.—The table of sections at
7 the beginning of chapter 73 of title 18, United States Code,
8 is amended by adding at the end the following:

“1518. Obstruction of Criminal Investigations of Federal Health Care Offenses.”.

9 **SEC. 546. THEFT OR EMBEZZLEMENT.**

10 (a) IN GENERAL.—Chapter 31 of title 18, United
11 States Code, is amended by adding at the end the following
12 new section:

13 **“§669. Theft or embezzlement in connection with**
14 **health care**

15 “Whoever willfully embezzles, steals, or otherwise will-
16 fully and unlawfully converts to the use of any person other
17 than the rightful owner, or intentionally misapplies any
18 of the moneys, funds, securities, premiums, credits, prop-
19 erty, or other assets of a health care program, shall be fined
20 under this title or imprisoned not more than 10 years, or
21 both.”.

22 (b) CLERICAL AMENDMENT.—The table of sections at
23 the beginning of chapter 31 of title 18, United States Code,
24 is amended by adding at the end the following:

“669. Theft or Embezzlement in Connection with Health Care.”.

1 **SEC. 547. LAUNDERING OF MONETARY INSTRUMENTS.**

2 *Section 1956(c)(7) of title 18, United States Code, is*
3 *amended by adding at the end the following new subpara-*
4 *graph:*

5 *“(F) Any act or activity constituting an of-*
6 *fense involving a Federal health care offense as*
7 *that term is defined in section 982(a)(6)(B) of*
8 *this title.”.*

9 **SEC. 548. AUTHORIZED INVESTIGATIVE DEMAND PROCE-**
10 **DURES.**

11 *(a) IN GENERAL.—Chapter 233 of title 18, United*
12 *States Code, is amended by adding after section 3485 the*
13 *following new section:*

14 **“§ 3486. Authorized investigative demand procedures**

15 *“(a)(1)(A) In any investigation relating to functions*
16 *set forth in paragraph (2), the Attorney General or designee*
17 *may issue in writing and cause to be served a subpoena*
18 *compelling production of any records (including any books,*
19 *papers, documents, electronic media, or other objects or tan-*
20 *gible things), which may be relevant to an authorized law*
21 *enforcement inquiry, that a person or legal entity may pos-*
22 *sess or have care, custody, or control.*

23 *“(B) A custodian of records may be required to give*
24 *testimony concerning the production and authentication of*
25 *such records.*

1 “(C) The production of records may be required from
2 any place in any State or in any territory or other place
3 subject to the jurisdiction of the United States at any des-
4 ignated place; except that such production shall not be re-
5 quired more than 500 miles distant from the place where
6 the subpoena is served.

7 “(D) Witnesses summoned under this section shall be
8 paid the same fees and mileage that are paid witnesses in
9 the courts of the United States.

10 “(E) A subpoena requiring the production of records
11 shall describe the objects required to be produced and pre-
12 scribe a return date within a reasonable period of time
13 within which the objects can be assembled and made avail-
14 able.

15 “(2) Investigative demands utilizing an administra-
16 tive subpoena are authorized for any investigation with re-
17 spect to any act or activity constituting or involving health
18 care fraud, including a scheme or artifice—

19 “(A) to defraud any health care program, in
20 connection with the delivery of or payment for health
21 care benefits, items, or services; or

22 “(B) to obtain, by means of false or fraudulent
23 pretenses, representations, or promises, any of the
24 money or property owned by, or under the custody or
25 control of, any health care program in connection

1 *with the delivery of or payment for health care bene-*
2 *fits, items, or services.*

3 *“(b)(1) A subpoena issued under this section may be*
4 *served by any person designated in the subpoena to serve*
5 *it.*

6 *“(2) Service upon a natural person may be made by*
7 *personal delivery of the subpoena to such person.*

8 *“(3) Service may be made upon a domestic or foreign*
9 *association which is subject to suit under a common name,*
10 *by delivering the subpoena to an officer, to a managing or*
11 *general agent, or to any other agent authorized by appoint-*
12 *ment or by law to receive service of process.*

13 *“(4) The affidavit of the person serving the subpoena*
14 *entered on a true copy thereof by the person serving it shall*
15 *be proof of service.*

16 *“(c)(1) In the case of contumacy by or refusal to obey*
17 *a subpoena issued to any person, the Attorney General may*
18 *invoke the aid of any court of the United States within the*
19 *jurisdiction of which the investigation is carried on or of*
20 *which the subpoenaed person is an inhabitant, or in which*
21 *such person carries on business or may be found, to compel*
22 *compliance with the subpoena.*

23 *“(2) The court may issue an order requiring the sub-*
24 *poenaed person to appear before the Attorney General to*

1 *produce records, if so ordered, or to give testimony required*
2 *under subsection (a)(1)(B).*

3 *“(3) Any failure to obey the order of the court may*
4 *be punished by the court as a contempt thereof.*

5 *“(4) All process in any such case may be served in*
6 *any judicial district in which such person may be found.*

7 *“(d) Notwithstanding any Federal, State, or local law,*
8 *any person, including officers, agents, and employees, re-*
9 *ceiving a subpoena under this section, who complies in good*
10 *faith with the subpoena and thus produces the materials*
11 *sought, shall not be liable in any court of any State or the*
12 *United States to any customer or other person for such pro-*
13 *duction or for nondisclosure of that production to the cus-*
14 *tomers.*

15 *“(e)(1) Health information about an individual that*
16 *is disclosed under this section may not be used in, or dis-*
17 *closed to any person for use in, any administrative, civil,*
18 *or criminal action or investigation directed against the in-*
19 *dividual who is the subject of the information unless the*
20 *action or investigation arises out of and is directly related*
21 *to receipt of health care or payment for health care or action*
22 *involving a fraudulent claim related to health; or if author-*
23 *ized by an appropriate order of a court of competent juris-*
24 *isdiction, granted after application showing good cause there-*
25 *for.*

1 “(2) *In assessing good cause, the court shall weigh the*
2 *public interest and the need for disclosure against the in-*
3 *jury to the patient, to the physician-patient relationship,*
4 *and to the treatment services.*

5 “(3) *Upon the granting of such order, the court, in*
6 *determining the extent to which any disclosure of all or any*
7 *part of any record is necessary, shall impose appropriate*
8 *safeguards against unauthorized disclosure.”.*

9 (b) *CLERICAL AMENDMENT.*—*The table of sections for*
10 *chapter 223 of title 18, United States Code, is amended by*
11 *inserting after the item relating to section 3405 the follow-*
12 *ing new item:*

“3486. Authorized investigative demand procedures.”.

13 (c) *CONFORMING AMENDMENT.*—*Section*
14 *1510(b)(3)(B) of title 18, United States Code, is amended*
15 *by inserting “or a Department of Justice subpoena (issued*
16 *under section 3486),” after “subpoena”.*

17 ***TITLE VI—INTERNAL REVENUE***
18 ***CODE AND OTHER PROVISIONS***

19 ***SEC. 600. REFERENCES.***

20 *Except as otherwise expressly provided, whenever in*
21 *this title an amendment or repeal is expressed in terms of*
22 *an amendment to, or repeal of, a section or other provision,*
23 *the reference shall be considered to be made to a section or*
24 *other provision of the Internal Revenue Code of 1986.*

1 **Subtitle A—Foreign Trust Tax**
2 **Compliance**

3 **SEC. 601. IMPROVED INFORMATION REPORTING ON FOR-**
4 **EIGN TRUSTS.**

5 (a) *IN GENERAL.*—Section 6048 (relating to returns
6 as to certain foreign trusts) is amended to read as follows:

7 **“SEC. 6048. INFORMATION WITH RESPECT TO CERTAIN FOR-**
8 **EIGN TRUSTS.**

9 “(a) *NOTICE OF CERTAIN EVENTS.*—

10 “(1) *GENERAL RULE.*—On or before the 90th day
11 (or such later day as the Secretary may prescribe)
12 after any reportable event, the responsible party shall
13 provide written notice of such event to the Secretary
14 in accordance with paragraph (2).

15 “(2) *CONTENTS OF NOTICE.*—The notice required
16 by paragraph (1) shall contain such information as
17 the Secretary may prescribe, including—

18 “(A) the amount of money or other property
19 (if any) transferred to the trust in connection
20 with the reportable event, and

21 “(B) the identity of the trust and of each
22 trustee and beneficiary (or class of beneficiaries)
23 of the trust.

24 “(3) *REPORTABLE EVENT.*—For purposes of this
25 subsection—

1 “(A) *IN GENERAL.*—The term ‘reportable
2 event’ means—

3 “(i) *the creation of any foreign trust*
4 *by a United States person,*

5 “(ii) *the transfer of any money or*
6 *property (directly or indirectly) to a foreign*
7 *trust by a United States person, including*
8 *a transfer by reason of death, and*

9 “(iii) *the death of a citizen or resident*
10 *of the United States if—*

11 “(I) *the decedent was treated as*
12 *the owner of any portion of a foreign*
13 *trust under the rules of subpart E of*
14 *part I of subchapter J of chapter 1, or*

15 “(II) *any portion of a foreign*
16 *trust was included in the gross estate*
17 *of the decedent.*

18 “(B) *EXCEPTIONS.*—

19 “(i) *FAIR MARKET VALUE SALES.*—
20 *Subparagraph (A)(ii) shall not apply to*
21 *any transfer of property to a trust in ex-*
22 *change for consideration of at least the fair*
23 *market value of the transferred property.*
24 *For purposes of the preceding sentence, con-*
25 *sideration other than cash shall be taken*

1 into account at its fair market value and
2 the rules of section 679(a)(3) shall apply.

3 “(ii) DEFERRED COMPENSATION AND
4 CHARITABLE TRUSTS.—Subparagraph (A)
5 shall not apply with respect to a trust
6 which is—

7 “(I) described in section 402(b),
8 404(a)(4), or 404A, or

9 “(II) determined by the Secretary
10 to be described in section 501(c)(3).

11 “(4) RESPONSIBLE PARTY.—For purposes of this
12 subsection, the term ‘responsible party’ means—

13 “(A) the grantor in the case of the creation
14 of an inter vivos trust,

15 “(B) the transferor in the case of a report-
16 able event described in paragraph (3)(A)(ii)
17 other than a transfer by reason of death, and

18 “(C) the executor of the decedent’s estate in
19 any other case.

20 “(b) UNITED STATES GRANTOR OF FOREIGN TRUST.—

21 “(1) IN GENERAL.—If, at any time during any
22 taxable year of a United States person, such person
23 is treated as the owner of any portion of a foreign
24 trust under the rules of subpart E of part I of sub-

1 *chapter J of chapter 1, such person shall be respon-*
2 *sible to ensure that—*

3 *“(A) such trust makes a return for such*
4 *year which sets forth a full and complete ac-*
5 *counting of all trust activities and operations for*
6 *the year, the name of the United States agent for*
7 *such trust, and such other information as the*
8 *Secretary may prescribe, and*

9 *“(B) such trust furnishes such information*
10 *as the Secretary may prescribe to each United*
11 *States person (i) who is treated as the owner of*
12 *any portion of such trust or (ii) who receives*
13 *(directly or indirectly) any distribution from the*
14 *trust.*

15 *“(2) TRUSTS NOT HAVING UNITED STATES*
16 *AGENT.—*

17 *“(A) IN GENERAL.—If the rules of this*
18 *paragraph apply to any foreign trust, the deter-*
19 *mination of amounts required to be taken into*
20 *account with respect to such trust by a United*
21 *States person under the rules of subpart E of*
22 *part I of subchapter J of chapter 1 shall be de-*
23 *termined by the Secretary.*

24 *“(B) UNITED STATES AGENT REQUIRED.—*
25 *The rules of this paragraph shall apply to any*

1 *foreign trust to which paragraph (1) applies un-*
2 *less such trust agrees (in such manner, subject to*
3 *such conditions, and at such time as the Sec-*
4 *retary shall prescribe) to authorize a United*
5 *States person to act as such trust's limited agent*
6 *solely for purposes of applying sections 7602,*
7 *7603, and 7604 with respect to—*

8 *“(i) any request by the Secretary to ex-*
9 *amine records or produce testimony related*
10 *to the proper treatment of amounts required*
11 *to be taken into account under the rules re-*
12 *ferred to in subparagraph (A), or*

13 *“(ii) any summons by the Secretary*
14 *for such records or testimony.*

15 *The appearance of persons or production of*
16 *records by reason of a United States person*
17 *being such an agent shall not subject such per-*
18 *sons or records to legal process for any purpose*
19 *other than determining the correct treatment*
20 *under this title of the amounts required to be*
21 *taken into account under the rules referred to in*
22 *subparagraph (A). A foreign trust which ap-*
23 *points an agent described in this subparagraph*
24 *shall not be considered to have an office or a per-*
25 *manent establishment in the United States, or to*

1 *be engaged in a trade or business in the United*
2 *States, solely because of the activities of such*
3 *agent pursuant to this subsection.*

4 “(C) *OTHER RULES TO APPLY.—Rules simi-*
5 *lar to the rules of paragraphs (2) and (4) of sec-*
6 *tion 6038A(e) shall apply for purposes of this*
7 *paragraph.*

8 “(c) *REPORTING BY UNITED STATES BENEFICIARIES*
9 *OF FOREIGN TRUSTS.—*

10 “(1) *IN GENERAL.—If any United States person*
11 *receives (directly or indirectly) during any taxable*
12 *year of such person any distribution from a foreign*
13 *trust, such person shall make a return with respect to*
14 *such trust for such year which includes—*

15 “(A) *the name of such trust,*

16 “(B) *the aggregate amount of the distribu-*
17 *tions so received from such trust during such*
18 *taxable year, and*

19 “(C) *such other information as the Sec-*
20 *retary may prescribe.*

21 “(2) *INCLUSION IN INCOME IF RECORDS NOT*
22 *PROVIDED.—*

23 “(A) *IN GENERAL.—If adequate records are*
24 *not provided to the Secretary to determine the*
25 *proper treatment of any distribution from a for-*

1 *foreign trust, such distribution shall be treated as*
2 *an accumulation distribution includible in the*
3 *gross income of the distributee under chapter 1.*
4 *To the extent provided in regulations, the preced-*
5 *ing sentence shall not apply if the foreign trust*
6 *elects to be subject to rules similar to the rules*
7 *of subsection (b)(2)(B).*

8 “(B) *APPLICATION OF ACCUMULATION DIS-*
9 *TRIBUTION RULES.—For purposes of applying*
10 *section 668 in a case to which subparagraph (A)*
11 *applies, the applicable number of years for pur-*
12 *poses of section 668(a) shall be 1/2 of the number*
13 *of years the trust has been in existence.*

14 “(d) *SPECIAL RULES.—*

15 “(1) *DETERMINATION OF WHETHER UNITED*
16 *STATES PERSON RECEIVES DISTRIBUTION.—For pur-*
17 *poses of this section, in determining whether a United*
18 *States person receives a distribution from a foreign*
19 *trust, the fact that a portion of such trust is treated*
20 *as owned by another person under the rules of sub-*
21 *part E of part I of subchapter J of chapter 1 shall*
22 *be disregarded.*

23 “(2) *DOMESTIC TRUSTS WITH FOREIGN ACTIVI-*
24 *TIES.—To the extent provided in regulations, a trust*
25 *which is a United States person shall be treated as*

1 *a foreign trust for purposes of this section and section*
2 *6677 if such trust has substantial activities, or holds*
3 *substantial property, outside the United States.*

4 “(3) *TIME AND MANNER OF FILING INFORMA-*
5 *TION.—Any notice or return required under this sec-*
6 *tion shall be made at such time and in such manner*
7 *as the Secretary shall prescribe.*

8 “(4) *MODIFICATION OF RETURN REQUIRE-*
9 *MENTS.—The Secretary is authorized to suspend or*
10 *modify any requirement of this section if the Sec-*
11 *retary determines that the United States has no sig-*
12 *nificant tax interest in obtaining the required infor-*
13 *mation.”.*

14 (b) *INCREASED PENALTIES.—Section 6677 (relating to*
15 *failure to file information returns with respect to certain*
16 *foreign trusts) is amended to read as follows:*

17 **“SEC. 6677. FAILURE TO FILE INFORMATION WITH RESPECT**
18 **TO CERTAIN FOREIGN TRUSTS.**

19 “(a) *CIVIL PENALTY.—In addition to any criminal*
20 *penalty provided by law, if any notice or return required*
21 *to be filed by section 6048—*

22 “(1) *is not filed on or before the time provided*
23 *in such section, or*

1 “(2) does not include all the information re-
2 quired pursuant to such section or includes incorrect
3 information,
4 the person required to file such notice or return shall pay
5 a penalty equal to 35 percent of the gross reportable
6 amount. If any failure described in the preceding sentence
7 continues for more than 90 days after the day on which
8 the Secretary mails notice of such failure to the person re-
9 quired to pay such penalty, such person shall pay a penalty
10 (in addition to the amount determined under the preceding
11 sentence) of \$10,000 for each 30-day period (or fraction
12 thereof) during which such failure continues after the expi-
13 ration of such 90-day period. In no event shall the penalty
14 under this subsection with respect to any failure exceed the
15 gross reportable amount.

16 “(b) SPECIAL RULES FOR RETURNS UNDER SECTION
17 6048(b).—In the case of a return required under section
18 6048(b)—

19 “(1) the United States person referred to in such
20 section shall be liable for the penalty imposed by sub-
21 section (a), and

22 “(2) subsection (a) shall be applied by substitut-
23 ing ‘5 percent’ for ‘35 percent’.

24 “(c) GROSS REPORTABLE AMOUNT.—For purposes of
25 subsection (a), the term ‘gross reportable amount’ means—

1 “(1) the gross value of the property involved in
2 the event (determined as of the date of the event) in
3 the case of a failure relating to section 6048(a),

4 “(2) the gross value of the portion of the trust’s
5 assets at the close of the year treated as owned by the
6 United States person in the case of a failure relating
7 to section 6048(b)(1), and

8 “(3) the gross amount of the distributions in the
9 case of a failure relating to section 6048(c).

10 “(d) *REASONABLE CAUSE EXCEPTION.*—No penalty
11 shall be imposed by this section on any failure which is
12 shown to be due to reasonable cause and not due to willful
13 neglect. The fact that a foreign jurisdiction would impose
14 a civil or criminal penalty on the taxpayer (or any other
15 person) for disclosing the required information is not rea-
16 sonable cause.

17 “(e) *DEFICIENCY PROCEDURES NOT TO APPLY.*—Sub-
18 chapter B of chapter 63 (relating to deficiency procedures
19 for income, estate, gift, and certain excise taxes) shall not
20 apply in respect of the assessment or collection of any pen-
21 alty imposed by subsection (a).”.

22 (c) *CONFORMING AMENDMENTS.*—

23 (1) Paragraph (2) of section 6724(d) is amended
24 by striking “or” at the end of subparagraph (S), by
25 striking the period at the end of subparagraph (T)

1 and inserting “, or”, and by inserting after subpara-
2 graph (T) the following new subparagraph:

3 “(U) section 6048(b)(1)(B) (relating to for-
4 eign trust reporting requirements).”.

5 (2) The table of sections for subpart B of part
6 III of subchapter A of chapter 61 is amended by strik-
7 ing the item relating to section 6048 and inserting
8 the following new item:

 “Sec. 6048. Information with respect to certain foreign trusts.”.

9 (3) The table of sections for part I of subchapter
10 B of chapter 68 is amended by striking the item relat-
11 ing to section 6677 and inserting the following new
12 item:

 “Sec. 6677. Failure to file information with respect to certain foreign trusts.”.

13 (d) *EFFECTIVE DATES.*—

14 (1) *REPORTABLE EVENTS.*—To the extent related
15 to subsection (a) of section 6048 of the Internal Reve-
16 nue Code of 1986, as amended by this section, the
17 amendments made by this section shall apply to re-
18 portable events (as defined in such section 6048) oc-
19 curring after the date of the enactment of this Act.

20 (2) *GRANTOR TRUST REPORTING.*—To the extent
21 related to subsection (b) of such section 6048, the
22 amendments made by this section shall apply to tax-
23 able years of United States persons beginning after
24 the date of the enactment of this Act.

1 (3) *REPORTING BY UNITED STATES BENE-*
2 *FICIARIES.*—*To the extent related to subsection (c) of*
3 *such section 6048, the amendments made by this sec-*
4 *tion shall apply to distributions received after the*
5 *date of the enactment of this Act.*

6 **SEC. 602. MODIFICATIONS OF RULES RELATING TO FOR-**
7 **EIGN TRUSTS HAVING ONE OR MORE UNITED**
8 **STATES BENEFICIARIES.**

9 (a) *TREATMENT OF TRUST OBLIGATIONS, ETC.*—

10 (1) *Paragraph (2) of section 679(a) is amended*
11 *by striking subparagraph (B) and inserting the fol-*
12 *lowing:*

13 “(B) *TRANSFERS AT FAIR MARKET*
14 *VALUE.*—*To any transfer of property to a trust*
15 *in exchange for consideration of at least the fair*
16 *market value of the transferred property. For*
17 *purposes of the preceding sentence, consideration*
18 *other than cash shall be taken into account at its*
19 *fair market value.”.*

20 (2) *Subsection (a) of section 679 (relating to for-*
21 *foreign trusts having one or more United States bene-*
22 *ficiaries) is amended by adding at the end the follow-*
23 *ing new paragraph:*

24 “(3) *CERTAIN OBLIGATIONS NOT TAKEN INTO AC-*
25 *COUNT UNDER FAIR MARKET VALUE EXCEPTION.*—

1 “(A) *IN GENERAL.*—*In determining whether*
2 *paragraph (2)(B) applies to any transfer by a*
3 *person described in clause (ii) or (iii) of sub-*
4 *paragraph (C), there shall not be taken into ac-*
5 *count—*

6 “(i) *except as provided in regulations,*
7 *any obligation of a person described in sub-*
8 *paragraph (C), and*

9 “(ii) *to the extent provided in regula-*
10 *tions, any obligation which is guaranteed*
11 *by a person described in subparagraph (C).*

12 “(B) *TREATMENT OF PRINCIPAL PAYMENTS*
13 *ON OBLIGATION.*—*Principal payments by the*
14 *trust on any obligation referred to in subpara-*
15 *graph (A) shall be taken into account on and*
16 *after the date of the payment in determining the*
17 *portion of the trust attributable to the property*
18 *transferred.*

19 “(C) *PERSONS DESCRIBED.*—*The persons*
20 *described in this subparagraph are—*

21 “(i) *the trust,*

22 “(ii) *any grantor or beneficiary of the*
23 *trust, and*

1 “(iii) any person who is related (with-
2 in the meaning of section 643(i)(2)(B)) to
3 any grantor or beneficiary of the trust.”.

4 (b) *EXEMPTION OF TRANSFERS TO CHARITABLE*
5 *TRUSTS.*—Subsection (a) of section 679 is amended by
6 striking “section 404(a)(4) or 404A” and inserting “section
7 6048(a)(3)(B)(ii)”.

8 (c) *OTHER MODIFICATIONS.*—Subsection (a) of section
9 679 is amended by adding at the end the following new
10 paragraphs:

11 “(4) *SPECIAL RULES APPLICABLE TO FOREIGN*
12 *GRANTOR WHO LATER BECOMES A UNITED STATES*
13 *PERSON.*—

14 “(A) *IN GENERAL.*—If a nonresident alien
15 individual has a residency starting date within
16 5 years after directly or indirectly transferring
17 property to a foreign trust, this section and sec-
18 tion 6048 shall be applied as if such individual
19 transferred to such trust on the residency start-
20 ing date an amount equal to the portion of such
21 trust attributable to the property transferred by
22 such individual to such trust in such transfer.

23 “(B) *TREATMENT OF UNDISTRIBUTED IN-*
24 *COME.*—For purposes of this section, undistrib-
25 uted net income for periods before such individ-

1 *ual's residency starting date shall be taken into*
2 *account in determining the portion of the trust*
3 *which is attributable to property transferred by*
4 *such individual to such trust but shall not other-*
5 *wise be taken into account.*

6 *“(C) RESIDENCY STARTING DATE.—For*
7 *purposes of this paragraph, an individual's resi-*
8 *dency starting date is the residency starting date*
9 *determined under section 7701(b)(2)(A).*

10 *“(5) OUTBOUND TRUST MIGRATIONS.—If—*

11 *“(A) an individual who is a citizen or resi-*
12 *dent of the United States transferred property to*
13 *a trust which was not a foreign trust, and*

14 *“(B) such trust becomes a foreign trust*
15 *while such individual is alive,*

16 *then this section and section 6048 shall be applied as*
17 *if such individual transferred to such trust on the*
18 *date such trust becomes a foreign trust an amount*
19 *equal to the portion of such trust attributable to the*
20 *property previously transferred by such individual to*
21 *such trust. A rule similar to the rule of paragraph*
22 *(4)(B) shall apply for purposes of this paragraph.”.*

23 *(d) MODIFICATIONS RELATING TO WHETHER TRUST*
24 *HAS UNITED STATES BENEFICIARIES.—Subsection (c) of*

1 *section 679 is amended by adding at the end the following*
2 *new paragraph:*

3 “(3) *CERTAIN UNITED STATES BENEFICIARIES*
4 *DISREGARDED.*—*A beneficiary shall not be treated as*
5 *a United States person in applying this section with*
6 *respect to any transfer of property to foreign trust if*
7 *such beneficiary first became a United States person*
8 *more than 5 years after the date of such transfer.”.*

9 *(e) TECHNICAL AMENDMENT.*—*Subparagraph (A) of*
10 *section 679(c)(2) is amended to read as follows:*

11 “(A) *in the case of a foreign corporation,*
12 *such corporation is a controlled foreign corpora-*
13 *tion (as defined in section 957(a)),”.*

14 *(f) REGULATIONS.*—*Section 679 is amended by adding*
15 *at the end the following new subsection:*

16 “(d) *REGULATIONS.*—*The Secretary shall prescribe*
17 *such regulations as may be necessary or appropriate to*
18 *carry out the purposes of this section.”.*

19 *(g) EFFECTIVE DATE.*—*The amendments made by this*
20 *section shall apply to transfers of property after February*
21 *6, 1995.*

22 ***SEC. 603. FOREIGN PERSONS NOT TO BE TREATED AS OWN-***
23 ***ERS UNDER GRANTOR TRUST RULES.***

24 *(a) GENERAL RULE.*—

1 (1) *Subsection (f) of section 672 (relating to spe-*
2 *cial rule where grantor is foreign person) is amended*
3 *to read as follows:*

4 “(f) *SUBPART NOT TO RESULT IN FOREIGN OWNER-*
5 *SHIP.—*

6 “(1) *IN GENERAL.—Notwithstanding any other*
7 *provision of this subpart, this subpart shall apply*
8 *only to the extent such application results in an*
9 *amount being currently taken into account (directly*
10 *or through 1 or more entities) under this chapter in*
11 *computing the income of a citizen or resident of the*
12 *United States or a domestic corporation.*

13 “(2) *EXCEPTIONS.—*

14 “(A) *CERTAIN REVOCABLE AND IRREV-*
15 *OCABLE TRUSTS.—Paragraph (1) shall not*
16 *apply to any trust if—*

17 “(i) *the power to revest absolutely in*
18 *the grantor title to the trust property is ex-*
19 *ercisable solely by the grantor without the*
20 *approval or consent of any other person or*
21 *with the consent of a related or subordinate*
22 *party who is subservient to the grantor, or*

23 “(ii) *the only amounts distributable*
24 *from such trust (whether income or corpus)*
25 *during the lifetime of the grantor are*

1 *amounts distributable to the grantor or the*
2 *spouse of the grantor.*

3 “(B) *COMPENSATORY TRUSTS.*—*Except as*
4 *provided in regulations, paragraph (1) shall not*
5 *apply to any portion of a trust distributions*
6 *from which are taxable as compensation for serv-*
7 *ices rendered.*

8 “(3) *SPECIAL RULES.*—*Except as otherwise pro-*
9 *vided in regulations prescribed by the Secretary—*

10 “(A) *a controlled foreign corporation (as de-*
11 *fined in section 957) shall be treated as a domes-*
12 *tic corporation for purposes of paragraph (1),*
13 *and*

14 “(B) *paragraph (1) shall not apply for pur-*
15 *poses of applying section 1296.*

16 “(4) *RECHARACTERIZATION OF PURPORTED*
17 *GIFTS.*—*In the case of any transfer directly or indi-*
18 *rectly from a partnership or foreign corporation*
19 *which the transferee treats as a gift or bequest, the*
20 *Secretary may recharacterize such transfer in such*
21 *circumstances as the Secretary determines to be ap-*
22 *propriate to prevent the avoidance of the purposes of*
23 *this subsection.*

24 “(5) *SPECIAL RULE WHERE GRANTOR IS FOR-*
25 *EIGN PERSON.*—*If—*

1 “(A) but for this subsection, a foreign per-
2 son would be treated as the owner of any portion
3 of a trust, and

4 “(B) such trust has a beneficiary who is a
5 United States person,
6 such beneficiary shall be treated as the grantor of
7 such portion to the extent such beneficiary has made
8 transfers of property by gift (directly or indirectly) to
9 such foreign person. For purposes of the preceding
10 sentence, any gift shall not be taken into account to
11 the extent such gift would be excluded from taxable
12 gifts under section 2503(b).

13 “(6) REGULATIONS.—The Secretary shall pre-
14 scribe such regulations as may be necessary or appro-
15 priate to carry out the purposes of this subsection, in-
16 cluding regulations providing that paragraph (1)
17 shall not apply in appropriate cases.”.

18 (2) The last sentence of subsection (c) of section
19 672 of such Code is amended by inserting “subsection
20 (f) and” before “sections 674”.

21 (b) CREDIT FOR CERTAIN TAXES.—Paragraph (2) of
22 section 665(d) is amended by adding at the end the follow-
23 ing new sentence: “Under rules or regulations prescribed
24 by the Secretary, in the case of any foreign trust of which
25 the settlor or another person would be treated as owner of

1 any portion of the trust under subpart E but for section
2 672(f), the term ‘taxes imposed on the trust’ includes the
3 allocable amount of any income, war profits, and excess
4 profits taxes imposed by any foreign country or possession
5 of the United States on the settlor or such other person in
6 respect of trust gross income.”.

7 (c) DISTRIBUTIONS BY CERTAIN FOREIGN TRUSTS
8 THROUGH NOMINEES.—

9 (1) Section 643 is amended by adding at the end
10 the following new subsection:

11 “(h) DISTRIBUTIONS BY CERTAIN FOREIGN TRUSTS
12 THROUGH NOMINEES.—For purposes of this part, any
13 amount paid to a United States person which is derived
14 directly or indirectly from a foreign trust of which the
15 payor is not the grantor shall be deemed in the year of pay-
16 ment to have been directly paid by the foreign trust to such
17 United States person.”.

18 (2) Section 665 is amended by striking sub-
19 section (c).

20 (d) EFFECTIVE DATE.—

21 (1) IN GENERAL.—Except as provided by para-
22 graph (2), the amendments made by this section shall
23 take effect on the date of the enactment of this Act.

1 (2) *EXCEPTION FOR CERTAIN TRUSTS.*—The
2 amendments made by this section shall not apply to
3 any trust—

4 (A) which is treated as owned by the grant-
5 or or another person under section 676 or 677
6 (other than subsection (a)(3) thereof) of the In-
7 ternal Revenue Code of 1986, and

8 (B) which is in existence on September 19,
9 1995.

10 The preceding sentence shall not apply to the portion
11 of any such trust attributable to any transfer to such
12 trust after September 19, 1995.

13 (e) *TRANSITIONAL RULE.*—If—

14 (1) by reason of the amendments made by this
15 section, any person other than a United States person
16 ceases to be treated as the owner of a portion of a do-
17 mestic trust, and

18 (2) before January 1, 1997, such trust becomes
19 a foreign trust, or the assets of such trust are trans-
20 ferred to a foreign trust,

21 no tax shall be imposed by section 1491 of the Internal Rev-
22 enue Code of 1986 by reason of such trust becoming a for-
23 eign trust or the assets of such trust being transferred to
24 a foreign trust.

1 **SEC. 604. INFORMATION REPORTING REGARDING FOREIGN**
2 **GIFTS.**

3 (a) *IN GENERAL.*—Subpart A of part III of subchapter
4 A of chapter 61 is amended by inserting after section 6039E
5 the following new section:

6 **“SEC. 6039F. NOTICE OF GIFTS RECEIVED FROM FOREIGN**
7 **PERSONS.**

8 “(a) *IN GENERAL.*—If the value of the aggregate for-
9 eign gifts received by a United States person (other than
10 an organization described in section 501(c) and exempt
11 from tax under section 501(a)) during any taxable year ex-
12 ceeds \$10,000, such United States person shall furnish (at
13 such time and in such manner as the Secretary shall pre-
14 scribe) such information as the Secretary may prescribe re-
15 garding each foreign gift received during such year.

16 “(b) *FOREIGN GIFT.*—For purposes of this section, the
17 term ‘foreign gift’ means any amount received from a per-
18 son other than a United States person which the recipient
19 treats as a gift or bequest. Such term shall not include any
20 qualified transfer (within the meaning of section
21 2503(e)(2)).

22 “(c) *PENALTY FOR FAILURE TO FILE INFORMATION.*—

23 “(1) *IN GENERAL.*—If a United States person
24 fails to furnish the information required by subsection
25 (a) with respect to any foreign gift within the time
26 prescribed therefor (including extensions)—

1 “(A) the tax consequences of the receipt of
2 such gift shall be determined by the Secretary in
3 the Secretary’s sole discretion from the Sec-
4 retary’s own knowledge or from such information
5 as the Secretary may obtain through testimony
6 or otherwise, and

7 “(B) such United States person shall pay
8 (upon notice and demand by the Secretary and
9 in the same manner as tax) an amount equal to
10 5 percent of the amount of such foreign gift for
11 each month for which the failure continues (not
12 to exceed 25 percent of such amount in the aggre-
13 gate).

14 “(2) REASONABLE CAUSE EXCEPTION.—Para-
15 graph (1) shall not apply to any failure to report a
16 foreign gift if the United States person shows that the
17 failure is due to reasonable cause and not due to will-
18 ful neglect.

19 “(d) COST-OF-LIVING ADJUSTMENT.—In the case of
20 any taxable year beginning after December 31, 1996, the
21 \$10,000 amount under subsection (a) shall be increased by
22 an amount equal to the product of such amount and the
23 cost-of-living adjustment for such taxable year under section
24 1(f)(3), except that subparagraph (B) thereof shall be ap-
25 plied by substituting ‘1995’ for ‘1992’.

1 “(e) *REGULATIONS.*—The Secretary shall prescribe
2 such regulations as may be necessary or appropriate to
3 carry out the purposes of this section.”.

4 (b) *CLERICAL AMENDMENT.*—The table of sections for
5 such subpart is amended by inserting after the item relating
6 to section 6039E the following new item:

 “Sec. 6039F. Notice of large gifts received from foreign persons.”.

7 (c) *EFFECTIVE DATE.*—The amendments made by this
8 section shall apply to amounts received after the date of
9 the enactment of this Act in taxable years ending after such
10 date.

11 **SEC. 605. MODIFICATION OF RULES RELATING TO FOREIGN**
12 **TRUSTS WHICH ARE NOT GRANTOR TRUSTS.**

13 (a) *MODIFICATION OF INTEREST CHARGE ON ACCUMU-*
14 *LATION DISTRIBUTIONS.*—Subsection (a) of section 668 (re-
15 lating to interest charge on accumulation distributions from
16 foreign trusts) is amended to read as follows:

17 “(a) *GENERAL RULE.*—For purposes of the tax deter-
18 mined under section 667(a)—

19 “(1) *INTEREST DETERMINED USING UNDERPAY-*
20 *MENT RATES.*—The interest charge determined under
21 this section with respect to any distribution is the
22 amount of interest which would be determined on the
23 partial tax computed under section 667(b) for the pe-
24 riod described in paragraph (2) using the rates and

1 *the method under section 6621 applicable to under-*
2 *payments of tax.*

3 “(2) *PERIOD.*—*For purposes of paragraph (1),*
4 *the period described in this paragraph is the period*
5 *which begins on the date which is the applicable num-*
6 *ber of years before the date of the distribution and*
7 *which ends on the date of the distribution.*

8 “(3) *APPLICABLE NUMBER OF YEARS.*—*For pur-*
9 *poses of paragraph (2)—*

10 “(A) *IN GENERAL.*—*The applicable number*
11 *of years with respect to a distribution is the*
12 *number determined by dividing—*

13 “(i) *the sum of the products described*
14 *in subparagraph (B) with respect to each*
15 *undistributed income year, by*

16 “(ii) *the aggregate undistributed net*
17 *income.*

18 *The quotient determined under the preceding*
19 *sentence shall be rounded under procedures pre-*
20 *scribed by the Secretary.*

21 “(B) *PRODUCT DESCRIBED.*—*For purposes*
22 *of subparagraph (A), the product described in*
23 *this subparagraph with respect to any undistrib-*
24 *uted income year is the product of—*

1 “(i) the undistributed net income for
2 such year, and

3 “(ii) the sum of the number of taxable
4 years between such year and the taxable
5 year of the distribution (counting in each
6 case the undistributed income year but not
7 counting the taxable year of the distribu-
8 tion).

9 “(4) *UNDISTRIBUTED INCOME YEAR.*—For pur-
10 poses of this subsection, the term ‘undistributed in-
11 come year’ means any prior taxable year of the trust
12 for which there is undistributed net income, other
13 than a taxable year during all of which the bene-
14 ficiary receiving the distribution was not a citizen or
15 resident of the United States.

16 “(5) *DETERMINATION OF UNDISTRIBUTED NET*
17 *INCOME.*—Notwithstanding section 666, for purposes
18 of this subsection, an accumulation distribution from
19 the trust shall be treated as reducing proportionately
20 the undistributed net income for undistributed income
21 years.

22 “(6) *PERIODS BEFORE 1996.*—Interest for the
23 portion of the period described in paragraph (2)
24 which occurs before January 1, 1996, shall be deter-
25 mined—

1 “(A) by using an interest rate of 6 percent,
2 and

3 “(B) without compounding until January
4 1, 1996.”.

5 (b) *ABUSIVE TRANSACTIONS.*—Section 643(a) is
6 amended by inserting after paragraph (6) the following new
7 paragraph:

8 “(7) *ABUSIVE TRANSACTIONS.*—The Secretary
9 shall prescribe such regulations as may be necessary
10 or appropriate to carry out the purposes of this part,
11 including regulations to prevent avoidance of such
12 purposes.”.

13 (c) *TREATMENT OF LOANS FROM TRUSTS.*—

14 (1) *IN GENERAL.*—Section 643 (relating to defi-
15 nitions applicable to subparts A, B, C, and D) is
16 amended by adding at the end the following new sub-
17 section:

18 “(i) *LOANS FROM FOREIGN TRUSTS.*—For purposes of
19 subparts B, C, and D—

20 “(1) *GENERAL RULE.*—Except as provided in
21 regulations, if a foreign trust makes a loan of cash or
22 marketable securities directly or indirectly to—

23 “(A) any grantor or beneficiary of such
24 trust who is a United States person, or

1 “(B) any United States person not de-
2 scribed in subparagraph (A) who is related to
3 such grantor or beneficiary,
4 the amount of such loan shall be treated as a distribu-
5 tion by such trust to such grantor or beneficiary (as
6 the case may be).

7 “(2) DEFINITIONS AND SPECIAL RULES.—For
8 purposes of this subsection—

9 “(A) CASH.—The term ‘cash’ includes for-
10 eign currencies and cash equivalents.

11 “(B) RELATED PERSON.—

12 “(i) IN GENERAL.—A person is related
13 to another person if the relationship between
14 such persons would result in a disallowance
15 of losses under section 267 or 707(b). In ap-
16 plying section 267 for purposes of the pre-
17 ceding sentence, section 267(c)(4) shall be
18 applied as if the family of an individual
19 includes the spouses of the members of the
20 family.

21 “(ii) ALLOCATION.—If any person de-
22 scribed in paragraph (1)(B) is related to
23 more than one person, the grantor or bene-
24 ficiary to whom the treatment under this

1 *subsection applies shall be determined under*
2 *regulations prescribed by the Secretary.*

3 *“(C) EXCLUSION OF TAX-EXEMPTS.—The*
4 *term ‘United States person’ does not include any*
5 *entity exempt from tax under this chapter.*

6 *“(D) TRUST NOT TREATED AS SIMPLE*
7 *TRUST.—Any trust which is treated under this*
8 *subsection as making a distribution shall be*
9 *treated as not described in section 651.*

10 *“(3) SUBSEQUENT TRANSACTIONS REGARDING*
11 *LOAN PRINCIPAL.—If any loan is taken into account*
12 *under paragraph (1), any subsequent transaction be-*
13 *tween the trust and the original borrower regarding*
14 *the principal of the loan (by way of complete or par-*
15 *tial repayment, satisfaction, cancellation, discharge,*
16 *or otherwise) shall be disregarded for purposes of this*
17 *title.”.*

18 *(2) TECHNICAL AMENDMENT.—Paragraph (8) of*
19 *section 7872(f) is amended by inserting “, 643(i),” be-*
20 *fore “or 1274” each place it appears.*

21 *(d) EFFECTIVE DATES.—*

22 *(1) INTEREST CHARGE.—The amendment made*
23 *by subsection (a) shall apply to distributions after the*
24 *date of the enactment of this Act.*

1 (2) *ABUSIVE TRANSACTIONS.*—The amendment
2 made by subsection (b) shall take effect on the date of
3 the enactment of this Act.

4 (3) *LOANS FROM TRUSTS.*—The amendment
5 made by subsection (c) shall apply to loans of cash
6 or marketable securities after September 19, 1995.

7 **SEC. 606. RESIDENCE OF ESTATES AND TRUSTS, ETC.**

8 (a) *TREATMENT AS UNITED STATES PERSON.*—

9 (1) *IN GENERAL.*—Paragraph (30) of section
10 7701(a) is amended by striking subparagraph (D)
11 and by inserting after subparagraph (C) the follow-
12 ing:

13 “(D) any estate or trust if—

14 “(i) a court within the United States
15 is able to exercise primary supervision over
16 the administration of the estate or trust,
17 and

18 “(ii) in the case of a trust, one or more
19 United States fiduciaries have the authority
20 to control all substantial decisions of the
21 trust.”.

22 (2) *CONFORMING AMENDMENT.*—Paragraph (31)
23 of section 7701(a) is amended to read as follows:

24 “(31) *FOREIGN ESTATE OR TRUST.*—The term
25 ‘foreign estate’ or ‘foreign trust’ means any estate or

1 *trust other than an estate or trust described in section*
2 *7701(a)(30)(D).”.*

3 (3) *EFFECTIVE DATE.*—*The amendments made*
4 *by this subsection shall apply—*

5 (A) *to taxable years beginning after Decem-*
6 *ber 31, 1996, or*

7 (B) *at the election of the trustee of a trust,*
8 *to taxable years ending after the date of the en-*
9 *actment of this Act.*

10 *Such an election, once made, shall be irrevocable.*

11 (b) *DOMESTIC TRUSTS WHICH BECOME FOREIGN*
12 *TRUSTS.*—

13 (1) *IN GENERAL.*—*Section 1491 (relating to im-*
14 *position of tax on transfers to avoid income tax) is*
15 *amended by adding at the end the following new flush*
16 *sentence:*

17 *“If a trust which is not a foreign trust becomes a foreign*
18 *trust, such trust shall be treated for purposes of this section*
19 *as having transferred, immediately before becoming a for-*
20 *foreign trust, all of its assets to a foreign trust.”.*

21 (2) *PENALTY.*—*Section 1494 is amended by add-*
22 *ing at the end the following new subsection:*

23 *“(c) PENALTY.*—*In the case of any failure to file a re-*
24 *turn required by the Secretary with respect to any transfer*
25 *described in section 1491 with respect to a trust, the person*

1 *required to file such return shall be liable for the penalties*
2 *provided in section 6677 in the same manner as if such*
3 *failure were a failure to file a return under section*
4 *6048(a).”.*

5 (3) *EFFECTIVE DATE.*—*The amendments made*
6 *by this subsection shall take effect on the date of the*
7 *enactment of this Act.*

8 ***Subtitle B—Repeal of Bad Debt Re-***
9 ***serve Method for Thrift Savings***
10 ***Associations***

11 ***SEC. 611. REPEAL OF BAD DEBT RESERVE METHOD FOR***
12 ***THRIFT SAVINGS ASSOCIATIONS.***

13 (a) *IN GENERAL.*—*Section 593 (relating to reserves for*
14 *losses on loans) is hereby repealed.*

15 (b) *CONFORMING AMENDMENTS.*—

16 (1) *Subsection (d) of section 50 is amended by*
17 *adding at the end the following new sentence:*

18 *“Paragraphs (1)(A), (2)(A), and (4) of section 46(e) re-*
19 *ferred to in paragraph (1) of this subsection shall not apply*
20 *to any taxable year beginning after December 31, 1995.”.*

21 (2) *Subsection (e) of section 52 is amended by*
22 *striking paragraph (1) and by redesignating para-*
23 *graphs (2) and (3) as paragraphs (1) and (2), respec-*
24 *tively.*

1 (3) Subsection (a) of section 57 is amended by
2 striking paragraph (4).

3 (4) Section 246 is amended by striking sub-
4 section (f).

5 (5) Clause (i) of section 291(e)(1)(B) is amended
6 by striking “or to which section 593 applies”.

7 (6) Subparagraph (A) of section 585(a)(2) is
8 amended by striking “other than an organization to
9 which section 593 applies”.

10 (7) Sections 595 and 596 are hereby repealed.

11 (8) Subsection (a) of section 860E is amended—

12 (A) by striking “Except as provided in
13 paragraph (2), the” in paragraph (1) and in-
14 serting “The”,

15 (B) by striking paragraphs (2) and (4) and
16 redesignating paragraphs (3) and (5) as para-
17 graphs (2) and (3), respectively, and

18 (C) by striking in paragraph (2) (as so re-
19 designated) all that follows “subsection” and in-
20 serting a period.

21 (9) Paragraph (3) of section 992(d) is amended
22 by striking “or 593”.

23 (10) Section 1038 is amended by striking sub-
24 section (f).

1 (11) Clause (ii) of section 1042(c)(4)(B) is
2 amended by striking “or 593”.

3 (12) Subsection (c) of section 1277 is amended
4 by striking “or to which section 593 applies”.

5 (13) Subparagraph (B) of section 1361(b)(2) is
6 amended by striking “or to which section 593 ap-
7 plies”.

8 (14) The table of sections for part II of sub-
9 chapter H of chapter 1 is amended by striking the
10 items relating to sections 593, 595, and 596.

11 (c) *EFFECTIVE DATE.*—

12 (1) *IN GENERAL.*—Except as provided in para-
13 graph (2), the amendments made by this section shall
14 apply to taxable years beginning after December 31,
15 1995.

16 (2) *REPEAL OF SECTION 595.*—The repeal of sec-
17 tion 595 under subsection (b)(7) shall apply to prop-
18 erty acquired in taxable years beginning after Decem-
19 ber 31, 1995.

20 (d) *6-YEAR SPREAD OF ADJUSTMENTS.*—

21 (1) *IN GENERAL.*—In the case of any taxpayer
22 who is required by reason of the amendments made
23 by this section to change its method of computing re-
24 serves for bad debts—

1 (A) such change shall be treated as a change
2 in a method of accounting,

3 (B) such change shall be treated as initiated
4 by the taxpayer and as having been made with
5 the consent of the Secretary, and

6 (C) the net amount of the adjustments re-
7 quired to be taken into account by the taxpayer
8 under section 481(a)—

9 (i) shall be determined by taking into
10 account only applicable excess reserves, and

11 (ii) as so determined, shall be taken
12 into account ratably over the 6-taxable year
13 period beginning with the first taxable year
14 beginning after December 31, 1995.

15 (2) APPLICABLE EXCESS RESERVES.—

16 (A) IN GENERAL.—For purposes of para-
17 graph (1), the term ‘applicable excess reserves’
18 means the excess (if any) of—

19 (i) the balance of the reserves described
20 in section 593(c)(1) of such Code (as in ef-
21 fect on the day before the date of the enact-
22 ment of this Act) as of the close of the tax-
23 payer’s last taxable year beginning before
24 January 1, 1996, over

25 (ii) the lesser of—

1 (I) the balance of such reserves as
2 of the close of the taxpayer's last tax-
3 able year beginning before January 1,
4 1988, or

5 (II) the balance of the reserves de-
6 scribed in subclause (I), reduce by an
7 amount determined in the same man-
8 ner as under section 585(b)(2)(B)(ii)
9 on the basis of the taxable years de-
10 scribed in clause (i) and this clause.

11 (B) *SPECIAL RULE FOR THRIFTS WHICH*
12 *BECOME SMALL BANKS.*—In the case of a bank
13 (as defined in section 581 of such Code) which
14 is not a large bank (as defined in section
15 585(c)(2) of such Code) for its first taxable year
16 beginning after December 31, 1995—

17 (i) the balance taken into account
18 under subparagraph (A)(ii) shall not be less
19 than the amount which would be the bal-
20 ance of such reserve as of the close of its last
21 taxable year beginning before January 1,
22 1996, if the additions to such reserve for all
23 taxable years had been determined under
24 section 585(b)(2)(A), and

1 (ii) the opening balance of the reserve
2 for bad debts as of the beginning of such
3 first taxable year shall be the balance taken
4 into account under subparagraph (A)(ii)
5 (determined after the application of clause
6 (i) of this subparagraph).

7 The preceding sentence shall not apply for pur-
8 poses of paragraphs (5), (6), and (7).

9 (3) *RECAPTURE OF PRE-1988 RESERVES WHERE*
10 *TAXPAYER CEASES TO BE BANK.*—If during any tax-
11 able year beginning after December 31, 1995, a tax-
12 payer to which paragraph (1) applied is not a bank
13 (as defined in section 581), paragraph (1) shall apply
14 to the reserves described in subparagraph (A)(ii) ex-
15 cept that such reserves shall be taken into account rat-
16 ably over the 6-taxable year period beginning with
17 such taxable year.

18 (4) *SUSPENSION OF RECAPTURE IF RESIDENTIAL*
19 *LOAN REQUIREMENT MET.*—

20 (A) *IN GENERAL.*—In the case of a bank
21 which meets the residential loan requirement of
22 subparagraph (B) for a taxable year beginning
23 after December 31, 1995, and before January 1,
24 1998—

1 (i) no adjustment shall be taken into
2 account under paragraph (1) for such tax-
3 able year, and

4 (ii) such taxable year shall be dis-
5 regarded in determining—

6 (I) whether any other taxable year
7 is a taxable year for which an adjust-
8 ment is required to be taken into ac-
9 count under paragraph (1), and

10 (II) the amount of such adjust-
11 ment.

12 (B) *RESIDENTIAL LOAN REQUIREMENT.*—A
13 taxpayer meets the residential loan requirement
14 of this subparagraph for any taxable year if the
15 principal amount of the residential loans made
16 by the taxpayer during such year is not less than
17 the base amount for such year.

18 (C) *RESIDENTIAL LOAN.*—For purposes of
19 this paragraph, the term “residential loan”
20 means any loan described in clause (v) of section
21 7701(a)(19)(C) of such Code but only if such
22 loan is incurred in acquiring, constructing, or
23 improving the property described in such clause.

24 (D) *BASE AMOUNT.*—For purposes of sub-
25 paragraph (B), the base amount is the average

1 *of the principal amounts of the residential loans*
2 *made by the taxpayer during the 6 most recent*
3 *taxable years beginning before January 1, 1996.*
4 *At the election of the taxpayer who made such*
5 *loans during each of such 6 taxable years, the*
6 *preceding sentence shall be applied without re-*
7 *gard to the taxable year in which such principal*
8 *amount was the highest and the taxable year in*
9 *such principal amount was the lowest. Such an*
10 *election may be made only for the first taxable*
11 *year beginning after December 31, 1995, and, if*
12 *made for such taxable year, shall apply to the*
13 *succeeding taxable year unless revoked with the*
14 *consent of the Secretary of the Treasury or the*
15 *Secretary's delegate.*

16 *(E) CONTROLLED GROUPS.—In the case of*
17 *a taxpayer which is a member of any controlled*
18 *group of corporations described in section*
19 *1563(a)(1) of such Code, subparagraph (B) shall*
20 *be applied with respect to such group.*

21 *(5) CONTINUED APPLICATION OF FRESH START*
22 *UNDER SECTION 585 TRANSITIONAL RULES.—In the*
23 *case of a taxpayer to which paragraph (1) applied*
24 *and which was not a large bank (as defined in section*

1 585(c)(2) of such Code) for its first taxable year be-
2 ginning after December 31, 1995:

3 (A) *IN GENERAL.*—For purposes of deter-
4 mining the net amount of adjustments referred to
5 in section 585(c)(3)(A)(iii) of such Code, there
6 shall be taken into account only the excess of the
7 reserve for bad debts as of the close of the last
8 taxable year before the disqualification year over
9 the balance taken into account by such taxpayer
10 under paragraph (2)(A)(ii) of this subsection.

11 (B) *TREATMENT UNDER ELECTIVE CUT-OFF*
12 *METHOD.*—For purposes of applying section
13 585(c)(4) of such Code—

14 (i) the balance of the reserve taken into
15 account under subparagraph (B) thereof
16 shall be reduced by the balance taken into
17 account by such taxpayer under paragraph
18 (2)(A)(ii) of this subsection, and

19 (ii) no amount shall be includible in
20 gross income by reason of such reduction.

21 (6) *CONTINUED APPLICATION OF SECTION*
22 593(e).—Notwithstanding the amendments made by
23 this section, in the case of a taxpayer to which para-
24 graph (1) of this subsection applies, section 593(e) of
25 such Code (as in effect on the day before the date of

1 *the enactment of this Act) shall continue to apply to*
2 *such taxpayer as if such taxpayer were a domestic*
3 *building and loan association but the amount of the*
4 *reserves taken into account under subparagraphs (B)*
5 *and (C) of section 593(e)(1) (as so in effect) shall be*
6 *the balance taken into account by such taxpayer*
7 *under paragraph (2)(A)(ii) of this subsection.*

8 (7) *CERTAIN ITEMS INCLUDED AS SECTION 381(c)*
9 *ITEMS.—The balance of the applicable excess reserves,*
10 *and the balance taken into account by a taxpayer*
11 *under paragraph (2)(A)(ii) of this subsection, shall be*
12 *treated as items described in section 381(c) of such*
13 *Code.*

14 (8) *CONVERSIONS TO CREDIT UNIONS.—In the*
15 *case of a taxpayer to which paragraph (1) applied*
16 *which becomes a credit union described in section*
17 *501(c)(14)(A)—*

18 (A) *any amount required to be included in*
19 *the gross income of the credit union by reason of*
20 *this subsection shall be treated as derived from*
21 *an unrelated trade or business (as defined in sec-*
22 *tion 513), and*

23 (B) *for purposes of paragraph (3), the cred-*
24 *it union shall not be treated as if it were a bank.*

1 *Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)) is amend-*
2 *ed—*

3 (1) *by striking “(2)(A)” and inserting*
4 *“(2)(A)(i)”;*

5 (2) *by striking the second sentence and all that*
6 *follows through the end of the subparagraph; and*

7 (3) *by adding at the end the following new*
8 *clause:*

9 *“(ii) Each assistance contract under this section shall*
10 *provide that—*

11 *“(I) if the maximum monthly rent for a unit in*
12 *a new construction or substantial rehabilitation*
13 *project to be adjusted using an annual adjustment*
14 *factor exceeds 100 percent of the fair market rent for*
15 *an existing dwelling unit in the market area, the Sec-*
16 *retary shall adjust the rent using an operating costs*
17 *factor that increases the rent to reflect increases in*
18 *operating costs in the market area; and*

19 *“(II) if the owner of a unit in a project described*
20 *in subclause (I) demonstrates that the adjusted rent*
21 *determined under subclause (I) would not exceed the*
22 *rent for an unassisted unit of similar quality, type,*
23 *and age in the same market area, as determined by*
24 *the Secretary, the Secretary shall use the otherwise*
25 *applicable annual adjustment factor.”.*

1 (b) *RESTRAINT ON SECTION 8 RENT INCREASES.*—
2 Section 8(c)(2)(A) of the United States Housing Act of 1937
3 (42 U.S.C. 1437f(c)(2)(A)), as amended by subsection (a)
4 of this section, is amended by adding at the end the follow-
5 ing new clause:

6 “(iii)(I) Subject to subclause (II), with respect to any
7 unit assisted under this section that is occupied by the same
8 family at the time of the most recent annual rental adjust-
9 ment, if the assistance contract provides for the adjustment
10 of the maximum monthly rent by applying an annual ad-
11 justment factor, and if the rent for the unit is otherwise
12 eligible for an adjustment based on the full amount of the
13 annual adjustment factor, 0.01 shall be subtracted from the
14 amount of the annual adjustment factor, except that the an-
15 nual adjustment factor shall not be reduced to less than 1.0.

16 “(II) With respect to any unit described in subclause
17 (I) that is assisted under the certificate program, the ad-
18 justed rent shall not exceed the rent for a comparable unas-
19 sisted unit of similar quality, type, and age in the market
20 area in which the unit is located.”.

21 (c) *EFFECTIVE DATE.*—The amendments made by this
22 section shall be construed to have become effective on Octo-
23 ber 1, 1995.

1 **SEC. 623. FORECLOSURE AVOIDANCE AND BORROWER AS-**
2 **SISTANCE.**

3 (a) *EFFECTIVENESS AND APPLICABILITY.*—Section
4 407 of The Balanced Budget Downpayment Act, I (Public
5 Law 104–99) is amended—

6 (1) in subsection (c)—

7 (A) by striking “Except as provided in sub-
8 section (e), the” and inserting “The”; and

9 (B) by striking “only with respect to mort-
10 gages insured under the National Housing Act
11 that are originated before October 1, 1995” and
12 inserting “to all mortgages insured under the
13 National Housing Act”; and

14 (2) by striking subsection (e).

15 (b) *TECHNICAL AMENDMENT.*—Section 230(d) of the
16 National Housing Act (12 U.S.C. 1715u(d)) is amended by
17 striking “the Departments” and all that follows through
18 “1996” and inserting “The Balanced Budget Downpayment
19 Act, I”.

Attest:

Secretary.

HR 3103 EAS—2
HR 3103 EAS—3
HR 3103 EAS—4
HR 3103 EAS—5
HR 3103 EAS—6
HR 3103 EAS—7
HR 3103 EAS—8
HR 3103 EAS—9
HR 3103 EAS—10
HR 3103 EAS—11
HR 3103 EAS—12
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HR 3103 EAS—18
HR 3103 EAS—19
HR 3103 EAS—20

104TH CONGRESS
2^D SESSION

H. R. 3103

AMENDMENT