for the Farm Credit System, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. D'AMATO (for himself and Mr. MOYNIHAN):

S. 1012. A bill to extend the time for construction of certain FERC licensed hydro projects; to the Committee on Energy and Natural Resources.

By Mr. CONRAD (for himself and Mr. DORGAN):

S. 1013. A bill to amend the Act of August 5, 1965, to authorize the Secretary of the Interior to acquire land for the purpose of exchange for privately held land for use as wildlife and wetland protection areas, in connection with the Garrison diversion unit project, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. NICKLES:

S. 1014. A bill to improve the management of royalties from Federal and Outer Continental Shelf oil and gas leases, and for other purposes; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. JOHNSTON:

S. Res. 146. A resolution designating the week beginning November 19, 1995, and the week beginning on November 24, 1996, as "National Family Week", and for other purposes; to the Committee on the Judiciary.

By Mr. THURMOND:

S. Res. 147. A resolution designating the weeks beginning September 24, 1995, and September 22, 1996, as "National Historically Black Colleges and Universities Week", and for other purposes; to the Committee on the Judiciary.

By Mr. HELMS:

S. Res. 148. A resolution expressing the sense of the Senate regarding the arrest of Harry Wu by the Government of the People's Republic of China; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PRYOR (for himself, Mr. HATCH, Mr. BREAUX and Mr. LEAHY): S. 1006. A bill to amend the Internal Revenue Code of 1986 to simplify the pension laws, and for other purposes; to the Committee on Finance.

THE PENSION SIMPLIFICATION ACT OF 1995

Mr. PRYOR. Mr. President, today I rise to introduce the Pension Simplification Act of 1995. This very important legislation is designed to simplify the tax laws governing our Nation's private retirement system.

This legislation is the result of the efforts of many, and these efforts date back to March of 1990 when I first held hearings in the Finance subcommittee on private retirement plans.

Later, in the summer of 1990, I introduced the Employee Benefits Simplification Act, S. 2901. As a matter of history, many experts, including pension planners for small and large businesses, logged countless hours to help me develop this legislation, and many organizations pushed to get this legislation enacted into law.

In the 102d Congress, I reintroduced this legislation as the Employee Benefits Simplification and Expansion Act of 1991. In early 1992, this legislation was included in the Tax Fairness and Economic Growth Act of 1992, which was H.R. 4210, and which was passed by the Congress, but it was vetoed by President Bush for reasons not associated with this particular piece of the overall tax bill.

During the summer of 1992, portions of the simplification effort were passed as part of the 1992 Unemployment Compensation Act. This legislation was then designed to liberalize the rollover rules which allow the worker the ability to take his pension benefits with him or her when they change jobs.

Later that year, the remainder of the simplification bill was included as part of the Revenue Act of 1992, which was H.R. 11, also passed by Congress, also vetoed by President Bush for reasons not related to the substance of this legislation.

Since that time, there has been no tax bill which could include the as-yet-unpassed provisions of the simplification effort.

Today, Mr. President, I am very happy to be joined by Senator ORRIN HATCH of Utah, Senator BREAUX of Louisiana, and Senator LEAHY of Vermont in introducing this legislation as the Pension Simplification Act of 1995. This bill includes many of the provisions passed two times by Congress in 1992, but it also includes some very new and important provisions, which evidences our continuing effort to simplify the very complex and arcane pension rules. To some, this in itself is an extremely arcane issue, but to small businesses across our great country it is a critical part of doing business. And it is that part of business which provides for savings and retirement funds ultimately for millions of employees.

This act is the next significant step toward reducing the costs associated with providing pension benefits. The legislation achieves this result by eliminating many of the complexities and the inconsistencies in the private pension system which will in turn promote the establishment of new pension plans by both large and small companies.

While this legislation affects both small and large businesses, who provide retirement plans for their workers, new provisions in this bill specifically target complex and costly rules affecting small business, and there is very good reason for this action in this legislation.

In 1993, 83 percent of the companies with 100 or more employees offered some type of retirement plan. In contrast, in businesses with fewer than 25 employees, only 19 percent of those firms had an employer-provided pension plan available to them, and only 15 percent of these employees even participated in those plans.

The major factor contributing to this dismal statistic is the sky-high per-participant cost of establishing and maintaining a pension plan for small business. The Pension Simplification Act alleviates the high-cost barriers for small business by creating a tax credit which can be applied toward the start-up costs of providing a new plan for employers with 50 or fewer employees. Of course, this is geared toward and focused on small business.

Next, the legislation slashes extensive annual nondiscrimination testing requirements for firms where no employee is highly compensated. These provisions, Mr. President, combined with the broad simplification provisions for all plans, will significantly reduce the costs of starting up and maintaining a retirement plan. Thus, this bill we are introducing today encourages private retirement savings for our Nation's small business worker.

Mr. President, rather than continuing a discussion of the many detailed provisions of the Pension Simplification Act of 1995, I ask unanimous consent that a 5-page summary of the legislation and a copy of the Pension Simplification Act of 1995 be printed in the RECORD.

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

S. 1006

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Pension Simplification Act of 1995".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; amendment of 1986 Code; table of contents.

TITLE I—SIMPLIFICATION OF NONDISCRIMINATION PROVISIONS

Sec. 101. Definition of highly compensated employees; repeal of family aggregation.
Sec. 102. Definition of compensation for section 415 purposes.
Sec. 103. Modification of additional participation requirements.
Sec. 104. Nondiscrimination rules for qualified cash or deferred arrangements and matching contributions.

TITLE II—SIMPLIFIED DISTRIBUTION RULES

Sec. 201. Repeal of 5-year income averaging for lump-sum distributions.
Sec. 202. Repeal of $5,000 exclusion of employees' death benefits.
Sec. 203. Simplified method for taxing annuity distributions under certain employer plans.
Sec. 204. Required distributions.

TITLE III—TARGETED ACCESS TO PENSION PLANS FOR SMALL EMPLOYERS

Sec. 301. Credit for pension plan start-up costs of small employers.
Sec. 302. Modifications of simplified employee pensions.
Sec. 303. Exemption from top-heavy plan requirements.

Sec. 304. Tax-exempt organizations eligible under section 401(k).
Sec. 305. Regulatory treatment of small employers.

TITLE IV—PAPERWORK REDUCTION

Sec. 401. Repeal of combined section 415 limit.
Sec. 402. Duties of sponsors of certain prototype plans.

TITLE V—MISCELLANEOUS SIMPLIFICATION

Sec. 501. Treatment of leased employees.
Sec. 502. Plans covering self-employed individuals.
Sec. 503. Elimination of special vesting rule for multiemployer plans.
Sec. 504. Full-funding limitation of multiemployer plans.
Sec. 505. Alternative full-funding limitation.
Sec. 506. Affiliated employers.
Sec. 507. Treatment of governmental plans under section 415.
Sec. 508. Treatment of deferred compensation plans of State and local governments and tax-exempt organizations.
Sec. 509. Contributions on behalf of disabled employees.
Sec. 510. Distributions under rural cooperative plans.
Sec. 511. Special rules for plans covering pilots.
Sec. 512. Tenured faculty.
Sec. 513. Uniform retirement age.
Sec. 514. Uniform penalty provisions to apply to certain pension reporting requirements.
Sec. 515. National Commission on Private Pension Plans.
Sec. 516. Date for adoption of plan amendments.

TITLE I—SIMPLIFICATION OF NONDISCRIMINATION PROVISIONS

SEC. 101. DEFINITION OF HIGHLY COMPENSATED EMPLOYEES; REPEAL OF FAMILY AGGREGATION.

(a) IN GENERAL.—Paragraph (1) of section 414(q) (defining highly compensated employee) is amended to read as follows:

''(1) IN GENERAL.—The term 'highly compensated employee' means any employee who—

''(A) was a 5-percent owner at any time during the year or the preceding year,

''(B) had compensation for the preceding year from the employer in excess of $80,000, or

''(C) was the most highly compensated officer of the employer for the preceding year.

The Secretary shall adjust the $80,000 amount under subparagraph (B) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning October 1, 1995.''

(b) SPECIAL RULE WHERE NO EMPLOYEE HAS COMPENSATION OVER SPECIFIED AMOUNT.—Paragraph (2) of section 414(q) is amended to read as follows:

''(2) SPECIAL RULE IF NO EMPLOYEE HAS COMPENSATION OVER SPECIFIED AMOUNT.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), if a defined benefit plan or a defined contribution plan meets the requirements of sections 401(a)(4) and 410(b) with respect to the availability of contributions, benefits, and other plan features, then for all other purposes, subparagraphs (A) and (C) of paragraph (1) shall not apply to such plan.

''(B) EXCEPTION.—Subparagraph (A) shall not apply to a plan to the extent provided in regulations that are prescribed by the Secretary to prevent the evasion of the purposes of this paragraph.''

(c) REPEAL OF FAMILY AGGREGATION RULES.—

(1) IN GENERAL.—Paragraph (6) of section 414(q) is hereby repealed.

(2) COMPENSATION LIMIT.—Paragraph (17)(A) of section 401(a) is amended by striking the last sentence.

(3) DEDUCTION.—Subsection (l) of section 404 is amended by striking the last sentence.

(d) CONFORMING AMENDMENTS.—

(1) Paragraphs (4), (5), (8), and (12) of section 414(q) are hereby repealed.

(2)(A) Section 414(r) is amended by adding at the end the following new paragraph:

''(9) EXCLUDED EMPLOYEES.—For purposes of this subsection, the following employees shall be excluded:

''(A) Employees who have not completed 6 months of service.

''(B) Employees who normally work less than 17½ hours per week.

''(C) Employees who normally work not more than 6 months during any year.

''(D) Employees who have not attained the age of 21.

''(E) Except to the extent provided in regulations, employees who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and the employer.

Except as provided by the Secretary, the employer may elect to apply subparagraph (A), (B), (C), or (D) by substituting a shorter period of service, smaller number of hours or months, or lower age for the period of service, number of hours or months, or age (as the case may be) specified in such subparagraph.''

(B) Subparagraph (A) of section 414(r)(2) is amended by striking ''subsection (q)(8)'' and inserting ''paragraph (9)''.

(3) Section 1114(c)(4) of the Tax Reform Act of 1986 is amended by adding at the end the following new sentence: ''Any reference in this paragraph to section 414(q) shall be treated as a reference to such section as in effect before the Pension Simplification Act of 1995.''

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1995, except that in determining whether an employee is a highly compensated employee for years beginning in 1996, such amendments shall be treated as having been in effect for years beginning in 1995.

SEC. 102. DEFINITION OF COMPENSATION FOR SECTION 415 PURPOSES.

(a) GENERAL RULE.—Section 415(c)(3) (defining participant's compensation) is amended by adding at the end the following new subparagraph:

''(D) CERTAIN DEFERRALS INCLUDED.—For purposes of this section, the terms 'compensation' and 'earned income' shall include—

''(i) any elective deferral (as defined in section 402(g)(3)), and

''(ii) any amount which is contributed by the employer of the election of the employee and which is not includible in the gross income of the employee under section 125 or 457.''

(b) CONFORMING AMENDMENTS.—

(1) Section 414(q)(7) is amended to read as follows:

''(7) COMPENSATION.—For purposes of this subsection, the term 'compensation' has the meaning given such term by section 415(c)(3).''

(2) Section 414(s)(2) is amended by inserting ''not'' after ''elect'' in the text and heading thereof.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1995.

SEC. 103. MODIFICATION OF ADDITIONAL PARTICIPATION REQUIREMENTS.

(a) GENERAL RULE.—Section 401(a)(26)(A) (relating to additional participation requirements) is amended to read as follows:

''(A) IN GENERAL.—In the case of a trust which is a part of a defined benefit plan, such trust shall not constitute a qualified trust under this subsection unless on each day of the plan year such trust benefits at least the lesser of—

''(i) 50 employees of the employer, or

''(ii) the greater of—

''(I) 40 percent of all employees of the employer, or

''(II) 2 employees (or if there is only 1 employee, such employee).''

(b) SEPARATE LINE OF BUSINESS TEST.—Section 401(a)(26)(G) (relating to separate line of business) is amended by striking ''paragraph (7)'' and inserting ''paragraph (2)(A) or (7)''.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 1995.

SEC. 104. NONDISCRIMINATION RULES FOR QUALIFIED CASH OR DEFERRED ARRANGEMENTS AND MATCHING CONTRIBUTIONS.

(a) ALTERNATIVE METHODS OF SATISFYING SECTION 401(k) NONDISCRIMINATION TESTS.—Section 401(k) (relating to cash or deferred arrangements) is amended by adding at the end the following new paragraph:

''(11) ALTERNATIVE METHODS OF MEETING NONDISCRIMINATION REQUIREMENTS.—

''(A) IN GENERAL.—A cash or deferred arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement—

''(i) meets the contribution requirements of subparagraph (B) or (C), and

''(ii) meets the notice requirements of subparagraph (D).

''(B) MATCHING CONTRIBUTIONS.—

''(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement, the employer makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to—

''(I) 100 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 3 percent of the employee's compensation, and

''(II) 50 percent of the elective contributions of the employee to the extent that such elective contributions exceed 3 percent but do not exceed 5 percent of the employee's compensation.

''(ii) RATE FOR HIGHLY COMPENSATED EMPLOYEES.—The requirements of this subparagraph are not met if, under the arrangement, the matching contribution with respect to any elective contribution of a highly compensated employee at any level of compensation is greater than that with respect to an employee who is not a highly compensated employee.

''(iii) ALTERNATIVE PLAN DESIGNS.—If the matching contribution with respect to any elective contribution at any specific level of compensation is not equal to the percentage required under clause (i), an arrangement shall not be treated as failing to meet the requirements of clause (i) if—

''(I) the level of an employer's matching contribution does not increase as an employee's elective contributions increase, and

''(II) the aggregate amount of matching contributions with respect to elective contributions not in excess of such level of compensation is at least equal to the amount of matching contributions which would be made if matching contributions were made on the basis of the percentages described in clause (i).

''(C) NONELECTIVE CONTRIBUTIONS.—The requirements of this subparagraph are met if,

under the arrangement, the employer is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee's compensation.

''(D) NOTICE REQUIREMENT.—An arrangement meets the requirements of this paragraph if, under the arrangement, each employee eligible to participate is, within a reasonable period before any year, given written notice of the employee's rights and obligations under the arrangement which—

''(i) is sufficiently accurate and comprehensive to appraise the employee of such rights and obligations, and

''(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

''(E) OTHER REQUIREMENTS.—

''(i) WITHDRAWAL AND VESTING RESTRICTIONS.—An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) unless the requirements of subparagraphs (B) and (C) of paragraph (2) are met with respect to all employer contributions (including matching contributions).

''(ii) SOCIAL SECURITY AND SIMILAR CONTRIBUTIONS NOT TAKEN INTO ACCOUNT.—An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) unless such requirements are met without regard to subsection (l), and, for purposes of subsection (l), employer contributions under subparagraph (B) or (C) shall not be taken into account.

''(F) OTHER PLANS.—An arrangement shall be treated as meeting the requirements under subparagraph (A)(i) if any other plan maintained by the employer meets such requirements with respect to employees eligible under the arrangement.''

(b) ALTERNATIVE METHODS OF SATISFYING SECTION 401(m) NONDISCRIMINATION TESTS.—Section 401(m) (relating to nondiscrimination test for matching contributions and employee contributions) is amended by redesignating paragraph (10) as paragraph (11) and by adding after paragraph (9) the following new paragraph:

''(10) ALTERNATIVE METHOD OF SATISFYING TESTS.—

''(A) IN GENERAL.—A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

''(i) meets the contribution requirements of subparagraph (B) or (C) of subsection (k)(11),

''(ii) meets the notice requirements of subsection (k)(11)(D), and

''(iii) meets the requirements of subparagraph (B).

''(B) LIMITATION ON MATCHING CONTRIBUTIONS.—The requirements of this subparagraph are met if—

''(i) matching contributions on behalf of any employee may not be made with respect to an employee's contributions or elective deferrals in excess of 6 percent of the employee's compensation,

''(ii) the level of an employer's matching contribution does not increase as an employee's contributions or elective deferrals increase, and

''(iii) the matching contribution with respect to any highly compensated employee at a specific level of compensation is not greater than that with respect to an employee who is not a highly compensated employee.''

(c) YEAR FOR COMPUTING NONHIGHLY COMPENSATED EMPLOYEE PERCENTAGE.—

(1) CASH OR DEFERRED ARRANGEMENTS.—Clause (ii) of section 401(k)(3)(A) is amended—

(A) by striking ''such year'' and inserting ''the plan year'', and

(B) by striking ''for such plan year'' and inserting ''the preceding plan year''.

(2) MATCHING AND EMPLOYEE CONTRIBUTIONS.—Section 401(m)(2)(A) is amended—

(A) by inserting ''for such plan year'' after ''highly compensated employee'', and

(B) by inserting ''for the preceding plan year'' after ''eligible employees'' each place it appears in clause (i) and clause (ii).

(d) SPECIAL RULE FOR DETERMINING AVERAGE DEFERRAL PERCENTAGE FOR FIRST PLAN YEAR, ETC.—

(1) Paragraph (3) of section 401(k) is amended by adding at the end the following new subparagraph:

''(E) For purposes of this paragraph, in the case of the first plan year of any plan, the amount taken into account as the actual deferral percentage of nonhighly compensated employees for the preceding plan year shall be—

''(i) 3 percent, or

''(ii) if the employer makes an election under this subclause, the actual deferral percentage of nonhighly compensated employees determined for such first plan year.''

(2) Paragraph (3) of section 401(m) is amended by adding at the end thereof the following: ''Rules similar to the rules of subsection (k)(3)(E) shall apply for purposes of this subsection.''

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1995.

TITLE II—SIMPLIFIED DISTRIBUTION RULES

SEC. 201. REPEAL OF 5-YEAR INCOME AVERAGING FOR LUMP-SUM DISTRIBUTIONS.

(a) IN GENERAL.—Subsection (d) of section 402 (relating to taxability of beneficiary of employees' trust) is amended to read as follows:

''(d) TAXABILITY OF BENEFICIARY OF CERTAIN FOREIGN SITUS TRUSTS.—For purposes of subsections (a), (b), and (c), a stock bonus, pension, or profit-sharing trust which would qualify for exemption from tax under section 501(a) except for the fact that it is a trust created or organized outside the United States shall be treated as if it were a trust exempt from tax under section 501(a).''

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (D) of section 402(e)(4) (relating to other rules applicable to exempt trusts) is amended to read as follows:

''(D) LUMP-SUM DISTRIBUTION.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'lump sum distribution' means the distribution or payment within one taxable year of the recipient of the balance to the credit of an employee which becomes payable to the recipient—

''(I) on account of the employee's death,

''(II) after the employee attains age 59½,

''(III) on account of the employee's separation from service, or

''(IV) after the employee has become disabled (within the meaning of section 72(m)(7)),

from a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501 or from a plan described in section 403(a). Subclause (III) of this clause shall be applied only with respect to an individual who is an employee without regard to section 401(c)(1), and subclause (IV) shall be applied only with respect to an employee within the meaning of section 401(c)(1). For purposes of this clause, a distribution to two or more trusts shall be treated as a distribution to one recipient. For purposes of this paragraph, the balance to the credit of the employee does not include the accumulated deductible employee contributions under the plan (within the meaning of section 72(o)(5)).

''(ii) AGGREGATION OF CERTAIN TRUSTS AND PLANS.—For purposes of determining the balance to the credit of an employee under clause (i)—

''(I) all trusts which are part of a plan shall be treated as a single trust, all pension plans maintained by the employer shall be treated as a single plan, all profit-sharing plans maintained by the employer shall be treated as a single plan, and all stock bonus plans maintained by the employer shall be treated as a single plan, and

''(II) trusts which are not qualified trusts under section 401(a) and annuity contracts which do not satisfy the requirements of section 404(a)(2) shall not be taken into account.

''(iii) COMMUNITY PROPERTY LAWS.—The provisions of this paragraph shall be applied without regard to community property laws.

''(iv) AMOUNTS SUBJECT TO PENALTY.—This paragraph shall not apply to amounts described in subparagraph (A) of section 72(m)(5) to the extent that section 72(m)(5) applies to such amounts.

''(v) BALANCE TO CREDIT OF EMPLOYEE NOT TO INCLUDE AMOUNTS PAYABLE UNDER QUALIFIED DOMESTIC RELATIONS ORDER.—For purposes of this paragraph, the balance to the credit of an employee shall not include any amount payable to an alternate payee under a qualified domestic relations order (within the meaning of section 414(p)).

''(vi) TRANSFERS TO COST-OF-LIVING ARRANGEMENT NOT TREATED AS DISTRIBUTION.—For purposes of this paragraph, the balance to the credit of an employee under a defined contribution plan shall not include any amount transferred from such defined contribution plan to a qualified cost-of-living arrangement (within the meaning of section 415(k)(2)) under a defined benefit plan.

''(vii) LUMP-SUM DISTRIBUTIONS OF ALTERNATE PAYEES.—If any distribution or payment of the balance to the credit of an employee would be treated as a lump-sum distribution, then, for purposes of this paragraph, the payment under a qualified domestic relations order (within the meaning of section 414(p)) of the balance to the credit of an alternate payee who is the spouse or former spouse of the employee shall be treated as a lump-sum distribution. For purposes of this clause, the balance to the credit of the alternate payee shall not include any amount payable to the employee.''

(2) Section 402(c) (relating to rules applicable to rollovers from exempt trusts) is amended by striking paragraph (10).

(3) Paragraph (1) of section 55(c) (defining regular tax) is amended by striking ''shall not include any tax imposed by section 402(d) and''.

(4) Paragraph (8) of section 62(a) (relating to certain portion of lump-sum distributions from pension plans taxed under section 402(d)) is hereby repealed.

(5) Section 401(a)(28)(B) (relating to coordination with distribution rules) is amended by striking clause (v).

(6) Subparagraph (B)(ii) of section 401(k)(10) (relating to distributions that must be lump-sum distributions) is amended to read as follows:

''(ii) LUMP-SUM DISTRIBUTION.—For purposes of this subparagraph, the term 'lump-sum distribution' means any distribution of the balance to the credit of an employee immediately before the distribution.''

(7) Section 406(c) (relating to termination of status as deemed employee not to be treated as separation from service for purposes of limitation of tax) is hereby repealed.

(8) Section 407(c) (relating to termination of status as deemed employee not to be treated as separation from service for purposes of limitation of tax) is hereby repealed.

(9) Section 691(c) (relating to deduction for estate tax) is amended by striking paragraph (5).

(10) Paragraph (1) of section 871(b) (relating to imposition of tax) is amended by striking ''section 1, 55, or 402(d)(1)'' and inserting ''section 1 or 55''.

(11) Subsection (b) of section 877 (relating to alternative tax) is amended by striking ''section 1, 55, or 402(d)(1)'' and inserting ''section 1 or 55''.

(12) Section 4980A(c)(4) is amended—

(A) by striking ''to which an election under section 402(d)(4)(B) applies'' and inserting ''(as defined in section 402(e)(4)(D)) with respect to which the individual elects to have this paragraph apply'',

(B) by adding at the end the following new flush sentence:

''An individual may elect to have this paragraph apply to only one lump-sum distribution.'', and

(C) by striking the heading and inserting:

''(4) SPECIAL ONE-TIME ELECTION.—''.

(13) Section 402(e) is amended by striking paragraph (5).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

(2) RETENTION OF CERTAIN TRANSITION RULES.—Notwithstanding any other provision of this section, the amendments made by this section shall not apply to any distribution for which the taxpayer elects the benefits of section 1122 (h)(3) or (h)(5) of the Tax Reform Act of 1986. For purposes of the preceding sentence, the rules of sections 402(c)(10) and 402(d) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this Act) shall apply.

SEC. 202. REPEAL OF $5,000 EXCLUSION OF EMPLOYEES' DEATH BENEFITS.

(a) IN GENERAL.—Subsection (b) of section 101 is hereby repealed.

(b) CONFORMING AMENDMENT.—Subsection (c) of section 101 is amended by striking ''subsection (a) or (b)'' and inserting ''subsection (a)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 203. SIMPLIFIED METHOD FOR TAXING ANNUITY DISTRIBUTIONS UNDER CERTAIN EMPLOYER PLANS.

(a) GENERAL RULE.—Subsection (d) of section 72 (relating to annuities; certain proceeds of endowment and life insurance contracts) is amended to read as follows:

''(d) SPECIAL RULES FOR QUALIFIED EMPLOYER RETIREMENT PLANS.—

''(1) SIMPLIFIED METHOD OF TAXING ANNUITY PAYMENTS.—

''(A) IN GENERAL.—In the case of any amount received as an annuity under a qualified employer retirement plan—

''(i) subsection (b) shall not apply, and

''(ii) the investment in the contract shall be recovered as provided in this paragraph.

''(B) METHOD OF RECOVERING INVESTMENT IN CONTRACT.—

''(i) IN GENERAL.—Gross income shall not include so much of any monthly annuity payment under a qualified employer retirement plan as does not exceed the amount obtained by dividing—

''(I) the investment in the contract (as of the annuity starting date), by

''(II) the number of anticipated payments determined under the table contained in clause (iii) (or, in the case of a contract to which subsection (c)(3)(B) applies, the number of monthly annuity payments under such contract).

''(ii) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of paragraphs (2) and (3) of subsection (b) shall apply for purposes of this paragraph.

''(iii) NUMBER OF ANTICIPATED PAYMENTS.—

''If the age of the primary annuitant on the annuity starting date is:	The number of anticipated payments is:
Not more than 55	300
More than 55 but not more than 60	260
More than 60 but not more than 65	240
More than 65 but not more than 70	170
More than 70	120

''(C) ADJUSTMENT FOR REFUND FEATURE NOT APPLICABLE.—For purposes of this paragraph, investment in the contract shall be determined under subsection (c)(1) without regard to subsection (c)(2).

''(D) SPECIAL RULE WHERE LUMP SUM PAID IN CONNECTION WITH COMMENCEMENT OF ANNUITY PAYMENTS.—If, in connection with the commencement of annuity payments under any qualified employer retirement plan, the taxpayer receives a lump sum payment—

''(i) such payment shall be taxable under subsection (e) as if received before the annuity starting date, and

''(ii) the investment in the contract for purposes of this paragraph shall be determined as if such payment had been so received.

''(E) EXCEPTION.—This paragraph shall not apply in any case where the primary annuitant has attained age 75 on the annuity starting date unless there are fewer than 5 years of guaranteed payments under the annuity.

''(F) ADJUSTMENT WHERE ANNUITY PAYMENTS NOT ON MONTHLY BASIS.—In any case where the annuity payments are not made on a monthly basis, appropriate adjustments in the application of this paragraph shall be made to take into account the period on the basis of which such payments are made.

''(G) QUALIFIED EMPLOYER RETIREMENT PLAN.—For purposes of this paragraph, the term 'qualified employer retirement plan' means any plan or contract described in paragraph (1), (2), or (3) of section 4974(c).

''(2) TREATMENT OF EMPLOYEE CONTRIBUTIONS UNDER DEFINED CONTRIBUTION PLANS.—For purposes of this section, employee contributions (and any income allocable thereto) under a defined contribution plan may be treated as a separate contract.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply in cases where the annuity starting date is after December 31, 1995.

SEC. 204. REQUIRED DISTRIBUTIONS.

(a) IN GENERAL.—Section 401(a)(9)(C) (defining required beginning date) is amended to read as follows:

''(C) REQUIRED BEGINNING DATE.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'required beginning date' means April 1 of the calendar year following the later of—

''(I) the calendar year in which the employee attains age 70½, or

''(II) the calendar year in which the employee retires.

''(ii) EXCEPTION.—Subclause (II) of clause (i) shall not apply—

''(I) except as provided in section 409(d), in the case of an employee who is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains age 70½, or

''(II) for purposes of section 408 (a)(6) or (b)(3).

''(iii) ACTUARIAL ADJUSTMENT.—In the case of an employee to whom clause (i)(II) applies who retires in a calendar year after the calendar year in which the employee attains age 70½, the employee's accrued benefit shall be actuarially increased to take into account the period after age 70½ in which the employee was not receiving any benefits under the plan.

''(iv) EXCEPTION FOR GOVERNMENTAL AND CHURCH PLANS.—Clauses (ii) and (iii) shall not apply in the case of a governmental plan or church plan. For purposes of this clause, the term 'church plan' means a plan maintained by a church for church employees, and the term 'church' means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to years beginning after December 31, 1995.

TITLE III—TARGETED ACCESS TO PENSION PLANS FOR SMALL EMPLOYERS

SEC. 301. CREDIT FOR PENSION PLAN START-UP COSTS OF SMALL EMPLOYERS.

(a) ALLOWANCE OF CREDIT.—Section 38(b) (defining current year business credit) is amended by striking ''plus'' at the end of paragraph (10), by striking the period at the end of paragraph (11) and inserting '', plus'', and by adding at the end the following new paragraph:

''(12) the small employer pension plan start-up cost credit.''

(b) SMALL EMPLOYER PENSION PLAN START-UP COST CREDIT.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by adding at the end the following new section:

''SEC. 45C. SMALL EMPLOYER PENSION PLAN START-UP COST CREDIT.

''(a) AMOUNT OF CREDIT.—For purposes of section 38—

''(1) IN GENERAL.—The small employer pension plan start-up cost credit for any taxable year is an amount equal to the qualified start-up costs of an eligible employer in establishing a qualified pension plan.

''(2) AGGREGATE LIMITATION.—The amount of the credit under paragraph (1) for any taxable year shall not exceed $1,000, reduced by the aggregate amount determined under this section for all preceding taxable years of the taxpayer.

''(b) QUALIFIED START-UP COSTS; QUALIFIED PENSION PLAN.—For purposes of this section—

''(1) QUALIFIED START-UP COSTS.—The term 'qualified start-up costs' means any ordinary and necessary expenses of an eligible employer which—

''(A) are paid or incurred in connection with the establishment of a qualified pension plan, and

''(B) are of a nonrecurring nature.

''(2) QUALIFIED PENSION PLAN.—The term 'qualified pension plan' means—

''(A) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a), or

''(B) a simplified employee pension (as defined in section 408(k)).

''(c) ELIGIBLE EMPLOYER.—For purposes of this section—

''(1) IN GENERAL.—The term 'eligible employer' means an employer which—

''(A) had an average daily number of employees during the preceding taxable year not in excess of 50, and

''(B) did not make any contributions on behalf of any employee to a qualified pension plan during the 2 taxable years immediately preceding the taxable year.

''(2) PROFESSIONAL SERVICE EMPLOYERS EXCLUDED.—Such term shall not include an employer substantially all of the activities of

which involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting.

''(d) SPECIAL RULES.—For purposes of this section—

''(1) AGGREGATION RULES.—All persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (n) or (o) of section 414 shall be treated as one person.

''(2) DISALLOWANCE OF DEDUCTION.—No deduction shall be allowable under this chapter for any qualified start-up costs for which a credit is allowable under subsection (a).''

(c) CONFORMING AMENDMENTS.—

(1) Section 39(d) is amended by adding at the end the following new paragraph:

''(7) NO CARRYBACK OF PENSION CREDIT.—No portion of the unused business credit for any taxable year which is attributable to the small employer pension plan start-up cost credit determined under section 45C may be carried back to a taxable year ending before the date of the enactment of section 45C.''

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

''Sec. 45C. Small employer pension plan start-up cost credit.''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to costs incurred after the date of the enactment of this Act in taxable years ending after such date.

SEC. 302. MODIFICATIONS OF SIMPLIFIED EMPLOYEE PENSIONS.

(a) INCREASE IN NUMBER OF ALLOWABLE PARTICIPANTS FOR SALARY REDUCTION ARRANGEMENTS.—Section 408(k)(6)(B) is amended by striking ''25'' each place it appears in the text and heading thereof and inserting ''100''.

(b) REPEAL OF PARTICIPATION REQUIREMENT.—

(1) IN GENERAL.—Section 408(k)(6)(A) is amended by striking clause (ii) and by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(2) CONFORMING AMENDMENTS.—Clause (ii) of section 408(k)(6)(C) and clause (ii) of section 408(k)(6)(F) are each amended by striking ''subparagraph (A)(iii)'' and inserting ''subparagraph (A)(ii)''.

(c) ALTERNATIVE TEST.—Clause (ii) of section 408(k)(6)(A), as redesignated by subsection (b)(1), is amended by adding at the end the following new flush sentence:

''The requirements of the preceding sentence are met if the employer makes contributions to the simplified employee pension meeting the requirements of sections 401(k)(11) (B) or (C), 401(k)(11)(D), and 401(m)(10)(B).''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1995.

SEC. 303. EXEMPTION FROM TOP-HEAVY PLAN REQUIREMENTS.

(a) EXEMPTION FROM TOP-HEAVY PLAN REQUIREMENTS.—Section 416(g) (defining top-heavy plans) is amended by adding at the end the following new paragraph:

''(3) EXEMPTION FOR CERTAIN PLANS.—A plan shall not be treated as a top-heavy plan if, for such plan year, the employer has no highly compensated employees (as defined in section 414(q)) by reason of section 414(q)(2).''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 1995.

SEC. 304. TAX-EXEMPT ORGANIZATIONS ELIGIBLE UNDER SECTION 401(k).

(a) GENERAL RULE.—Clause (ii) of section 401(k)(4)(B) is amended to read as follows:

''(ii) any organization described in section 501(c)(3) which is exempt from tax under section 501(a).''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to plan years beginning after December 31, 1995, but shall not apply to any cash or deferred arrangement to which clause (i) of section 1116(f)(2)(B) of the Tax Reform Act of 1986 applies.

SEC. 305. REGULATORY TREATMENT OF SMALL EMPLOYERS.

(a) IN GENERAL.—Section 7805(f) (relating to review of impact of regulations on small business) is amended by adding at the end the following new subparagraph:

''(4) SPECIAL RULE FOR PENSION REGULATIONS.—

''(A) IN GENERAL.—Any regulation proposed to be issued by the Secretary which relates to qualified pension plans shall not take effect unless the Secretary includes provisions to address any special needs of the small employers.

''(B) QUALIFIED PENSION PLAN.—For purposes of this paragraph, the term 'qualified pension plan' means—

''(i) any plan which includes a trust described in section 401(a) which is exempt from tax under section 501(a), or

''(ii) any simplified employee pension (as defined in section 408(k)).''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to regulations issued after the date of the enactment of this Act.

TITLE IV—PAPERWORK REDUCTION

SEC. 401. REPEAL OF COMBINED SECTION 415 LIMIT.

(a) IN GENERAL.—Section 415(e) (relating to limitation in case of defined benefit plan and defined contribution plan for same employee) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (B) of section 415(b)(5) is amended by striking ''and subsection (e)''.

(2) Section 415(f)(1) is amended by striking '', (c), and (e)'' and inserting ''and (c)''.

(3) Section 415(g) is amended by striking ''subsections (e) and (f)'' and inserting ''subsection (f)''.

(4) Section 415(k)(2)(A) is amended—

(A) by striking clause (i) and inserting:

''(i) any contribution made directly by an employee under such arrangement shall not be treated as an annual addition for purposes of subsection (c), and'', and

(B) by striking ''subsections (c) and (e)'' in clause (ii) and inserting ''subsection (c)''.

(5) Section 416(h) is hereby repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1995.

SEC. 402. DUTIES OF SPONSORS OF CERTAIN PROTOTYPE PLANS.

(a) IN GENERAL.—The Secretary of the Treasury may, as a condition of sponsorship, prescribe rules defining the duties and responsibilities of sponsors of master and prototype plans, regional prototype plans, and other Internal Revenue Service preapproved plans.

(b) DUTIES RELATING TO PLAN AMENDMENT, NOTIFICATION OF ADOPTERS, AND PLAN ADMINISTRATION.—The duties and responsibilities referred to in subsection (a) may include—

(1) the maintenance of lists of persons adopting the sponsor's plans, including the updating of such lists not less frequently than annually,

(2) the furnishing of notices at least annually to such persons and to the Secretary or the Secretary's delegate, in such form and at such time as the Secretary shall prescribe,

(3) duties relating to administrative services to such persons in the operation of their plans, and

(4) other duties that the Secretary considers necessary to ensure that—

(A) the master and prototype, regional prototype, and other preapproved plans of adopting employers are timely amended to meet the requirements of the Internal Revenue Code of 1986 or of any rule or regulation of the Secretary, and

(B) adopting employers receive timely notification of amendments and other actions taken by sponsors with respect to their plans.

TITLE V—MISCELLANEOUS SIMPLIFICATION

SEC. 501. TREATMENT OF LEASED EMPLOYEES.

(a) GENERAL RULE.—Subparagraph (C) of section 414(n)(2) (defining leased employee) is amended to read as follows:

''(C) such services are performed under significant direction or control by the recipient.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to years beginning after December 31, 1995, but shall not apply to any relationship determined under an Internal Revenue Service ruling issued before the date of the enactment of this Act pursuant to section 414(n)(2)(C) of the Internal Revenue Code of 1986 (as in effect on the day before such date) not to involve a leased employee.

SEC. 502. PLANS COVERING SELF-EMPLOYED INDIVIDUALS.

(a) AGGREGATION RULES.—Section 401(d) (relating to additional requirements for qualification of trusts and plans benefiting owner-employees) is amended to read as follows:

''(d) CONTRIBUTION LIMIT ON OWNER-EMPLOYEES.—A trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are owner-employees shall constitute a qualified trust under this section only if, in addition to meeting the requirements of subsection (a), the plan provides that contributions on behalf of any owner-employee may be made only with respect to the earned income of such owner-employee which is derived from the trade or business with respect to which such plan is established.''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1995.

SEC. 503. ELIMINATION OF SPECIAL VESTING RULE FOR MULTIEMPLOYER PLANS.

(a) IN GENERAL.—Paragraph (2) of section 411(a) (relating to minimum vesting standards) is amended—

(1) by striking ''subparagraph (A), (B), or (C)'' and inserting ''subparagraph (A) or (B)''; and

(2) by striking subparagraph (C).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning on or after the earlier of—

(1) the later of—

(A) January 1, 1996, or

(B) the date on which the last of the collective bargaining agreements pursuant to which the plan is maintained terminates (determined without regard to any extension thereof after the date of the enactment of this Act), or

(2) January 1, 1998.

Such amendments shall not apply to any individual who does not have more than 1 hour of service under the plan on or after the 1st day of the 1st plan year to which such amendments apply.

SEC. 504. FULL-FUNDING LIMITATION OF MULTIEMPLOYER PLANS.

(a) FULL-FUNDING LIMITATION.—Section 412(c)(7)(C) (relating to full-funding limitation) is amended—

(1) by inserting ''or in the case of a multiemployer plan,'' after ''paragraph (6)(B),'', and

(2) by inserting ''AND MULTIEMPLOYER PLANS'' after ''PARAGRAPH (6)(B)'' in the heading thereof.

(b) VALUATION.—Section 412(c)(9) is amended—

(1) by inserting ''(3 years in the case of a multiemployer plan)'' after ''year'', and

(2) by striking ''ANNUAL VALUATION'' in the heading and inserting ''VALUATION''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1995.

SEC. 505. ALTERNATIVE FULL-FUNDING LIMITATION.

(a) IN GENERAL.—Subsection (c) of section 412 (relating to minimum funding standards) is amended by redesignating paragraphs (8) through (12) as paragraphs (9) through (13), respectively, and by adding after paragraph (7) the following new paragraph:

''(8) ALTERNATIVE FULL-FUNDING LIMITATION.—

''(A) GENERAL RULE.—An employer may elect the full-funding limitation under this paragraph with respect to any defined benefit plan of the employer in lieu of the full-funding limitation determined under paragraph (7) if the requirements of subparagraphs (C) and (D) are met.

''(B) ALTERNATIVE FULL-FUNDING LIMITATION.—The full-funding limitation under this paragraph is the full-funding limitation determined under paragraph (7) without regard to subparagraph (A)(i)(I) thereof.

''(C) REQUIREMENTS RELATING TO PLAN ELIGIBILITY.—

''(i) IN GENERAL.—The requirements of this subparagraph are met with respect to a defined benefit plan if—

''(I) as of the 1st day of the election period, the average accrued liability of participants accruing benefits under the plan for the 5 immediately preceding plan years is at least 80 percent of the plan's total accrued liability,

''(II) the plan is not a top-heavy plan (as defined in section 416(g)) for the 1st plan year of the election period or either of the 2 preceding plan years, and

''(III) each defined benefit plan of the employer (and each defined benefit plan of each employer who is a member of any controlled group which includes such employer) meets the requirements of subclauses (I) and (II).

''(ii) FAILURE TO CONTINUE TO MEET REQUIREMENTS.—

''(I) If any plan fails to meet the requirement of clause (i)(I) for any plan year during an election period, the benefits of the election under this paragraph shall be phased out under regulations prescribed by the Secretary.

''(II) If any plan fails to meet the requirement of clause (i)(II) for any plan year during an election period, such plan shall be treated as not meeting the requirements of clause (i) for the remainder of the election period.

If there is a failure described in subclause (I) or (II) with respect to any plan, such plan (and each plan described in clause (i)(III) with respect to such plan) shall be treated as not meeting the requirements of clause (i) for any of the 10 plan years beginning after the election period.

''(D) REQUIREMENTS RELATING TO ELECTION.—The requirements of this subparagraph are met with respect to an election if—

''(i) FILING DATE.—Notice of such election is filed with the Secretary (in such form and manner and containing such information as the Secretary may provide) by January 1 of any calendar year, and is effective as of the 1st day of the election period beginning on or after January 1 of the following calendar year.

''(ii) CONSISTENT ELECTION.—Such an election is made for all defined benefit plans maintained by the employer or by any member of a controlled group which includes the employer.

''(E) TERM OF ELECTION.—Any election made under this paragraph shall apply for the election period.

''(F) OTHER CONSEQUENCES OF ELECTION.—

''(i) NO FUNDING WAIVERS.—In the case of a plan with respect to which an election is made under this paragraph, no waiver may be granted under subsection (d) for any plan year beginning after the date the election was made and ending at the close of the election period with respect thereto.

''(ii) FAILURE TO MAKE SUCCESSIVE ELECTIONS.—If an election is made under this paragraph with respect to any plan and such an election does not apply for each successive plan year of such plan, such plan shall be treated as not meeting the requirements of subparagraph (C) for the period of 10 plan years beginning after the close of the last election period for such plan.

''(G) DEFINITIONS.—For purposes of this paragraph—

''(i) ELECTION PERIOD.—The term 'election period' means the period of 5 consecutive plan years beginning with the 1st plan year for which the election is made.

''(ii) CONTROLLED GROUP.—The term 'controlled group' means all persons who are treated as a single employer under subsection (b), (c), (m), or (o) of section 414.''

(b) ALTERATION OF DISCRETIONARY REGULATORY AUTHORITY.—Subparagraph (D) of section 412(c)(7) is amended by striking ''provide—'' and all that follows through ''(iii) for'' and inserting ''provide for''.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall take effect on January 1, 1997.

(2) TRANSITION PERIOD.—In the case of a plan with respect to which a transition period election is made under section 412(c)(8)(D)(ii) of the Internal Revenue Code of 1986 (as added by this section), the amendments made by this section shall take effect on July 1, 1996.

SEC. 506. AFFILIATED EMPLOYERS.

(a) IN GENERAL.—For purposes of Treasury Regulations section 1.501(c)(9)–2(a)(1), a group of employers shall be deemed to be affiliated if they are substantially all section 501(c)(12) organizations which perform services (or with respect to which their members perform services) which are the same or are directly related to each other.

(b) SECTION 501(c)(12) ORGANIZATION.—For purposes of this section, the term ''section 501(c)(12) organization'' means—

(1) any organization described in section 501(c)(12) of the Internal Revenue Code of 1986,

(2) any organization providing a service which is the same as a service which is (or could be) provided by an organization described in paragraph (1),

(3) any organization described in paragraph (4) or (6) of section 501(c) of such Code, but only if at least 80 percent of the members of the organization are organizations described in paragraph (1) or (2), and

(4) any organization which is a national association of organizations described in paragraph (1), (2), or (3).

An organization described in paragraph (2) (but not in paragraph (1)) shall not be treated as a section 501(c)(12) organization with respect to a voluntary employees' beneficiary association unless a substantial number of employers maintaining such association are described in paragraph (1).

(c) EFFECTIVE DATE.—The provisions of this section shall apply to years beginning after December 31, 1995.

SEC. 507. TREATMENT OF GOVERNMENTAL PLANS UNDER SECTION 415.

(a) COMPENSATION LIMIT.—Subsection (b) of section 415 is amended by adding immediately after paragraph (10) the following new paragraph:

''(11) SPECIAL LIMITATION RULE FOR GOVERNMENTAL PLANS.—In the case of a governmental plan (as defined in section 414(d)), subparagraph (B) of paragraph (1) shall not apply.''

(b) TREATMENT OF CERTAIN EXCESS BENEFIT PLANS.—

(1) IN GENERAL.—Section 415 is amended by adding at the end the following new subsection:

''(m) TREATMENT OF QUALIFIED GOVERNMENTAL EXCESS BENEFIT ARRANGEMENTS.—

''(1) GOVERNMENTAL PLAN NOT AFFECTED.—In determining whether a governmental plan (as defined in section 414(d)) meets the requirements of this section, benefits provided under a qualified governmental excess benefit arrangement shall not be taken into account. Income accruing to a governmental plan (or to a trust that is maintained solely for the purpose of providing benefits under a qualified governmental excess benefit arrangement) in respect of a qualified governmental excess benefit arrangement shall constitute income derived from the exercise of an essential governmental function upon which such governmental plan (or trust) shall be exempt from tax under section 115.

''(2) TAXATION OF PARTICIPANT.—For purposes of this chapter—

''(A) the taxable year or years for which amounts in respect of a qualified governmental excess benefit arrangement are includible in gross income by a participant, and

''(B) the treatment of such amounts when so includible by the participant,

shall be determined as if such qualified governmental excess benefit arrangement were treated as a plan for the deferral of compensation which is maintained by a corporation not exempt from tax under this chapter and which does not meet the requirements for qualification under section 401.

''(3) QUALIFIED GOVERNMENTAL EXCESS BENEFIT ARRANGEMENT.—For purposes of this subsection, the term 'qualified governmental excess benefit arrangement' means a portion of a governmental plan if—

''(A) such portion is maintained solely for the purpose of providing to participants in the plan that part of the participant's annual benefit otherwise payable under the terms of the plan that exceeds the limitations on benefits imposed by this section,

''(B) under such portion no election is provided at any time to the participant (directly or indirectly) to defer compensation, and

''(C) benefits described in subparagraph (A) are not paid from a trust forming a part of such governmental plan unless such trust is maintained solely for the purpose of providing such benefits.''

(2) COORDINATION WITH SECTION 457.—Subsection (e) of section 457 is amended by adding at the end the following new paragraph:

''(14) TREATMENT OF QUALIFIED GOVERNMENTAL EXCESS BENEFIT ARRANGEMENTS.—Subsections (b)(2) and (c)(1) shall not apply to any qualified governmental excess benefit arrangement (as defined in section 415(m)(3)), and benefits provided under such an arrangement shall not be taken into account in determining whether any other plan is an eligible deferred compensation plan.''

(3) CONFORMING AMENDMENT.—Paragraph (2) of section 457(f) is amended by striking the word ''and'' at the end of subparagraph (C), by striking the period after subparagraph (D) and inserting '', and'', and by adding at the end the following new subparagraph:

''(E) a qualified governmental excess benefit arrangement described in section 415(m).''

(c) EXEMPTION FOR SURVIVOR AND DISABILITY BENEFITS.—Paragraph (2) of section 415(b) is amended by adding at the end the following new subparagraph:

''(I) EXEMPTION FOR SURVIVOR AND DISABILITY BENEFITS PROVIDED UNDER GOVERNMENTAL PLANS.—Subparagraph (B) of paragraph (1), subparagraph (C) of this paragraph, and paragraph (5) shall not apply to—

''(i) income received from a governmental plan (as defined in section 414(d)) as a pension, annuity, or similar allowance as the result of the recipient becoming disabled by reason of personal injuries or sickness, or

''(ii) amounts received from a governmental plan by the beneficiaries, survivors, or the estate of an employee as the result of the death of the employee.''

(d) REVOCATION OF GRANDFATHER ELECTION.—

(1) IN GENERAL.—Subparagraph (C) of section 415(b)(10) is amended by adding at the end the following new clause:

''(ii) REVOCATION OF ELECTION.—An election under clause (i) may be revoked not later than the last day of the third plan year beginning after the date of the enactment of this clause. The revocation shall apply to all plan years to which the election applied and to all subsequent plan years. Any amount paid by a plan in a taxable year ending after the revocation shall be includible in income in such taxable year under the rules of this chapter in effect for such taxable year, except that, for purposes of applying the limitations imposed by this section, any portion of such amount which is attributable to any taxable year during which the election was in effect shall be treated as received in such taxable year.''

(2) CONFORMING AMENDMENT.—Subparagraph (C) of section 415(b)(10) is amended by striking ''This'' and inserting:

''(i) IN GENERAL.—This''.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsections (a), (b), (c), and (d) shall apply to taxable years beginning on or after the date of the enactment of this Act. The amendments made by subsection (e) shall apply with respect to revocations adopted after the date of the enactment of this Act.

(2) TREATMENT FOR YEARS BEGINNING BEFORE DATE OF ENACTMENT.—A governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986) shall be treated as satisfying the requirements of section 415 of such Code for all taxable years beginning before the date of the enactment of this Act.

SEC. 508. TREATMENT OF DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.

(a) SPECIAL RULES FOR PLAN DISTRIBUTIONS.—Paragraph (9) of section 457(e) (relating to other definitions and special rules) is amended to read as follows:

''(9) BENEFITS NOT TREATED AS MADE AVAILABLE BY REASON OF CERTAIN ELECTIONS, ETC.—

''(A) TOTAL AMOUNT PAYABLE IS $3,500 OR LESS.—The total amount payable to a participant under the plan shall not be treated as made available merely because the participant may elect to receive such amount (or the plan may distribute such amount without the participant's consent) if—

''(i) such amount does not exceed $3,500, and

''(ii) such amount may be distributed only if—

''(I) no amount has been deferred under the plan with respect to such participant during the 2-year period ending on the date of the distribution, and

''(II) there has been no prior distribution under the plan to such participant to which this subparagraph applied.

A plan shall not be treated as failing to meet the distribution requirements of subsection (d) by reason of a distribution to which this subparagraph applies.

''(B) ELECTION TO DEFER COMMENCEMENT OF DISTRIBUTIONS.—The total amount payable to a participant under the plan shall not be treated as made available merely because the participant may elect to defer commencement of distributions under the plan if—

''(i) such election is made after amounts may be available under the plan in accordance with subsection (d)(1)(A) and before commencement of such distributions, and

''(ii) the participant may make only 1 such election.''

(b) COST-OF-LIVING ADJUSTMENT OF MAXIMUM DEFERRAL AMOUNT.—Subsection (e) of section 457, as amended by section 507(c)(2), is amended by adding at the end the following new paragraph:

''(15) COST-OF-LIVING ADJUSTMENT OF MAXIMUM DEFERRAL AMOUNT.—The Secretary shall adjust the $7,500 amount specified in subsections (b)(2) and (c)(1) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning October 1, 1994.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 509. CONTRIBUTIONS ON BEHALF OF DISABLED EMPLOYEES.

(a) ALL DISABLED PARTICIPANTS RECEIVING CONTRIBUTIONS.—Section 415(c)(3)(C) is amended by adding at the end the following: ''If a defined contribution plan provides for the continuation of contributions on behalf of all participants described in clause (i) for a fixed or determinable period, this subparagraph shall be applied without regard to clauses (ii) and (iii).''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1995.

SEC. 510. DISTRIBUTIONS UNDER RURAL COOPERATIVE PLANS.

(a) DISTRIBUTIONS FOR HARDSHIP OR AFTER A CERTAIN AGE.—Section 401(k)(7) is amended by adding at the end the following new subparagraph:

''(C) SPECIAL RULE FOR CERTAIN DISTRIBUTIONS.—A rural cooperative plan which includes a qualified cash or deferred arrangement shall not be treated as violating the requirements of section 401(a) or of paragraph (2) merely by reason of a hardship distribution or a distribution to a participant after attainment of age 59½. For purposes of this section, the term 'hardship distribution' means a distribution described in paragraph (2)(B)(i)(IV) (without regard to the limit of its application to profit-sharing or stock bonus plans).''

(b) DEFINITION OF RURAL COOPERATIVE PLANS.—

(1) PUBLIC UTILITY DISTRICTS.—Clause (i) of section 401(k)(7)(B) (defining rural cooperative) is amended to read as follows:

''(i) any organization which—

''(I) is engaged primarily in providing electric service on a mutual or cooperative basis, or

''(II) is engaged primarily in providing electric service to the public in its area of service and which is exempt from tax under this subtitle or which is a State or local government (or an agency or instrumentality thereof), other than a municipality (or an agency or instrumentality thereof).''

(2) RELATED ORGANIZATIONS.—Subparagraph (B) of section 401(k)(7), as amended by paragraph (1), is amended by striking clause (iv) and inserting the following new clauses:

''(iv) an organization which is a national association of organizations described in any other clause of this subparagraph, or

''(v) any other organization which provides services which are related to the activities or operations of an organization described in clause (i), (ii), (iii), or (iv), but only in the case of a plan with respect to which substantially all of the organizations maintaining it are described in clause (i), (ii), (iii), or (iv).''

(c) EFFECTIVE DATES.—

(1) DISTRIBUTIONS.—The amendments made by subsection (a) shall apply to distributions after the date of the enactment of this Act.

(2) RURAL COOPERATIVE.—The amendments made by subsection (b) shall apply to plan years beginning after December 31, 1984.

SEC. 511. SPECIAL RULES FOR PLANS COVERING PILOTS.

(a) GENERAL RULE.—

(1) Subparagraph (B) of section 410(b)(3) is amended to read as follows:

''(B) in the case of a plan established or maintained by one or more employers to provide contributions or benefits for air pilots employed by one or more common carriers engaged in interstate or foreign commerce or air pilots employed by carriers transporting mail for or under contract with the United States Government, all employees who are not air pilots.''

(2) Paragraph (3) of section 410(b) is amended by striking the last sentence and inserting the following new sentence: ''Subparagraph (B) shall not apply in the case of a plan which provides contributions or benefits for employees who are not air pilots or for air pilots whose principal duties are not customarily performed aboard aircraft in flight.''

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to years beginning after December 31, 1995.

SEC. 512. TENURED FACULTY.

(a) IN GENERAL.—Section 457(e)(11) is amended by inserting ''eligible faculty voluntary retirement incentive pay,'' after ''disability pay,''.

(b) DEFINITION.—Section 457(e), as amended by sections 507(c)(2) and 508(b), is amended by adding at the end the following new paragraph:

''(16) DEFINITION OF ELIGIBLE FACULTY VOLUNTARY RETIREMENT INCENTIVE PAY.—For purposes of this section, the term 'eligible faculty voluntary retirement incentive pay' means payments under a plan established for employees serving under contracts of unlimited tenure (or similar arrangements providing for unlimited tenure) at an institution of higher education (as defined in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a))) which—

''(A) provides—

''(i) payment to employees electing to retire during a specified period of time of limited duration, or

''(ii) payment to employees who elect to retire prior to normal retirement age,

''(B) provides that the total amount of payments to an employee does not exceed the equivalent of twice the employee's annual compensation (within the meaning of section 415(c)(3)) during the year immediately preceding the employee's termination of service, and

''(C) provides that all payments to an employee must be completed within 5 years after the employee's termination of service.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1995.

SEC. 513. UNIFORM RETIREMENT AGE.

(a) DISCRIMINATION TESTING.—Paragraph (5) of section 401(a) (relating to special rules relating to nondiscrimination requirements) is amended by adding at the end the following new subparagraph:

"(F) SOCIAL SECURITY RETIREMENT AGE.—For purposes of testing for discrimination under paragraph (4)—

"(i) the social security retirement age (as defined in section 415(b)(8)) shall be treated as a uniform retirement age, and

"(ii) subsidized early retirement benefits and joint and survivor annuities shall not be treated as being unavailable to employees on the same terms merely because such benefits or annuities are based in whole or in part on an employee's social security retirement age (as so defined)."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1995.

SEC. 514. UNIFORM PENALTY PROVISIONS TO APPLY TO CERTAIN PENSION REPORTING REQUIREMENTS.

(a) IN GENERAL.—

(1) Paragraph (1) of section 6724(d) is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", and by inserting after subparagraph (B) the following new subparagraph:

"(C) any statement of the amount of payments to another person required to be made to the Secretary under—

"(i) section 408(i) (relating to reports with respect to individual retirement accounts or annuities), or

"(ii) section 6047(d) (relating to reports by employers, plan administrators, etc.)."

(2) Paragraph (2) of section 6724(d) is amended by striking "or" at the end of subparagraph (S), by striking the period at the end of subparagraph (T) and inserting a comma, and by inserting after subparagraph (T) the following new subparagraphs:

"(U) section 408(i) (relating to reports with respect to individual retirement plans) to any person other than the Secretary with respect to the amount of payments made to such person, or

"(V) section 6047(d) (relating to reports by plan administrators) to any person other than the Secretary with respect to the amount of payments made to such person."

(b) MODIFICATION OF REPORTABLE DESIGNATED DISTRIBUTIONS.—

(1) SECTION 408.—Subsection (i) of section 408 (relating to individual retirement account reports) is amended by inserting "aggregating $10 or more in any calendar year" after "distributions".

(2) SECTION 6047.—Paragraph (1) of section 6047(d) (relating to reports by employers, plan administrators, etc.) is amended by adding at the end thereof the following new sentence: "No return or report may be required under the preceding sentence with respect to distributions to any person during any year unless such distributions aggregate $10 or more."

(c) QUALIFYING ROLLOVER DISTRIBUTIONS.—Section 6652(i) is amended—

(1) by striking "the $10" and inserting "$100", and

(2) by striking "$5,000" and inserting "$50,000".

(d) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 6047(f) is amended to read as follows:

"(1) For provisions relating to penalties for failures to file returns and reports required under this section, see sections 6652(e), 6721, and 6722."

(2) Subsection (e) of section 6652 is amended by adding at the end the following new sentence: "This subsection shall not apply to any return or statement which is an information return described in section 6724(d)(1)(C)(ii) or a payee statement described in section 6724(d)(2)(V)."

(3) Subsection (a) of section 6693 is amended by adding at the end the following new sentence: "This subsection shall not apply to any report which is an information return described in section 6724(d)(1)(C)(i) or a payee statement described in section 6724(d)(2)(U)."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to returns, reports, and other statements the due date for which (determined without regard to extensions) is after December 31, 1995.

SEC. 515. NATIONAL COMMISSION ON PRIVATE PENSION PLANS.

(a) IN GENERAL.—Chapter 77 is amended by adding at the end the following new section:

"SEC. 7524. NATIONAL COMMISSION ON PRIVATE PENSION PLANS.

"(a) ESTABLISHMENT.—There is hereby established a commission to be known as the National Commission on Private Pension Plans (in this section referred to as the 'Commission').

"(b) MEMBERSHIP.—

"(1) The Commission shall consist of—

"(A) 6 members to be appointed by the President;

"(B) 6 members to be appointed by the Speaker of the House of Representatives; and

"(C) 6 members to be appointed by the Majority Leader of the Senate.

"(2) The appointments made pursuant to subparagraphs (B) and (C) of paragraph (1) shall be made in consultation with the chairmen of the committees of the House of Representatives and the Senate, respectively, having jurisdiction over relevant Federal pension programs.

"(c) DUTIES AND FUNCTIONS OF COMMISSION; PUBLIC HEARINGS IN DIFFERENT GEOGRAPHICAL AREAS; BROAD SPECTRUM OF WITNESSES AND TESTIMONY.—

"(1) It shall be the duty and function of the Commission to conduct the studies and issue the report required by subsection (d).

"(2) The Commission (and any committees that it may form) may conduct public hearings in order to receive the views of a broad spectrum of the public on the status of the Nation's private retirement system.

"(d) REPORT TO THE PRESIDENT AND CONGRESS; RECOMMENDATIONS.—The Commission shall submit to the President, to the Majority Leader and the Minority Leader of the Senate, and to the Majority Leader and the Minority Leader of the House of Representatives a report no later than September 1, 1996, reviewing existing Federal incentives and programs that encourage and protect private retirement savings. The final report shall also set forth recommendations where appropriate for increasing the level and security of private retirement savings.

"(e) TIME OF APPOINTMENT OF MEMBERS; VACANCIES; ELECTION OF CHAIRMAN; QUORUM; CALLING OF MEETINGS; NUMBER OF MEETINGS; VOTING; COMPENSATION AND EXPENSES.—

"(1)(A) Members of the Commission shall be appointed for terms ending on September 1, 1996.

"(B) A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the vacant position was first filled.

"(2) The Commission shall elect 1 of its members to serve as Chairman of the Commission.

"(3) A majority of the members of the Commission shall constitute a quorum for the transaction of business.

"(4) The Commission shall meet at the call of the Chairman.

"(5) Decisions of the Commission shall be according to the vote of a simple majority of those present and voting at a properly called meeting.

"(6) Members of the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Commission.

"(f) EXECUTIVE DIRECTOR AND ADDITIONAL PERSONNEL; APPOINTMENT AND COMPENSATION; CONSULTANTS.—

"(1) The Commission shall appoint an Executive Director of the Commission. In addition to the Executive Director, the Commission may appoint and fix the compensation of such personnel as it deems advisable. Such appointments and compensation may be made without regard to the provisions of title 5, United States Code, that govern appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title that relate to classifications and the General Schedule pay rates.

"(2) The Commission may procure such temporary and intermittent services of consultants under section 3109(b) of title 5, United States Code, as the Commission determines to be necessary to carry out the duties of the Commission.

"(g) TIME AND PLACE OF HEARINGS AND NATURE OF TESTIMONY AUTHORIZED.—In carrying out its duties, the Commission, or any duly organized committee thereof, is authorized to hold such hearings, sit and act at such times and places, and take such testimony, with respect to matters for which it has a responsibility under this section, as the Commission or committee may deem advisable.

"(h) DATA AND INFORMATION FROM OTHER AGENCIES AND DEPARTMENTS.—

"(1) The Commission may secure directly from any department or agency of the United States such data and information as may be necessary to carry out its responsibilities.

"(2) Upon request of the Commission, any such department or agency shall furnish any such data or information.

"(i) SUPPORT SERVICES BY GENERAL SERVICES ADMINISTRATION.—The General Services Administration shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

"(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each of fiscal years 1995 and 1996, such sums as may be necessary to carry out this section.

"(k) DONATIONS ACCEPTED AND DEPOSITED IN TREASURY IN SEPARATE FUND; EXPENDITURES.—

"(1) The Commission is authorized to accept donations of money, property, or personal services. Funds received from donations shall be deposited in the Treasury in a separate fund created for this purpose. Funds appropriated for the Commission and donated funds may be expended for such purposes as official reception and representation expenses, public surveys, public service announcements, preparation of special papers, analyses, and documentaries, and for such other purposes as determined by the Commission to be in furtherance of its mission to review national issues affecting private pension plans.

"(2) Expenditures of appropriated and donated funds shall be subject to such rules and regulations as may be adopted by the Commission and shall not be subject to Federal procurement requirements.

"(l) PUBLIC SURVEYS.—The Commission is authorized to conduct such public surveys as it deems necessary in support of its review of national issues affecting private pension plans and, in conducting such surveys, the Commission shall not be deemed to be an "agency" for the purpose of section 3502 of title 44, United States Code."

(b) CONFORMING AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end the following new item:

"Sec. 7524. National Commission on Private Pension Plans."

SEC. 516. DATE FOR ADOPTION OF PLAN AMENDMENTS.

If any amendment made by this Act requires an amendment to any plan, such plan amendment shall not be required to be made before the first day of the first plan year beginning on or after January 1, 1997, if—

(1) during the period after such amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment, and

(2) such plan amendment applies retroactively to such period.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this section shall be applied by substituting ''1999'' for ''1997''.

PENSION SIMPLIFICATION ACT OF 1995

The Pension Simplification Act will provide greater access to our private pension system by reducing the costs of providing pension benefits. The Act achieves this result by eliminating many of the unnecessary complexities in the Tax Code. While the Act affects both large and small employers, special provisions target small business where sponsorship of a plan by an employer, and employee participation, is historically very low.

1. Simplification of the Definition of ''Highly Compensated Employee''. Current law requires an employer to identify HCEs using a 7-part test in order to ensure that HCEs do not disproportionately benefit under the plan. The bill proposes a simpler 3-part test to achieve this goal. Under the proposal, an employee is an HCE if the employee (1) was a 5-percent owner at any time during the year or preceding year, (2) has compensation for the preceding year in excess of $80,000 (indexed), or (3) was the highest-paid officer during the year (see #10 below which provides an exception to this rule for certain small businesses).

2. Repeal of the Family Aggregation Rules. The family aggregation rules greatly complicate the application of the nondiscrimination tests, particularly for family-owned or operated businesses, and may unfairly reduce retirement benefits for the family members who are not HCEs. The bill eliminates the rule that requires certain HCEs and their family members to be treated as a single employee.

3. Simplify the Definition of ''Compensation'' under Section 415. The general limit on a participant's annual contributions is based on that individuals's taxable compensation. The result is that pre-tax employee contributions (e.g., to cafeteria plans) reduce the participant's taxable compensation, and in turn, their section 415 contribution limit. This rule makes it difficult to communicate in advance the section 415 limit and it leads to many inadvertent violations. Under the bill, pre-tax employee contributions would be counted as compensation under section 415.

4. Exempt Defined Contribution Plans from the Minimum Participation Rule. Every qualified plan currently must cover at least 50 employee or, in smaller companies, 40% of all employees of the employer. This rule is intended to prevent the use of individual defined benefit plans to give high paid employees better benefits than those provided to others under a separate plan. Because the abuses addressed by the rule are unlikely to arise in the context of defined contribution plans, the rule adds unnecessary administrative burden and complexity for defined contribution plans; therefore, the bill repeals the rule for these plans.

5. Section 401(k) Safe Harbor. Current law requires complicated, annual comparisons between the level of contributions to 401(k) plans made by HCEs and non-highly compensated employees. First, the Act will eliminate end-of-year adjustments caused by employee population changes during the year by providing a rule that the maximum contribution for HCEs is determined by reference to NHCEs for the preceding, rather than the current year. Second, the bill provides two 401(k) plan designs which if offered by the employer, will qualify the employer for a special safe harbor, thus eliminating the need to do several annual, complex discrimination tests that apply to traditional plans.

6. Simplify Taxation of Annuity Distributions. A simplified method for determining the nontaxable portion of an annuity payment, similar to the current simplified alternative, would become the required method. Taxpayers would no longer be compelled to do calculations under multiple methods in order to determine the most advantageous approach. Under the simplified method, the portion of an annuity payment that would be nontaxable is generally equal to the employees's total after-tax contributions, divided by the number of anticipated payments listed in a table (based on the employee's age as of the annuity starting date).

7. Repeal Rule Requiring Employer Plans to Commence Minimum Distributions before Retirement. The Act repeals the current law rule requiring distribution of benefits after a participant reaches age 70½, even if he or she does not retire. However, the current law rule will continue to apply to 5% owners.

8. Eliminate the Section 415(e) Combined Plan Limit. Section 415(e) applies an overall limit on benefits and contributions with respect to an individual who participates in both a defined contribution plan and defined benefit plan maintained by the same employer. These rules are extremely complicated, and very burdensome to administer because they require maintaining compensation and contribution records for *all* employees for *all* years of service. Further, the test is duplicative in that there are other provisions in the Code which safeguard against an individual accruing excessive retirement benefits on a tax-favored basis.

9. Repeal 5-year Income Averaging for Lump-Sum Distributions. The bill repeals the special rule that allows a plan participant to calculate the current year tax on a lump-sum pension distribution as if the amount were received over a 5-year period. This special rule, designed to prevent unfair ''bunching'' of income, is no longer needed because of liberalized rollover rules enacted in 1992 (originally part of the Pension Simplification Act) which allow for partial distributions from a plan.

10. Targeting Small Business. Retirement plan coverage among employees of small employers is dismally low. The cost of establishing a retirement plan is, in a significant way, disproportionately high for small employers. The following provisions will help to alleviate these barriers:

Tax Credit for Start-Up Costs. Employers with less than 50 employees that have not maintained a qualified retirement plan at any time during the immediately preceding two years, would be eligible for an income tax credit (up to $1000) equal to the cost of establishing a qualified plan.

Elimination of the One-High-Paid Officer Rule. The highest paid officer of an employer is considered an HCE under current law. This rule is unfair for small employers with low-wage workforces. For example, the highest paid officer of a small employer may earn an amount less than $66,000 yet that employee must be treated as highly compensated. The result is that the nondiscrimination rules severely limit his or her benefits. Thus many small employers decide not to offer plans. The bill provides that no owners or employees would be treated as highly compensated unless they received compensation in excess of $80,000.

Salary Reduction Simplified Employee Pensions (SEPs). The Act adds the two design-based safe harbors, discussed in #5 above, as methods of satisfying the nondiscrimination requirements for SEPs. Further, the Act provides that SEPs may be established by employers with 100 or fewer employees, instead of current law (25 or fewer employees), and the Act repeals the requirement that at least half of eligible employees actually participate in a salary reduction SEP.

Exemption from Top Heavy Plan Requirements. Under the Act, if no employee makes over $80,000 (indexed) in the preceding year, the top heavy plan requirements do not apply for that year.

11. Permit Tax Exempt Organizations to Maintain 401(k) Plans. Except for certain plans established before July 2, 1986, an organization exempt from income tax is not allowed to maintain a 401(k) plan. This rule prevents many tax-exempt organizations from offering their employees retirement benefits on a salary reduction basis. The bill provides that tax exempt organizations (except section 501(c)(3)s which may currently provide 403(b) plans) may provide 401(k) plans to their employees.

12. Leased Employees. Generally, the bill defines an employee as a ''leased employee'' of a service recipient only if the services are performed by the individual under the control of the recipient. This simplified ''control test'' replaces the complicated, 4-part ''historically performed test.''

13. Vesting for Multi-Employer Plans. The bill conforms vesting requirements for multi-employer plans to vesting requirements for all other qualified plans. Thus, the current law 10-year vesting rule for collectively bargained plans would be repealed and such plans would be required to comply with general vesting rules.

14. Full-Funding Limitations for Multi-Employer Plans. The bill simplifies the calculation of the full funding limitation for multi-employer plans, and requires actuarial valuations be performed at least every 3 years, instead of every year.

15. Alternative Full-Funding Limitation. current law provides a formula which limits pension contributions an employer may make to a plan, in order to prevent over-funding. The bill provides the Secretary of Treasury authority to allow employers some flexibility in determining the full-funding limitation.

16. Volunteer Employees' Beneficiary Association (VEBA). Current regulations require that employees eligible to participate in a VEBA share an employment-related common bond. The bill clarifies this requirement by specifying that an employment-related common bond includes employer affiliation where employers are in the same line of business; they act jointly to perform tasks that are integral to the activities of each of them; and that such joint activities are sufficiently extensive that the maintenance of a common VEBA is not a major part of such joint activities.

17. Government Plans. The limitations on contributions and benefits present special problems for plans maintained by State and local governments due to the special nature of the involvement and operation of such governments. The Act addresses these problems by providing (1) section 457 does not apply to excess benefit plans maintained by State or local governments, (2) the compensation limit on benefits under a defined benefit plan does not apply to plans maintained by a State or local government, and (3) the defined benefit pension plan limits do

not apply to certain disability and survivor benefits provided under State and local government plans.

Further, because of the unique characteristics of the State and local government employee plans, many long-tenured and relatively low-paid employees may be eligible to receive benefits in excess of their average compensation. Therefore, the Act provides that the current law 100% of compensation limit does not apply to plans maintained by State and local governments.

18. State and Local Government Deferred Compensation (Section 457) Plans. The Act makes 3 changes to Section 457 plan rules: (1) it indexes the dollar limit on deferrals; (2) it permits in-service distributions from accounts of less than $3,500 if there has been no amount deferred with respect to the account for 2 years and if there has been no prior distribution under this cash-out rule; and (3) it permits an additional election as to the time distributions must begin under the plan. These changes are designed to make Section 457 plan participants treated more like private plan participants.

19. Rural Cooperatives. Unlike all other section 401(k) plans, rural cooperative 401(k) plans are not permitted to make in-service distributions for hardship or after age 59½. The Act treats rural cooperative plans the same as all other 401(k) plans. The Act also clarifies the definition of a ''rural cooperative'' for purposes of determining eligibility to offer a 404(k) plan.

20. Rules for Plans Covering Pilots. The Act applies the same discrimination testing rules to pensions maintained for airland pilots, whether or not the plans are collectively-bargained. Thus, under the rules, employees who are not air pilots may be excluded from consideration in testing whether the plan satisfies the minimum coverage requirements.

21. Eligible Faculty Voluntary Retirement Incentive Plans. The Act modifies the ''risk of forfeiture'' rule governing the timing of tax liability to allow qualifying future payments under an eligible faculty voluntary retirement incentive plan to be taxes when received, as opposed to at the time the participant becomes entitled to them.

22. Uniform Retirement Act/Social Security Retirement Age. The bill recognizes that plans use age 65 as a ''normal retirement age'' in part because it is Social Security's ''normal retirement age.'' Because the ''normal retirement age'' is scheduled to increase under the Social Security law, the bill provides that for purposes of the general nondiscrimination rule, the Social Security retirement age is a uniform retirement age.

23. Blue-Ribbon Commission. The bill establishes a blue-ribbon commission which will identify the long-term goals for private retirement savings. The 18-member commission would consist of 6 members appointed by the President; 6 by the Speaker of the House; and 6 by the Senate Majority Leader.

Mr. PRYOR. Mr. President, this month I was extremely gratified when President Clinton unveiled his approach to simplify the pension rules. Many of the provisions in this legislation are also in this particular Pension Simplification Act of 1995 that I am introducing today and am joined with by my colleagues, Senators HATCH, BREAUX, and LEAHY.

I wish to thank our colleagues for helping us in this matter. I commend the President for focusing on this very important cause affecting small businesses throughout our country. I believe that by working together with our Republican colleagues on the other side of the aisle and with our President, all of us together this year can enact this legislation into law. Should we do this, small businesses across America would be extremely grateful. It is important that this legislation have support from both sides, Mr. President, and I am happy to have Senator HATCH, my fellow member of the Finance Committee, as a lead cosponsor on this bill. I wish to thank him for joining us, and I look forward to working with him on this very important legislation.

Mr. President, these new pension simplification provisions affecting small business have already been strongly endorsed by three important small business organizations:

The National Federation of Independent Business, the U.S. Chamber of Commerce, and the Small Business Council of America.

I ask unanimous consent that a copy of these letters of endorsement from these very distinguished organizations be printed in the RECORD.

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

SMALL BUSINESS COUNCIL OF AMERICA
Overland Park, KS.

Re Pension simplification bill.

Hon. DAVID PRYOR,
Russell Senate Office Building, Washington, DC.

DEAR SENATOR PRYOR: The Small Business Council of America strongly endorses the new pension simplification legislation which will streamline the country's voluntary retirement plan system and encourage savings. We particularly appreciate the provisions that target the Nation's small businesses. There is no question that these provisions will give small businesses greater access to the retirement plan system than they have had over the last decade.

We have watched with approval your unceasing drive to revive the retirement plan system. Of particular importance to our members is the repeal of family aggregation, the institution of voluntary safe harbors for 401(k) plans and the tax credit for start up costs, the recognition that for many small businesses there is no such thing as a highly compensated employee, the return of 401(a)(26) to its original purpose and the repeal of the complicated 415(e) fraction. All of these changes, as well as others set forth in the bill, will dramatically improve the existing retirement plan system. By making the system user friendly, more small businesses will sponsor retirement plans. Easing administrative burdens will reduce the costs of maintaining retirement plans particularly for small businesses.

Retirement plans sponsored by small businesses operate under a stringent and excessively complicated statutory and regulatory system. These limitations and rules are now so complicated that the costs of sponsoring a retirement plan often outweigh the benefits that a small business can reasonably expect to obtain. By making the changes called for in this legislation, with a few additional changes, the costs incurred by small businesses sponsoring retirement plans will be brought back into line. The Small Business Council of America, with its technical expertise in the small business retirement plan area, believes that the changes contemplated by this legislation will significantly improve the country's voluntary retirement plan system.

Sincerely yours,

PAULA A. CALIMAFDE.

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
Washington, DC, June 27, 1995.

Hon. DAVID PRYOR,
U.S. Senate, Washington, DC.

DEAR SENATOR PRYOR: On behalf of the more than 600,000 members of the National Federation of Independent Business (NFIB), I wish to indicate our strong support for your legislation, The Pension Simplification Act of 1995.

NFIB believes that simplification of the regulations and reduction in the costs associated with retirement plans are of vital importance to American small business. Almost two-thirds of NFIB members strongly support pension simplification and the 1995 White House Conference on Small Business ranked pension simplification number seven out of sixty. Your legislation will increase the chances that small employers will set-up retirement plans, enabling their employees and themselves to provide for a secure retirement.

Three out of every four small businesses currently do not have retirement plans. Until small employers offer pension plans, many American workers will not be covered for their retirement outside of individual savings and Social Security.

An NFIB Education Foundation study revealed that one-third of small businesses which recently terminated their retirement plans, did so because of changing and complex regulations. Enabling small employers to implement a retirement plan without complex participation and non-discrimination rules as well as clarifying the definition of highly compensated employees will provide small employers with incentives to offer plans.

I also want to commend you for including a tax credit for small businesses equal to the cost of establishing a qualified retirement plan. And finally, NFIB supports your proposal to prohibit the IRS from issuing retirement plan regulations unless the regulation includes a section addressing the needs of small employers.

Small business owners purchase pensions coverage the same way they purchase other employee benefits. The lower the costs—in time, trouble and dollars—the more likely employers will participate. We look forward to working with you to achieve its passage.

Sincerely,

JACK FARIS,
President.

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA
Washington, DC, June 29, 1995.

Hon. DAVID H. PRYOR,
U.S. Senate, Washington, DC.

DEAR SENATOR PRYOR: On behalf of the U.S. Chamber of Commerce Federation of 215,000 businesses, 3,000 state and local chambers of commerce. 1,200 trade and professional associations, and 72 American Chambers of Commerce abroad, I commend you for introducing the ''Pension Simplification Act of 1995.''

The American business community is encouraged by your efforts to simplify the highly complex and overly burdensome private pension laws. We are especially pleased that many of the proposed changes in the legislation target small employers, providing incentives for small businesses to sponsor retirement plans.

As you know, the time has come to reverse the decade-old assault on private pensions,

and to enact sensible reform legislation that encourages employers to sponsor retirement plans for their employees. This legislation provides a solid framework for such reforms by making meaningful changes to many of the Internal Revenue Code provisions that currently hinder the private pension system. While the introduction of this legislation is a good start, there is much more that can and should be done to ensure that pension reform provides truly meaningful opportunities for increased savings through employer-sponsored pension plans.

The Chamber appreciates your leadership on this issue. We look forward to working with you and other members of Congress to ensure that the goals of simplifying our nation's pension laws and providing incentives for plan sponsorship are not lost as this legislation moves through Congress.

Sincerely,

R. BRUCE JOSTEN.

Mr. PRYOR. Mr. President, finally, in the coming days, I will be asking our colleagues to look closely at the Pension Simplification Act and join me in cosponsoring this effort. It is a bipartisan effort.

The bottom line is that it will increase retirement savings for workers in our country, especially those who work in small firms which, of course, is so critical to America's future.

Mr. HATCH. Mr. President, I am pleased to join with my distinguished colleague, Senator PRYOR, to introduce the Pension Simplification Act of 1995. I commend Senator PRYOR for the work he has done on this issue over the past few years.

I would also like to compliment President Clinton for his efforts in this area. We welcome the administration's suggestions on this issue.

Mr. President, simplification of this complex area of the tax law is long overdue. In 1974, the Employee Retirement Income Security Act [ERISA] was passed into law. The original intent of Congress for this act was, as the name implies, to provide security for private sector retirees. However, almost all of the laws and regulations governing private sector pensions that have been added since that time have had the completely opposite effect.

Since 1980, Congress has passed an average of one law per year affecting private sector pensions. As the rules and regulations governing pension plans have multiplied, defined benefit pension plans have become less and less attractive to employers, As a result, pension plan terminations have consistently outpaced the growth of new plans.

My colleague, Senator PRYOR, has tried to get Congress to act on pension simplification for the past 5 years. Meanwhile, an alarming number of pension plans have been terminated. Over the past 5 years, over 40,000 employee defined benefit plans have been terminated, affecting the retirement savings of more than 3 million Americans.

Pension regulation has directly affected the retirement security of millions of working Americans. The migration of employers away from defined benefit pension plans and toward defined contribution plans is a direct result of increased regulation. Employers prefer defined contribution plans because such plans are easier to administer and do not have the complex, burdensome rules that govern defined benefit plans. This movement away from defined benefit plans has effectively shifted the risks of the retirement plan investments from employers to employees.

At a time when the long-term adequacy of our Social Security Program is in question, we should be encouraging private sector retirement saving, not crippling pension plans with more and more regulation. The pension system provides a vital source of funding for the retirement needs of our nation's workforce. Over 41 million working Americans currently enrolled in private sector pension plans would directly benefit from pension simplification.

As unfortunate as the number of terminations of pension plans have been, Mr. President, the real tragedy of pension law complexity is at the small business level. Much of the burden of current pension law has fallen squarely on the shoulders of America's small businesses. Many small businesses simply cannot afford to establish pension plans for their employees.

Even if a small firm is able to establish a pension plan, current law throws up barriers to keeping the plan qualified for tax deferral treatment. Small businesses simply do not have the resources necessary to comply with all of the tests and antidiscrimination rules demanded by current law.

As a result of the heavy regulation of pension plans, lack of retirement plan sponsorship has left employees of small businesses out in the cold. Retirement plans are simply not an option for small employers because of the high cost to establish and administer them. In 1993, only 19 percent of employers with fewer than 25 employees sponsored a pension plan.

Thus, small businesses are placed at a competitive disadvantage to larger firms by our current pension law. Not only do the compliance costs take away from a small firm's profitability, but the firm's ability to attract high-quality employees is also impaired. Employees seeking retirement security prefer to work for a large company that can much more easily provide a pension plan over a small firm that cannot provide such security.

Mr. President, the Pension Simplification Act will provide relief to employers that are laboring under our outmoded and inflexible regulations to provide retirement plans for their employees. This act will restore flexibility to our pension laws and thus encourage employers, including small businesses, to offer and maintain retirement plans that are vital to the retirement security of our Nation's work force.

The Pension Simplification Act contains several provisions which will provide the relief that will result in retirement security for working Americans.

This bill introduces safe harbor rules for 401(k) plans that will help employers know whether or not their plans are qualified for tax-deferred treatment. The complex compliance tests required by current law will be eliminated.

A strong disincentive to offer defined benefit pension plans will be removed by simplifying the method for determining the nontaxable portion of annuity payments. Thus, employers would no longer have to make complex calculations to determine whether offering a defined benefit or a defined contribution plan is more advantageous.

The Pension Simplification Act also benefits State and local government pension plans by clarifying the application of the benefit limitation rules and by allowing these employers to establish 401(k)-type plans.

This bill also removes many of the burdens that small businesses face when trying to provide retirement programs for their employees. The Pension Simplification Act will make it easier for small businesses to provide retirement security for millions of Americans by providing a tax credit for starting a new pension plan. The bill also removes the complex discrimination rules for small employers and exempts small businesses from the minimum participation rules.

Mr. President, this bill targets a complex and confusing area of law. However, our goal is quite simple—increased retirement security for American workers.

The Pension Simplification Act is great bill, I urge my colleagues to join Senator PRYOR and me in supporting this important piece of legislation.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

SECTION-BY-SECTION ANALYSIS OF THE PENSION SIMPLIFICATION ACT OF 1995

TITLE I—SIMPLIFICATION OF THE NONDISCRIMINATION PROVISIONS

Sec. 101. Definition of Highly Compensated Employee (HCE)

In general, under present law, an employee is treated as highly compensated with respect to a year if during the year or the preceding year the employee (1) was a 5-percent owner of the employer, (2) received more than $75,000 (indexed at $100,000 for 1995) in annual compensation from the employer, (3) received more than $50,000 (indexed at $66,000 for 1995) in annual compensation from the employer and was a member of the top 20 percent of employees by compensation, or (4) was an officer of the employer who received compensation greater than $45,000 (indexed at $60,000 for 1995). If, for any year, no officer has compensation in excess of $60,000, then the highest paid officer of the employer for such year is treated as an HCE.

Under present law, all family members of (1) a 5-percent owner, or (2) a HCE in the group consisting of the 10 highest paid HCEs

are treated as a single HCE and all the compensation of the family members is treated as compensation of the HCE.

The bill provides that an employee is highly compensated with respect to a year if the employee (1) was a 5-percent owner of the employer at any time during the year or the preceding year, or (2) has compensation for the preceding year in excess of $80,000 (adjusted for cost-of-living increases using a base period beginning October 1, 1995 (sec. 415(d)), or (3) was the most highly compensated officer of the employer for the preceding year.

The bill provides that the dollar limit applicable for any year is the amount in effect for the calendar year with respect to which compensation is determined under the bill. For example, assume HCEs are being determined for the 1997 plan year in the case of a calendar year plan. Under the bill, 1996 compensation is used to make this determination, and the $80,000 figure for 1996, is the applicable dollar limit for the 1997 plan year (rather than the $80,000 figure as adjusted for 1997).

Under the bill, no employee would be treated as highly compensated in a year unless he or she received compensation from the employer during the preceding year in excess of $80,000. This proposal would apply to officers and to 5-percent owners. It targets small businesses where pension coverage is very low. For detailed discussion, see Title III, Targeted Access for Employees of Small Employers, section 302, page 17.

The bill repeals the family aggregation rules.

This provision is effective for years beginning after December 31, 1995, except that for purposes of determining whether an employee is an HCE in years beginning after December 31, 1995, the provision is effective for years beginning after December 31, 1994. Thus, for example, in determining whether an employee is highly compensated for 1996 with respect to calendar year plan, the determination is to be based on whether the employee had compensation during 1995 in excess of $80,000 (not $66,000 which may have been the applicable amount for the employee in 1995 prior to this bill).

Sec. 102. Definition of compensation under Section 415

Generally under present law, the section 415 limits with respect to an individual are based in part on the individual's taxable compensation. The general limit on a participant's annual additions under a defined contribution plan is the lesser of $30,000 or 25% of the participant's taxable compensation.

For example, assume a plan participant has a $20,000 salary. The 25% of compensation limit would generally permit the participant to have an annual addition of $5,000 (25% $20,000). However, because pre-tax employee contributions to a cafeteria plan would reduce the employee's taxable compensation from $20,000, any such contributions would also reduce the participant's section 415 limit. Moreover, contributions to a 401(k) plan, and other types of pre-tax employee contributions, would further reduce the participant's taxable compensation and section 415 limit.

The effect of pre-tax employee contributions makes it difficult to communicate in advance the section 415 limit applicable to each employee; this issue also leads to numerous inadvertent violations of section 415. Moreover, the reduction of the section 415 limit caused by pre-tax employee contributions primarily affects nonhighly compensated employees; this is so in part because section 125 contributions generally do not vary with compensation and thus have a proportionately smaller effect on higher paid employees.

Under the proposal, pre-tax employee contributions described in sections 402(g), 125, or 457 would be counted as compensation for purposes of section 415. In previous Pension Simplification bills this provision was limited to state and local governmental plans, however, the bill expands the provision to all plans.

Sec. 103. Modification of Additional Participation Requirements

Under present law, a plan is not a qualified plan unless it benefits no fewer than the lesser of (1) 50 employees or (2) 40 percent of all employees of an employer (sec. 401(a)(26)). This minimum participation rule cannot be satisfied by aggregating comparable plans, but can be applied separately to different lines of business of the employer. A line of business of the employer does not qualify as a separate line of business unless it has at least 50 employees. Also, certain employees may be disregarded in applying the rules.

The bill provides that the minimum participation rule applies only to defined benefit pension plans. In addition, the bill provides that a defined benefit plan does not satisfy the rule unless it benefits no fewer than the lesser of (1) 50 employees or (2) the greater of (a) 40 percent of all employees of the employer or (b) 2 employees (or 1 employee if there is only 1 employee). The separate line of business and excludable employee rules apply as under present law.

In the case of an employer with only 2 employees, a plan satisfies the present-law minimum participation rule if the plan covers 1 employee. However, under the bill, a plan satisfies the minimum participation rule only if it covers both employees.

The provision is effective for years beginning after December 31, 1995.

Sec. 104. Nondiscrimination Rules for Qualified Cash or Deferred Arrangements

a. In general: The bill modifies the present-law nondiscrimination test applicable to elective deferrals and employer matching and after-tax employee contributions to provide that the maximum permitted ADP or ACP for HCEs for the year is determined by reference to the ADP or ACP for nonhighly compensated employees for the preceding, rather than the current year. In the case of the first plan year of the plan, the ADP or ACP of nonhighly compensated employees for the previous year is deemed to be 3 percent or, at the election of the employer, the actual ADP or ACP for such plan year.

b. Section 401(k) Safe Harbor: Under present law, the special nondiscrimination test applicable to elective deferrals under qualified cash or deferred arrangements (401(k)s) is satisfied if the actual deferral percentage (ADP) under a cash or deferral arrangement for eligible HCEs for a plan year is equal to or less than either (1) 125 percent of the ADP of all non-highly compensated employees eligible to defer under the arrangement, or (2) the lesser of 200 percent of the ADP of all eligible nonhighly compensated employees or such ADP plus 2 percentage points (section 401(k)). The ADP for a group of employees is the average of the ratios (calculated separately for each employee in the group) of the contributions paid to the plan on behalf of the employee to the employee's compensation.

A cash or deferred arrangement that satisfies the special nondiscrimination test is deemed to satisfy the nondiscrimination requirement applicable to qualified plans with respect to the amount of contribution or benefits (section 401(a)(4)).

In addition, under present law, a special nondiscrimination test is applied to employer matching contributions and after-tax employee contributions (section 401(m)). This special nondiscrimination test is similar to the special nondiscrimination test in section 401(k).

An employer matching contribution means (1) any employer contribution made on behalf of an employee on account of an employee contribution made by such employee, and (2) any employer contribution made on behalf of an employee on account of an employee's elective deferral.

The bill adds alternative methods of satisfying the special nondiscrimination requirements applicable to elective deferrals and employer matching contributions. Under these safe harbor rules, a cash or deferred arrangement is treated as satisfying the ADP test if the plan of which the arrangement is a part (or any other plan of the employer maintained with respect to the employees eligible to participate in the cash or deferred arrangement) meets (1) one of two contribution requirements and (2) a notice requirement. These safe harbors permit a plan to satisfy the special nondiscrimination tests through plan design, rather than through the testing of actual contributions.

A plan satisfies the contribution requirements under the safe harbor rule for qualified cash or deferred arrangements if the plan either (1) satisfies a matching contribution requirement or (2) the employer makes a contribution to the plan of at least 3 percent of an employee's compensation on behalf of each nonhighly compensated employee who is eligible to participate in the arrangement without regard to whether the employee makes an elective contribution under the arrangement. Under both tests, contributions may also be made to highly compensated employees.

A plan satisfies the matching contribution requirement if, under the arrangement: (1) the employer makes a matching contribution on behalf of each nonhighly compensated employee that is not less than (a) 100 percent of the employee's elective contributions up to 3 percent of compensation and (b) 50 percent of the employee's elective contributions from 3 to 5 percent of compensation; and (2) the level of match for highly compensated employees is not greater than the match rate for nonhighly compensated employees.

Alternatively, if the matching contribution requirement is not satisfied at some level of employee compensation, the requirement is deemed to be satisfied if (1) the level of employer matching contributions does not increase as employee elective contributions increase and (2) the aggregate amount of matching contributions with respect to elective contributions up to that level of compensation at least equals the amount of matching contributions required under the general safe harbor rule.

Under the safe harbor, an employee's rights to employer matching contributions or nonelective contributions used to meet the contribution requirements are required to be 100 percent vested.

An arrangement does not satisfy the contribution requirements with respect to nonelective contributions unless the requirements are met without regard to the permitted disparity rules (sec. 401(1)), and nonelective contributions used to satisfy the contribution requirements are not taken into account for purposes of determining whether a plan of the employer satisfies the permitted disparity rules. It is intended that the rule applies to matching contributions as well.

Employer matching and nonelective contributions used to satisfy the contribution requirements of the safe harbor rules are subject to the restrictions on withdrawals

that apply to an employee's elective deferrals under a qualified cash or deferred arrangement (sec. 401(k)(2)(B)).

The notice requirement is satisfied if each employee eligible to participate in the arrangement is given written notice within a reasonable period before any year of the employee's rights and obligations under the arrangement. This notice must be sufficiently accurate and comprehensive to apprise the employee of his or her rights and obligations and must be written in a manner calculated to be understood by the average employee eligible to participate.

c. Alternative method of satisfying special nondiscrimination test for matching contributions: The bill provides a safe harbor method of satisfying the special nondiscrimination test applicable to employer matching contributions. Under this safe harbor, a plan is treated as meeting the special nondiscrimination test with respect to matching contributions if (1) the plan meets the contribution and notice requirements applicable under the safe harbor method of satisfying the special nondiscrimination requirement for qualified cash or deferred arrangements, and (2) the plan satisfies a special limitation on matching contributions. After-tax employee contributions continue to be tested separately under the present ACP test, taking into account both employee contributions and employer matches in calculating contribution percentages.

The limitation on matching contributions is satisfied if (1) matching contributions on behalf of any employee may not be made with respect to employee contributions or elective deferrals in excess of 6 percent of compensation and (2) the level of an employer's matching contribution does not increase as an employee's contributions or elective deferrals increase.

TITLE II.—SIMPLIFIED DISTRIBUTION RULES

Under present law, distributions from tax-favored retirement arrangements are generally includable in gross income when received, however special rules apply in certain circumstances.

For example, certain distributions from tax-favored retirement arrangements attributable to contributions prior to January 1, 174, could qualify for treatment as long-term capital gains.

Under present law, a taxpayer may elect to have 5-year forward averaging apply to a lump-sum distribution from a qualified plan. Such an election may be made with respect to a distribution received on or after the employee attains age 59½ and only one election may be made with respect to an employee.

Prior to the Tax Reform Act of 1986, 10-year forward averaging was available with respect to lump-sum distributions. The Tax Reform Act replaced 10-year averaging with 5-year averaging and phased out capital gains treatment. The Tax Reform Act provided transition rules which generally preserved prior-law treatment in the case of certain distributions with respect to individuals who attained age 50 before January 1, 1986.

Under present law, a taxpayer is not required to include in gross income amounts received in the form of a lump-sum distribution to the extent that the amounts are attributable to net unrealized appreciation in employer securities. Such unrealized appreciation is includable in income when the securities are sold.

The bill eliminates 5-year averaging for lump sum distributions from qualified plans, repeals the $5000 employer-provided death benefit exclusion, and simplifies the basis recovery rules applicable to distributions from qualified plans. In addition, the bill modifies the rule that generally requires all participants to commence distributions by age 70½.

Sec. 201. Repeal of 5-Year Income Averaging for Lump-Sum Distributions

The bill repeals the special 5-year forward averaging rule. The original intent of the income averaging rules for pension distributions was to prevent a bunching of taxable income because a taxpayer received all of the benefits in a qualified plan in a single taxable year. Liberalization of the rollover rules enacted in 1992, as originally part of this bill, increases the flexibility of taxpayers in determining the time of the income inclusion of pension distributions, and eliminates the need for special rules to prevent bunching of income.

The bill preserves the transition rules for 10 year averaging adopted in the Tax Reform Act; in addition, the repeal of 5-year averaging is not applicable to individuals eligible for those transition rules. The bill also retains the present-law treatment of net unrealized appreciation on employer securities and generally retains the definition of lump-sum distribution solely for such purpose.

The provisions are effective with respect to distributions after December 31, 1995.

Sec. 202. Simplified Method for Taxing Annuity Distribution Under Certain Employer Plans

Under the bill, the portion of an annuity distribution from a qualified retirement plan, qualified annuity, or tax-sheltered annuity that represents nontaxable return of basis generally is determined under a method similar to the present-law simplified alternative method provided by the IRS. Under the simplified method provided in the bill, the portion of each annuity payment that represents nontaxable return of basis generally is equal to the employee's total investment in the contract as of the annuity starting date, divided by the number of anticipated payments determined by reference to the age of the participant listed in the table set forth in the bill. The number of anticipated payments listed in the table is based on the employee's age on the annuity starting date. If the number of payments is fixed under the terms of the annuity, that number is to be used instead of the number of anticipated payments listed in the table.

The simplified method does not apply if the primary annuitant has attained age 75 on the annuity starting date unless there are fewer than 5 years of guaranteed payments under the annuity. If in connection with commencement of annuity payments, the recipient receives a lump-sum payment that is not part of the annuity stream, such payment is taxable under the rules relating to annuities (section 72) as if received before the annuity starting data, and the investment in the contract used to calculate the simplified exclusion ratio for the annuity payments is reduced accordingly.

As under present law, in no event will the total amount excluded from income as nontaxable return of basis be greater than the recipient's total investment in the contract.

Sec. 203. Required Distributions

Under present law, distributions under all qualified plans, IRAs, tax-sheltered custodial accounts and annuities, and eligible deferred compensation plans of State and local governments are required to begin no later than April 1 of the calendar year following the calendar year in which the participant or owner attains age 70½, without regard to the actual date of separation from service. In the case of church plans and governmental plans, distributions are required to begin no later than the later of the April 1 date described above or April 1 of the calendar year following the calendar year in which the participant retires.

The bill repeals the rule that requires all participants in qualified plans to commence distributions by age 70½ without regard to whether the participant is still employed by the employer, and therefore, generally replaces it with the rule in effect prior to the Tax Reform Act. Thus, under the bill, distributions are required to begin by April 1 of the calendar year following the later of (1) the calendar year in which the employee attains age 70½, or (2) the calendar year in which the employee retires. In the case of a 5-percent owner of the employer, distributions are required to begin no later than April 1 of the calendar year following the year in which the 5-percent owner attains age 70½. Distributions from an IRA are required to begin no later than April 1 of the calendar year following the year in which the IRA owner attains age 70½.

In addition, in the case of an employee (other than a 5-percent owner) who retires in a calendar year after attaining age 70½, the bill requires the employee's accrued benefit to be actuarially increased to take into account the period after age 70½ in which the employee was not receiving benefits under the plan. Thus, under the bill, the employee's accrued benefit is required to reflect the value of benefits that the employee would have received if the employee had retired at age 70½ and began receiving benefits at that time.

The actuarial adjustment rules does not apply, under the bill, in the case of a governmental plan or church plan.

This provision applies to years beginning after December 31, 1995.

TITLE III.—TARGETED ACCESS FOR EMPLOYEES OF SMALL EMPLOYERS.

Sec. 301. Tax Credit for the Cost of Establishing a Plan for Small Employers

Retirement plan coverage among employees of small employers is dismally low. The cost of establishing a retirement plan is, in a significant way, disproportionately high for small employers. Many costs of plan establishment—plan design, plan drafting, application for IRS approval—are relatively fixed. Accordingly, the per-employee costs can be much higher for a small employer than for a large employer.

Under the proposal, employers with 50 or fewer employees, that have not maintained a qualified retirement plan at any time during the immediately preceding two years, would be eligible for an income tax credit (up to a maximum of $1,000) equal to the cost of establishing a qualified retirement plan.

Sec. 302. Elimination of the One-High-Paid-Officer Rule

Under present law, the term highly compensated employee includes the employer's highest paid officer even if no employee in the plan receives over $45,000 (indexed to $60,000 in 1995).

The application of the highest paid officer rule is unfair for small employers with low-wage workforces. For example, the highest paid officer of a small employer may earn less than $66,000, yet that employee is highly compensated under this rule. If the same individual less than $66,000 working for a large employer with numerous highly paid employees, that individual would not be defined as highly compensated.

Because the individual described above is considered highly compensated, the nondiscrimination rules can severely limit his or her benefits (such as 401(k) contributions). In fact, due to the way the nondiscrimination rules work, these limitations are actually more restrictive for the $30,000-a-year HCE of a small employer than they are for the $150,000-a-year executive of a large employer. These limitations can, in turn, result in the small employer deciding not to establish a plan or deciding to terminate an existing plan.

Under the bill, no employee would be treated as highly compensated in a year unless he or she received compensation from the employer during the preceding year in excess of $80,000. This proposal would apply not only to officers but also to 5-percent owners.

This proposal would, however, be subject to two conditions. First, the proposal would not apply to any plan maintained by the employer unless the plan makes all contributions, benefits, and other plan features available on a nondiscriminatory basis. For this purpose, 5-percent owners would be treated as highly compensated; if there are no 5-percent owners, the highest paid officer for the preceding year would be an HCE.

The purpose of the conditions set forth above is to prevent abuse. The conditions would, for example, prevent an employer from establishing a plan solely (or primarily) for the owner.

The second condition is that this proposal would not apply to the extent provided in regulations. The purpose of this second condition is to prevent business owners from avoiding HCE status by treating an amount as compensation that is less than reasonable compensation.

This provision is effective for years beginning after December 31, 1995, except that for purposes of determining whether an employee is an HCE in years beginning after December 31, 1995, the provision is effective for years beginning after December 31, 1994. Thus, for example, in determining whether an employee is highly compensated for 1996 with respect to a calendar year plan, the determination is to be based on whether the employee had compensation during 1995 in excess of $80,000 (not $66,000 which may have been the applicable amount for the employee in 1995 prior to this bill).

Sec. 303. Salary Reduction Simplified Employee Pensions

Under present law, a simplified employee pension (SEP) is an individual retirement plan established with respect to an employee that meets certain requirements. Employers with 25 or fewer employees may provide that contributions to a SEP maybe made on a salary reduction basis.

The bill conforms the eligibility requirements for SEP participation to the rules applicable to pension plans generally by providing that contributions to a SEP must be made with respect to each employee who has at least one year of service with the employer.

The bill adds alternative methods of satisfying the special nondiscrimination requirements for SEPs applicable to elective deferrals and employer matching contributions. These are the same alternative methods or ''safe harbors'' discussed in Title I.-section 104 above, relating to 401(k) plans.

Further, the bill modifies the rules relating to salary reducion SEPs by providing that such SEPs may be established by employers with 100 or fewer employees.

The bill also repeals the requirement that at least half of eligible employees actually participate in a salary reduction SEP.

The provision applies to years beginning after December 31, 1995.

Sec. 304. Exemption From Top Heavy Plan Requirements

In general, under present law, a top-heavy plan is required to satisfy special requirements regarding vesting, minimum benefits or contributions, and section 415. The requirements regarding minimum benefits or contributions are particularly burdensome. For example, a small employer may maintain a plan that permits employees to make section 401(k) contributions and that provides matching contributions on behalf of employees who make the section 401(k) contributions. Generally, if such a plan is top-heavy, all non-key employees must receive nonelective contributions equal to at least 3% of compensation, even though the plan does not otherwise provide for nonelective contributions.

The top-heavy plan rules were intended to address situations where an excessive percentage of a plan's retirement benefits is attributable to the highly paid executives and owners of the business. However, the rules actually apply more broadly and are applicable to small businesses where none of the owners and officers of the business is highly paid. In these cases, the top-heavy plan rules place a burden on middle-income individuals solely because they are owners or officers of a small business.

Under the bill, if no employee makes over $80,000 (as provided in the bill's new definition of ''highly compensated employee'') in the preceding year, the top-heavy plan requirements do not apply for that year.

Sec. 305. Tax Exempt Organizations Eligible Under Section 401(k)

Under present law, tax-exempt organizations are generally prohibited from establishing qualified cash or deferred arrangements (401(k)s). Because of this limitation, many such employers are precluded from maintaining broad-based, funded, elective deferral arrangements for their employees.

The bill allows tax-exempt organizations (other than 501(c)(3)s, State and Local governments, and their agencies and instrumentalities who have available salary deferral arrangements) to maintain 401(k)s.

The provision applies to years beginning after December 31, 1995.

Sec. 306. Regulatory Treatment of Small Employers

Unlike large employers, small employers often do not have the resources to monitor and affect the development of regulations relating to qualified retirement plans. Accordingly, such regulations often do not take into account the unique circumstances of small employers.

Under the bill, no IRS regulation relating to a qualified retirement plan could become effective unless the regulation includes a section addressing the special needs of small employers.

The provision is effective for regulations issued after date of enactment.

TITLE V.—PAPERWORK REDUCTION.

Sec. 401. Repeal Section 415(e)

Section 415(e) applies an overall limit on benefits and contributions with respect to an individual who participates in both a defined contribution plan and a defined benefit plan maintained by the same employer. These rules are extremely complicated. They are also very burdensome to administer because they require maintaining compensation and contribution records for all employees for all years of service.

The section 415(e) limit is not the only limit in the Code that safeguards against an individual accruing excessive retirement benefits on a tax-favored basis. For example, section 401(a)(17) provides for limitations on compensation that can be taken into account for benefits and contributions to qualified plans; section 401 provides extensive nondiscrimination rules; and section 415 provides limits on contributions paid to and benefits paid from qualified plans. Taken in combination, these provisions sufficiently constrain excessive tax-favored benefits accruing to highly compensated employees. In addition, a 15% ''excess distribution'' penalty achieves many of the same goals as Section 415(e).

Because Section 415(e) is both cumbersome and duplicative, the bill repeals this provision.

The provision is effective for years beginning after December 31, 1995.

Sec. 402. Duties of Sponsors of Certain Prototype Plans

The IRS master and prototype program is an administrative program under which trade and professional associations, banks, insurance companies, brokerage houses, and other financial institutions can obtain IRS approval of model retirement plan language and then make these preapproved plans available for adoption by the customers, investors, or association members.

Master and prototype plans reduce the costs and burdens of administering plans, especially for small to medium sized employers, and improve IRS administration of plan rules.

Today, a majority of employer-provided qualified plans are approved master and prototype plans. Further expansion of the program is desirable, but statutory authority should be given to the IRS to define the duties of master and prototype sponsors before the program becomes more widely utilized.

The bill authorizes the IRS to define the duties of organizations that sponsor master and prototype, regional prototype, and other preapproved plans, including mass submitters. The provision's purpose is to protect employers against the loss of qualification merely because they are unaware of the need to arrange for certain administrative services, or the unavailability of professional assistance from parties familiar with the sponsor's plan. The bill should not be construed as creating fiduciary relationships or responsibilities under Title I of ERISA that would not exist in the absence of the provision.

TITLE V.—MISCELLANEOUS PROVISIONS

Sec. 501. Treatment of Leased Employees

Under present law, an individual performing services is treated as a leased employee of a service recipient for certain employee benefit purposes if (1) the individual is not a common law employee of the service recipient, (2) the services are provided pursuant to an agreement between the recipient and any other person, (3) the individual performs services for the recipient on a substantially full-time basis for a period of at least one year, and (4) the services are of a type historically performed in the business field of the recipient by employees.

The bill replaces the historically performed test with a control test. Thus, under the bill, an individual is a leased employee of a service recipient only if the services are performed by the individual under the control of the recipient.

The provision is effective for taxable years beginning after December 31, 1995.

Sec. 501. Plans Covering Self-Employed Individuals

Prior to the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) different rules applied to retirement plans maintained by incorporated employers and unincorporated employers (such as partnerships and sole proprietors). In general, plans maintained by unincorporated employers were subject to special rules in addition to the other qualification requirements of the Code. TEFRA eliminated most, but not all, of this disparity.

Under present law, certain special aggregation rules apply to plans maintained by owner-employers that do not apply to other qualified plans (sec. 401(d) (1) and (2)). The bill eliminates these special rules.

The provision applies to years beginning after December 31, 1995.

Sec. 503. Elimination of Special Vesting Rule for Multiemployer Plans

Under present law, except in the case of multiemployer plans, a plan is not a qualified plan unless a participant's employer-

provided benefit vests at least as rapidly as under 1 of 2 alternative minimum vesting schedules. A plan satisfies the first schedule if a participant acquires a nonforfeitable right to 100 percent of the participant's accrued benefit derived from employer contributions upon the participant's completion of 5 years of service.

A plan satisfies the second schedule if a participant has a nonforfeitable right to at least 20 percent of the participant's accrued benefit derived from employer contributions after 3 years of service, 40 percent at the end of 4 years of service, 60 percent at the end of 5 years of service, 80 percent a the end of 6 years of service, and 100 percent at the end of 7 years of service.

In the case of a multiemployer plan, a participant's accrued benefit derived from employer contributions is required to be 100 percent vested no later than upon the participant's completion of 10 years of service. This special rule applies only to employees covered by the plan pursuant to a collective bargaining agreement.

The bill conforms the vesting rules for multiemployer plans to the rules applicable to other qualified plans.

The provision is effective for plan years beginning on or after the earlier of (1) the later of January 1, 1996, or the date on which the last of the collective bargaining agreements pursuant to which the plan is maintained terminates, or (2) January 1, 1998, with respect to participants with an hour of service after the effective date.

Sec. 504. Full Funding Limitation of Multi-Employer Plans

Under present law, a deduction is allowed (within limits) for employer contributions to a qualified pension plan. No deduction is allowed for contributions in excess of the full funding limit. The full funding limit is the excess, if any, of (1) the lesser of (a) the accrued liability under the plan (including normal cost) or (b) 150 percent of a plan's current liability, over (2) the lesser of (a) the fair market value of the plan's assets or (b) the actuarial value of the plan's assets.

Plans subject to the minimum funding rules are required to make an actuarial valuation of the plan not less frequently than annually.

The bill provides that the 150 percent of current liability limitation does not apply to multi-employer plans. Consistent with this change, the bill also repeals the present law annual valuation requirement for multi-employer plans and applies the prior law requirement that valuations be performed at least every 3 years.

The provision applies to years beginning after December 31, 1995.

Sec. 505. Alternative full-funding limitation

The Secretary may, under regulations, adjust the 150-percent figure contained in the full funding limitation to take into account the average age (and length of service, if appropriate) of the participants in the plan (weighed by the value of their benefits under the plan). In addition, the Secretary is authorized to prescribe regulations that apply, in lieu of the 150 percent of current liability limitation, a different full funding limitation based on factors other than current liability. The Secretary may exercise this authority only in a manner so that in the aggregate, the effect on Federal budge receipts is substantially identical to the effect of the 150-percent full funding limitation.

The bill provides that an employer may elect to disregard the 150-percent limitation if each plan in the employer's control group is not top-heavy and the average accrued liability of active participants under the plan for the immediately preceding 5 plan years is at least 80-percent of the plan's total accrued liability (the ''alternative full funding limitation''). The Secretary is required to adjust the 150-percent full funding limitation (in the manner specified under the bill) for employers that do not use the alternative full funding limit to ensure that the election by employers to disregard the 150-percent limit does not result in a substantial reduction in Federal revenues for any fiscal year.

Under the bill, employers electing to apply the alternative limitation generally must notify the Secretary by January 1 of the calendar year preceding the calendar year in which the election period begins. The provision is effective on January 1, 1997.

Sec. 506. Affiliation Requirements for Employers Jointly Maintaining a VEBA

Treasury regulations require that employees eligible to participate in a voluntary employees' beneficiary association (''VEBA'') share an employment-related common bond. Under the regulations, employees employed by a ''common employer (or affiliated employers)'' are considered to have such a bond.

Under the bill, employers are considered affiliated for purposes of the VEBA rules if (1) such employers are in the same line of business, (2) the employers act jointly to perform tasks that are integral to the activities of each of the employers, and (3) such joint activities are sufficiently extensive that the maintenance of a common VEBA is not a major part of such joint activities.

Under the bill, employers are considered affiliated, for example, in the following circumstances: the employers participating in the VEBA are in the same line of business and belong to an association that provides to its members a significant amount of each of the following services: (1) research and development relating to the members' primary activity; (2) education and training of members' employees; and (3) public relations. In addition, the employers are sufficiently similar (e.g., subject to similar regulatory requirements) that the association's services provide material assistance to all of the employers. The employers also demonstrate the importance of their joint activities by having meetings at least annually attended by substantially all of the employers. Finally, the employers maintain a common retirement plan.

On the other hand, it is not intended that the mere existence of a trade association is a sufficient basis for the member-employees to be considered affiliated, even if they are in the same line of business. It is also not sufficient if the trade association publishes a newsletter and provides significant public relations services, but only provides nominal amounts, if any, of other services integral to the employers' primary activity.

A group of employers are also not considered affiliated under the bill by virtue of the membership of their employees in a professional association.

This bill is intended as a clarification of present law, but is not intended to create any inference as to whether any part of the Treasury regulations affecting VEBAs, other than the affiliated employer rule, is or is not present law.

Sec. 507. Treatment of Certain Governmental Plans under Section 415

Under present law, the limitations on benefits and contributions (section 415) generally apply to plans maintained by State and local governments.

Under present law, unfunded deferred compensation plans maintained by State and local government employers are subject to certain limitations (sec. 457). For example, such plans generally may not permit deferred compensation in excess of $7,500 in a single year.

The limitations on contributions and benefits present special problems for plans maintained by State and local governments due to the special nature of the involvement and operation of such governments.

The bill addresses these problems by providing that (1) section 457 does not apply to excess benefit plans maintained by a State or local government, (2) the compensation limitation on benefits under a defined benefit pension plan does not apply to plans maintained by a State or local government, and (3) the defined benefit pension plan limits do not apply to certain disability and survivor benefits provided under such plans. Excess plans maintained by a State or local government are subject to the same tax rules applicable to such plans maintained by private employers.

Under present law, benefits under a defined benefit plan generally may not exceed 100 percent of the participant's average compensation. However, because of the unique characteristics of State and local government employee plans, many long-tenured and relatively low-paid employees may be eligible to receive benefits in excess of their average compensation as a result of cost-of-living increases. The bill provides that the 100 percent of compensation limitation does not apply to plans maintained by State and local governments.

The provision is effective for taxable years beginning on or after the date of enactment. Governmental plans are treated as if in compliance with the requirements of section 415 for years beginning on or before the date of enactment.

Sec. 508. Treatment of Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations

Under a section 457 plan, an employee who elects to defer the receipt of current compensation will be taxed on the amounts deferred when such amounts are paid or made available. The maximum annual deferral under such a plan is the lesser of (1) $7500 or (2) 33½ percent of compensation (net of the deferral).

In general, amounts deferred under a section 457 plan may not be made available to an employee before the earlier of (1) the calendar year in which the participant attains age 70½, (2) when the participant is separated from service with the employer, or (3) when the participant is faced with an unforeseeable emergency. Amounts that are made available to an employee upon separation from service are includable in gross income in the taxable year in which they are made available.

Under present law, benefits under a section 457 plan are not treated as made available if the participant may elect to receive a lump sum payable after separation from service and within 60 days of the election. This exception to the general rules is available only if the total amount payable to the participant under the plan does not exceed $3500 and no additional amounts may be deferred under the plan with respect to the participant.

The bill makes three changes. First, the bill permits in-service distributions of accounts that do not exceed $3500 if no amount has been deferred under the plan with respect to the account for 2 years and there has been no prior distribution under this cash-out rule.

Second, the bill increases the number of elections that can be made with respect to the time distributions must begin under the plan. The bill provides that the amount payable to a participant under a 457 plan is not to be treated as made available merely because the participant may elect to defer commencement of distributions under the plan if (1) the election is made after amounts may be distributed under the plan but before

the actual commencement of benefits, and (2) the participant makes only 1 such additional election. This additional election is permitted without the need for financial hardship, and the election can only be to a date that is after the date originally selected by the participant.

Finally, the bill provides for indexing of the dollar limit on deferrals.

The provisions are effective for taxable years beginning after the date of enactment.

Sec. 509. Contributions on Behalf of Disabled Employees

Under present law, special limitations on contributions to a defined contribution plan apply in the case of certain disabled participants. In particular, the compensation of a disabled participant in a defined contribution plan is treated, for purposes on the limitations or contributions and benefits, as the compensation the participant received before becoming disabled if (1) the participant is permanently and totally disabled (within the meaning of sec. 22(c)(3)), (2) the participant is not a highly compensated employee, and (3) the employer elects to have this special rule apply.

The bill makes requirements (2) and (3) inapplicable if the defined contribution plan provides for the continuation of contributions on behalf of all participants who are permanently and totally disabled.

It is not intended, however, that an employer be able to provide contributions on behalf of all disabled participants only during certain years so as to favor highly compensated participants over nonhighly compensated participants. Accordingly, if an employer provides for contributions on behalf of all disabled participants and subsequently amends its plan to delete such contributions, the plan shall cease to be qualified if the timing of the amendment results in discrimination in favor of highly compensated participants.

The provision applies to years beginning after December 31, 1995.

Sec. 510. Technical Clarifications of Section 401(k) for Rural Cooperative Plans

Under present law, a qualified section 401(k) arrangement must be a part of one of the following: a profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan.

A ''rural cooperative plan'' is defined generally to mean a defined contribution pension plan that is maintained by a rural cooperative. with respect to rural electric cooperatives, a rural cooperative is generally defined to mean any organization that (1) is tax-exempt or is a State or local government, and (2) ''is engaged primarily in providing electric service on a mutual or cooperative basis.''

Present law was clearly intended to permit the rural electric cooperatives to continue to maintain their section 401(k) plan. However, there are two technical issues that should be clarified in order to better achieve this objective.

First, in the vast majority of states, rural electric systems are organized as cooperatives. However, in some states, some utilities are organized as public power districts. Public power districts are subdivisions of a state that provide electric service. Thus, they would clearly fall within the definition of a rural cooperative but for the requirement that a rural cooperative provide electric service ''on a mutual or cooperative basis.''

This requirement is not further defined in the statute or regulations. Accordingly, some concern is warranted with respect to whether a public power district satisfies this requirement since they are political subdivisions of a state and do not have the member ownership traditionally required for mutual or cooperative status.

Secondly, many rural electric cooperatives participate in a multiple employer money purchase pension plan that contains a section 401(k) arrangement. This multiple employer plan must fit within the definition of a rural cooperative plan in order for the section 401(k) arrangement to be qualified. An issue therefore arises due to the fact that the definition of a ''rural cooperative'' does not include taxable cooperatives. Although the vast majority of rural electric cooperatives are tax-exempt, some within these multiple employer plans are taxable. It is unclear whether this would cause the section 401(k) arrangement in the multiple employer plan to fail to be qualified with respect to the participating taxable cooperatives.

The bill clarifies both of these potential problems by providing that the definition of a ''rural cooperative'' would be modified to include, in addition, any other organization that is providing electric service. However, this expansion of the definition would only apply with respect to section 401(k) plans in which substantially all of the employers fit within the present-law definition of a rural cooperative. This limitation prevents unintended expansion of the term ''rural cooperative plan.''

In addition, under present law, unlike all other section 401(k) plans (other than certain pre-ERISA plans), rural cooperative plans are not permitted to make in-service distributions for hardship or after age 59-½. Under the proposal, rural cooperative plans would be permitted to make such distributions after the date of enactment.

Sec. 511. Rules for Plans Covering Pilots

Under present law, employees covered by a collective bargaining agreement are excluded from consideration in testing whether a qualified retirement plan satisfies the minimum coverage and non discrimination requirements (section 410(b)(3)). Similarly, in the case of a plan established pursuant to a collective bargaining agreement between airline pilots and one or more employers, all employees not covered by the collective bargaining agreement are disregarded for purposes of testing whether the plan satisfies the minimum coverage and nondiscrimination requirements (section 410(b)(3)(B)). This provision applies only in the case of a plan that provides contributions or benefits for employees whose principal duties are customarily performed abroad aircraft in flight. Thus, a collectively bargained plan covering only airline pilots in tested separately from employees who are not air pilots.

The bill provides that, in the case of a plan established to provide contributions or benefits for air pilots employed by one or more common carriers engaged in interstate or foreign commerce on air pilots employed by carriers transporting mail for or under contract with the United States Government, all employees who are not air pilots are excluded from consideration in testing whether the plan satisfies the minimum coverage requirements (whether or not they are covered by a collective bargaining agreement).

The provision is effective for years beginning after December 31, 1995.

Sec. 512. Tenured Faculty

Present law section 457 governs and provides limits for nonqualified deferred compensation arrangements of a governmental or tax-exempt employers. Under section 457(f), an individual is taxed on the value of the benefits under an ineligible arrangement when there is no risk of forfeiture of the benefit, rather than when any benefit is received. Risk of forfeiture is generally tied to the performance of future services. For example, if an employer adopted an early retirement incentive to pay a yearly supplement of $10,000 over 5 years, the retiree will be taxed on the present value of the full $50,000 in the year of retirement notwithstanding the fact that he only received a payment of $10,000.

Under the bill, ''eligible faculty voluntary retirement incentive plans'' are not subject to the taxation provisions of section 457(f). Payments under such plans will be taxed when they are made available to participants, rather than when a risk of forfeiture lapses. An ''eligible faculty voluntary retirement incentive plan'' means a plan established for employees serving under contracts of unlimited tenure at an institution of higher learning. Total benefits under the contract cannot exceed two times annual compensation, and all payments must be completed over a five-year period.

The provision is effective for years beginning after December 31, 1995.

Sec. 513. Uniform Retirement Age

A qualified plan generally must provide that payment of benefits under the plan must begin no later than 60 days after the end of the plan year in which the participant reaches age 65. Also, for purposes of the vesting and benefit accrual rules, normal retirement age generally can be no later than age 65. For purposes of applying the limits on contributions and benefits (section 415), social security retirement age is generally used as retirement age. The social security retirement age as used for such purposes is presently age 65, but is scheduled to gradually increase.

The bill provides that for purposes of the general nondiscrimination rule, the social security retirement age is a uniform retirement age and that subsidized early retirement benefits and joint and survivor annuities are not treated as not being available to employees on the same terms merely because they are based on an employee's social security retirement age.

The provision is effective for years beginning after December 31, 1995.

Sec. 514. Reports of Pension and Annuity Payments

The penalty reform provisions of the Omnibus Budget Reconciliation Act of 1989 revised the penalties imposed for failures to file correct and timely information returns to IRS, and to provide statements to payees. This revised penalty structure applies to 18 different types of reportable payments. Section 6724(d)(1).

However, this developed structure does not apply to reports of pension and annuity payments required under section 6047(d). It also does not apply to certain reports required by sections 408(i) and 408(*l*) relating to IRAs and SEPs.

The bill provides that the definition of ''information return'' under section 6724(d) includes reports of pension and annuity payments required by section 6047(d), and any report required under subsection (i) or (*l*) of section 408.

Similarly, the definition of ''payee statement'' under section 6724(d)(2) is amended to include reports of pension and annuity payments required by section 6047(d) and any report required under subsection (i) or (*1*) of section 408. The bill provides that section 6652(e) is amended to delete reports of designated distributions from the scope of its $25 per day penalty.

Under present law, interest and dividend payments do not have to be reported if less than $10 is paid to a person in any year. Miscellaneous income need not be reported unless it exceeds $600. However, the law currently contains no dollar threshold for reports of ''designated distributions''—primarily pension and annuity payments. The bill provides a $10 reporting threshold for designated distributions.

Sec. 515. National Commission on Private Pension Plans

In 1974, Congress first recognized the importance of the Federal Government taking an active role in creating a system where American workers could earn private pension benefits to supplement Social Security and ensuring that promised pension benefits are paid. It did this by passing the Employment Retirement Income Security Act (ERISA).

Today, our private pension system works by delivering trillions of dollars to retiring American workers. However, since its enactment in 1974, ERISA has become more and more complex, and the administrative costs of maintaining a pension plan has risen substantially.

The bill will authorize the Commission (six members appointed by the President, six by the Speaker of the House, and six by the Senate Majority Leader) to review existing Federal incentives and programs that encourage and protect private retirement savings and set forth recommendations where appropriate for increasing the level and security of private retirement savings.

Sec. 516. Date for Adoption of Plan Amendments

The bill provides that any plan amendment required by the bill are not required to be made before the first plan year beginning on or after January 1, 1997, if the plan is operated in accordance with the applicable provision and the amendment is retroactive to the effective date of the applicable provision. In the case of state and local governmental plans, plan requirements are required to be made on the first plan year beginning on or after January 1, 1999.

By Mr. INOUYE:

S. 1008. A bill to amend title 10, United States Code, to provide for appointments to the military service academies by the Resident Representative to the United States for the Commonwealth of the Northern Mariana Islands; to the Committee on Armed Services.

TITLE 10 AMENDMENT LEGISLATION

• Mr. INOUYE. Mr. President, today I am introducing a bill to amend title 10, United States Code, to provide for appointments to the military service academies by the Resident Representative for the Commonwealth of the Northern Mariana Islands. I think it is important that students from the Commonwealth of the Northern Mariana Islands have an opportunity to be trained at our military academies and serve in our Armed Forces. This bill would enable that to occur. I ask unanimous consent that the text of the bill appear in the RECORD.

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

S. 1008

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Appointments to military service academies by the resident representative to the United States for the commonwealth of the northern mariana islands.

(a) UNITED STATES MILITARY ACADEMY.—

(1) APPOINTMENT AUTHORITY.—Subsection (a) of section 4342 of title 10, United States Code, is amended by striking out the sentence following the clauses of such subsection and inserting in lieu thereof the following:

''(10) One cadet from the Commonwealth of the Northern Mariana Islands, nominated by the Resident Representative to the United States for the Commonwealth of the Northern Mariana Islands.

Each person specified in clauses (3) through (10) who is entitled to nominate a candidate for admission to the Academy may nominate a principal candidate and nine alternates for each vacancy that is available to the person under this subsection.''.

(2) DOMICILE OF CADETS.—Subsection (f) of such section is amended to read as follows:

''(f) Each candidate for admission nominated under clauses (3) through (10) of subsection (a) must be domiciled—

''(1) in the State, or in the congressional district, from which the candidate is nominated; or

''(2) in the District of Columbia, Puerto Rico, American Samoa, Guam, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, if the candidate is nominated from one of those places.''.

(3) CONFORMING AMENDMENTS.—(A) Subsection (d) of such section is amended by striking out ''(9)'' and inserting in lieu thereof ''(10)''.

(B) Section 4343 of such title is amended by striking out ''(8) of section 4342(a)'' in the second sentence and inserting in lieu thereof ''(10) of section 4342(a)''.

(b) UNITED STATES NAVAL ACADEMY.—

(1) APPOINTMENT AUTHORITY.—Subsection (a) of section 6954 of title 10, United States Code, is amended by striking out the sentence following the clauses of such subsection and inserting in lieu thereof the following:

''(10) One from the Commonwealth of the Northern Mariana Islands, nominated by the Resident Representative to the United States for the Commonwealth of the Northern Mariana Islands.

Each person specified in clauses (3) through (10) who is entitled to nominate a candidate for admission to the Academy may nominate a principal candidate and nine alternates for each vacancy that is available to the person under this subsection.''.

(2) DOMICILE OF MIDSHIPMEN.—Subsection (b) of section 6958 of such title is amended to read as follows:

''(b) Each candidate for admission nominated under clauses (3) through (10) of section 6954(a) of this title must be domiciled—

''(1) in the State, or in the congressional district, from which the candidate is nominated; or

''(2) in the District of Columbia, Puerto Rico, American Samoa, Guam, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, if the candidate is nominated from one of those places.''.

(3) CONFORMING AMENDMENT.—(A) Section 6954(d) of such title is amended by striking out ''(9)'' and inserting in lieu thereof ''(10)''.

(B) Section 6956(b) of such title is amended by striking out ''(8) of section 6954(a)'' in the second sentence and inserting in lieu thereof ''(10) of section 6954(a)''.

(c) UNITED STATES AIR FORCE ACADEMY.—

(1) APPOINTMENT AUTHORITY.—Subsection (a) of section 9342 of title 10, United States Code, is amended by striking out the sentence following the clauses of such subsection and inserting in lieu thereof the following:

''(10) One cadet from the Commonwealth of the Northern Mariana Islands, nominated by the Resident Representative to the United States for the Commonwealth of the Northern Mariana Islands.

Each person specified in clauses (3) through (10) who is entitled to nominate a candidate for admission to the Academy may nominate a principal candidate and nine alternates for each vacancy that is available to the person under this subsection.''.

(2) DOMICILE OF CADETS.—Subsection (f) of such section is amended to read as follows:

''(f) Each candidate for admission nominated under clauses (3) through (10) of subsection (a) must be domiciled—

''(1) in the State, or in the congressional district, from which the candidate is nominated; or

''(2) in the District of Columbia, Puerto Rico, American Samoa, Guam, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, if the candidate is nominated from one of those places.''.

(3) CONFORMING AMENDMENTS.—(A) Subsection (d) of such section is amended by striking out ''(9)'' and inserting in lieu thereof ''(10)''.

(B) Section 9343 of such title is amended by striking out ''(8) of section 9342(a)'' in the second sentence and inserting in lieu thereof ''(10) of section 9342(a)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to the nomination of candidates for appointment to the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy for classes entering the academies after the date of the enactment of this Act.•

By Mr. D'AMATO:

S. 1009. A bill to prohibit the fraudulent production, sale, transportation, or possession of fictitious items purporting to be valid financial instruments of the United States, foreign governments, States, political subdivisions, or private organizations, to increase the penalties for counterfeiting violations, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

THE FINANCIAL INSTRUMENTS ANTI-FRAUD ACT OF 1995

• Mr. D'AMATO. Mr. President, I am today introducing the Financial Instruments Anti-Fraud Act of 1995.

This legislation combats the use of factitious financial instruments to defraud individual investors, banks, pension funds, and charities. These fictitious instruments have been called many names, including prime bank notes, prime bank derivatives, prime bank guarantees, Japanese yen bonds, Indonesian promissory notes, U.S. Treasury warrants, and U.S. dollar notes. Fictitious financial instruments have caused hundreds of millions of dollars in losses.

Mr. President, these frauds have been perpetrated by antigovernment groups such as the Posse Comitatus and ''We the People,'' which use fictitious financial instruments to fund their violent activities. In the wake of the terrible tragedy in Oklahoma City, I hope my colleagues will support legislation that will cut the purse strings of these organizations.

Because these fictitious instruments are not counterfeits of any existing negotiable instrument, Federal prosecutors have determined that the manufacture, possession, or utterance of these instruments does not violate the counterfeit or bank fraud provisions contained in chapters 25 and 65 of title 18 of the United States Code. The perpetrators of these frauds can be prosecuted under existing Federal law only

if they used the mails or wires, or violated the bank fraud statute.

Mr. President, we have worked closely with the Treasury Department and various U.S. Attorneys' Offices to prepare the Financial Instruments Anti-Fraud Act of 1995. This bill makes it a violation of Federal law to possess, pass, utter, publish, or sell, with intent to defraud, any items purporting to be negotiable instruments of the U.S. Government, a foreign government, a State entity, or a private entity. It closes a loophole in Federal counterfeiting law.

Fictitious financial instruments are typically produced in very large denominations and purport to offer very high rates of return. Promoters of these schemes claim that they have exclusive access to secret wholesale markets paying 25 percent or more to investors. The June 13, 1994, issue of Business Week reported that innocent investors, including the National Council of Churches and Salvation Army, lost hundreds of millions of dollars in a scam involving bogus guarantees issued by the Czech Republic's Banka Bohemia.

Mr. President, organized terrorist and militia groups are distributing do-it-yourself kits that provide the materials and instructions for members of such organizations to produce phony money order and securities. These antisocial groups seek to undermine the soundness of the U.S. financial system, and to raise funds to advance their violent, radical agenda. They claim, for example, that the IRS is a tool of Zionist international bankers and advocate violent confrontation with Federal law enforcement agents.

Drug traffickers also rely on fictitious financial investment instruments. Some West African organized criminal syndicates, for instance, use these instruments to fund their thriving heroin trade.

In addition to combating the use of fictitious financial investment instruments, this legislation correct a technical error that occurred when the Congress enacted the Counterfeit Deterrence Act of 1992. Congress intended this bill to increase penalties for counterfeit violations. As a result of a drafting error, however, the 1992 legislation actually lowered criminal penalties for counterfeiting.

This bill imposes criminal penalties for the production and sale of fictitious instruments. These penalties are identical to those imposed for counterfeiting. Criminals found guilty under these sections will fact up to 25 years in prison.

Mr. President, I strongly urge passage of the Financial Instruments Anti-Fraud Act of 1995.●

By Mr. STEVENS (for himself and Mr. MURKOWSKI):

S. 1010. A bill to amend the ''unit of general local government'' definition for Federal payments in lieu of taxes to include unorganized boroughs in Alaska and for other purposes; to the Committee on Labor and Human Resources.

PILT LEGISLATION

● Mr. STEVENS. Mr. President, Alaska shoulders more than its fair share of the Federal lands. Federal lands are costly to State and local governments, which cannot impose a property tax on the Federal Government. Also, we are not able to develop the Federal lands to produce jobs and strengthen our economy.

The Payments In Lieu of Taxes [PILT] program provides Federal funds to local governments which have tax-exempt Federal lands within their boundaries. PILT funding is designed to relieve the fiscal burden on local governments which Federal lands impose by severely reducing the property tax base. Under the act directing PILT payments, the Secretary of the Interior makes annual payments to each unit of general local government within which Federal lands are located.

Despite Alaska's stature as the largest State in the Union and despite the millions of Federal acres in Alaska, Alaska is currently only the 10th highest PILT recipient. This is because the definition of ''unit of general local government'' includes only organized boroughs and certain independent cities in Alaska. Yet over 60 percent of Alaska and 60 percent of the Federal lands are located outside of any organized borough.

I cannot over-emphasize this point. Only 40 percent of the Federal lands in Alaska are located in organized boroughs. Over half of the Federal lands in Alaska, 60 percent, are not currently considered in determining PILT payments to Alaska. Therefore, hundreds of poor rural Alaskan communities which are surrounded by Federal lands, but which are outside of organized boroughs, receive no PILT payments. Most of these villages lack adequate sewer and water systems and do not have health facilities within 200 or 300 miles.

Last year, I introduced a bill to include Federal lands which are not within organized boroughs or independent cities. That legislation, which the Senate passed, would have accomplished this by correcting an inequity in the present definition of ''unit of general local government'' for the purpose of determining PILT payments to include unorganized boroughs. Today, I am introducing a similar bill.

This bill will resolve a great injustice. The villages in Alaska that are surrounded by tax-exempt Federal lands should be compensated for loss of property tax revenues and for the inability to use the lands for any development. The increase in Alaskan PILT payments will directly benefit villages which are in desperate need of resources to sustain basic necessities for their remote existence.

Currently, the local governments in Alaska receive about $4.5 million a year from PILT. Under this legislation, the funds the State and villages receive would increase by about $2.5 million under the corrected PILT program. $2.5 million a year will only begin to improve the living conditions in the villages—but it will help. And it is much-needed.

This bill will not increase the current entitlement ceiling of PILT. It will only change the way the PILT fund is divided. It will provide a small additional share of the PILT fund distribution to those Alaskan communities that are outside organized boroughs.

This legislation also will not reduce other States' PILT funding by very much because PILT calculations include population statistics. Therefore, Alaska will never receive as much as some of the Western States with high populations and relatively high Federal acreage.

It is a matter of fairness—60 percent of the Federal lands in Alaska are not included under current PILT calculations. Alaska is the only State not fully compensated for all of its Federal lands. Even the territories and the District of Columbia are fully compensated.

I would appreciate the support of the other Senators to see that Alaska finally receives PILT funds for all of the Federal lands in the State—not just 40 percent of them.●

By Mr. CRAIG (for himself, Mr. HEFLIN, Mr. LUGAR, and Mr. LEAHY):

S. 1011. A bill to help reduce the cost of credit to farmers by providing relief from antiquated and unnecessary regulatory burdens for the Farm Credit System, and for other purposes.

THE FARM CREDIT SYSTEM REGULATORY RELIEF ACT

Mr. CRAIG. Mr. President, I am here today to introduce the Farm Credit System Regulatory Relief Act of 1995. I am pleased that my colleague, Senator HEFLIN along with the chairman and ranking member of the Agriculture Committee, Senators LUGAR and LEAHY, join me as original cosponsors of this important legislation.

The Farm Credit System Regulatory Relief Act of 1995 will provide for the elimination, consistent with safety and soundness requirements, of all regulations that are unnecessary, unduly burdensome or costly, or not based on statute.

The Farm Credit System supplies about 25 percent of the credit provided to American producers and more than 80 percent of the credit provided to agricultural cooperatives. The cost of this credit is increased by unnecessary regulations. The increasingly competitive global market combined with the decreasing role of the Federal Government in agricultural support programs necessitates that farmers and ranchers have continued access to competitive sources of financial capital.

There are 8 Farm Credit System banks and approximately 230 locally owned farm credit associations located across all 50 of the United States. If the Farm Credit System is to remain the

viable financial partner for American agriculture that it is, then the time is now to make these significant revisions. Mr. President, I would also emphasize for the record that this piece of legislation is simply and solely regulatory relief, it does not provide the Farm Credit System with any additional or expanded lending authorities.

The changes, as I have outlined in the attached section-by-section summary, are an important step toward ensuring that our American farmers will be able to obtain competitive loan rates and better service from the Farm Credit System.

Mr. President, I ask unanimous consent that the section-by-section analysis of this bill along with a letter from the Farm Credit Administration be printed in the RECORD.

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

THE FARM CREDIT SYSTEM REGULATORY RELIEF ACT OF 1995—SECTION-BY-SECTION ANALYSIS

Section 1: Short title; table of contents: The short title is the ''Farm Credit System Regulatory Relief Act of 1995.''

Section 2: References to the Farm Credit Act of 1971: As used in this bill, all references, unless otherwise noted, are references to the ''Farm Credit Act of 1971.''

Section 3: Regulatory Review: This section describes the findings of Congress regarding recent efforts by the Farm Credit Administration (FCA) to reduce regulatory burden on Farm Credit System institutions. This section also directs FCA to continue its efforts to eliminate, consistent with safety and soundness, all regulations that are unnecessary, unduly burdensome or costly, or not based on statute.

Section 4: Examination of Farm Credit System Institutions: Under current law, the Farm Credit Administration has the authority to examine System direct lender institutions whenever and as often as the agency chooses, but not less than once every year. This section would grant the FCA flexibility to extend the length of time between mandatory examinations to 18 months. This section would not apply to Federal Land Bank Associations, which under current law are only mandated for examination every three years.

Nothing in this section would affect FCA's ability to examine any System institution at any time the regulator deems necessary. Likewise, this section would not affect the specific technical requirements of FCA's examinations or the Agency's enforcement authorities.

This section is designed to reduce examination costs for well-captialized System institutions while fully preserving FCA's existing safety and soundness oversight authorities.

Section 5; Farm Credit Insurance Fund Operations. This section would authorize the Farm Credit System Insurance Corporation (FCSIC) to allocate to System banks excess interest earnings generated by the Farm Credit Insurance Fund once the Fund reaches the secure base amount. At the same time, until the excess interest earnings are rebated to system banks, which would not begin until five years after the secure base amount is reached, any uses of the Fund would could first from the allocated earnings held in the Fund. Only after such allocated amounts were exhausted would funds from the secure base amount be used.

Current law requires the FCSIC to assess premiums until such time as the aggregate amount in the Farm Credit Insurance Fund (The Fund) equals the secure base amount. The secure base amount is defined as an amount equal to 2 percent of the insured liabilities of the Farm Credit System, or such other amount determined by FCSIC to be actuarially sound. Once the secure base is reached (expected in early 1997), premiums can be suspended. However, FSCIC does not have the authority to address the excess interest earnings that will continue to build above the secure base amount.

This section would allow the eventual rebate of this excess interest to those institutions that have paid insurance premiums based on a three-year running average of their accruing loan volume. This section would also authorize, but not require, FCSIC to reduce insurance premiums as the Insurance Fund approaches the 2 percent secure base amount.

Section 6: Powers with Respect to Troubled Insured System Banks: This section would require FCSIC to implement the least costly of all alternatives available to it, including an assisted merger, as it considers options for providing assistance to a troubled System institution. It would also make clear that the directorship and management of an assisted institution serves at the discretion of and is subject to the approval of FCSIC. Current law permits FCSIC to provide ''open-bank'' assistance to a troubled System institution if such assistance is merely less costly than liquidation, and also permits FCSIC to ignore this least-cost restriction altogether in certain limited circumstances. Current law also permits FCSIC to provide financial support to a troubled institution without any requirement that the operations or management of that institution be materially changed. Failure to amend current authorities could lead to open-ended cost to the Farm Credit Insurance fund, and potentially result in additional costs to other, healthy FCS institutions.

Section 7: Farm Credit System Insurance Corporation Board of Directors: This section would retain the current structure of the FCSIC Board by removing provisions of current law requiring a new FCSIC Board structure. Currently, the FCSIC board is comprised of the three board members of the Farm Credit Administration. The Chairman of FCSIC is elected by the board and must be someone other than the FCA chairman. Effective January 1, 1996, current law requires the establishment of a new, full-time presidentially-appointed, three-person board completely separate and independent from the FCA board. This section would remove the provision in current law and would result in the retention of the FCA board as the FCSIC board.

Section 8: Conservatorships and Receiverships: This section makes a conforming change to clarify that FCSIC can act in the capacity of a receiver or conservator of a System institution.

Section 9: Examinations by the Farm Credit System Insurance Corporation: This section provides that once the Farm Credit Administration cancels the charter of a System institution that is in receivership, FCSIC shall have exclusive authority to examine the institution.

Section 10: Oversight and Regulatory Actions by the Farm Credit System Insurance Corporation: This section provides that the Farm Credit Administration shall consult with FCSIC before approving any debt issuances by a System bank that fails to meet the minimum capital levels set by FCA. This section also provides for consultation with FCSIC before the Farm Credit Administration approves a proposed merger or restructuring of a System bank or large association that does not meet FCA's minimum capital levels. Finally, the section grants FCSIC similar authority to that of the FDIC to prohibit any golden parachute payment of indemnification payment by a System institution that is in a troubled condition.

Section 11: Formation of Administrative Service Entities: This section would allow Farm Credit System associations to establish administrative service entities. These entities would not be permitted to perform activities or carry out functions not currently authorized by statute. Under current law, Farm Credit System banks can form such entities under Section 4.25 of the Farm Credit Act. This section would extend that authority to FCS associations, although an entity organized under this section would have no authority either to extend credit or provide insurance services to Farm Credit System borrowers, nor would it have any greater authority with respect to functions and services than the organizing assocaiton or associations possess under the Farm Credit Act.

Section 12: Requirements for Loans Sold into the Secondary Market: This section would make inapplicable the borrower rights requirements of current law, and allow System banks and associations to change their bylaws to make inapplicable the borrower stock requirements of current law, for any loan specifically originated for sale into the secondary market. Under current law, Farm Credit borrowers are required to buy and maintain stock or participation certificates in the System institution which originated their loan, even when the loan was originated with the express intent of selling it into the secondary market.

In addition, System loans to farmers are covered by the borrower rights provisions of the Agricultural Credit Act of 1987. This section would allow System institutions to waive these requirements for loans that are originated for sale into the secondary market. If loans designated for sale into the secondary market are not sold within one year, the relevant borrower stock and borrower rights requirements would again apply.

The borrower stock provisions of this section would apply whether or not the bank or association retains a subordinated participation interest in a loan or pool of loans or contributes to a cash reserve pursuant to title VIII of the Farm Credit Act.

Section 13: Removal of Antiquated and Unnecessary Paperwork Requirements:

Compensation of Association Personnel: This section would remove the requirement in current law that Farm Credit System banks approve the appointment and compensation of association CEOs.

Use of Private Mortgage Insurance: This section would allow a rural home loan borrower to obtain financing in excess of 85 percent of the value of the real estate collateral pledged, provided the borrower obtains private mortgage insurance for the amount in excess of 85 percent. Under current statute, Farm Credit System institutions can only lend up to 85 percent of the value of the real estate security unless federal, state, or government agency guarantees are obtained.

Removal of Certain Borrower Reporting Requirements: This section would repeal the provision of current law which requires all long-term mortgage borrowers to provide updated financial statements every three years, regardless of the status of the borrower's loan.

Disclosure Relating to Adjustable Rate Loans: For loans not subject to the Truth-In-Lending Act, current regulation requires Farm Credit System institutions to notify a borrower of any increase in the interest rate applicable to the borrower's loan at least 10 -

days in advance of the effective date of the change. For adjustable rate loans that are based on an underlying index (such as prime), this requirement is impossible to fulfill.

This section would permit notice of a change in the borrower's interest rate to be given within a reasonable time after the effective date of an increase or decrease.

Joint Management Agreements: This section would remove the requirement in current law that both stockholders and the Farm Credit Administration approve joint management agreements, thereby leaving such decisions to the discretion of the boards of directors of the institutions involved.

Dissemination of Quarterly Reports: This section would require that regulations issued by the Farm Credit Administration governing the dissemination of quarterly reports to shareholders be no more burdensome or costly than regulations issued by other financial regulators governing similar disclosures by national banks.

Section 14: Removal of Federal Government Certification Requirement for Certain Private Sector Financings: This section would remove government certification procedures for certain Banks for Cooperatives' lending activities without changing eligibility requirements in current statute. Under current law, eligibility for FCS bank for cooperative rural utility lending is based on the eligibility requirements in the Rural Electrification Act. Current statute requires the administrator of the Rural Electrification Administration (REA) to certify that rural utility companies are eligible for REA financing in order for those systems to obtain private sector financing from the Banks for Cooperatives. This section would remove the certification requirement without changing the underlying eligibility criteria in the statute.

Section 15: Reform of Regulatory Limitations on Dividend, Member Business, and Voting Practices of Eligible Farmer-Owned Cooperatives: This section would allow greater flexibility for evolving cooperative structure issues such as dividend, member business, and voting practices. Under current law, farmer-owned cooperatives are required to maintain rigid operating procedures in order to maintain their eligibility for FCS Bank for Cooperatives financing. This section would allow existing borrowers to adapt their operations, while retaining their farmer-owned nature, and thereby maintain their continued eligibility to borrow from the Banks for Cooperatives. This section would not expand Banks for Cooperatives eligibility to cooperatives that do not meet the eligibility criteria in current law.

FARM CREDIT ADMINISTRATION,
McLean, VA, June 29, 1995.

Hon. LARRY E. CRAIG,
Chairman, Forestry, Conservation, and Rural Revitalization Subcommittee.
Committee on Agriculture, Nutrition and Forestry,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: In response to your request, the Farm Credit Administration provides its views on the proposed Farm Credit System Regulatory Relief Act of 1995 (Relief Act). Relieving regulatory burden has been a strategic goal of the FCA's since 1994, and we have accomplished a great deal in this area. We are, nevertheless, supportive of legislative efforts to relieve burdens we lack the power to remove, provided safety and soundness are not compromised.

We do not believe it is necessary for the Congress to direct FCA to continue its efforts to eliminate regulations that are unnecessary, unduly burdensome or costly or not based on statute. The FCA has been actively involved in an effort to streamline its regulatory burden and is committed to continuing that process. The FCA Board recently reaffirmed the existing policy to regulate only as necessary to implement or interpret the statute or as required by safety and soundness and to conduct a periodic review of regulations with a view to eliminating unnecessary burden.

While we understand the position the System has taken with respect to the statutory provision for financial statements, we do believe that timely financial information on large loans with annual or infrequent payment schedules is required for safe and sound business decisions and planning. Should the statutory provision be eliminated, we would continue to address this issue by regulation as necessary for safety and soundness. It should also be noted that the current FCA regulation (12 CFR 614.4200(c)) exempts loans with regular and frequently scheduled payments such as rural housing or other similarly amortized consumer-type loans.

With respect to the provisions dealing with information provided to stockholders, FCA regulations require that borrowers receive a 10-day advance notice of the increase in rates on an adjustable rate loan, whether the rate is an administered rate or is tied to an index that is available to the general public and not under the lender's control. The Relief Act proposes to delete this requirement and provide for a post increase notice within a reasonable time. The FCA Board has expressed interest in relaxing the regulatory requirement and would support notification to the borrower within 10 days after the increase or decrease.

The Relief Act provisions would relieve an association of any obligation to provide stockholders with a quarterly financial report. The quarterly report, together with the annual report, serves a dual purpose. The reports provide shareholders with current information on the performance of their investment and the management of the association they own. In addition, they serve as the basis for disclosure to prospective shareholders. FCA regulations currently require that quarterly reports be sent to stockholders or published in a widely available publication. The FCA currently is considering a request from a number of System institutions to permit these reports be made available only when stockholders request them. The Relief Act would relieve System institutions of the obligation to provide a quarterly report even if requested. We think shareholders need to have access to recent financial information about the institution they own.

With respect to the provision related to the Farm Credit System Insurance Corporation Board structure, we believe that it would result in significant savigns and that addressign this issue as proposed in the Relief Act would be consistent with the current emphasis on streamlining government.

We thank you for the opportunity to comment. If we can be of further assistance, please let us know.

Sincerely,

MARSHA MARTIN,
Chairman.
DOYLE L. COOK,
Board Member.

Mr. HEFLIN. Mr. President, I rise in strong support of, and am proud to lend my cosponsorship to, the Farm Credit System Regulatory Relief Act of 1995.

The Farm Credit System has played a central role in providing capital to farming families for decades. However, as we face an evolving business world, modifications are necessary for Farm Credit to remain a viable financial partner for American agriculture.

The availability of credit is of vital importance to rural economies. The Farm Credit System Regulatory Relief Act addresses the need for adequate and reliable credit by providing for the removal of unnecessary and burdensome regulation which will facilitate the flow of required capital.

The Farm Credit Regulatory Relief Act grants the Farm Credit Administration the flexibility to extend the length of time between mandatory examinations to 18 months. The Farm Credit Administration has the authority to examine system-direct lending institutions whenever and as often as the agency chooses. This improvement only changes the mandatory period between examinations. This change will reduce the isntitutions' examination costs and the savings will be passed back to rural borrowers through lwoer loan rates, thereby making capital more easily attainable where it is most needed.

In addition to reducing costs, the Regulatory Relief Act will also allow the Farm Credit System to better serve local communities by creating administrative service entities. Current law allows Farm Credit banks to establish such service entities. This act would extend existing authority to Farm Credit System associations which serve the rural communities. I fully support this change and believe that it is long overdue.

Through the removal of outdated and burdensome regulations, the Farm Credit System will be able to better serve farming families and rural communities wshile promoting cost savings to agriculture by providing farmers with competitive loan rates. For these reasons, I strongly support the Farm Credit Regulatory Relief Act of 1995.

By Mr. D'AMATO (for himself and Mr. MOYNIHAN):

S. 1012. A bill to extend the time for construction of certain FERC licensed hydro projects; to the Committee on Energy and Natural Resources.

HYDROELECTRIC POWER LICENSE EXTENSION

• Mr. D'AMATO. Mr. President, I rise today to introduce legislation with my friend and colleague, Senator MOYNIHAN, that will keep two hydroelectric projects in upstate New York on track. Our legislation will extend the time limitations on two Federal Energy Regulatory Commission [FERC] licensed hydroelectric projects located on two existing dam sites on the Hudson River—the Northumberland project and the Waterford project.

The Northumberland Hydroelectric project, when completed, will generate 48 million kilowatt hours of electricity while the Waterford Hydroelectric project will produce 42 million kilowatt hours. The development of these two dams will provide a clean alternative energy source. In addition, the construction and operation of these projects will provide jobs for this upstate region of New York.

As many of my colleagues who are familiar with similar projects know, the Federal Power Act sets a time limit for the beginning of construction on a hydropower project once FERC has issued a license. Once a license is issued, construction must occur 2 years from the licensing date unless FERC extends the initial two year deadline. The Federal Power Act allows only one extension for up to 2 years. Failure to commerce construction within the time allotted opens the license to termination. In the case of these two projects, FERC has already extended the deadline—the Northumberland deadline is January 16, 1996, while the Waterford deadline is June 7, 1997.

The bill that we are introducing today is identical to legislation introduced in the House by Representatives SOLOMON and MCNULTY. Both bills give FERC the authority to extend the construction deadline for each project for up to a total of 6 years. The current licensees for these projects are moving steadily toward development, however, they recognize that they may not be able to achieve their goals within the prescribed deadlines. By enacting this legislation, the extra time necessary to realize the potential of these projects will be granted.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1012

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION.

Notwithstanding the limitations of section 13 of the Federal Power Act, the Federal Energy Regulatory Commission, upon the request of the licensee or licensees for FERC projects numbered 4244 and 10648 (and after reasonable notice), is authorized in accordance with the good faith, due diligence, and public interest requirements of such section 13 and the Commission's procedures under such section, to extend the time required for commencement of construction for each of such projects for up to a maximum of 3 consecutive 2-year periods. This section shall take effect for the projects upon the expiration of the extension (issued by the Commission under such section 13) of the period required for commencement of construction of each such project.●

By Mr. NICKLES:

S. 1014. A bill to improve the management of royalties from Federal and Outer Continental Shelf oil and gas leases, and for other purposes; to the Committee on Energy and Natural Resources.

THE ROYALTY FAIRNESS ACT OF 1995

Mr. NICKLES. Mr. President, over time, serious problems have developed with the ways courts and consequently the Minerals Management Service [MMS] have interpreted the Federal statute of limitations governing royalty collection. Basically the issue is: At what time does the statute of limitations begin to run on the underpayment of royalties?

Some courts claim that the statute of limitations does not begin to run until the MMS ''should have known about the deficiency'' in the amount the producer has paid [*Mesa* v. *U.S.* (10th Cir. 1994)]. Other courts have held that the current six year statute ''is tolled until such time as the government could reasonably have known about a fact material to its right of action.'' [*Phillips* v. *Lujan* (10th Cir. 1993)].

Either of the above interpretations subject producers to unlimited liability—a period that well exceeds the statute of limitations on other agency actions regarding procedures. This situation has created a climate of deep uncertainty in the payment of royalties that was not intended by Congress and that is not in the best interests of consumers, producers, or ultimately the U.S. Government.

Oil and gas producers pay billions of dollars every year for the opportunity to drill on Federal land. The payment of royalties is a routine part of doing business with the federal government. Their is no attempt here to alter that obligation to pay.

However, like all other businesses, oil and gas producers need certainty in their business relationships and in their business transactions with the Federal Government. That certainty is not now present in the MMS's regulations or in numerous court decisions interpreting the applicable statute of limitations. Certainty can be achieved only through legislation. For that reason, I am introducing today the Royalty Fairness Act of 1995.

The main objective of this legislation is to identify the time when the statute of limitations begins to run on royalty payments. In most cases, it will be when the obligation to pay the royalty begins. That will occur, in most instances, at the time of an underpayment of the royalty payment to the MMS.

Let me summarize the effects and provisions of this bill:

The bill establishes a 6-year statute of limitations for auditing royalty activities and correcting errors, defined to commence the month following the month of production.

The bill also addresses the refund period for overpayments on OCS drilling. Currently, there is a 2-year period to file for an overpayment on offshore leases. Experience has shown that this period is too short and that, as a result, producers can lose legitimate refunds. To correct this problem, the bill extends the refund period from 2 to 3 years. This section also provides for routine crediting or offsetting of overpayments against payments currently due—something that is not permitted now for royalty payments but would increase the efficiencies of collection.

An amendment to the Federal Oil and Gas Royalty Management Act of 1982 [FOGRMA] is included to similarly shorten the time frame for producers to keep records. There is simply no need to keep records beyond the proposed 6-year statute of limitations.

Interest reciprocity is established, but requires offsetting by both the lessee and the Secretary. This offsetting procedure applies to all overpayments and underpayments at the lessee level for all federal leases of the same category prior to determining the ''net'' overpayment or underpayment which is subject to interest.

The Act allows the Secretary to waive interest. Currently, the law is interpreted to require the collection of interest in all cases. That interpretation has made it difficult to resolve payment issues or settle disputed claims. Thus, this section is intended to facilitate the settlement of payments and disputes.

Furthermore, the Act provides an inducement for MMS to resolve administrative proceedings in a diligent timeframe (3 years). There is currently no such inducement; in fact, the MMS in many instances tolls its decisions indefinitely.

This bill provides for the imposition of civil or criminal penalties upon a showing of willful misconduct or gross negligence. Currently penalties or assessments are imposed without notice or an opportunity to be heard. This section provides for due process.

No section of this bill allows for reduced royalties either before or after production is commenced.

It does, however, eliminate the need to give formal notice before seeking enforcement of the Outer Continental Shelf Leasing Act [OCSLA].

These are the major provisions of the Act. It covers leases administered by the Secretary of the Interior on Federal lands and the Outer Continental Shelf but specifically excludes Indian lands.

The MMS has made a number of attempts to correct these problems, and currently it has several information policies that parallel many of the provisions in this bill. However, there will be no permanent solution until Congress enacts legislation. The bill has strong support among oil and gas producers. I am confident that creating a climate of certainty in the oil and gas industry and getting rid of some inconsistencies in current regulation is very much in the national economic interest.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1014

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Federal Oil and Gas Royalty Simplification and Fairness Act of 1995''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Limitation periods.
Sec. 4. Overpayments: offsets and refunds.

Sec. 5. Required recordkeeping.
Sec. 6. Royalty interest, penalties, and payments.
Sec. 7. Limitation on assessments.
Sec. 8. Cost-effective audit and collection requirements.
Sec. 9. Elimination of notice requirement.
Sec. 10. Royalty in kind.
Sec. 11. Time and manner of royalty payment.
Sec. 12. Repeals.
Sec. 13. Indian lands.
Sec. 14. Effective date.

SEC. 2. DEFINITIONS.

Section 3 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) is amended as follows:

(1) In paragraph (5), by inserting ''(including any unit agreement and communitization agreement)'' after ''agreement''.

(2) By amending paragraph (7) to read as follows:

''(7) 'lessee' means any person to whom the United States issues a lease.''.

(3) By striking ''and'' at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting a semicolon, and by adding at the end the following:

''(17) 'administrative proceeding' means any agency process for rulemaking, adjudication or licensing, as defined in and governed by chapter 5 of title 5, United States Code (relating to administrative procedures);

''(18) 'assessment' means any fee or charge levied or imposed by the Secretary or the United States other than—

''(A) the principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;

''(B) any interest; and

''(C) any civil or criminal penalty;

''(19) 'commence' means—

''(A) with respect to a judicial proceeding, the service of a complaint, petition, counterclaim, cross-claim, or other pleading seeking affirmative relief or seeking offset or recoupment;

''(B) with respect to an administrative proceeding—

''(i) the receipt by a lessee of an order to pay issued by the Secretary; or

''(ii) the receipt by the Secretary of a written request or demand by a lessee, or any person acting on behalf of a lessee which asserts an obligation due the lessee;

''(20) 'credit' means the method by which an overpayment is utilized to discharge, cancel, reduce or offset an obligation in whole or in part;

''(21) 'obligation' means a duty of the Secretary, the United States, or a lessee—

''(A) to deliver or take oil or gas in kind; or

''(B) to pay, refund, credit or offset monies, including (but not limited to) a duty to calculate, determine, report, pay, refund, credit or offset—

''(i) the principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;

''(ii) any interest;

''(iii) any penalty; or

''(iv) any assessment,

which arises from or relates to any lease administered by the Secretary for, or any mineral leasing law related to, the exploration, production and development of oil or gas on Federal lands or the Outer Continental Shelf;

''(22) 'offset' means the act of applying an overpayment (in whole or in part) against an obligation which has become due to discharge, cancel or reduce the obligation;

''(23) 'order to pay' means a written order issued by the Secretary or the United States which—

''(A) asserts a definite and quantified obligation due the Secretary or the United States; and

''(B) specifically identifies the obligation by lease, production month and amount of such obligation ordered to be paid, as well as the reason or reasons such obligation is claimed to be due,

but such term does not include any other communication by or on behalf of the Secretary or the United States;

''(24) 'overpayment' means any payment (including any estimated royalty payment) by a lessee or by any person acting on behalf of a lessee in excess of an amount legally required to be paid on an obligation;

''(25) 'payment' means satisfaction, in whole or in part, of an obligation due the Secretary or the United States;

''(26) 'penalty' means a statutorily authorized civil fine levied or imposed by the Secretary or the United States for a violation of this Act, a mineral leasing law, or a term or provision of a lease administered by the Secretary;

''(27) 'refund' means the return of an overpayment by the Secretary or the United States by the drawing of funds from the United States Treasury;

''(28) 'underpayment' means any payment by a lessee or person acting on behalf of a lessee that is less than the amount legally required to be paid on an obligation; and

''(29) 'United States' means—

''(A) the United States Government and any department, agency, or instrumentality thereof; and

''(B) when such term is used in a geographic sense, includes the several States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.''.

SEC. 3. LIMITATION PERIODS.

(a) IN GENERAL.—The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) is amended by adding after section 114 the following new section:

''SEC. 115. LIMITATION PERIODS.

''(a) IN GENERAL.—

''(1) SIX-YEAR PERIOD.—A judicial or administrative proceeding which arises from, or relates to, an obligation may not be commenced unless such proceeding is commenced within 6 years from the date on which such obligation becomes due.

''(2) LIMIT ON TOLLING OF LIMITATION PERIOD.—The running of the limitation period under paragraph (1) shall not be suspended or tolled by any action of the United States or an officer or agency thereof other than the commencement of a judicial or administrative proceeding under paragraph (1) or an agreement under paragraph (3).

''(3) FRAUD OR CONCEALMENT.—For the purpose of computing the limitation period under paragraph (1), there shall be excluded therefrom any period during which there has been fraud or concealment by a lessee in an attempt to defeat or evade payment of any such obligation.

''(4) REASONABLE PERIOD FOR PROVIDING INFORMATION.—In seeking information on which to base an order to pay, the Secretary shall afford the lessee or person acting on behalf of the lessee a reasonable period in which to provide such information before the end of the period under paragraph (1).

''(b) FINAL AGENCY ACTION.—The Director of the Minerals Management Service shall issue a final Director's decision in any administrative proceeding before the Director within one year from the date such proceeding was commenced. The Secretary shall issue a final agency decision in any administrative proceeding within 3 years from the date such proceeding was commenced. If no such decision has been issued by the Director or Secretary within the prescribed time periods referred to above:

''(1) the Director's or Secretary's decision, as the case may be, shall be deemed issued and granted in favor of the lessee or lessees as to any nonmonetary obligation and any obligation the principal amount of which is less than $2,500; and

''(2) in the case of a monetary obligation the principal amount of which is $2,500 or more, the Director's or Secretary's decision, as the case may be, shall be deemed issued and final, and the lessee shall have a right of de novo judicial review and appeal of such final agency action.

''(c) TOLLING BY AGREEMENT.—Prior to the expiration of any period of limitation under subsections (a) or (c), the Secretary and a lessee may consent in writing to extend such period as it relates to any obligation under the mineral leasing laws. The period so agreed upon may be extended by subsequent agreement or agreements in writing made before the expiration of the period previously agreed upon.–

''(d) LIMITATION ON CERTAIN ACTIONS BY THE UNITED STATES.—When an action on or enforcement of an obligation under the mineral leasing laws is barred under subsection (a) or (b), the United States or an officer or agency thereof may not take any other or further action regarding that obligation including (but not limited to) the issuance of any order, request, demand or other communication seeking any document, accounting, determination, calculation, recalculation, principal, interest, assessment, penalty or the initiation, pursuit or completion of an audit.

''(e) OBLIGATION BECOMES DUE.—

''(1) IN GENERAL.—For purposes of subsection (a), an obligation becomes due when the right to enforce the obligation is fixed.

''(2) SPECIAL RULE REGARDING ROYALTY OBLIGATION.—The right to enforce any royalty obligation is fixed for the purposes of this Act on the last day of the calendar month following the month in which oil or gas is produced, except that with respect to any such royalty obligation which is altered by a retroactive redetermination of working interest ownership pursuant to a unit or communitization agreement, the right to enforce such royalty obligation in such amended unit or communitization agreement is fixed for the purposes of this Act on the last day of the calendar month in which such redetermination is made. The Secretary shall issue any such redetermination within 180 days of receipt of a request for redetermination.

''(f) JUDICIAL REVIEW OF ADMINISTRATIVE PROCEEDINGS.—In the event an administrative proceeding subject to subsection (a) is timely commenced and thereafter the limitation period in subsection (a) lapses during the pendency of the administrative proceeding, no party to such administrative proceeding shall be barred by this section from commencing a judicial proceeding challenging the final agency action in such administrative proceeding so long as such judicial proceeding is commenced within 90 days from receipt of notice of the final agency action.

''(g) IMPLEMENTATION OF FINAL DECISION.—In the event a judicial or administrative proceeding subject to subsection (a) is timely commenced and thereafter the limitation period in subsection (a) lapses during the pendency of such proceeding, any party to such proceeding shall not be barred from taking such action as is required or necessary to implement the final unappealable judicial or administrative decision, including any action required or necessary to implement such decision by the recovery or recoupment of an underpayment or overpayment by means of refund, credit or offset.

''(h) STAY OF PAYMENT OBLIGATION PENDING REVIEW.—Any party ordered by the Secretary or the United States to pay any obligation (including any interest, assessment or penalty) shall be entitled to a stay of such payment without bond or other surety pending administrative or judicial review unless the Secretary demonstrates that such party is or may become financially insolvent or otherwise unable to pay the obligation, in which case the Secretary may require a bond or other surety satisfactory to cover the obligation.

''(i) INAPPLICABILITY OF THE OTHER STATUTES OF LIMITATION.—The limitations set forth in sections 2401, 2415, 2416, and 2462 of title 28, United States Code, section 42 of the Mineral Leasing Act (30 U.S.C. 226–2), and section 3716 of title 31, United States Code, shall not apply to any obligation to which this Act applies.''.

(b) CLERICAL AMENDMENT.—The table of contents in section 1 of such Act (30 U.S.C. 1701) is amended by adding after the item relating to section 114 the following new item:

''Sec. 115. Limitation period.''.

SEC. 4. OVERPAYMENTS: OFFSETS AND REFUNDS.

(a) IN GENERAL.—The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) is amended by adding after section 111 the following new section:

''SEC. 111A. OVERPAYMENTS: OFFSETS AND REFUNDS.

''(a) OFFSETS.—

''(1) MANNER.—For each reporting month, a lessee or person acting on behalf of a lessee shall offset all under payments and overpayments made for that reporting month for all leases within the same royalty distribution category established under permanent indefinite appropriations.

''(2) OFFSET AGAINST OBLIGATIONS.—The net overpayment resulting within each category from the offsetting described in paragraph (1) may be offset and credited against any obligation for current or subsequent reporting months which have become due on leases within the same royalty distribution category.

''(3) PRIOR APPROVAL NOT REQUIRED.—The offsetting or crediting of any overpayment, in whole or part, shall not require the prior request to or approval by the Secretary.

''(4) EXCLUSION OF CERTAIN UNDER AND OVERPAYMENTS.—Any underpayment or overpayment upon which an order has been issued which is subject to appeal shall be excluded from the offsetting provisions of this section.

''(b) REFUNDS.—

''(1) IN GENERAL.—A refund request may be made to the Secretary not before one-year after the subject reporting month. After such one-year period and when a lessee or a person acting on behalf of a lessee has made a net overpayment to the Secretary or the United States and has offset or credited in accordance with subsection (a), the Secretary shall, upon request, refund to such lessee or person the net overpayment, with accumulated interest thereon determined in accordance with section 111. If for any reason, a lessee or person acting on behalf of a lessee is no longer accruing obligations on any lease within a category, then such lessee or person may immediately file a request for a refund of any net overpayment and accumulated interest.

''(2) REQUEST.—The request for refund is sufficient if it—

''(A) is made in writing to the Secretary;

''(B) identifies the person entitled to such refund; and

''(C) provides the Secretary information that reasonably enables the Secretary to identify the overpayment for which such refund is sought.

''(3) TREATMENT AS WRITTEN REQUEST OR DEMAND.—Service of a request for refund shall be a 'written request or demand' sufficient to commence an administrative proceeding.

''(4) PAYMENT BY SECRETARY OF THE TREASURY.—The Secretary shall certify the amount of the refund to be paid under paragraph (1) to the Secretary of the Treasury who is authorized and directed to make such refund.

''(5) PAYMENT PERIOD.—A refund under this subsection shall be paid within 90 days of the date on which the request for refund was received by the Secretary.

''(c) LIMITATION ON OFFSETS AND REFUNDS.—

''(1) LIMITATION PERIOD FOR OFFSETS AND REFUNDS.—Except as provided by paragraph (2), a lessee or person acting on behalf of a lessee may not offset or receive a refund of any overpayment which arises from or relates to an obligation unless such offset or refund request is initiated within six years from the date on which the obligation which is the subject of the overpayment became due.

''(2) EXCEPTION.—(A) For any overpayment the recoupment of which (in whole or in part) by offset or refund, or both, may occur beyond the six-year limitation period provided in paragraph (1), where the issue of whether an overpayment occurred has not been finally determined, or where recoupment of the overpayment has not been accomplished within said six-year period, the lessee or person acting on behalf of a lessee may preserve its right to recover or recoup the overpayment beyond the limitation period by filing a written notice of the overpayment with the Secretary within the six-year period.

''(B) Notice under subparagraph (A) shall be sufficient if it—

''(i) identifies the person who made such overpayment;

''(ii) asserts the obligation due the lessee or person; and

''(iii) identifies the obligation by lease, production month and amount, as well as the reason or reasons such overpayment is due.

''(d) PROHIBITION AGAINST REDUCTION OF REFUNDS OR OFFSETS.—In no event shall the Secretary directly or indirectly claim any amount or amounts against, or reduce any offset or refund (or interest accrued thereon) by, the amount of any obligation the enforcement of which is barred by section 115.''.

(b) CLERICAL AMENDMENT.—The table of contents in section 1 of such Act (30 U.S.C. 1701)is amended by adding after the item relating to section 111 the following new item:

''Sec. 111A. Overpayments: offsets and refunds.''.

SEC. 5. REQUIRED RECORDKEEPING.

Section 103 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1713(b)) is amended by adding at the end the following:

''(c) Records required by the Secretary for the purpose of determining compliance with an applicable mineral leasing law, lease provision, regulation or order with respect to oil and gas leases from Federal lands or the Outer Continental Shelf shall be maintained for six years after an obligation becomes due unless the Secretary commences a judicial or administrative proceeding with respect to an obligation within the time period prescribed by section 115 in which such records may be relevant. In that event, the Secretary may direct the record holder to maintain such records until the final nonappealable decision in such judicial or administrative proceeding is rendered. Under no circumstance shall a record holder be required to maintain or produce any record covering a time period for which a substantive claim with respect to an obligation to which the record relates would be barred by the applicable statute of limitation in section 115.''.

SEC. 6. ROYALTY INTEREST, PENALTIES, AND PAYMENTS.

(a) INTEREST CHARGED ON LATE PAYMENTS AND UNDERPAYMENTS.—Section 111(a) of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721(a)) is amended to read as follows:

''(a) In the case of oil and gas leases where royalty payments are not received by the Secretary on the date that such payments are due, or are less than the amount due, the Secretary shall charge interest on a net late payment or underpayment at the rate published by the Department of the Treasury as the Treasury Current Value Of Funds Rate. The Secretary may waive or forego such interest in whole or in part. In the case of a net underpayment for a given reporting month, interest shall be computed and charged only on the amount of the net underpayment and not on the total amount due from the date of the net underpayment. The net underpayment is determined by offsetting in the same manner as required under paragraphs (1) and (2) of section 111A(a). Interest may only be billed by the Secretary for any net underpayment not less than one year following the subject reporting month.''.

(b) CHARGE ON LATE PAYMENT MADE BY THE SECRETARY.—Section 111(b) of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721(b)) is amended to read as follows:

''(b) Any payment made by the Secretary to a State under section 35 of the Mineral Leasing Act, and any other payment made by the Secretary which is not paid on the date required under such section 35, shall include an interest charge computed at the rate published by the Department of the Treasury as the Treasury Current Value of Funds Rate. The Secretary shall not be required to pay interest under this paragraph until collected or when such interest has been waived or is otherwise not collected. With respect to any obligation, the Secretary may waive or forego interest otherwise required under section 3717 of title 31, United States Code.''.

(c) PERIOD.—Section 111(f) of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721(f)) is amended to read as follows:

''(f) Unless waived or not collected pursuant to subsections (a)(2) and (b)(2), interest shall be charged under this section only for the number of days a payment is late.''.

(d) LESSEE INTEREST.—Section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721) is amended by adding the following after subsection (g):

''(h) If a net overpayment, as determined by offsetting as required under section 111A(1) and (2) for a reporting month, interest shall be allowed and paid or credited on such net overpayment, with such interest to accrue from the date such net overpayment was made, at the rate published by the Department of the Treasury as the Treasury Current Value of Funds Rate.''.

(e) PAYMENT EXCEPTION FOR MINIMAL PRODUCTION.—Section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721) is amended by adding the following after subsection (h):

''(i) For any well on a lease which produces on average less than 250 thousand cubic feet of gas per day or 25 barrels of oil per day, the royalty on the actual or allocated lease production may be paid—

''(1) for a 12-month period, only based on actual production removed or sold from the lease; and

''(2) 6 months following such period, for additional production allocated to the lease during the period.

No interest shall be allowed or accrued on any underpayment resulting from this payment methodology until the month following the applicable 12-month period.''.

SEC. 7. LIMITATION ON ASSESSMENTS.

Section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721) is amended by adding the following after subsection (i):

''(j) The Secretary may levy or impose an assessment upon any person not to exceed $250 for any reporting month for the inaccurate reporting of information required under subsection (k). No assessment may be levied or imposed upon any person for any underpayment, late payment, or estimated payment or for any erroneous or incomplete royalty or production related report for information not required by subsection (k) absent a showing of gross negligence or willful misconduct.''.

SEC. 8. COST-EFFECTIVE AUDIT AND COLLECTION REQUIREMENTS.

Section 101 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) is amended by adding the following after subsection (c):

''(d)(1) If the Secretary determines that the cost of accounting for and collecting of any obligation due for any oil or gas production exceeds or is likely to exceed the amount of the obligation to be collected, the Secretary shall waive such obligation.

''(2) The Secretary shall develop a lease level reporting and audit strategy which eliminates multiple or redundant reporting of information.

''(3) In carrying out this section, for onshore production from any well which is less than 250 thousand cubic feet of gas per day or 25 barrels of oil per day, or for offshore production for any well less than 1,500,000 cubic feet of gas per day or 150 barrels of oil per day, the Secretary shall only require the lessee to submit the information described in section 111(k). For such onshore and offshore production, the Secretary shall not conduct royalty reporting compliance and enforcement activities, levy or impose assessments described in such section 111(k) and shall not bill for comparisons between royalty reporting and production information. The Secretary may only conduct audits on such leases if the Secretary has reason to believe that the lessee has not complied with payment obligations for at least three months during a twelve month period. The Secretary shall not perform such audit if the Secretary determines that the cost of conducting the audit exceeds or is likely to exceed the additional royalties expected to be received as a result of such audit.''.–

SEC. 9. ELIMINATION OF NOTICE REQUIREMENT.

Section 23(a)(2) of the Outer Continental Shelf Lands Act (43 U.S.C. 1349(a)(2)) is amended to read as follows:

''(2) Except as provided in paragraph (3) of this subsection, no action may be commenced under subsection (a)(1) of this section if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States or a State with respect to such matter, but in any such action in a court of the United States any person having a legal interest which is or may be adversely affected may intervene as a matter of right.''.

SEC. 10. ROYALTY IN KIND.

(a) IN GENERAL.—Section 27(a)(1) of the Outer Continental Shelf Lands Act (43 U.S.C. 1353(a)(1)) and the first undesignated paragraph of section 36 of the Mineral Leasing Act (30 U.S.C. 192) are each amended by adding at the end the following: ''Any royalty or net profit share of oil or gas accruing to the United States under any lease issued or maintained by the Secretary for the exploration, production and development of oil and gas on Federal lands or the Outer Continental Shelf, at the Secretary's option, may be taken in kind at or near the lease upon 90 days prior written notice to the lessee. Once the United States has commenced taking royalty in kind, it shall continue to do so until 90 days after the Secretary has provided written notice to the lessee that it will resume taking royalty in value. Delivery of royalty in kind by the lessee shall satisfy in full the lessee's royalty obligation. Once the oil or gas is delivered in kind, the lessee shall not be subject to the reporting and recordkeeping requirements, including requirements under section 103, except for those reports and records necessary to verify the volume of oil or gas produced and delivered prior to or at the point of delivery.''.

(b) SALE.—Section 27(c)(1) of the Outer Continental Shelf Lands Act (43 U.S.C. 1353(c)(1)) is amended by striking ''competitive bidding for not more than its regulated price, or if no regulated price applies, not less than its fair market value'' and inserting ''competitive bidding or private sale''.

SEC. 11. TIME, MANNER, AND INFORMATION REQUIREMENTS FOR ROYALTY PAYMENT AND REPORTING.

Section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721) is amended by adding the following after subsection (j):

''(k)(1) Any royalty payment on an obligation due the United States for oil or gas produced pursuant to an oil and gas lease administered by the Secretary shall be payable at the end of the month following the month in which oil or gas is removed or sold from such lease.

''(2) Royalty reporting with respect to any obligation shall be by lease and shall include only the following information:

''(A) identification of the lease;

''(B) product type;

''(C) volume (quantity) of such oil or gas produced;

''(D) quality of such oil or gas produced;

''(E) method of valuation and value, including deductions; and

''(F) royalty due the United States.

''(3) Other than the reporting required under paragraph (2), the Secretary shall not require additional reports or information for production or royalty accounting, including (but not limited to) information or reports on allowances, payor information, selling arrangements, and revenue source.

''(4) No assessment may be imposed on a retroactive adjustments with respect to royalty information made on a net basis for reports described in paragraph (2).

''(5) The Secretary shall establish reporting thresholds for de minimis production, which is defined as less than 100 thousand cubic feet of gas per day or 10 barrels of oil per day per lease. For such de minimis production, the lessee shall report retroactive adjustments with the current month royalty payment, and the Secretary shall not bill for, or collect, comparisons to production, assessments, or interest.

''(6) If the deadline for tendering a royalty payment imposed by paragraph (1) cannot be met for one or more leases, an estimated royalty payment in the approximate amount of royalties that would otherwise be due may be made by a lessee or person acting on behalf of a lessee for such leases to avoid late payment interest charges. When such estimated royalty payment is established, actual royalties become due at the end of the second month following the month the production was removed or sold for as long as the estimated balance exists. Such estimated royalty payment may be carried forward and not reduced by actual royalties paid. Any estimated balance may be adjusted, recouped, or reinstated, at any time. The requirements of paragraph (2) shall not apply to any estimated royalty payment.''.

SEC. 12. REPEALS.

(a) FOGRMA.—Section 307 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1755), is repealed. Section 1 of such Act (relating to the table of contents) is amended by striking out the item relating to section 307.

(b) OCSLA.—Effective on the date of the enactment of this Act, section 10 of the Outer Continental Shelf Lands Act (43 U.S.C. 1339) is repealed.

SEC. 13. INDIAN LANDS.

The amendments made by this Act shall not apply with respect to Indian lands, and the provisions of the Federal Oil and Gas Royalty Management Act of 1982 as in effect on the day before the date of enactment of this Act shall apply after such date only with respect to Indian lands.

SEC. 14. EFFECTIVE DATE.

This Act, and the amendments made by this Act, shall take effect on the date of the enactment of this Act with respect to any obligation which becomes due on or after such date of enactment.

ADDITIONAL COSPONSORS

S. 648

At the request of Mr. COHEN, the name of the Senator from Maine [Ms. SNOWE] was added as a cosponsor of S. 648, a bill to clarify treatment of certain claims and defenses against an insured depository institution under receivership by the Federal Deposit Insurance Corporation, and for other purposes.

S. 678

At the request of Mr. AKAKA, the names of the Senator from North Dakota [Mr. CONRAD], and the Senator from Rhode Island [Mr. PELL] were added as cosponsors of S. 678, a bill to provide for the coordination and implementation of a national aquaculture policy for the private sector by the Secretary of Agriculture, to establish an aquaculture development and research program, and for other purposes.

S. 690

At the request of Mr. AKAKA, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 690, a bill to amend the Federal Noxious Weed Act of 1974 and the Terminal Inspection Act to improve the exclusion, eradication, and control of noxious weeds and plants, plant products, plant pests, animals, and other organisms within and into the United States, and for other purposes.

S. 890

At the request of Mr. KOHL, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 890, a bill to amend title 18, United States Code, with respect to gun free schools, and for other purposes.