The original documents are located in Box 63, folder "10/13/76 HR13367 State and Local Fiscal Assistance Amendments of 1976 (2)" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 94–
2d Session } { 1165, Part 1

FISCAL AMENDMENTS OF 1976

MAY 15, 1976.—Ordered to be printed

Mr. BROOKS, from the Committee on Government Operations, submitted the following

REPORT

together with

ADDITIONAL, SUPPLEMENTAL, AND MINORITY VIEWS

[Including cost estimate and comparison of the Congressional Budget Office]

[To accompany H.R. 13367]

The Committee on Government Operations, to whom was referred the bill (H.R. 13367) to extend and amend the State and Local Fiscal Assistance Act of 1972, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments made by the Committee on Government Operations strike out the matter printed in linetype and insert the matter printed in italic type in the reported bill.

I. STATEMENT OF PURPOSE

H.R. 13367, the Fiscal Assistance Amendments of 1976, is designed to extend and amend the State and Local Fiscal Assistance Act of 1972, commonly known as the "revenue sharing" Act. This program is intended to provide general financial assistance to help support public services that are the responsibility of the States and their general purpose units of local government. Since this assistance is not restricted to any particular services or functions, the Committee has included provisions intended to assure that citizens are afforded an opportunity to participate in the determination of the use of these funds by their State and local governments. The Committee has also included specific provisions to assure that the funds are expended without discrimination, and that financial accounts are examined by outside auditors. This legislation, like the 1972 Act, establishes a program of limited duration so

that Congress may decide in the light of further experience and new developments whether or not it should be continued.

II. Background

A. Legislative History of the 1972 Act

The State and Local Fiscal Assistance Act of 1972 was signed into law on October 22, 1972, after a long period of debate. When this type of unconditional Federal aid was first proposed in 1964 by Dr. Walter Heller, then Chairman of the Council of Economic Advisers, it was intended to stimulate the economy by earmarking an anticipated Federal surplus for distribution to the States. Payments were to be made only to State governments. The States, at their discretion, could allocate a portion of the funds to local governments.

It subsequently became evident that in order for such legislation to be politically acceptable, it would have to provide for direct payments to at least the larger local governments. As finally enacted, the Act guaranteed automatic payments, without applications, to all States and to virtually all general purpose local governments.

The Act provided $30.2 billion for the five calendar years 1972 through 1976, with payments commencing at $5.3 billion for 1972 and increasing annually to a level of $6.5 billion in 1976. The first payments, made retroactive for all of 1972, were sent to recipients in December 1972.

The funds are distributed among the States and local governments on the basis of formulas that take in account their varying economic circumstances. Two-thirds of the total is distributed to local governments and one-third to the States, because the local units were viewed as having the more pressing financial problems and more limited taxing capabilities.

The legislative history indicates that Congress enacted this program with a variety of perceptions of its objectives. For example, some Members viewed the program as purely a fiscal device to ease the tax burden of State and especially local governments by sharing revenue from the progressive and productive Federal income tax; others saw it as a means of decentralizing political power in our federal system. Some believed the program was intended to supplement existing Federal categorical (special purpose) assistance; others viewed it as a partial substitute for existing categorical programs. Some Members thought the program was intended to expand the activities of local and State governments to provide important but unmet public needs; others saw it as a means of reducing or stabilizing local property taxes.

The program established by the 1972 Act is widely identified as "revenue sharing," even though the law does not use that term and appropriates specified amounts from the general fund irrespective of the size of Federal revenues.

B. Fiscal Position of State and Local Governments

Federal assistance to State and local governments has increased dramatically during the past 11 years, from less than $11 billion in

FY 1965 to almost $53 billion in FY 1975; a further increase to nearly $56 billion is estimated for FY 1976. In these 11 years, Federal aid to State and local governments almost doubled as a proportion of total Federal outlays (from 9 to 17 percent), and the Federal share of State and local expenditures increased from 15 to 23 percent.

Increases in State and local government tax revenues in recent years have been obtained primarily by rate increases. This has occurred because most State and local revenues are derived from sources that do not increase rapidly as personal income levels rise. In 1974, these governments obtained 72 percent of their total tax revenues from property and sales tax—sources whose yields rise only proportionately, or less, with increases in income levels. Income taxes—whose yields rise at a relatively faster rate as income levels increase—accounted for only 19 percent of their total tax receipts.

The older central cities of the Nation have experienced a disproportionate share of fiscal problems in recent years. These cities have lost large numbers of middle and higher income residents to less crowded suburbs and have usually been frustrated in efforts to adjust their political boundaries to incorporate the more affluent suburban communities that surround them. Consequently, the central cities have been left with a high portion of low income and high cost residents. The financial plight of many central cities is aggravated by the need to raise taxes to compensate for a dwindling population and tax base, thereby creating a vicious cycle by accelerating the further exodus of higher income residents and business enterprises.

The fiscal condition of State governments is generally much less perilous. Although many States have experienced very significant changes in their economic growth patterns, they have generally been in a much better position to adjust their tax sources as these changes occur. Consequently, they are generally experiencing less serious fiscal difficulties than the urban cities.

C. Fiscal Significance of Program

At the present time, the revenue sharing program accounts for almost 12 percent of total Federal assistance payments to State and local governments.

Approximately 38,000 units of local government, in addition to the States, receive revenue sharing allocations which range, on an annual basis, from the minimum payment of $200 to $263 million in the case of New York City. While these allocations constitute a very high proportion of the budgets for some small jurisdictions, on an overall basis the program provides approximately 5 percent of local expenditures and 2 percent of State government expenditures. These payments, however, assume much greater significance when compared with tax revenues. Shared revenues are equal to approximately 3 percent of State tax collections and 12 percent of the taxes raised by general purpose local governments. In some instances, local governments receive allocations equal to 50 percent or more of their total tax revenues.

Because of imbalances between service needs and financial resources among States, and also among local communities, the distribution formulas of most Federal assistance programs are designed to be

"equalizing"—this is, to pay a proportionately larger share of benefits to the more needy States and localities.

The revenue sharing program is no exception, although need is measured here by the level of expenditures for services as well as by the level of per capita personal income. For the year ending June 30, 1976, Mississippi, New York, and Vermont will receive approximately $40 per resident, as compared with per capita allocations of approximately $24 for Ohio, Indiana, and Florida. Similarly, central cities and poor rural communities generally receive larger per capita payments than affluent suburban communities.

III. Committee Consideration of Extension Legislation

Legislative jusisdiction over "general revenue sharing" was assigned to the Committee on Government Operations at the beginning of the 94th Congress. This legislation had previously been assigned to the Ways and Means Committee. Revenue sharing constitutes the largest single domestic program ever enacted by Congress. Recognizing the significance of the program and its impact on the Federal budget, as well as the budgets of the recipient State and local governments, the committee undertook an intensive review of the program.

The matter was assigned to the Intergovernmental Relations and Human Resources Subcommittee which held two sets of comprehensive hearings on the subject.

First, seven days of hearings were held in July 1975 on "Fiscal Relations in the American Federal System" in order to develop an appropriate background for evaluating the revenue sharing program. In these hearings, the subcommittee obtained very useful testimony from experts in the various specialized areas of public finance.

In September 1975, the Subcommittee began three months of in-depth hearings to take testimony both on the numerous and varied revenue sharing bills introduced in the House and on the operation of the program since 1972. The Subcommittee heard 101 witnesses, including 20 Members of Congress, representing a broad spectrum of viewpoints and social philosophies. In addition, 55 organizations and individuals submitted written statements for the hearing record, and a tremendous number of communications were received from public officials and interested citizens.

Following the completion of public hearings, informal discussions were held for the purpose of determining the position of the Members on the various bills before the Subcommittee. When it became evident that no single bill was acceptable to a majority of the Subcommittee as the vehicle for markup, a Working Paper was developed for the purpose. The Working Paper, which presented as objectively as possible a range of alternatives for each of the policy issues in which there appeared to be interest, served as the basis for marking up a bill in concept. A wide range of proposals for changing various provisions of the present Act were examined in detail by the Subcommittee. Upon the conclusion of these deliberations, a bill was drafted incorporating the Subcommittee's decisions, and that draft bill was further refined in succeeding meetings until a clean bill, H.R. 13367, was approved. Action by the Subcommittee was completed on April 30, 1976, after 16 formal meetings devoted to markup.

IV. Committee Action on H.R. 13367

The Committee met on May 4, 5, and 6, 1976, to consider and take action on H.R. 13367, the clean bill approved by the Subcommittee. Following the adoption of a number of amendments, described later in this report, the bill was ordered favorably reported by a vote of 39 to 3 with a quorum present.

V. Discussion

A. Extension of Program

(Term, Funding, and Entitlements)

Funding for the State and Local Fiscal Assistance Act of 1972 expires on December 31, 1976. H.R. 13367 will extend the program for an additional three and three-quarters years to September 30, 1980. The purpose of the three-quarter year segment is to synchronize the program with the Federal Government's new fiscal year, which begins on October 1 each year and terminates on September 30 of the following year.

During the three and three-quarter year extension, the program will continue to be funded at the level of funding for the last entitlement period under the 1972 act. Under the 1972 act, entitlement period 7 (July 1, 1976, through December 31, 1976) provides for funding at the rate of $3,325,000,000. On an annual basis, this reflects a funding rate of $6.65 billion. The committee's legislation provides for funding at that rate for each of the three fiscal years plus an appropriately adjusted amount for the three-quarter fiscal year from January 1, 1977, to September 30, 1977. The committee also authorizes the funding of the noncontiguous States adjustment amounts through the three and three-quarters years at the present level of $4,780,000.

The formula for allocating the $6.65 billion made available by this legislation is discussed more fully elsewhere in this report. (See allocation formula.) In essence, it is to be divided into two parts with $6.5 billion to be distributed under the formula in the 1972 act and all above that to be distributed in accordance with a new formula designed to target some additional funding to those jurisdictions with greatest need.

The $6.65 billion funding for this program is to be made available through an entitlement procedure in lieu of the authorizations-appropriations procedure followed in the 1972 Act. Under this procedure, the recipient State and local governments will become entitled to the $24.94 billion provided by this legislation.

The Congressional Budget and Impoundment Control Act of 1974 contains a provision permitting the enactment of spending authority by way of entitlement. Use of the entitlement procedure effectively takes the program out from under the auspices of the concurrent resolution on the budget and the usual appropriations process of Congress.

The proponents of the entitlements procedure assert that this certainty of receipt will enable the State and local governments to use these funds more efficiently. Those who favor the customary appropriations process question whether revenue sharing should be given a priority over other Federal programs such as national defense, health, education, etc.

B. ALLOCATION FORMULAS

Except for the addition of a new section providing for Supplemental Fiscal Assistance (discussed below), the Committee did not change the method of distributing funds under the 1972 Act.

The Act reflects a compromise between the differing formulas originally adopted by the House and the Senate. It also makes the allocation process more flexible and responsive to the particular circumstances of individual States by providing a choice between two formulas for allocating funds to each State area (which includes both the State government and its local governments): a 5-factor formula developed by the House, and a 3-factor formula developed by the Senate. The amount for each State area is tentatively computed under both formulas and each area is automatically given an allocation based on whichever of the two formulas yields the higher payment. If either Alaska or Hawaii uses the 3-factor formula, its allocation is increased (in accordance with the Noncontiguous States Adjustment) by the same percentage adjustment as applies to the base pay allowances of Federal Government employees residing in those States. This adjustment is intended to reflect higher living costs in those States.

Under the first, or House-originated formula, the total amount for each State area is based on five factors. Three of these factors are designed to take need into account: population, urbanized population, and population weighted by the relative per capita income of the United States compared to the State per capita income. Each of these factors is given a weight of about 22 percent and together comprise two-thirds of the total. The remaining two factors, general tax effort of the State and its localities, and State individual income tax collections provide some incentive and reward to the States and localities for meeting their fiscal requirements from their own tax sources. Each of these factors is given a weight of about 17 percent and together comprise one-third of the total.

Under the second, or Senate-originated formula, which is used if it produces higher payments than the 5-factor formula, funds are allocated to each State area on the basis of 3 factors that are given equal weight: population, relative income, and general tax effort. The factors in this formula, therefore, are similar to three of the factors in the 5-factor formula. However, the elements in the 3-factor formula are multiplied by each other instead of being given a particular weight. This tends to provide larger distributions to those States which have both low incomes and high tax effort.

Two-thirds of the amount allocated to each State area for each entitlement period is apportioned to the general purpose local governments in that State area (including cities, counties, towns, and townships); the remaining one-third share is apportioned to the State government.

The Act's provisions for distributing the local government share within each State are very complex. They require essentially the following procedures:

1. The amount to be allocated to units of local government is divided by the population of the State to establish the per capita entitlement for all governments within the State.

2. The local government amount is distributed to county areas (these are geographic areas, not governments) based upon the ratio that each county area bears to all county areas within the State, using a 3-factor formula (population × tax effort × relative income).

3. If this calculation allocates to any county area an amount which, on a per capita basis, exceeds 145% of the statewide per capita entitlement calculated in step 1, its amount is reduced to the 145% level and the resulting surplus amount is shared proportionately by all the remaining unconstrained county areas within the State.

4. Similarly, if any county area is allocated less than 20%, on a per capita basis, of the amount calculated in step 1, its allocation is increased to the 20% level and the resulting deficit is taken proportionately from all the remaining unconstrained county areas within the State.

5. Each county area allocation is then divided into four parts: First, an amount for Indian tribal governments or Alaskan native villages is determined by the ratio of tribal or village population to the total population of the county area.

Then, from the remainder, a township allocation is determined on the basis of the ratio of all township adjusted taxes (i.e., taxes excluding those for school purposes) to the total adjusted taxes in the county.

Next, a county government share is similarly determined on the basis of county government adjusted taxes.

The remaining proportion is reserved for the other units of local government.

6. The 3-factor formula is then used to allocate funds separately to townships and other local governments. If a unit of government receives more than 145 percent on a per capita basis, it is adjusted to the 145 percent level. If a unit receives less than 20 percent, its allocation is increased to the lower of either the 20 percent level, or 50 percent of its adjusted taxes and intergovernmental transfers. If any unit receives more than 50 percent of its adjusted taxes and transfers, its allocation is reduced to that level and the excess is given to the county government.

7. If the county government has been allocated more than 50 percent of its adjusted taxes and transfers, its allocation is reduced to that level, and the excess is returned to the State government. (This adjustment can result in a State share exceeding one-third of the funds.)

8. If any allocation is less than $200, or any unit of local government waives its entitlement, those funds are allocated to the next higher level of government.

Congress included these maximum and minimum constraints in the intrastate formula in order to prevent local governments from receiving extremely large or small entitlement amounts.

The Supplemental Fiscal Assistance section adopted by the Committee establishes a new allocation formula to be used in distributing a specific portion of the available funds both among the States and within each State area.

Forty percent of the applicable funds are to be allocated by the following factors: population multiplied by the income factor, di-

vided by the sum of these products. (The income factor of a State, county area, or local government is a fraction: the numerator consists of the number of persons in families and the number of unrelated individuals 65 years or over who are below the poverty line (or below 125 percent of the poverty line if they reside in the central city of an urbanized area); the denominator consists of the same types of persons regardless of their income level.) The other sixty percent is to be based on either of the following two formulas, depending upon which would result in the greater amount: (a) population multiplied by the general tax effort factor, divided by the sum of those products; or (b) population multiplied by the income tax effort factor, divided by the sum of these products.

In addition, this new section contains the following major provisions applicable to it:

1. It eliminates the distinction between townships and other local units of government in allocating funds within the county area.

2. It provides that before county areas and units of local government receive their funds from the State, Indian tribes or Alaskan native villages will receive their allocation directly based on the ratio of their population to the population of the State. The population of the tribe or village is then not counted in determining the allocation in the county area in which it is located.

3. It eliminates the existing 20 percent minimum per capita entitlement and raises to 300 percent the 145 percent maximum per capita entitlement.

4. It increases from $200 to $2,500 the minimum entitlement which a local government must receive in any entitlement period in order to be eligible for supplemental funds.

The primary objective of the Supplemental Fiscal Assistance section is to target some additional funding to those jurisdictions that have the greatest service needs and very limited fiscal capacity to meet those needs. Central cities and poor rural communities are intended to be its main beneficiaries. The formula is designed to accomplish this objective primarily by substituting the number of persons below the poverty level (or below 125 percent of that level in the case of a central city) for per capita income as the basic measure of need.

C. ELIMINATION OF THE TRUST FUND ON REVENUE SHARING

The legislation creating the revenue sharing program provided for establishment on the books of the Treasury a trust fund to be known as the "State and Local Government Fiscal Assistance Trust Fund." In fact, there is no trust fund and none is necessary for carrying out this program.

In its present form, the trust fund concept is a fiction. No money is set aside into a trust fund for use only in the State and local fiscal assistance program. These funds are disbursed from the general fund of the Treasury as are most other appropriated Federal funds.

The committee recommends the removal of the references to the trust fund in order to eliminate a misconception of the nature of the program. Deletion of the references to the trust fund does not affect the operation of the revenue sharing program in any way.

The committee makes it clear that this action is not intended to take away from the Secretary any authority he has been using to make adjustments where recipients have been overpaid or underpaid.

D. ELIMINATION OF PRIORITY EXPENDITURES PROVISION

The State and Local Fiscal Assistance Act of 1972 provided that revenue sharing funds could be used only for certain priority expenditures. Priority expenditures were defined as ordinary and necessary maintenance and operating expenses for public safety, environmental protection, public transportation, health, recreation, libraries, social services for the poor or aged, and financial administration. Priority expenditures also included ordinary and necessary capital expenditures authorized by law.

The committee bill eliminates this provision entirely. One purpose of the revenue sharing program is to distribute funds to State and local governments for use as they determine. The continuation of priority expenditure categories is inconsistent with that basic purpose of the act. Furthermore, since revenue sharing funds are fungible with other State and local government revenues, it is impossible in many cases to determine for what purposes the funds are actually being used.

The committee's deletion of the priority expenditures provisions has the effect of permitting State and local governments to use revenue sharing funds for any purpose consistent with Federal, state, and local law.

In addition to eliminating the restrictions on purposes for which the funds may be used, the committee made clear its intent that the funds be expended by the recipients in a timely manner. Section 123 (a)(2) of the Act presently require the recipient governments to "use" revenue sharing funds "during such reasonable period or periods as may be provided" in regulations prescribed by the Secretary. The regulations that have been promulgated require the recipient to "use, obligate, or appropriate" such funds within 24 months. Expansion of the term "use" to include "obligate or appropriate" has created situations that circumvent the intent of Congress. The regulation sets no time period for the actual expenditure of the funds.

Although no specific language is included in the legislation, the Committee believes the intent of Section 123(a)(2) would be better met if the regulations set a reasonable time for the actual expenditure of the funds. The Secretary should retain his power to extend the time requirements where he feels it is necessary or appropriate to meet the purposes of the Act.

E. ELIMINATION OF PROHIBITION ON USE AS MATCHING FUNDS

The committee recommends the deletion of the provision of the State and Local Fiscal Assistance Act of 1972 which prohibits State and local governments from using revenue sharing funds directly or indirectly for the purpose of obtaining Federal funds in matching programs. This provision was included in the original program in an effort to deter recipients from obtaining 100 percent Federal funding for

programs that are intended to require some contribution from local resources.

In recognition of the "no strings" nature of the revenue sharing program, the committee determined that continuation of this prohibition was not appropriate or meaningful. Revenue sharing funds are intended to be available for use in essentially the same manner the recipients could use funds from their own sources. Under the existing act, the prohibition can often be avoided by using revenue sharing funds in such a way as to release local funds for use as matching funds.

Removal of the prohibition on use as matching funds is not intended to encourage State and local governments to seek out matching programs for the purpose of multiplying Federal grant revenues. It was argued, however, that to the extent this prohibition has any effect, its most restrictive impact is on social service programs, including those for the poor and elderly. Because of their own budget restrictions, some State and local governments found it impossible to participate in these matching grant programs because local revenues were often absorbed by ongoing programs.

F. MAINTENANCE OF EFFORT

The present Act requires each State government to continue to assist all units of general local government within the State to the same extent as it had assisted them just prior to the enactment of this legislation. The Act provides that a State may receive the full amount allocable to it for an entitlement period beginning after June 30, 1973, only if it distributes as much to its local governments in the aggregate from its own sources (based on the average during that entitlement period and the immediately preceding entitlement period) as it did in the year beginning July 1 1971 (one-half of this amount in the case of the last entitlement period, July through December 1976). If it fails to do so, the amount that otherwise would be distributed to the State is to be reduced dollar for dollar by the reduction in its aid to its localities. The Act provides for adjustments in the required maintenance of effort if a State government assumes part or all of the responsibility for a category of expenditures that was previously a local government responsibility or if it confers new taxing authority on one or more of its local governments.

The bill reported by the Committee continues this provision, but designates the year beginning July 1, 1975 (or until such data are available, the most recent one-year period for which data are available) as the base period in place of the year beginning July 1, 1971.

G. DEFINITION OF UNIT OF LOCAL GOVERNMENT

The present Act defines a "unit of local government" as the government of a county, municipality, township, or other unit below the State which is treated as a unit of general government by the Census Bureau for general statistical purposes. The term also includes the recognized governing body of an Indian tribe or Alaskan native village which performs substantial governmental functions. The term "township" is meant to include equivalent local units having different designations, such as "towns."

Some concern was expressed before the subcommittee that large numbers of single-purpose governmental units were qualifying as recipients under the existing definition. Since the revenue sharing program is intended to aid general purpose governments, the committee clarified the existing definition by including several additional specifications. To meet the revised definition, which becomes applicable on October 1, 1977, a unit of local government must impose taxes or receive intergovernmental transfer payments for the substantial performance of at least two services for their citizens from among the commonly provided municipal-type services listed in the bill. In addition, a local unit must spend at least 10 percent of its total expenditures (exclusive of expenditures for general and financial administration and for the assessment of property) in the most recent fiscal year for each of two such services. However, this additional requirement is not applicable to a local unit which performs four or more such services, or which has performed two or more such services since January 1, 1976, and continues to perform them.

H. CITIZEN PARTICIPATION (PUBLIC HEARINGS, REPORTS, AND PUBLICATION REQUIREMENTS)

The Act presently requires each recipient government to submit reports to the Treasury Department for each entitlement period on the planned and actual use of revenue sharing funds. This provision was intended to assist the Treasury Department in enforcing the various statutory requirements. The Act also requires each State and local government to publish such reports in a general circulation newspaper in order to inform the public of the uses made of the funds and the extent to which the planned uses are carried out.

The Committee bill contains strengthened provisions to help assure that citizens are afforded an opportunity to participate in determining how these funds are to be used by their State and local governments. This is accomplished by specific requirements for two hearings, after adequate notice, concerned respectively with the development of the proposed use report and with the use of these funds in relation to the government's entire budget; for dissemination of information on the proposed and actual use of the funds in relation both to particular items in a government's entire budget and to the use of the funds in previous fiscal years; and for newspaper publication of the report on the proposed use of funds and of the narrative summary of the adopted budget. It is the Committee's view that the public should have as much opportunity as possible to participate with their State and local officials in deciding the uses of Federal assistance made available for unrestricted purposes.

The bill continues the present provision for submission of the proposed and actual use reports to the Treasury Department, and, in addition, requires the Secretary of the Treasury to provide copies of these reports to the governors of the respective States for their information. In addition, it requires each unit of local government within a metropolitan area to submit its proposed use report to the areawide planning organization concerned with implementing certain provisions of specified Federal laws for the latter's information. The bill changes

the name of the "planned use report" to the "proposed use report" for better identification of its purpose.

The Secretary of the Treasury is authorized to waive the requirements for publication of the proposed use report and of the narrative summary of the adopted budget, and to waive the requirement for a hearing before adoption of the proposed use report, if the cost of such requirements would be unreasonably burdensome in relation to a local or State government's entitlement. The Secretary may also waive the requirement for a budget hearing if the budget process required under State or local laws, or charter provisions, assure the opportunity for the public attendance and participation contemplated by the hearing requirement, and if a portion of such processes include a hearing on the proposed use of revenue sharing funds. This waiver was included particularly to accommodate the situation in some local jurisdiction where a single "town hall" type of meeting is held in which all citizens are entitled to vote on the community's budget. The bill also authorizes the Secretary to shorten, to the minimum extent necessary to comply with State and local laws, the requirement for publishing the proposed use report 30 days prior to the budget hearing if the Secretary is satisfied that the citizens affected will receive adequate notification.

The Committee recognizes that the requirements with respect to the times specified in the bill for hearings and the publication of reports and budget summaries for each entitlement period may not conform with the budget cycle of individual State or local governments. This is to be expected in view of the wide variation in the fiscal years used by the States and their local governmental units. Accordingly, the Committee expects that the Secretary will take this situation into account in promulgating regulations, and in adopting procedures, for accomplishing the purposes of this legislation.

I. NONDISCRIMINATION PROVISION

Background.—Section 122 of the current law prohibits discrimination on the basis of race, color, sex, or national origin in any program or activity funded with revenue sharing proceeds which is conducted by a state government or unit of local government. Under the Act, the Secretary is authorized to take appropriate administrative action to secure compliance with the nondiscrimination provisions and to refer cases of noncompliance to the Attorney General for suit. In addition to such referrals, the Act also provides independent authority for the Attorney General to initiate suits against recipient governments engaged in a "pattern or practices" of prohibited discrimination.

The Committee is aware of major deficiencies in the effectiveness of Section 122. The "fungibility" of shared revenues has sometimes permitted recipients to escape coverage by designating revenue sharing funds as having been used in programs or activities where discrimination does not exist while using their own freed-up funds in programs or activities which are discriminatory. The Secretary of the Treasury has inadequately utilized his discretionary authority to enforce the nondiscrimination provision.

The Committee revised Section 122 to strengthen the nondiscrimination provisions. The revision seeks to improve enforcement at the

Federal level, to provide better coordination among federal, state, and local civil rights agencies and to insure that recipients will not be subject to conflicting enforcement standards. With these goals in mind, the Committee adopted the following changes in Section 122.

Scope of Section.—The present law prohibits discrimination on the basis of race, color, national origin, or sex in any program or activity funded in whole or in part by shared revenues. The revised section broadens the prohibition of discrimination in two ways. Firstly, it adds age, handicapped status, and religion to the prohibition. Secondly, it requires that all activities of a recipient government be free from discrimination. The requirement was created by the committee because of the difficulty of tracing the shared revenue and identifying the separate and distinct activities funded by it. A recipient government can utilize various accounting techniques to substitute shared revenue for its own funds in a particular activity. These displacement possibilities allow the recipient to designate shared revenue as being used in activities less subject to civil rights complaints. The recipient jurisdiction can then designate its own freed-up funds as being used in activities more subject to civil rights challenges. Under current law, these accounting techniques immunize from challenge activities where discrimination might exist because the activities are not funded directly by revenue sharing payments.

The blanket prohibition would not apply when a recipient jurisdiction can prove by "clear and convincing evidence" that the activities alleged to be discriminatory are not funded in whole or in part, directly or indirectly, with shared revenue. Because of the displacement possibilities available, the committee felt the stringent evidentiary standard of "clear and convincing evidence" was necessary to avoid deception.

Enforcement Mechanism.—The current law commits federal enforcement to the discretion of the Secretary of the Treasury and the Attorney General. The committee felt that the poor nondiscrimination enforcement record of the revenue sharing program to date necessitated the mandating of certain enforcement steps.

(*a*) *Secretary of the Treasury.*—The central feature of the revision is a trigger mechanism which determines when the Secretary will begin compliance proceedings by sending appropriate notices to the noncomplying recipients. Such notification will be triggered under two circumstances: (1) when a federal or state court or administrative agency, after notice and opportunity for the recipient to be heard, makes a finding of discrimination on the basis of race, color, religion, sex, national origin, age, or handicapped status; and (2) when the Secretary, after affording the recipient an opportunity to make a documentary submission, makes a initial determination of noncompliance based on his own investigation.

After the notification, the recipient has 90 days to end the discrimination and take wwhatever affirmative steps are necessary to conform its practices to the law. The recipient may request a hearing on the merits which the Secretary is required to initiate within 30 days of the request. At that hearing the recipient may raise any defense available under the law, including the contention that the shared revenues

were not used in the program or activity in which the alleged discrimination occurred.

In advance of the hearing on the merits, the recipient may also request a preliminary hearing before an administrative law judge when the notification to the recipient is based on the Secretary's initial determination of non-compliance. When notification is triggered by a finding of a Federal or state court or administrative agency, there is no need for such a preliminary hearing because the recipient has already been afforded an opportunity for a hearing on the merits. Such a preliminary hearing must be requested within 30 days of the notification of non-compliance and must be completed within the 90 day period. If the recipient demonstrates that it is likely to prevail on the merits at a subsequent full hearing, the administrative judge is authorized to order a deferral of a fund suspension which would otherwise automatically occur at the conclusion of the 90 days if compliance is not achieved.

At the end of the 90 days, the payment of shared revenues is automatically suspended if a compliance agreement has not been signed, or if compliance itself has not been achieved, or if an administrative law judge has not entered an appropriate order. The suspension of funds applies only to a local government which is the subject of the notification from the Secretary. The payment of funds to other governments in the state or the state itself remains unaffected. The suspension then remains in effect for a period of 120 days, or 30 days after the conclusion of a hearing on the merits, whichever is later. During this period of suspension, the Secretary is obligated to make a final determination of compliance or non-compliance. If insufficient evidence of non-compliance is presented to the Secretary, then the suspended payments and all future payments are paid to the recipient. If non-compliance is found, the funds are terminated and the Attorney General is notified. The recipient government could, of course, seek resumption of payments when it achieved compliance with the Act.

(b) *Attorney General.*—Under present law, the Attorney General is authorized to initiate legal action against any recipient which is engaged in a "pattern or practice" of discrimination in violation of the Act. That authority is continued under the revision, and the Attorney General is given express authority to seek suspension, termination, or repayment of shared revenues. The revision gives the Attorney General the responsibility of monitoring and coordinating the nondiscriminatory compliance activities of the Treasury. The revision requires the Secretary to suspend payments of shared revenue 45 days after the filing of a "pattern or practice" suit by the Attorney General against a recipient. The recipient, however, always has the right, within the first 45 days after filing, to obtain a preliminary injunction deferring the suspension of funds.

Citizen remedies.—Under the revenue sharing statute and other nondiscrimination laws, private citizens, or organizations representing their interests, may sue the United States or any recipient government for using shared revenues in a discriminatory fashion. Those rights are continued under the revised Section 122. A new Section 125 of the Act authorizes courts to award attorney fees in citizen law suits and authorizes the Attorney General to intervene when it is a case of general public importance. In *Alyeska Pipeline Service Corp.* v. *The Wilderness Society*, 421 U.S. 240 (1975), the Supreme Court held that counsel fees cannot ordinarily be awarded without express congressional authorization. Therefore if citizens are to recover their attorney fees, this section is essential. It is expected that the courts will apply the attorney fee provision in accordance with applicable Supreme Court and lower federal court standards.

The Committee is aware that complaints alleging the discriminatory use of revenue sharing funds have not been processed by the Secretary as expeditiously as possible. A new section 124 of the Act requires the Secretary to establish reasonable and specific time limits for responding to a complaint and making an appropriate determination with respect to the allegations contained therein. The new section also requires the Secretary to establish time limits for conducting compliance reviews and audits of recipient governments to determine compliance with the provisions of the Act.

Inter-agency cooperation agreements.—To achieve greater efficiency in enforcement, the bill requires the Secretary to enter into cooperation agreements with appropriate Federal and state agencies. Such agreements must detail the cooperative efforts to be undertaken, including the sharing of resources and personnel. They must also include procedures for notifying the Secretary whenever findings of discrimination are made or, in the case of the Attorney General, whenever a pattern or practice suit is filed against a recipient.

J. AUDITING AND ACCOUNTING

The 1972 Act gives the Secretary of the Treasury the responsibility for providing for such accounting and auditing procedures and reviews as the deems necessary to insure that the expenditures of revenue sharing funds comply with the requirements of the Act. Recognizing the size of the revenue sharing program, the number of participants, and the virtually unrestricted use allowed, the committee determined that more explicit and uniform auditing requirements are in order.

To be able to obtain revenue sharing funds, each State and local government must utilize fiscal, accounting and auditing procedures which comply with the standards established by the Secretary of the Treasury and must also conduct independent audits which are in accordance with generally accepted auditing standards. The "generally accepted auditing standards" is the standard adopted by the General Accounting Office and the Certified Public Accountants national organization. This standard will provide some uniformity so that the General Accounting Office can effectively conduct the oversight responsibilities placed upon it by this section over the 38,000 governmental units involved in the program.

The Secretary of the Treasury is required to promulgate regulations which assure that each governmental unit conducts an audit each fiscal year which is in accordance with the standard referred to above. The section does allow the Secretary to provide for less formal reviews of financial information or less frequent audits for those States or units

of local government whose funding under this program is such that that cost of an annual audit would be unreasonably burdensome.

The regulations are also to provide that the audits and financial statements provided by this section are public documents. This requirement should assist in making the citizen participation section of the Act more meaningful since citizens will be able to see the purposes for which the revenue sharing funds were spent.

K. PROHIBITION OF USE FOR LOBBYING PURPOSES

The committee recommends that the recipients of revenue sharing funds be prohibited from using those funds for the purpose of lobbying or other activities intended to influence legislation regarding revenue sharing. This prohibition is consistent with the general policy of the Federal government's prohibiting the use of Federal funds for the purpose of soliciting additional Federal funds.

There is no intention on the part of the committee to restrict individuals, including State and local officials, from making their views on related legislation known. The restriction goes only to the use of revenue sharing funds for such purposes.

The language of the legislation makes clear that, for purpose of this prohibition, dues paid to national and state associations shall not be deemed to have come from revenue sharing funds. The committee does not intend to restrict the national or state associations from appropriately carrying out their responsibilities to their members.

It is anticipated that the recipients of revenue sharing funds would certify in their annual use reports that no funds have been used in violation of this provision.

L. APPLICATION OF DAVIS BACON ACT

The 1972 Revenue Sharing Act provides that all laborers and mechanics employed by contractors or subcontractors in the performance of work on any construction project of which 25 percent or more of the costs are paid out of revenue sharing funds, will be paid in accordance with the provisions of the Davis Bacon Act. It has been alleged that many recipient governments have allocated their revenue sharing funds among numerous construction projects in order to stay below the 25 percent threshold on any one project in an effort to bypass the impact of this provision. The committee recommends the deletion of the "less than 25 percent" exemption, thereby extending Davis Bacon Act coverage to all construction projects financed with proceeds from the revenue sharing program. The bill does not extend the Davis Bacon wage standards to construction projects which are not financed in any part with revenue sharing funds.

The committee was also concerned that some recipients were effectively avoiding the Davis Bacon provision by temporarily employing on their government payroll laborers and mechanics working on these construction projects. The 1972 provision applies only to laborers and mechanics employed by contractors and subcontractors. The committee recommends that the reference to contractors and subcontractors be deleted, thereby extending the provision to all laborers and mechanics employed on construction projects financed with revenue sharing

funds. The committee provision makes clear, however, that it does not intend this provision to extend to permanent, full-time employees of the State or local government.

M. MODERNIZATION OF GOVERNMENT

Many of the problems experienced by large numbers of local governments arise because the boundaries or functions of that government remain static while the constituency it serves fluctuates. One of the criticisms leveled at the revenue sharing program is that these funds tend to perpetuate ineffective and inefficient units of local government. Local governmental units should be periodically adjusted to reflect changing population and economic patterns.

The bill reported by the committee creates a new section of the Act intended to encourage the modernization and revitalization of State and local governments. It establishes as a goal that each State government should prepare a plan and time-table for modernizing and revitalizing the State and local governments. The States are not required to prepare and implement this plan; but, each State is required to submit to the Secretary of the Treasury an annual report describing steps taken to achieve the goal. Treasury is required to report annually to the Congress on the progress made by each State in the development and implementation of the State's plan and time-table.

To assist the States in achieving the goal of the bill, the provision contains a broad series of nonexclusive criteria for the State to use if it chooses in the development of the State plan. It is suggested that the plan include proposals for improving the effectiveness and economy of State and local governments, the steps necessary to effectuate those proposals, and a time-table for effectuating each proposal within a reasonable period. The States are encouraged to reduce the number of limited-function governments and special districts and to increase broad participation of the general public in the decision-making process.

The committee emphasizes that this provision is not mandatory, with the exception of the annual report of the State to the Secretary describing any steps taken to achieve the goal set forth. The committee further points out that this provision contains no penalties for failure to comply.

VI. Statement Pursuant to Clause 2(1)(3)(A) of Rule XI

The House Committee on Government Operations conducted extensive hearings and investigations into the performance of the State and Local Fiscal Assistance Act of 1972. These activities did not result in any specific oversight findings but rather in the legislation that is the subject of this report.

VII. Statement Pursuant to Clause 2(1)(4) of Rule XI

The enactment of this bill into law is not expected to have any inflationary impact on prices or costs in the operation of the national economy.

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VIII. Statement Pursuant to Clause 7(a) of Rule XIII

(1) The committee estimates that the enactment of H.R. 13367 will result in the following costs:

Fiscal year	
1976	No costs
1977	$4,991,085,000
1978	6,654,780,000
1979	6,654,780,000
1980	6,654,780,000
1981	Not applicable

(2) No government agency has submitted an estimate of costs involved in H.R. 13367 to the House Government Operations Committee.

IX. Statements Pursuant to Section 308(a) of the Congressional Budget and Impoundment Control Act of 1974 and Clause 1(1)(3)(B) of Rule XI

(1) H.R. 13367 provides $4.991 billion in Fiscal Year 1977 as new entitlement authority for the revenue sharing program. The most recent concurrent resolution on the budget for Fiscal Year 1977 sets forth the sum of $7.35 billion for Function 850, Revenue Sharing and General Purpose Assistance. The 302(a) report accompanying the concurrent resolution allocates $4.880 billion in Function 850 new entitlement authority to the House Government Operations Committee. Hence, H.R. 13367 provides approximately $111 million more new entitlement authority for the revenue sharing program than is provided for in the most recent concurrent resolution on the budget.

(2) The Congressional Budget Office has informed the Committee that the five-year projection of outlays associated with H.R. 13367 is as follows:

Fiscal year:	*Outlays*
	Billions
1977	$3.325
1978	6.650
1979	6.650
1980	6.650
1981	1.663

The entitlement for the last quarter of any fiscal year is paid within the first five days of the following quarter. H.R. 13367 authorizes entitlements for three quarters of fiscal year 1977, and four quarters of fiscal year 1978, fiscal year 1979, and fiscal year 1980. The outlays for fiscal year 1977 are less than the entitlement amount by one quarter's payment, and the last quarter's payment for fiscal year 1980 occurs in fiscal year 1981.

(3) The Congressional Budget Office has informed the committee that all new budget authority and budget outlays mandated by H.R. 13367 would be for financial assistance to State and local governments.

X. Statement Supplied by Congressional Budget Office Pursuant to Section 403 of the Congressional Budget Act of 1974 in Conformance with Clause 2(1)(3)(c) Rule XI

Congress of the United States,
Congressional Budget Office,
Washington, D.C., May 14, 1976.

Hon. Jack Brooks,
Chairman, Committee on Government Operations, U.S. House of Representatives, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 13367, a bill to extend and amend the State and Local Fiscal Assistance Act of 1972.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

James L. Blum,
(For Alice M. Rivlin, Director).

Attachment.

Congressional Budget Office

Cost Estimate

1. Bill number: H.R. 13367.
2. Bill title: Fiscal Assistance Amendments of 1976.
3. Purpose of bill: This bill extends and amends the State and Local Fiscal Assistance Act of 1972. Funds for the general revenue sharing program are provided for the period from January 1, 1977 through September 30, 1980.
4. Cost estimate: (Fiscal years, in thousands of dollars).

	1977[1]	1978	1979	1980	1981
Budget authority	4,991,085	6,654,780	6,654,780	6,654,780	1,663,695
Estimated outlays	3,325,000	6,650,000	6,650,000	6,650,000	1,662,695

[1]The original law, Public Law 92-512, provides funding through the 1st quarter of fiscal year 1977. The bill provides money for the remaining 3 quarters of the fiscal year.

5. Basis for estimate: The bill contains explicit dollar amounts for general revenue sharing payments for the periods, January through September 1977, FY 1978, FY 1979, and FY 1980. In the past the spendout pattern has been that the allotment for the last quarter of any fiscal year is paid within the first five days of the first quarter of the next fiscal year. Consequently, the outlays for FY 77 are less than the budget authority by one quarter's payment, and there is a one quarter's payment in FY 81 after the program has expired.

Subtitle D of the bill targets $112.5 million in FY 1977 and $150 million annually in FY 1978 through FY 1980 to poverty areas. The CBO estimate assumes that the outlays from this program follow the same spendout pattern as the rest of the general revenue sharing program. Subtitle D also contains an authorization for Congress to appropriate an unspecified amount of additional funds for distribution under the terms of this program for poverty areas. Since there is no specific dollar figure for this authorization, no estimate has been made of the costs that might be incurred under this authorization.

There is also a provision for a non-contiguous state adjustment amount. For the last three quarters of FY 1977, the amount is $3.585 million, and for the other three fiscal years, the amount is $4.78 million. This money is available for Alaska and Hawaii to draw upon, depending upon the formula they use to determine their allocations. In the past, they generally have used a formula which does not permit them to receive additional amounts from this section. It is assumed that there will be no future outlays from this authority.

6. Estimate comparison: Not applicable.
7. Previous CBO estimate: Not applicable.
8. Estimate prepared by: Roger M. Winsby (225–5378).
9. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

XI. SECTION-BY-SECTION ANALYSIS

Section 1

This Act is cited as the Fiscal Assistance Amendments of 1976.

Section 2

This section states that the term "the Act" refers to the State and Local Fiscal Assistance Act of 1972 (Title I of Public Law 92–512, approved October 20, 1972).

Section 3—Elimination of Priority Expenditure Categories

(a) This section amends Subtitle A of the State and Local Fiscal Assistance Act of 1972 to eliminate Section 103 which requires local governments to spend their allocations of funds received under this Act for certain "priority expenditures". Under this amendment local governments would no longer be compelled to spend their allocations for any of the following priority categories:

(1) ordinary and necessary maintenance and operating expenses for:

(A) public safety (including law enforcement, fire protection, and building code enforcement),
(B) environmental protection (including sewage disposal, sanitation and pollution abatement),
(C) public transportation (including transit systems and streets and roads),
(D) health,
(E) recreation,
(F) libraries,
(G) social services for the poor or aged, and
(H) financial administration; and

(2) ordinary and necessary capital expenditures authorized by law.

This amendment would grant local government recipients of funds under this Act the same treatment as that accorded State governments which, under the existing legislation, are not subject to the requirements set forth in Section 103.

(b) This subsection strikes out paragraph (3) of Section 123(a) of the Act.

Paragraph (3) of Section 123(a) imposes a penalty upon any local government for failure to give assurances to the Secretary of the Treasury that it will use amounts deposited in its trust fund (including interest earned thereon) during an entitlement period only for the priority expenditures enumerated in Section 103(a) of the Act. Under this penalty, 110 percent of any amount expended out of a local government's trust fund in violation of paragraph (3) of Section 123 (a) must be paid to the Secretary of the Treasury unless corrective action is taken by the government in question, which amount shall then be deposited in the general fund of the U.S. Treasury. This subsection represents a conforming amendment to eliminate this penalty provision.

Section 4—Elimination of Prohibition on Use of Funds For Matching

(a) This subsection strikes out Section 104 which prohibits State and local governments from using any part of the funds they receive under the Act, directly or indirectly, to match Federal grants received under other programs.

(b) Section 104 (b) authorizes repayment, or the withholding by the Secretary of the Treasury from State or local units of government, of amounts equal to those used in violation of Section 104 (after notice and opportunity for a hearing is granted to the government in question). Subsection (b) of Section 4 of the bill is a conforming amendment to strike 104(b) from Section 143(a) of the Act which gives State and local governments, after having received notice of withholding of payments by the Secretary of the Treasury, the right to file with a U.S. Court of Appeals petitioning for review of this action by the Secretary of the Treasury. Since Section 104 is stricken from this legislation, there is no longer any need for this provision.

Section 5—Abolition of the Trust Fund Concept

Amendments made by Section 5 of the bill delete the concept of a State and Local Fiscal Assistance Trust Fund for the Act. The Trust Fund concept is unnecessary and superfluous to the Act and creates the impression that revenue sharing funds are somehow segregated from other funds in the Treasury. The elimination of references to the Trust Fund does not affect the operation of the program.

Section 6:

(a) *Extension of Program and Funding.*

Section 105 of the Act provided $30.2 billion in permanent appropriations to the State and Local Government Fiscal Assistance Trust Fund for payments to State and local governments during the five-year initial life of the program from January 1, 1972 through December 31, 1976. Section 6(a) amends Section 105 to authorize $24.955 billion in appropriations to finance a 3¾ years extension of this program as an "entitlement" program. The extension runs from January 1, 1977 to September 30, 1980.

Subsection (c) of Section 105 is redesignated (d). This subsection authorizes that transfers be made from time to time by the Secretary of the Treasury to the general fund of the Treasury any funds appropriated which he determines will not be needed to make payments

to State governments and units of local government under the revenue sharing program.

A new subsection (c) is inserted after subsection (b) of Section 105 which is designated "Authorizations of Appropriaitons for Entitlements". This new subsection contains the following authorization of amounts to be appropriated to pay entitlements to qualifying State and local governments during this extension period:

Authorizations of appropriations for entitlements

In General:	
For the period beginning Jan. 1, 1977 and ending Sept. 30, 1977	$4, 987, 500, 000
For each of the fiscal years beginning Oct. 1, 1977, Oct. 1, 1978 and Oct. 1, 1979 $6,650,000,000	19, 950, 000, 000
Subtotal	24, 937, 500, 000
Noncontiguous State adjustment amounts (Alaska and Hawaii):	
For the period beginning Jan. 1, 1977 and ending Sept. 30, 1977	3, 585, 000
For each of the fiscal years beginning Oct. 1, 1977, Oct. 1, 1978 and Oct. 1, 1979, $4,780,000	14, 340, 000
Subtotal noncontiguous States adjustment amounts	17, 925, 000
Total authorization of appropriations for the period from Jan. 1, 1977, through Sept. 30, 1980	24, 955, 425, 000

Subsection (c)(1)(B) contains a provision to conform this section to section 15 of the bill which creates a new subtitle D. The conforming exception provides that sums authorized as an entitlement under subsection (c)(1)(B) in excess of the amount specified in section 163(a)(1) or (2) shall be distributed under subtitle D as an entitlement. This will result in the distribution of $562,500,000 of the $24,955,425,000 being available for distribution under subtitle D.

Section 6(b) amends Section 105, "Allocation Among States" as follows:

Paragraphs (1), (2), and (3) of Section 6(b) are conforming amendments to insure that amounts authorized by subsection (a) will be distributed as entitlements of States and local governments and provides that distribution will be based on the amounts authorized, not on the amount appropriated. This necessarily implies that appropriations must equal authorizations. As a result the entitlement system would appear to be spending authority within the meaning of Section 401c 2(c) of the Congressional Budget Act of 1974.

Section 6(b)(4) amends Section 107(b) of the Act by redesignating paragraphs (6) and (7) as paragraphs (7) and (8) respectively, and by inserting a new paragraph (6) which contains the following special rule which applies to the first nine months of the extension period (January 1, 1977 through September 30, 1977):

Under Section 107(b) "a State may receive the full amount allocable to it for an entitlement period beginning after June 30, 1973 only if it distributes as much to its local governments in the aggregate from its own sources, on the average during that entitlement

period and immediately preceding entitlement period as it did in fiscal year 1972." [1] With respect to the nine-month entitlement period beginning January 1, 1977, the aggregate amount taken into account for the preceding entitlement period and for the fiscal year 1972 shall be three-fourths of the amounts which (except for this paragraph) would be taken into account.

Section 6(b)(5) amends Section 108(b)(6)(D) of the Act to reduce the $200 *de minimis* provisions to $150 for a nine-month entitlement period. Under the 1972 Act a local government below the level of county government must be entitled to receive a minimum of $200 during a one-year entitlement period in order to receive funds under this Act. In those instances where a local government's allocation is less than this amount, its allotment is added to that of the county government in the county area in which the local government is located. This amendment simply reduces proportionately the amount imposed by the *de minimis* rule for a shorter entitlement period.

Section 6(b)(6) amends Section 108(c)(1)(C) which permits a State to adopt an alternative formula for distribution of these funds among county areas and among other local governing units (other than county governments) within the State. The current law permits a State to change the Act's basic formula only once during the five-year life of the program. This amendment simply extends this provision to the end of the proposed extension period (September 30, 1980).

Section 6(b)(7) amends Section 141 (b) of the Act which defines entitlement periods to add the following new entitlement periods: for the period from January 1, 1977 through September 30, 1977 and for each of the fiscal years beginning October 1, 1977, October 1, 1978 and October 1, 1979.

Section 7.—Maintenance of Effort; Change of Base Year

Section 7(a)(1) amends Section 107(b)(1) of the Act to extend applicability of the provision which authorizes a reduction in a State government's allotment which fails to maintain transfers out of its own sources to local governments within its boundary to entitlement periods which begin on or after January 1, 1977. Under the existing law this provision applies to entitlement periods which begin on or after January 1, 1973.

Section 7(a)(2) strikes out clause B of Section 107(b)(1) and inserts a new clause which changes the base year which is used to determine whether a State government has failed to comply with the maintenance-of-effort provision. The new clause B substitutes the fiscal year 1976, or the most recent one-year period for which similar aggregate amounts are available, for the base year of fiscal year 1972 which is given in the present Act.

(b) This provision amends Section 107(b)(2) which permits an adjustment to be made in the amount which a State must transfer to its local governments in those instances where a State assumes responsibility for a part or all of a category of expenditure which, prior to July 1, 1972, was carried on by its local governments. This amendment

[1] U.S. Congress. Joint Commitee on Internal Revenue Taxation. General explanation of the State and Local Fiscal Assistance Act and the Federal-State Tax Collection Act of 1972 (H.R. 14370, 92d Congress, Public Law 92-512). Washington, U.S. Govt. Print. Off., February 12, 1973, p. 29.

would change the base year referred to in this paragraph to conform to the amendment offered in Section 7(a)(2) of this bill (which changes the base year from the fiscal year 1972 to the fiscal year 1976, or the most recent one-year period for which data are available).

Section 8.—Definition of Unit of Local Government

This section amends Section 108(d)(1) of the Act to redefine units of local government which qualify for payments under this Act to include the following: the government of a county, municipality or township which is a unit of general government (as determined by the Bureau of the Census for general statistical purposes).

Furthermore, such local governments must meet the following requirements with respect to entitlement periods which begin on or after October 1, 1977: At least 10 percent of their total expenditures (excluding those for general and financial administration and for property tax assessment) during the most recent fiscal year, must have been utilized for each of two of any of the fourteen public services enumerated below. Exempt from this provision are governmental units which substantially perform four or more of such services for their citizens. Furthermore, such local governments must impose taxes or receive intergovernmental transfer payments which are utilized by them for substantial performance of at least two of the fourteen public service categories. For purposes of this legislation, a governmental unit is considered to be imposing taxes even though they are collected by another governmental entity from the same geographic area served by that unit, if they are transferred to that local government.

The fourteen public service categories enumerated in this section are as follows:

(A) police protection;
(B) courts and corrections;
(C) fire protection;
(D) health services;
(E) social services for the poor or aged;
(F) public recreation;
(G) public libraries
(H) zoning or land use planning;
(I) sewerage disposal or water supply;
(J) solid waste disposal;
(K) pollution abatement;
(L) road or street construction and maintenance;
(M) mass transportation; and
(N) education.

This section continues the practice of existing law by including in its definition of local government, the recognized governing body of an Indian tribe or Alaskan native village (except for purposes of paragraphs (1), (2), (3), (5), (6)(C) and (D) of subsection (b) and of subsection (c) of Section (108)) which performs substantial governmental functions.

Omitted from this definition are single-purpose units of local government which currently receive funds under the Act.

Section 9—This section adds a new Section 120 to Subtitle B of Title I of the Act

Section 120, entitled "Modernization of Government" requires each state to submit to the Secretary of the Treasury an annual report describing steps the state has taken to achieve the goal of this section. The goal is that each state develop a master plan and timetable for modernizing and revitalizing state and local governments.

If the governor of the state prepares a proposed master plan and timetable he must allow 120 days for comment to elapse before submitting the final master plan to the state legislature. The state legislature must decide whether or not the final plan and timetable will be submitted to the Secretary of the Treasury. A proposed master plan and timetable is not required nor is the submission of the final plan or timetable to the Secretary required. The Secretary must only receive reports on the steps taken to develop the plan and timetable.

Section 120 contains a listing of broad criteria which may be utilized by the state in developing the contents of the plan and timetable if the state so desires. The Section also contains a listing of suggested methods the state may desire to utilize in discussing the effectiveness, economy, and equity of the state and local government in the master plan.

Section 120 requires the Secretary of the Treasury to annually report to Congress on the progress made by each state in developing and implementing a master plan and timetable and make recommendations concerning the encouragement of each state to develop a master plan and timetable.

Section 10—Citizen Participation; Reports:

Section 10(a)

This subsection amends Section 121 of the Act in its entirety.

Provisions contained in this section would impose new requirements on recipient governments in reporting to their constituents proposed or actual uses of funds received under this Act.

The proposed use (designated planned use in the 1972 Act) and the actual use report provisions are reversed in their order of presentation in this section and contain the following requirements:

(a) Reports on Proposed Use of Funds—State and local governments which expect to receive funds under this Act are required to submit proposed use reports to the Secretary of the Treasury for entitlement periods which begin on or after January 1, 1977. The contents of such reports are expanded by the following provisions: (1) Governments which expect to receive funds must not only report how they expect to spend their allotments, but they must also provide comparative data on the use made of the funds received during the two immediately preceding entitlement periods. (2) Such reports must also budget. (3) Furthermore, they must also indicate whether the proposed use will be spent for a new activity, to expand or continue an existing activity, or for tax stabilization or reduction.

(b) Reports on Use of Funds—This amended subsection also expands the contents of actual use reports which must be submitted by

recipient governments to the Secretary of the Treasury in the following ways: (1) Recipient governments are required to make such reports available to the public for inspection and reproduction. (2) In addition to reporting how their allotments have been spent or obligated, they must also report how they have been appropriated by the recipient. (3) As with the proposed use report, they are required to show the relationship of these funds to the relevant functional items in the recipient government's budget. (4) Furthermore, they must explain all differences between how they had proposed to use the funds and how they were actually spent during an entitlement period.

(c) Public Hearings Required—This is a new subsection which is designed to assure that citizens will have a greater input in decision-making with respect to uses made of these funds by recipient governments. It requires State and local government recipients, prior to publication of proposed use reports and prior to adoption of their budget, to hold the following hearings:

(1) *Prereport hearing.*—Each State and local unit of government which expects to receive funds under this Act is required, with respect to entitlement periods which begin on or after January 1, 1977, and after adequate public notice is given, to hold at least one public hearing during which citizens are to be given an opportunity to make recommendations regarding possible uses which may be made of their government's allotment of these funds. Such a hearing must be held at least seven calendar days before submission of the proposed use report. An additional provision is inserted which permits governing units to waive this requirement, in whole or in part, in accordance with regulations prescribed by the Secretary of the Treasury if the cost of such a hearing is high in relation to the amount of funds it receives. Thus this provision waives this requirement for those governmental units which receive relatively small amounts under this legislation.

(2) *Prebudget hearing.*—Recipient governments, with respect to entitlement periods which begin on or after January 1, 1977, are required to hold at least one public hearing during which their citizens may present written or oral comments and may submit questions concerning the proposed use of funds received under this Act and the relationship of such funds to the entire budget of the recipient government. Such hearings must be held not less than seven calendar days before adoption of the budget. It is required that they be held at a place and at a time which would encourage public attendance and participation.

(3) Waiver—Provision is made for the waiver of paragraph (1) or (2) in certain cases where compliance would be prohibitively costly or incompatible with local law.

(d) Notification and Publicity of Public Hearings; Access to Budget Summary and Proposed and Actual Use Reports—This subsection expands the provisions of Section 121(c) of the existing law which sets forth requirements for newspaper publication and publicity of planned and actual use reports. Under this amending legislation State and local governments which expect to receive funds under the Act are subject to the following requirements with respect to entitlement periods which begin on or after January 1, 1977:

(A) Thirty days before the pre-budget hearing authorized in subsection (c)(2), they must publish in at least one newspaper of general circulation, the proposed use report which is required under subsection (a) along with a summation of their proposed budget and notification of the time and place where the pre-budget hearing will be held. They must also make available for inspection and reproduction by the public, copies of the proposed use report, the narrative summary explaining the proposed budget, and a copy of the government's official budget document. Provision is also made that the requirements for publication of the proposed use reports and the narrative summaries may be waived in whole or part, in accordance with regulations of the Secretary of the Treasury where the publication costs would be burdensome in relation to the amount of funds a State or local unit of government would receive, or where such publication is otherwise impractical or not feasible. Such documents are to be made available at principal State and local government offices or at public libraries.

(B) Within 30 days after adoption of its budget, State and local recipient governments are required to publish conspicuously in at least one newspaper of general circulation an explanation of its official budget, including changes made from the proposed budget and the relationship of the use of funds under this Act to the relevant functional items in such budget. It is also required that this summary shall be made available for inspection and reproduction by the public at principal State and local offices or at public libraries.

(e) This is a new subsection which requires that copies of the proposed use and actual use reports filed with the Secretary of the Treasury by recipient governments shall be furnished by the Secretary of the Treasury to the Governor of the State in which the unit of government is located. Such reports are to be in such manner or form as the Secretary of the Treasury may prescribe by regulation.

(f) This is a new subsection requiring that the proposed use report be filed with the area-wide organization in the metropolitan area which is formally charged with carrying out the provisions of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, section 401 of the Intergovernmental Cooperation Act of 1968, or Section 302 of the Housing and Community Development Act of 1974.

Section 10(b)

This subsection amends Section 123 of the Act by adding at the end, the following new subsection (d) which authorizes the Secretary of the Treasury to include in his annual report submitted to Congress on the implementation and administration of the Act a comprehensive and detailed analysis of the following:

(d)(1) Measures taken to comply with Section 122, the nondiscrimination provision, including a description of the nature and the extent of any noncompliance and the status of all pending complaints;

(2) The extent to which citizens have become involved in decision-making with respect to use of funds made available to recipient jurisdictions;

(3) The extent to which recipient jurisdictions have complied with Section 123, including a description of the nature and extent of any noncompliance and of measures taken to ensure the independence of audits conducted pursuant to subsection (c);

(4) The manner in which the funds distributed have been used, including the net fiscal impact, if any, in recipient jurisdictions;

(5) Significant problems which have arisen in the administration of the Act and proposals to remedy such problems through legislation.

A further provision is inserted which would amend Section 105 (a) (2) to provide that the date when the Secretary of the Treasury is required to submit an annual report to Congress on the operation of the trust fund and on other aspects of this program is changed from March 1 to January 15 of each year.

Section 11—Nondiscrimination; enforcement

Section 11 (a)

This subsection amends Section 122 of the Act in its entirety.

This Bill provides that no person is to be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of a recipient government on the basis of race, color, religion, sex, national origin, age, or handicapped status.

The prohibition against discrimination is strengthened in five major ways. First, the Bill requires that all activities of a recipient government be free from discrimination, not only activities which are funded with shared revenue. However, this provision does not apply if a recipient government can prove, by "clear and convincing evidence," that the activities alleged to be discriminatory are not funded by shared revenues. Second, to the prohibition is enlarged to include a prohibition of discrimination based on religion, age, and handicapped status in addition to race, color, national origin and sex in the present Act. Third, the Secretary of the Treasury is directed to take certain steps, which may result in the suspension or termination of payments, to enforce the nondiscrimination provisions. Fourth, the filing of a lawsuit by the Attorney General alleging a pattern or practice of prohibited discrimination can result in the suspension of Revenue Sharing payments. Fifth, the Secretary of the Treasury is required to enter into cooperative agreements with federal and state agencies providing for the coordination and the sharing of civil rights personnel and resources.

The Secretary must send out noncompliance notices after any Federal or State court or Federal or State administrative agency has found that a recipient government has engaged in a pattern or practice of prohibiting discrimination. In order for a Federal or State agency finding to trigger notice by the Secretary, the agency must have provided the respondent with adequate notice and opportunity for a hearing in accordance with comparable provisions of the Administrative Procedures Act. The noncompliance notice must be sent within ten days after publication of, or receipt of notice of, the court or agency findings of prohibited discrimination.

A noncompliance notice must also be issued whenever a thorough Treasury investigation (which must include an opportunity for the recipient to make a submission of documents) leads to a determination of discrimination. This notice must be sent within 10 days after a Treasury determination of noncompliance.

A ninety-day period automatically begins to run from the date the noncompliance notice is issued. At the end of that period, if

neither voluntary compliance nor a compliance agreement have been achieved, or preliminary relief has not been granted, entitlement payments to the recipient government are to be suspended.

The right to a preliminary hearing for the purpose of deferring the suspension of funds applies to those cases where a noncompliance notice was based upon a Treasury investigation. In all other cases, noncompliance notices are triggered only after courts and agencies have already afforded the recipient government an opportunity for a hearing on the discrimination charge.

The suspension is effective for no longer than 120 days, or if there is a compliance hearing, no longer than 30 days after the conclusion of the hearing. The suspension will be lifted and payments resumed after the recipient jurisdiction enters into a compliance agreement approved by the Secretary and the Attorney General or after the government comes into full compliance with a final order or judgment of a federal or state court or is otherwise found to be in compliance by such a court. However, in the case of compliance with a final order, payments are not to be resumed unless the final order or judgment complied with addresses all matters raised in the noncompliance notice issued by the Secretary.

The Bill allows the recipient government to obtain a hearing on the merits at anytime after it receives the noncompliance notice and before the end of the 210th day following such notice. This compliance hearing must commence within 30 days after the request is made and the Secretary must make a finding as to whether the recipient is in compliance with the nondiscrimination provisions within 30 days after the conclusion of the noncompliance hearing.

If the Secretary finds that the recipient is in compliance, any suspended funds shall be released and future payments made. If the Secretary determines that the jurisdiction is not in compliance, Treasury is required to terminate the payment of revenue sharing funds and to notify the Attorney General in order that the Attorney General may institute an appropriate civil action. The Secretary may also seek repayment of revenue sharing funds if appropriate.

The Secretary must make a determination of compliance or noncompliance in all cases. If no compliance hearing is held, these determinations must be made by the 210th day after the issuance of the noncompliance notice. If the recipient government has been aggrieved by the Secretary's determination that government may seek judicial review of the finding pursuant to Section 143 of the Act.

Revenue sharing funds are to be withheld upon the filing of a lawsuit by the Attorney General alleging that a recipient government has engaged in a pattern or practice of discriminatory conduct on the basis of race, color, religion, sex, national origin, age, or handicapped status. A 45-day waiting period begins after the filing of the suit. During the 45-day period, either party can obtain preliminary relief ordering the deferral of the suspension. Otherwise, suspension remains effective until the court orders suspended payments to be released and further payments to be paid.

The Bill requires the Secretary to enter into cooperative agreements with appropriate state agencies and with other federal agencies. The agreement must provide for the sharing of civil rights enforcement

personnel and resources and require that the Attorney General immediately notify the Secretary of any lawsuits alleging a pattern or practice of discrimination instituted against a recipient government.

Section 11(b)

This subsection adds a new section 124 and a new section 125 to Subtitle B of Title 1 of the Act.

Section 124, entitled "Complaints and Compliance Review," mandates the Secretary of the Treasury to promulgate regulations establishing reasonable time limits within which the Treasury and cooperating agencies must respond to a complainant alleging prohibited discrimination in a recipent government. The regulations must include, but are not limited to, time limits for instituting an investigation, making a determination of alleged discrimination and advising the complainant of the status of the complaint. The regulations must also establish time limits within which the Secretary must conduct audits and reviews of the compliance activities of recipient governments.

Section 125—"Private Civil Actions" allows a court to grant reasonable attorney fees to a prevailing plaintiff in a lawsuit enforcing the Act. The Section also allows the Attorney General to intervene in any lawsuit of general public importance enforcing the Act and provides the United States shall be entitled to the same relief as if it had instituted the action.

Section 12—Auditing and Accounting

Subsection (a) is a conforming amendment to change the language of section 123(a)(5)(A), which relates to the requirement that State and local governments, in order to qualify for payments under this Act, use certain fiscal, accounting and auditing procedures. Under this amendment the language is changed to conform with amendments which are made to Section 123(c) under Section 10(b) of this bill.

Subsection (b) amends Section 123(c) as follows:

(1) *In general.*—This provision is the same as that provided in section 123(c)(1) except that it specifically states that the Secretary of the Treasury is authorized to accept an audit by a State or local unit of government of funds they receive under this Act if he determines that their audit procedures are reliable. Under the 1972 law, only State governments are authorized to make an audit of both State and local government expenditures for submission to the Secretary of the Treasury. Furthermore, under this amendment, such audits are to be conducted in compliance with a new paragraph (2) relating to independent audits.

(2) *Independent audits.*—This new paragraph is inserted which authorizes the Secretary of the Treasury to promulgate no later than March 31, 1977, regulations which require State and local government recipients to conduct an independent audit of their finances during each fiscal year. Such regulations shall also include a provision which permits more simplified procedures or less frequent audits for those governmental units where the cost of such may be unreasonably burdensome in comparison to the amount of allotment they receive.

These regulations shall provide further that such audit reports shall be made available to the public.

(3) *Comptroller General shall review compliance.*—This provision remains unchanged except that it is changed from paragraph (2) to paragraph (3).

SECTION BY SECTION—DAVIS BACON ACT

Section 13

This section amends Section 123(a)(6) of the Act in its entirety.

The Bill provides that a recipient government must assure the Secretary of the Treasury that all laborers and mechanics employed in the performance of work on any construction project financed with shared revenue will be paid wages at rates not less than those prevailing on similar construction projects in the locality in accordance with the Davis Bacon Act as amended, and that with respect to these labor standards, the Secretary of Labor shall act in accordance with Reorganization Plan Numbered 14 of 1950 and Section 2 of the Act of June 13, 1934, as amended.

The Bill broadens the coverage of the Davis Bacon Act to include construction projects financed with 25 percent or less shared revenue and to include temporary employees of recipient governments. An express exemption exists for regular or permanent employees of recipient governments.

Section 14—Prohibition of Use for Lobbying Purposes

Section 123 of the Act is amended by adding at the end a new subsection which prohibits any State or local government recipient from using, directly or indirectly, any part of its allocation of funds received under this Act for lobbying activities which are for the purpose of influencing legislation relating to provisions of this Act.

Section 15—Supplemental Fiscal Assistance

This section adds a new Subtitle D, Supplemental Fiscal Assistance.

Section 161—Short Title

This subtitle is cited as the Supplemental Fiscal Assistance Act of 1976.

Section 162—Payments to State and Local Governments

Each State and local government is to be paid by the Secretary of the Treasury, out of amounts appropriated under this subtitle, an amount determined by the allocation procedures under Section 164 for each entitlement period. Payments are to be made in installments, but not less often than once each quarter. Payments are to be made not later than five days after the close of each quarter, and may be made on the basis of estimates. Whenever a State or local government has been over- or underpaid, adjustments are required.

Section 163—Authorizations

Any funds that Congress deems necessary to adequately fund the Supplemental Fiscal Assistance program are authorized for appropriation for each entitlement period beginning on or after January 1, 1977; however, there will be no authorization for any entitlement

period unless funds provided under Section 105(c)(1) equals: (1) $4,875,000,000 for the entitlement period January 1, 1977, through September 30, 1977, or (2) $6,500,000,000 for any 12-month entitlement period thereafter. Any funds authorized in excess of these amounts under Section 105(c)(1) must be distributed as an entitlement in accordance with this subtitle. Any additional funds for distribution under the provisions of subtitle D must be appropriated in accordance with the authorization provision in section 163(b).

Section 164—Eligibility; Determination of Amount of Payments

(a) No State or local government is eligible to receive any payments under this subtitle unless its entitlement under Section 167 or 168 exceeds its entitlement under Section 107 or 108. In other words, each government will receive an amount which is at least equal to the amount provided by Section 107 or 108.

(b) Subject to the eligibility provision of subsection (a), each State and local government will be paid the amount by which its entitlement under Section 167 or 168 exceeds its entitlement under Section 107 or 108 unless affected by (c) (1) or (2) which follows.

(c)(1) If the amount available under Section 163(a) and (b) for any entitlement period for making payments under this Subtitle is not sufficient to pay the total incremental amounts, then each payment for that period would be ratably reduced. If, after payments have been ratably reduced, additional funds become available for any entitlement period, the reduced payments must be ratably increased.

(c)(2) If the payment to any local government, other than a county government, is less than $2,500 ($1,875 for a 9-month entitlement period) or is waived for any entitlement period, then in lieu of being paid to the local unit, the amount will be added to and will become part of the payment of the county government.

Section 165—Management of Funds

(a) Any funds appropriated pursuant to Section 163(f) are to remain available without fiscal year limitation and are to be used only for payments to State and local governments eligible to receive payments under this subtitle. By January 15 of each year, the Treasury Secretary must report to Congress on the operations and payments under this subtitle.

(b) Appropriated amounts not used for payments to State and local governments are to be transferred to the general fund of the Treasury.

Section 166—Computation of Allocation Among States

The amount authorized under Section 105(c)(1) is to be allocated among the States for each entitlement period as follows:

(a) Allocation on the basis of income factor: Forty percent is to be distributed according to a formula which multiplies the population of each State by the income factor of that State. The formula then compares the resulting product for a State with the sum of the products similarly determined for all States.

(b) Allocation on the basis of tax effort factor: Sixty percent is to be distributed according to a formula which allocates among the States in the same proportion as the amount allocated to each State under subsection (c) bears to the sum of the amounts allocated to all States.

(c)(1) For purposes of subsection (f) the amounts allocated to a State under this subsection should be determined under paragraph (2) or (3), whichever allocates the higher amount.

(2) General Tax Effort Amount: The amount allocated to a State under this paragraph would be determined by a formula which multiplies State population by the State general tax effort factor. The formula then compares the resulting product for a State with sum of the products similarly determined for all States.

(3) Income Tax Effort Amount: The amount allocated to a State under this paragraph would be determined by a formula which multiplies State population by the State income tax effort factor. The formula then compares the resulting product for a State with the sum of the products similarly determined for all States.

Section 167—Entitlements of State Governments

(a) Division between State and local governments. Each State government is entitled to receive one-third of the amount allocated to the State area for each entitlement period. The remaining two-thirds of the amount allocated to the State area is to be allocated among local units of government as described in Section 168.

(b) State must maintain transfers to local governments.

(1) Each State government must continue to use its own funds to assist all units of local government within the State to the same extent that had been done previously. Accordingly, a State government may receive its total entitlement for the period beginning on or after January 1, 1977, only if it distributes as much to its local governments in the aggregate from its own sources, on the average during that entitlement period and the immediately preceding entitlement period, as it did in the one-year period beginning July 1, 1975, or, until data on this period are available, the most recent one-year period. If it fails to do so, the State's entitlement will be reduced by the amount of reduction in its aid to local governments. Any reduction is to be treated as a distribution by the State to its local governments for that period.

(2) When a State has assumed responsibility for a category of expenditures which was the responsibility of its local governments prior to January 1, 1977, the amount it must distribute to its local governments may be reduced by an amount equal to the increased State spending out of its own sources for the assumed category.

(3) When a State has conferred new taxing authority on one or more of its local governments after January 1, 1977, the amount it must distribute to its local governments may be reduced by an amount equal to the greater amount of either (1) taxes collected under the new taxing authority by the local governments or (2) by the amount of revenue loss to the State by reason of the new taxing authority conferred on local governments. If the new taxing authority is merely an increase in a previously authorized tax, no amount can be treated as collected by the exercise of new taxing authority by local governments unless the Secretary of the Treasury determines that the State has decreased a related State tax.

(4) For the entitlement period January 1, 1977, through September 30, 1977, the aggregate amounts taken into account under paragraph (1) will be three-fourths of the amounts which would normally be taken into account.

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(5) If the Secretary determines that a State has not maintained its effort and that a reduction in its entitlement should be made, he must give the State reasonable notice and opportunity for a hearing. Afterwards, if he continues to believe that an entitlement reduction should be made, he must determine the amount of such reduction, notify the governor of the State that the entitlement will be reduced because of the State's failure to maintain its effort, and withhold from subsequent payments an amount equal to the reduction in the State's maintenance of effort.

(6) After any judicial review under Section 143, an amount equal to the reduction of any State government must be made available for distribution to the State's local governments in accordance with Section 168. If, because of the limits imposed by Section 168, any portion of the funds cannot be distributed to local governments, they will be transferred to the general fund of the Treasury.

Section 168—Entitlements of Local Governments

(a) Allocation among county areas: The two-thirds amount allocated to a State's local governments for any entitlement period will be further allocated among a State's county areas according to a formula which multiplies county area population by the county area tax effort factor, by the county area income factor. The formula then compares the resulting product for a county area with the sum of the products similarly determined for all county areas within a State. In other words, each county area share is determined by its relative standing among all county areas within a State on the basis of population, tax effort, and income.

(b) Allocation to county governments, municipalities, townships, etc.:

(1) County governments.—The funds allocated to a county area are then allocated between the county government and the aggregate of other general purpose local units in that county on the basis of their relative adjusted taxes.

(2) Other units of local government:—After the funds allocated to a county area have been divided between a county government and the other local units, the local government's share is divided among the eligible units of local government according to the same three-factor formula that was used to distribute funds among county areas, except that an individual government's share is dependent on its population, tax effort, and income in relation to the population, tax effort, and income of all other eligible units within that particular county area.

(3) Township governments:—If one or more townships is located in the county area, then these governments will be treated as local units of government for the purpose of making the distribution described in the preceding paragraph.

(4) Indian tribes and Alaskan native villages:—If a State has an Indian tribe or Alaskan native village with a recognized governing body which performs substantial governmental functions, then before the allocation among county areas, as described in (a) above, each tribe or village will be allocated a portion of the two-third local government share on the basis of the relative population of that tribe or village within the State compared to the population of the State as a whole. If

such an allocation applies, the total amount allocated to tribes and villages will be subtracted from the local governments' two-thirds share. If the governing body of a tribe or village waives the entitlement for any entitlement period, then the provisions of this paragraph are not applicable resulting in the distribution of the waived amount among all other local governments within the State.

(5) Rule for small units of government:—A special allocation rule can be used for units of local government (other than a county government) which have a population not in excess of 500. If the Secretary of the Treasury determines that the data available for any entitlement period for such small units are not adequate for the application of the three-factor formula used for distributions to local governments, he may allocate funds to these governments on the basis of their population to the total population of all governments located in the county area. If this provision applies to any county area, the amount to be allocated among other units of local government in that county area for that entitlement period will be reduced accordingly.

(6) Entitlement.—

(A) *In general.*—The entitlement of any unit of local government for any entitlement period is the amount allocated to it by this subsection, except as provided by (B), (C), or (D) below.

(B) *Maximum per capita entitlement.*—The maximum limitation for any county area or unit of local government (other than a county government) in the State is 300 percent of the per capita allocation to all local governments in the State.

(C) *Limitation.*—A county or local government may not receive an allocation that exceeds 50 percent of its adjusted taxes plus intergovernmental transfers of revenue.

(D) *Entitlement less than $2,500, or governing body waives entitlement.*—If any local government below the county government level receives an entitlement of less than $2,500 for any annual entitlement period ($1,875 for a nine-month entitlement period) or if the local government's governing body waives its entitlement for any entitlement period, then the amount of the entitlement will become part of the county government's entitlement in lieu of being paid to the local unit.

(7) Adjustment of Entitlement.—

(A) *In General.*—In adjusting the allocation of any county area or local government, the Secretary must make any adjustment required by the 300% constraint first, any adjustment required by the 50% limitaton second, and any adjustment required by a waiver or the $2,500 minimum payment third.

(B) *Adjustment for application of maximum per capita entitlement.*—In the course of making adjustments to the allocations of county areas or units of local governments under the maximum constraint provision, the Secretary is to make adjustments to the county areas before adjustments are made to local units of government within the counties.

(C) *Adjustment for application of limitation.*—If the Secretary reduces the allocation to any unit of local government due to application of the 50% constraint, the amount of that reduction will be added to the allocation of the next higher level or govern-

ment. In the case of a municipal or township government, the amount would go to the county government. In the case of a county government, the amount will go to the State government.

Section 169.—Definitions and Special Rules for Application of Formulas

(a) (1) *Population.*—Population is to be determined on the same basis as resident population is determined by the Bureau of the Census for general statistical purposes.

(a) (2) *Exempt income.*—Exempt income is to be one-fourth of the annual income designated by the Bureau of the Census as the low-income level for a family of four.

(a) (3) *Aggregate exempt income.*—Aggregate exempt income for any unit of government is to be the population of the government times the exempt income as defined in paragraph (2) above.

(a) (4) *Income.*—Income is to be total money income from all sources, as determined by Census for general statistical purposes.

(a) (5) *Dates for determining allocations and entitlements.*—The determination of allocations and entitlements for each entitlement period must be made three full months preceding each entitlement period, unless regulations provide otherwise.

(a) (6) *Intergovernmental transfers.*—An intergovernmental transfer is an amount received from another government as a share in financing or as reimbursement for the performance of governmental functions. Only those items classified for general statistical purposes by the Bureau of the Census as intergovernmental transfers will be considered.

(a) (7) Data used; uniformity of data.—

(A) The most recently available data provided by the Bureau of the Census or the Commerce Department will be used for allocation purposes, except as provided in paragraph (B) which follows.

(B) The Treasury Secretary is authorized to use additional data (including data based on estimates) when he determines that data referred to in the above paragraph do not reflect the most recent developments or are not comprehensive enough to provide for equitable allocations. He must issue the necessary regulations to carry out this provision.

(b) *Income factor.*—The income factor of a State, county area, or local government is a fraction. The numerator is composed of the number of persons in families below the low-income level and the number of unrelated individuals 65 years old or over who are below the low-income level. In addition, the numerator also includes those persons in families and unrelated individuals 65 years old or over whose incomes are between 100 and 125% of the low-income level if they reside in an urbanized area's central city. The denominator is composed of the number of persons in families and the number of unrelated individuals 65 years old and over regardless of their income level. The terms used in this paragraph are defined in accordance with definitions used by the Bureau of the Census for general statistical purposes.

(c) *General tax effort factor of States.*—The general tax effort factor for any State for any entitlement period is defined as the net State and local taxes collected during the most recent reporting year divided by the total money income less aggregate exempt income (defined in subsection (a), paragraph (3) above) attributed to a State. The State and local tax used in the computation of a State's general tax effort factor are defined as the compulsory contributions exacted by a State, local government, or any other political subdivision of a State for public purposes as determined by the Bureau of the Census for general statistical purposes. Items to be specifically excluded from the State and local tax figure are employer-employee assessments and contributions to retirement and social insurance systems and special assessments for capital outlay. The State and local taxes to be taken into account are those for the most recent year available from the Bureau of the Census before the close of an entitlement period.

(d) *Income tax collections of States.*—A State's income tax collections for any entitlement period are defined as the net amount collected from the State individual income tax during the last calendar year which ended before the beginning of an entitlement period. The State individual income tax is defined as a tax imposed upon the income of individuals by a State and described under Section 164(a)(3) of Title 26, United States Code, as a State income tax.

(e) *Income tax effort factor.*—The State income tax effort factor for any entitlement period is described as the State's income tax collections divided by total money income from all sources less aggregate exempt income (defined in subsection (a), paragraph (3) above).

(f) *Tax effort factor of a county area.*—The tax effort factor of any county area for any entitlement period is described as the adjusted taxes of all governments within the county area divided by the greater of (1) aggregate income less aggregate exempt income attributable to the county area, or (2) one-half of the county area's aggregate exempt income.

(g) *Tax effort factor of a unit of local government.*—The tax effort factor of any unit of local government for any entitlement period is described as that government's adjusted taxes divided by the greater of (1) aggregate income less aggregate exempt income attributable to the local government, or (2) one-half of the local government's aggregate exempt income. Adjusted taxes are described in the same general manner as the local taxes taken into account for purposes of determining the general tax effort of a State (described above in (c)). However, in calculating adjusted taxes, that portion of the taxes properly allocable to education expenses is specifically excluded.

In addition, where a county government exacts sales taxes within a municipality and transfers part or all of those taxes to the municipality without specifying the purposes for which the municipality may spend the revenues and the governor of the State notifies the Secretary of the Treasury that this is the case, the transferred taxes are to be treated as taxes of the municipalities and not as taxes of the county government.

All payments received under this subtitle must be deposited in a trust fund established by the recipient. This is identical to the requirement imposed by Section 123(a)(1) of subtitle B.

Section 16—Effective Date

This section provides that the amendments made by this bill shall become effective at the close of December 31, 1976—the date when the present program expires—with the following exceptions:

(1) The provisions of Section 5, which relate to extension and funding of the program, shall become effective on the date of enactment.

(2) The provisions of Section 7, which amend the definition of local governments, shall become effective at the close of September 30, 1977.

XII. Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

State and Local Fiscal Assistance Act of 1972

AN ACT to provide fiscal assistance to State and local governments, to authorize Federal collection of State individual income taxes, and for other purposes

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

TITLE I—FISCAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

Subtitle A—Allocation and Payment of Funds

SEC. 101. SHORT TITLE.

This title may be cited as the "State and Local Fiscal Assistance Act of 1972".

SEC. 102. PAYMENTS TO STATE AND LOCAL GOVERNMENTS.

Except as otherwise provided in this title, the Secretary shall, for each entitlement period, pay [out of the Trust Fund] to—

(1) each State government a total amount equal to the entitlement of such State government determined under section 107 for such period, and

(2) each unit of local government a total amount equal to the entitlement of such unit determined under section 108 for such period.

In the case of entitlement periods ending after the date of the enactment of this Act, such payments shall be made in installments, but not less often than once for each quarter, and, in the case of quarters ending after September 30, 1972, shall be paid not later than 5 days after the close of each quarter. Such payments for any entitlement period may be initially made on the basis of estimates. Proper adjustment shall be made in the amount of any payment to a State government or a unit of local government to the extent that the payments previously made to such government under this subtitle were in excess of or less than the amounts required to be paid.

[SEC. 103. USE OF FUNDS BY LOCAL GOVERNMENTS FOR PRIORITY EXPENDITURES.

[(a) In General.—Funds received by units of local government under this subtitle may be used only for priority expenditures. For purposes of this title, the term "priority expenditures" means only—

[(1) ordinary and necessary maintenance and operating expenses for—

[(A) public safety (including law enforcement, fire protection, and building code enforcement),

[(B) environmental protection (including sewage disposal, sanitation, and pollution abatement),

[(C) public transportation (including transit systems and streets and roads),

[(D) health,

[(E) recreation,

[(F) libraries,

[(G) social services for the poor or aged, and

[(H) financial administration; and

[(2) ordinary and necessary capital expenditures authorized by law.

[(b) Certificates by Local Governments.—The Secretary is authorized to accept a certification by the chief executive officer of a unit of local government that the unit of local government has used the funds received by it under this subtitle for an entitlement period only for priority expenditures, unless he determines that such certification is not sufficiently reliable to enable him to carry out his duties under this title.

[SEC. 104. PROHIBITION ON USE AS MATCHING FUNDS BY STATE OR LOCAL GOVERNMENTS.

[(a) In General.—No State government or unit of local government may use, directly or indirectly, any part of the funds it receives under this subtitle as a contribution for the purpose of obtaining Federal funds under any law of the United States which requires such government to make a contribution in order to receive Federal funds.

[(b) Determinations by Secretary of the Treasury.—If the Secretary has reason to believe that a State government or unit of local government has used funds received under this subtitle in violation of subsection (a), he shall give reasonable notice and opportunity for hearing to such government. If, thereafter, the Secretary of the Treasury determines that such government has used funds in violation of subsection (a), he shall notify such government of his determination and shall request repayment to the United States of an amount equal to the funds so used. To the extent that such government fails to repay such amount, the Secretary shall withhold from subsequent payments to such government under this subtitle an amount equal to the funds so used.

[(c) Increased State or Local Government Revenues.—No State government or unit of local government shall be determined to have used funds in violation of subsection (a) with respect to any funds received for any entitlement period to the extent that the net revenues received by it from its own sources during such period exceed the net

revenues received by it from its own sources during the one-year period beginning July 1, 1971 (or one-half of such net revenues, in the case of an entitlement period of 6 months).

[(d) DEPOSITS AND TRANSFERS TO GENERAL FUND.—Any amount repaid by a State government or unit of local government under subsection (b) shall be deposited in the general fund of the Treasury. An amount equal to the reduction in payments to any State government or unit of local government which results from the application of this section (after any judicial review under section 143) shall be transferred from the Trust Fund to the general fund of the Treasury on the day on which such reduction becomes final.

[(e) CERTIFICATES BY STATE AND LOCAL GOVERNMENTS.—The Secretary is authorized to accept a certification by the Governor of a State or the chief executive officer of a unit of local government that the State government or unit of local government has not used any funds received by it under this subtitle for an entitlement period in violation of subsection (a) unless he determines that such certification is not sufficiently reliable to enable him to carry out his duties under this title.]

SEC. 105. [CREATION OF TRUST FUND;] APPROPRIATIONS; *AUTHORIZATIONS FOR ENTITLEMENTS.*

[(a) TRUST FUND.—

[(1) IN GENERAL.—There is hereby established on the books of the Treasury of the United States a trust fund to be known as the "State and Local Government Fiscal Assistance Trust Fund" (referred to in this subtitle as the "Trust Fund"). The Trust Fund shall remain available without fiscal year limitation and shall consist of such amounts as may be appropriated to it and deposited in it as provided in subsection (b). Except as provided in this title, amounts in the Trust Fund may be used only for the payments to State and local governments provided by this subtitle.

[(2) TRUSTEE.—The Secretary of the Treasury shall be the trustee of the Trust Fund and shall report to the Congress not later than March 1 of each year on the operation and status of the Trust Fund during the preceding fiscal year.]

(a) IN GENERAL.—Funds appropriated pursuant to subsections (b) and (c) shall remain available without fiscal year limitation and shall be used for the payments to State and local governments as provided by this title. The Secretary of the Treasury shall report to the Congress not later than January 15 of each year on the operations and payments under this subtitle during the preceding fiscal year.

(b) APPROPRIATIONS.—

(1) IN GENERAL.—There is appropriated [to the Trust Fund, out of amounts in the general fund of the Treasury attributable to the collections of the Federal individual income taxes not otherwise appropriated] *for the purpose of making the payments authorized by this subtitle*—

(A) for the period beginning January 1, 1972, and ending June 30, 1972, $2,650,000,000;

(B) for the period beginning July 1, 1972, and ending December 31, 1972, $2,650,000,000;

(C) for the period beginning January 1, 1973, and ending June 30, 1973, $2,987,500,000;

(D) for the fiscal year beginning July 1, 1973, $6,050,000,000;

(E) for the fiscal year beginning July 1, 1974, $6,200,000,000;

(F) for the fiscal year beginning July 1, 1975, $6,350,000,000; and

(G) for the period beginning July 1, 1976, and ending December 31, 1976, $3,325,000,000.

(2) NONCONTIGUOUS STATES ADJUSTMENT AMOUNTS.—There is appropriated [to the Trust Fund, out of amounts in the general fund of the Treasury attributable to the collections of the Federal individual income taxes not otherwise appropriated] *for the purpose of making the payments authorized by this subtitle*—

(A) for the period beginning January 1, 1972, and ending June 30, 1972, $2,390,000;

(B) for the period beginning July 1, 1972, and ending December 31, 1972, $2,390,000;

(C) for the period beginning January 1, 1973, and ending June 30, 1973, $2,390,000;

(D) for each of the fiscal years beginning July 1, 1973, July 1, 1974, and July 1, 1975, $4,780,000; and

(E) for the period beginning July 1, 1976, and ending December 31, 1976, $2,390,000.

[(3) DEPOSITS.—Amounts appropriated by paragraph (1) or (2) for any fiscal year or other period shall be deposited in the Trust Fund on the later of (A) the first day of such year or period, or (B) the day after the date of enactment of this Act.]

(c) AUTHORIZATION OF APPROPRIATIONS FOR ENTITLEMENTS.—

(1) IN GENERAL.—There are authorized to be appropriated to pay the entitlements hereinafter provided in this subtitle—

(A) for the period beginning January 1, 1977, and ending September 30, 1977, $4,987,500,000; and

(B) for the fiscal years beginning on October 1 of 1977, 1978, and 1979, $6,650,000,000,

except that sums authorized hereunder for any entitlement period in excess of the amount specified in section 163(a)(1) or (2) for that period shall be distributed under subtitle D of this title as an entitlement.

(2) NONCONTIGUOUS STATES ADJUSTMENT AMOUNTS.—There are authorized to be appropriated to pay the entitlements hereinafter provided—

(A) for the period beginning January 1, 1977, and ending September 30, 1977, $3,585000,; and

(B) for each of the fiscal years beginning on October 1 of 1977, 1978, and 1979, $4,780,000.

[(c) TRANSFERS FROM TRUST FUND TO GENERAL FUND.—The Secretary shall from time to time transfer from the Trust Fund to the general fund of the Treasury any moneys in the Trust Fund which he determines will not be needed to make payments to State governments and units of local government under this subtitle.]

(d) TRANSFERS TO THE GENERAL FUND.—The Secretary shall from time to time transfer to the general fund of the Treasury any funds available for this subtitle which he determines will not be needed to make payments to State governments and units of local government under this subtitle.

SEC. 106. ALLOCATION AMONG STATES.

[(a) IN GENERAL.—There shall be allocated to each State for each entitlement period, out of amounts appropriated under section 105(b) (1) for that entitlement period, an amount which bears the same ratio to the amount appropriated under that section for that period as the amount allocable to that State under subsection (b) bears to the sum of the amounts allocable to all States under subsection (b).]

(a) IN GENERAL.—There shall be allocated an entitlement to each State—

(1) for each entitlement period beginning prior to December 31, 1976, out of amounts appropriated under section 105(b)(1) for that entitlement period, an amount which bears the same ratio to the amount appropriated under that section for that period as the amount allocable to that State under subsection (b) bears to the sum of the amounts allocable to all States under subsection (b); and

(2) for each entitlement period beginning on or after January 1, 1977, out of amounts authorized under section 105(c)(1) for that entitlement period which are not reserved for distribution under subtitle D, an amount which bears the same ratio to the amount so available under that section for that period as the amount allocable to that State under subsection (b) bears to the sum of the amounts allocable to all States under subsection (b).

(b) DETERMINATION OF ALLOCABLE AMOUNT.—

(1) IN GENERAL.—For purposes of subsection (a), the amount allocable to a State under this subsection for any entitlement period shall be determined under paragraph (2), except that such amount shall be determined under paragraph (3) if the amount allocable to it under paragraph (3) is greater than the sum of the amounts allocable to it under paragraph (2) and subsection (c).

(2) THREE FACTOR FORMULA.—For purposes of paragraph (1), the amount allocable to a State under this paragraph for any entitlement period is the amount which bears the same ratio to $5,300,000,000 as—

(A) the population of that State, multiplied by the general tax effort factor of that State, multiplied by the relative income factor of that State, bears to

(B) the sum of the products determined under subparagraph (A) for all States.

(3) FIVE FACTOR FORMULA.—For purposes of paragraph (1), the amount allocable to a State under this paragraph for any entitlement period is the amount to which that State would be entitled if—

(A) ⅓ of $3,500,000,000 were allocated among the States on the basis of population.

(B) ⅓ of $3,500,000,000 were allocated among the States on the basis of urbanized population.

(C) ⅓ of $3,500,000,000 were allocated among the States on the basis of population inversely weighted for per capita income.

(D) ½ of $1,800,000,000 were allocated among the States on the basis of income tax collections, and

(E) ½ of $1,800,000,000 were allocated among the States on the basis of general tax effort.

(c) NONCONTIGUOUS STATES ADJUSTMENT.—

(1) IN GENERAL.—In addition to amounts allocated among the States under subsection (a), there shall be allocated for each entitlement period, out of amounts appropriated under [section 105(b)(2)] *subsection (b)(2) or (c)(2) of section 105*, an additional amount to any State (A) whose allocation under subsection (b) is determined by the formula set forth in paragraph (2) of that subsection and (B) in which civilian employees of the United States Government receive an allowance under section 5941 of title 5, United States Code.

(2) DETERMINATION OF AMOUNT.—The additional amount allocable to any State under this subsection for any entitlement period is an amount equal to a percentage of the amount allocable to that State under subsection (b)(2) for that period which is the same as the percentage of basic pay received by such employees stationed in that State as an allowance under such section 5941. If the total amount appropriated under section 105(b)(2) for any entitlement period *ending on or before December 31, 1976, or authorized under section 105(c)(2) for any entitlement period beginning on or after January 1, 1977*, is not sufficient to pay in full the additional amounts allocable under this subsection for that period, the Secretary shall reduce proportionately the amounts so allocable.

SEC. 107. ENTITLEMENTS OF STATE GOVERNMENTS.

(a) DIVISION BETWEEN STATE AND LOCAL GOVERNMENTS.—The State government shall be entitled to receive one-third of the amount allocated to that State for each entitlement period. The remaining portion of each State's allocation shall be allocated among the units of local government of that State as provided in section 108.

(b) STATE MUST MAINTAIN TRANSFERS TO LOCAL GOVERNMENTS.—

(1) GENERAL RULE.—The entitlement of any State government for any entitlement period beginning on or after [July 1, 1973] *January 1, 1977*, shall be reduced by the amount (if any) by which—

(A) the average of the aggregate amounts transferred by the State government (out of its own sources) during such period and the preceding entitlement period to all units of local government in such State, is less than;

(B) the similar aggregate amount for the one-year period beginning July 1, [1971] *1976, or, until data on such period are available, the most recent such one-year period for which data on such amounts are available.*

For purposes of subparagraph (A), the amount of any reduction in the entitlement of a State government under this subsection for any entitlement period shall, for subsequent entitlement

periods, be treated as an amount transferred by the State government (out of its own sources) during such period to units of local government in such State.

(2) ADJUSTMENT WHERE STATE ASSUMES RESPONSIBILITY FOR CATEGORY OF EXPENDITURES.—If the State government establishes to the satisfaction of the Secretary that since June 30, 1972, it has assumed responsibility for a category of expenditures which (before July 1, 1972) was the responsibility of local governments located in such State, then, under regulations prescribed by the Secretary, the aggregate amount taken into account under paragraph (1)(B) shall be reduced to the extent that increased State government spending (out of its own sources) for such category has replaced corresponding amounts which for the one-year period [beginning July 1, 1971,] *utilized for purposes of such paragraph* it transferred to units of local government.

(3) ADJUSTMENT WHERE NEW TAXING POWERS ARE CONFERRED UPON LOCAL GOVERNMENTS.—If a State establishes to the satisfaction of the Secretary that since June 30, 1972, one or more units of local government within such State have had conferred upon them new taxing authority, then, under regulations prescribed by the Secretary, the aggregate amount taken into account under paragraph (1)(B) shall be reduced to the extent of the larger of—

(A) an amount equal to the amount of taxes collected by reason of the exercise of such new taxing authortiy by such local governments, or

(B) an amount equal to the amount of the loss of revenue to the State by reason of such new taxing authority being conferred on such local governments.

No amount shall be taken into consideration under subparagraph (A) if such new taxing authority is an increase in the authorized rate of tax under a previously authorized kind of tax, unless the State is determined by the Secretary to have decreased a related State tax.

(4) SPECIAL RULE FOR PERIOD BEGINNING JULY 1, 1973.—In the case of the entitlement period beginning July 1, 1973, the preceding entitlement period for purposes of paragraph (1)(A) shall be treated as being the one-year period beginning July 1, 1972.

(5) SPECIAL RULE FOR PERIOD BEGINNING JULY 1, 1976.—In the case of the entitlement period beginning July 1, 1976, and ending December 31, 1976, the aggregate amount taken into account under paragraph (1)(A) for the preceding entitlement period and the aggregate amount taken into account under paragraph (1)(B) shall be one-half the amounts which (but for this paragraph) would be taken into account.

(6) SPECIAL RULE FOR THE PERIOD BEGINNING JANUARY 1, 1977.—In the case of the entitlement period beginning January 1, 1977, and ending September 30, 1977, the aggregate amount taken into account under paragraph (1)(A) for the preceding entitlement period and the aggregate amount taken into account under paragraph (1)(B) shall be three-fourths of the amounts which (but for this paragraph) would be taken into account.

[(6)] (7) REDUCTION IN ENTITLEMENT.—If the Secretary has reason to believe that paragraph (1) requires a reduction in the entitlement of any State government for any entitlement period, he shall give reasonable notice and opportunity for hearing to the State. If, thereafter, he determines that paragraph (1) requires the reduction of such entitlement, he shall also determine the amount of such reduction and shall notify the Governor of such State of such determinations and shall withhold from subsequent payments to such State government under this subtitle an amount equal to such reduction.

[(7)] (8) TRANSFER TO GENERAL FUND.—An amount equal to the reduction in the entitlement of any State government which results from the application of this subsection (after any judicial review under section 143) shall be transferred [from the Trust Fund] to the general fund of the Treasury on the day on which such reduction becomes final.

SEC. 108. ENTITLEMENTS OF LOCAL GOVERNMENTS.

(a) ALLOCATION AMONG COUNTY AREAS.—The amount to be allocated to the units of local government within a State for any entitlement period shall be allocated among the county areas located in that State so that each county area will receive an amount which bears the same ratio to the total amount to be allocated to the units of local government within that State as—

(1) the population of that county area, multiplied by the general tax effort factor of that county area, multiplied by the relative income factor of that county area, bears to

(2) the sum of the products determined under paragraph (1) for all county areas within that State.

(b) ALLOCATION TO COUNTY GOVERNMENTS, MUNICIPALITIES, TOWNSHIPS, ETC.

(1) COUNTY GOVERNMENTS.—The county government shall be allocated that portion of the amount allocated to the county area for the entitlement period under subsection (a) which bears the same ratio to such amount as the adjusted taxes of the county government bear to the adjusted taxes of the county government and all other units of local government located in the county area.

(2) OTHER UNITS OF LOCAL GOVERNMENT.—The amount remaining for allocation within a county area after the application of paragraph (1) shall be allocated among the units of local government (other than the county government and other than township governments) located in that county area so that each unit of local government will receive an amount which bears the same ratio to the total amount to be allocated to all such units as—

(A) the population of that local government, multiplied by the general tax effort factor of that local government, multiplied by the relative income factor of that local government, bears to

(B) the sum of the products determined under subparagraph (A) for all such units.

(3) TOWNSHIP GOVERNMENTS.—If the county area includes one or more township governments, then before applying paragraph (2)—

(A) there shall be set aside for allocation under subparagraph (B) to such township governments that portion of the

amount allocated to the county area for the entitlement period which bears the same ratio to such amount as the sum of the adjusted taxes of all such township governments bears to the aggregate adjusted taxes of the county government, such township governments, and all other units of local government located in the county area, and

(B) that portion of each amount set aside under subparagraph (A) shall be allocated to each township government on the same basis as amounts are allocated to units of local government under paragraph (2).

If this paragraph applies with respect to any county area for any entitlement period, the remaining portion allocated under paragraph (2) to the units of local government located in the county area (other than the county government and the township governments) shall be appropriately reduced to reflect the amounts set aside under subparagraph (A).

(4) INDIAN TRIBES AND ALASKAN NATIVE VILLAGES.—If within a county area there is an Indian tribe or Alaskan native village which has a recognized governing body which performs substantial governmental functions, then before applying paragraph (1) there shall be allocated to such tribe or village a portion of the amount allocated to the county area for the entitlement period which bears the same ratio to such amount as the population of that tribe or village within that county area bears to the population of that county area. If this paragraph applies with respect to any county area for any entitlement period, the amount to be allocated under paragraph (1) shall be appropriately reduced to reflect the amount allocated under the preceding sentence. If the entitlement of any such tribe or village is waived for any entitlement period by the governing body of that tribe or village, then the provisions of this paragraph shall not apply with respect to the amount of such entitlement for such period.

(5) RULE FOR SMALL UNITS OF GOVERNMENT.—If the Secretary determines that in any county area the data available for any entitlement period are not adequate for the application of the formulas set forth in paragraphs (2) and (3)(B) with respect to units of local government (other than a county government) with a population below a number (not more than 500) prescribed for that county area by the Secretary, he may apply paragraph (2) or (3)(B) by allocating for such entitlement period to each such unit located in that county area an amount which bears the same ratio to the total amount to be allocated under paragraph (2) or (3)(B) for such entitlement period as the population of such unit bears to the population of all units of local government in that county area to which allocations are made under such paragraph. If the preceding sentence applies with respect to any county area, the total amount to be allocated under paragraph (2) or (3)(B) to other units of local government in that county area for the entitlement period shall be appropriately reduced to reflect the amounts allocated under the preceding sentence.

(6) ENTITLEMENT.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the entitlement of any unit of local government

for any entitlement period shall be the amount allocated to such unit under this subsection (after taking into account any applicable modification under subsection (c)).

(B) MAXIMUM AND MINIMUM PER CAPITA ENTITLEMENT.—Subject to the provisions of subparagraphs (C) and (D), the per capita amount allocated to any county area or any unit of local government (other than a county government) within a State under this section for any entitlement period shall not be less than 20 percent, nor more than 145 percent, of two-thirds of the amount allocated to the State under section 106, divided by the population of that State.

(C) LIMITATION.—The amount allocated to any unit of local government under this section for any entitlement period shall not exceed 50 percent of the sum of (i) such government's adjusted taxes, and (ii) the intergovernmental transfers of revenue to such government (other than transfers to such government under this subtitle).

(D) ENTITLEMENT LESS THAN $200, OR GOVERNING BODY WAIVES ENTITLEMENT.—If (but for this subparagraph) the entitlement of any unit of local government below the level of the county government—

(i) would be less than $200 for any entitlement period ($100 for an entitlement period of 6 months, *$150 for an entitlement period of 9 months*), or

(ii) is waived for any entitlement period by the governing body of such unit,

then the amount of such entitlement for such period shall (in lieu of being paid to such unit) be added to, and shall become a part of, the entitlement for such period of the county government of the county area in which such unit is located.

(7) ADJUSTMENT OF ENTITLEMENT.—

(A) IN GENERAL.—In adjusting the allocation of any county area or unit of local government, the Secretary shall make any adjustment required under paragraph (6)(B) first, any adjustment required under paragraph (6)(C) next, and any adjustment required under paragraph (6)(D) last.

(B) ADJUSTMENT FOR APPLICATION OF MAXIMUM OR MINIMUM PER CAPITA ENTITLEMENT.—The Secretary shall adjust the allocations made under this section to county areas or to units of local governments in any State in order to bring those allocations into compliance with the provisions of paragraph (6)(B). In making such adjustments he shall make any necessary adjustments with respect to county areas before making any necessary adjustments with respect to units of local government.

(C) ADJUSTMENT FOR APPLICATION OF LIMITATION.—In any case in which the amount allocated to a unit of local government is reduced under paragraph (6)(C) by the Secretary, the amount of that reduction—

(i) in the case of a unit of local government (other than a county government), shall be added to and increase the allocation of the county government of the county area in which it is located, unless (on account of

the application of paragraph (6)) that county government may not receive it, in which case the amount of the reduction shall be added to and increase the entitlement of the State government of the State in which that unit of local government is located; and

(ii) in the case of a county government, shall be added to and increase the entitlement of the State government of the State in which it is located.

(c) SPECIAL ALLOCATION RULES.—

(1) OPTIONAL FORMULA.—A State may by law provide for the allocation of funds among county areas, or among units of local government (other than county governments), on the basis of the population multiplied by the general tax effort factors of such areas or units of local government, on the basis of the population multiplied by the relative income factors of such areas or units of local government, or on the basis of a combination of those two factors. Any State which provides by law for such a variation in the allocation formula provided by subsection (a), or by paragraphs (2) and (3) of subsection (b), shall notify the Secretary of such law not later than 30 days before the beginning of the first entitlement period to which such law is to apply. Any such law shall—

(A) provide for allocating 100 percent of the aggregate amount to be allocated under subsection (a), or under paragraphs (2) and (3) of subsection (b);

(B) apply uniformly throughout the State; and

(C) apply during the period beginning on the first day of the first entitlement period to which it applies and ending on [December 31, 1976.] *September 30, 1980.*

(2) CERTIFICATION.—Paragraph (1) shall apply within a State only if the Secretary certifies that the State law complies with the requirements of such paragraph. The Secretary shall not certify any such law with respect to which he receives notification later than 30 days prior to the first entitlement period during which it is to apply.

(d) GOVERNMENTAL DEFINITIONS AND RELATED RULES.—For purposes of this title—

[(1) UNITS OF LOCAL GOVERNMENT.—The term "unit of local government" means the government of a county, municipality, township, or other unit of government below the State which is a unit of general government (determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes). Such term also means, except for purposes of paragraphs (1), (2), (3), (5), (6)(C), and (6)(D) of subsection (b), and, except for purposes of subsection (c), the recognized governing body of an Indian tribe or Alaska native village which performs substantial governmental functions.]

(1) UNIT OF LOCAL GOVERNMENT.—

(A) IN GENERAL.—The term "unit of local government" means the government of a county, municipality, or township which is a unit of general government as determined by the Bureau of the Census for general statistical purposes, and

which, with respect to entitlement periods beginning on or after October 1, 1977, meets the requirements specified in subparagraph B, and imposes taxes or receives intergovernmental transfers for substantial performance of at least two of the following services for its citizens: (i) police protection; (ii) courts and corrections; (iii) fire protection; (iv) health services; (v) social services for the poor or aged; (vi) public recreation; (vii) public libraries; (viii) zoning or land use planning; (ix) sewerage disposal or water supply; (x) solid waste disposal; (xi) pollution abatement; (xii) road or street construction and maintenance; (xiii) mass transportation; and (xiv) education. Such term also means, except for purposes of paragraphs (1), (2), (3), (5), (6)(C), and (6)(D) of subsection (b), and, except for purposes of subsection (c), the recognized governing body of an Indian tribe or Alaskan Native village which performs substantial governmental functions. For the purposes of this subsection a unit of local government shall be deemed to impose a tax if that tax is collected by another governmental entity from the geographical area served by that unit of local government and an amount equivalent to the net proceeds of that tax are paid to that unit of local government.

(B) LIMITATION.—To be considered a unit of local government for purposes of this Act, at least 10 per centum of a local government's total expenditures (exclusive of expenditures for general and financial administration and for the assessment of property taxes) in the most recent fiscal year must have been for each of two of the public services listed in subparagraph (A), except that the foregoing restriction shall not apply to a unit of local government (i) which substantially performs four or more of such public services, or (ii) which has performed two or more of such public services since January 1, 1976, and continues to provide two or more such public services.

(2) CERTAIN AREAS TREATED AS COUNTIES.—In any State in which any unit of local government (other than a county government) constitutes the next level of government below the State government level, then, except as provided in the next sentence, the geographic area of such unit of government shall be treated as a county area (and such unit of government shall be treated as a county government) with respect to that portion of the State's geographic area. In any State in which any county area is not governed by a county government but contains two or more units of local government, such units shall not be treated as county governments and the geographic areas of such units shall not be treated as county areas.

(3) TOWNSHIPS.— The term "township" includes equivalent subdivisions of government having different designations (such as "towns"), and shall be determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes.

(4) UNITS OF LOCAL GOVERNMENT LOCATED IN LARGER ENTITY.—A unit of local government shall be treated as located in a larger entity if part or all of its geographic area is located in the larger entity.

(5) ONLY PART OF UNIT LOCATED IN LARGER ENTITY.—If only part of a unit of local government is located in a larger entity, such part shall be treated for allocation purposes as a separate unit of local government, and all computations shall, except as otherwise provided in regulations, be made on the basis of the ratio which the estimated population of such part bears to the population of the entirety of such unit.

(6) BOUNDARY CHANGES, GOVERNMENTAL REORGANIZATION, ETC.—If, by reason of boundary line changes, by reason of State statutory or constitutional changes, by reason of annexations or other governmental reorganizations, or by reason of other circumstances, the application of any provision of this section to units of local government does not carry out the purposes of this subtitle, the application of such provision shall be made, under regulations prescribed by the Secretary, in a manner which is consistent with such purposes.

SEC. 109. DEFINITIONS AND SPECIAL RULES FOR APPLICATION OF ALLOCATION FORMULAS.

(a) IN GENERAL.—For purposes of this subtitle—

(1) POPULATION.—Population shall be determined on the same basis as resident population is determined by the Bureau of the Census for general statistical purposes.

(2) URBANIZED POPULATION.—Urbanized population means the population of any area consisting of a central city or cities of 50,000 or more inhabitants (and of the surrounding closely settled territory for such city or cities) which is treated as an urbanized area by the Bureau of the Census for general statistical purposes.

(3) INCOME.—Income means total money income received from all sources, as determined by the Bureau of the Census for general statistical purposes.

(4) PERSONAL INCOME.—Personal income means the income of individuals, as determined by the Department of Commerce for national income accounts purposes.

(5) DATES FOR DETERMINING ALLOCATIONS AND ENTITLEMENTS.—Except as provided in regulations, the determination of allocations and entitlements for any entitlement period shall be made as of the first day of the third month immediately preceding the beginning of such period.

(6) INTERGOVERNMENTAL TRANSFERS.—The intergovernmental transfers of revenue to any government are the amounts of revenue received by that government from other governments as a share in financing (or as reimbursement for) the performance of governmental functions, as determined by the Bureau of the Census for general statistical purposes.

(7) DATA USED; UNIFORMITY OF DATA.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), the data used shall be the most recently available data

provided by the Bureau of the Census or the Department of Commerce, as the case may be.

(B) USE OF ESTIMATES, ETC.—Where the Secretary determines that the data referred to in subparagraph (A) are not current enough or are not comprehensive enough to provide for equitable allocations, he may use such additional data (including data based on estimates) as may be provided for in regulations.

(b) INCOME TAX AMOUNT OF STATES.—For purposes of this subtitle—

(1) IN GENERAL.—The income tax amount of any State for any entitlement period is the income tax amount of such State as determined under paragraphs (2) and (3).

(2) INCOME TAX AMOUNT.—The income tax amount of any State for any entitlement period is 15 percent of the net amount collected from the State individual income tax of such State during 1972 or (if later) during the last calendar year ending before the beginning of such entitlement period.

(3) CEILING AND FLOOR.—The income tax amount of any State for any entitlement period—

(A) shall not exceed 6 percent, and

(B) shall not be less than 1 percent.

of the Federal individual income tax liabilities attributed to such State for taxable years ending during 1971 or (if later) during the last calendar year ending before the beginning of such entitlement period.

(5) FEDERAL INDIVIDUAL INCOME TAX LIABILITIES.—Federal individual income tax liabilities attributed to any State for any period shall be determined on the same basis as such liabilities are determined for such period by the Internal Revenue Service for general statistical purposes.

(c) GENERAL TAX EFFORT OF STATES.—

(1) IN GENERAL.—For purposes of this subtitle—

(A) GENERAL TAX EFFORT FACTOR.—The general tax effort factor of any State for any entitlement period is (i) the net amount collected from the State and local taxes of such State during the most recent reporting year, divided by (ii) the aggregate personal income (as defined in paragraph (4) of subsection (a)) attributed to such State for the same period.

(B) GENERAL TAX EFFORT AMOUNT.—The general tax effort amount of any State for any entitlement period is the amount determined by multiplying—

(i) the net amount collected from the State and local taxes of such State during the most recent reporting year, by

(ii) the general tax effort factor of that State.

(2) STATE AND LOCAL TAXES.—

(A) TAXES TAKEN INTO ACCOUNT.—The State and local taxes taken into account under paragraph (1) are the compulsory contributions exacted by the State (or by any unit of local government or other political subdivision of the State)

for public purposes (other than employee and employer assessments and contributions to finance retirement and social insurance systems, and other than special assessments for capital outlay), as such contributions are determined by the Bureau of the Census for general statistical purposes.

(B) MOST RECENT REPORTING YEAR.—The most recent reporting year with respect to any entitlement period consists of the years taken into account by the Bureau of the Census in its most recent general determination of State and local taxes made before the close of such period.

(d) GENERAL TAX EFFORT FACTOR OF COUNTY AREA.—For purposes of this subtitle, the general tax effort factor of any county area for any entitlement period is—

(1) the adjusted taxes of the county government plus the adjusted taxes of each other unit of local government within that county area, divided by

(2) the aggregate income (as defined in paragraph (3) of subsection (a)) attributed to that county area.

(e) GENERAL TAX EFFORT FACTOR OF UNIT OF LOCAL GOVERNMENT.—For purposes of this subtitle—

(1) IN GENERAL.—The general tax effort factor of any unit of local government for any entitlement period is—

(A) the adjusted taxes of that unit of local government, divided by

(B) the aggregate income (as defined in paragraph (3) of subsection (a)) attributed to that unit of local government.

(2) ADJUSTED TAXES.—

(A) IN GENERAL.—The adjusted taxes of any unit of local government are—

(i) the compulsory contributions exacted by such government for public purposes (other than employee and employer assessments and contributions to finance retirement and social insurance systems, and other than special assessments for capital outlay), as such contributions are determined by the Bureau of the Census for general statistical purposes,

(ii) adjusted (under regulations prescribed by the Secretary) by excluding an amount equal to that portion of such compulsory contributions which is properly allocable to expenses for education.

(B) CERTAIN SALES TAXES COLLECTED BY COUNTIES.—In any case where—

(i) a county government exacts sales taxes within the geographic area of a unit of local government and transfers part or all of such taxes to such unit without specifying the purposes for which such unit may spend the revenues, and

(ii) the Governor of the State notifies the Secretary that the requirements of this subparagraph have been met with respect to such taxes,

then the taxes so transferred shall be treated as the taxes of the unit of local government (and not the taxes of the county government).

(f) RELATIVE INCOME FACTOR.—For purposes of this subtitle, the relative income factor is a fraction—

(1) in the case of a State, the numerator of which is the per capita income of the United States and the denominator of which is the per capita income of that State;

(2) in the case of a county area; the numerator of which is the per capita income of the State in which it is located and the denominator of which is the per capita income of that county area; and

(3) in the case of a unit of local government, the numerator of which is the per capita income of the county area in which it is located and the denominator of which is the per capita income of the geographic area of that unit of local government.

For purposes of this subsection, per capita income shall be determined on the basis of income as defined in paragraph (3) of subsection (a).

(g) ALLOCATION RULES FOR FIVE FACTOR FORMULA.—For purposes of section 106(b)(3)—

(1) ALLOCATION ON BASIS OF POPULATION.—Any allocation among the States on the basis of population shall be made by allocating to each State an amount which bears the same ratio to the total amount to be allocated as the population of such State bears to the population of all the States.

(2) ALLOCATION ON BASIS OF URBANIZED POPULATION.—Any allocation among the States on the basis of urbanized population shall be made by allocating to each State an amount which bears the same ratio to the total amount to be allocated as the urbanized population of such State bears to the urbanized population of all the States.

(3) ALLOCATION ON BASIS OF POPULATION INVERSELY WEIGHTED FOR PER CAPITA INCOME.—Any allocation among the States on the basis of population inversely weighted for per capita income shall be made by allocating to each State an amount which bears the same ratio to the total amount to be allocated as—

(A) the population of such State, multiplied by a fraction the numerator of which is the per capita income of all the States and the denominator of which is the per capita income of such State, bears to

(B) the sum of the products determined under subparagraph (A) for all the States.

(4) ALLOCATION ON BASIS OF INCOME TAX COLLECTIONS.—Any allocation among the States on the basis of income tax collections shall be made by allocating to each State an amount which bears the same ratio to the total amount to be allocated as the income tax amount of such State bears to the sum of the income tax amounts of all the States.

(5) ALLOCATION ON BASIS OF GENERAL TAX EFFORT.—Any allocation among the States on the basis of general tax effort shall be made by allocating to each State an amount which bears the same ratio to the total amount to be allocated as the general tax effort amount of such State bears to the sum of the general tax effort amounts of all the States.

Subtitle B—Administrative Provisions

SEC. 120. MODERNIZATION OF GOVERNMENT

(a) POLICY AND PURPOSE.—In order that funds provided under this Act shall encourage the modernization and revitalization of State and local governments, each State shall submit an annual report to the Secretary describing any steps it has taken to achieve the goal set forth in this section.

(b) STATE MASTER PLAN.—It is established as a goal that each State government prepare and develop in accordance with subsections (c), (d), and (e) a master plan and timetable for modernizing and revitalizing State and local government.

(c) PREPARATION OF MASTER PLAN AND TIMETABLE.—Prior to submitting the State's annual report to the Secretary, the State's chief executive officer may submit a proposed master plan and timetable to the State legislature and to the chief executive officer and legislative body of each county government, township government, and other unit of local government, including, for these purposes, special purpose governments not covered by the definition of unit of local government in section 108(d)(1). The proposed master plan and timetable shall also be made available to the public by publication in newspapers throughout the State. After issuance of any proposed master plan and timetable, there shall be a period of not less than 120 days for local officials and citizens of the State to comment on the proposed master plan and timetable, in accordance with a procedure for such comment promulgated by the chief executive officer of the State. The chief executive officer of the State shall take into consideration such comments in preparing the final master plan and timetable. A final master plan and timetable shall be submitted to the State legislature which shall vote whether or not to submit such plan to the Secretary.

(d) Contents of Master Plans and Timetables.—

(1) IN GENERAL.—A State's master plan and timetable may contain:

(A) a set of proposals for substantially improving the effectiveness, economy and equity of State and local government;

(B) the steps (constitutional, legislative, or administrative) necessary to effectuate those proposals; and

(C) a timetable for effectuating each proposal within a reasonable period.

(2) CRITERIA.—The following broad criteria may be employed in the development of the provisions of the master plan and timetable:

(A) FUNCTION.—Governmental responsibilities should be assigned to State and sub-State governments with the objective of providing all residents with at least a minimal level of public services.

(B) STRUCTURE.—The organization of State and sub-State governments should substantially reduce the number of limited function general governments and special districts.

(C) FISCAL INTEGRITY.—The system of State and local taxation should result in a tax burden commensurate with the fiscal capacity of the taxing unit.

(D) MANAGEMENT CAPACITY.—Improvements in the professional capacity of State and local governments should be specifically addressed.

(E) ACCOUNTABILITY.—Broad participation of the general public in the decisionmaking process should be encouraged, and formal mechanisms of reporting the impact of such decisions should be proposed.

(e) METHODS FOR PROMOTING EFFECTIVENESS, ECONOMY, AND EQUITY IN STATE AND LOCAL GOVERNMENT.—

(1) IN GENERAL.—In preparing the master plan and timetable, the chief executive officer may take into consideration the following methods for promoting effectiveness, economy and equity in State and local governments:

(A) INTERSTATE.—Arrangements, by interstate compact or otherwise for dealing with interstate regional problems, including those of metropolitan areas which overlap State lines, and for regional cooperation in such areas as health, education, welfare, conservation, resource development, transportation, recreation, and housing.

(B) STATE DIRECT ACTION.—Strengthening and modernizing of State government (by constitutional, statutory, and administrative changes), including but not limited to, modernized State borrowing powers; improved tax systems; increased financial and technical assistance to local governments; revising the terms of State aids and shared taxes to compensate for differences in total local fiscal capacity; State assumption of greater direct fiscal responsibility for basic functions; modern personnel systems; and development of minimum State standards for services at the State and local level.

(C) STATE ACTION AFFECTING LOCALITIES.—Strengthening and modernizing by the State of local, rural, urban, and metropolitan governments (by constitutional, statutory, and administrative changes), including—

(i) changes designed to make local government more efficient, economical and accountable, as by—

(I) reducing the number of, or eliminating, local governments too small to provide efficient administration or possessing inadequate fiscal resources;

(II) reducing the number of special districts not subject to democratic controls, and eliminating those whose functions can be carried out by general governments;

(III) granting adequate home-rule powers to local governments of sufficient size and scope;

(IV) improving local property tax administration;

(V) authorizing local governments to utilize non-property taxes, coordinated at the State or regional level; and

(VI) easing restrictions on the borrowing and taxing powers of local governments.

(ii) other changes designed to strengthen local government in metropolitan areas, as by—

(I) liberalizing municipal annexation of unincorporated areas;

(II) setting minimum standards of population and population density for proposed new incorporations;

(III) authorizing city-county consolidation, or transfers of specified functions between municipalities and counties;

(IV) authorizing intergovernmental contracts for the provision of services;

(V) authorizing municipalities to exercise extraterritorial planning, zoning, and subdivision control over unincorporated areas not subject to effective county regulation;

(VI) restricting zoning authority in metropolitan areas to metropolitan bodies, larger municipalities, counties, or the State;

(VII) authorizing the formation of regional multi-functional bodies for housing, health care, social services, parks and recreation, and water sewer facilities; and

(VIII) establishing State standards of accountability in the planning process and operations of special districts, boards, commissions and official agencies not directly subordinate to a general government.

(f) REPORTS AND RECOMMENDATIONS.—The Secretary shall report to Congress at the end of each fiscal year on the progress made by each State in developing and carrying out a master plan and timetable, and based on such progress, shall make recommendations concerning the goal set forth in this section.

[SEC. 121. REPORTS ON USE OF FUNDS; PUBLICATION

[(a) REPORTS ON USE OF FUNDS.—Each State government and unit of local government which receives funds under subtitle A shall, after the close of each entitlement period, submit a report to the Secretary setting forth the amounts and purposes for which funds received during such period have been spent or obligated. Such reports shall be in such form and detail and shall be submitted at such time as the Secretary may prescribe.

[(b) REPORTS ON PLANNED USE OF FUNDS.—Each state government and unit of local government which expects to receive funds under subtitle A for any entitlement period beginning on or after January 1, 1973, shall submit a report to the Secretary setting forth the amounts and purposes for which it plans to spend or obligate the funds which it expects to receive during such period. Such reports shall be in such form and detail as the Secretary may prescribe and shall be submitted at such time before the beginning of the entitlement period as the Secretary may prescribe.

[(c) PUBLICATION AND PUBLICITY OF REPORTS.—Each State government and unit of local government shall have a copy of each report submitted by it under subsection (a) or (b) published in a newspaper which is published within the State and has general circulation within the geographic area of that government. Each State government and unit of local government shall advise the news media of the publication of its reports pursuant to this subsection.]

Sec. 121 Reports on use of funds; Publication and public hearings

(a) REPORTS ON PROPOSED USE OF FUNDS.—Each State government and unit of local government which expects to receive funds under subtitle A or D for any entitlement period beginning on or after January 1, 1977, shall submit a report to the Secretary setting forth the amounts and purposes for which it proposes to spend or obligate the funds which it expects to receive during such period as compared with the use of similar funds during the two immediately preceding entitlement periods. Each such report shall include a comparison of the proposed, current, and past use of such funds to the relevant functional items in its official budget and specify whether the proposed use is for a completely new activity, for the expansion or continuation of an existing activity, or for tax stabilization or reduction. Such report shall be in such form and detail as the Secretary may prescribe and shall be submitted at such time before the beginning of the entitlement period as the Secretary may prescribe.

(b) REPORTS ON USE OF FUNDS.—Each State government and unit of local government which receives funds under subtitle A or D shall, after the close of each entitlement period, submit a report to the Secretary (which report shall be available to the public for inspection and reproduction) setting forth the amounts and purposes of which funds received during such period have been appropriated, spent, or obligated and showing the relationship of those funds to the relevant functional items in the government's official budget. Such report shall further provide an explanation of all differences between the actual use of funds received and the proposed use of such funds as reported to the Secretary under subsection (a). Such reports shall be in such form and detail and shall be submitted at such time as the Secretary may prescribe.

(c) PUBLIC HEARINGS REQUIRED.—

(1) PRE-REPORT HEARING.—Not less than 7 calendar days before the submission of the report required under subsection (a), each State government or unit of local government which expects to receive funds under subtitle A or D for any entitlement period beginning on or after January 1, 1977, shall, after adequate public notice, have at least one public hearing at which citizens shall have the opportunity to provide written and oral comment on the possible uses of such funds.

(2) PRE-BUDGET HEARING.—Not less than 7 calendar days before the adoption of its budget as provided for under State and local law, each State government or unit of local government which expects to receive funds under subtitle A or D for any entitlement period beginning on or after January 1, 1977, shall have

at least one public hearing on the proposed use of funds made available under subtitles A and D in relation to its entire budget. At such hearing, citizens shall have the opportunity to provide written and oral comment to the body responsible for enacting the budget, and to have answered questions concerning the entire budget and the relation to it of funds made available under subtitles A and D. Such hearing shall be at a place and time that permits and encourages public attendance and participation.

(3) WAIVER.—The provisions of paragraph (1) may be waived in whole or in part in accordance with regulations of the Secretary if the cost of such a requirement would be unreasonably burdensome in relation to the entitlement of such State government or unit of local government to funds made available under subtitles A and D. The provisions of paragraph (2) may be waived in whole or in part in accordance with regulations of the Secretry if the budget processes required under applicable State or local laws or charter provisions assure the opportunity for public attendance and participation contemplated by the provisions of this subsection and a portion of such process includes a hearing on the proposed use of funds made available under subtitles A and D in relation to its entire budget.

(d) NOTIFICATION AND PUBLICITY OF PUBLIC HEARINGS; ACCESS TO BUDGET SUMMARY AND PROPOSED AND ACTUAL USE REPORTS.—

(1) IN GENERAL.—Each State government and unit of local government which expects to receive funds under subtitle A or D for any entitlement period beginning on or after January 1, 1977, shall—

(A) 30 days prior to the public hearing required by subsection (c) (2)—

(i) publish conspicuously, in at least one newspaper of general circulation, the proposed use report required by subsection (a), a narrative summary setting forth in simple language an explanation of its proposed official budget, and a notice of the time and place of such public hearing; and

(ii) make available for inspection and reproduction by the public (at the principal office of such State government or unit of local government, at public libraries, if any, within the boundaries of such a unit of local government, and, in the case of a State government, at the main libraries of the principal municipalities of such State) the proposed use report, the narrative summary, its offical budget which shall specify with particularity each item in its official budget which will be funded, in whole or in part, with funds made available under subtitle A or D, and for, each such budget item, shall specify amount of such funds budgeted for that item and the percentage of total expenditures for that item attributable to such funds; and

(B) within 30 days after adoption of its budget as provided for under State or local law—

(i) publish conspicuously, in at least one newspaper of general circulation, a narrative summary setting forth in simple language an explanation of its official budget (including an explanation of changes from the proposed budget) and the relationship of the use of funds made available under subtitles A and D to the relevant functional items in such budget; and

(ii) make such summary available for inspection and reproduction by the public at the principal office of such State government or unit of local government, at public libraries, if any, within the boundaries of such unit of local government, and, in the case of a State government, at the main libraries of the principal municipalities of such State.

(2) WAIVER.—The provisions of paragraph (1) may be waived, in whole or in part, with respect to publication of the proposed use reports and the narrative summaries, in accordance with regulations of the Secretary, where the cost of such publication would be unreasonably burdensome in relation to the entitlement of such State government or unit of local government to funds made available under subtitles A and D, or where such publication is otherwise impractical or infeasible. In addition, the 30 day provision of paragraph (1) (A) may be modified to the minimum extent necessary to comply with State and local law if the Secretary is satisfied with the citizens of the State or local government will receive adequate notification of the proposed use of funds, consistent with the intent of this section.

(e) REPORTS PROVIDED TO THE GOVERNOR.—A copy of each report required under subsections (a) and (b) filed with the Secretary by a unit of local government which receives funds under subtitle A or D shall be provided by the Secretary to the Governor of the State in which the unit of local government is located, in such manner and form as the Secretary may prescribe by regulation.

(f) PLANNED USE REPORT TO AREAWIDE ORGANIZATION.—At the same time that the proposed use report is published and publicized in accordance with this section, each unit of local government which is within a metropolitan area shall submit a copy of the proposed use report to the areawide organization in the metropolitan area which is formally charged with carrying out the provisions of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334); section 401 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231); or section 302 of the Housing and Community Development Act of 1974 (42 U.S.C. 461).

[SEC. 122. NONDISCRIMINATION PROVISION.

[(a) IN GENERAL.—No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under subtitle A.

[(b) AUTHORITY OF SECRETARY.—Whenever the Secretary determines that a State government or unit of local government has failed to

comply with subsection (a) or an applicable regulation, he shall notify the Governor of the State (or, in the case of a unit of local government, the Governor of the State in which such unit is located) of the noncompliance and shall request the Governor to secure compliance. If within a reasonable period of time the Governor fails or refuses to secure compliance, the Secretary is authorized (1) to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) to exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); or (3) to take such other action as may be provided by law.

[(c) AUTHORITY OF ATTORNEY GENERAL.—When a matter is referred to the Attorney General pursuant to subsection (b), or whenever he has reason to believe that a State government or unit of local government is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.]

SEC. 122. NONDISCRIMINATION PROVISION.

(a) PROHIBITION.—(1) IN GENERAL.—No person shall, on account of race, color, religion, sex, national origin, age, or handicapped status, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of a State government or unit of local government which government or unit receives funds made available under subtitle A or D. The provisions of this paragraph shall be interpreted—

(A) in accordance with titles II, III, IV, VI, and VII of the Civil Rights Act of 1964, as amended, title VIII of the Civil Rights Act of 1968, as amended, and title IX of the Education Amendments of 1972, with respect to discrimination on the basis of race, color, religion, sex, or national origin;

(B) in accordance with the Rehabilitation Act of 1973 with respect to discrimination on the basis of handicapped status; and

(C) in accordance with the Age Discrimination Act of 1975 with respect to discrimination on the basis of age, notwithstanding the deferred effectiveness of such Act.

(2) EXCEPTIONS.—

(A) FUNDING.—The provisions of paragraph (1) of this subsection shall not apply where any State government or unit of local government proves by a preponderance of the evidence that the program or activity with respect to which the allegation of discrimination has been made is not funded in whole or in part, directly or indirectly, with funds made available under subtitle A or D.

(B) CONSTRUCTION PROJECTS IN PROGRESS.—The provisions of paragraph (1), relating to discrimination on the basis of handicapped status, shall not apply with respect to construction projects commenced prior to January 1, 1977.

(b) AUTHORITY OF THE SECRETARY.—

(1) NOTICE.—Whenever there has been—

(A) publication or receipt of notice of a finding, after notice and opportunity for a hearing, by a Federal or State court, or by a Federal or State administrative agency (other

than the Secretary under subparagraph (B)), to the effect that there has been a pattern or practice of discrimination on the basis of race, color, religion, sex, national origin, age, or handicapped status in any program or activity of a State government or unit of local government, which government or unit receives funds made available under subtitle A or D; or

(B) a determination that a State government or unit of local government is not in compliance with subsection (a) (1) after an investigation by the Secretary, prior to a hearing under paragraph (4), but including an opportunity for the State government or unit of local government to make a documentary submission regarding the allegation of discrimination or the funding of such program of activity with funds made available under subtitle A or D;

the Secretary shall, within 10 days of such occurrence, notify the Governor of the affected State, or of the State in which an affected unit of local government is located, and the chief executive officer of such affected unit of local government, that such State government or unit of local government is presumed not to be in compliance with subsection (a) (1), and shall request such Governor and such chief executive officer to secure compliance. For purposes of subparagraph (A), a finding by a Federal or State administrative agency shall be deemed rendered after notice and opportunity for a hearing if it is rendered pursuant to procedures consistent with the provisions of subchapter II of chapter 5, title 5, United States Code.

(2) VOLUNTARY COMPLIANCE.—In the event the Governor or the chief executive officer secures compliance after notice pursuant to paragraph (1), the terms and conditions with which the affected State government or unit or local government agrees to comply shall be set forth in writing and signed by the Governor, by the chief executive officer (in the event of a violation by a unit of local government), and by the Secretary and the Attorney General. At least 15 days prior to the effective date of the agreement, the Secretary shall send a copy of the agreement to each complainant, if any, with respect to such violation. The Governor, or the chief executive officer in the event of a violation by a unit of local government, shall file semiannual reports with the Secretary and the Attorney General detailing the steps taken to comply with the agreement. Within 15 days of receipt of such reports the Secretary shall send a copy thereof to each such complainant.

(3) SUSPENSION AND RESUMPTION OF PAYMENT OF FUNDS.—

(A) SUSPENSION AFTER NOTICE.—If, at the conclusion of 90 days after notification under paragraph (1)—

(i) a compliance agreement has not been entered into under paragraph (2),

(ii) compliance has not been secured by the Governor of that State or the chief executive officer of that unit of local government, and

(iii) an administrative law judge has not made a determination under paragraph (4) (A) that it is likely the

State government or unit of local government will prevail on the merits,

the Secretary shall notify the Attorney General that compliance has not been secured and shall suspend further payment of any funds under subtitles A and D to that State government or that unit of local government. Such suspension shall be effective for a period of not more than 120 days, or, if there is a hearing under paragraph (4)(B), not more than 30 days after the conclusion of such hearing.

(B) RESUMPTION OF PAYMENTS SUSPENDED UNDER SUBPARAGRAPH (A).—Payment of the suspended funds shall resume only if—

(i) such State government or unit of local government enters into a compliance agreement approved by the Secretary and the Attorney General in accordance with paragraph (2);

(ii) such State government or unit of local government complies fully with the final order or judgment of a Federal or State court, if that order or judgment covers all the matters raised by the Secretary in the notice pursuant to paragraph (1), or is found to be in compliance with subsection (a)(1) by such court; or

(iii) the Secretary finds, pursuant to paragraph (4)(B), that noncompliance has not been demonstrated.

(C) SUSPENSION UPON ACTION BY ATTORNEY GENERAL.—Whenever the Attorney General files a civil action alleging a pattern or practice of discriminatory conduct on the basis of race, color, religion, sex, national origin, age, or handicapped status in any program or activity of a State government or unit of local government, which State government or unit of local government receives funds made available under subtitle A or D, and neither party within 45 days after such filing has been granted such preliminary relief with regard to the suspension or payment of funds as may be otherwise available by law, the Secretary shall suspend further payment of any funds under subtitles A and D to that State government or that unit of local government until such time as the court orders resumption of payment.

(4) HEARINGS; OTHER ACTIONS.—

(A) PRELIMINARY HEARING.—Within the first 30 days after notification under paragraph (1)(B), the State government or unit of local government may request an expedited preliminary hearing by an administrative law judge in order to determine whether it is likely that the State government or unit of local government would, at a full hearing under subparagraph (B) of this paragraph, prevail on the issue of the alleged noncompliance. Such judge shall render a finding hereunder within the 90-day period after notification under paragraph (1)(B). A finding under this subparagraph by the administrative law judge in favor of the State government or unit of local government shall defer the suspension of funds under paragraph (3) until the 210th

day after the issuance of a notice of noncompliance under paragraph (1)(B), or until 30 days after the conclusion of hearing on the merits under subparagraph (B) of this paragraph.

(B) COMPLIANCE HEARING.—At any time after notification under paragraph (1) but before the conclusion of the 120-day period referred to in paragraph (3)A, a State government or unit of local government may request a hearing, which the Secretary shall initiate within 30 days of such request. The Secretary may also initiate a hearing in case of a finding in favor of a State government or unit of local government under subparagraph (A) of this paragraph. Within 30 days after the conclusion of a hearing under this subparagraph, or, in the absence of a hearing, within 210 days after issuance of a notice of noncompliance under paragraph (1), the Secretary shall make a finding of compliance or noncompliance. If the Secretary makes a finding of noncompliance, the Secretary shall (i) notify the Attorney General of the United States in order that the Attorney General may institute a civil action under subsection (c), (ii) terminate the payment of funds under subtitles A and B, and, (iii) if appropriate, seek repayment of such funds. If the Secretary makes a finding of compliance, payment of the suspended funds shall resume as provided in paragraph (3)(B).

(5) JUDICIAL REVIEW.—Any State government or unit of local government aggrieved by a final determination of the Secretary under paragraph (4) may appeal such determination as provided in section 143(c).

(c) AUTHORITY OF ATTORNEY GENERAL.—Whenever the Attorney General has reason to believe that a State government or unit of local government has engaged or is engaging in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in an appropriate United States district court. Such court may grant as relief any temporary restraining order, preliminary or permanent injunction, or other order, as necessary or appropriate to insure the full enjoyment of the rights described in this section, including the suspension, termination, or repayment of funds made available under this title, or placing any further payments under this title in escrow pending the outcome of the litigation.

(d) AGREEMENTS BETWEEN AGENCIES.—The Secretary shall enter into agreements with State agencies and with other Federal agencies authorizing such agencies to investigate noncompliance with subsection (a). The agreements shall describe the cooperative efforts to be undertaken (including the sharing of civil rights enforcement personnel and resources) to secure compliance with this section, and shall provide for the immediate notification of the Secretary by the Attorney General of any actions instituted under subsection (b)(3)(C), subsection (c), or under any other Federal civil rights statute or regulations issued thereunder.

SEC. 123. MISCELLANEOUS PROVISIONS.

(a) ASSURANCES TO THE SECRETARY.—In order to qualify for any payment under subtitle A for any entitlement period beginning on or

after January 1, 1973, a State government or unit of local government must establish (in accordance with regulations prescribed by the Secretary, and, with respect to a unit of local government, after an opportunity for review and comment by the Governor of the State in which such unit is located) to the satisfaction of the Secretary that—

(1) it will establish a trust fund in which it will deposit all payments it receives under subtitle A *or D*;

(2) it will use amounts in such trust fund (including any interest earned thereon while in such trust fund) during such reasonable period or periods as may be provided in such regulations;

[(3) in the case of a unit of local government, it will use amounts in such trust fund (including any interest earned thereon while in such trust fund) only for priority expenditures (as defined in section 103(a)), and will pay over to the Secretary (for deposit in the general fund of the Treasury) an amount equal to 110 percent of any amount expended out of such trust fund in violation of this paragraph, unless such amount is promptly repaid to such trust fund (or the violation is otherwise corrected) after notice and opportunity for corrective action;]

(4) it will provide for the expenditure of amounts received under subtitle A only in accordance with the laws and procedures applicable to the expenditure of its own revenues;

(5) it will—

(A) use fiscal, accounting, and audit procedures which conform to guidelines established [therefor], *in conformity with subsection (c) of this section*, by the Secretary (after consultation with the Comptroller General of the United States), *and conduct independent financial audits in accordance with generally accepted auditing standards as required by paragraph (2) of such subsection*,

(B) provide to the Secretary (and to the Comptroller General of the United States), on reasonable notice, access to, and the right to examine, such books, documents, papers, or records as the Secretary may reasonably require for purposes of reviewing compliance with this title (or, in the case of the Comptroller General, as the Comptroller General may reasonably require for purposes of reviewing compliance and operations under subsection (c)(2)), and

(C) make such annual and interim reports (other than reports required by section 121) to the Secretary as he may reasonably require;

(6) all laborers and mechanics employed [by contractors or subcontractors] in the performance of work on any construction project, [25 percent or more of the costs of which project are paid] *which is funded in whole or part* out of its trust fund established under paragraph (1), will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5), and that with respect to the labor standards specified in this paragraph the Secretary of Labor shall act in accordance with Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934[, as amended] (40 U.S.C. 276c) *, except that nothing in this subsection shall be construed to cover work performed by a state or local jurisdiction with its own regular, permanent laborers or mechanics;*

(7) individuals employed by it whose wages are paid in whole or in part out of its trust fund established under paragraph (1) will be paid wages which are not lower than the prevailing rates of pay for persons employed in similar public occupations by the same employer; and

(8) in the case of a unit of local government as defined in the second sentence of section 108(d)(1) (relating to governments of Indian tribes and Alaskan native villages), it will expend funds received by it under subtitle A for the benefit of members of the tribe or village residing in the county area from the allocation of which funds are allocated to it under section 108(b)(4).

Paragraph (7) shall apply with respect to employees in any category only if 25 percent or more of the wages of all employees of the State government or unit of local government in such category are paid from the trust fund established by it under paragraph (1).

(b) WITHHOLDING OF PAYMENTS.—If the Secretary determines that a State government or unit of local government has failed to comply substantially with any provision of subsection (a) or any regulations prescribed thereunder, after giving reasonable notice and opportunity for a hearing to the Governor of the State or the chief executive officer of the unit of local government, he shall notify the State government or unit of local government that if it fails to take corrective action within 60 days from the date of receipt of such notification further payments to it will be withheld for the remainder of the entitlement period and for any subsequent entitlement period until such time as the Secretary is satisfied that appropriate corrective action has been taken and that there will no longer be any failure to comply. Until he is satisfied, the Secretary shall make no further payments of such amounts.

(c) ACCOUNTING, AUDITING, AND EVALUATION.—

(1) IN GENERAL.—The Secretary shall provide for such [accounting and auditing procedures] *audits*, evaluations, and reviews as may be necessary to insure that the expenditures of funds received under subtitle A *or D* by State governments and units of local government comply fully with [the] requirements of this title. *Such audits, evaluations, and reviews shall include such independent audits as may be required pursuant to paragraph (2).* The Secretary is authorized to accept an audit by a [State of such expenditures of a] State government or unit of local government *of its expenditures* if he determines that such audit *was conducted in compliance with paragraph (2), and that such audit* and the audit procedures of that State *government or unit of local government* are sufficiently reliable to enable him to carry out his duties under this title.

[(2) COMPTROLLER GENERAL SHALL REVIEW COMPLIANCE.—The Comptroller General of the United States shall make such reviews of the work as done by the Secretary, the State governments, and

the units of local government as may be necessary for the Congress to evaluate compliance and operations under this title.]

(2) INDEPENDENT AUDITS.—The Secretary shall, after consultation with the Comptroller General, promulgate regulations to take effect not later than March 31, 1977, which shall require that each State government and unit of local government receiving funds under subtitle A or D conducts during each fiscal year an audit of its financial accounts in accordance with generally accepted auditing standards. Such regulations shall include such provisions as may be necessary to assure, independent audits are conducted in accordance with such standards, but may provide, for less formal reviews of financial information, or less frequent audits, to the extent necessary to ensure that the cost of such audits not be unreasonably burdensome in relation to the entitlement of such State government or unit of local government to funds available under subtitles A and D. Such regulations shall further provide for the availability to the public of financial statements and reports on audits or informal reviews conducted under this paragraph for inspection and reproduction as public documents.

(3) COMPTROLLER GENERAL SHALL REVIEW COMPLIANCE.—The Comptroller General of the United States shall make such reviews of the work as done by the Secretary, the State governments, and the units of local government as may be necessary for the Congress to evaluate compliance and operations under this title.

(d) REPORT OF THE SECRETARY OF THE TREASURY.—The Secretary of the Treasury shall include with the report required under section 105(a) a report to the Congress on the implementation and administration of this Act during the preceding fiscal year. Such report shall include, but not be limited to, a comprehensive and detailed analysis of the following:

(1) the measures taken to comply with section 122, including a description of the nature and extent of any noncompliance and the status of all pending complaints;

(2) the extent to which citizens in recipient jurisdictions have become involved in the decisions determining the expenditure of funds received under subtitles A and D;

(3) the extent to which recipient jurisdictions have complied with section 123, including a description of the nature and extent of any noncompliance and of measures taken to ensure the independence of audits conducted pursuant to subsection (c) of such section;

(4) the manner in which funds distributed under subtitles A and D have been used, including the net fiscal impact, if any, in recipient jurisdictions; and

(5) significant problems arising in the administration of the Act and proposals to remedy such problems through appropriate legislation.

(e) PROHIBITION OF USE FOR LOBBYING PURPOSES.—No State government or unit of local government may use, directly or indirectly, any part of the funds it receives under subtitle A or D for the purpose of lobbying or other activities intended to influence any legislation regarding the provisions of this Act. For the purpose of this subsection, dues paid to National or State associations shall be deemed not to have been paid from funds received under subtitle A or D.

SEC. 124. COMPLAINTS AND COMPLIANCE REVIEWS.

By March 31, 1977, the Secretary shall promulgate regulations establishing—

(1) reasonable and specific time limits for the Secretary or the appropriate cooperating agency to respond to the filing of a complaint by any person alleging that a State government or unit of local government is in violation of the provisions of this Act, including time limits for instituting an investigation, making an appropriate determination with respect to the allegations, and advising the complainant of the status of the complaint; and

(2) reasonable and specific time limits for the Secretary to conduct audits and reviews of State governments and units of local government for compliance with the provisions of this Act.

SEC. 125. PRIVATE CIVIL ACTIONS.

(a) In any action brought to enforce compliance with any provision of this Act, the court may grant to a prevailing plaintiff reasonable attorney fees except where the lawsuit is frivolous, vexatious, brought for harassment purposes, or brought principally for the purpose of gaining attorney fees.

(b) INTERVENTION BY ATTORNEY GENERAL.—In any action brought to enforce compliance with any provision of this Act, the Attorney General, or a specially designated assistant for or in the name of the United States, may intervene upon timely application if he certifies that the action is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

Subtitle C—General Provisions

SEC. 141. DEFINITIONS AND SPECIAL RULES.

(a) SECRETARY.—For purposes of this title, the term "Secretary" means the Secretary of the Treasury or his delegate. The term "Secretary of the Treasury" means the Secretary of the Treasury personally, not including any delegate.

(b) ENTITLEMENT PERIOD.—For purposes of this title, the term "entitlement period" means—

(1) The period beginning January 1, 1972, and ending June 30, 1972.

(2) The period beginning July 1, 1972, and ending December 31, 1972.

(3) The period beginning January 1, 1973, and enging June 30, 1973.

(4) The one-year periods beginning on July 1 of 1973, 1974, and 1975.

(5) The period beginning July 1, 1976, and ending December 31, 1976.

(6) The period beginning on January 1, 1977, and ending September 30, 1977.

(7) The one-year periods beginning on October 1 of 1977, 1978, and 1979.

(c) DISTRICT OF COLUMBIA.—For purposes of this title, the District of Columbia shall be treated both—

(1) as a State (and any reference to the Governor of a State shall, in the case of the District of Columbia, be treated as a reference to the Mayor of the District of Columbia), and

(2) as a country area which has no units of local government (other than itself) within its geographic area.

SEC. 142. REGULATIONS.

(a) GENERAL RULE.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the provisions of this title.

(b) ADMINISTRATIVE PROCEDURE ACT TO APPLY.—The rulemaking provisions of subchapter II of chapter 5 of title 5 of the United States Code shall apply to the regulations prescribed under this title for entitlement periods beginning on or after January 1, 1973.

SEC. 143. JUDICIAL REVIEW.

(a) PETITIONS FOR REVIEW.—Any State which receives a notice of reduction in entitlement under section 107(b), and any State or unit of local government which receives a notice of withholding of payments under section [104(b) or] 123(b), may, within 60 days after receiving such notice, file with the United States court of appeals for the circuit in which such State or unit of local government is located a petition for review of the action of the Secretary. A copy of the petition shall forthwith be transmitted to the Secretary; a copy shall also forthwith be transmitted to the Attorney General.

(b) RECORD.—The Secretary shall file in the court the record of the proceeding on which he based his action, as provided in section 2112 of title 28, United States Code. No objection to the action of the Secretary shall be considered by the court unless such objection has been urged before the Secretary.

(c) JURISDICTION OF COURT.—The court shall have jurisdiction to affirm or modify the action of the Secretary or to set it aside in whole or in part. The findings of fact by the Secretary, if supported by substantial evidence contained in the record, shall be conclusive. However, if any finding is not supported by substantial evidence contained in the record, the court may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous actions. He shall certify to the court the record of any further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence contained in the record.

(d) REVIEW BY SUPREME COURT.—The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

SEC. 144. AUTHORITY TO REQUIRE INFORMATION ON INCOME TAX RETURNS.

(a) GENERAL RULE.—

(1) INFORMATION WITH RESPECT TO PLACE OF RESIDENCE.—Subpart B of part II of subchapter A of chapter 61 of the Internal Revenue Code of 1954 (relating to income tax returns) is amended by adding at the end thereof the following new section:

"SEC. 6017A. PLACE OF RESIDENCE.

"In the case of an individual, the information required on any return with respect to the taxes imposed by chapter 1 for any period shall include information as to the State, county, municipality, and any other unit of local government in which the taxpayer (and any other individual with respect to whom an exemption is claimed on such return) resided on one or more dates (determined in the manner provided by regulations prescribed by the Secretary or his delegate) during such period."

(2) CLERICAL AMENDMENT.—The table of sections for such subpart B is amended by adding at the end thereof the following:

"Sec. 6017A. Place of residence."

(b) CIVIL PENALTY.—

(1) IN GENERAL.—Subchapter B of chapter 68 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new section:

"SEC. 6687. FAILURE TO SUPPLY INFORMATION WITH RESPECT TO PLACE OF RESIDENCE.

"(a) CIVIL PENALTY.—If any person fails to include on his return any information required under section 6017A with respect to his place of residence he shall pay a penalty of $5 for each such failure, unless it is shown that such failure is due to reasonable cause.

"(b) DEFICIENCY PROCEDURES NOT TO APPLY.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and chapter 42 taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a)."

(2) CLERICAL AMENDMENT.—The table of sections for such subchapter B is amended by adding at the end thereof the following:

"Sec. 6687. Failure to supply information with respect to place of residence."

Subtitle D—Supplemental Fiscal Assistance

SEC. 161. SHORT TITLE.

This subtitle may be cited as the "Supplemental Fiscal Assistance Act of 1976".

SEC. 162. PAYMENTS TO STATE AND LOCAL GOVERNMENTS

Except as otherwise provided in this title, the Secretary shall, for each entitlement period beginning on or after January 1, 1977, pay out of the amounts authorized under section 106(c)(1) which are not reserved for distribution under subtitle A, and out any additional amounts appropriated under section 163(b), to each eligible State government, and to each eligible unit of local government, an amount determined under section 164 for such period. Such payments shall be made in installments, but not less often than once for each quarter, and shall be paid not later than 5 days after the close of each quarter.

Such payments for any entitlement period may be initially made on the basis of estimates. Proper adjustment shall be made in the amount of any payment to a State government or a unit of local government to the extent that the payments previously made to such government under this subtitle were in excess of or less than the amounts required to be paid.

"SEC. 163. FUNDING.

"(a) ENTITLEMENT.—There shall be available for distribution under this subtitle, as an entitlement, any sums authorized under section 105(c)(1) which exceed—

"(1) $4,875,000,000 for the entitlement period beginning January 1, 1977, and ending September 30, 1977; or

"(2) $6,500,000,000 for any entitlement period of 12 months duration thereafter.

"(b) AUTHORIZATION.—In addition to the sums available under subsection (a) there are authorized to be appropriated such sums as Congress may deem necessary to adequately fund the program established by this subtitle.

SEC. 164. ELIGIBILITY; DETERMINATION OF AMOUNT OF PAYMENTS.

(a) ELIGIBILITY.—No State government shall be eligible to receive payments under this subtitle unless, with respect to an entitlement period, its entitlement under section 167 exceeds its entitlement under section 107. No unit of local government shall be eligible to receive payments under this subtitle unless, with respect to an entitlement period, its entitlement under section 168 exceeds its entitlement under section 108.

(b) PAYMENT OF EXCESS.—Except as provided in subsection (c) the Secretary shall pay—

(1) to each State government eligible under subsection (a), an amount equal to the amount by which its entitlement under section 167 exceeds its entitlement under section 107; and

(2) to each unit of local government eligible under subsection (a), an amount equal to the amount by which its entitlement under section 168 exceeds its entitlement under section 108.

(c) LIMITATIONS.—

(1) RATABLE REDUCTIONS.—If the sums available under section 163 (a) and (b) for any entitlement period for making payments under this subtitle to State governments and units of local government are not sufficient to pay in full the total amount of payments authorized by subsection (b) of this section for that entitlement period, then each such payment for such period shall be ratably reduced. In case additional funds become available for making such payments for any entitlement period during which the preceding sentence is applicable, such reduced payments shall be increased on the same basis as they were reduced.

(2) PAYMENT LESS THAN $2,500, OR GOVERNING BODY WAIVES PAYMENT.—If (but for this subparagraph) the payments to any unit of local government below the level of the county government—

(i) would be less than $2,500 for any entitlement period ($1,875 for an entitlement period of 9 months), or

(ii) is waived for any entitlement period by the governing body of such unit,

then the amount of such payment for such period shall (in lieu of being paid to such unit) be added to, and shall become a part of, the payment for such period to the county government of the county area in which such unit is located.

SEC. 165. MANAGEMENT OF FUNDS.

(a) MANAGEMENT.—

(1) IN GENERAL.—Funds appropriated pursuant to section 163(b) shall remain available without fiscal year limitation and, except as provided in this title, may be used only for the payments to State and local governments as provided by this subtitle.

(2) REPORT.—The Secretary of the Treasury shall report to the Congress not later than January 15 of each year on the operations and payments under this subtitle during the preceding fiscal year.

(b) TRANSFER TO GENERAL FUND.—The Secretary shall from time to time transfer to the general fund of the Treasury any moneys available for this subtitle which he determines will not be needed to make payments to State governments and units of local government under this subtitle.

SEC. 166. COMPUTATION OF ALLOCATION AMONG STATES.

An amount equal to the amount authorized under section 105(c)(1) for each entitlement period which is not reserved for distribution under this subtitle shall be allocated among the States as follows:

(a) ALLOCATION ON BASIS OF INCOME FACTOR.—Forty percent of an amount equal to the amount authorized under section 105(c)(1) for any entitlement period which is not reserved for distribution under this subtitle shall be allocated among the States in the same proportion as—

(1) the population of each State, multiplied by the income factor of that State, bears to

(2) the sum of the products determined under subparagraph (1) for all States.

(b) ALLOCATION ON BASIS OF TAX EFFORT FACTOR.—Sixty percent of an amount equal to the amount authorized under section 105(c)(1) for any entitlement period which is not reserved for distribution under this subtitle shall be allocated among the States in the same proportion as the amount allocable to each State under subsection (c) of this section bears to the sum of the amounts allocable to all States under subsection (c) of this section.

(c) DETERMINATION OF ALLOCABLE AMOUNT.—

(1) IN GENERAL.—For purposes of subsection (b) of this section, the amount allocable to a State under this subsection for any entitlement period shall be determined under paragraph (2), except that such amount shall be determined under paragraph (3) if the amount allocable to it under paragraph (3) is greater than the amount allocable to it under paragraph (2).

(2) GENERAL TAX EFFORT AMOUNT.—For purposes of paragraph (1), the amount allocable to a State under this paragraph for any entitlement period is the amount which bears the same ratio to the total amount allocable under subsection (b) as—

(A) the population of that State, multiplied by the general tax effort factor of that State, bears to

(B) the sum of the products determined under subparagraph (A) for all States.

(3) INCOME TAX EFFORT AMOUNT.—For purposes of paragraph (1), the amount allocable to a State under this paragraph for any entitlement period is the amount which bears the same ratio to the total amount allocable under subsection (b) as—

(A) the population of that State, multiplied by the income tax effort factor of that State, bears to

(B) the sum of the products determined under subparagraph (A) for all States.

SEC. 167. ENTITLEMENTS OF STATE GOVERNMENTS.

(a) DIVISION BETWEEN STATE AND LOCAL GOVERNMENTS.—The State government shall be entitled to receive one-third of the amount allocated to that State for each entitlement period. The remaining portion of each State's allocation shall be allocated among the units of local government of that State as provided in section 168.

(b) STATE MUST MAINTAIN TRANSFERS TO LOCAL GOVERNMENTS.—

(1) GENERAL RULE.—The entitlement of any State government for any entitlement period beginning on or after January 1, 1977, shall be reduced by the amount (if any) by which—

(A) the average of the aggregate amounts transferred by the State government (out of its own sources) during such period and the preceding entitlement period to all units of local government in such State, is less than,

(B) the similar aggregate amount for the one-year period beginning July 1, 1975, or until data on such period are available, the most recent such one-year period for which data on such amounts are available.

For purposes of subparagraph (A), the amount of any reduction in the entitlement of a State government under this subsection for any entitlement period shall, for subsequent entitlement periods, be treated as an amount transferred by the State government (out of its own sources) during such period to units of local government in such State.

(2) ADJUSTMENT WHERE STATE ASSUMES RESPONSIBILITY FOR CATEGORY OF EXPENDITURES.—If the State government establishes to the satisfaction of the Secretary that since December 31, 1976, it has assumed responsibility for a category of expenditures which (before January 1, 1977) was the responsibility of local governments located in such State, then, under regulations prescribed by the Secretary, the aggregate amount taken into account under paragraph (1)(B) shall be reduced to the extent that increased State government spending (out of its own sources) for such category has replaced corresponding amounts which for the one-year period utilized for purposes of paragraph (1)(B) it transferred to units of local government.

(3) ADJUSTMENT WHERE NEW TAXING POWERS ARE CONFERRED UPON LOCAL GOVERNMENTS.—If a State establishes to the satisfaction of the Secretary that since January 1, 1977, one or more units of local government within such State have had conferred upon them new

taxing authority, then, under regulations prescribed by the Secretary, the aggregate amount taken into account under paragraph (1)(B) shall be reduced to the extent of the larger of—

(A) an amount equal to the amount of the taxes collected by reason of the exercise of such new taxing authority by such local governments, or

(B) an amount equal to the amount of the loss of revenue to the State by reason of such new taxing authority being conferred on such local governments.

No amount shall be taken into consideration under subparagraph (A) if such new taxing authority is an increase in the authorized rate of tax under a previously authorized kind of tax, unless the State is determined by the Secretary to have decreased a related State tax.

(4) SPECIAL RULE FOR PERIOD BEGINNING JANUARY 1, 1977.—In the case of the entitlement period beginning January 1, 1977, and ending September 30, 1977, the aggregate amount taken into account under paragraph (1)(A) for the preceding entitlement period and the aggregate amount taken into account under paragraph (1)(B) shall be three-fourths of the amounts which (but for this paragraph) would be taken into account.

(5) REDUCTION IN ENTITLEMENT.—If the Secretary has reason to believe that paragraph (1) requires a reduction in the entitlement of any State government for any entitlement period, he shall give reasonable notice and opportunity for hearing to the State. If thereafter, he determines that paragraph (1) requires the reduction of such entitlement, he shall also determine the amount of such reduction and shall notify the Governor of such State of such determinations and shall withhold from subsequent payments to such State government under this title an amount equal to such reduction.

(6) TRANSFERS TO LOCAL GOVERNMENTS.—An amount equal to the reduction in the entitlement of any State government which results from the application of this subsection (after any judicial review under section 143) shall be made available for distribution to local governments within the State in accordance with section 168. In the event that, because of limits imposed by section 168, any portion of such amount is not properly allocable to local governments, such portion shall be transferred to the general fund of the Treasury.

SEC. 168. ENTITLEMENTS OF LOCAL GOVERNMENTS.

(a) ALLOCATION AMONG COUNTY AREAS.—The amount to be allocated to the units of local government within a State for any entitlement period shall be allocated among the county areas located in that State so that each county area will receive an amount which bears the same ratio to the total amount to be allocated to the units of local government within that State as—

(1) the population of that county area, multiplied by the tax effort factor of that county area, multiplied by the income factor of that county area, bears to

(2) the sum of the products determined under paragraph (1) for all county areas within that State.

(b) ALLOCATION TO COUNTY GOVERNMENTS, MUNICIPALITIES, TOWNSHIPS, ETC.—

(1) COUNTY GOVERNMENTS.—The county government shall be allocated that portion of the amount allocated to the county area for the entitlement period under subsection (a) which bears the same ratio to such amount as the adjusted taxes of the county government bear to the adjusted taxes of the county government and all other units of local government located in the county area.

(2) OTHER UNITS OF LOCAL GOVERNMENT.—The amount remaining for allocation within a county area after the application of paragraph (1) shall be allocated among the units of local government (other than the county government) located in that county area so that each unit of local government will receive an amount which bears the same ratio to the total amount to be allocated to all such units as—

(A) the population of that local government, multiplied by the tax effort factor of that local government, multiplied by the income factor of that local government, bears to

(B) the sum of the products determined under subparagraph (A) for all such units.

(3) TOWNSHIP GOVERNMENTS.—If the county area includes one or more township governments, then such township governments shall be treated as units of local government in making the allocation prescribed by paragraph (2) of this subsection.

(4) INDIAN TRIBES AND ALASKAN NATIVE VILLAGES.—If within a State there is an Indian tribe or Alaskan native village which has a recognized governing body which performs substantial governmental functions then before applying subsection (a) of this section there shall be allocated to each such tribe or village a portion of the amount allocated to that State for the entitlement period which bears the same ratio to such amount as the population of such tribe or village within that State bears to the population of that State. If this paragraph applies with respect to any State for any entitlement period, the total amount to be allocated to county areas under subsection (a) shall be appropriately reduced to reflect the amount allocated under the preceding sentence, and the population of any tribe or village receiving such allocation shall not be counted in determining the allocation under subsection (a) of the county area in which such tribe or village is located. If the entitlement of any such tribe or village is waived for any entitlement period by the governing body of that tribe or village, then the provisions of this paragraph shall not apply with respect to the amount of such entitlement for such period.

(5) RULE FOR SMALL UNITS OF GOVERNMENT.—If the Secretary determines that in any county area the data available for any entitlement period are not adequate for the application of the formulas set forth in paragraph (2) with respect to units of local government (other than a county government) with a population below a number (not more than 500) prescribed for that county area by the Secretary, he may apply paragraph (2) by allocating for such entitlement period to each such unit located in that county area an amount which bears the same ratio to the total amount to

be allocated under paragraph (2) for such entitlement period as the population of such unit bears to the population of all units of local government in that county area to which allocations are made under such paragraph. If the preceding sentence applies with respect to any county area, the total amount to be allocated under paragraph (2) to other units of local government in that county area for the entitlement period shall be appropriately reduced to reflect the amounts allocated under the preceding sentence.

(6) ENTITLEMENT.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the entitlement of any unit of local government for any entitlement period shall be the amount allocated to such unit under this subsection.

(B) MAXIMUM PER CAPITA ENTITLEMENT.—The per capita amount allocated to any county area or any unit of local government (other than a county government) within a State under this section for any entitlement period shall not be more than 300 percent of two-thirds of the amount allocated to the State under section 166, divided by the population of that State.

(C) LIMITATION.—The amount allocated to any unit of local government under this section for any entitlement period shall not exceed 50 percent of the sum of (i) such government's adjusted taxes, and (ii) the intergovernmental transfers of revenue to such government (other than transfers to such government under this subtitle).

(D) ENTITLEMENT LESS THAN $2,500, OR GOVERNING BODY WAIVES ENTITLEMENT.—If (but for this subparagraph) the entitlement of any unit of local government below the level of the county government—

(i) would be less than $2,500 for any entitlement period ($1,875 for an entitlement period of 9 months), or

(ii) is waived for any entitlement period by the governing body of such unit,

then the amount of such entitlement for such period shall (in lieu of being paid to such unit) be added to, and shall become a a part of, the entitlement for such period of the county government of the county area in which such unit is located.

(7) ADJUSTMENT OF ENTITLEMENT.—

(A) IN GENERAL.—In adjusting the allocation of any county area or unit of local government, the Secretary shall make any adjustment required under paragraph (6)(B) first, any adjustment required under paragraph (6)(C) next, and any adjustment required under paragraph (6)(D) last.

(B) ADJUSTMENT FOR APPLICATION OF MAXIMUM PER CAPITA ENTITLEMENT.—The secretary shall adjust the allocation made under this section to county areas or to units of local governments in any State in order to bring those allocations in compliance with the provisions of paragraph (6)(B). In making such adjustments he shall make any necessary adjustments with respect to county areas before making any necessary adjustments with respect to units of local government.

(C) ADJUSTMENT FOR APPLICATION OF LIMITATION.—In any case in which the amount allocated to a unit of local government is reduced under paragraph (6)(C) by the Secretary, the amount of that reduction—

(i) in the case of a unit of local government (other than a county government), shall be added to and increase the allocation of the county government of the county area in which it is located, unless (on account of the application of paragraph (6)) that county government may not receive it, in which case the amount of the reduction shall be added to and increase the entitlement of the State government of the State in which that unit of local government is located; and

(ii) in the case of a county government, shall be added to and increase the entitlement of the State government of the State in which it is located.

SEC. 169. DEFINITIONS AND SPECIAL RULES FOR APPLICATION OF ALLOCATION FORMULAS.

(a) IN GENERAL.—For the purposes of this subtitle—

(1) POPULATION.—Population shall be determined on the same basis as resident population is determined by the Bureau of the Census for general statistical purposes.

(2) EXEMPT INCOME.—Exempt income shall mean one-fourth of the annual income designated by the Bureau of the Census as the low income level for a family of four persons.

(3) AGGREGATE EXEMPT INCOME.—Aggregate exempt income for any unit of government shall mean the population of that unit multiplied by exempt income as defined in paragraph (2).

(4) INCOME.—Income means total money income from all sources, as determined by the Bureau of the Census, for general statistical purposes.

(5) DATES FOR DETERMINING ALLOCATIONS AND ENTITLEMENTS.—Except as provided in regulations, the determination of allocations and entitlements for any entitlement period shall be made as of the first day of the third month immediately preceding the beginning of such period.

(6) INTERGOVERNMENTAL TRANSFERS.—The intergovernmental transfers of revenue to any government are the amounts of revenue received by that government from other governments as a share in financing (or as reimbursement for) the performance of governmental functions, as determined by the Bureau of the Census for general statistical purposes.

(7) DATA USED; UNIFORMITY OF DATA.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), the data used shall be the most recently available data provided by the Bureau of the Census or the Department of Commerce, as the case may be.

(B) USE OF ESTIMATES, ETC.—Where the Secretary determines that the data referred to in subparagraph (A) are not current enough or are not comprehensive enough to provide for equitable allocations, he shall use such additional data (including data based on estimates) as may be provided for in regulations.

(b) INCOME FACTOR.—

(1) The income factor for a State, county area, or unit of local government is a fraction—

(A) the numerator of which is—

(i) the number of persons in families in that State, county area, or unit of local government below the low-income level, plus the number of unrelated individuals 65 years old or over below the low-income level, plus

(ii) the number of persons in families with incomes between 100 percent and 125 percent of the low-income level residing in a central city of an urbanized area within that State, county area, or unit of local government, plus the number of unrelated individuals 65 years old or over who have incomes between 100 percent and 125 percent of the low-income level residing in a central city of an urbanized area within that State, county area, or unit of local government; and

(B) the denominator of which is the number of persons in families in that State, county area, or unit of local government plus the number of unrelated individuals 65 years old and over.

(2) The terms used in paragraph (1) are defined in accordance with the definitions used by the Bureau of the Census for general statistical purposes.

(c) GENERAL TAX EFFORT FACTOR OF STATES.—

(1) IN GENERAL.—For purposes of this title, the general tax effort factor of any State for any period is—

(A) the net amount collected from the State and local taxes of such State during the most recent reporting year, divided by

(B) the aggregate income, as defined in paragraph (4) of subsection (a), attributed to such State for the same period, minus the aggregate exempt income attributable to such State for the same period.

(2) STATE AND LOCAL TAXES.—

(A) TAXES TAKEN INTO ACCOUNT.—The State and local taxes taken into account under paragraph (1) are the compulsory contributions exacted by the State (or by any unit of local government or other political subdivision of the State) for public purposes (other than employee and employer assessments and contributions to finance retirement and social insurance systems, and other than special assessments for capital outlay), as such contributions are determined by the Bureau of the Census for general statistical purposes.

(B) MOST RECENT REPORTING YEAR.—The most recent reporting year with respect to any entitlement period consists of the years taken into account by the Bureau of the Census in its most recent general determination of State and local taxes made before the close of such period.

(d) INCOME TAX COLLECTIONS OF STATES.—The income tax collections attributed to any State for any entitlement period shall be equal to the net amount collected from the State individual income tax of such State during the last calendar year ending before the beginning of such entitlement period. The individual income tax of any State is the tax imposed upon the income of individuals by that State and described as a State income tax under section 164(a)(3) of title 26, United States Code.

(e) INCOME TAX EFFORT FACTOR.—The income tax effort factor of any State for any entitlement period is—

(1) the income tax collections of that State as defined in subsection (d), divided by

(2) the aggregate income, as defined in paragraph (4) of subsection (a) attributed to such State for the same period, minus the aggregate exempt income attributable to such State for the same period.

(f) TAX EFFORT FACTOR OF COUNTY AREA.—For purposes of this title, the tax effort factor of any county area for any entitlement period is—

(1) the adjusted taxes of the county government plus the adjusted taxes of each other unit of local government within that county area, divided by

(2) the greater of

(A) the aggregate income (as defined in paragraph (4) of subsection (a)) attributed to that county area, minus the aggregate exempt income attributable to that county area, or

(B) one-half the aggregate exempt income attributable to such county area for the same period.

(g) TAX EFFORT FACTOR OF UNIT OF LOCAL GOVERNMENT.—For purposes of this title—

(1) IN GENERAL.—The tax effort factor of any unit of local government for any entitlement period is—

(A) the adjusted taxes of that unit of local government, divided by

(B) the greater of—

(i) the aggregate income (as defined in paragraph (4) of subsection (a)) attributed to that unit of local government, minus the aggregate exempt income attributable to that unit of local government, or

(ii) one-half the aggregate exempt income attributable to such unit of local government for the same period.

(2) ADJUSTED TAXES.—

(A) IN GENERAL.—The adjusted taxes of any unit of local government are—

(i) the compulsory contributions exacted by such government for public purposes (other than employee and employer assessments and contributions to finance retirement and social insurance systems, and other than special assessments for capital outlay), as such contributions are determined by the Bureau of the Census for general statistical purposes,

(ii) adjusted (under regulations prescribed by the Secretary) by excluding an amount equal to that portion of such compulsory contributions which is properly allocable to expenses for education.

(B) CERTAIN SALES TAXES COLLECTED BY COUNTIES.—In any case where—

(i) a county government exacts sales taxes within the geographic area of a unit of local government and transfers part or all of such taxes to such unit without specifying the purposes for which such unit may spend the revenues, and

(ii) the Governor of the State notifies the Secretary that the requirements of this subparagraph have been met with respect to such taxes,

then the taxes so transferred shall be treated as the taxes of the unit of local government (and not the taxes of the county government).

DISSENTING VIEWS OF HON. JACK BROOKS CONCURRED IN BY HON. JOHN MOSS

In exercising its new jurisdiction over this important legislation for the first time, the Committee on Government Operations has, I believe, fulfilled its obligation to the House in a highly responsible manner. The committee has had the benefit of a wide variety of information, practical experience, expert opinion and scholarly research in making its recommendation for the continuation of the State and Local Fiscal Assistance Act. In some respects H.R. 13367 is an improvement over the current program. But my disagreement with the fundamental concept of revenue sharing is so basic, I am unable to support it.

My opposition is based mainly on a deep concern over the effect revenue sharing is having on our representative system of government. I am also disturbed by its impact on federal spending and borrowing. And I am dismayed and disheartened by the willingness of its supporters to overlook even its most glaring defects in their eagerness to perpetuate this pernicious program.

Adverse Effect on System

Until the enactment of the State and Local Fiscal Assistance Act in 1972 the principle that those who spend the taxpayers' money should have the responsibility of raising it was so firmly established as to be virtually unquestioned. It is, after all, merely an extension of the rallying cry, "No taxation without representation!" that played so large a part in establishing the 200 years of independence we are now celebrating.

It is the representatives of the people who vote to levy the city, state, and federal taxes people must pay. Until now, they have been accountable for spending only the revenue they have raised. But the $6.65 billion handed out each year to state and local units of government through revenue sharing is spent by officials who have no responsibility for collecting it. Such a division of responsibility strikes a heavy blow at our form of government.

Revenue sharing also marks a fundamental departure from Congress' constitutionally assigned role of providing for "the general welfare of the United States" through its taxing power. That used to mean that money appropriated from the national Treasury was used in pursuit of national goals and policies. But Congress is now using its power of the purse to provide for the collection of garbage in one city, the payment of policemen in another, and the construction of a swimming pool in a third. If this were being done as part of a national attack on problems connected with waste management, law enforcement, or the development of recreational facilities it would be in keeping with Congress' responsibilities. But to be paying for them simply because officials in those cities have been given drawing rights on the U.S. Treasury through revenue sharing is a drastic distortion of our federal system.

But the gravest danger to our federal system I see in revenue sharing lies in the growing dependence of the cities on this aid. In the few short years the funds have been flowing, and at a time when they amount to only a small percentage of most cities' budgets, they have already become indispensable, if we can believe the local government officials who have been besieging the committee during its consideration of H.R. 13367. Even the slightest reduction in the funds, we were told, would cripple their ability to render vitally needed services.

One of the arguments used to encourage passage of revenue sharing in 1972 was that it would reverse the trend toward centralized government. If anyone still believes that, a reading of H.R. 13367 should be a sobering experience. It is an inescapable fact in government that he who pays the piper calls the tune. And sooner or later 38,000 local units of government—90 percent of which never had a direct link with Washington before revenue sharing—will suddenly learn to their dismay that those revenue sharing funds were not "free" after all.

As one who believes strongly in the need for local government to be as strong and independent as possible, I can only watch in sorrow and wonderment as officials of these communities struggle and strain to tug this Trojan Horse inside their city gates.

Fiscal Impact

Revenue sharing is one of those programs that has benefited immensely from its name. The idea of the federal government sharing its riches with the states and cities is very appealing. It might even be logical in prosperous times. But when the federal government is running a $74 billion deficit in one year and there is no prospect of it turning a surplus in the foreseeable future, it is proper to ask, what revenue is there to share?

The fact is the federal government is borrowing approximately 20 percent of what it is spending this year. When revenue sharing was enacted it was argued that the federal government's more efficient tax collecting machinery made the program desirable. But what the recipients of revenue sharing were really counting on was the federal government's borrowing capacity. Many states and most cities have constitutions or charters that prevent them from going into debt. Not so the federal government. The national debt now stands at something over $600 billion, and every quarterly allocation of revenue sharing money adds to it.

It is true that other government programs in these times are also financed in part by borrowed funds. But it is also true that Congress has a chance to examine these programs, weigh them against each other and against the limited resources available, and decide how much to allot to each one. But this basic exercise of its authority is denied to Congress when it comes to revenue sharing. The 1972 act committed Congress to an outlay of $30 billion over five years and H.R. 13367 would continue that open door policy at the Treasury until October, 1980. For Congress to lock up its largest domestic spending program at

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a time when the cost of government is causing serious and widespread concern is not only unjustified, but incomprehensible. An amendment to H.R. 13367 to bring revenue sharing into the regular appropriation process will have my vigorous support.

Measured against the promises and expectations of 1972, revenue sharing has come up short in many respects. It has not increased citizen involvement in local affairs. It has not strengthened or revitalized local government or made it more responsive. It has not improved conditions in the cities. To a great extent, the money has simply disappeared without a trace.

Instead of pouring out $6.65 billion indiscriminately to every state and local jurisdiction we should be using our severely limited funds to attack specific urban problems. That is the proper role for Congress.

JACK BROOKS.
JOHN E. MOSS.

SUPPLEMENTAL VIEWS OF HON. DANTE B. FASCELL

I support the bill approved by the committee and urge its adoption by the House.

The bill includes several important reform provisions intended to help redress a number of defects found during the first years of operation of the general revenue sharing program. The inclusion of these reforms—in such areas as greater equity in the distribution of funds, increased opportunities for citizen participation in the budgeting of funds at the State and local levels, and strengthened protection of civil rights in the use of funds—is welcomed by those who have been working to correct the program's flaws.

At the same time, the bill does not resolve all of the problems inherent in the general revenue sharing program to date. These areas should receive further attention as the bill proceeds through the legislative process.

I am concerned about the committee's decisions on the duration of the program and the type of funding. The bill provides for an entitlement over the next 3¾ years at an annual rate of $6.65 billion. This is considerably less than the 5¾-year extension sought by the Administration, but it still does not satisfy those who feel that the program should be subject to the annual appropriation review of Congress.

A better approach would be to combine both concepts. The bill should provide for 3¾ years of authorization and appropriation, with annual reviews thereafter. The reviews should be conducted on a three-year forward basis, however, so that each jurisdiction would know what it would be getting each year, long enough in advance to plan intelligently for the wisest use of funds. Under such a system, $6.65 billion could be authorized and appropriated by the bill for each year through Fiscal Year 1979, and starting in January, 1977, Congress would begin the consideration of authorization and appropriation for Fiscal Year 1980.

Such a system would bring the program back under the normal legislative process and enable the authorization, appropriation, and budgeting committees to work their will. The next Congress could decide to abandon the program after September 30, 1979, expand it, or maintain it at the same level.

This approach is embodied in H.R. 10319, a bill which I introduced on October 22, 1975, to implement reforms sought by a number of public interest organizations based on extensive studies of the program. Although this provision is not included in the committee bill, it does contain major elements of other reforms sought by my legislation.

The committee bill's strong and specific provisions for citizen participation will go far toward eliminating ills in the use of funds at the local level. The expanded anti-discrimination section will provide new assurance that the rights of minorities, women, the handicapped

and the elderly will be protected. The bill also contains a start toward the modernization of State and local governments, through the inclusion of a statement of policy on behalf of consolidations and other steps that could increase the economy and efficiency of State and local governments.

An important change is the formula revision which is a compromise between the existing mechanism and the principles set forth in H.R. 10319. The committee bill provides for the distribution of $6.5 billion under the existing formula, which uses per capita income data as a measure of need. The remaining $150 million would be distributed under a revised formula using the percentage of the population below the poverty level in each jurisdiction as the measure of need.

The effect of the formula revision is to assure that each jurisdiction will be "held harmless" to the amount it would receive by continued use of the existing formula at an annual rate of $6.5 billion (the actual funding level during calendar 1976). Thus, no city or State will lose funds because of the formula change.

During the committee's discussion, those who favored a simple extension of the existing formula pointed out that under the revision some jurisdictions would "lose" funds they would otherwise receive under the old formula at a $6.65 billion spending level. It is important to note, however, that such a "loss" is only theoretical, since the revenue sharing program has never been funded at $6.65 billion for a full year. The $6.65 billion figure represents an annualization of the funding level of the last six months of calendar 1976. Since jurisdictions have never actually received such a sum, they could not "lose" it under the formula change. A more accurate comparison would be between the $6.5 billion actually received in 1976 and the $6.65 billion to be received during 1977 and future years under the committee bill. This would show all jurisdictions unharmed by the change, and many jurisdictions gaining.

The $150 million to be distributed under the revised formula would be shared by jurisdictions which gain through use of the poverty standard. Studies have shown that poverty data is a more accurate reflection of need than per capita income, since many jurisdictions with relatively high per capita income levels actually have high needs for services as well. The formula change would help city and poor rural areas with high proportions of poverty.

While the provisions of H.R. 13367 as revised by the committee make important improvements in the program, I feel that Congress should maintain close oversight in the future so that any further reforms can be adopted as needed. Hopefully, the committee bill will lay the groundwork for continuation of the general revenue sharing program in a manner that will meet the best interests of all Americans.

DANTE B. FASCELL.

SUPPLEMENTAL VIEWS OF HON. BENJAMIN S. ROSENTHAL

One common refrain heard throughout the committee's consideration of this bill was the need to reenact the general revenue sharing bill with virtually no changes. I feel this is a sad commentary on the legislative process. Surely, after five years of experience in the distribution of over $30 billion to state and local governments, there are numerous refinements and improvements which could be made in this program.

Fortunately, the bill does incorporate several valuable changes. One is an amendment I introduced to encourage states to take steps to modernize and revitalize state and local government structures and procedures. This is discussed below.

But various other thoughtful and beneficial proposals fell victim to the "hands-off" pressures. I intend to offer one of the most important of these on the floor. It addresses a major problem posed by the figures used in the allocation formula—the systematic undercounting of certain state residents. The amendment failed in committee on a 17–21 vote.

Population Undercount and Illegal Aliens

The Bureau of the Census estimates that 2.5% of the nation's citizens (approximately 5 million Americans) and virtually all of the country's illegal aliens (as many as 8 million persons) were missed in the last census. The Bureau is in the midst of studies which hopefully will permit a state-by-state breakdown of this population. This amendment simply says that if these studies result in reliable figures, the number should be included in each state's population.

Citizens missed by the census tend to be those who make great use of government services—the needy and uneducated. Illegal aliens also cause a great drain on government finances—estimated at $18 billion a year in added payments and lost taxes. Local communities shoulder these burdens through no fault of their own. It is only fair that all local residents be counted.

This amendment would not condone the presence of illegal aliens. Nor would it alter the revenue sharing formula. It merely seeks to improve the accuracy of the population figures used in the formula. I hope the full House will recognize the urgency of this improvement.

State and Local Government Modernization

I am pleased that the committee did adopt an amendment I introduced to encourage the modernization of state and local governmental structures.

Revenue sharing is the single largest domestic program of our federal government. It pours substantial sums of money into state

and local governments. But it does so without regard to their effectiveness or efficiency. In too many instances, we are pouring money into rusted or misshappen vehicles, and we know that there is considerable leakage.

This section of the bill is a modest step towards correcting this situation. It sets as a goal the preparation by states of a plan for modernizing and revitalizing state and local government. It requires each state to submit to the Secretary of the Treasury a report annually on the state's progress in achieving governmental reform and modernization, and it establishes a procedure for each state's modernization plan to be developed and implemented. It also sets a broad series of noncontroversial and nonexclusive criteria as to what is meant by modernization. There is no penalty connected with a state's failure to develop and pursue a modernization policy other than a reporting of that fact by the Treasury Secretary to the Congress in an annual report on all states' revitalization efforts.

Hopes were strong in 1972 that revenue sharing, as unrestricted aid, might induce states to restructure and modernize their governments. There was little disagreement then or now over the need for such modernization. Unfortunately, these hopes have not been realized. The evidence shows virtually no effort on the part of states, as a consequence of revenue sharing, to overhaul obsolete government structures, strengthen management capacity or alter time-encrusted ways of delivering services.

Indeed general revenue sharing, according to a comprehensive League of Women Voters report, has had the opposite effect. By encouraging each local jurisdiction to "go it alone", giving each government its own allocation of funds, revenue sharing has encouraged the fragmentation of political responsibilities and can be viewed as a throwback to earlier days of exclusionary home rule.

Studies by the GAO, Brookings Institute and League of Women Voters could uncover no significant examples of revenue sharing funds inspiring improved delivery of services or collection of revenues across local government lines. Indeed the evidence is to the contrary. In Rochester, New York, for example, general revenue sharing payments reportedly halted a movement to disincorporate several villages which were burdened by excessive taxes; revenue sharing funds also furthered delays in carrying out a city-county plan to unify police services in the same metropolitan area.

This section of the bill is the opportunity to correct one of the greatest failings of the revenue sharing program. In enacting grant-in-aid programs in the 1950's and 60's, the Congress recognized that the fragmentation of governments posed a threat to the effective delivery of services. Several laws then passed required region-wide sharing and planning, and encouraged the establishment of regional planning bodies. This section of the bill continues the momentum started then and so urgently needed now in a time of increasing local budget stress. While it requires states only to report upon their modernization efforts, and imposes no sanctions against any recalcitrant states, it is an essential ingredient of the revenue sharing program.

BENJAMIN S. ROSENTHAL.

SUPPLEMENTAL VIEWS OF HON. JOHN CONYERS, JR.

One of the purposes—indeed, the principal justification—of General Revenue Sharing was to bring government closer to the people. This program was heralded in 1972 before Congress and the American people as the beginning of "a new American revolution—a peaceful revolution in which power [is] turned back to the people." The record unambiguously shows, however, that far from being a vehicle for the redistribution of power, General Revenue Sharing has amplified even further the entrenched power of local majorities. Five years and more than $30 billion later, the political question, that goes to the heart of this program—namely, which people is this mammoth Federal transfer bringing government closer to—has been answered in a way that is totally unsatisfactory to me.

Every political jurisdiction evidences divisions between majorities and minorities, and the smaller, more homogeneous a jurisdiction is, the more likely will the majority trample on the rights of the minority. Member of the majority group enjoy the readiest access to decision-makers, get the first crack at public funds, and are the first called to fill newly-created jobs. A significant portion of the 39,000 local jurisdictions that receive revenue sharing funds are small, and their past use of these funds has not contradicted the experience which drove the Founders of this country to institute a Bill of Rights to be enforced by the Federal Government to check the tyranny of local majorities.

The United States Civil Rights Commission, the National Urban League, and other organizations which have investigated the operation of the General Revenue Sharing have documented thousands upon thousands of cases in which local governments have used revenue sharing funds in ways that discriminate against politically vulnerable groups. Employment discrimination has been the most prevalent form. There has been little or no enforcement of the non-discrimination provisions in the original Act in the areas of the hiring of workers, the payment of wages, and in the management of apprenticeship programs.

Local majorities have been rewarded with the lion's share of revenue sharing in yet another way. Only two percent of revenue sharing funds in 1975 went directly to programs for the poor and the aged. With the help of revenue sharing many local governments were able to prevent tax increases or even to reduce tax burdens. (Ten states do not even have income taxes.) Rather than expanding municipal services to the poor, these funds too often have subsidized middle-class taxpayers. Because there is virtually no way to trace how funds are spent, local governments labor under few constraints that might prevent them from catering only to dominant local interests.

Finally, General Revenue Sharing's formula for allocating funds nation-wide, by not taking into account fully in its measurement of

public need citizens who have incomes below the poverty level and by placing a ceiling on the amount of funds which big cities are eligible for, has discriminated against jurisdictions which are most in need of Federal assistance. The interests of big cities continue to be sacrificed while far less responsive governmental units are rewarded.

At some point in the not too distant future the Congress will have to examine much more seriously than it has up to now the long-range implications of programs such as General Revenue Sharing, which give local governments such considerable discretion and which require so little Federal oversight. Federal spending for social programs is being terribly squeezed; the current Budget Resolution provides no real growth in most existing social programs and, given the incredible increase in the Pentagon's budget authority, and the unchecked growth in tax subsidies, we will be locked into an ever-diminishing amount of Federal Revenue available to address the urgent social needs in the country. The very authority of the Federal Government to safeguard the national welfare and to perform the leading role in promoting constructive social and economic change is under severe attack. Given this situation, it is of paramount importance that the Federal Government not shirk its very considerable responsibility not only in seeing that social spending is adequate to meet the needs of people, but that the process whereby funds are distributed and used is an equitable one.

I propose as a way to examine the long-term implications of General Revenue Sharing, and the overall context of trends in social spending, that a national commission be established to investigate the distribution of functions and responsibilities of all levels of government, to examine alternative grant-in-aid programs as well as ways to overhaul Federal, State, and local systems of taxation, and to recommend much-needed reforms.

I voted to continue General Revenue Sharing with great reservations. To turn the Federal spigot off without having a workable alternative would do incalculable damage to our cities. As cities totter dangerously on the brink of insolvency, Federal support must be continued until a way is found to improve upon revenue sharing. The strong civil rights and citizen participation sections in the new revenue sharing bill reported by the Government Operations Committee, hopefully, will restore the necessary Federal role in overseeing the program.

JOHN CONYERS.

SUPPLEMENTAL VIEWS OF HON. JOHN L. BURTON

I do not believe that gifts of federal funds to local governments in the form of General Revenue Sharing is the best means of helping local governments with their fiscal problems.

The separation of taxing responsibility from spending authority is poor fiscal policy.

I believe that local governments would be best served if the federal government would assume the total costs of the various federal, state and local welfare programs. Increased federal assistance to local school districts would also be helpful. Such steps by the federal government would free up local revenues to finance other duties of local government, without the need for the general revenue sharing funds.

While I have some questions and concerns about the present revenue sharing program, I can support the bill as passed by the Committee because of the expanded and strengthened citizen participation and civil rights guarantees included. I am not in love with the entitlement approach to funding this program. As part of the overall bill reported by the Committee, however, I can support it.

JOHN L. BURTON.

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SUPPLEMENTAL VIEWS OF HON. ROBERT F. DRINAN

When the Intergovernmental Relations and Human Relations Subcommittee began hearings on legislation to extend the State and Fiscal Assistance Act of 1972 last September, I asserted the need for substantial improvements in the areas of accountability, equitability, citizen participation, and civil rights enforcement if the revenue sharing program were to be extended. The enormous volume of testimony and data received by the Subcommittee confirmed the existence of significant flaws in the operation of the program and established the necessity for a legislative remedy. Throughout its deliberations on this issue, the Committee has been subjected to intense pressure by lobbyists representing state and local officials to ignore these obvious deficiencies and extend the general revenue sharing program without change.

I am pleased that the Committee has successfully withstood that challenge and reported out a good bill which extends revenue sharing at its current funding level for 3 and ¾ years while reducing or eliminating some of the most serious shortcomings of the existing Act. H.R. 13367, which was approved by an overwhelming vote of 39 to 3, does not tamper with the fundamental premises of revenue sharing. Indeed, by eliminating mandatory expenditure categories and other cosmetic restrictions on the use of funds, the bill recognizes the fact that revenue sharing is, in reality, a direct operating subsidy for state and local governments, rather than a distinctive fund earmarked and utilized for specific purposes.

The Committee retained the complex formula through which more than 39,000 jurisdictions receive funds four times each year and preserved the freedom exercised by those recipients in spending revenue sharing dollars. At the same time, the Committee took steps to ensure that all citizens would benefit from the revenue sharing program and that local officials would be held accountable to their constituents and to Congress for the expenditure of revenue sharing funds.

EQUITABILITY OF ALLOCATION

The Committee struggled repeatedly with the question of whether the allocation formula arrived at somewhat arbitrarily 4 years ago was the most equitable means of distributing revenue sharing funds. While all agreed that the formula is imperfect, no one could suggest an alternative which was clearly more equitable. Moreover, any formula alteration which increased the entitlements of some recipients would necessarily reduce the entitlements of others. For that reason, the Committee was reluctant to adopt major formula changes.

It is significant and rather disconcerting that once an allocation formula in a program of this magnitude is adopted there is tremendous resistance to alter it, even in the face of overwhelming evidence. For example, the General Accounting Office issued a report on April 22, 1976 which sharply criticized the 20 percent per capita allocation floor which automatically increases the entitlements of some 10,000 jurisdictions at the expense of more deserving recipients. The unfairness and counterproductivity of the 20 percent floor was corroborated by studies conducted by the Brookings Institute and the National Science Foundation. No rationale or justification for this formula provision was ever offered, yet the Committee voted to retain the floor without change.

The Committee also failed to address the problem of population undercounting as it applies to the computation of revenue sharing entitlements. Millions of American citizens and illegal aliens, not included in the 1970 census, are receiving public services provided by state and local governments but are not taken into account when revenue sharing entitlements are computed. As a result, communities containing a large proportion of undercounted individuals receive less revenue sharing funds on a per capita basis than they are entitled to. The Committee narrowly defeated an amendment to revise population figures to the extent possible in order to incorporate those not counted in the last census in the distribution of revenue sharing funds. I hope that both of these formula issues will be considered on the floor.

The Committee did make several formula changes which should ultimately increase the fairness of the program. First, it adopted a new eligibility requirement designed to eliminate from the program those jurisdictions which refer to themselves as "general purpose governments" while actually performing only one public service. These nonfunctional or single purpose units have been receiving a windfall under the current Act at the expense of the legitimate general purpose governments in the same area. The Committee bill will ensure that the actual functions of a government, rather than its designation, will determine eligibility for revenue sharing funds.

A second change approved by the Committee establishes an alternative allocation formula to be used to distribute funds authorized by Congress for inclusion in a supplemental pot of revenue sharing funds. This substitute formula emphasizes tax effort to a greater extent than the present formula and replaces per capita income with percent of population below the poverty line as an indicator of fiscal capacity. It is not clear whether this second formula will prove more equitable or even as workable as the first. Indeed, the Committeee did not specifically authorize any funding for this separate title of the bill. Yet, by establishing an alternative formula, the Committee served notice that it is not willing to accept the present distribuion of funds as unalterable and that it will continue to seek a solution which best responds to the needs of all state and local governments.

CITIZEN PARTICIPATION

Effective citizen involvement in the decision-making process is fundamental to the revenue sharing concept. While elected officials must ultimately decide how revenue sharing funds are to be spent, all citizens should be able to offer their suggestions and to advise their governments concerning the programs they think should be funded in whole or in part out of revenue sharing. Faced with a record indicating that citizen participation in the expenditure of revenue sharing funds has been virtually nil to date, the Committee adopted a series of important provisions to ensure more effective public input.

First, the Committee added a requirement that recipient governments hold a public hearing on the proposed expenditure of revenue sharing funds prior to submitting a Proposed Use Report to the Office of Revenue Sharing. Under the current Act, local officials need not consult with or even inform citizens about the availability of revenue sharing funds before reporting how they intend to use the money. The addition of this new hearing provision will have the effect of enabling citizens to get involved in the issues about the expenditure of revenue sharing funds at a sufficiently early stage in the decision-making process to exert a meaningful impact.

The Committee also added a requirement that recipients hold public hearings prior to the adoption of their budget to consider the proposed use of revenue sharing funds within the context of their overall spending plan. This requirement would be waived in the case of recipients which already hold such a hearing. The most significant aspect of this pre-budget hearing is that citizens, for the first time, will be told how revenue sharing funds fit into the overall budget and, consequently, what the actual fiscal input of the revenue sharing dollars will be.

While these new hearing provisions are important, it is clear that the convening of a public hearing does not necessarily mean that effective citizen participation has been achieved. Particularly in the case of large municipal and state governments, which operate on complex multi-million dollar budgets, the ordinary citizen lacks the knowledge,

the time, and the expertise to offer substantial input. In these jurisdictions, public hearings are insufficient to ensure effective public participation. A special vehicle, such as a Citizens Advisory Committee appointed by the Chief Executive Officer and representing the various facets of the community, is needed. Such citizens' groups have been mandated by law in a number of federal programs, including Model Cities and the Communities and Housing Development Act of 1975. Advisory Committees are most necessary in a program such as revenue sharing where local discretion in the expenditure of Federal funds is virtually absolute. I hope that a provision requiring the establishment of Citizen Advisory Committees in the 50 states and the 540 other jurisdictions receiving $1 million or more each year in revenue sharing funds can be added to H.R. 13367 on the floor.

ACCOUNTABILITY

Having eliminated the priority expenditure categories and other restrictions on the use of revenue sharing funds, the Committee acted to strengthen reporting requirements and auditing standards in order to increase the accountability of recipient governments in the expenditure of the federal dollars. The GAO testified that existing reports on the use of revenue sharing funds were meaningless. The problem was that by substituting revenue sharing dollars for other local revenues in certain budgetary areas, local governments could effectively conceal the actual fiscal inpact of the revenue sharing funds.

The Committee followed the recommendations of the GAO in meeting this problem by increasing the specificity of reports on the proposed and actual use of revenue sharing funds and by requiring such reports to relate the expenditure of revenue sharing funds to the entire local budget. Moreover, the Committee stipulated that Actual Use Reports shall provide an explanation of all differences between the actual use of funds received and the proposed use of such funds as reported to the Secretary. Under the existing Act, there need be no relationship whatsoever between how a recipient says it tends to use revenue sharing funds and how it does in fact expend the funds.

In the area of auditing standards, the Committee expanded upon the current requirement that recipients conduct annual audits in accordance with their local laws and auditing practices. The Committee added the key requirement that such audits be conducted independently and that audit reports on the expenditure of all public funds be made available to the public. The Comptroller General was authorized to evaluate compliance with the new auditing provision. If the regulations to be promulgated by the Secretary of the Treasury to carry out this section accurately reflect the will of the Committee, local governments will be required to meet a new standard of responsibility and accountability for their expenditure of funds.

The Committee also provided for an annual comprehensive report by the Secretary of the Treasury to Congress on all aspects of the program including the extent of citizen participation, compliance with civil rights provisions, the implementation of auditing standards, and the net fiscal impact of revenue sharing funds. This report should greatly aid Congress in its oversight of the program and serve as an

incentive to the Office of Revenue Sharing to enforce the provisions of the Act in a timely and forthright manner.

NONDISCRIMINATION

The provision adopted by the Committee in the area of Civil Rights enforcement is among the most important components of H.R. 13367. The Committee's hearing record was replete with evidence that the Act's nondiscrimination requirement had gone virtually unenforced since the enactment of the State and Local Fiscal Assistance Act of 1972. Oversight hearings on the civil rights aspects of revenue sharing held by the House Judiciary Subcommittee on Civil and Constitutional Rights confirmed the need for immediate and decisive action to halt the discriminatory use of revenue sharing funds. The recommendations of the Subcommittee were contained in a report issued in November, 1975. The Committee relied heavily upon the expertise of its sister subcommittee in Judiciary in addressing the civil rights issue and formulating the remedy contained in the Committee bill.

The nondiscrimination provision, explained in detail elsewhere in this report, is designed to provide for the effective enforcement of the prohibition on the discriminatory use of revenue sharing funds contained in the existing Act. By establishing a set of compliance procedures resulting in the mandatory suspension of revenue sharing payments should proven discrimination persist, the Committee has ensured that the laxity of the Office of Revenue Sharing in enforcing the nondiscrimination requirement of the Act shall not be permitted to continue. Local governments will no longer be able to evade civil rights enforcement through slick accounting devices in reporting the use of revenue sharing funds. Individuals submitting complaints alleging civil rights violations will no longer have to wait many months or even years before receiving a response from the Office of Revenue Sharing. Revenue sharing recipients will no longer be able to continue discriminatory practices without suffering the suspension of their revenue sharing funds. Instead, the federal government will take steps to enforce the law and protect the civil rights of all Americans.

I would have preferred a stronger nondiscrimination provision than that ultimately approved by the Committee. Specifically, I fear that the clause permitting recipients to avoid civil rights compliance proceedings by proving that revenue sharing dollars were not expended in the program in which the alleged discrimination occurred may prove to be a major loophole. As the GAO and other analysts have reported, it is virtually impossible to identify revenue sharing funds as such once they are commingled with other local revenues within an overall budget. If that fact is recognized by the Office of Revenue Sharing in administering this section, the exception clause will not have much impact. But, on the other hand, if the Administration relies upon the assurances of local governments and easily-manipulated accounting designations as adequate evidence that revenue sharing funds were not spent in a particular program, civil rights enforcement will continue to be ineffectual.

Second, the requirement that a recipient must be engaging in a "pattern or practice of discrimination" in order to be subject to enforcement proceedings sets a different standard for civil rights violations in this Act than that which appears elsewhere in Federal law. It is not clear, for example, how many acts or instances of discrimination against one or more individuals must be committed before a "pattern or practice" is said to exist. Should this language be retained on the floor, I am hopeful that courts will swiftly interpret the provision to provide the broadest possible protection to victims of discrimination.

Third, the Committee bill requires the Secretary of the Treasury to hold a preliminary hearing on alleged noncompliance in the area of civil rights at the request of a recipient government before taking any action to defer the payment of revenue sharing funds. Other civil rights provisions of federal law invariably allow an administrator to convene such a hearing at his discretion, without requiring that he do so. This provision will tend to delay effective enforcement of the prohibition against discrimination by allowing recipient governments to engage in time-consuming bureaucratic procedures.

Despite these deficiencies, the civil rights provision adopted by the Committee is an excellent one which remedies the major deficiencies which have paralyzed civil rights enforcement under the Act to date. Having participated in the oversight hearings of the Judiciary Subcommittee on Civil and Constitutional Rights as well as the hearings of the Subcommittee on Intergovernmental Relations and Human Resources, I feel that the adoption of a strong civil rights provision is an essential prerequisite to the complaints of the revenue sharing program. I am pleased that the Committee responded to the pressing need for change in this area by adopting a workable legislative plan for the effective protection of civil rights under the revenue sharing program.

FUNDING MECHANISM

The Committee spent a considerable amount of time debating alternative methods of funding the revenue sharing program. There was considerable opposition to the continuation of the present funding mechanism which both authorized and appropriated funds for the program for a five year period. Thus, unlike virtually all other Federal programs, revenue sharing is exempt from the annual appropriations process and from periodic review by the Budget Committee. Under this approach, which violates the ordinary rules of the House, revenue sharing is, in effect, uncontrolled spending. While the Department of Defense, the Office of Education, the National Cancer Institute and other essential agencies have to stand in line each year to compete with other priorities to secure appropriations, revenue sharing funds have continued to flow on a guaranteed, uncontrolled basis. Chairman George Mahon of the Appropriations Committee and Budget Committee Chairman Brock Adams urged annual review and appropriation; this would provide local governments with sufficient time to plan their expenditures without sacrificing congressional oversight and fiscal responsibility.

Regrettably, the Committee narrowly rejected the suggestion for annual forward funded appropriations and instead settled upon a third funding device—entitlements—as an alleged compromise between the two alternatives described above. While entitlement programs are explicitly authorized by the Budget Act, they are, in effect, combined authorization-appropriations which constitute uncontrollable spending. If entitlement funding is ever justifiable, it is only in those programs such as Social Security and veterans' benefits where the recipient has a vested right to the authorized funds. Such is not the case with revenue sharing. I hope that the House will reconsider this issue and settle upon a mechanism for funding the revenue sharing program which does not violate basic principles of accountability and fiscal responsibility.

GOVERNMENT REVITALIZATION

I was pleased that the Committee adopted a provision to encourage states to develop comprehensive plans to revitalize and modernize state and local government. The strengthening of local government through effective planning and regional cooperation, was one of the key objectives of a pioneering revenue sharing bill introduced by Congressman Henry Reuss and Senator Hubert Humphrey well before the enactment of the State and Local Fiscal Assistance Act of 1972. If revenue sharing can provide an impetus for local governments to become more efficient providers of public services, the program will have made an enduring contribution to our democratic system. The provision adopted by the Committee which emphasizes planning and communication rather than actual structural changes in government, is just a start in this direction. Yet it is an important addition to the bill which should be retained.

CONCLUSION

In the wake of the Committee's protracted deliberations on the proposed extension of the revenue sharing program. I continue to harbor doubts about whether this is really the best way to spend more than $6.5 billion each year to meet the needs of the American people. Perhaps the funds would be better spent in initiating a program of national health insurance or in federal assumption of state welfare costs or in increased aid to local education. Perhaps Americans would rather receive these dollars back directly, in the form of reduced federal taxes, instead of turning them over to state and local officials to spend as they see fit.

But it is apparent that state and local governments throughout the United States have become dependent upon the continuation of this source of revenue beyond the end of 1976. The abrupt termination of this program could lead some of our communities to the brink of fiscal disaster. The program has numerous flaws, but the committee has gone a long way toward supplying legislative remedies. I will continue to fight for necessary changes in the bill as described above. But, if the revenue sharing program is to be continued, I believe it should go forward substantially in the form provided for in H.R. 13367.

ROBERT F. DRINAN.

ADDITIONAL VIEWS OF HON. ROBERT F. DRINAN (CONCURRED IN BY HON. JOHN E. MOSS, HON. DANTE B. FASCELL, HON. WILLIAM S. MOORHEAD, HON. BENJAMIN S. ROSENTHAL, HON. JOHN CONYERS, JR., HON. BELLA S. ABZUG, HON. CARDISS COLLINS, AND HON. MICHAEL HARRINGTON)

At the mark-up session on H.R. 13367, the Committee adopted an amendment in the nature of a substitute to Section 10 of the bill. That amendment revised the non-discrimination provision (Section 122) of the State and Local Fiscal Assistance Act of 1972, and added new Sections 124 and 125 which expand the opportunities for citizens to protect their rights under the Act. During the debate over this amendment, a number of questions arose regarding the scope and meaning of the revisions. To insure an interpretation consistent with that discussion and the intent of the proponents, we wish to add a few words to the Committee report regarding these important provisions.

Section 122: Nondiscrimination Provision

A. Background

Section 122 of the current law forbids discrimination on account of race, color, sex, or national origin in any program or activity funded by shared revenues which is conducted by a State government or unit of local government. Under the Act, the Secretary is authorized to take appropriate administrative action to secure compliance (suspension, termination, or repayment of funds for violating the section) and to refer cases to the Attorney General for suit. In addition to such referrals the Act also provides independent authority for the Attorney General to initiate "pattern or practice" suits. The current statute gives private citizens a right of action against the United States or a recipient government for violating Section 122.[1]

The Committee received extensive testimony regarding Section 122, including an oversight report from the House Committee on the Judiciary's Subcommittee on Civil and Constitutional Rights.[2] The evidence disclosed a number of deficiencies in the effectiveness of that section: (1) the "fungibility" of shared revenues has permitted recipients to escape coverage by designating the funds as having been used in programs or activities where discrimination does not exist while designating the use of their own "freed-up" funds in programs or activities which are discriminatory; (2) the Office of Revenue Sharing and the Secretary of the Treasury have inadequately enforced the anti-discrimination provision by failing to process citizen complaints efficiently, to conduct adequate compliance reviews, to monitor com-

[1] See, e.g., *U.S. v. City of Chicago*, 395 F. Supp. 329 (N.D. Ill.), *aff'd* 525 F. 2d 695 (7th Cir. 1975).

[2] *The Civil Rights Aspects of General Revenue Sharing*, Nov. 1975, the findings of which are adopted and incorporated by reference.

pliance agreements, and to take any administrative action to suspend, terminate, or seek repayment of funds;[3] (3) the Department of Justice has failed to meet its responsibilities under the Act, including its general authority to monitor the compliance program of the Office of Revenue Sharing; and (4) the private remedies under the Act are insufficient, especially the lack of a provision allowing the award of attorney fees to prevailing private litigants and the lack of complainant involvement in complaint processing.

In light of this evidence, the Committee determined that Section 122 should be amended to strengthen the non-discrimination provisions.[4] The purposes of the revision are to improve enforcement at the Federal level, to provide better coordination among federal, state, and local civil rights agencies, to insure that recipients will not be subject to conflicting enforcement standards, and to increase the participation of citizen-complainants in the enforcement process. With these goals in mind, the Commitee adopted the following changes in Section 122.

B. Amendments

1. *Scope of section.*—The present law prohibits discrimination on the basis of race, color, national origin, or sex in any program or activity funded in whole or in part by shared revenues. The revised section would add age,[4a] handicapped status,[5] and religion as proscribed grounds for exclusion.[6] Because of the fungible nature of shared rev-

[3] Since the passage of the Act, the Secretary has never suspended shared revenues for a civil rights violation. Even when the Secretary had evidence of such a violation in Chicago, he still refused to suspend funds until ordered to do so by the federal court. See *U.S. v. City of Chicago, supra.* The Secretary has suspended funds for other violations of the Act, such as a recipient's failure to file a Planned Use Report.

[4] In revising Section 122 and adding Sections 124 and 125, the Committee adopted an amendment offered by Mr. Drinan (as amended by Ms. Jordan) to Section 9 of H.R. 13367. The final language tracks the Drinan amendment in relevant part.

[4a] This provision is similar to the provisions of the Age Discrimination Act of 1975. That Act prohibits "unreasonable" age discrimination in programs and activities receiving Federal financial assistance, including revenue sharing funds. The Committee intends that its amendment to the Revenue Sharing Act be considered a separate and independent statutory right that age discrimination not be practiced by governments receiving revenue sharing funds. It is important that the Committee amendment be interpreted in this manner, rather than be viewed strictly as an endorsement of the Congress' actions in the 1975 Age Discrimination Act. Unlike the 1975 Act, the Committee bill would prohibit age discrimination in all activities or programs of revenue sharing recipients, rather than merely in those programs and activities receiving revenue sharing funds. As indicated above, the Committee adopted this approach in its bill because of the serious problem of the fungibility of funds. Also, unlike the 1975 Act, the Committee measure establishes more detailed and automatic suspension and termination procedures, and does not delay effectiveness of the provision until January 1, 1979. Because of these significant distinctions, in terms of the broadness of the prohibition and the remedies provided, it is imperative that the Committee bill not be subject to a limited or narrow interpretation based on the 1975 Age Discrimination Act. Rather, the Committee bill and the 1975 legislation are to be viewed as independnet yet complementary measures. Both seek to insure the elimination of unreasonable age discrimination which is federally financed, but they nevertheless establish different approaches to the overall prohibition as well as to the enforcement mechanism. The Committee intends that through cooperation agreements (discussed hereinafter) the various Departments responsible for enforcement under the two laws will coordinate, to the greatest extent possible, those enforcement efforts.

[5] The Architectural Barriers Act of 1968 requires that all Federal buildings and federally-assisted projects be barrier-free for purposes of achieving accessibility to the handicapped. The Committee intends that its broadening of the nondiscrimination prohibition to protect the handicapped be similarly interpreted to forbid recipient governments from constructing buildings and other facilities which do not have special accommodations for the handicapped.

[6] The revision specifies that the general prohibitions be interpreted in accordance with certain existing anti-discrimination laws so that unformity is achieved, and that current standards at least are applied. See *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971); *Lau v. Nichols*, 414 U.S. 563 (1974); *Hills v. Gautreaux*, 44 U.S.L.W. 4480 (U.S. April 20, 1976); *Hawkins v. Town of Shaw*, 461 F. 2d 1171 (5th Cir. 1972); *Gregory v. Litton Systems, Inc.*, 472 F. 2d 631 (9th Cir. 1972); *Brennan v. J. M. Fields, Inc.*, 488 F. 2d 443 (5th Cir. 1973), *cert. denied*, 419 U.S. 881 (1974); *U.S. v. City of Black Jack*, 508 F. 2d 1179 (8th Cir. 1974), *cert. denied*, 422 U.S. 1042 (1975); *Hodgson v. First Federal Savings and Loan Association of Broward County*, 455 F. 2d 818 (5th Cir. 1972); and *Adams v. Richardson*, 480 F. 2d 1159 (D.C. Cir. 1973).

enues, the amendment also removes the restriction limiting the non-discrimination provision to programs or activities "funded in whole or in part" by shared revenues. Under the amendment, it is presumed that all activities of a recipient are funded with shared revenues.

There may be circumstances, however rare, when a recipient may be able to demonstrate, contrary to the presumption, that shared revenues were not used in the program or activity in which the alleged discrimination occurred. The revised Section 122 gives such a recipient the opportunity to make that showing. In view of the fungibility problem and the "special danger of deception" [7] inherent in accounting for the expenditure of shared revenues in specific programs or activities, the exception requires a "clear and convincing" standard of proof.

2. *Enforcement mechanism.*—The current law commits Federal enforcement to the total discretion of the Secretary of the Treasury and the Attorney General. In light of the hearing record demonstrating the unwillingness to exercise that discretion to secure the rights under Section 122, the revised section provides a more certain enforcement scheme. It also seeks to improve coordination among Federal, state, and local civil rights agencies.

(a) Secretary of the Treasury: The central feature of the revision is a trigger mechanism which determines when the Secretary will begin compliance proceedings by sending appropriate notices to the non-complying recipients. Such notification will be triggered under two circumstances: (1) when a federal or state court or administrative agency, after notice and opportunity to be heard, makes a finding of discrimination (on the basis of race, color, religion, sex, national origin, age, or handicapped status); [8] and (2) when the Secretary, after affording the recipient an opportunity to make a documentary submission, makes an initial determination of noncompliance based on his own investigation.

After notification, the recipient has 90 days to end the discrimination and take whatever affirmative steps are necessary to conform its practices to the law. If the recipient believes it has not violated Section 122, it may request a hearing on the merits which the Secretary is required to initiate (but not necessarily complete) within 30 days of the request. At that hearing the recipient may raise any defense available under law, including the contention that the shared revenues were not used in the program or activity in which the alleged discrimination occurred.

In advane of the hearing on the merits, the recipient may also request a preliminary hearing before an administrative law judge when the notification to the recipient is based on the Secretary's initial determination of non-compliance.[9] Such a preliminary hearing must be

[7] McCormick, *On Evidence* (1972) at 798.

[8] Ordinarily the complainant or the other agency will bring such findings to the attention of the Secretary. Under the revision, however, the Secretary also has an affirmative obligation to uncover discrimination findings that are published in law reporters, legal journals, newspapers, and other publications, and to begin the compliance process on his own initiative. If recipients have not, by the effective date of these amendments, corrected practices already found to be discriminatory, the Secretary is expected to begin compliance proceedings by notifying such jurisdictions of their non-compliance status.

[9] When notification is triggered by a finding of a Federal or state court or administrative agency, there is no need for such a preliminary hearing because the recipient has already been afforded an opportunity on the merits.

requested within 30 days of the notification of non-compliance and must be completed within the 90 day "grace" period. If the recipient demonstrates that it is likely to prevail on the merits at a subsequent full hearing, the administrative judge is authorized to order a deferral of a fund suspension which would otherwise automatically occur at the conclusion of the 90 days if compliance is not achieved.[10]

At the end of the 90 days, the payment of shared revenues is automatically suspended if a compliance agreement has not been signed, or if compliance itself has not been achieved, or if an administrative judge has not entered an appropriate order.[11] The suspension then remains in effect for a period of 120 days, or 30 days after the conclusion of a hearing on the merits. Within that period of time, the Secretary is obligated to make a final determination of compliance or non-compliance. If insufficient evidence of non-compliance is presented to the Secretary, then the suspension is lifted and fund payments resume. If non-compliance is found, the funds are terminated, the Attorney General is notified, and the Secretary has the additional option of seeking repayment of Federal monies previously paid under the Act.[12] After termination, the funds due that government would be returned to the general treasury. Such government could, of course, seek reinstatement into the program if it achieved full compliance with the Act.

(b) Attorney General: Under present law, the Attorney General is authorized to initiate legal action against any recipient which is engaged in a "pattern or practice" of discrimination in violation of the Act.[13] That authority is continued under the revision. The Attorney General is given express authority to seek suspension, termination, or repayment of shared revenues, allowing the Attorney General to achieve in court what the Secretary may do administratively.[14]

The amended section gives the Attorney General added responsibility to monitor the civil rights compliance activities of the Office of Revenue Sharing at Treasury. Under Executive Order 11764, the Attorney General already exercises that authority with respect to all other Federal agencies which dispense Federal funds, including the prescription of appropriate "standards and procedures regarding the implementation of title VI." Because Treasury has taken the position that revenue sharing is not a title VI program, it is necessary to codify the principles of Executive Order 11764 for revenue sharing purposes. Thus, the amended Section 122 would require the Attorney General, among other things, to approve compliance agreements for the purpose of insuring uniformity of Federal standards. This is intended to benefit both complainants and recipients.

[10] The preliminary administrative hearing is akin to a judicial hearing for a preliminary injunction and the same standards for obtaining such preliminary relief are to apply. See *Chance* v. *Board of Examiners*, 458 F. 2d 1167 (2d Cir. 1972).

[11] The suspension of funds applies only to a local government which is the subject of the notification from the Secretary. The payment of funds to other governments in the State or the State itself remains unaffected.

[12] Whether repayment would be sought by the Secretary would depend on the facts of each case. Undoubtedly repayment would be appropriate where the violation is particularly egregious or the recipient recalcitrant. In addition, where the money has already been used to build a facility which, for example, serves only one racial group or fails to provide adequate arrangements for the handicapped, a demand for repayment would be justified if the location or design of the structure could not be appropriately altered.

[13] The words "pattern or practice" are intended to have the same meaning each of the three times they appear in the revised section and are "not intended to be esoteric words of art." *U.S.* v. *West Peachtree Tenth Corp.*, 437 F. 2d 221, 227 (5th Cir. 1971). While embracing something more than an isolated or accidental instance of discrimination, the "number of (victims) actually turned away or discriminated against is not determinative." *Ibid.* Although a class action would always be a "pattern or practice," something less than a class suit would also qualify.

[14] Since the Secretary must suspend revenue sharing funds on the 45th day after the Attorney General files a law suit, the remedy of suspension ordinarily will not be needed in such litigation. If, however, a recipient obtains a preliminary injunction against suspension within those 45 days, the Attorney General might later consider it appropriate to seek suspension by moving to dissolve the injunction.

The amended Section 122 makes additional provision for coordinating the enforcement efforts of the Secretary and the Attorney General. In the revised section, the Secretary is required to suspend payment of shared revenues 45 days after the filing of a "pattern or practice" suit by the Attorney General against a recipient. The automatic suspension operates whether or not the complaint specifically alleges a violation of Section 122. The recipient, however, always has the right, within the first 45 days after filing, to obtain a preliminary injunction against the suspension of funds by proving, by clear and convincing evidence, that the program or activity alleged to be discriminatory does not utilize shared revenues. The Committee intends that this preliminary determination, if sought by a recipient, is to be made exclusively by the court. The Secretary's role under this section is purely ministerial.

3. *Citizen remedies.*—Under the revenue sharing statute and other antidiscrimination laws, private citizens or organizations representing their interests, may sue the United States or any recipient for using shared revenues in a discriminatory fashion.[15] Those rights are continued under the revised Section 122. A new Section 125 of the Act authorizes courts to award attorney fees in citizen law suits and authorizes the Attorney General to intervene when it is a case of general public importance.

As noted earlier, the hearing record also discloses serious shortcomings at the Office of Revenue Sharing in processing complaints of discrimination and monitoring compliance. A new section 124 would correct some of that maladministration by requiring the promulgation of regulations requiring strict time tables for complaint investigation and compliance reviews. In addition, the Secretary, at least 15 days before the effective date of any compliance agreement, would be required to forward a copy to the complainant for examination. The Secretary would also be required to forward copies of compliance reports within 15 days after receipt.

4. *Inter-agency cooperation agreements.*—To achieve greater efficiency in enforcement, the bill requires the Secretary to enter into cooperation agreements with appropriate Federal, State, and local agencies. Such agreements must detail the cooperative efforts to be undertaken, including the sharing of resources and personnel. They would also include procedures for notifying the Secretary whenever findings of discrimination are made or, in the case of the Attorney General, whenever a pattern or practice suit is filed against a recipient. Before approving such agreements, the Secretary must be satisfied that the effective participation in such a cooperative arrangement.

5. *Judicial review.*—If a recipient is aggrieved by a final determination of the Secretary under Section 122, judicial review may be sought pursuant to existing Section 143(c) of the Act. In accordance

[15] See discussion of Section 125, *infra*.

with the settled rule in administrative practice, only final judgments are appealable.

Section 124: Citizen Complaints and Compliance Reviews

The hearing record disclosed serious deficiencies in the procedures of the Office of Revenue Sharing for processing citizen complaints and conducting compliance reviews. These deficiencies applied to a whole range of citizen complaints, not only those involving allegations of discrimination. Similar deficiencies were uncovered respecting the ORS' conduct of compliance reviews to insure that the provisions of the Act are followed. A new section 124 would correct much of this maladministration by requiring the Secretary, by March 31, 1977, to promulgate rules and regulations establishing procedures and timetables to process citizen complaints and undertake compliance reviews.

Section 125: Private Civil Actions

Under the present Act, both Federal and state courts have recognized the right of citizens to bring civil actions against the United States or recipient governments to remedy violations of the statute.[16] That right of action is continued under this bill.[17] A new section 125 is added however to authorize the courts to award attorney fees to prevailing plaintiffs so that access to the courts is meaningful.[18] In *Alyeska Pipeline Service Corp.* v. *The Wilderness Society*, 421 U.S. 240 (1975), the Supreme Court held that counsel fees cannot ordinarily be awarded without express congressional authorization. Therefore if citizens are to recover their attorney fees, this section is essential.[19]

It is expected that the court will apply the attorney fee provision in accordance with applicable Supreme Court and lower federal court standards. See *Newman* v. *Piggie Park Enterprises, Inc.* 390 U.S. 400 (1968); *Bradley* v. *School Board of the City of Richmond*, 416 U.S. 696 (1974); *Parham* v. *Southwestern Bell Telephone Co.* 433 F.2d 421 (8th Cir. 1970); *Lea* v. *Cone Mills Corp.*, 438 F.2d 86 (4th Cir. 1971); and *Aspira of New York, Inc.* v. *Board of Education of the City of New York*, 65 F.R.D. 541 (S.D.N.Y. 1975).

Furthermore, Section 125 would authorize the Attorney General, as a matter of right, to intervene in any private action brought "to enforce compliance with any provision of this Act." See 42 U.S.C. 2000h-2; *Spangler* v. *United States*, 415 F.2d 1242 (9th Cir. 1969).

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[16] See, e.g., *Mathews* v. *Massell*, 356 F. Supp. 291 (N.D. Ga. 1973); *U.S.* v. *City of Chicago*, 395 F. Supp. 329 (N.D. Ill.), *aff'd* 525 F. 2d 695 (7th Cir. 1975); *Mackey* v. *McDonald*, 255 Ark. 978, 504 S.W. 2d 726 (Ark. Sup. Ct. 1974); *Vovetich* v. *McClintock*, —— Mont. ——, 526 P. 2d 999 (Mont. Sup. Ct. 1974); *Schreiber* v. *Lugar*, 518 F. 2d 1099 (7th Cir. 1975). To the extent the *Schreiber* case bars private suits in Federal court for jurisdictional reasons, it is disapproved.

[17] During consideration of H.R. 13367, the Committee struck as superfluous and unnecessary language regarding "standing" and "relief" in private civil actions. Courts already recognize the right of citizens to sue for violations of the Act and to obtain appropriate relief, including suspension, termination, or repayment of funds. *U.S.* v. *City of Chicago*, *supra*. The Committee also struck language requiring the exhaustion of administrative remedies before private suits can be brought.

[18] Allowing attorney fees only to prevailing plaintiffs tracks certain provisions of existing law. See 15 U.S.C. 15; 29 U.S.C. 216(b); 45 U.S.C. 153(p); 47 U.S.C. 206; 49 U.S.C. 16(2); 18 U.S.C. 1964(c).

[19] Since the United States will undoubtedly be a defendant from time to time, the provision for counsel fees is intended as specific authorization for such fees within the meaning of 28 U.S.C. 2412.

The Attorney General must certify that the case "is of general public importance," and the application must be timely.

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DISSENTING VIEWS OF HON. GLENN ENGLISH

In the months that the State and Local Fiscal Assistance Act Amendments have been considered by the Government Operations Committee, repeated efforts have surfaced to employ the revenue sharing concept as the vehicle for a variety of regulations and restrictions on the independence of local governing units.

The original concept of revenue sharing was based on the reasonable belief that state and local governments, which are much closer to the citizens than the federal bureaucracy, could better decide how to utilize tax revenues most wisely.

There is no justification whatsoever for the federal strings which are now attached to revenue sharing—strings which can only lead to greater federal intervention in local affairs, and greater local dependence on the federal bureaucracy.

I have watched with growing alarm as amendment after amendment was added to the State and Local Fiscal Assistance Act.

The Committee's bill, as reported, broadens the federal role in local governments through a stiffer nondiscrimination section, a complex set of citizen participation guidelines, and by a far more comprehensive audit procedure.

But these amendments, while extremely disturbing in their implications for the program, do not begin to offer the threat to smaller jurisdictions which is implicit in Section 9, the Rosenthal Amendment.

This measure, in the words of its proponents, "sets as a goal the preparation . . . of a plan for modernizing and revitalizing state and local government . . . (and) requires each state to submit . . . a report annually on the state's progress . . ." Its sponsors further describe it as "an important first step" towards increased centralization of governments.

In this amendment lies the threat of extinction for every small municipal government in America. Although the Rosenthal Amendment does not require immediate dismantling of small town governments, it clearly sets consolidation and "efficiency" as a federal goal.

It is incomprehensible to me that this Committee or this Congress might accept such a policy—especially as a section of the revenue sharing program.

I have faith in the ability of the citizens of local jurisdictions to elect a representative government which will use the federal funds it receives in a manner which benefits the community as a whole. But instead of strengthening local government, the many amendments attached to the State and Local Fiscal Assistance Act by the Committee's bill would throw the door wide open for federal domination of smaller communities.

I believe that H.R. 13367 as reported negates the trust which the Congress quite properly placed in local governments. Its effect upon these small governments would be so far-reaching, and so dangerous, that I firmly believe it should not be passed in its present form.

GLENN ENGLISH.

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We support the continuation of the State and Local Fiscal Assistance Act, better known as the "General Revenue Sharing" program. The bill repored by this Committee makes many significant improvements in the program in the areas of citizen participation, reporting requirements and eliminating discrimination. We have done away with the restrictive categories in which revenue sharing funds had to be spent and, by doing so, have more fully implemented the concept on which revenue sharing is based, that is, letting State and local elected officials, who are close to the people, have the decision-making power to determine the most effective means for meeting their own community needs, which they know best.

Unfortunately, this Committee has, in one most significant instance, taken a giant step backwards. We refer to the amendment offered by Congressman Rosenthal which was adopted, on reconsideration, by a one vote margin in Committee and which we strongly oppose. It now apears in the bill as Section 9. An amendment will be offered on the floor to strike it.

The amendment requires that each State government prepare and develop a "master plan" and "timetable" for "modernizing" and "revitalizing" State and local governments. It further spells out the criteria which the States may use in developing their master plan, and requires the subcommission by the Scretary of Treasury of annual reports to Congress on their progress in meeting these goals. The criteria include, but are not limited to:

Easing the restrictions on the borrowing and taxing powers of local governments;

Liberalizing municipal annexation of unincorporated areas;

Authorizing city-council consolidation or transfers of specified functions between municipalities and counties;

Authorizing municipalities to exercise extraterritorial planning, zoning and subdivision control over unincorporated areas not subject to effective county control;

Developing minimum State standards for services at the State and local level; and

Reducing the number of local governments too small to provide efficient administration possessing inadequate fiscal resources.

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The Rosenthal amendment is a death-dealing blow to the whole concept of a federal system of government. It is clearly the first step at letting some bureaucrat in Washington impose his ideas of "modern" and "revitalized" local and State government on the 50 States and the 37,000 local governments across the nation.

The amendment is described as "permissive" in nature, but its proponents further call it ". . . an important first step." A first step is necessarily followed by a second step, and then more steps until we reach a junction in the road which this Committee, in reporting reenactment of general revenue sharing, never intended to follow. In this "first" step we are *admonishing* the State and local governments. Will our next step be to *require* them, and then to *administer* a modernization and revitalization plan stamped out by Washington? Will the distribution of revenue sharing funds be tied to the efforts of State and local governments to comply with the master plan?

Is the federal government itself, after all, the model of efficiency and modernization that we are asking of State and local governments through this amendment? Perhaps we should apply the criteria set forth in the Rosenthal amendment to ourselves first before we point a finger, albeit advisory, at our State and local governments. "Physician, heal thyself."

Some of the criteria set forth in this amendment, such as improving local tax bases, authorizing intergovernmental contracts, etc., may be worthy of consideration and desirable ends in and of themselves. However, each of these may be desirable, only if initiated by the State and local government in this country what is an improvement for them in modernizing their governmental structure. If the constituents of these States and local jurisdictions don't like the way things are run, let them send the message.

The general revenue sharing program is not the proper vehicle to implant every Member's ideas of what is improved local government. In April, last year, the General Accounting Office issued a report which concluded that the general revenue sharing program was not the vehicle to bring about or even encourage "modernization" of local governments. In the appendix to that GAO report, entitled "Revenue Sharing and Local Government Modernization," Daniel J. Elazar of the Center for the Study of Federalism at Temple University states:

> . . . it would be both infeasible and inappropriate to amend the Revenue Sharing Act to provide inducements for modernization. In part, this is because it is unclear precisely what modernization involves these days. Beyond that, the political and administrative problems of establishing a single federally enforceable pattern are enormous and likely to be counter-productive. Moreover, the value judgments that must be made before such a plan could be enacted into legislation are very great indeed. One of the great values of federalism is the possibility it offers for diversity and experimentation. Both exist in great measure in the United States today and any actions that might reduce either deserve long and careful consideration. Finally, congressional action to attach serious conditions to general revenue sharing would by any standards be a radical departure from the original premises of the revenue sharing idea and would change the character of revenue sharing beyond recognition.

Our system of government is a federal system. The states and their subdivisions are part of that system. This Rosenthal amendment charts a new course in the federal-state-local relationship. If the Rosenthal amendment is not deleted, we will undermine the entire Constitutional concept of federalism. The Rosenthal amendment is at best a dangerous precedent.

Some local governmental structures have been in existence longer than even our federal structure. Many of them operate with a level of representation and a record of achievements deserving of our envy. Yet the Rosenthal amendment suggests that these governments adopt new ways of handling community needs, even though they may have been successfully dealt with for generations.

We believe in the precepts on which general revenue sharing is based. It is a straightforward approach which recognizes the ability of elected State and local government officials to identify and resolve their own problems. It restores tax revenues to local officials, and expresses our confidence in their ability to use these funds wisely. The Rosenthal amendment cuts into the trust we have affirmed in local officials and jeopardizes the basic concept of general revenue sharing.

The cost of developing a master plan and the subsequent implementation of it, dilutes the purpose of these funds for community services and could in the long run exceed the amount of total federal dollars derived, in addition to the legal threat it poses to our Constitutional federal system of government.

By adopting an amendment to delete Section 9, the House of Representatives will reaffirm its belief in the federal system and its support of the concept behind general revenue sharing. The dollars that State and local governments would receive could not be worth the cost of converting our States into provinces and our local governments into administrative precincts molded and run by a powerful central government in Washington. That would be the end of our federal system.

ELLIOTT H. LEVITAS.
L. H. FOUNTAIN.
DON FUQUA.
RICHARDSON PREYER.
FRANK HORTON.
JOHN N. ERLENBORN.
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WILLIS D. GRADISON, JR.

ADDITIONAL VIEWS OF HON. FRANK HORTON, HON. JOHN N. ERLENBORN, HON. JOHN W. WYDLER, HON. CLARENCE J. BROWN, HON. PAUL N. McCLOSKEY, JR., HON. SAM STEIGER, HON. CHARLES THONE, HON. ALAN STEELMAN, HON. JOEL PRITCHARD, HON. EDWIN B. FORSYTHE, ROBERT W. KASTEN, JR., HON. WILLIS D. GRADISON, JR., AND HON. GARRY BROWN

When the State and Local Fiscal Assistance Act of 1972 was signed into law, government officials from towns, cities, counties, and States heralded its enactment as the most significant change in Federal-State-local relations since the beginning of the New Deal.

During the nearly five years of the program, $30.2 billion has been distributed to 39,000 units of government. The funds made available under this program, with a minimum of restriction, have reduced the increasing pressure on State and local governments' budgets.

On Thursday, May 6, 1976, the Full Government Operations Committee approved a bill to extend this program for 3¾ years. The proposal contains some excellent provisions including an entitlement mechanism for funding revenue sharing and a long-term authorization of 3¾ years.

However, the bill also includes some provisions which are alien to the concept of General Revenue Sharing; burdensome in the requirements they impose on State and local governments; and contrary to the structure of a Federal system of government.

The Rosenthal amendment

Central to the purposes of General Revenue Sharing, is the goal of providing fiscal assistance to State and local governments without the encumbrances of traditional categorical assistance. One amendment approved by the Committee would add a restriction which will inevitably lead to a conversion of revenue sharing into a bureaucratic nightmare. This is the Rosenthal "Modernization of Government Amendment."

The Rosenthal Amendment would have each State government prepare and develop a master plan and timetable for modernizing State and local government. But the master plan is to be designed according to Washington-defined goals as outlined in the subsections (c) (d) and (e) of the amendment.

The Rosenthal Amendment also directs the Governor of each State to submit the proposed master plan to the State legislature, and to the chief executive officer and legislative body of each county government, township government and other units of local governments.

The responses of these governments are to be compiled and submitted to the Secretary of the Treasury on an annual basis who in turn is supposed to submit an annual "progress" report to the Congress.

This is bureaucratic red tape at its worst. The number of reports

generated by the Rosenthal Amendment will place additional burdens on all levels of government WITHOUT any demonstrable benefit.

The standards for modernization established in the amendment include such laudable goals as "... substantially improving the effectiveness, economy and equity of State and local government." By what standards are effectiveness, economy and equity measured? The standards for the design of State and local governments are the province of their constituencies.

We oppose the creation of another self-perpetuating Federal bureaucracy to pass judgment on these non-Federal concerns.

Reporting requirements

The reporting requirements now imposed on recipient governments are a good example of how both the Subcommittee and the Full Committee have loaded down the program with requirements without looking at the implications of these requirements for the governments that must administer the program. Reporting requirements for any program should be designed to meet the following needs:

1. To inform citizens of the expected arrival of revenue sharing funds and to prepare them to participate if they so desire in the allocation of these resources;
2. To inform the Treasury and Congress of how recipient governments have chosen to spend the money; and
3. To provide some basis for ascertaining whether recipient governments have allocated funds in compliance with the law.

These three purposes strongly suggest that the reporting requirements of the Bill represent the collection of information for information's sake.

Specifically, it is not necessary for Congress or the Treasury to collect Proposed Use Reports. Actual Use Reports are enough. Proposed Use Reports serve the important purpose of preparing citizens for participation in the local budget process, but because of their tenuous nature, such reports are of little use to the Federal officials.

Unless a compelling purpose can be identified, why should we require Federal employees to receive, read, and categorize 39,000 Planned Use Reports ranging in complexity from a few pages for small localities, to many volumes for States and large cities and counties.

The requirement of the Bill to automatically send copies of the Actual Use Report to each of the Governor's offices is another good example of unnecessary reporting. This provision assumes that all Governors wish to receive such reports and would do something useful with these reports after they receive them. Such reports should be available to Governors only upon request.

The Full Committee added an additional and unnecessary record keeping provision that requires all 39,000 recipient governments to identify particular items in their budgets funded by revenue sharing. The only useful purpose of this provision is to put recipient governments on notice that they must strictly account for the expenditure of these funds.

This strict accounting would assist recipient governments in countering nondiscrimination suits by helping to meet the requirements of clear and convincing evidence of the uses chosen for revenue sharing

funds. Adding this requirement to the bill, however, conflicts with positions supposedly taken by both the Subcommittee and the Full Committee that revenue sharing funds are by their very nature fungible. Under this view, no amount of accounting will help to separate sharing funds from other tax revenues. As a consequence, the requirement to identify with great precision the use of revenue sharing funds will prove to be another example of a meaningless Federal requirement.

Until now the reporting of proposed and actual use of revenue sharing funds was done at the time recipient governments received notice from Treasury of the arrival of funds. This allocation of funds could occur at any time in a local government's fiscal year. The bill, as written, would tie reporting and citizen participation requirements to the local budget process. Local governments must allocate revenue sharing funds at the same time they allocate their own resources. While this objective is laudable, the proponents of this change have failed to account for the fact that 94 percent (see Exhibit I) of the local governments of this country have budget cycles different from that of the Federal government.

Unless over 35,000 recipient governments change their fiscal cycles to correspond with the Federal fiscal year, which is neither reasonable nor desirable, it will not be possible for these governments to comply in good faith with this provision.

If the requirement is not changed, these governments will have to resort to accounting tricks and gimmicks to meet the letter of the law. This result flies in the face of the Committee's intent to improve meaningful citizen participation, planning and accountability for the use of revenue sharing funds.

EXHIBIT I

SUMMARY OF LOCAL GOVERNMENT FISCAL YEARS

	Number of governments	Percent of total
Fiscal year ending:		
Jan. 31	14	*
Feb. 29	1,034	2.7
Mar. 31	7,114	19.1
Apr. 30	1,267	3.3
May 31	618	1.6
June 30	6,885	18.5
Sept. 30	2,252	6.0
Nov. 30	102	.2
Dec. 31	17,993	48.3
Total	37,279	99.7

Note: Main point—94 percent of all local governments have fiscal years ending at a date different from that of the Federal Government. 85 percent of all local governments have fiscal years ending at 1 of the following dates: Mar. 31, June 30, Dec. 31.

Source: Bureau of Census.

Auditing requirements

The Committee bill requires an audit of the entire recipient government's finances rather than just those programs funded in whole or in part by revenue sharing. Few major local governments conduct audits of *all* their finances each year. Many programs are audited on a three or four year cycle. To require that a major city like New York or Chicago completely audit all of its finances yearly would be an expensive proposition requiring tremendous audit staffs producing thick documents that may hardly change much from year to year.

The Committee has not focused on what is to be done with this audit information. Clearly, this requirement will yield much more than is necessary to determine compliance with provisions of the Act. This extra information is compiled at great cost which will serve no purpose except to increase the burden of Federal paperwork.

The Committee Bill requires that these financial audits be in accordance with generally accepted auditing standards. Yet, it is not at all clear that such standards exist in operational form for State and local governments.

Proponents of these audit standards argue that such audits will prevent local governments from bankruptcy similar to what befell New York City. The proponents fail to address the fact that audit reports usually fail to confront the really important questions that pertain to the fiscal solvency of State and local government. There are many different ways to estimate revenues and expenses. Playing with these techniques is the way some State and local governments bring their budgets into "balance." Audit reports tend not to focus on the important questions of whether a budget is actually in balance, whether estimating techniques are valid, and whether the steps necessary to achieve or maintain balance of revenues and expenses have been taken On the contrary, audit reports tend to focus only on whether funds have been expended in the manner appropriated. As a consequence, the important information promised by the author of this amendment may never materialize.

Nondiscrimination provisions

Since the early 1960's, the Congress has repeatedly enacted civil rights legislation designed to bring the full power of Federal enforcement mechanisms to bear on guaranteeing constitutionally protected rights for all American citizens. Beginning with the historic Civil Rights Act of 1964, the Congress has reaffirmed its commitment to strong civil rights enforcement through the Public Accommodations Act, the Equal Employment Act and the Voting Rights Act.

When markup of the General Revenue Sharing extension proposals began in earnest early in 1976, a bipartisan effort was started to provide an improved nondiscrimination provision commensurate with the scope of the General Revenue Sharing program. Legitimate criticism had been lodged against the Office of Revenue Sharing for its lack of initiative in enforcing the nondiscrimination provision of the existing law.

The basic goal of the Subcommittee was to "send the Office a Revenue Sharing a message" that effective civil rights enforcement was a principal goal of the Congress in its extension of the revenue sharing program.

The provisions which emerged from the Subcommittee on Intergovernmental Relations and Human Resources were extremely comprehensive in that they extended the nondiscrimination protections to all activities of local government unless it could be proved by clear and convincing evidence that revenue sharing funds were not used in the activity where the discrimination was alleged.

The provision contained procedural safeguards for recipient governments but simultaneously removed discretion from the Office of Revenue Sharing on the timing and degree of fund suspension and/or termination.

When the Full Committee on Government Operations met on May 6, 1976, an alternative was approved that eliminated many of the procedural safeguards in the Subcommittee provisions.

Principal among these modifications is a provision permitting the suspension of revenue sharing funds on the basis of the filing of a civil action alleging discrimination on the part of a recipient government by the Attorney General of the United States WHETHER OR NOT THE USE OF REVENUE SHARING FUNDS IS EVEN ALLEGED. This provision places in perpetual doubt the continuation of revenue sharing funds to each recipient government. The continuing threat of suspension would have a devastating impact on local budget planning and would place in continual jeopardy the delivery of services to those most in need.

Another provision of the nondiscrimination section modified in the Full Committee requires the Attorney General to participate in all compliance agreements developed by the Department of Treasury and the Office of Revenue Sharing. This change was made despite the Department of Justice clearly stating that such an arrangement would be an administrative nightmare which would undercut litigation the Justice Department might already be pursuing.

Finally, the Committee agreed to a provision on private citizen suits which permits the awarding of attorney's fees only to the prevailing plaintiff, to enforce any provision of the Act.

The issue of the propriety of awarding attorney's fees is secondary. The central question is whether the United States government shall be in the position of defendant or plaintiff in civil rights enforcement cases. If the United States becomes a defendant in every civil rights case involving revenue sharing funds, its capacity to enforce laws will be severely limited. The Justice Department's enforcement powers would be greatly strengthened if such private suits were authorized against State or local governments, but not the Federal government. The role of the Justice Department should be the enforcement of the civil rights provision through litigation. The present provisions on private citizen suits would severely limit that capacity.

These modifications approved by the Full Committee will not improve the operations of the revenue sharing program, nor will they enhance the civil rights enforcement record of the Office of Revenue Sharing *vis a vis* the provisions approved by the Subcommittee. On the contrary, they could substantially reduce the number of Justice Department lawsuits since any discrimination alleged at the State or local level will trigger suspension of revenue sharing funds within 45 days.

Extension of the Davis-Bacon Act

Under P.L. 92–512, the original General Revenue Sharing Act, the Davis-Bacon wage standards were to be applied to any construction project of a recipient government which received 25 percent or more of the funds for that project from General Revenue Sharing funds.

The provision approved by the Committee would apply to the Davis-Bacon provisions to all local construction projects, regardless of the percentage of revenue sharing funds used.

Advocates for this modification justified their position by arguing that some local governments had used 24 percent revenue sharing funds in construction to avoid the Davis-Bacon wage requirements. While there has been little in the way of documentation of this charge, the Committee agreed to eliminate the 25 percent requirement.

The manner in which the Davis-Bacon Act is administered by the Department of Labor is likely to drive the cost of construction beyond the reach of many small and medium size local governments.

Studies by the General Accounting Office have shown that Davis-Bacon Act adds from 5 to 15 percent to the cost of construction.[1] A Murray L. Wiedenbaum, "Government Mandated Price Increases-A construction projejct of a Veterans Hospital was increased by 22 percent as a result of Davis-Bacon and a public housing project in Florida by 6 percent.[2]

This issue for revenue sharing is not the validity of Davis-Bacon, but the impact of using revenue sharing as a vehicle for extending Federal regulations and controls over all facets of State and local government activities.

Over half of the 39,000 recipient governments receive less than $7,000 annually in revenue sharing funds. In countless cases, extending the applicability of Davis-Bacon standards to all construction projects by these governments would add more in construction costs than the government receives in revenue sharing.

Supplemental fiscal assistance

The Supplemental Fiscal Assistance Provision allocates $150 million along the lines specified in the Fascell formula, H.R. 10319.

Under the bill, as written, the supplemental funds come from the current formula. The amount of money authorized for the current or standard formula was the annualized amount of the last entitlement period. This supplemental appropriation is achieved by reducing this funding level by $150 million. This provision has the effect of reducing the standard revenue sharing program by $150 million, thus reducing the standard revenue sharing allocation to *each* recipient government.

The formula includes a poverty factor which is achieved by substituting the percentage of people below the poverty line in place of the per capita income figure that is used in the current formula.

Major problems with this supplemental fiscal assistance

1. The decision to allocate an extra "pot" of money to State and local governments to recognize particular needs is laudable. It is questionable as to whether the Fascell formula is the best formula for doing this.

The question is: Which needs should be addressed that are not being addressed under the current law? The Committee has never really focused on this question. The formula for allocating this Supplemental Fiscal Assistance does not address many of the commonly recognized problems of State and local government.

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[1] See Murray L. Weidenbaum, "Government Mandated Price Increases—A Neglected Aspect of Inflation," A.E.I. 1975, p. 62.
[2] *Ibid.*, p. 62.

For example:

a. The formula does not benefit the large urban industrial States that have been impacted so severely by the recession.

b. The formula does not favor States that have higher than average unemployment rates. (Exhibit II)

c. Many cities in dire financial straits would receive no supplemental funds at all. Other local governments with no apparent need get an increase in their allocations.

For example: Yonkers, New York which almost went bankrupt earlier this year would receive no additional funds under the supplemental add-on provision. Yet Vail, Colorado which already has a high per capita allocation would receive a 16 percent increase in funds.

The Supplemental Assistance Provision does not recognize that the responsibility for the provision of social services varies from government to government. In many cases, there are four different levels of government: State, county, townships and municipalities. Only one level may have primary responsibilities for the provision of social services. Yet, the proposal would dump money on all four levels regardless of their ability to use the funds.

Any supplement to the revenue sharing program that professes to apply money to social needs cannot afford to overlook the fact that only certain levels of government have the responsibility of providing these services.

In summary, applying this Supplemental Fiscal Assistance reduces the allocation to the current revenue sharing program to a level below the current funding level of 6.65 annually (Entitlement Period 7). This $150 million is then reallocated on the basis of a formula that has not been the subject of much debate and may have serious distributional inequities.

EXHIBIT II

IMPACT OF SUPPLEMENTAL FISCAL ASSISTANCE PROVISION ON STATES WITH UNEMPLOYMENT RATES HIGHER THAN THE NATIONAL AVERAGE (NATIONAL AVERAGE 8.3, DECEMBER 1975)

	State and local government losses				State and local government gains		
	Unemployment rate	Dollar loss (thousands)	Percent reduction		Unemployment rate	Dollar gain (thousands)	Percent gain
Michigan	12.5	1,824	0.7	Massachusetts	11.8	1,250	0.6
Rhode Island	12.4	334	1.2	Oregon	10.4	2,034	2.9
Florida	11.7	1,438	.7	Alaska	9.6	300	3.1
Connecticut	10.5	548	.6	South Carolina	9.5	1,817	1.9
New York	10.3	765	.1	Delaware	9.5	615	3.1
New Jersey	9.9	2,274	1.1	Georgia	8.7	3,116	2.2
Maine	9.7	758	1.8	Montana	8.4	(1)	(2)
Vermont	9.5	349	1.7	Alabama	8.4	1,290	1.2
Arizona	9.4	1,284	1.9				
California	9.4	13,407	1.9	Total gain		10,422	
Pennsylvania	8.8	556	.2				
Washington	8.7	1,790	1.8				
Total loss		25,327					

[1] Less than 1,000
[2] Less than 1 percent

Note main point.—The supplementary fiscal assistance provision does not benefit States that have been severely impacted by the recession. Of the 20 States with higher than average unemployment rates, 12 of them fail to benefit from this supplementary assistance. This supplementary provision would deny them some $25,000,000 that would accrue to them if the $150,000,000 were allocated under the current formula.

Conclusion

The legislative process requires that differing points of view come together in order to achieve positive results. But, when the proposals of some become so contrary to the purposes of an individual piece of legislation as to violate its basic intent, these proposals can no longer be the basis of agreement and compromise. The amendments to revenue sharing extension bill discussed in these additional views represent such violations of the program's intent.

Perhaps, some of these amendments are well intentioned. However, taken individually or together, they represent the conversion of General Revenue Sharing into a burdensome and convoluted program guaranteed to strangle the lifeblood from most units of State and local government by reducing or eliminating the benefits that should flow from Federal revenue sharing assistance. Neither the interest groups supporting these amendments, nor the opponents of General Revenue Sharing who have supported them in the name of reform, are well served by such actions.

We, the undersigned, supported the Committee Bill because of our strong commitment to the General Revenue Sharing concept, and because it is urgent that Congress act to extend this program. We are confident that the Full House of Representatvies will see fit to modify the injurious provisions so that revenue sharing will continue to exist as a model of Federal cooperation—not of Federal interference—with State and local governments and their citizens.

FRANK HORTON.
JOHN N. ERLENBORN.
JOHN W. WYDLER.
CLARENCE J. BROWN.
PAUL MCCLOSKEY, Jr.
SAM STEIGER.
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ROBERT W. KASTEN, Jr.
WILLIS D. GRADISON, Jr.
GARRY BROWN.

ADDITIONAL VIEWS OF HON. JOHN N. ERLENBORN

The Davis-Bacon Act was originally designed to insure the integrity of union wage scales in the construction industry where a threat of non-union employment existed. It is, therefore, ironic, that a decision made by the Full Committee extending Davis-Bacon to all local construction projects will result in destroying the integrity of the General Revenue Sharing program.

When revenue sharing was originally enacted, a provision of the law required the application of Davis-Bacon wage standards where 25 percent of a local construction project was financed by revenue sharing funds. This provision, agreed to after extensive negotiations with the interested unions, was to protect the union wage scales where substantial Federal funds were involved.

There were many Members of Congress at the time of the original enactment who expressed concern about this provision. I believe it was a valid compromise and adhere to that view today.

The action taken by the full Committee, however, is a potential disaster for many local governments. In a recent study published by The Wharton School of Finance of the University of Pennsylvania, Professor Armand J. Thiebolt, Jr. strongly criticized any applicability of Davis-Bacon. He wrote in part:

> Without question, the greatest disadvantage of Davis-Bacon is its cost. Exclusive of residual, multiplying, or escalating effects, Davis-Bacon costs more to operate than the whole federal judiciary establishment, and perhaps more to run than the entire legislative branch of government. A very conservative estimate would be one-quarter to one-half of a billion dollars per year in administration and excess construction costs over what a free market would provide. To this estimate must be added the inflationary impact which Davis-Bacon creates by favoring union rates, which then spread from government construction to private construction and hence establish an escalating superminimum wage rate for the industry. Including these effects might well bring the total annual cost of the Davis-Bacon Act to $1.5 billion.[1]

Whether Davis-Bacon standards are applicable to all local construction projects is critical to continuation of many small and medium sized governments in the program.

Over 50 percent of the 39,000 recipients of revenue sharing funds receive less than $7,000. On an average $100,000 capital construction project by a local community, an increase in cost in excess of 7 percent would eliminate any financial benefit of the program.

Studies by the General Accounting Office have shown that the Davis-Bacon Act adds from 5 to 15 percent to the cost of Federal construction.

[1] Labor Relations and Public Policy Series, "The Davis-Bacon Act," 1975, p. 170.

Professor Yale Brozen of the University of Chicago has reported that in many instances the U.S. Department of Labor, which sets the "minimum scale" of union pay for Federal projects, uses figures that are higher than those prevailing in the area where the work is being done. In 50 percent of the cases, the Labor Department used union rates from a country other than that in which the work was being done.[2]

Such excessive upward pressure on construction costs can only force many units of local government out of the revenue sharing program. The impact of this on the economy of those areas which would be forced to refuse revenue sharing funds can only serve to drive down pay scales as the governments cut construction projects and other capital expenditures.

The Davis-Bacon provision in the existing law is sufficiently strong to protect the rights of union pay scales. It should be preserved in the bill to which the House of Representatives ultimately agrees.

JOHN N. ERLENBORN.

[2] Brozen, Yale, "The Law That Boomeranged," *Nation's Business*, April, 1974, pp. 71–72.

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94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT 94–
2d Session } 1165, Part II

FISCAL ASSISTANCE AMENDMENTS OF 1976

MAY 27, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BROOKS, from the Committee on Government Operations, submitted the following

SUPPLEMENTAL REPORT

[To accompany H.R. 13367]

1. This portion of the supplemental report corrects the heading of the report for the bill (H.R. 13367), as reported, which appears on the first page of the report submitted on May 15, 1976 (H. Rept. 94–1165, Part 1).

The report heading should read as follows:

FISCAL ASSISTANCE AMENDMENTS OF 1976

2. This portion of the supplemental report shows changes in existing law made by the bill (H.R. 13367), as reported, which had technical errors in the report submitted on May 15, 1976 (H. Rept. 94–1165, Part 1).

XII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

STATE AND LOCAL FISCAL ASSISTANCE ACT OF 1972

AN ACT to provide fiscal assistance to State and local governments, to authorize Federal collection of State individual income taxes, and for other purposes

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

TITLE I—FISCAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

Subtitle A—Allocation and Payment of Funds

SEC. 101. SHORT TITLE.

This title may be cited as the "State and Local Fiscal Assistance Act of 1972".

SEC. 102. PAYMENTS TO STATE AND LOCAL GOVERNMENTS.

Except as otherwise provided in this title, the Secretary shall, for each entitlement period, pay [out of the Trust Fund] to—

(1) each State government a total amount equal to the entitlement of such State government determined under section 107 for such period, and

(2) each unit of local government a total amount equal to the entitlement of such unit determined under section 108 for such period.

In the case of entitlement periods ending after the date of the enactment of this Act, such payments shall be made in installments, but not less often than once for each quarter, and, in the case of quarters ending after September 30, 1972, shall be paid not later than 5 days after the close of each quarter. Such payments for any entitlement period may be initially made on the basis of estimates. Proper adjustment shall be made in the amount of any payment to a State government or a unit of local government to the extent that the payments previously made to such government under this subtitle were in excess of or less than the amounts required to be paid.

[SEC. 103. USE OF FUNDS BY LOCAL GOVERNMENTS FOR PRIORITY EXPENDITURES.

[(a) IN GENERAL.—Funds received by units of local government under this subtitle may be used only for priority expenditures. For purposes of this title, the term "priority expenditures" means only—

[(1) ordinary and necessary maintenance and operating expenses for—

[(A) public safety (including law enforcement, fire protection, and building code enforcement),

[(B) environmental protection (including sewage disposal, sanitation, and pollution abatement),

[(C) public transportation (including transit systems and streets and roads),

[(D) health,

[(E) recreation,

[(F) libraries,

[(G) social services for the poor or aged, and

[(H) financial administration; and

[(2) ordinary and necessary capital expenditures authorized by law.

[(b) CERTIFICATES BY LOCAL GOVERNMENTS.—The Secretary is authorized to accept a certification by the chief executive officer of a unit of local government that the unit of local government has used the funds received by it under this subtitle for an entitlement period only for priority expenditures, unless he determines that such certification

is not sufficiently reliable to enable him to carry out his duties under this title.

[SEC. 104. PROHIBITION ON USE AS MATCHING FUNDS BY STATE OR LOCAL GOVERNMENTS.

[(a) IN GENERAL.—No State government or unit of local government may use, directly or indirectly, any part of the funds it receives under this subtitle as a contribution for the purpose of obtaining Federal funds under any law of the United States which requires such government to make a contribution in order to receive Federal funds.

[(b) DETERMINATIONS BY SECRETARY OF THE TREASURY.—If the Secretary has reason to believe that a State government or unit of local government has used funds received under this subtitle in violation of subsection (a), he shall give reasonable notice and opportunity for hearing to such government. If, thereafter, the Secretary of the Treasury determines that such government has used funds in violation of subsection (a), he shall notify such government of his determination and shall request repayment to the United States of an amount equal to the funds so used. To the extent that such government fails to repay such amount, the Secretary shall withhold from subsequent payments to such government under this subtitle an amount equal to the funds so used.

[(c) INCREASED STATE OR LOCAL GOVERNMENT REVENUES.—No State government or unit of local government shall be determined to have used funds in violation of subsection (a) with respect to any funds received for any entitlement period to the extent that the net revenues received by it from its own sources during such period exceed the net revenues received by it from its own sources during the one-year period beginning July 1, 1971 (or one-half of such net revenues, in the case of an entitlement period of 6 months).

[(d) DEPOSITS AND TRANSFERS TO GENERAL FUND.—Any amount repaid by a State government or unit of local government under subsection (b) shall be deposited in the general fund of the Treasury. An amount equal to the reduction in payments to any State government or unit of local government which results from the application of this section (after any judicial review under section 143) shall be transferred from the Trust Fund to the general fund of the Treasury on the day on which such reduction becomes final.

[(e) CERTIFICATES BY STATE AND LOCAL GOVERNMENTS.—The Secretary is authorized to accept a certification by the Governor of a State or the chief executive officer of a unit of local government that the State government or unit of local government has not used any funds received by it under this subtitle for an entitlement period in violation of subsection (a) unless he determines that such certification is not sufficiently reliable to enable him to carry out his duties under this title.]

SEC. 105. [CREATION OF TRUST FUND;] APPROPRIATIONS; *AUTHORIZATIONS FOR ENTITLEMENTS.*

[(a) TRUST FUND.—

[(1) IN GENERAL.—There is hereby established on the books of the Treasury of the United States a trust fund to be known as the "State and Local Government Fiscal Assistance Trust Fund" (referred to in this subtitle as the "Trust Fund"). The Trust Fund

shall remain available without fiscal year limitation and shall consist of such amounts as may be appropriated to it and deposited in it as provided in subsection (b). Except as provided in this title, amounts in the Trust Fund may be used only for the payments to State and local governments provided by this subtitle.

[(2) TRUSTEE.—The Secretary of the Treasury shall be the trustee of the Trust Fund and shall report to the Congress not later than March 1 of each year on the operation and status of the Trust Fund during the preceding fiscal year.]

(a) IN GENERAL.—Funds appropriated pursuant to subsections (b) and (c) shall remain available without fiscal year limitation and shall be used for the payments to State and local governments as provided by this title. The Secretary of the Treasury shall report to the Congress not later than January 15 of each year on the operations and payments under this subtitle during the preceding fiscal year.

(b) APPROPRIATIONS.—

(1) IN GENERAL.—There is appropriated [to the Trust Fund, out of amounts in the general fund of the Treasury attributable to the collections of the Federal individual income taxes not otherwise appropriated] *for the purpose of making the payments authorized by this subtitle*—

(A) for the period beginning January 1, 1972, and ending June 30, 1972, $2,650,000,000;

(B) for the period beginning July 1, 1972, and ending December 31, 1972, $2,650,000,000;

(C) for the period beginning January 1, 1973, and ending June 30, 1973, $2,987,500,000;

(D) for the fiscal year beginning July 1, 1973, $6,050,000,000;

(E) for the fiscal year beginning July 1, 1974, $6,200,000,000;

(F) for the fiscal year beginning July 1, 1975, $6,350,000,000; and

(G) for the period beginning July 1, 1976, and ending December 31, 1976, $3,325,000,000.

(2) NONCONTIGUOUS STATES ADJUSTMENT AMOUNTS.—There is appropriated [to the Trust Fund, out of amounts in the general fund of the Treasury attributable to the collections of the Federal individual income taxes not otherwise appropriated] *for the purpose of making the payments authorized by this subtitle*—

(A) for the period beginning January 1, 1972, and ending June 30, 1972, $2,390,000;

(B) for the period beginning July 1, 1972, and ending December 31, 1972, $2,390,000;

(C) for the period beginning January 1, 1973, and ending June 30, 1973, $2,390,000;

(D) for each of the fiscal years beginning July 1, 1973, July 1, 1974, and July 1, 1975, $4,780,000; and

(E) for the period beginning July 1, 1976, and ending December 31, 1976, $2,390,000.

[(3) DEPOSITS.—Amounts appropriated by paragraph (1) or (2) for any fiscal year or other period shall be deposited in the

Trust Fund on the later of (A) the first day of such year or period, or (B) the day after the date of enactment of this Act.]

(c) AUTHORIZATION OF APPROPRIATIONS FOR ENTITLEMENTS.—

(1) IN GENERAL.—There are authorized to be appropriated to pay the entitlements hereinafter provided in this subtitle—

(A) for the period beginning January 1, 1977, and ending September 30, 1977, $4,987,500,000; and

(B) for the fiscal years beginning on October 1 of 1977, 1978, and 1979, $6,650,000,000,

except that sums authorized hereunder for any entitlement period in excess of the amount specified in section 103(a)(1) or (2) for that period shall be distributed under subtitle D of this title as an entitlement.

(2) NONCONTIGUOUS STATES ADJUSTMENT AMOUNTS.—There are authorized to be appropriated to pay the entitlements hereinafter provided—

(A) for the period beginning January 1, 1977, and ending September 30, 1977, $3,585000;; and

(B) for each of the fiscal years beginning on October 1 of 1977, 1978, and 1979, $4,780,000.

[(c) TRANSFERS FROM TRUST FUND TO GENERAL FUND.—The Secretary shall from time to time transfer from the Trust Fund to the general fund of the Treasury any moneys in the Trust Fund which he determines will not be needed to make payments to State governments and units of local government under this subtitle.]

(d) TRANSFERS TO THE GENERAL FUND.—The Secretary shall from time to time transfer to the general fund of the Treasury any funds available for this subtitle which he determines will not be needed to make payments to State governments and units of local government under this subtitle.

SEC. 106. ALLOCATION AMONG STATES.

[(a) IN GENERAL.—There shall be allocated to each State for each entitlement period, out of amounts appropriated under section 105(b)(1) for that entitlement period, an amount which bears the same ratio to the amount appropriated under that section for that period as the amount allocable to that State under subsection (b) bears to the sum of the amounts allocable to all States under subsection (b).]

(a) IN GENERAL.—There shall be allocated an entitlement to each State—

(1) for each entitlement period beginning prior to December 31, 1976, out of amounts appropriated under section 105(b)(1) for that entitlement period, an amount which bears the same ratio to the amount appropriated under that section for that period as the amount allocable to that State under subsection (b) bears to the sum of the amounts allocable to all States under subsection (b); and

(2) for each entitlement period beginning on or after January 1, 1977, out of amounts authorized under section 105(c)(1) for that entitlement period which are not reserved for distribution under subtitle D, an amount which bears the same ratio to the amount so available under that section for that period as the

amount allocable to that State under subsection (b) bears to the sum of the amounts allocable to all States under subsection (b).

(b) DETERMINATION OF ALLOCABLE AMOUNT.—

(1) IN GENERAL.—For purposes of subsection (a), the amount allocable to a State under this subsection for any entitlement period shall be determined under paragraph (2), except that such amount shall be determined under paragraph (3) if the amount allocable to it under paragraph (3) is greater than the sum of the amounts allocable to it under paragraph (2) and subsection (c).

(2) THREE FACTOR FORMULA.—For purposes of paragraph (1), the amount allocable to a State under this paragraph for any entitlement period is the amount which bears the same ratio to $5,300,000,000 as—

(A) the population of that State, multiplied by the general tax effort factor of that State, multiplied by the relative income factor of that State, bears to

(B) the sum of the products determined under subparagraph (A) for all States.

(3) FIVE FACTOR FORMULA.—For purposes of paragraph (1), the amount allocable to a State under this paragraph for any entitlement period is the amount to which that State would be entitled if—

(A) ⅓ of $3,500,000,000 were allocated among the States on the basis of population.

(B) ⅓ of $3,500,000,000 were allocated among the States on the basis of urbanized population.

(C) ⅓ of $3,500,000,000 were allocated among the States on the basis of population inversely weighted for per capita income.

(D) ½ of $1,800,000,000 were allocated among the States on the basis of income tax collections, and

(E) ½ of $1,800,000,000 were allocated among the States on the basis of general tax effort.

(c) NONCONTIGUOUS STATES ADJUSTMENT.—

(1) IN GENERAL.—In addition to amounts allocated among the States under subsection (a), there shall be allocated for each entitlement period, out of amounts appropriated under [section 105(b)(2)] *subsection (b)(2) or (c)(2) of section 105*, an additional amount to any State (A) whose allocation under subsection (b) is determined by the formula set forth in paragraph (2) of that subsection and (B) in which civilian employees of the United States Government receive an allowance under section 5941 of title 5, United States Code.

(2) DETERMINATION OF AMOUNT.—The additional amount allocable to any State under this subsection for any entitlement period is an amount equal to a percentage of the amount allocable to that State under subsection (b)(2) for that period which is the same as the percentage of basic pay received by such employees stationed in that State as an allowance under such section 5941. If the total amount appropriated under section 105(b)(2) for any entitlement period *ending on or before December 31, 1976, or authorized under section 105(c)(2) for any entitlement period beginning on or after January 1, 1977*, is not sufficient to pay in full

the additional amounts allocable under this subsection for that period, the Secretary shall reduce proportionately the amounts so allocable.

SEC. 107. ENTITLEMENTS OF STATE GOVERNMENTS.

(a) DIVISION BETWEEN STATE AND LOCAL GOVERNMENTS.—The State government shall be entitled to receive one-third of the amount allocated to that State for each entitlement period. The remaining portion of each State's allocation shall be allocated among the units of local government of that State as provided in section 108.

(b) STATE MUST MAINTAIN TRANSFERS TO LOCAL GOVERNMENTS.—

(1) GENERAL RULE.—The entitlement of any State government for any entitlement period beginning on or after [July 1, 1973] *January 1, 1977*, shall be reduced by the amount (if any) by which—

(A) the average of the aggregate amounts transferred by the State government (out of its own sources) during such period and the preceding entitlement period to all units of local government in such State, is less than,

(B) the similar aggregate amount for the one-year period beginning July 1, [1971] *1976, or, until data on such period are available, the most recent such one-year period for which data on such amounts are available.*

For purposes of subparagraph (A), the amount of any reduction in the entitlement of a State government under this subsection for any entitlement period shall, for subsequent entitlement periods, be treated as an amount transferred by the State government (out of its own sources) during such period to units of local government in such State.

(2) ADJUSTMENT WHERE STATE ASSUMES RESPONSIBILITY FOR CATEGORY OF EXPENDITURES.—If the State government establishes to the satisfaction of the Secretary that since June 30, 1972, it has assumed responsibility for a category of expenditures which (before July 1, 1972) was the responsibility of local governments located in such State, then, under regulations prescribed by the Secretary, the aggregate amount taken into account under paragraph (1)(B) shall be reduced to the extent that increased State government spending (out of its own sources) for such category has replaced corresponding amounts which for the one-year period [beginning July 1, 1971,] *utilized for purposes of such paragraph* it transferred to units of local government.

(3) ADJUSTMENT WHERE NEW TAXING POWERS ARE CONFERRED UPON LOCAL GOVERNMENTS.—If a State establishes to the satisfaction of the Secretary that since June 30, 1972, one or more units of local government within such State have had conferred upon them new taxing authority, then, under regulations prescribed by the Secretary, the aggregate amount taken into account under paragraph (1)(B) shall be reduced to the extent of the larger of—

(A) an amount equal to the amount of taxes collected by reason of the exercise of such new taxing authortiy by such local governments, or

(B) an amount equal to the amount of the loss of revenue to the State by reason of such new taxing authority being conferred on such local governments.

No amount shall be taken into consideration under subparagraph (A) if such new taxing authority is an increase in the authorized rate of tax under a previously authorized kind of tax, unless the State is determined by the Secretary to have decreased a related State tax.

(4) SPECIAL RULE FOR PERIOD BEGINNING JULY 1, 1973.—In the case of the entitlement period beginning July 1, 1973, the preceding entitlement period for purposes of paragraph (1)(A) shall be treated as being the one-year period beginning July 1, 1972.

(5) SPECIAL RULE FOR PERIOD BEGINNING JULY 1, 1976.—In the case of the entitlement period beginning July 1, 1976, and ending December 31, 1976, the aggregate amount taken into account under paragraph (1)(A) for the preceding entitlement period and the aggregate amount taken into account under paragraph (1)(B) shall be one-half the amounts which (but for this paragraph) would be taken into account.

(6) SPECIAL RULE FOR THE PERIOD BEGINNING JANUARY 1, 1977.—In the case of the entitlement period beginning January 1, 1977, and ending September 30, 1977, the aggregate amount taken into account under paragraph (1)(A) for the preceding entitlement period and the aggregate amount taken into account under paragraph (1)(B) shall be three-fourths of the amounts which (but for this paragraph) would be taken into account.

[(6)] (7) REDUCTION IN ENTITLEMENT.—If the Secretary has reason to believe that paragraph (1) requires a reduction in the entitlement of any State government for any entitlement period, he shall give reasonable notice and opportunity for hearing to the State. If, thereafter, he determines that paragraph (1) requires the reduction of such entitlement, he shall also determine the amount of such reduction and shall notify the Governor of such State of such determinations and shall withhold from subsequent payments to such State government under this subtitle an amount equal to such reduction.

[(7)] (8) TRANSFER TO GENERAL FUND.—An amount equal to the reduction in the entitlement of any State government which results from the application of this subsection (after any judicial review under section 143) shall be transferred [from the Trust Fund] to the general fund of the Treasury on the day on which such reduction becomes final.

SEC. 108. ENTITLEMENTS OF LOCAL GOVERNMENTS.

(a) ALLOCATION AMONG COUNTY AREAS.—The amount to be allocated to the units of local government within a State for any entitlement period shall be allocated among the county areas located in that State so that each county area will receive an amount which bears the same ratio to the total amount to be allocated to the units of local government within that State as—

(1) the population of that county area, multiplied by the general tax effort factor of that county area, multiplied by the relative income factor of that county area, bears to

(2) the sum of the products determined under paragraph (1) for all county areas within that State.

(b) ALLOCATION TO COUNTY GOVERNMENTS, MUNICIPALITIES, TOWNSHIPS, ETC.

(1) COUNTY GOVERNMENTS.—The county government shall be allocated that portion of the amount allocated to the county area for the entitlement period under subsection (a) which bears the same ratio to such amount as the adjusted taxes of the county government bear to the adjusted taxes of the county government and all other units of local government located in the county area.

(2) OTHER UNITS OF LOCAL GOVERNMENT.—The amount remaining for allocation within a county area after the application of paragraph (1) shall be allocated among the units of local government (other than the county government and other than township governments) located in that county area so that each unit of local government will receive an amount which bears the same ratio to the total amount to be allocated to all such units as—

(A) the population of that local government, multiplied by the general tax effort factor of that local government, multiplied by the relative income factor of that local government, bears to

(B) the sum of the products determined under subparagraph (A) for all such units.

(3) TOWNSHIP GOVERNMENTS.—If the county area includes one or more township governments, then before applying paragraph (2)—

(A) there shall be set aside for allocation under subparagraph (B) to such township governments that portion of the amount allocated to the county area for the entitlement period which bears the same ratio to such amount as the sum of the adjusted taxes of all such township governments bears to the aggregate adjusted taxes of the county government, such township governments, and all other units of local government located in the county area, and

(B) that portion of each amount set aside under subparagraph (A) shall be allocated to each township government on the same basis as amounts are allocated to units of local government under paragraph (2).

If this paragraph applies with respect to any county area for any entitlement period, the remaining portion allocated under paragraph (2) to the units of local government located in the county area (other than the county government and the township governments) shall be appropriately reduced to reflect the amounts set aside under subparagraph (A).

(4) INDIAN TRIBES AND ALASKAN NATIVE VILLAGES.—If within a county area there is an Indian tribe or Alaskan native village which has a recognized governing body which performs substantial governmental functions, then before applying paragraph (1) there shall be allocated to such tribe or village a portion of the amount allocated to the county area for the entitlement period which bears the same ratio to such amount as the population of that tribe or village within that county area bears to the population of that county area. If this paragraph applies with respect to any county area for any entitlement period, the amount to be allocated under paragraph (1) shall be appropriately reduced to reflect the amount allocated under the preceding sentence. If the entitlement of any such tribe or village is waived for any

entitlement period by the governing body of that tribe or village, then the provisions of this paragraph shall not apply with respect to the amount of such entitlement for such period.

(5) RULE FOR SMALL UNITS OF GOVERNMENT.—If the Secretary determines that in any county area the data available for any entitlement period are not adequate for the application of the formulas set forth in paragraphs (2) and (3)(B) with respect to units of local government (other than a county government) with a population below a number (not more than 500) prescribed for that county area by the Secretary, he may apply paragraph (2) or (3)(B) by allocating for such entitlement period to each such unit located in that county area an amount which bears the same ratio to the total amount to be allocated under paragraph (2) or (3)(B) for such entitlement period as the population of such unit bears to the population of all units of local government in that county area to which allocations are made under such paragraph. If the preceding sentence applies with respect to any county area, the total amount to be allocated under paragraph (2) or (3)(B) to other units of local government in that county area for the entitlement period shall be appropriately reduced to reflect the amounts allocated under the preceding sentence.

(6) ENTITLEMENT.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the entitlement of any unit of local government for any entitlement period shall be the amount allocated to such unit under this subsection (after taking into account any applicable modification under subsection (c)).

(B) MAXIMUM AND MINIMUM PER CAPITA ENTITLEMENT.—Subject to the provisions of subparagraphs (C) and (D), the per capita amount allocated to any county area or any unit of local government (other than a county government) within a State under this section for any entitlement period shall not be less than 20 percent, nor more than 145 percent, of two-thirds of the amount allocated to the State under section 106, divided by the population of that State.

(C) LIMITATION.—The amount allocated to any unit of local government under this section for any entitlement period shall not exceed 50 percent of the sum of (i) such government's adjusted taxes, and (ii) the intergovernmental transfers of revenue to such government (other than transfers to such government under this subtitle).

(D) ENTITLEMENT LESS THAN $200, OR GOVERNING BODY WAIVES ENTITLEMENT.—If (but for this subparagraph) the entitlement of any unit of local government below the level of the county government—

(i) would be less than $200 for any entitlement period ($100 for an entitlement period of 6 months, *$150 for an entitlement period of 9 months*), or

(ii) is waived for any entitlement period by the governing body of such unit,

then the amount of such entitlement for such period shall (in lieu of being paid to such unit) be added to, and shall become a part of, the entitlement for such period of the county government of the county area in which such unit is located.

(7) ADJUSTMENT OF ENTITLEMENT.—

(A) IN GENERAL.—In adjusting the allocation of any county area or unit of local government, the Secretary shall make any adjustment required under paragraph (6)(B) first, any adjustment required under paragraph (6)(C) next, and any adjustment required under paragraph (6)(D) last.

(B) ADJUSTMENT FOR APPLICATION OF MAXIMUM OR MINIMUM PER CAPITA ENTITLEMENT.—The Secretary shall adjust the allocations made under this section to county areas or to units of local governments in any State in order to bring those allocations into compliance with the provisions of paragraph (6)(B). In making such adjustments he shall make any necessary adjustments with respect to county areas before making any necessary adjustments with respect to units of local government.

(C) ADJUSTMENT FOR APPLICATION OF LIMITATION.—In any case in which the amount allocated to a unit of local government is reduced under paragraph (6)(C) by the Secretary, the amount of that reduction—

(i) in the case of a unit of local government (other than a county government), shall be added to and increase the allocation of the county government of the county area in which it is located, unless (on account of the application of paragraph (6)) that county government may not receive it, in which case the amount of the reduction shall be added to and increase the entitlement of the State government of the State in which that unit of local government is located; and

(ii) in the case of a county government, shall be added to and increase the entitlement of the State government of the State in which it is located.

(c) SPECIAL ALLOCATION RULES.—

(1) OPTIONAL FORMULA.—A State may by law provide for the allocation of funds among county areas, or among units of local government (other than county governments), on the basis of the population multiplied by the general tax effort factors of such areas or units of local government, on the basis of the population multiplied by the relative income factors of such areas or units of local government, or on the basis of a combination of those two factors. Any State which provides by law for such a variation in the allocation formula provided by subsection (a), or by paragraphs (2) and (3) of subsection (b), shall notify the Secretary of such law not later than 30 days before the beginning of the first entitlement period to which such law is to apply. Any such law shall—

(A) provide for allocating 100 percent of the aggregate amount to be allocated under subsection (a), or under paragraphs (2) and (3) of subsection (b);

(B) apply uniformly throughout the State; and

(C) apply during the period beginning on the first day of the first entitlement period to which it applies and ending on [December 31, 1976.] *September 30, 1980.*

(2) CERTIFICATION.—Paragraph (1) shall apply within a State only if the Secretary certifies that the State law complies with the requirements of such paragraph. The Secretary shall not

certify any such law with respect to which he receives notification later than 30 days prior to the first entitlement period during which it is to apply.

(d) GOVERNMENTAL DEFINITIONS AND RELATED RULES.—For purposes of this title—

[(1) UNITS OF LOCAL GOVERNMENT.—The term "unit of local government" means the government of a county, municipality, township, or other unit of government below the State which is a unit of general government (determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes). Such term also means, except for purposes of paragraphs (1), (2), (3), (5), (6)(C), and (6)(D) of subsection (b), and, except for purposes of subsection (c), the recognized governing body of an Indian tribe or Alaska native village which performs substantial governmental functions.]

(1) UNIT OF LOCAL GOVERNMENT.—

(A) IN GENERAL.—The term "unit of local government" means the government of a county, municipality, or township which is a unit of general government as determined by the Bureau of the Census for general statistical purposes, and which, with respect to entitlement periods beginning on or after October 1, 1977, meets the requirements specified in subparagraph (B), and imposes taxes or receives intergovernmental transfers for substantial performance of at least two of the following services for its citizens: (i) police protection; (ii) courts and corrections; (iii) fire protection; (iv) health services; (v) social services for the poor or aged; (vi) public recreation; (vii) public libraries; (viii) zoning or land use planning; (ix) sewerage disposal or water supply; (x) solid waste disposal; (xi) pollution abatement; (xii) road or street construction and maintenance; (xiii) mass transportation; and (xiv) education. Such term also means, except for purposes of paragraphs (1), (2), (3), (5), (6)(C), and (6)(D) of subsection (b), and, except for purposes of subsection (c), the recognized governing body of an Indian tribe or Alaskan Native village which performs substantial governmental functions. For the purposes of this subsection a unit of local government shall be deemed to impose a tax if that tax is collected by another governmental entity from the geographical area served by that unit of local government and an amount equivalent to the net proceeds of that tax are paid to that unit of local government.

(B) LIMITATION.—To be considered a unit of local government for purposes of this Act, at least 10 per centum of a local government's total expenditures (exclusive of expenditures for general and financial administration and for the assessment of property) in the most recent fiscal year must have been for each of two of the public services listed in subparagraph (A), except that the foregoing restriction shall not apply to a unit of local government (i) which substantially performs four or more of such public services, or (ii) which has performed two or more of such public services since

January 1, 1976, and continues to provide two or more such public services.

(2) CERTAIN AREAS TREATED AS COUNTIES.—In any State in which any unit of local government (other than a county government) constitutes the next level of government below the State government level, then, except as provided in the next sentence, the geographic area of such unit of government shall be treated as a county area (and such unit of government shall be treated as a county government) with respect to that portion of the State's geographic area. IN any State in which any county area is not governed by a county government but contains two or more units of local government, such units shall not be treated as county governments and the geographic areas of such units shall not be treated as county areas.

(3) TOWNSHIPS.— The term "township" includes equivalent subdivisions of government having different designations (such as "towns"), and shall be determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes.

(4) UNITS OF LOCAL GOVERNMENT LOCATED IN LARGER ENTITY.—A unit of local government shall be treated as located in a larger entity if part or all of its geographic area is located in the larger entity.

(5) ONLY PART OF UNIT LOCATED IN LARGER ENTITY.—If only part of a unit of local government is located in a larger entity, such part shall be treated for allocation purposes as a separate unit of local government, and all computations shall, except as otherwise provided in regulations, be made on the basis of the ratio which the estimated population of such part bears to the population of the entirety of such unit.

(6) BOUNDARY CHANGES, GOVERNMENTAL REORGANIZATION, ETC.—If, by reason of boundary line changes, by reason of State statutory or constitutional changes, by reason of annexations or other governmental reorganizations, or by reason of other circumstances, the application of any provision of this section to units of local government does not carry out the purposes of this subtitle, the application of such provision shall be made, under regulations prescribed by the Secretary, in a manner which is consistent with such purposes.

SEC. 109. DEFINITIONS AND SPECIAL RULES FOR APPLICATION OF ALLOCATION FORMULAS.

(a) IN GENERAL.—For purposes of this subtitle—

(1) POPULATION.—Population shall be determined on the same basis as resident population is determined by the Bureau of the Census for general statistical purposes.

(2) URBANIZED POPULATION.—Urbanized population means the population of any area consisting of a central city or cities of 50,000 or more inhabitants (and of the surrounding closely settled territory for such city or cities) which is treated as an urbanized area by the Bureau of the Census for general statistical purposes.

(3) INCOME.—Income means total money income received from all sources, as determined by the Bureau of the Census for general statistical purposes.

(4) PERSONAL INCOME.—Personal income means the income of individuals, as determined by the Department of Commerce for national income accounts purposes.

(5) DATES FOR DETERMINING ALLOCATIONS AND ENTITLEMENTS.—Except as provided in regulations, the determination of allocations and entitlements for any entitlement period shall be made as of the first day of the third month immediately preceding the beginning of such period.

(6) INTERGOVERNMENTAL TRANSFERS.—The intergovernmental transfers of revenue to any government are the amounts of revenue received by that government from other governments as a share in financing (or as reimbursement for) the performance of governmental functions, as determined by the Bureau of the Census for general statistical purposes.

(7) DATA USED; UNIFORMITY OF DATA.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), the data used shall be the most recently available data provided by the Bureau of the Census or the Department of Commerce, as the case may be.

(B) USE OF ESTIMATES, ETC.—Where the Secretary determines that the data referred to in subparagraph (A) are not current enough or are not comprehensive enough to provide for equitable allocations, he may use such additional data (including data based on estimates) as may be provided for in regulations.

(b) INCOME TAX AMOUNT OF STATES.—For purposes of this subtitle—

(1) IN GENERAL.—The income tax amount of any State for any entitlement period is the income tax amount of such State as determined under paragraphs (2) and (3).

(2) INCOME TAX AMOUNT.—The income tax amount of any State for any entitlement period is 15 percent of the net amount collected from the State individual income tax of such State during 1972 or (if later) during the last calendar year ending before the beginning of such entitlement period.

(3) CEILING AND FLOOR.—The income tax amount of any State for any entitlement period—

(A) shall not exceed 6 percent, and

(B) shall not be less than 1 percent.

of the Federal individual income tax liabilities attributed to such State for taxable years ending during 1971 or (if later) during the last calendar year ending before the beginning of such entitlement period. For purposes of the preceding sentence, Federal individual income tax liabilities attributed to any State for any period shall be such State and described as a State income tax under section 164(a)(3) of the Internal Revenue Code of 1954.

(5) FEDERAL INDIVIDUAL INCOME TAX LIABILITIES.—Federal individual income tax liabilities shall be determined on the same basis as such liabilities are determined for such period by the Internal Revenue Service for general statistical purposes.

(c) GENERAL TAX EFFORT OF STATES.—

(1) IN GENERAL.—For purposes of this subtitle—

(A) GENERAL TAX EFFORT FACTOR.—The general tax effort factor of any State for any entitlement period is (i) the net amount collected from the State and local taxes of such State during the most recent reporting year, divided by (ii) the aggregate personal income (as defined in paragraph (4) of subsection (a)) attributed to such State for the same period.

(B) GENERAL TAX EFFORT AMOUNT.—The general tax effort amount of any State for any entitlement period is the amount determined by multiplying—

(i) the net amount collected from the State and local taxes of such State during the most recent reporting year, by

(ii) the general tax effort factor of that State.

(2) STATE AND LOCAL TAXES.—

(A) TAXES TAKEN INTO ACCOUNT.—The State and local taxes taken into account under paragraph (1) are the compulsory contributions exacted by the State (or by any unit of local government or other political subdivision of the State) for public purposes (other than employee and employer assessments and contributions to finance retirement and social insurance systems, and other than special assessments for capital outlay), as such contributions are determined by the Bureau of the Census for general statistical purposes.

(B) MOST RECENT REPORTING YEAR.—The most recent reporting year with respect to any entitlement period consists of the years taken into account by the Bureau of the Census in its most recent general determination of State and local taxes made before the close of such period.

(d) GENERAL TAX EFFORT FACTOR OF COUNTY AREA.—For purposes of this subtitle, the general tax effort factor of any county area for any entitlement period is—

(1) the adjusted taxes of the county government plus the adjusted taxes of each other unit of local government within that county area, divided by

(2) the aggregate income (as defined in paragraph (3) of subsection (a)) attributed to that county area.

(e) GENERAL TAX EFFORT FACTOR OF UNIT OF LOCAL GOVERNMENT.—For purposes of this subtitle—

(1) IN GENERAL.—The general tax effort factor of any unit of local government for any entitlement period is—

(A) the adjusted taxes of that unit of local government, divided by

(B) the aggregate income (as defined in paragraph (3) of subsection (a)) attributed to that unit of local government.

(2) ADJUSTED TAXES.—

(A) IN GENERAL.—The adjusted taxes of any unit of local government are—

(i) the compulsory contributions exacted by such government for public purposes (other than employee and employer assessments and contributions to finance retirement and social insurance systems, and other than special assessments for capital outlay), as such contributions are

determined by the Bureau of the Census for general statistical purposes,

(ii) adjusted (under regulations prescribed by the Secretary) by excluding an amount equal to that portion of such compulsory contributions which is properly allocable to expenses for education.

(B) CERTAIN SALES TAXES COLLECTED BY COUNTIES.—In any case where—

(i) a county government exacts sales taxes within the geographic area of a unit of local government and transfers part or all of such taxes to such unit without specifying the purposes for which such unit may spend the revenues, and

(ii) the Governor of the State notifies the Secretary that the requirements of this subparagraph have been met with respect to such taxes,

then the taxes so transferred shall be treated as the taxes of the unit of local government (and not the taxes of the county government).

(f) RELATIVE INCOME FACTOR.—For purposes of this subtitle, the relative income factor is a fraction—

(1) in the case of a State, the numerator of which is the per capita income of the United States and the denominator of which is the per capita income of that State;

(2) in the case of a county area, the numerator of which is the per capita income of the State in which it is located and the denominator of which is the per capita income of that county area; and

(3) in the case of a unit of local government, the numerator of which is the per capita income of the county area in which it is located and the denominator of which is the per capita income of the geographic area of that unit of local government.

For purposes of this subsection, per capita income shall be determined on the basis of income as defined in paragraph (3) of subsection (a).

(g) ALLOCATION RULES FOR FIVE FACTOR FORMULA.—For purposes of section 106(b)(3)—

(1) ALLOCATION ON BASIS OF POPULATION.—Any allocation among the States on the basis of population shall be made by allocating to each State an amount which bears the same ratio to the total amount to be allocated as the population of such State bears to the population of all the States.

(2) ALLOCATION ON BASIS OF URBANIZED POPULATION.—Any allocation among the States on the basis of urbanized population shall be made by allocating to each State an amount which bears the same ratio to the total amount to be allocated as the urbanized population of such State bears to the urbanized population of all the States.

(3) ALLOCATION ON BASIS OF POPULATION INVERSELY WEIGHTED FOR PER CAPITA INCOME.—Any allocation among the States on the basis of population inversely weighted for per capita income shall be made by allocating to each State an amount which bears the same ratio to the total amount to be allocated as—

(A) the population of such State, multiplied by a fraction the numerator of which is the per capita income of all the States and the denominator of which is the per capita income of such State, bears to

(B) the sum of the products determined under subparagraph (A) for all the States.

(4) ALLOCATION ON BASIS OF INCOME TAX COLLECTIONS.—Any allocation among the States on the basis of income tax collections shall be made by allocating to each State an amount which bears the same ratio to the total amount to be allocated as the income tax amount of such State bears to the sum of the income tax amounts of all the States.

(5) ALLOCATION ON BASIS OF GENERAL TAX EFFORT.—Any allocation among the States on the basis of general tax effort shall be made by allocating to each State an amount which bears the same ratio to the total amount to be allocated as the general tax effort amount of such State bears to the sum of the general tax effort amounts of all the States.

Subtitle B—Administrative Provisions

SEC. 120. MODERNIZATION OF GOVERNMENT.

(a) POLICY AND PURPOSE.—In order that funds provided under this Act shall encourage the modernization and revitalization of State and local governments, each State shall submit an annual report to the Secretary describing any steps it has taken to achieve the goal set forth in this section.

(b) STATE MASTER PLAN.—It is established as a goal that each State government prepare and develop in accordance with subsections (c), (d), and (e) a master plan and timetable for modernizing and revitalizing State and local government.

(c) PREPARATION OF MASTER PLAN AND TIMETABLE.—Prior to submitting the State's annual report to the Secretary, the State's chief executive officer may submit a proposed master plan and timetable to the State legislature and to the chief executive officer and legislative body of each county government, township government, and other unit of local government, including, for these purposes, special purpose governments not covered by the definition of unit of local government in section 108(d)(1). The proposed master plan and timetable may also be made available to the public by publication in newspapers throughout the State. After issuance of any proposed master plan and timetable, there shall be a period of not less than 120 days for local officials and citizens of the State to comment on the proposed master plan and timetable, in accordance with a procedure for such comment promulgated by the chief executive officer of the State. The chief executive officer of the State may take into consideration such comments in preparing the final master plan and timetable. A final master plan and timetable shall be submitted to the State legislature which shall vote whether or not to submit such plan to the Secretary.

(d) CONTENTS OF MASTER PLANS AND TIMETABLES.—

(1) IN GENERAL.—A State's master plan and timetable may contain:

(A) a set of proposals for substantially improving the effectiveness, economy and equity of State and local government;

(B) the steps (constitutional, legislative, or administrative) necessary to effectuate those proposals; and

(C) a timetable for effectuating each proposal within a reasonable period.

(2) CRITERIA.—The following broad criteria may be employed in the development of the provisions of the master plan and timetable:

(A) FUNCTION.—Governmental responsibilities should be assigned to State and sub-State governments with the objective of providing all residents with at least a minimal level of public services.

(B) STRUCTURE.—The organization of State and sub-State governments should substantially reduce the number of limited function general governments and special districts.

(C) FISCAL INTEGRITY.—The system of State and local taxation should result in a tax burden commensurate with the fiscal capacity of the taxing unit.

(D) MANAGEMENT CAPACITY.—Improvements in the professional capacity of State and local governments should be specifically addressed.

(E) ACCOUNTABILITY.—Broad participation of the general public in the decisionmaking process should be encouraged, and formal mechanisms of reporting the impact of such decisions should be proposed.

(e) METHODS FOR PROMOTING EFFECTIVESS, ECONOMY, AND EQUITY IN STATE AND LOCAL GOVERNMENT.—

(1) IN GENERAL.—In preparing the master plan and timetable, the chief executive officer may take into consideration the following methods for promoting effectiveness, economy and equity in State and local governments:

(A) INTERSTATE.—Arrangements, by interstate compact or otherwise for dealing with interstate regional problems, including those of metropolitan areas which overlap State lines, and for regional cooperation in such areas as health, education, welfare, conservation, resource development, transportation, recreation, and housing.

(B) STATE DIRECT ACTION.—Strengthening and modernizing of State government (by constitutional, statutory, and administrative changes), including but not limited to, modernized State borrowing powers; improved tax systems; increased financial and technical assistance to local governments; revising the terms of State aids and shared taxes to compensate for differences in total local fiscal capacity; State assumption of greater direct fiscal responsibility for basic functions; modern personnel systems; and development of minimum State standards for services at the State and local level.

(C) STATE ACTION AFFECTING LOCALITIES.—Strengthening and modernizing by the State of local, rural, urban, and metropolitan governments (by constitutional, statutory, and administrative changes), including—

(i) changes designed to make local government more efficient, economical and accountable, as by—

(I) reducing the number of, or eliminating, local governments too small to provide efficient administration or possessing inadequate fiscal resources;

(II) reducing the number of special districts not subject to democratic controls, and eliminating those whose functions can be carried out by general governments;

(III) granting adequate home-rule powers to local governments of sufficient size and scope;

(IV) improving local property tax administration;

(V) authorizing local governments to utilize non-property taxes, coordinated at the State or regional level; and

(VI) easing restrictions on the borrowing and taxing powers of local governments.

(ii) other changes designed to strengthen local government in metropolitan areas, as by—

(I) liberalizing municipal annexation of unincorporated areas;

(II) setting minimum standards of population and population density for proposed new incorporations;

(III) authorizing city-county consolidation, or transfers of specified functions between municipalities and counties;

(IV) authorizing intergovernmental contracts for the provision of services;

(V) authorizing municipalities to exercise extra-territorial planning, zoning, and subdivision control over unincorporated areas not subject to effective county regulation;

(VI) restricting zoning authority in metropolitan areas to metropolitan bodies, larger municipalities, counties, or the State;

(VII) authorizing the formation of regional multi-functional bodies for housing, health care, social services, parks and recreation, and water sewer facilities; and

(VIII) establishing State standards of accountability in the planning process and operations of special districts, boards, commissions and official agencies not directly subordinate to a general government.

(f) REPORTS AND RECOMMENDATIONS.—The Secretary shall report to Congress at the end of each fiscal year on the progress made by each State in developing and carrying out a master plan and timetable, and based on such progress, shall make recommendations concerning the goal set forth in this section.

[SEC. 121. REPORTS ON USE OF FUNDS; PUBLICATION

[(a) REPORTS ON USE OF FUNDS.—Each State government and unit of local government which receives funds under subtitle A shall, after the close of each entitlement period, submit a report to the Secretary setting forth the amounts and purposes for which funds received during such period have been spent or obligated. Such reports shall be in such form and detail and shall be submitted at such time as the Secretary may prescribe.

[(b) REPORTS ON PLANNED USE OF FUNDS.—Each state government and unit of local government which expects to receive funds under subtitle A for any entitlement period beginning on or after January 1, 1978, shall submit a report to the Secretary setting forth the amounts and purposes for which it plans to spend or obligate the funds which it expects to receive during such period. Such reports shall be in such form and detail as the Secretary may prescribe and shall be submitted at such time before the beginning of the entitlement period as the Secretary may prescribe.

[(c) PUBLICATION AND PUBLICITY OF REPORTS.—Each State government and unit of local government shall have a copy of each report submitted by it under subsection (a) or (b) published in a newspaper which is published within the State and has general circulation within the geographic area of that government. Each State government and unit of local government shall advise the news media of the publication of its reports pursuant to this subsection.]

SEC. 121. REPORTS ON USE OF FUNDS; PUBLICATION AND PUBLIC HEARINGS.

(a) REPORTS ON PROPOSED USE OF FUNDS.—Each State government and unit of local government which expects to receive funds under subtitle A or D for any entitlement period beginning on or after January 1, 1977, shall submit a report to the Secretary setting forth the amounts and purposes for which it proposes to spend or obligate the funds which it expects to receive during such period as compared with the use of similar funds during the two immediately preceding entitlement periods. Each such report shall include a comparison of the proposed, current, and past use of such funds to the relevant functional items in its official budget and specify whether the proposed use is for a completely new activity, for the expansion or continuation of an existing activity, or for tax stabilization or reduction. Such report shall be in such form and detail as the Secretary may prescribe and shall be submitted at such time before the beginning of the entitlement period as the Secretary may prescribe.

(b) REPORTS ON USE OF FUNDS.—Each State government and unit of local government which receives funds under subtitle A or D shall, after the close of each entitlement period, submit a report to the Secretary (which report shall be available to the public for inspection and reproduction) setting forth the amounts and purposes for which funds received during such period have been appropriated, spent, or obligated and showing the relationship of those funds to the relevant functional items in the government's official budget. Such report shall further provide an explanation of all differences between the actual use of funds received and the proposed use of such funds as reported to the Secretary under subsection (a). Such reports shall be in such form and detail and shall be submitted at such time as the Secretary may prescribe.

(c) PUBLIC HEARINGS REQUIRED.—

(1) PRE-REPORT HEARING.—Not less than 7 calendar days before the submission of the report required under subsection (a), each State government or unit of local government which expects to receive funds under subtitle A or D for any entitlement period beginning on or after January 1, 1977, shall, after adequate public notice, have at least one public hearing at which citizens shall have the opportunity to provide written and oral comment on the possible uses of such funds.

(2) PRE-BUDGET HEARING.—Not less than 7 calendar days before the adoption of its budget as provided for under State and local law, each State government or unit of local government which expects to receive funds under subtitle A or D for any entitlement period beginning on or after January 1, 1977, shall have at least one public hearing on the proposed use of funds made available under subtitles A and D in relation to its entire budget. At such hearing, citizens shall have the opportunity to provide written and oral comment to the body responsible for enacting the budget, and to have answered questions concerning the entire budget and the relation to it of funds made available under subtitles A and D. Such hearing shall be at a place and time that permits and encourages public attendance and participation.

(3) WAIVER.—The provisions of paragraph (1) may be waived in whole or in part in accordance with regulations of the Secretary if the cost of such a requirement would be unreasonably burdensome in relation to the entitlement of such State government or unit of local government to funds made available under subtitles A and D. The provisions of paragraph (2) may be waived in whole or in part in accordance with regulations of the Secretry if the budget processes required under applicable State or local laws or charter provisions assure the opportunity for public attendance and participation contemplated by the provisions of this subsection and a portion of such process includes a hearing on the proposed use of funds made available under subtitles A and D in relation to its entire budget.

(d) NOTIFICATION AND PUBLICITY OF PUBLIC HEARINGS; ACCESS TO BUDGET SUMMARY AND PROPOSED AND ACTUAL USE REPORTS.—

(1) IN GENERAL.—Each State government and unit of local government which expects to receive funds under subtitle A or D for any entitlement period beginning on or after January 1, 1977, shall—

(A) 30 days prior to the public hearing required by subsection (c) (2)—

(i) publish conspicuously, in at least one newspaper of general circulation, the proposed use report required by subsection (a), a narrative summary setting forth in simple language an explanation of its proposed official budget, and a notice of the time and place of such public hearing; and

(ii) make available for inspection and reproduction by the public (at the principal office of such State government or unit of local government, at public libraries, if any, within the boundaries of such a unit of local government, and, in the case of a State government, at the main libraries of the principal municipalities of such State) the proposed use report, the narrative summary, and its official budget which shall specify with particularity each item in its official budget which will be funded, in whole or in part, with funds made available under subtitle A or D, and for each such budget item, shall specify the amount of such funds budgeted for that item and the percentage of total expenditures for that item attributable to such funds; and

(B) within 30 days after adoption of its budget as provided for under State or local law—

(i) publish conspicuously, in at least one newspaper of general circulation, a narrative summary setting forth in simple language an explanation of its official budget (including an explanation of changes from the proposed budget) and the relationship of the use of funds made available under subtitles A and D to the relevant functional items in such budget; and

(ii) make such summary available for inspection and reproduction by the public at the principal office of such State government or unit of local government, at public libraries, if any, within the boundaries of such unit of local government, and, in the case of a State government, at the main libraries of the principal municipalities of such State.

(2) WAIVER.—The provisions of paragraph (1) may be waived, in whole or in part, with respect to publication of the proposed use reports and the narrative summaries, in accordance with regulations of the Secretary, where the cost of such publication would be unreasonably burdensome in relation to the entitlement of such State government or unit of local government to funds made available under subtitles A and D, or where such publication is otherwise impractical or infeasible. In addition, the 30-day provision of paragraph (1)(A) may be modified to the minimum extent necessary to comply with State and local law if the Secretary is satisfied that the citizens of the State or local government will receive adequate notification of the proposed use of funds, consistent with the intent of this section.

(e) REPORTS PROVIDED TO THE GOVERNOR.—A copy of each report required under subsections (a) and (b) filed with the Secretary by a unit of local government which receives funds under subtitle A or D shall be provided by the Secretary to the Governor of the State in which the unit of local government is located, in such manner and form as the Secretary may prescribe by regulation.

(f) PLANNED USE REPORT TO AREAWIDE ORGANIZATION.—At the same time that the proposed use report is published and publicized in accordance with this section, each unit of local government which is

within a metropolitan area shall submit a copy of the proposed use report to the areawide organization in the metropolitan area which is formally charged with carrying out the provisions of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334); section 401 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231); or section 302 of the Housing and Community Development Act of 1974 (42 U.S.C. 461).

[SEC. 122. NONDISCRIMINATION PROVISION.

[(a) IN GENERAL.—No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under subtitle A.

[(b) AUTHORITY OF SECRETARY.—Whenever the Secretary determines that a State government or unit of local government has failed to comply with subsection (a) or an applicable regulation, he shall notify the Governor of the State (or, in the case of a unit of local government, the Governor of the State in which such unit is located) of the noncompliance and shall request the Governor to secure compliance. If within a reasonable period of time the Governor fails or refuses to secure compliance, the Secretary is authorized (1) to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) to exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); or (3) to take such other action as may be provided by law.

[(c) AUTHORITY OF ATTORNEY GENERAL.—When a matter is referred to the Attorney General pursuant to subsection (b), or whenever he has reason to believe that a State government or unit of local government is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.]

SEC. 122. NONDISCRIMINATORY PROVISION.

(a) PROHIBITION.—(1) IN GENERAL.—No person shall, on account of race, color, religion, sex, national origin, age, or handicapped status, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of a State government or unit of local government which government or unit receives funds made available under subtitle A or D. The provisions of this paragraph shall be interpreted—

(A) in accordance with titles II, III, IV, VI, and VII of the Civil Rights Act of 1964, as amended, title VIII of the Civil Rights Act of 1968, as amended, and title IX of the Education Amendments of 1972, with respect to discrimination on the basis of race, color, religion, sex, or national origin;

(B) in accordance with the Rehabilitation Act of 1973 with respect to discrimination on the basis of handicapped status; and

(C) in accordance with the Age Discrimination Act of 1975 with respect to discrimination on the basis of age, notwithstanding the deferred effectiveness of such Act.

(2) EXCEPTIONS.—

(A) FUNDING.—The provisions of paragraph (1) of this subsection shall not apply where any State government or unit of local government proves by clear and convincing evidence that the program or activity with respect to which the allegation of discrimination has been made is not funded in whole or in part, directly or indirectly, with funds made available under subtitle A or D.

(B) CONSTRUCTION PROJECTS IN PROGRESS.—The provisions of paragraph (1), relating to discrimination on the basis of handicapped status, shall not apply with respect to construction projects commenced prior to January 1, 1977.

(b) AUTHORITY OF THE SECRETARY.—

(1) NOTICE.—Whenever there has been—

(A) publication or receipt of notice of a finding, after notice and opportunity for a hearing, by a Federal or State court, or by a Federal or State administrative agency (other than the Secretary under subparagraph (B)), to the effect that there has been a pattern or practice of discrimination on the basis of race, color, religion, sex, national origin, age, or handicapped status in any program or activity of a State government or unit of local government, which government or unit receives funds made available under subtitle A or D; or

(B) a determination that a State government or unit of local government is not in compliance with subsection (a) (1) after an investigation by the Secretary, prior to a hearing under paragraph (4), but including an opportunity for the State government or unit of local government to make a documentary submission regarding the allegation of discrimination or the funding of such program or activity with funds made available under subtitle A or D;

the Secretary shall, within 10 days of such occurrence, notify the Governor of the affected State, or of the State in which an affected unit of local government is located, and the chief executive officer of such affected unit of local government, that such State government or unit of local government is presumed not to be in compliance with subsection (a) (1), and shall request such Governor and such chief executive officer to secure compliance. For purposes of subparagraph (A), a finding by a Federal or State administrative agency shall be deemed rendered after notice and opportunity for a hearing if it is rendered pursuant to procedures consistent with the provisions of subchapter II of chapter 5, title 5, United States Code.

(2) VOLUNTARY COMPLIANCE.—In the event the Governor or the chief executive officer secures compliance after notice pursuant to paragraph (1), the terms and conditions with which the affected State government or unit or local government agrees to comply shall be set forth in writing and signed by the Governor, by the chief executive officer (in the event of a violation by a unit of local government), and by the Secretary and the Attorney General. At least 15 days prior to the effective date of the agreement, the Secretary shall send a copy of the agreement to each complainant, if any, with respect to such violation. The Governor, or the chief executive officer in the event of a violation by a unit of local government, shall file semiannual reports with the Secretary and the Attorney General detailing the steps taken to comply with the agreement. Within 15 days of receipt of such reports the Secretary shall send a copy thereof to each such complainant.

(3) SUSPENSION AND RESUMPTION OF PAYMENT OF FUNDS.—

(A) SUSPENSION AFTER NOTICE.—If, at the conclusion of 90 days after notification under paragraph (1)—

(i) a compliance agreement has not been entered into under paragraph (2),

(ii) compliance has not been secured by the Governor of that State or the chief executive officer of that unit of local government, and

(iii) an administrative law judge has not made a determination under paragraph (4)(A) that it is likely the State government or unit of local government will prevail on the merits,

the Secretary shall notify the Attorney General that compliance has not been secured and shall suspend further payment of any funds under subtitles A and D to that State government or that unit of local government. Such suspension shall be effective for a period of not more than 120 days, or, if there is a hearing under paragraph (4)(B), not more than 30 days after the conclusion of such hearing.

(B) RESUMPTION OF PAYMENTS SUSPENDED UNDER SUBPARAGRAPH (A).—Payment of the suspended funds shall resume only if—

(i) such State government or unit of local government enters into a compliance agreement approved by the Secretary and the Attorney General in accordance with paragraph (2);

(ii) such State government or unit of local government complies fully with the final order or judgment of a Federal or State court, if that order or judgment covers all the matters raised by the Secretary in the notice pursuant to paragraph (1), or is found to be in compliance with subsection (a) (1) by such court; or

(iii) the Secretary finds, pursuant to paragraph (4)(B), that noncompliance has not been demonstrated.

(C) SUSPENSION UPON ACTION BY ATTORNEY GENERAL.—Whenever the Attorney General files a civil action alleging a pattern or practice of discriminatory conduct on the basis of race, color, religion, sex, national origin, age, or handicapped status in any program or activity of a State government or unit of local government, which State government or unit of local government receives funds made available under subtitle A or D, and neither party within 45 days after such filing has been granted such preliminary relief with regard to the suspension or payment of funds as may be otherwise available by law, the Secretary shall suspend further payment of any funds under subtitles A and D to that State government or that unit of local government until such time as the court orders resumption of payment.

(4) HEARINGS; OTHER ACTIONS.—

(A) PRELIMINARY HEARING.—Within the first 30 days after notification under paragraph (1)(B), the State government or unit of local government may request an expedited preliminary hearing by an administrative law judge in order to determine whether it is likely that the State government or unit of local government would, at a full hearing under subparagraph (B) of this paragraph, prevail on the merits on the issue of the alleged noncompliance. Such judge shall render a finding hereunder within the 90-day period after notification under paragraph (1)(B). A finding under this subparagraph by the administrative law judge in favor of the State government or unit of local government shall defer the suspension of funds under paragraph (3) until the 210th day after the issuance of a notice of noncompliance under paragraph (1)(B), or until 30 days after the conclusion of hearing on the merits under subparagraph (B) of this paragraph.

(B) COMPLIANCE HEARING.—At any time after notification under paragraph (1) but before the conclusion of the 120-day period referred to in paragraph (3)A, a State government or unit of local government may request a hearing, which the Secretary shall initiate within 30 days of such request. The Secretary may also initiate a hearing in case of a finding in favor of a State government or unit of local government under subparagraph (A) of this paragraph. Within 30 days after the conclusion of a hearing under this subparagraph, or, in the absence of a hearing, within 210 days after issuance of a notice of noncompliance under paragraph (1), the Secretary shall make a finding of compliance or noncompliance. If the Secretary makes a finding of noncompliance, the Secretary shall (i) notify the Attorney General of the United States in order that the Attorney General may institute a civil action under subsection (c), (ii) terminate the payment of funds under subtitles A and B, and, (iii) if appropriate, seek repayment of such funds. If the Secretary makes a finding of compliance, payment of the suspended funds shall resume as provided in paragraph (3)(B).

(5) JUDICIAL REVIEW.—Any State government or unit of local government aggrieved by a final determination of the Secretary under paragraph (4) may appeal such determination as provided in section 143(c).

(c) AUTHORITY OF ATTORNEY GENERAL.—Whenever the Attorney General has reason to believe that a State government or unit of local government has engaged or is engaging in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in an appropriate United States district court. Such court may grant as relief any temporary restraining order, preliminary or permanent injunction, or other order, as necessary or appropriate to insure the full enjoyment of the rights described in this section, including the suspension, termination, or repayment of funds made available under this title, or placing any further payments under this title in escrow pending the outcome of the litigation.

(d) AGREEMENTS BETWEEN AGENCIES.—The Secretary shall enter into agreements with State agencies and with other Federal agencies authorizing such agencies to investigate noncompliance with subsection (a). The agreements shall describe the cooperative efforts to be undertaken (including the sharing of civil rights enforcement personnel and resources) to secure compliance with this section, and shall provide for the immediate notification of the Secretary by the Attorney General of any actions instituted under subsection (b)(3)(C), subsection (c), or under any other Federal civil rights statute or regulations issued thereunder.

SEC. 123. MISCELLANEOUS PROVISIONS.

(a) ASSURANCES TO THE SECRETARY.—In order to qualify for any payment under subtitle A for any entitlement period beginning on or after January 1, 1973, a State government or unit of local government must establish (in accordance with regulations prescribed by the Secretary, and, with respect to a unit of local government, after an opportunity for review and comment by the Governor of the State in which such unit is located) to the satisfaction of the Secretary that—

(1) it will establish a trust fund in which it will deposit all payments it receives under subtitle A *or D*;

(2) it will use amounts in such trust fund (including any interest earned thereon while in such trust fund) during such reasonable period or periods as may be provided in such regulations;

[(3) in the case of a unit of local government, it will use amounts in such trust fund (including any interest earned thereon while in such trust fund) only for priority expenditures (as defined in section 103(a)), and will pay over to the Secretary (for deposit in the general fund of the Treasury) an amount equal to 110 percent of any amount expended out of such trust fund in violation of this paragraph, unless such amount is promptly repaid to such trust fund (or the violation is otherwise corrected) after notice and opportunity for corrective action;]

(4) it will provide for the expenditure of amounts received under subtitle A only in accordance with the laws and procedures applicable to the expenditure of its own revenues;

(5) it will—

(A) use fiscal, accounting, and audit procedures which conform to guidelines established [therefor], *in conformity with subsection (c) of this section*, by the Secretary (after consultation with the Comptroller General of the United States), *and conduct independent financial audits in accordance with generally accepted auditing standards as required by paragraph (2) of such subsection*,

(B) provide to the Secretary (and to the Comptroller General of the United States), on reasonable notice, access to, and the right to examine, such books, documents, papers, or records as the Secretary may reasonably require for purposes of reviewing compliance with this title (or, in the case of the Comptroller General, as the Comptroller General may reasonably require for purposes of reviewing compliance and operations under subsection (c)(2)), and

(C) make such annual and interim reports (other than reports required by section 121) to the Secretary as he may reasonably require;

(6) all laborers and mechanics employed [by contractors or subcontractors] in the performance of work on any construction project, [25 percent or more of the costs of which project are paid] *which is funded in whole or part* out of its trust fund established under paragraph (1), will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5), and that with respect to the labor standards specified in this paragraph the Secretary of Labor shall act in accordance with Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934[, as amended] (40 U.S.C. 276c) *, except that nothing in this subsection shall be construed to cover work performed by a state or local jurisdiction with its own regular, permanent laborers or mechanics;*

(7) individuals employed by it whose wages are paid in whole or in part out of its trust fund established under paragraph (1) will be paid wages which are not lower than the prevailing rates of pay for persons employed in similar public occupations by the same employer; and

(8) in the case of a unit of local government as defined in the second sentence of section 108(d)(1) (relating to governments of Indian tribes and Alaskan native villages), it will expend funds received by it under subtitle A for the benefit of members of the tribe or village residing in the county area from the allocation of which funds are allocated to it under section 108(b)(4).

Paragraph (7) shall apply with respect to employees in any category only if 25 percent or more of the wages of all employees of the State government or unit of local government in such category are paid from the trust fund established by it under paragraph (1).

(b) WITHHOLDING OF PAYMENTS.—If the Secretary determines that a State government or unit of local government has failed to comply substantially with any provision of subsection (a) or any regulations prescribed thereunder, after giving reasonable notice and opportunity for a hearing to the Governor of the State or the chief executive officer of the unit of local government, he shall notify the State government or unit of local government that if it fails to take corrective action within 60 days from the date of receipt of such notification further payments to it will be withheld for the remainder of the entitlement period and for any subsequent entitlement period until such time as the Secretary is satisfied that appropriate corrective action has been taken and that there will no longer be any failure to comply. Until he is satisfied, the Secretary shall make no further payments of such amounts.

(c) ACCOUNTING, AUDITING, AND EVALUATION.—

(1) IN GENERAL.—The Secretary shall provide for such [accounting and auditing procedures] *audits*, evaluations, and reviews as may be necessary to insure that the expenditures of funds received under subtitle A *or D* by State governments and units of local government comply fully with [the] requirements of this

title. *Such audits, evaluations, and reviews shall include such independent audits as may be required pursuant to paragraph (2).* The Secretary is authorized to accept an audit by a [State of such expenditures of a] State government or unit of local government *of its expenditures* if he determines that such audit *was conducted in compliance with paragraph (2), and that such audit* and the audit procedures of that State *government or unit of local government* are sufficiently reliable to enable him to carry out his duties under this title.

[(2) COMPTROLLER GENERAL SHALL REVIEW COMPLIANCE.—The Comptroller General of the United States shall make such reviews of the work as done by the Secretary, the State governments, and the units of local government as may be necessary for the Congress to evaluate compliance and operations under this title.]

(2) INDEPENDENT AUDITS.—The Secretary shall, after consultation with the Comptroller General, promulgate regulations to take effect not later than March 31, 1977, which shall require that each State government and unit of local government receiving funds under subtitle A or D conducts during each fiscal year an audit of its financial accounts in accordance with generally accepted auditing standards. Such regulations shall include such provisions as may be necessary to assure independent audits are conducted in accordance with such standards, but may provide for less formal reviews of financial information, or less frequent audits, to the extent necessary to ensure that the cost of such audits not be unreasonably burdensome in relation to the entitlement of such State government or unit of local government to funds available under subtitles A and D. Such regulations shall further provide for the availability to the public of financial statements and reports on audits or informal reviews conducted under this paragraph for inspection and reproduction as public documents.

(3) COMPTROLLER GENERAL SHALL REVIEW COMPLIANCE.—The Comptroller General of the United States shall make such reviews of the work as done by the Secretary, the State governments, and the units of local government as may be necessary for the Congress to evaluate compliance and operations under this title.

(d) REPORT OF THE SECRETARY OF THE TREASURY.—The Secretary of the Treasury shall include with the report required under section 105(a) a report to the Congress on the implementation and administration of this Act during the preceding fiscal year. Such report shall include, but not be limited to, a comprehensive and detailed analysis of the following:

(1) the measures taken to comply with section 122, including a description of the nature and extent of any noncompliance and the status of all pending complaints;

(2) the extent to which citizens in recipient jurisdictions have become involved in the decisions determining the expenditure of funds received under subtitles A and D;

(3) the extent to which recipient jurisdictions have complied with section 123, including a description of the nature and extent of any noncompliance and of measures taken to ensure the independence of audits conducted pursuant to subsection (c) of such section;

(4) the manner in which funds distributed under subtitles A and D have been used, including the net fiscal impact, if any, in recipient jurisdictions; and

(5) significant problems arising in the administration of the Act and proposals to remedy such problems through appropriate legislation.

(c) PROHIBITION OF USE FOR LOBBYING PURPOSES.—No State government or unit of local government may use, directly or indirectly, any part of the funds it receives under subtitle A or D for the purpose of lobbying or other activities intended to influence any legislation regarding the provisions of this Act. For the purpose of this subsection, dues paid to National or State associations shall be deemed not to have been paid from funds received under subtitle A or D.

SEC. 124. COMPLAINTS AND COMPLIANCE REVIEWS.

By March 31, 1977, the Secretary shall promulgate regulations establishing—

(1) reasonable and specific time limits for the Secretary or the appropriate cooperating agency to respond to the filing of a complaint by any person alleging that a State government or unit of local government is in violation of the provisions of this Act, including time limits for instituting an investigation, making an appropriate determination with respect to the allegations, and advising the complainant of the status of the complaint; and

(2) reasonable and specific time limits for the Secretary to conduct audits and reviews of State governments and units of local government for compliance with the provisions of this Act.

SEC. 125. PRIVATE CIVIL ACTIONS.

(a) In any action brought to enforce compliance with any provision of this Act, the court may grant to a prevailing plaintiff reasonable attorney fees except where the lawsuit is frivolous, vexatious, brought for harassment purposes, or brought principally for the purpose of gaining attorney fees.

(b) INTERVENTION BY ATTORNEY GENERAL.—In any action brought to enforce compliance with any provision of this Act, the Attorney General, or a specially designated assistant for or in the name of the United States, may intervene upon timely application if he certifies that the action is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

Subtitle C—General Provisions

SEC. 141. DEFINITIONS AND SPECIAL RULES.

(a) SECRETARY.—For purposes of this title, the term "Secretary" means the Secretary of the Treasury or his delegate. The term "Secretary of the Treasury" means the Secretary of the Treasury personally, not including any delegate.

(b) ENTITLEMENT PERIOD.—For purposes of this title, the term "entitlement period" means—

(1) The period beginning January 1, 1972, and ending June 30, 1972.

(2) The period beginning July 1, 1972, and ending December 31, 1972.

(3) The period beginning January 1, 1973, and enging June 30, 1973.

(4) The one-year periods beginning on July 1 of 1973, 1974, and 1975.

(5) The period beginning July 1, 1976, and ending December 31, 1976.

(6) The period beginning on January 1, 1977, and ending September 30, 1977.

(7) The one-year periods beginning on October 1 of 1977, 1978, and 1979.

(c) DISTRICT OF COLUMBIA.—For purposes of this title, the District of Columbia shall be treated both—

(1) as a State (and any reference to the Governor of a State shall, in the case of the District of Columbia, be treated as a reference to the Mayor of the District of Columbia), and

(2) as a country area which has no units of local government (other than itself) within its geographic area.

SEC. 142. REGULATIONS.

(a) GENERAL RULE.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the provisions of this title.

(b) ADMINISTRATIVE PROCEDURE ACT TO APPLY.—The rulemaking provisions of subchapter II of chapter 5 of title 5 of the United States Code shall apply to the regulations prescribed under this title for entitlement periods beginning on or after January 1, 1973.

SEC. 143. JUDICIAL REVIEW.

(a) PETITIONS FOR REVIEW.—Any State which receives a notice of reduction in entitlement under section 107(b), and any State or unit of local government which receives a notice of withholding of payments under section [104(b) or] 123(b), may, within 60 days after receiving such notice, file with the United States court of appeals for the circuit in which such State or unit of local government is located a petition for review of the action of the Secretary. A copy of the petition shall forthwith be transmitted to the Secretary; a copy shall also forthwith be transmitted to the Attorney General.

(b) RECORD.—The Secretary shall file in the court the record of the proceeding on which he based his action, as provided in section 2112 of title 28, United States Code. No objection to the action of the Secretary shall be considered by the court unless such objection has been urged before the Secretary.

(c) JURISDICTION OF COURT.—The court shall have jurisdiction to affirm or modify the action of the Secretary or to set it aside in whole or in part. The findings of fact by the Secretary, if supported by substantial evidence contained in the record, shall be conclusive. However, if any finding is not supported by substantial evidence contained in the record, the court may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous actions. He shall certify to the court the record of any further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence contained in the record.

(d) REVIEW BY SUPREME COURT.—The judgment of the court shall be subject to review by the Supreme Court of the United States upon

certiorari or certification, as provided in section 1254 of title 28, United States Code.

SEC. 144. AUTHORITY TO REQUIRE INFORMATION ON INCOME TAX RETURNS.

(a) GENERAL RULE.—

(1) INFORMATION WITH RESPECT TO PLACE OF RESIDENCE.—Subpart B of part II of subchapter A of chapter 61 of the Internal Revenue Code of 1954 (relating to income tax returns) is amended by adding at the end thereof the following new section:

"SEC. 6017A. PLACE OF RESIDENCE.

"In the case of an individual, the information required on any return with respect to the taxes imposed by chapter 1 for any period shall include information as to the State, county, municipality, and any other unit of local government in which the taxpayer (and any other individual with respect to whom an exemption is claimed on such return) resided on one or more dates (determined in the manner provided by regulations prescribed by the Secretary or his delegate) during such period."

(2) CLERICAL AMENDMENT.—The table of sections for such subpart B is amended by adding at the end thereof the following:

"Sec. 6017A. Place of residence."

(b) CIVIL PENALTY.—

(1) IN GENERAL.—Subchapter B of chapter 68 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new section:

"SEC. 6687. FAILURE TO SUPPLY INFORMATION WITH RESPECT TO PLACE OF RESIDENCE.

"(a) CIVIL PENALTY.—If any person fails to include on his return any information required under section 6017A with respect to his place of residence he shall pay a penalty of $5 for each such failure, unless it is shown that such failure is due to reasonable cause.

"(b) DEFICIENCY PROCEDURES NOT TO APPLY.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and chapter 42 taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a)."

(2) CLERICAL AMENDMENT.—The table of sections for such subchapter B is amended by adding at the end thereof the following:

"Sec. 6687. Failure to supply information with respect to place of residence."

SEC. 145. ENTITLEMENT FACTORS AFFECTED BY MAJOR DISASTERS.

In the administration of this title the Secretary shall disregard any change in data used in determining the entitlement of a State government or a unit of local government for a period of 60 months if that change—

(1) results from a major disaster determined by the President under section 301 of the Disaster Relief Act of 1974, and

(2) reduces the amount of the entitlement of that State government or unit of local government.

Subtitle D—Supplemental Fiscal Assistance

SEC. 161. SHORT TITLE.

This subtitle may be cited as the "Supplemental Fiscal Assistance Act of 1976".

SEC. 162. PAYMENTS TO STATE AND LOCAL GOVERNMENTS.

Except as otherwise provided in this title, the Secretary shall, for each entitlement period beginning on or after January 1, 1977, pay out of the amounts authorized under section 105(c)(1) which are not reserved for distribution under subtitle A, and out of any additional amounts appropriated under section 163(b), to each eligible State government, and to each eligible unit of local government, an amount determined under section 164 for such period. Such payments shall be made in installments, but not less often than once for each quarter, and shall be paid not later than 5 days after the close of each quarter. Such payments for any entitlement period may be initially made on the basis of estimates. Proper adjustment shall be made in the amount of any payment to a State government or a unit of local government to the extent that the payments previously made to such government under this subtitle were in excess of or less than the amounts required to be paid.

SEC. 163. FUNDING.

(a) ENTITLEMENT.—There shall be available for distribution under this subtitle, as an entitlement, any sums authorized under section 105(c)(1) which exceed—

(1) $4,875,000,000 for the entitlement period beginning January 1, 1977, and ending September 30, 1977; or

(2) $6,500,000,000 for any entitlement period of 12 months duration thereafter.

(b) AUTHORIZATION.—In addition to the sums available under subsection (a) there are authorized to be appropriated such sums as Congress may deem necessary to adequately fund the program established by this subtitle.

SEC. 164. ELIGIBILITY; DETERMINATION OF AMOUNT OF PAYMENTS.

(a) ELIGIBILITY.—No State government shall be eligible to receive payments under this subtitle unless, with respect to an entitlement period, its entitlement under section 167 exceeds its entitlement under section 107. No unit of local government shall be eligible to receive payments under this subtitle unless, with respect to an entitlement period, its entitlement under section 168 exceeds its entitlement under section 108.

(b) PAYMENT OF EXCESS.—Except as provided in subsection (c) the Secretary shall pay—

(1) to each State government eligible under subsection (a), an amount equal to the amount by which its entitlement under section 167 exceeds its entitlement under section 107; and

(2) to each unit of local government eligible under subsection (a), an amount equal to the amount by which its entitlement under section 168 exceeds its entitlement under section 108.

(c) LIMITATIONS.—

(1) RATABLE REDUCTIONS.—If the sums available under section 163 (a) and (b) for any entitlement period for making payments under this subtitle to State governments and units of local government are not sufficient to pay in full the total amount of payments authorized by subsection (b) of this section for that entitlement period, then each such payment for such period shall be ratably reduced. In case additional funds become available for making such payments for any entitlement period during which the preceding sentence is applicable, such reduced payments shall be increased on the same basis as they were reduced

(2) PAYMENT LESS THAN $2,500, OR GOVERNING BODY WAIVES PAYMENT.—If (but for this subparagraph) the payments to any unit of local government below the level of the county government—

(i) would be less than $2,500 for any entitlement period ($1,875 for an entitlement period of 9 months), or

(ii) is waived for any entitlement period by the governing body of such unit,

then the amount of such payment for such period shall (in lieu of being paid to such unit) be added to, and shall become a part of, the payment for such period to the county government of the county area in which such unit is located.

SEC. 165. MANAGEMENT OF FUNDS.

(a) MANAGEMENT.—

(1) IN GENERAL.—Funds appropriated pursuant to section 163 (b) shall remain available without fiscal year limitation and, except as provided in this title, may be used only for the payments to State and local governments as provided by this subtitle.

(2) REPORT.—The Secretary of the Treasury shall report to the Congress not later than January 15 of each year on the operations and payments under this subtitle during the preceding fiscal year.

(b) TRANSFER TO GENERAL FUND.—The Secretary shall from time to time transfer to the general fund of the Treasury any moneys available for this subtitle which he determines will not be needed to make payments to State governments and units of local government under this subtitle.

SEC. 166. COMPUTATION OF ALLOCATION AMONG STATES.

An amount equal to the amount authorized under section 105(c) (1) for each entitlement period which is not reserved for distribution under this subtitle shall be allocated among the States as follows:

(a) ALLOCATION ON BASIS OF INCOME FACTOR.—Forty percent of an amount equal to the amount authorized under section 105(c)(1) for any entitlement period which is not reserved for distribution under this subtitle shall be allocated among the States in the same proportion as—

(1) the population of each State, multiplied by the income factor of that State, bears to

(2) the sum of the products determined under subparagraph (1) for all States.

(b) ALLOCATION ON BASIS OF TAX EFFORT FACTOR.—Sixty percent of an amount equal to the amount authorized under section 105(c)(1) for any entitlement period which is not reserved for distribution under this subtitle shall be allocated among the States in the same proportion as the amount allocable to each State under subsection (c) of this section bears to the sum of the amounts allocable to all States under such subsection.

(c) DETERMINATION OF ALLOCABLE AMOUNT.—

(1) IN GENERAL.—For purposes of subsection (b) of this section, the amount allocable to a State under this subsection for any entitlement period shall be determined under paragraph (2), except that such amount shall be determined under paragraph (3) if the amount allocable to it under paragraph (3) is greater than the amount allocable to it under paragraph (2).

(2) GENERAL TAX EFFORT AMOUNT.—For purposes of paragraph (1), the amount allocable to a State under this paragraph for any entitlement period is the amount which bears the same ratio to the total amount allocable under subsection (b) as—

(A) the population of that State, multiplied by the general tax effort factor of that State, bears to

(B) the sum of the products determined under subparagraph (A) for all States.

(3) INCOME TAX EFFORT AMOUNT.—For purposes of paragraph (1), the amount allocable to a State under this paragraph for any entitlement period is the amount which bears the same ratio to the total amount allocable under subsection (b) as—

(A) the population of that State, multiplied by the income tax effort factor of that State, bears to

(B) the sum of the products determined under subparagraph (A) for all States.

SEC. 167. ENTITLEMENTS OF STATE GOVERNMENTS.

(a) DIVISION BETWEEN STATE AND LOCAL GOVERNMENTS.—The State government shall be entitled to receive one-third of the amount allocated to that State for each entitlement period. The remaining portion of each State's allocation shall be allocated among the units of local government of that State as provided in section 168.

(b) STATE MUST MAINTAIN TRANSFERS TO LOCAL GOVERNMENTS.—

(1) GENERAL RULE.—The entitlement of any State government for any entitlement period beginning on or after January 1, 1977, shall be reduced by the amount (if any) by which—

(A) the average of the aggregate amounts transferred by the State government (out of its own sources) during such period and the preceding entitlement period to all units of local government in such State, is less than,

(B) the similar aggregate amount for the one-year period beginning July 1, 1975, or until data on such period are available, the most recent such one-year period for which data on such amounts are available.

For purposes of subparagraph (A), the amount of any reduction in the entitlement of a State government under this subsection for any entitlement period shall, for subsequent entitlement periods, be treated as an amount transferred by the State government (out of its own sources) during such period to units of local government in such State.

(2) ADJUSTMENT WHERE STATE ASSUMES RESPONSIBILITY FOR CATEGORY OF EXPENDITURES.—If the State government establishes to the satisfaction of the Secretary that since December 31, 1976, it has assumed responsibility for a category of expenditures which (before January 1, 1977) was the responsibility of local governments located in such State, then, under regulations prescribed by the Secretary, the aggregate amount taken into account under paragraph (1)(B) shall be reduced to the extent that increased State government spending (out of its own sources) for such category has replaced corresponding amounts which for the one-year period utilized for purposes of paragraph (1)(B) it transferred to units of local government.

(3) ADJUSTMENT WHERE NEW TAXING POWERS ARE CONFERRED UPON LOCAL GOVERNMENTS.—If a State establishes to the satisfaction of the Secretary that since January 1, 1977, one or more units of local government within such State have had conferred upon them new taxing authority, then, under regulations prescribed by the Secretary, the aggregate amount taken into account under paragraph (1)(B) shall be reduced to the extent of the larger of—

(A) an amount equal to the amount of the taxes collected by reason of the exercise of such new taxing authority by such local governments, or

(B) an amount equal to the amount of the loss of revenue to the State by reason of such new taxing authority being conferred on such local governments.

No amount shall be taken into consideration under subparagraph (A) if such new taxing authority is an increase in the authorized rate of tax under a previously authorized kind of tax, unless the State is determined by the Secretary to have decreased a related State tax.

(4) SPECIAL RULE FOR PERIOD BEGINNING JANUARY 1, 1977.—In the case of the entitlement period beginning January 1, 1977, and ending September 30, 1977, the aggregate amount taken into account under paragraph (1)(A) for the preceding entitlement period and the aggregate amount taken into account under paragraph (1)(B) shall be three-fourths of the amounts which (but for this paragraph) would be taken into account.

(5) REDUCTION IN ENTITLEMENT.—If the Secretary has reason to believe that paragraph (1) requires a reduction in the entitlement of any State government for any entitlement period, he shall give reasonable notice and opportunity for hearing to the State. If thereafter, he determines that paragraph (1) requires the reduction of such entitlement, he shall also determine the amount of such reduction and shall notify the Governor of such State of such determinations and shall withhold from subsequent payments to such State government under this title an amount equal to such reduction.

(6) TRANSFERS TO LOCAL GOVERNMENTS.—An amount equal to the reduction in the entitlement of any State government which results from the application of this subsection (after any judicial review under section 143) shall be made available for distribution to local governments within the State in accordance with section 168. In

the event that, because of limits imposed by section 168, any portion of such amount is not properly allocable to local governments, such portion shall be transferred to the general fund of the Treasury.

SEC. 168. ENTITLEMENTS OF LOCAL GOVERNMENTS.

(a) ALLOCATION AMONG COUNTY AREAS.—The amount to be allocated to the units of local government within a State for any entitlement period shall be allocated among the county areas located in that State so that each county area will receive an amount which bears the same ratio to the total amount to be allocated to the units of local government within that State as—

(1) the population of that county area, multiplied by the tax effort factor of that county area, multiplied by the income factor of that county area, bears to

(2) the sum of the products determined under paragraph (1) for all county areas within that State.

(b) ALLOCATION TO COUNTY GOVERNMENTS, MUNICIPALITIES, TOWNSHIPS, ETC.—

(1) COUNTY GOVERNMENTS.—The county government shall be allocated that portion of the amount allocated to the county area for the entitlement period under subsection (a) which bears the same ratio to such amount as the adjusted taxes of the county government bear to the adjusted taxes of the county government and all other units of local government located in the county area.

(2) OTHER UNITS OF LOCAL GOVERNMENT.—The amount remaining for allocation within a county area after the application of paragraph (1) shall be allocated among the units of local government (other than the county government) located in that county area so that each unit of local government will receive an amount which bears the same ratio to the total amount to be allocated to all such units as—

(A) the population of that local government, multiplied by the tax effort factor of that local government, multiplied by the income factor of that local government, bears to

(B) the sum of the products determined under subparagraph (A) for all such units.

(3) TOWNSHIP GOVERNMENTS.—If the county area includes one or more township governments, then such township governments shall be treated as units of local government in making the allocation prescribed by paragraph (2) of this subsection.

(4) INDIAN TRIBES AND ALASKAN NATIVE VILLAGES.—If within a State there is an Indian tribe or Alaskan native village which has a recognized governing body which performs substantial governmental functions, then before applying subsection (a) of this section there shall be allocated to each such tribe or village a portion of the amount allocated to that State for the entitlement period which bears the same ratio to such amount as the population of such tribe or village within that State bears to the population of that State. If this paragraph applies with respect to any State for any entitlement period, the total amount to be allocated to county areas under subsection (a) shall be appropriately reduced to reflect the amount allocated under the preceding

sentence, and the population of any tribe or village receiving such allocation shall not be counted in determining the allocation under subsection (a) of the county area in which such tribe or village is located. If the entitlement of any such tribe or village is waived for any entitlement period by the governing body of that tribe or village, then the provisions of this paragraph shall not apply with respect to the amount of such entitlement for such period.

(5) RULE FOR SMALL UNITS OF GOVERNMENT.—If the Secretary determines that in any county area the data available for any entitlement period are not adequate for the application of the formulas set forth in paragraph (2) with respect to units of local government (other than a county government) with a population below a number (not more than 500) prescribed for that county area by the Secretary, he may apply paragraph (2) by allocating for such entitlement period to each such unit located in that county area an amount which bears the same ratio to the total amount to be allocated under paragraph (2) for such entitlement period as the population of such unit bears to the population of all units of local government in that county area to which allocations are made under such paragraph. If the preceding sentence applies with respect to any county area, the total amount to be allocated under paragraph (2) to other units of local government in that county area for the entitlement period shall be appropriately reduced to reflect the amounts allocated under the preceding sentence.

(6) ENTITLEMENT.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the entitlement of any unit of local government for any entitlement period shall be the amount allocated to such unit under this subsection.

(B) MAXIMUM PER CAPITA ENTITLEMENT.—The per capita amount allocated to any county area or any unit of local government (other than a county government) within a State under this section for any entitlement period shall not be more than 300 percent of two-thirds of the amount allocated to the State under section 166, divided by the population of that State.

(C) LIMITATION.—The amount allocated to any unit of local government under this section for any entitlement period shall not exceed 50 percent of the sum of (i) such government's adjusted taxes, and (ii) the intergovernmental transfers of revenue to such government (other than transfers to such government under this subtitle).

(D) ENTITLEMENT LESS THAN $2,500, OR GOVERNING BODY WAIVES ENTITLEMENT.—If (but for this subparagraph) the entitlement of any unit of local government below the level of the county government—

(i) would be less than $2,500 for any entitlement period ($1,875 for an entitlement period of 9 months), or

(ii) is waived for any entitlement period by the governing body of such unit,

then the amount of such entitlement for such period shall (in lieu of being paid to such unit) be added to, and shall become a part of, the entitlement for such period of the county government of the county area in which such unit is located.

(7) ADJUSTMENT OF ENTITLEMENT.—

(A) IN GENERAL.—In adjusting the allocation of any county area or unit of local government, the Secretary shall make any adjustment required under paragraph (6)(B) first, any adjustment required under paragraph (6)(C) next, and any adjustment required under paragraph (6)(D) last.

(B) ADJUSTMENT FOR APPLICATION OF MAXIMUM PER CAPITA ENTITLEMENT.—The secretary shall adjust the allocation made under this section to county areas or to units of local governments in any State in order to bring those allocations into compliance with the provisions of paragraph (6)(B). In making such adjustments he shall make any necessary adjustments with respect to county areas before making any necessary adjustments with respect to units of local government.

(C) ADJUSTMENT FOR APPLICATION OF LIMITATION.—In any case in which the amount allocated to a unit of local government is reduced under paragraph (6)(C) by the Secretary, the amount of that reduction—

(i) in the case of a unit of local government (other than a county government), shall be added to and increase the allocation of the county government of the county area in which it is located, unless (on account of the application of paragraph (6)) that county government may not receive it, in which case the amount of the reduction shall be added to and increase the entitlement of the State government of the State in which that unit of local government is located; and

(ii) in the case of a county government, shall be added to and increase the entitlement of the State government of the State in which it is located.

SEC. 169. DEFINITIONS AND SPECIAL RULES FOR APPLICATION OF ALLOCATION FORMULAS.

(a) IN GENERAL.—For the purposes of this subtitle—

(1) POPULATION.—Population shall be determined on the same basis as resident population is determined by the Bureau of the Census for general statistical purposes.

(2) EXEMPT INCOME.—Exempt income shall mean one-fourth of the annual income designated by the Bureau of the Census as the low-income level for a family of four persons.

(3) AGGREGATE EXEMPT INCOME.—Aggregate exempt income for any unit of government shall mean the population of that unit multiplied by exempt income as defined in paragraph (2).

(4) INCOME.—Income means total money income from all sources, as determined by the Bureau of the Census, for general statistical purposes.

(5) DATES FOR DETERMINING ALLOCATIONS AND ENTITLEMENTS.—Except as provided in regulations, the determination of allocations and entitlements for any entitlement period shall be made as of the first day of the third month immediately preceding the beginning of such period.

(6) INTERGOVERNMENTAL TRANSFERS.—The intergovernmental transfers of revenue to any government are the amounts of revenue received by that government from other governments as a

share in financing (or as reimbursement for) the performance of governmental functions, as determined by the Bureau of the Census for general statistical purposes.

(7) DATA USED; UNIFORMITY OF DATA.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), the data used shall be the most recently available data provided by the Bureau of the Census or the Department of Commerce, as the case may be.

(B) USE OF ESTIMATES, ETC.—Where the Secretary determines that the data referred to in subparagraph (A) are not current enough or are not comprehensive enough to provide for equitable allocations, he shall use such additional data (including data based on estimates) as may be provided for in regulations.

(b) INCOME FACTOR.—

(1) The income factor for a State, county area, or unit of local government is a fraction—

(A) the numerator of which is—

(i) the number of persons in families in that State, county area, or unit of local government below the low-income level, plus the number of unrelated individuals 65 years old or over below the low-income level, plus

(ii) the number of persons in families with incomes between 100 percent and 125 percent of the low-income level residing in a central city of an urbanized area within that State, county area, or unit of local government, plus the number of unrelated individuals 65 years old or over who have incomes between 100 percent and 125 percent of the low-income level residing in a central city of an urbanized area within that State, county area, or unit of local government; and

(B) the denominator of which is the number of persons in families in that State, county area, or unit of local government plus the number of unrelated individuals 65 years old and over.

(2) The terms used in paragraph (1) are defined in accordance with the definitions used by the Bureau of the Census for general statistical purposes.

(c) GENERAL TAX EFFORT FACTOR OF STATES.—

(1) IN GENERAL.—For purposes of this title, the general tax effort factor of any State for any period is—

(A) the net amount collected from the State and local taxes of such State during the most recent reporting year, divided by

(B) the aggregate income, as defined in paragraph (4) of subsection (a), attributed to such State for the same period, minus the aggregate exempt income attributable to such State for the same period.

(2) STATE AND LOCAL TAXES.—

(A) TAXES TAKEN INTO ACCOUNT.—The State and local taxes taken into account under paragraph (1) are the compulsory contributions exacted by the State (or by any unit

of local government or other political subdivision of the State) for public purposes (other than employee and employer assessments and contributions to finance retirement and social insurance systems, and other than special assessments for capital outlay), as such contributions are determined by the Bureau of the Census for general statistical purposes.

(B) MOST RECENT REPORTING YEAR.—The most recent reporting year with respect to any entitlement period consists of the years taken into account by the Bureau of the Census in its most recent general determination of State and local taxes made before the close of such period.

(d) INCOME TAX COLLECTIONS OF STATES.—The income tax collections attributed to any State for any entitlement period shall be equal to the net amount collected from the State individual income tax of such State during the last calendar year ending before the beginning of such entitlement period. The individual income tax of any State is the tax imposed upon the income of individuals by that State and described as a State income tax under section 164(a)(3) of title 26, United States Code.

(e) INCOME TAX EFFORT FACTOR.—The income tax effort factor of any State for any entitlement period is—

(1) the income tax collections of that State as defined in subsection (d), divided by

(2) the aggregate income, as defined in paragraph (4) of subsection (a) attributed to such State for the same period, minus the aggregate exempt income attributable to such State for the same period.

(f) TAX EFFORT FACTOR OF COUNTY AREA.—For purposes of this title, the tax effort factor of any county area for any entitlement period is—

(1) the adjusted taxes of the county government plus the adjusted taxes of each other unit of local government within that county area, divided by

(2) the greater of

(A) the aggregate income (as defined in paragraph (4) of subsection (a)) attributed to that county area, minus the aggregate exempt income attributable to that county area, or

(B) one-half the aggregate exempt income attributable to such county area for the same period.

(g) TAX EFFORT FACTOR OF UNIT OF LOCAL GOVERNMENT.—For purposes of this title—

(1) IN GENERAL.—The tax effort factor of any unit of local government for any entitlement period is—

(A) the adjusted taxes of that unit of local government, divided by

(B) the greater of—

(i) the aggregate income (as defined in paragraph (4) of subsection (a)) attributed to that unit of local government, minus the aggregate exempt income attributable to that unit of local government, or

(ii) one-half the aggregate exempt income attributable to such unit of local government for the same period.

(2) ADJUSTED TAXES.—

(A) IN GENERAL.—The adjusted taxes of any unit of local government are—

(i) the compulsory contributions exacted by such government for public purposes (other than employee and employer assessments and contributions to finance retirement and social insurance systems, and other than special assessments for capital outlay), as such contributions are determined by the Bureau of the Census for general statistical purposes,

(ii) adjusted (under regulations prescribed by the Secretary) by excluding an amount equal to that portion of such compulsory contributions which is properly allocable to expenses for education.

(B) CERTAIN SALES TAXES COLLECTED BY COUNTIES.—In any case where—

(i) a county government exacts sales taxes within the geographic area of a unit of local government and transfers part or all of such taxes to such unit without specifying the purposes for which such unit may spend the revenues, and

(ii) the Governor of the State notifies the Secretary that the requirements of this subparagraph have been met with respect to such taxes,

then the taxes so transferred shall be treated as the taxes of the unit of local government (and not the taxes of the county government).

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Calendar No. 1141

94TH CONGRESS, 2d Session | SENATE | REPORT No. 94-1207

EXTENDING AND AMENDING THE STATE AND LOCAL FISCAL ASSISTANCE ACT OF 1972

Filed under authority of the order of the Senate of SEPTEMBER 1 (legislative day, AUGUST 27), 1976

SEPTEMBER 3 (legislative day, AUGUST 27), 1976.—Ordered to be printed

Mr. LONG, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 13367]

The Committee on Finance, to which was referred the bill (H.R. 13367) to extend and amend the State and Local Fiscal Assistance Act of 1972, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

I. SUMMARY

The renewal of the State and Local Fiscal Assistance Act of 1972, or general revenue sharing, represents a reaffirmation of the principles of the 1972 legislation.

The committee believes that our Federal system of government, composed of Federal, State, and local governments, has been strengthened by the provision of unrestricted fiscal assistance on a continuing and certain basis. By providing Federal funds with few limitations, the committee believes that State and local governments may more effectively meet the diverse needs and priorities of the nation. The bill, as amended by the committee, renews the 1972 Act to achieve this result. In addition to providing continued, growing financial assistance to State and local governments, the committee has made certain changes in the 1972 Act which are designed to strengthen and clarify the legislation.

Extension, funding, and amounts

Under the committee amendment to H.R. 13367, the general revenue sharing program is renewed for 5¾ years. Entitlement payments

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of $6.9 billion are provided for fiscal year 1977, and are increased thereafter by $150 million per year. Also, the noncontiguous State adjustment amounts will increase throughout the renewal period. Thus, unlike the House bill which did not provide for any growth in funding, the committee amendment provides for an 11-percent increase in funding.

Distribution of funds

Basically the committee continues the present provisions relating to the distribution of funds. As a result, the distribution of the funds to the States will continue to be based on one of two formulas: one is based on population, on tax effort, and on need (inverse per capita income); the other is based on population, urbanization, need, relative use of income taxes, and tax effort. The State governments themselves will receive one-third of the funds and the remainder distributed among the counties, cities, and other local governments for the most part on the basis of population, tax effort, and need. However, a few relatively minor changes to the distribution formulas are made on the basis of the experience to date.

The committee amendment retains the current formulas for allocation of funds among States and within. It does provide for certain technical modifications designed to improve the administration of the formulas and achieve greater equity. At the State level, the committee amendment provides that the noncontiguous State adjustment be available to States (Hawaii and Alaska) with extraordinary costs of living under both the 5-factor and 3-factor formulas. Under current law, the adjustment has been available only for such States with extraordinary costs of living which benefit under the 3-factor formula.

At the local level, the committee amendment also provides for certain technical changes in the administration of the formulas which are designed to achieve greater equity and greater certainty. First, the committee amendment would prohibit the retroactive application of a change in statistical methodology (e.g., the precise manner in which, for example, school taxes are removed from total taxes to arrive at adjusted taxes) by the Office of Revenue Sharing which would result in a recipient having to repay revenue sharing funds received in a previous entitlement period. Second, to minimize fluctuations in entitlements, census data would be required to be used only for periods ending before the beginning of the next entitlement period. Third, revenue sharing funds waived by an Alaskan Native Village or Indian Tribe is to be added to the entitlement of the county government in which the tribe or village is located. This is the requirement of current law with respect to waivers by cities and townships, and would provide parallel treatment for tribes and villages. Fourth, the committee amendment provides for an allocation to certain separate law enforcement officers in Louisiana except in Orleans parish from funds available to State and parish governments. A State may elect during the renewal period the optional within-State distribution formula provided in current law.

Fiscal requirements

The committee amendment revises the fiscal requirements of the Act by eliminating the requirements that localities spend revenue sharing funds in priority categories and that recipients not use revenue sharing

to match other Federal programs. Also, the State maintenance of effort requirement in the Act is revised so that States must maintain their transfers to localities compared to a moving average of their previous transfers.

Eligibility requirements

The committee amendment continues the local government eligibility requirements of current law, and eliminates an unused category of recipients ("other units of local government").

Accounting and auditing requirements

The committee amendment provides that where State or local law requires a financial audit of State and local revenues and expenditures, the same requirements are to be sufficient for revenue sharing funds. Where no statutory audit requirement exists, an independent audit of the recipient's financial statements, according to generally acceptable accounting standards, is to be required every three years. A series of audits which aggregate the entire financial activity of the recipient would be sufficient. In certain circumstances, where recipient units of Government are not auditable, the required audit is to be waived where it is demonstrated by the recipient (under regulations promulgated by the Secretary) that substantial progress toward being auditable is being achieved annually. Recipients with annual entitlements of less than $25,000 per year of revenue sharing funds would be exempted from the required audit provisions. Coordination with other Federal audit requirements is mandated, in order to avoid duplication of audits in the case of units of Government not subject to State or local statutory audit requirements.

Reports, hearings, and public participation

The committee amendment provides a general requirement for public hearings, notification, and publication of summary budgetary information. An exception to this general requirement is provided if a recipient holds public hearings after notice on the proposed uses of its own funds in which citizens can participate under generally applicable State or local law.

Nondiscrimination

The committee amendment also strengthens the nondiscrimination provisions of current law by providing: (1) a general prohibition against discriminating on the basis of race, color, national origin or sex, with respect to any program or activity of a recipient government which program or activity has been designated as receiving revenue sharing funds or which under all the facts and circumstances is demonstrated to be funded in whole or in part with revenue sharing funds; (2) a procedure which provides certain timetables under which the Treasury Department must seek compliance, and which can result in suspension of revenue sharing payments; (3) standing for citizens who, upon exhaustion of administrative remedies, can bring a civil action in an appropriate U.S. district or State court.

Study of Federal fiscal system

The committee amendment also creates a 14 member Commission to study and evaluate our (and other) Federal systems in terms of the allocation of taxing and spending authorities; to study and

evaluate State and local government organization to determine, especially at the local level, what general governments do and how they might relate to each other and to special districts in terms of service and financing responsibilities, as well as annexation and incorporation responsibilities. In addition, the Commission is to examine the effectiveness of Federal stabilization policies on local areas, and the effects of individual State and local fiscal decisions on aggregate economic activity, the quality of financial control and audit procedures that exists in our Federal system, and the formal and pratical aspects of citizen participation in fiscal decisions in our Federal system. The Commission is to have 3 years to make its study and report to the President and Congress. The commission is to be composed of the Speaker of the House, the Minority Leader of the House, the Majority and Minority Leaders of the Senate, two members of the Executive Branch, two Governors, two local government officials, two representatives of the business community and two representatives from labor.

II. REASONS FOR THE BILL

Fiscal problems of State and local governments

Over the past two and a half years, the Nation has suffered the worst recession since the Great Depression. Not only has the private sector been adversely affected, but so too has the State and local sector. Rapidly rising service costs coupled with sluggish or declining tax bases has meant that State and local governments have had to raise tax rates and/or cut services. For example, State spending grew in 1975 by 18.2% while revenues grew by only 9.8%. The impact of the recession has been especially severe in some of the older, industrial cities. As a result of this, the committee concluded that State and local governments face financial problems of a continued severe nature.

A chronic problem State and local governments face is that the demand for public services is more elastic than the availability of revenues to finance them. Thus, because of inflation and other factors, expenditure requirements tend to outpace revenues. On the revenue side, State and local governments have tended to rely on revenue sources that do not grow as the economy does.

The continued provision of general revenue sharing thus not only serves to help solve the fiscal problems of individual State and local governments, but also serves to stabilize the economy.

Revenue sharing in the Federal fiscal system

Since 1972, general revenue sharing has become an integral part of State and local budgets. Initially proposed as a new and additional form of Federal assistance, revenue sharing has been used by State and local governments to hold the fiscal line as other Federal categorical programs were reduced. As such, revenue sharing has become not only well integrated into the State and local fiscal process, but also an essential source of funding to State and local governments.

Expiration of general revenue sharing

Payments to State and local governments under the State and local Fiscal Assistance Act of 1972 (title I of Public Law 95–512) terminate at the end of calendar 1976. Were the committee not to act between now and the end of 1976, State and local governments would lose more than

10 percent of all Federal grant-in-aid funds. Besides the fact that it has become essential to State and local governments, the committee considers the renewal of revenue sharing to be worthwhile because of its success in allowing State and local governments to effectively meet their needs and priorities.

III. GENERAL EXPLANATION

A. Extension, Funding, and Amounts (sec. 5 of committee amendment and sec. 105 of present law)

Payments to State and local governments under the State and Local Fiscal Assistance Act of 1972 (revenue sharing) end at the end of the calendar 1976.[1] The payments began at an annual rate of $5.3 billion per year and increased annually until they reached $6.65 billion annual rate for the second half of calendar year 1976. Table 1 displays the aggregate amounts of aid over this period.

TABLE 1.—PAYMENTS TO STATE AND LOCAL GOVERNMENTS UNDER GENERAL REVENUE SHARING

Entitlement period	Amount (millions)	Percent increase over previous period [1]
(1) Jan. 1 to June 30, 1972	$2,650.0	
(2) July 1 to Dec. 30, 1972	2,650.0	
(3) Jan. 1 to June 30, 1973	2,987.5	(12.7)
(4) July 1, 1973 to June 30, 1974	6,050.0	(1.3)
(5) July 1, 1974 to June 30, 1975	6,200.0	(2.5)
(6) July 1, 1975 to June 30, 1976	6,350.0	(2.4)
(7) July 1, 1975 to Dec. 31, 1976	3,325.0	(4.7)
Total	30,212.5	

[1] At annual rates.

The 1972 Act provided that the funds be permanently appropriated out of funds attributable to Federal individual income tax collections and placed in a trust fund.

In considering the renewal of revenue sharing, the committee has sought to balance its concern that the program be periodically reviewed, and thus made controllable, with the concern that State and local governments be provided sufficient certainty so that they might plan and therefore use revenue sharing funds most effectively. By renewing the program for 5 and 3/4 years, substantial certainty will continue to be available to State and local governments, and the Congress will have sufficient time to be able to review its operation prior to considering its renewal again.

Over the five years of revenue sharing, annual payments rose from $5.3 billion to $6.65 billion, a 25.5 percent overall increase. During this period, however, the Consumer Price Index rose by more than 35 per-

[1] Under Sec. 102 of the Act, revenue sharing payments are made in at least four installments over the "entitlement period" which is generally the Federal fiscal year. The Act permits the Treasury Department to make these payments as late as 5 days after the end of each quarter. The Treasury Department practice has been to make payments of equal size with some amount (e.g., .5 percent) held back to account for corrections to data, etc. after the close of each quarter. Accordingly, the last checks under the 1972 Act will be mailed out in early January, 1977.

cent, and the implicit price deflator for State and local purchases of goods and services (a price index for State and local government) rose by more than 30 percent. Thus, the value of revenue sharing, once corrected for price changes, has declined somewhat over the period of its existence. The committee considers it essential that the level of new funding, to the extent financially possible, take into account future price increases. Accordingly, the committee amendment provides that revenue sharing payments be $6.9 billion for fiscal year 1977. This represents a 3.8 percent increase over the $6.65 billion per year rate at which current law ends. The committee amendment then provides for a more modest growth rate: for fiscal year 1978, the growth in funding is 2.2 percent; and in the last year of the renewal period, the growth rate is 2.0 percent.

In view of the new budget procedures resulting from the Congressional Budget and Impoundment Act of 1974, the committee provides for entitlement funding, which combines the certainty previously available with additional oversight which derives from the exercise of the Congressional budgetary process.

Explanation of provision

The committee amendment provides for a 5 and ¾-year extension of entitlement payments to State and local governments. Payments under the noncontiguous State adjustment are increased at the same rate. In fiscal year 1977, $6.9 billion will be available for allocations. Since $1,662.5 million is provided for the period October 1, 1976–December 31, 1976 under present law, the committee amendment provides for $5,237.5 million for the 9-month period, January 1, 1977–September 30, 1977. Thereafter, the amount available for allocation increases each year by $150 million. Table 2 displays the aggregate amount available and the noncontiguous State adjustment amounts under the committee amendment and House bill.

The House bill provides for a 3 and 3/4-year extension of entitlement payments. Payments are at a constant $6.65 billion annual rate; the noncontiguous States adjustment amount is also fixed at a $4.78 million annual rate.

Effective date

The committee amendment is effective for entitlement periods beginning on or after January 1, 1977.

TABLE 2.—ENTITLEMENT PAYMENTS UNDER COMMITTEE AMENDMENT AND HOUSE BILL

Entitlement period	Basic amount ($ millions)		Noncontiguous States adjustment amount ($ millions)	
	Committee amendment	House bill	Committee amendment	House bill
(8) Jan. 1, 1977 to Sept. 30, 1977	$5,237.5	$4,987.5	$35.8	$35.8
(9) Oct. 1, 1977 to Sept. 30, 1978	7,050.0	6,650.0	5.1	4.8
(10) Oct. 1, 1978 to Sept. 30, 1979	7,200.0	6,650.0	5.2	4.8
(11) Oct. 1, 1979 to Sept. 30, 1980	7,350.0	6,650.0	5.3	4.8
(12) Oct. 1, 1980 to Sept. 30, 1981	7,500.0		5.4	
(13) Oct. 1, 1981 to Sept. 30, 1982	7,650.0		5.5	
Total	41,987.5	24,937.5	30.3	18.8

B. Distribution of Funds (secs. 5, 6(b), 6(c), 6(d), 6(e), and 6(f) of committee amendment and secs. 102, 105, 106, 108, and 109 of present law)

1. Interstate allocation.—Under present law, the amount available to each State area for each entitlement period is allocated on the basis of whichever of two formulas, the "three-factor" formula or the "five-factor" formula, yields the greater portion of the amount available for the entitlement period. (These formulas allocate funds to a State geographic area for the use of the State government and all the units of local government in the State. The division of funds between the State government and the units of local government in the State is discussed below.)

The three-factor formula is based on a multiplication of population, tax effort, and inverse per capita income. The formula compares the resulting product for a State with the sum of the product similarly determined for all of the States and, initially, allocates a State area amount equal to the resulting proportion of $5.3 billion.

If this allocation is determined under the three-factor formula, rather than under the five-factor formula described below, and the State is eligible for the "noncontiguous State adjustment"—Alaska and Hawaii only—the basic allocation is increased.

Under the noncontiguous State adjustment, the basic allocation for States in which civilian employees of the U.S. Government receive an allowance under sec. 5941 of title 5 of the U.S. Code is increased by this percentage increase in base pay allowance (currently 15 percent for Hawaii and 25 percent for Alaska). The full fiscal year appropriation for this adjustment is $4.78 million, some of which may not be used because the percentage increase of the basic allocation may require less, or one or both States may not be eligible for the percentage adjustment because they receive more under the five-factor formula. This adjustment is taken into account before the determination of whether these States receive more under the three-factor formula or under the five-factor formula, but is provided only if the three-factor formula with the adjustment is more advantageous than the five-factor formula. Table 3 displays payments to Alaska and Hawaii under this provision.

TABLE 3—PAYMENTS TO ALASKA AND HAWAII UNDER THE NONCONTIGUOUS STATE ADJUSTMENT PROVISION, CURRENT LAW

Entitlement period	Payments to—		Total payment
	Alaska	Hawaii	
(1) Jan. 1 to June 30, 1972	$660,567	0	$660,567
(2) July 1 to Dec. 31, 1972	660,567	0	660,567
(3) Jan. 1 to June 30, 1973	741,427	$1,648,573	2,390,000
(4) July 1, 1973 to June 30, 1974	1,482,855	3,297,145	4,780,000
(5) July 1, 1974 to June 30, 1975	0	0	0
(6) July 1, 1975 to June 30, 1976	0	0	0
(7) July 1, 1976 to Dec. 31, 1976	0	0	0
Total	3,545,416	4,945,718	8,491,134

Source: U.S. Treasury Department, Office of Revenue Sharing.

2. Within State allocation

The amount allocated to a State is divided two-thirds to the local governments in that State and one-third to the State government.

1. County area allocations.—The two-thirds available for allocation to the local governments is then allotted among county areas [2] on the basis of the three-factor formula: population multiplied by general tax effort, and that product multiplied by inverse relative per capita income.

In the case of county areas the population taken into account is the population of the country area, the tax effort taken into account is the "adjusted taxes" [3] raised by all units of general government in the county area divided by the total money income of the residents of the county area, and the per capita money income is the total money income of the county area divided by the county area population.

In the case of cities or townships, the population used refers to the population within its political boundaries; the tax effort used is the ratio of its adjusted taxes to the total money income of the residents of the city or township; the per capita income used is the ratio of total money income of the city or township divided by its respective population.

Inverse per capita income is the ratio of the larger geographic unit's per capita income to that of the jurisdiction for which an allocation is being computed. Thus, in the case of a county area allocation, inverse per capita income is the ratio of State per capita income to the county per capita income in question.

3. Intra-county allocation

Once each county area allocation has been determined, allocation among types of governments (county, city, township, and Indian tribes, and Alaskan native villages which perform substantial governmental functions) is made. If there are any Indian tribes or Alaskan native villages, an allocation is made first on the basis of total tribal population as a percentage of the county area population. The remainder of the county area allocation is then divided among the county governments, all cities (if any), and all townships (if any) on the basis of their adjusted taxes.

Table 4 displays these steps for a hypothetical county area with an initial $1,000,000 county area allocation. Since total tribal population is 10 percent of the county area population, the tribes receive $100,000; this leaves $900,000 to be allocated among the county government, all cities, and all townships. Total adjusted taxes are $10,000,000, of which the county government has 70 percent, the cities 20 percent, and the townships 10 percent. Accordingly, the county government receives $630,000 (70 percent of $900,000); the cities receive $180,000 (20 percent of $900,000); and the townships receive $90,000 (10 percent of $900,000). This division of funds on the basis of taxes was intended to distinguish among fiscally active and inactive types of governments.

[2] For any part of the State where there is no county, the next unit of local government below the State level will be treated as a county. In other words, this allocation to county areas is intended to cover the entire geographic area of the State, whether or not there are active county governments. Thus, for example, San Francisco and Baltimore cities are treated as county areas, as are the independent cities in Virginia.

[3] "Adjusted taxes" mean all tax revenues minus the amount attributable to finance education.

TABLE 4.—EXAMPLE OF DIVISION OF $1,000,000 COUNTY AREA ALLOCATION AMONG TYPES OF GOVERNMENT

	Population	Adjusted taxes	Share of area allocation
Area total	100,000	$10,000,000	
Tribes	[illegible]		$100,000
County government		7,000,000	630,000
All cities		2,000,000	180,000
All townships		1,000,000	90,000

4. Optional formula and special rules.

A State may by law alter the above allocation formula once during the 5 years of the program. Instead of using the three-factor formula, a State may use an average of population times tax effort and population times inverse per capita income. The change which must be made for the entire State may be solely at the county area level, solely at the sub-county level, or both; however, the maximum and minimum limitations may not be changed. To date, no State has elected to modify the formula provided in the 1972 legislation.

5. Definitions—Inter-State data.

The population of a State is the total resident population as determined by the Bureau of the Census. The population data are estimates which are updated annually by the Bureau of the Census, and published in *Current Population Reports, Series P–25.* Urbanized population of a State is the amount of that State's population which is classified as an urbanized area by the Bureau of the Census. Urbanized population data is based on complete population enumeration and subsequent classification of population density. Urbanized population data is available only from a decennial census. The per capita income of a State is the ratio of the estimated total money income received by all persons residing in the State to the estimated resident population of the State. The calendar year 1972 updates for Entitlement Periods 6 and 7 and the planned future updates are Bureau of the Census estimates. The estimates are developed by utilizing information obtained by the place of residence questions on the IRS 1040 forms in conjunction with other administrative records. Sec. 144 of the 1972 Act requires that State, county, city or township place of residence be provided annually by taxpayers on the 1040 and 1040A individual income tax forms.

The State individual income tax of a State is the tax imposed upon the income of individuals by the State according to Section 164(a)(3) of the Internal Revenue Code of 1954. Actual calendar year collections data are published annually by the Bureau of the Census in their *Quarterly Summary of State and Local Tax Revenue* reports. The Federal individual income tax liability of a State is the total annual Federal individual income tax after credits attributed to the residents of the State by IRS. Calendar year estimates are obtained annually from the Internal Revenue Service's publication, *Statistics of Income.* State and local taxes data are the compulsory contributions exacted by a State (or local government of the State) for public purposes other than employer or employee assess-

ments, contributions to finance retirement and social insurance systems, and special assessments for capital outlay. State and local taxes data are updated annually and published by the Bureau of the Census in their publication *Government Finances*. The general tax effort factor of a State is the State and local taxes of the State divided by the aggregate personal income of the State. The aggregate personal income of a State is the income of individuals of the State as determined by the Department of Commerce for National income accounts purposes. General tax effort factor data are updated annually by the Bureau of the Census and are published in *Governmental Finances*.

6. *Definitions—Intra-State data.*

The population of a unit of local government is the total resident population as determined by the Bureau of the Census. The July 1, 1973 updates for Entitlement Periods 6 and 7 and the planned future updates are Bureau of the Census estimates. The estimates are developed by utilizing information derived from the place of residence questions on the IRS 1040 forms in conjunction with information from other administrative records. Annual revisions are also made to the population data to reflect boundary changes and annexations. The Bureau of the Census conducts an annual *Boundary and Annexation Survey*, the result of which are utilized to update the boundaries and thereby the population and per capita income data for local governments.

The per capita income for a local government is the ratio of estimated total money income received by the residents of the jurisdiction to the estimated total population of the jurisdiction as determined by the Bureau of the Census. The calendar year 1972 updates for Entitlement Periods 6 and 7 and the planned future updates are Bureau of the Census estimates. The estimates are developed by utilizing information derived from the place of residence questions on the IRS 1040 forms in conjunction with other administrative records. Sec. 144 of the 1972 Act requires that State, county, city, or township place of residence be provided annually by taxpayers on the 1040 and 1040A individual income tax forms. Annual revisions are made to the per capita income data which reflect updated boundaries of the local governments. The updated geography information is collected by the Bureau of the Census in their annual *Boundary and Annexation Survey*.

The adjusted taxes of a local government are the total taxes received by the government excluding taxes for schools and other educational purposes. Adjusted taxes data are collected annually by the Bureau of the Census in their *General Revenue Sharing Survey*.

The intergovernmental transfers of a local government are the total amounts received from other governments (other than revenue sharing) for use for either specific functions or general financial support. These data are collected annually by the Bureau of the Census in their *General Revenue Sharing Survey*.

7. Utilization of new data

Current law (Sec. 109(a)(7)(A) and (B) and 109(c)(2)) requires that the data used be the most recently available, and that where such data provided by the Bureau of the Census are not current enough or

not comprehensive enough to provide equitable allocations, the Secretary may use additional data, including data based on estimates as provided by regulations. Present law (Sec. 109(a)(5)) also provides, except as provided otherwise by regulations, that computations of allocations for an entitlement period be made 3 months prior to the beginning of the entitlement period. As a consequence, unless the Secretary provides otherwise through regulations, the Office of Revenue Sharing may have to use preliminary estimates of the required Census data to initially write checks and then, during the entitlement period, use the final data estimates. Table 5 displays for Entitlement Periods 1 through 7 the periods to which the data refer.

TABLE 5

GENERAL REVENUE SHARING—DATA ELEMENT BASE PERIODS, ENTITLEMENT PERIODS 1 TO 7

	Entitlement period—						
	1—Jan. 1, to June 30, 1972	2—July 1, to Dec. 31, 1972	3—Jan. 1, to June 30, 1973	4—July 1, 1973 to June 30, 1974	5—July 1, 1974 to June 30, 1975	6—July 1, 1975 to June 30, 1976	7—July 1, to Dec. 31, 1976
Data for intrastate allocations:							
Population	Apr. 1, 1970	Apr. 1, 1970	Apr. 1, 1970	Apr. 1, 1970	Apr. 1, 1970	July 1, 1973	July 1, 1973.
Per Capita income	CY 1969	CY 1969	CY 1969	CY 1969	CY 1969	CY 1972	CY 1972.
Adjusted taxes	FY 1971	FY 1971	FY 1971	FY 1972	FY 1973	FY 1974	FY 1975.
Intergovernmental transfers	FY 1971	FY 1971	FY 1971	FY 1972	FY 1973	FY 1974	FY 1975.
Data for interstate allocations:							
Population	Apr. 1, 1970	Apr. 1, 1970	July 1, 1972	July 1, 1972	July 1, 1973	July 1, 1974	July 1, 1975.
Urbanized population	Apr. 1, 1970	Apr. 1, 1970	Apr. 1, 1970	Apr. 1, 1970	Apr. 1, 1970	Apr. 1, 1970	Apr. 1, 1970.
Per capita income	CY 1969	CY 1969	CY 1969	CY 1969	CY 1969	CY 1972	CY 1972.
State individual income taxes	CY 1972	CY 1972	CY 1972	CY 1972	CY 1973	CY 1974	CY 1975.
Federal individual income tax liabilities	CY 1971	CY 1971	CY 1971	CY 1971	CY 1972	CY 1973	CY 1974.
State and local taxes	FY 1970–71	FY 1970–71	FY 1970–71	FY 1970–71	FY 1971–72	FY 1972–73	FY 1973–74.
General tax effort factor	FY 1970–71	FY 1970–71	FY 1970–71	FY 1970–71	FY 1971–72	FY 1972–73	FY 1973–74.

Note: CY refers to a calendar year, and FY refers to the 12 month period beginning on July 1.

Source: U.S. Treasury Department, Office of Revenue Sharing.

In reviewing the allocation of funds under present law, the committee determined that several problems required attention.

1. *Noncontiguous State adjustment.*—The noncontiguous State adjustment provision of the Act had been infrequently used because it is available only under the three-factor formula, which is not as beneficial to Alaska and Hawaii as the five-factor formula is (see table 3). Yet, the cost of living difference in States potentially affected by the provision (Alaska and Hawaii) as compared to the rest of the country remain substantial. Accordingly, the committee amendment provides that the noncontiguous State adjustment be available under both the five-factor and three-factor formulas, subject to the overall limitation that such adjustments not exceed the amount of funds made available.

2. *Retroactive repayment for changes in entitlements resulting from revised statistical procedures.*—Another difficulty the committee encountered with respect to the distribution of funds involves when and under what circumstances the Office of Revenue Sharing may use new or revised procedures to obtain the necessary data to administer the program, and the extent to which it may seek repayment which results from the use of such data. It is the committee's understanding that the Office of Revenue Sharing in consultation with the Bureau of the Census has revised the manner in which it removes from total taxes those taxes attributable to education to arrive at "adjusted taxes." Upon arriving at these revised adjusted tax figures, the Office of Revenue Sharing recomputed the entitlements for previous periods for counties in Virginia and sought retroactive repayments from several of these counties. The committee has concluded that under these circumstances, the seeking of retroactive repayment, either directly through the transfer from such counties to the Office of Revenue Sharing, or indirectly through the current or future reduction of such counties' entitlements, is undesirable because of its unsettling effect on local governments' budgetary planning and not in accord with the intention of the 1970 Act. The committee amendment remedies this problem by limiting the period after which decreases in payments may be made.

3. *Allocations to certain separate law enforcement offices in Louisiana.*—When considering the revenue sharing legislation in 1972, the committee made special provisions in the allocation formulas to reflect variations in governmental structures. For example, provision was made for city-county governments such as St. Louis, Missouri, and Baltimore, Maryland, to be treated as county areas. Similarly, provision was made to treat the independent cities of Virginia as county areas. And, because certain States do not have county governments (Connecticut and Rhode Island), the allocation formulas were structured to deal with these situations as well. In reviewing the performance of the program since enactment, another case of unique governmental organization (which was not provided for in the 1972 legislation) has come to light which in the committee's judgment warrants legislative action. The State of Louisiana has separate law enforcement officers who perform certain governmental functions. While they are closely related to the parish governments, they have not, as had been contemplated in the 1972 legislation, benefited from the revenue sharing program. Consequently, in order to ensure equitable treatment, the committee amendment provides a direct allocation to each separate

sheriff office in parishes other than Orleans of an amount equal to 15 percent of what would otherwise have been the parish allocation, to be financed one-half from the parish allocation and one-half from the State government allocation.

4. *Timeliness of data.*—Three other matters related to the distribution of funds have come to the committee's attention. First, the committee has been concerned by the extent of fluctuations in entitlement amounts through and after an entitlement period. It is the committee's understanding that these fluctuations, which have been marked in certain cases, result primarily from the revision of data during an entitlement period. Small corrections to interstate data can lead to extensive changes in the dollar allocations to a State area, or to a locality. To minimize these unintended fluctuations, the committee amendment directs the use of data that will not be changed during an entitlement period except by reason of clerical or administrative error.

5. *Treatment of waivers by Indian Tribes and Alaskan Native Villages.*—Another matter that has come to the committee's attention involves the treatment of revenue sharing payments which are waived by recognized Indian Tribes and Alaskan Native Villages. The 1972 Act provides that waivers by cities and townships are to result in transfer of the waived funds to the county government; however, funds waived by Indian Tribes and Alaskan Native Villages are, under the present law, shared among all units of local government.[4] The committee has concluded that greater equity would be achieved by treating waivers by Indian Tribes and Alaskan Native Villages on a basis parallel to that of waivers by cities and townships.

6. *Optional formula.*—A further concern of the committee is that the optional formula for the instate allocations in the current law be available during the renewal period. While the current allocation formula has been thought to be equitable and generally equalizing, the committee considers the optional formula to be a desirable feature of the Act which should be generally available in the future.

Explanation of provisions

1. Noncontiguous State adjustment.—The committee amendment to the noncontiguous State adjustment provision of current law provides that the adjustment is to be available under both the 5-factor and 3-factor formulas, that the amounts available for this purpose are to increase, and that the amounts resulting from the application of the adjustment(s) are not to exced the amounts available. To achieve this, the adjustment is not made initially when choosing between the 5- and 3-factor formulas for the affected States, Alaska and Hawaii, but after the larger of the two amounts is chosen and after it is scaled to the aggregate amounts available. For example, were Alaska and Hawaii to choose the 5-factor formula, and the amounts after being scaled were respectively $9.1 million and $27.7 million, the committee amendment increases the Alaska mount by 25 percent and the Hawaii amount by 15 perecnt, or to $11.4 million and $31.9 million respectively. However, because the increment of both adds to $6.5 million, and, for the purposes of the example only $4.9 million is available,

[4] The pertinent Treasury Regulations (§ 51.25 of 31 CFR, Subtitle B, Part 51) provide for both waivers and constructive waivers. The reallocation of waived payments of less than $25 per locality are currently not being made.

both increments need to be reduced 25 percent so that only $4.9 million is allocated. Table 6 displays the fiscal year 1977 entitlements under the committee amendment, based on the data used for Entitlement Period 7.

TABLE 6

ENTITLEMENTS TO STATE AREAS FOR FEDERAL FISCAL YEAR 1977 UNDER COMMITTEE AMENDMENT*

Alabama	114, 559, 819	Nebraska	43, 552, 877
Alaska	14, 091, 122	Nevada	16, 710, 555
Arizona	67, 338, 133	New Hampshire	22, 186, 146
Arkansas	72, 625, 015	New Jersey	216, 805, 799
California	736, 447, 011	New Mexico	45, 000, 814
Colorado	76, 190, 678	New York	777, 393, 207
Connecticut	87, 867, 487	North Carolina	171, 578, 056
Delaware	21, 863, 877	North Dakota	17, 360, 120
D.C.	28, 904, 467	Ohio	278, 294, 614
Florida	213, 191, 645	Oklahoma	76, 964, 109
Georgia	147, 081, 400	Oregon	74, 580, 440
Hawaii	33, 326, 363	Pennsylvania	362, 796, 160
Idaho	26, 393, 737	Rhode Island	29, 653, 525
Illinois	353, 174, 066	South Carolina	97, 033, 882
Indiana	147, 159, 241	South Dakota	22, 459, 639
Iowa	84, 389, 635	Tennessee	127, 744, 739
Kansas	62, 266, 829	Texas	347, 605, 056
Kentucky	114, 599, 236	Utah	38, 597, 598
Louisiana	153, 181, 117	Vermont	20, 414, 869
Maine	42, 853, 845	Virginia	139, 684, 725
Maryland	138, 008, 113	Washington	102, 778, 495
Massachusetts	218, 466, 588	West Virginia	63, 380, 049
Michigan	282, 926, 372	Wisconsin	168, 234, 408
Minnesota	138, 954, 570	Wyoming	11, 150, 329
Mississippi	104, 184, 420		
Missouri	129, 942, 645	Total	6, 903, 719, 784
Montana	25, 327, 644		

*Based on data for entitlement period 7.

2. Retroactive payments.—Under the committee amendment, the Treasury Department would be prohibited from increasing or decreasing a payment previously made to a recipient unless the Secretary made a demand to the recipient within a year after the close of the entitlement period.

3. Allocations to certain separate law enforcement officers in Louisiana.—The committee amendment with respect to Louisiana sheriff offices provides that, beginning January 1, 1977, such sheriff offices (except those in Orleans Parish) shall receive an entitlement equal in amount to 15 percent of what would otherwise be allocated to the parish government. One-half of this amount is to come from a reduction in the parish entitlement, and one-half from what would otherwise be the State government's entitlement. For example, if a parish were entitled to, after the application of the formula, maximum and minimum constraints, the 50-percent limitation,[5] and the deminimis and waiver provisions, $1,000,000, an allocation of $150,000 to the sheriff office in the parish would be made; the parish entitlement payment would then be $925,000, and the entitlement of the State

[5] Current law provides that no unit of local government receive more than 50 percent of its adjusted taxes plus transfers.

government would be reduced by $75,000 (one-half of the $150,000 amount).

4. Timeliness of Data.—The committee amendment provides that the Office of Revenue Sharing must use tax data which relates to the period ending before the entitlement period in question. Thus the Office of Revenue Sharing must use tax data throughout an entitlement period without introducing new data (e.g., for a more recent period) until the beginning of the next entitlement period. It is understood that this may permit the Office of Revenue Sharing to use data according to the schedule displayed in Table 7.

TABLE 7

PERIODS TO WHICH DATA REFERS FOR ENTITLEMENT PERIODS 8 TO 13 UNDER THE COMMITTEE AMENDMENT

	Entitlement period—					
	8—(Jan. 1 to Sept. 30, 1977)	9—(Oct. 1, 1977, to Sept. 30, 1978)	10—(Oct. 1, 1978, to Sept. 30, 1979)	11—(Oct. 1, 1979, to Sept. 30, 1980)	12—(Oct. 1, 1980, to Sept. 30, 1981)	13—(Oct. 1, 1981, to Sept. 30, 1982)
Data for intrastate allocations:						
Population	July 1, 1975	July 1, 1976	July 1, 1977	July 1, 1978	July 1, 1979	Apr. 1, 1980.
Per capita income	CY 1973	CY 1975	CY 1976	CY 1977	CY 1978	CY 1979.
Adjusted taxes	FY 1976	FY 1976	FY 1977	FY 1978	FY 1979	FY 1980.
Intergovernmental transfers	FY 1976	FY 1976	FY 1977	FY 1978	FY 1979	FY 1980.
Data for interstate allocations:						
Population	July 1, 1975	July 1, 1976	July 1, 1977	July 1, 1978	July 1, 1979	Apr. 1, 1980.
Urbanized population	Apr. 1, 1970	Apr. 1, 1970	Apr. 1, 1970	Apr. 1, 1970	Apr. 1, 1970	Apr. 1, 1980.
Per capita income	CY 1972	CY 1975	CY 1976	CY 1977	CY 1978	CY 1979.
State individual income taxes	CY 1975	CY 1976	CY 1977	CY 1978	CY 1979	CY 1980.
Federal individual income tax liabilities	CY 1974	CY 1975	CY 1976	CY 1977	CY 1978	CY 1979.
State and local taxes	FY 1973–74	FY 1974–75	FY 1975–76	FY 1976–77	FY 1977–78	FY 1978–79.
General tax effort factor	FY 1973–74	FY 1974–75	FY 1975–76	FY 1976–77	FY 1977–78	FY 1978–79.

5. Reserves for adjustments.—The committee amendment permits the Secretary to reserve a percentage of each State area's entitlement as he deems necessary to insure there will be sufficient funds available to pay certain adjustments. The percentage may not exceed one-half of 1 percent.

6. Treatment of waivers by Indian Tribes and Alaskan Native Villages.—The committee amendment provides that in circumstances in which an Indian Tribe or Alaskan native village waives an entitlement payment, it is given to the county government in which it is located. Previously, the waived amount was shared among all units of local government in proportion to their share of the county area other than that provided to the Indian tribe(s) or Alaskan native village(s).

7. Optional formula.—The committee amendment provides that the optional formulas in current law be available during the renewal period except for Louisiana.

Effective date.

These provisions take effect January 1, 1977.

C. Fiscal Requirements (Secs. 3, 4, and 6(a) of committee amendment, secs. 103, 104 and 107 of present law)

1. General requirements.—Under current law, recipient governments must comply with certain fiscal requirements in order to receive revenue sharing payments. In particular, State and local governments must use the funds in accordance with the laws and procedures applicable to the expenditure of their own revenues, establish a trust fund in which the revenue sharing payments are deposited, use the funds in a reasonable period of time, pay prevailing wage rates, pay wages at rates consistent with the Davis-Bacon Act on construction projects funded 25 percent or more by revenue sharing, make annual and interim reports to the Secretary, and in the case of Indian tribes and Alaskan native villages, spend revenue sharing funds only for the benefit of members residing in the county area of allocation.

2. Priority categories.—In addition, a locality must spend revenue sharing in priority categories: for ordinary and necessary operating expenses (public safety, environmental protection, public transportation, health, recreation, libraries, social services for the poor or aged, and financial administration) and for ordinary and necessary capital expenditures. There are no restrictions on State uses of revenue sharing funds.

3. Matching prohibition.—State and local governments are prohibited from using revenue sharing, directly or indirectly, to match other Federal programs.

4. State maintenance of effort.—Current law requires that for any entitlement period beginning on or after July 1, 1973, a State government's revenue sharing payment will be reduced by the amount which the average of local transfers from its own sources for that period and the immediately preceding period is less than the similar total for the one year period beginning July 1, 1971. A two-year moving average

compared against the base year amount is currently being used by the Office of Revenue Sharing to measure compliance.[6]

Present law allows adjustments in the base amount (one year beginning July 1, 1971) to reflect State assumption of new expenditure categories or the granting of new taxing powers to local governments. Special rules are also provided for the two entitlement periods beginning July 1, 1973, and July 1, 1976.

The Act further states that when the Secretary has reason to believe that there is noncompliance with this requirement, he shall give notice and opportunity for a hearing. If, after a hearing, he determines that there is noncompliance, he must notify the Governor and withholds from subsequent payments to the State an amount equal to the reduction in transfers. This sum is transferred to the general fund of the Treasury.

1. Priority categories.—After considering the experience to date with the high priority categories for localities, the committee concluded that their requirement at the local level but not at the State level was inequitable. In view of the fact that the high priority categories have substantially complicated the operation of what was intended to be an administratively simple program, the committee amendment eliminates the priority categories, the required certification by local governments that revenue sharing funds were used only for these purposes, and the 110-percent repayment penalty for violating this restriction.

2. Matching prohibition.—In 1972, the committee was concerned about the number of open ended Federal matching programs that were available to State and local governments. Some provided as much as three Federal dollars for every State or local dollar provided for matching purposes. Since 1972, however, most of these programs, such as title XI of the Social Security Act (the social services program), have been limited. Accordingly, the committee feels it is now appropriate to allow recipients to match other Federal programs in accordance with their own priorities. The committee amendment thus eliminates the matching prohibition and related provisions.

3. State maintenance of effort.—Several problems have developed in relation to the current law requirement that States maintain transfers to localities at historical levels. First, the fixed 1972 base period has limited substantially the effectiveness of the provision. Second, there is some uncertainty about how to properly account for a State's own source transfers and about the accuracy of the current data being used to administer the requirement. Third, the current provision references a July 1 to June 30 period for the measurement of a State's

[6] Treasury regulation 51.40 (31 CFR, subtitle B, part 51) elaborates on the statutory requirement by: (i) including the proceeds from borrowing in own source revenues against which transfers are measured; (ii) providing a formula to calculate the level of transfers from own sources for States that do not have accounting systems which permit the separation of own source funds from other monies. This formula basically assumes that own source transfers are a portion of all transfers equal to the ratio of own source revenues to all revenues. The Secretary may use an alternative to this formula if he feels that it would provide a more equitable standard of compliance in any particular case; (iii) detailing conditions for adjustments in the requirement where a State assumes responsibility for an additional category of expenditures or where new taxing powers are conferred on local governments. The latter provisions exclude increases in already authorized taxes unless such result in decreases in related State taxes; (iv) requiring an annual report from the Governor covering the following items relevant to the proceeding fiscal year of the State: the State's own source funds; the State's total funds; the State's own source transfers to units of local government, and the State's total transfers to units of local government.

transfers; however, three States [7] are on a different fiscal year basis. Fourth, there are certain inequitable circumstances in which a State government would be penalized for not making certain transfers to localities. Accordingly, the committee amendment revises the maintenance of effort provision in the Act so that it is on a moving average basis, rather than a fixed date basis, relates the intergovernmental transfers to the State's fiscal year, and provides for situations where the Federal government assumes responsibilities for what was previously a local program.

Explanation of provision

1. Priority categories.—The committee amendment eliminates the priority categories by striking section 103 of current law. Also, the provision in sec. 123(a)(3) that recipients repay 110 percent of amounts spent in violation of the priority spending requirement is eliminated. The House bill also eliminated this provision.

2. Matching prohibition.—The committee amendment eliminates the prohibition on using revenue sharing to match other Federal programs in (sec. 104 of present law). The House bill also eliminated this provision.

3. Maintenance of effort provision.—The committee amendment revises the current requirement by comparing two-year average of transfers to a two-year moving average (based on the State's fiscal year) base period for which data is available. The years covered by the base period would be different from the two-year average tested for maintenance of effort. Thus, if FY 1975 were the most recent fiscal period for which data on a State's transfers were available, the average of own source transfers in FY 1975 and FY 1974 would be compared to the average of its own source transfers in FY 1973 and FY 1972.

It is the committee's understanding that there is some uncertainty now in the measurement of a State's own-source transfers. It is expected that the Office of Revenue Sharing will rely on the Bureau of the Census to collect such information on intergovernmental transfers and then, if necessary, apply the necessary procedures to arrive at State's own-source transfers. Both agencies would participate in the process of data improvement resulting from challenges by recipients and self-initiated Office of Revenue Sharing and Census efforts.

As a part of this cooperative effort, it is contemplated that procedures will be developed to identify and properly account for previously local programs that are now directly Federally funded. For example, the Federal Supplemental Security Income program (SSI) replaced a Federal-State-local program of categorical assistance to the blind, aged, and disabled. In States with county-administered welfare programs. Federal assistance has passed through the State general fund to the county government. Since the State matched this program in part, and transferred the resulting Federal funds to the county, subsequent Federal assumption has diminished previous State transfers to the county, and the State might violate the maintenance of effort requirement of current law, unless this matching is properly accounted for.

[7] Alabama is on an October 1 basis; New York is on an April 1 basis; and Texas is on a September 1 basis.

The House bill moved the base period of the maintenance of effort requirement to the period July 1, 1975–June 30, 1976, or the most recent similar 1-year period prior to then for which data is available.

Effective date

These provisions take effect on January 1, 1977.

D. Eligibility Requirements (sec. 10c of committee amendment and sec. 108 of present law)

To receive funds under the 1972 Act, a government must be a State government [1] or a unit of local government as defined by the Bureau of the Census for general statistical purposes. A unit of local government is further defined in the Act to be a county, municipality, township, or other unit of government [2] below the State. and the recognized governing body of an Indian tribe or Alaskan native village which performs substantial governmental functions. The Census Bureau generally defines a government as: "an organized entity which, in addition to having governmental character, has sufficient discretion in the management of its own affairs to distinguish it as separate from the administrative structure of any other governmental unit." [3] A unit of local government is thus a general government as compared to a single purpose government such as a school district or a mosquito-control district.

After reviewing the definitions of a recipient government in the Act, the committee concluded that they properly reflect the original intent of Congress to provide assistance to general governments. However, it is the committee's understanding that use of "other unit of local government" has led to some confusion about the original intent of Congress. In view of the fact that no such recipient has received funds under the current operation of the program, the committee concluded that the elimination of this category would be desirable.

Explanation of provision

The committee amendment eliminates the phrase "other unit of local government" in Section 108(d)(1) of the present law.

While the committee amendment retains the eligibility criteria of current law, the House bill adds certain restrictions to become effective October 1, 1977. The net result of the House provision is to eliminate governments which do not continue to perform two or more of 14 enumerated services in Federal fiscal year 1978.

E. Accounting and Auditing Requirements (sec. 9 of committee amendment and sec. 123 of present law)

The 1972 Act requires that recipient governments use fiscal accounting and audit procedures in conformity with guidelines developed by the Secretary, after consultation with the Comptroller General. A

[1] The District of Columbia is treated as a State area for the purposes of the interstate formula, and as a county area which has no units of local government within it. Accordingly, the 1972 Act requires that the District be subject to the priority category expenditure restrictions.

[2] The phrase "other unit of government" has led to some confusion, in that, for the purposes of revenue sharing, the four types of governments (county, city, and township governments, and recognized Indian tribes and Alaska native villages) enumerated are the only ones actually receiving payments.

[3] U.S. Bureau of the Census, Census of Governments, 1972, *Vol. 1 Governmental Organization* (U.S. Government Printing Office, 1973), p. 13.

recipient must also provide the Secretary and the Comptroller General access to its books and documents in order to permit the Secretary to review compliance with the provisions of the 1972 Act.

The Secretary is empowered to require such accounting and audit procedures, evaluations, and reviews to insure that expenditures by recipients are made in compliance with the 1972 Act. The Secretary may accept a State audit of itself, or a local audit of itself, if the audit procedures are sufficiently reliable. The Comptroller General is required to review the work of the Secretary and the recipients. Section 51.71(c) of the revenue sharing regulations provide that the Secretary is to rely to the maximum extent possible on audits of recipient governments by State auditors and independent public accountants.

In 1973, the Treasury Department issued an audit guide[8] to assist recipients in complying with the audit requirements of the Act, and in August 1976, issued a revision of the guide.[9]

The revised Audit Guide distinguishes between audits performed by local government auditors, and audits performed by State auditors and independent public accountants (IPAs). The revised guide now subjects the IPAs to a subsequent review of their performance. Local government auditors must now, however, be reviewed prior to the audit, in terms of their independence, to satisfy the Office of Revenue Sharing that the audits will be acceptable. Also, the revised guide precludes accepting audits made by local government auditors if the government has recurring audits made of all of its funds by a State auditor.

While present law empowers the Secretary through regulation to require audit procedures to ensure compliance with present law (e.g., expenditure of funds in accordance with applicable State and local law, prevailing wages, Davis-Bacon, maintenance of effort, prohibition of matching, high priority categories, nondiscriminaton, etc.), the Secretary has not required audits of recipients to ascertain if compliance has been achieved. The Secretary has relied to the maximum extent feasible on audits by State auditors and independent public accountants. The regulations do not deal with situations where recipients do not perform or have not performed audits of their revenue sharing funds.

In view of audit problems in ensuring compliance with the current requirements of the Act, and in view of the committee's continuation of the majority of the current fiscal requirements of the Act, the committee concluded that a general requirement for a financial and compliance audit is necessary. To balance this need with the likelihood that some recipients may not be initially auditable and/or are now under State or local laws which require audits, the committee believes it is also necessary to provide certain waiver conditions for the audit requirement as well as certain exceptions.

Explanation of provision

The committee amendment balances its concern that financial and compliance audits be performed with its concern that State or local financial audits performed under generally applicable State or local law be sufficient for the purposes of general revenue sharing. The committee amendment thus provides a general requirement for financial and compliance audits. An exception to this general requirement is provided if a recipient performs a compliance audit pursuant to generally applicable State or local audit requirements. If a recipient under either the general audit requirement or the exception is unauditable, the committee amendment empowers the Secretary to waive the requirement, in either case, if the recipient demonstrates, as provided by regulations, that it is making progress toward becoming auditable.

Under the general audit and accounting requirement of the committee amendment, an independent financial and compliance audit of a recipient's financial statements, according to generally accepted auditing standards and generally accepted accounting principles is required at least every three years. A series of audits which aggregate the entire financial activity of the recipient, and which are performed over the three-year period, would meet this requirement. In applying the rule that a series of audits may be aggregated over a time to meet the every-three-year audit requirement, the committee amendment contemplates that the recipient will by the end of the three-year period have audited 100 percent of its funds of accounts, in terms of the number of accounts in its financial activity. Governments receiving less than $25,000 per year in revenue sharing entitlements are exempted from this requirement. Governments which are not auditable can have the general requirement waived, if it can be demonstrated, pursuant to regulations issued by the Secretary that substantial progress toward being auditable is being annually achieved. With respect to a compliance audit regarding the nondiscrimination provisions, the audit would pertain to whether there are any outstanding complaints or lawsuits alleging discrimination prohibited under the nondiscrimination provisions. It is also expected that the audit would indicate the designation and use of revenue sharing funds. The committee amendment also requires coordination of other Federal audit requirements so that duplication of financial and compliance audits is avoided. A financial and compliance audit performed for another Federal program could thus satisfy the general audit requirement if it satisfied the requirements of independence, scope, and was otherwise adequate with respect to standards established by the Secretary through regulations.

With respect to audits performed under the general requirement, the evaluation of the independence of the auditor, and will include but not be limited to, considerations of the manner of his appointment and the source and control of his funding. With respect to the standard of financial and compliance audit required, it is expected that "generally accepted auditing standards" will be defined in terms of those standards set forth in the first element ("Financial and Compliance") of *Standards for Audit of Governmental Organizations, Programs, Activities and Functions of the General Accounting Office.*

The committee amendment provides that if a recipient has performed a financial audit in compliance with generally applicable State or local law, such an audit will be accepted by the Secretary in lieu of an audit performed under the general requirement.

It is expected that a recipient which has performed an audit under the general audit requirement will provide a copy of the opinion of the

[8] Department of the Treasury, Office of Revenue Sharing, *Audit Guide and Standards for Revenue Sharing Recipients*, October, 1973.
[9] Department of the Treasury, Office of Revenue Sharing, *Audit Guide and Standards for Revenue Sharing Recipients* (revised), August, 1976.

audit to the Secretary, in a manner and at such time as the Secretary provides through regulation. Similarly, it is expected that a recipient which has performed a financial audit in compliance with generally applicable State or local law will provide a copy of the opinion to the Secretary in a manner and at such time as the Secretary provides through regulation. It is contemplated that the Office of Revenue Sharing, in conjunction with the General Accounting Office, will evaluate the audits performed by recipients.

The House bill requires that a recipient perform an annual audit of its financial statement in accordance with generally accepted audit standards. The Secretary of the Treasury is empowered to partially or entirely exempt recipients from this requirement when the costs are unreasonably burdensome in relation to the revenue sharing entitlement.

F. Reports and Public Hearings (Sec. 7 of committee amendment and sec. 121 of present law)

The 1972 Act requires each government to file an actual use report after the close of the entitlement period which indicates the amounts and purposes for which funds received during the entitlement period have been spent or obligated. The pertinent regulations (§ 51.11(b) of subtitle B, Part 51) require further that the report indicate how the funds were spent or transferred from the trust fund, indicate any interest earned on entitlement funds during the period, and show the status of the trust fund, including its balance, as of June 30 each year. The report must be filed with the Secretary on or before September 1 of each year.

Prior to receiving an entitlement payment, a government must file a planned use report setting forth the amounts and purposes for which it plans to spend or obligate the revenue sharing funds it expects to receive. As a part of the planned use report document, the Office of Revenue Sharing has incorporated the signature of the chief executive officer of statement of assurances [1] required under Section 123 of the Act, and also provides to the recipient an estimate of the entitlement payment due.

The third requirement of the Act is the publication, in a newspaper of general circulation, of the proposed use and actual use reports. The regulations (§ 51.13 (a) and (b) of 31 CFB subtitle B, Part 51) further provide that government in a metropolitan area which crosses State boundaries may satisfy the publication requirement by publishing the report in a newspaper in the adjoining State. Additionally, the recipient is required to advise the news media of the publication of the actual use report and make copies available upon request. Also, each recipient is required to make available for public inspection a copy of both reports and information developed to support the reports.

Table 8 displays the months in which the Office of Revenue Sharing mails out, and expects to receive, the proposed and actual use reports as provided by the Act and regulations.

[1] The assurances relate to the establishment and deposit of entitlements into a trust fund; use of such funds during such periods as required by regulations; use of the funds for priority expenditures; provide for the expenditure of such funds only in accordance with the laws and procedures applicable to the expenditure of its own revenues; use fiscal accounting and audit procedures in conformity with regulations; provide access to the Secretary and Comptroller to books and documents as may be necessary; pay wages in accordance with the Davis-Bacon requirements of the Act; and pay employees funded by revenue sharing at wage rates not lower than those funded by other sources of funds.

TABLE 8—TIMING OF PLANNED AND ACTUAL USE REPORTS UNDER PRESENT LAW

	Entitlement periods						
	1	2	3	4	5	6	7
Planned use report mailed	(1)	(1)	Apr. 1973	July 1973	Apr. 1974	Apr. 1975	Apr. 1976
Planned use report due	(1)	(1)	June 1973	Sept. 1973	June 1974	June 1975	June 1976
Actual use report mailed	(1)	(1)	do	June 1974	June 1975	June 1976	Dec. 1976.
Actual use report due	(1)	(1)	Sept. 1973	Sept. 1974	Sept. 1975	Sept. 1976	Mar. 1977.

[1] Combined with Entitlement Period-3 reports as provided in the Act.

Source: U.S. Treasury Department, Office of Revenue Sharing.

In providing unrestricted assistance to Sate and local governments, the committee expected increased citizen participation in the budgetary process to provide the oversight which the imposition of categorical restrictions had sought to achieve in other grant in aid programs. Since enactment, several difficulties in the current reporting requirements have developed which in turn have limited the expected growth in citizen participation. First, the reporting forms developed by the Treasury Department have been found to be uninformative, especially in relating uses of revenue sharing to the general budget. Another limitation of the current reporting system is that it frequently requires information on a basis other than the government's fiscal period. The committee is especially concerned about this problem in view of the new Federal fiscal year, which begins on October 1, and which would be the new entitlement period under the amendment.

The committee is in favor of having reporting, hearing, and publicity requirements for revenue sharing, subject to the extent possible, that they follow the budgetary, hearing, and publication requirements of State and local law.

Explanation of provision

The committee amendment balances the committee's desire that a public hearing be held which encourages public participation in the budgetary process with the committee's determination that generally applicable public hearing, notification, and information provisions of State or local law as they relate to the State or local budgetary process be relied upon.

Accordingly, the committee amendment provides a general requirement for public hearings, notification, and publication of summary budgetary information. An exception to this general requirement is provided if a recipient holds public hearings after adequate notice on the proposed uses of its own funds in which citizens can participate under generally applicable state or local law.

Under the general requirement, a recipient must, at least seven days before the adoption of its budget, hold a public hearing on the proposed expenditures of revenue sharing funds. The hearing must be at a place and time that is convenient to general public attendance. At the hearing, citizens would be able to give written and oral comment on the proposed uses of revenue sharing. For State governments, such a hearing would be before each of the relevant committee or committees of each part of the legislature.

The planned use report under the general requirement would have to be published prior to the required hearing by each recipient (except where its cost exceeds 5 percent of last year's entitlement or if impractical, as provided by the Secretary through regulation) in a newspaper of general circulation. The publication must be sufficiently prior to the public hearing to provide for meaningful participation of the public. Publication of the report the morning of the hearing would not, for example, meet this criteria. The report would indicate the amounts of revenue sharing funds to be expended in the budget, and a comparison of these proposed uses to those of the current period, and the previous period and the proposed designation of the coming fiscal year's expenditures; a short narrative summary would also be published which would relate the broad uses in the report to the line items in the proposed budget. The newspaper publication would also give notice of the time(s) and place(s) of the public hearing(s).

Under the general publication requirement, a recipient must show in its proposed use report a summary of its entire budget for the previous year, for the current year, and for the coming year. The report is also to indicate how the previous, current and proposed uses of revenue sharing expenditures relate to the recipient's budget, and contain a narrative summary of the proposed revenue sharing funded programs.

In addition, the general requirement provides certain rules for the public hearing requirements with respect to legislatures which are not unicameral. It is contemplated that, in the case of a bicameral legislative body of a state or unit of local government, more than one hearing will be held if the relevant appropriations committee of each body meets separately. Where joint committee hearings are held on the executive budget proposal, a hearing before the joint session would meet the general requirement. Where more than one committee in each body deals with the budget proposal, it is contemplated that one hearing on each side, e.g., the house and senate of a State legislature would meet the requirement. Thus, if subcommittees of the appropriations committee of the house hold hearings, and the full committee does as well, it is expected that a hearing before the full committee, if it meets the requirements discussed above, would satisfy the public hearing requirement for the house.

Upon election by the recipient, as provided by the Secretary through regulation, the government may waive the above general public hearing, publication, and notice requirements, if it certifies that it will hold a public hearing at which citizens may give written and oral comment, upon adequate notice. The election must describe the hearing and reporting process as it relates to its own revenues and expenditures.

The committee understands that the necessary election information (or information indicating a recipient's compliance with the general hearing requirement) could be incorporated into the present form used by the recipient to provide assurances to the Secretary as currently required by the Act.

G. Nondiscrimination

1. Scope of Nondiscrimination Provision (sec. 8(a) of the commitment and sec. 122(a) of the present law)

The present nondiscrimination provision (sec. 122(a)) prohibits discrimination on the basis of race, color, national origin, or sex "under any program or activity funded in whole or in part" with revenue sharing funds.*

The committee believes that the prohibition of present law against discrimination in programs or activities funded with revenue sharing funds can be either unintentionally or intentionally circumvented. The committee recognizes that the difficulty in tracing revenue sharing funds, once these funds are received at the local level, may have permitted some recipients to escape the nondiscrimination coverage by designating their revenue sharing funds for use in programs or activities where discrimination does not exist, and designating their own freed-up funds for use in programs or activities where discrimination may exist. These designations could be found in a State's or locality's budgetary documents, trust fund records, accounting records, and other official records, reports, and documents.

It is clear that the present nondiscrimination provision applies to any program or activity specifically designated as the recipient of revenue sharing funds. Generally, in those instances where there is no specific designation of revenue sharing funds to any particular program or activity, each program or activity is considered a pro rata recipient of revenue sharing funds. It is not clear, however, where certain programs or activities are specifically designated as the recipients of revenue sharing funds, whether any other programs or activities of the locality could under some circumstances be considered recipients of revenue sharing funds.

For these reasons, the committee decided that it was necessary to clarify the language of the present nondiscrimination provision.

Explanation of provision

The committee amendment prohibits discrimination on the grounds of race, color, national origin or sex under any program or activity of a State government or unit of local government which (1) has been designated as being funded with revenue sharing funds, or (2) under all the facts and circumstances, is demonstrated to be funded in whole or in part with revenue sharing funds.

By this amendment, the committee intends to clarify the provisions of present law, particularly where a program or activity is not included among those programs or activities of a locality which are specifically designated as recipients of revenue sharing funds. The committee's amendment contemplates that it is possible under certain facts and circumstances that these programs and activities of the locality could be considered recipients of revenue sharing funds. Thus, if evidence adduced by the Secretary demonstrates that a program or activity has received revenue sharing funds as a result, for instance, of the shifting of freed-up funds to the program or activity, notwithstanding that the program or activity is not specifically designated as a recipient, it will be subject to the prohibitions of the nondiscrimination provision.

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*It is the committee's understanding that other existing laws prohibit discrimination on the basis of religion, age, and handicapped status. Title II of the 1964 Civil Rights Act (pertaining to discrimination in places of public accommodation) and Title VIII of the 1968 Civil Rights Act (pertaining to the sale or rental of housing) prohibit discrimination based on religion. The Rehabilitation Act of 1973 prohibits discrimination against "otherwise qualified handicapped individuals" in Federally financed programs, and the Age Discrimination Act of 1975 prohibits unreasonable discrimination on the basis of age in programs and activities receiving Federal financial assistance, including revenue sharing funds. Title VI of the Civil Rights Act of 1964 (relating to nondiscrimination in Federally assisted programs) does not contain any prohibition against discrimination on the grounds of religion.

2. Authority of the Secretary and Procedure in Withholding Funds (sec. 8(a) of the committee amendment and sec. 122(b) of present law)

Under present law, the Secretary is required to notify the Governor of the State (or, in the case of a unit of local government, the Governor of that State in which the unit is located) of noncompliance with the nondiscrimination provision. The notice is to request the Governor to secure compliance with the nondiscrimination provision and if, within a reasonable period of time, the Governor fails or refuses to secure compliance, the Secretary is then authorized (but not necessarily required) to (1) refer the matter to the Attorney General with the recommendation that appropriate civil action be instituted, (2) exercise the powers and functions provided by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), or (3) take such other actions as may be provided by law.

Generally, Title VI of the Civil Rights Act of 1964 (more specifically, 42 U.S.C. 2000d–1) grants authority to Federal agencies empowered to extend Federal financial assistance to any program or activity to effect compliance with the nondiscrimination provision relating to the particular Federal program involved by the termination of or refusal to grant or to continue assistance under the program or activity with respect to which the recipient, by an express finding on the record, has been found to have been involved in discriminatory activity.

This termination or refusal to grant or to continue Federal financial assistance can only take place after an opportunity for a hearing regarding the matter. However, termination, etc., cannot occur until the Federal agency has advised the persons of noncompliance, determined that compliance cannot be secured by voluntary means, and filed a full report with the committees of the House and Senate having legislative jurisdiction over the program or activity involved. No such action could become effective until 30 days has elapsed after the filing of the report.

The regulations issued by the Office of Revenue Sharing pertaining to the procedure for effecting compliance restate, in substance, the statutory provisions of the Revenue Sharing Act and the above-described provisions of Title VI of the Civil Rights Act of 1964. They provide that a "reasonable period of time" to secure compliance is not to exceed 60 days. The regulations also provide that the Office of Revenue Sharing (seemingly, at the end of the 60-day period) may initiate an administrative hearing in which it could seek an order from an administrative law judge to withhold temporarily, to repay, or to forfeit revenue sharing funds. Even after an administrative law judge has ordered a temporary withholding of funds, withholding would not occur until:

(1) 30 days has elapsed, during which time efforts will have been made to assist the recipient government to comply with the nondiscrimination provision and there has been a submission of a full written report of the circumstances and grounds for withholding of funds to the House Committee on Government Operations and the Senate Finance Committee; and

(2) the Secretary has notified the recipient that it will withhold payment of funds until the recipient complies with the order of the administrative law judge.

These regulations further provide for withholding pursuant to court action. Under this regulation section (51.59(c)), the Office of Revenue Sharing would immediately withhold the payment of an entitlement if: (1) a violation of the revenue sharing nondiscrimination provision was alleged in a complaint before a court; (2) the court finds that the recipient government has violated the revenue sharing nondiscrimination provision, and (3) the court has failed to pass on the question of whether withholding of revenue sharing funds should take place.

The committee believes that it is necessary to establish a procedure setting forth an ascertainable and reasonable period of time within which a cutoff of revenue sharing funds to a recipient found to be discriminating in violation of the revenue sharing nondiscrimination provision will definitely occur. In formulating this procedure, the committee recognizes the necessity for including provisions which will safeguard the due process rights of the recipient.

Explanation of provision

The initial formal step of the procedure involves the Secretary's sending of a noncompliance notice to a revenue sharing recipient. This notice will be triggered by and must be sent within 10 days of:

(1) Receipt of a holding by a Federal or State court or by a Federal administrative agency law judge of discrimination on the grounds of either race, color, national origin, or sex in any of the State's or local unit's activities or program. This section contemplates the actual receipt by the Secretary of a certified copy of the holding.[10] A Federal administrative agency law judge's holding must have been preceded by a notice and opportunity for a hearing and it must be rendered pursuant to the provisions of the Administrative Procedures Act (5 U.S.C. 551–559).

(2) A finding by the Secretary, as a result of an investigation, that it is more likely than not that the recipient has not complied with the nondiscrimination provision. This finding will be made with respect to any complaint, information, or holding from any source other than the holding of a court or Federal administrative law judge. If within 60 days after the Secretary receives a complaint, information (including information generated within the Office of Revenue Sharing), or a holding by a State or local administrative agency pertaining to discrimination on the grounds of either race, color, national origin or sex, he determines that it is more likely than not that the recipient has not complied with the nondiscrimination provision, he will send a noncompliance notice to the recipient. This notice will be sent no later than 10 days after the finding is made.

The Secretary (and/or other Federal agencies with which it has entered into cooperative enforcement agreements) will conduct an investigation with respect to a complaint or any other information received pertaining to discrimination on the grounds of either race, color, national origin or sex. It is this investigation that will set in motion the procedural machinery under which the Secretary may make the

[10] It is contemplated that other Federal administrative agencies, pursuant to cooperative agreements with the Office of Revenue Sharing, will bring such holdings to the attention of the Secretary. It is also contemplated that the Secretary will currently review law reporters, legal journals and other publications in order to be apprised of any court or Federal administrative agency law judge holding of discrimination on the grounds of either race color, national origin or sex.

finding described above. The Secretary's investigation would pertain to whether any of the prohibited types of discrimination have occurred and whether the program or activity involved has been funded in whole or in part with revenue sharing funds. It is contemplated that within a reasonably short period of time after the investigation begins (e.g., 5 days), the recipient will be informed of the investigation and its purpose.

Upon the receipt of a holding of a State or local administrative agency of discrimination on the grounds of either race, color, national origin or sex, the Secretary will be required to review the finding and determine, among other things, whether the finding was rendered in accordance with procedures which are similar to or consistent with those requirements set forth in the Administrative Procedures Act (5 U.S.C. 551–559). If he concludes that the State or local administrative agency's findings were so rendered, his investigation need not be as extensive as it would be with respect to a complaint or other information alleging discrimination. If the Secretary determines, however, that the State or local administrative agency's finding was not rendered pursuant to requirements similar to or consistent with provisions of the Administrative Procedures Act, it would then be incumbent upon him to conduct the same investigation as that which would be conducted with respect to a complaint or information alleging discrimination.

It is the committee's intention to encourage voluntary compliance agreements. Thus, it is contemplated that in this 60-day pre-notice period, the recipient could enter into a compliance agreement under which it would agree to end its discriminatory acts or practices. The procedure established by the committee, both in the pre-notice and post-notice periods, provides many opportunities for the recipient to enter into a compliance agreement.

The notice sent by the Secretary to the recipient should clearly set forth the specific acts or practices and the programs or activities in which the recipient is accused of discriminating and the grounds upon which the accusation is based. In the event that the notice is triggered by a holding of a court of Federal administrative law judge, the allegations of the notice should include all parts of the holding which conclude that there has been discrimination on the grounds of either race, color, national origin, or sex.

In the 60 days following notification by the Secretary, the recipient will have the opportunity to informally present its evidence and contentions to the Secretary. In those instances where the notice was triggered by a finding of discrimination by a court or Federal administrative agency, the question of discrimination will be considered resolved against the recipient so long as the Secretary's notice was restricted to the particular holding of the court or Federal administrative agency. The only issue in this instance would be whether the particular program or activity was funded with revenue sharing funds.

In those instances where the notice was triggered by a complaint, information or State or local administrative agency finding, both the issues of discrimination and funding would be subject to discussion during this 60-day period.

By the end of the initial 60-day period following notification, the Secretary must issue a determination as to whether the recipient has failed to comply with the nondiscrimination provision. As previously stated, if the notice was triggered by a finding of discrimination by a court or Federal administrative law judge, the Secretary's determination regarding discrimination (but not funding) would be dictated by the court's or Federal administrative law judge's holding in that this holding will have already been made after a full hearing either before a court or a Federal administrative law judge on the full facts.

A determination of noncompliance with the nondiscrimination provision will start a new 60-day period running, during which the recipient may enter into a compliance agreement.

The compliance agreement will contain the terms and conditions with which the recipient agrees in order to remedy the violations of the nondiscrimination provision. The agreement could condition the resumption of the payment of funds suspended under this procedure upon the Secretary's determination that the recipient has taken specified remedial steps. Within 15 days after the execution of the agreement, the Secretary will send copies thereof to any persons whose complaint initiated the procedure which ultimately led to the compliance agreement. In the event these persons were parties to a class action, a copy of the agreement will be sent to their representative. The agreement must dispose of all the issues with respect to which there had been findings or holdings of discrimination on the grounds of either race, color, national origin, or sex.

The committee intends that the Secretary actively monitor the steps taken by the recipient in complying with the agreement. If the Secretary determines that the recipient is not taking these steps within the time limits set forth in the agreement, he will then be required to reinstitute any part of the procedures established by the committee amendment which had not taken place at the time the agreement was executed.

It is contemplated that in those instances where the notice was triggered by a finding of a Federal or State court or by a Federal administrative agency, a compliance-type agreement entered into between the recipient and the Federal administrative agency involved, or with the authorities (including the Attorney General) which brought the action in the Federal or State court, would constitute a compliance agreement for purposes of these provisions. The Secretary, however, will have the discretion to reject the agreement involved if he feels that it does not adequately remedy the discrimination involved. Moreover, where suspension of funds has occurred under this procedure, the Secretary shall have the authority in approving the agreement, to condition the resumption of the payment of funds upon the recipient's compliance with any or all of the provisions of the agreement. Any agreement entered into between the recipient and another authority besides the Secretary would nonetheless have to be executed within the time periods designated in this procedure. In this situation, the Secretary will be required to send copies of the agreement to complainants within fifteen days of his approval of the agreement.

In those instances where the compliance agreement is between the Secretary and a State government, the necessary signators will be the Secretary and the Governor of the affected State. In those instances

where the compliance agreement is between a locality and the Secretary, the necessary signators will be the Secretary and the chief executive officer of the locality.

If within the second 60-day period following notification the recipient does not enter into a compliance agreement, the Secretary will immediately notify the recipient that it will have 10 days within which to request a full hearing before an administrative law judge. The hearing will be conducted pursuant to the requirements set forth in the Administrative Procedures Act (5 U.S.C. 551–559). If a finding of discrimination has already been made by a court or a Federal administrative law judge, the hearing would only pertain to whether the program or activity involved received revenue sharing funds. In this instance, the issues at the hearing would be whether the particular program or activity in question was, in fact, designated as a revenue sharing fund recipient or, under the facts and circumstances, was a revenue sharing fund recipient.

If the recipient fails to request a hearing within 10 days of the Secretary's determination, the Secretary would be required to immediately suspend payment of revenue sharing funds to the locality.

Within 30 days of the request for a hearing, a Federal administrative law judge must commence a hearing. Within 60 days of commencement of the hearing, the administrative law judge will be required to make a preliminary finding on the record of evidence then before him as to whether it is likely that the recipient would fail to prevail on the issues to which the hearing pertained. It is contemplated that within this 60-day period, something akin to a summary hearing would be held, where both parties, through affidavits and other evidence, would present their sides of the case. The burden of proof during this preliminary hearing, and in the total hearing, will be upon the Secretary. (See 5 U.S.C. 556(d)).

A preliminary finding by the administrative law judge in favor of the Secretary within the 60-day period following the commencement of the hearing will result in the immediate suspension of any further payments of revenue sharing funds to the recipient pending the outcome of the full hearing. At the conclusion of the hearing, the administrative law judge will make a finding based upon the complete record of evidence before him and, if, by the preponderance of the evidence, the Secretary prevails upon the issues, an indefinite suspension of the payment of funds will occur within 30 days after the rendering of the finding by the administrative law judge, unless within that 30-day period a compliance agreement is entered into.

This suspension of funds would be indefinite until such time that: (a) a compliance agreement is entered into or the Secretary determines that the recipient has complied with certain provisions of a compliance agreement, such determination being a condition precedent to the resumption of payments; (b) the recipient complies fully with the order of a court or Federal administrative law judge if that order covers all the matters raised by the Secretary in his notice of noncompliance; (c) upon a rehearing or similar proceeding, the court or administrative law judge which originally held that the recipient had discriminated on the grounds of either race, color, national origin, or sex, holds that the recipient did not so discriminate; (d) an appellate court reverses the findings of discrimination by a lower court or

administrative agency, such initial findings having triggered the notice of noncompliance and ultimately the suspension of funds by the Secretary; or (e) the Secretary determines that the recipient has come into compliance with the nondiscrimination provision.

3. Authority of Attorney General (sec. 8(a) of the committee amendment and sec. 122(f) of the present law)

Under current law, the Attorney General is authorized to bring a civil action seeking "such relief as may be appropriate, including injunctive relief."

The committee decided that it would be desirable to elaborate more specifically as to the authority of the Attorney General in his enforcement of the nondiscrimination provision.

Explanation of provision

The Attorney General's authority is expanded so that whenever he believes that a State government or unit of local government has engaged in a pattern or practice of discriminatory actions in violation of the nondiscrimination provision, he may bring a civil action seeking as relief any temporary restraining order, preliminary or permanent injunction, or other order calling for, among other things, the suspension, termination, repayment, or placing of revenue sharing funds in escrow pending the outcome of the litigation. The House bill similarly expands the authority of the Attorney General.

4. Agreements Between Agencies (sec. 8(a) of the committee amendment and new sec. 122(g) of the present law)

While there is no specific authorizing provision in present law, the Office of Revenue Sharing, as a matter of current practice, has entered into various interagency cooperative agreements with respect to the enforcement of the nondiscrimination provision.

To encourage greater efficiency in nondiscrimination enforcement, the committee decided to specifically provide the Secretary with authority to enter into cooperative enforcement agreements.

Explanation of provision

The committee amendment provides that the Secretary is to endeavor to enter into agreements with State agencies and with other Federal agencies authorizing these agencies to investigate allegations of noncompliance with the nondiscrimination provision. Each agreement is to describe the cooperative efforts to be undertaken (including the sharing of civil rights enforcement personnel and resources) to secure compliance, and will provide for immediate notification to the Secretary of any actions instituted against a State government or unit of local government alleging a violation of any Federal civil rights statute or regulations issued thereunder.

5. Citizen Remedies (sec. 8(b) of the committee amendment and newly added sec. 124 of present law)

Present law does not contain any specific provision pertaining to citizen remedies.

The committee felt it was necessary to establish specific time limits within which the Office of Revenue Sharing and the Department of Justice should respond to complaints filed by any person alleging that a recipient is violating the nondiscrimination provision. The committee decided that in the event both the Office of Revenue Sharing and the Department of Justice failed to affirmatively respond to a person's complaint within these time limits, the person should then have the right to seek relief in court.

Explanation of provision

Upon exhaustion of administrative remedies, a civil action may be instituted by an aggrieved person in an appropriate United States district court or State court. The action, alleging discrimination by a recipient in violation of the revenue sharing nondiscrimination provision, could seek such relief as a temporary restraining order, preliminary or permanent injunction or other order providing for the suspension, termination, repayment of funds, or placing any further payments of revenue sharing funds in escrow pending the outcome of the litigation.

Administrative remedies will be considered "exhausted" upon:

(a) the expiration of the 60-day period following the date the complaint is filed with the Office of Revenue Sharing, during which time it either (i) fails to issue a determination on the merits of the complaint, (ii) issues a determination that the recipient did not violate the nondiscrimination provision, or (iii) refers the complaint to the Department of Justice, and

(b) the expiration of the subsequent 60-day period where the complaint is filed with or referred to the Department of Justice, during which time it either (i) fails to issue a determination on the merits of the complaint or, (ii) issues a determination that the recipient did not violate the nondiscrimination provision.

The Attorney General may, upon timely application, intervene in any action brought by a private citizen (after that citizen has exhausted his administrative remedies) if he certifies that the action is of general public importance.

It is contemplated that the Secretary will promulgate regulations establishing, among other things, the required form and content of a complaint alleging discrimination, and the methods by which the complainant will be advised of the status of the complaint and the manner and form in which the Secretary's determination with respect to the allegation will be made.

H. Commission on Revenue Sharing and Federalism (Sec. 11 of the Committee Amendment and new sec. 146 of the Act)

There is presently a permanent 26-member Advisory Commission on Intergovernmental Relations (ACIR). The ACIR was established in 1959 (P.L. 86-380), primarily as a result of the study and recommendations of the Knestnbaum Commission. The ACIR is composed of members from Congress, the Executive Branch, State Governors, State legislators, mayors, county officials, as well as representatives from private life. The ACIR was created generally to make studies and investigations of intergovernmental relations, provide a forum for discussing the administration and coordination of Federal grant programs, and to recommend methods of coordinating and simplifying the tax laws and administrative practices governing relations between the Federal government and State and local governments.

Reasons for change

In reviewing the 1972 Act, the committee was concerned that detailed information was not available on certain aspects of our Federal system of government. In particular was the concern that our knowledge about the efficiency and equity aspects of the allocation of spending and taxing responsibilities among the three tiers of government was not sufficiently detailed to be of assistance when the question of the revision of revenue sharing was before the committee. Accordingly, the committee amendment provides for the establishment of a temporary commission whose mission is to study, evaluate, and make recommendations on several well-defined matters of our Federal system of government. In providing for this temporary commission, it is the committee's intention that it be a complimentary, but more concentrated effort to those currently in existence.

Explanation of provision

The committee amendment establishes a 14-member Commission on American Federalism. The membership is to consist of (1) the Speaker and Minority Leader of the House of Representatives, (2) the Majority and Minority Leaders of the Senate, and (3) ten members to be appointed by the President, with the advice and consent of the Senate (two from the Executive Branch, two State Governors, two local government officials, two from business, and two from labor). Any vacancy is to be filled as for the original appointment. The Commission is to select, by majority vote, its chairman and vice chairman from the members appointed by the President. It is contemplated that the membership will be bipartisan in nature.

The Commission is to study and evaluate the American federal fiscal system, primarily in terms of the allocation and coordination of public resources among Federal, State, and local governments. The study is to cover, but not be limited to, the following areas of intergovernmental concern to the committee:

(1) the allocation and coordination of taxing and spending authorities between levels of government, including a comparison of other Federal government systems;

(2) State and local governmental organization from both legal and operational viewpoints to determine how general local governments do and ought to relate to each other, to special districts and to State governments in terms of service and financing responsibilities, as well as annexation and incorporation responsibilities;

(3) the effectiveness of Federal Government stabilization policies on State and local areas and the effects of State and local fiscal decisions on aggregate economic activity;

(4) the quality of financial control and audit procedures that exists among Federal, State, and local governments;

(5) the legal and operational aspects of citizen participation in Federal, State, and local governmental fiscal decisions; and

(6) the specific relationship of Federal general revenue sharing funds to other Federal grant programs to State and local govern-

ments, as well as the role of revenue sharing funds in Federal, State, and local fiscal interrelationships.

The Chairman is to have authority (under rules adopted by the Commission) to appoint an executive director and necessary staff personnel, without regard to the provisions governing appointments in the competitive service and General Service pay rates except that the executive director is not to receive pay in excess of the maximum rate in effect for grade GS–18. Other personnel may not receive pay in excess of the rate for GS–17. All meetings of the Commission are to be open to the public, unless the members vote otherwise in a public session.

The Commission is to submit a final report to the President and to the Congress no later than 3 years after the date that all members of the Commission have been appointed. The report is to contain a detailed statement of the findings and conclusions for the legislation as it deems advisable. The Commission is to terminate 90 days after submission of the final report. There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

Effective date

This provision is effective on February 1, 1977.

IV. Costs of Carrying Out the Bill and Vote of the Committee in Reporting the Committee Amendment to H.R. 13367

Revenue Cost

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statement is made relative to the costs in carrying out H.R. 13367. The committee estimates that it will have no effect on revenues. The Treasury agrees with this statement.

In accordance with section 308(a) of the Congressional Budget and Impoundment Control Act of 1974, the committee states that H.R. 13367 involves no new tax expenditures, and provides new budget authority for assistance for State and local governments as displayed in the following table:

COST ESTIMATE OF H.R. 13367

[In millions of dollars]

	Fiscal year—						
	1977	1978	1979	1980	1981	1982	1983
New budget authority	5,241	7,055	7,205	7,355	7,505	7,655	----------
Estimated outlays	3,446	7,017	7,167	7,317	7,467	7,617	1,988

The committee contemplates that reductions in other programs under its jurisdiction will offset any estimated increase in total budget authority and outlay levels for general revenue sharing for fiscal year 1977. These offsetting reductions are expected to ensure that legislation extending the general revenue sharing program will be consistent with the first concurrent resolution.

In accordance with section 403 of the Congressional Budget Act of 1974, the Director of the Congressional Budget Office has provided the following cost estimate:

Congressional Budget Office

COST ESTIMATE

1. Bill number: H.R. 13367 (as amended by Senate Finance Committee).

2. Bill title: State and Local Fiscal Assistance Amendments of 1976.

3. Purpose of bill: This bill extends and amends the State and Local Fiscal Assistance Act of 1972. Funds for general revenue sharing program are provided for the period from January 1, 1977, through September 30, 1982.

4. Cost estimate: (Fiscal years, in millions of dollars.)

	1977 [1]	1978	1979	1980	1981	1982	1983
Budget authority	5,241	7,055	7,205	7,355	7,505	7,655	----------
Estimated outlays	3,446	7,017	7,167	7,317	7,467	7,617	1,988

[1] The original law, Public Law 92–512, provides funding through the 1st quarter of fiscal year 1977. The bill provides money for the remaining 3 quarters of the fiscal year. Total fiscal year 1977 budget authority is $6,905,000,000.

5. Basis for estimate: The bill contains explicit dollar amounts for general revenue sharing payments for the periods, January through September 1977, fiscal year 1978, fiscal year 1979, fiscal year 1980, fiscal year 1981 and fiscal year 1982. In the past, the spendout pattern has been that the allotment for the last quarter of any fiscal year is paid within the first five days of the first quarter of the next fiscal year. Consequently, the outlays for fiscal year 1977 are less than the budget authority by one quarter's payment, and there is a one quarter's payment in fiscal year 1983 after the program's authority has been expended.

The other adjustment from budget authority to outlays is the unobligated balance reserve for adjustment of revenue-sharing payments. Following OMB assumptions, the CBO estimates that a reserve of approximately $70 million will be created from the new program budget authority in fiscal year 1977. This reserve is assumed to grow each succeeding year by $1 million. This money is spent out in fiscal year 1983.

The bill continues the non-contiguous states adjustment amount from the prior program with two changes. One is that the amount available to Alaska and Hawaii will grow by the same rate as the regular revenue sharing payments grow. Second, Alaska and Hawaii will qualify for this additional allotment under either of the two allotment formulas. It is assumed that this money will be spent out in the same manner as the regular revenue sharing payments.

6. Estimate comparison: H.R. 13367, as passed by the House, was originally estimated by the CBO to have the following costs: (Fiscal years, millions of dollars)

	1977	1978	1979	1980	1981
Budget authority	4,991	6,655	6,655	6,655	----------
Estimated outlays	3,325	6,650	6,650	6,650	1,663

The outlays have been reestimated by CBO, based on different assumptions about the unobligated balance reserve. The reestimated outlays are as follows:

Fiscal years:	*Millions*
1977	3,258
1978	6,650
1979	6,650
1980	6,650
1981	1,730

The basic differences between the House-passed and Senate Finance versions of H.R. 13367 are: (1) the House extension is 3¾ years; the Senate extensions is 5¾ years; (2) the House funding level for the regular program is $6,650 million for each year; the Senate establishes a level of $6,900 million for the full FY 1977, and then increases this amount by $150 million each year; (3) the House maintains the level of $4.8 million for the non-contiguous states adjustment; the Senate increases the non-contiguous states amount each year, and makes Alaska and Hawaii eligible for this allotment under either formula.

7. Estimate prepared by: Roger M. Winsby (225–5373).

8. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Vote of the committee

In compliance with section 133 of the Legislative Reorganization Act of 1946, the following statement is made relative to the vote by the committee on the motion to report the amendment. The committee amendment to H.R. 13367, as amended by committee, was ordered reported by a recorded vote of 14 to 0.

V. Changes in Existing Law

In the opinion of the committee, it is necessary, in order to expedite the business of the Senate, to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the committee amendment, as reported).

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94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 94-1720

THE STATE AND LOCAL FISCAL ASSISTANCE AMENDMENTS OF 1976

SEPTEMBER 29, 1976.—Ordered to be printed

Mr. BROOKS, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 13367]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 13367) to extend and amend the State and Local Fiscal Assistance Act of 1972, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

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

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "State and Local Fiscal Assistance Amendments of 1976".

SEC. 2. AMENDMENT OF STATE AND LOCAL FISCAL ASSISTANCE ACT OF 1972.

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 State and Local Fiscal Assistance Act of 1972, as amended (31 U.S.C. 1221 et seq.; 86 Stat. 919).

SEC. 3. ELIMINATION OF EXPENDITURE CATEGORIES.

(a) Section 103 (relating to requirement that local governments use revenue sharing funds only for priority expenditures) is repealed.

(b) Section 123(a) (relating to assurances to the Secretary of the Treasury) is amended by striking out paragraph (3).

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SEC. 4. ELIMINATION OF PROHIBITION ON USE OF FUNDS FOR MATCHING.

(a) Section 104 (relating to prohibition on use of revenue sharing funds as matching funds) is repealed.

(b) Section 143(a) (relating to judicial review of withholding of payments) is amended by striking out "104(b) or".

SEC. 5. EXTENSION OF PROGRAM AND FUNDING.

(a) IN GENERAL.—Section 105 (relating to funding for revenue sharing) is amended—

(1) by inserting "or (c)" immediately after "as provided in subsection (b)" in subsection (a)(1);

(2) by redesignating subsection (c) as subsection (d);

(3) by inserting immediately after subsection (b) the following new subsection:

"(c) AUTHORIZATION OF APPROPRIATIONS FOR ENTITLEMENTS.—

"(1) IN GENERAL.—There are authorized to be appropriated to the Trust Fund to pay the entitlements hereinafter provided—

"(A) for the period beginning January 1, 1977, and ending September 30, 1977, $4,987,500,000; and

"(B) for each of the fiscal years beginning October 1 of 1977, 1978, and 1979, $6,850,000,000.

"(2) NONCONTIGUOUS STATES ADJUSTMENT AMOUNTS.—There are authorized to be appropriated to the Trust Fund to pay the entitlements hereinafter provided—

"(A) for the period beginning January 1, 1977, and ending September 30, 1977, $3,585,000; and

"(B) for each of the fiscal years beginning on October 1 of 1977, 1978, and 1979, $4,923,759."; and

(4) by inserting "; AUTHORIZATIONS FOR ENTITLEMENTS" in the heading of such section immediately after "APPROPRIATIONS".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 106 (relating to general rule for allocation among States) is amended to read as follows:

"(a) IN GENERAL.—There shall be allocated an entitlement to each State—

"(1) for each entitlement period beginning before December 31, 1976, out of amounts appropriated under section 105(b)(1) for that entitlement period, an amount which bears the same ratio to the amount appropriated under that section for that period as the amount allocable to that State under subsection (b) bears to the sum of the amounts allocable to all States under subsection (b); and

"(2) for each entitlement period beginning on or after January 1, 1977, out of amounts authorized under section 105(c)(1) for that entitlement period, an amount which bears the same ratio to the amount authorized under that section for that period as the amount allocable to that State under subsection (b) bears to the sum of the amounts allocable to all States under subsection (b).".

(2) Paragraph (1) of section 106(b) (relating to general rule for determining allocable amounts) is amended to read as follows:

"(1) IN GENERAL.—For purposes of subsection (a), the amount allocable to a State under this subsection for any entitlement

period shall be determined under paragraph (2), except that such amount shall be determined under paragraph (3) if—

"(A) in the case of an entitlement period beginning before December 31, 1976, the amount allocable to such State under paragraph (3) is greater than the sum of the amounts allocable to such State under paragraph (2) and subsection (c); and

"(B) in the case of an entitlement period beginning on or after January 1, 1977, the amount allocable to such State under paragraph (3) is greater than the amount allocable to such State under paragraph (2).".

(3) Paragraph (1) of section 106(c) (general rule for noncontiguous State adjustment) is amended to read as follows:

"(1) IN GENERAL.—In addition to the amounts allocated to the States under subsection (a), there shall be allocated for each entitlement period an additional amount to any State in which civilian employees of the United States Government receive an allowance under section 5941 of title 5, United States Code—

"(A) in the case of an entitlement period beginning before December 31, 1976, out of amounts appropriated under section 105(b)(2), if the allocation of such State under subsection (b) is determined by the formula set forth in paragraph (2) of that subsection; and

"(B) in the case of an entitlement period beginning on or after January 1, 1977, out of amounts authorized under section 105(c)(2).".

(4) Section 106(c)(2) (relating to amount of noncontiguous State adjustments) is amended—

(A) by striking out "subsection (b)(2)" and inserting in lieu thereof "subsection (b)", and

(B) by inserting immediately after "section 105(b)(2) for any entitlement period" the following: "beginning before December 31, 1976, or authorized under section 105(c)(2) for any entitlement period beginning on or after January 1, 1977,".

(5) Section 108(b)(6)(D)(i) (relating to entitlements less than $200) is amended by inserting after "6 months" the following: ", $150 for an entitlement period of 9 months".

(6) Section 108(c)(1)(C) (relating to optional formula for allocation among local governments) is amended by striking out "December 31, 1976," and inserting in lieu thereof "September 30, 1980,".

(7) Section 141(b) (relating to definition of "entitlement period") is amended by inserting at the end thereof the following new paragraphs:

"(6) The period beginning January 1, 1977, and ending September 30, 1977.

"(7) The one-year periods beginning October 1 of 1977, 1978, and 1979.".

SEC. 6. SPECIAL ENTITLEMENT RULES.

(a) STATE MAINTENANCE OF TRANSFERS TO LOCAL GOVERNMENTS.—

(1) Paragraph (1) of section 107(b) (relating to general rule for State maintenance of transfers to local governments) is amended to read as follows:

"(1) GENERAL RULE.—

"(A) PRE-1977 ENTITLEMENT PERIOD.—The entitlement of any State government for any entitlement period beginning on or after July 1, 1973, and before December 31, 1976, shall be reduced by the amount (if any) by which—

"(i) the average of the aggregate amounts transferred by the State government (out of its own sources) during such period and the preceding entitlement period to all units of local government in such State, is less than,

"(ii) the similar aggregate amount for the one-year period beginning July 1, 1971.

"(B) POST-1976 ENTITLEMENT PERIODS.—The entitlement of any State government for any entitlement period beginning on or after January 1, 1977, shall be reduced by the amount (if any) by which—

"(i) one-half of the aggregate amounts transferred by the State government (out of its own sources) during the 24-month period ending on the last day of the last fiscal year of such State for which the relevant data are available (in accordance with regulations prescribed by the Secretary) on the first day of such entitlement period, to all units of local government in such State, is less than,

"(ii) one-half of the similar aggregate amount for the 24-month period ending on the day before the start of the 24-month period described in clause (i).

"(C) For purposes of subparagraphs (A)(i) and (B)(i), the amount of any reduction in the entitlement of a State government under this subsection for any entitlement period shall, for subsequent entitlement periods, be treated as an amount transferred by the State government (out of its own sources) during such period to units of local government in such State.".

(2) Section 107(b)(2) (relating to adjustment where State assumes responsibility for category of expenditures) is amended—

(A) by striking out "under paragraph (1)(B)" and inserting in lieu thereof "under paragraph (1)(A)(ii) or (1)(B)(ii)"; and

(B) by striking out "the one-year period beginning July 1, 1971," and inserting in lieu thereof "the period utilized for purposes of such paragraph".

(3) Section 107(b)(3) (relating to adjustments in the case of new taxing powers) is amended by striking out "paragraph (1)(B)" and inserting in lieu thereof "paragraph (1)(A)(ii) (in the case of an entitlement period beginning before December 31, 1976) or paragraph (1)(B)(ii) (in the case of an entitlement period beginning on or after January 1, 1977)".

(4) Section 107(b) (relating to State maintenance of support to local governments) is amended by redesignating paragraphs

(6) and (7) as paragraphs (8) and (9), respectively, and by inserting after paragraph (5) the following new paragraphs:

"(6) SPECIAL RULE FOR THE PERIOD BEGINNING JANUARY 1, 1977.—In the case of the entitlement period beginning January 1, 1977, and ending September 30, 1977, the aggregate amounts taken into account under clauses (i) and (ii) of paragraph (1)(B) shall be three-fourths of the amount which (but for this paragraph) would be taken into account.

"(7) ADJUSTMENT WHERE FEDERAL GOVERNMENT ASSUMES RESPONSIBILITY FOR CATEGORY OF EXPENDITURES.—If, for an entitlement period beginning on or after January 1, 1977, a State government establishes to the satisfaction of the Secretary that during all or part of the period utilized for purposes of paragraph (1)(B)(i), the Federal Government has assumed responsibility for a category of expenditures for which such State government transferred amounts which (but for this paragraph) would be included in the aggregate amount taken into account under paragraph (1)(B)(ii) for the period utilized for purposes of such paragraph, then (under regulations prescribed by the Secretary) the aggregate amount taken into account under paragraph (1)(B)(ii) shall be reduced to the extent that increased Federal Government spending in that State for such category of expenditures has replaced corresponding amounts which such State government had transferred to units of local government during the period utilized for purposes of paragraph (1)(B)(ii).".

(b) WAIVERS BY INDIAN TRIBES AND ALASKAN NATIVE VILLAGES.—

(1) Paragraph (4) of section 108(b) (relating to Indian tribes and Alaskan native villages) is amended by striking out the last sentence.

(2) Paragraph (6)(D) of such section (relating to effect of waivers) is amended by adding at the end thereof the following: "If the entitlement of an Indian tribe or Alaskan native village is waived for any entitlement period by the governing body of that tribe or village, then the amount of such entitlement for such period shall (in lieu of being paid to such tribe or village) be added to, and shall become a part of, the entitlement for such period of the county government of the county area in which such tribe or village is located.".

(c) SEPARATE LAW ENFORCEMENT OFFICERS.—

(1) GENERAL RULE.—Section 108 (relating to entitlements of local governments) is amended by adding at the end thereof the following new subsection:

"(e) SEPARATE LAW ENFORCEMENT OFFICERS.—

"(1) ENTITLEMENT OF SEPARATE LAW ENFORCEMENT OFFICERS.—The office of the separate law enforcement officer for any county area in the State of Louisiana, other than the parish of East Baton Rouge, shall be entitled to receive for each entitlement period beginning on or after January 1, 1977, an amount equal to 15 percent of the amount which would (but for the provisions of this subsection) be the entitlement of the government of such county area. The office of the separate law enforcement officer for the parish of East Baton Rouge shall be entitled to receive for

each entitlement period beginning on or after January 1, 1977, an amount equal to 7.5 percent of the sum of the amounts which would (but for the provisions of this subsection) be the entitlements of the governments of Baton Rouge, Baker, and Zachary, Louisiana, for each such entitlement period.

"(2) REDUCTION OF ENTITLEMENT OF COUNTY GOVERNMENT.—The entitlement of the government of a county area for an entitlement period shall be reduced by an amount equal to one half of the entitlement for the separate law enforcement officer for such county area for such entitlement period. For the purpose of applying this paragraph to the parish of East Baton Rouge, Louisiana, the entitlements of the governments of Baton Rouge, Baker, and Zachary, Louisiana, for each entitlement period shall each be reduced by an amount equal to 3.75 percent of the amount which would (but for the provisions of this paragraph) be the entitlement of each such government.

"(3) REDUCTION OF ENTITLEMENT OF STATE GOVERNMENT.—The entitlement of the State government of Louisiana for an entitlement period shall be reduced by an amount equal to the sum of the reductions provided under paragraph (2) for governments of county areas in such State for such entitlement period. For purposes of this paragraph—

"(A) the reductions provided under paragraph (2) for the governments of Baton Rouge, Baker, and Zachary, Louisiana, shall be considered as reductions of entitlements of governments of county areas, and

"(B) the entitlement of the parish of Orleans for an entitlement period shall be considered to have been reduced by an amount equal to the additional amount provided for such parish for that entitlement period under paragraph (4).

"(4) ENTITLEMENT OF PARISH OF ORLEANS.—In the case of the parish of Orleans, Louisiana, paragraphs (1) and (2) shall not apply, and such parish shall be entitled to receive, for each entitlement period beginning after December 31, 1976, an additional amount equal to 7.5 percent of the amount which would otherwise be the entitlement of such parish.".

(2) CONFORMING AMENDMENTS.—

(A) Section 108(b)(7)(A) (relating to general rule for adjustment of entitlement) is amended by striking out "and any adjustment required under paragraph (6)(D) last." and inserting in lieu thereof "any adjustment required under paragraph (6)(D) next, and any adjustment required under subsection (e) last.".

(B) Section 108(d)(1) (defining "unit of local government") is amended by adding at the end thereof the following: "Such term also means (but only for purposes of subtitles B and C) the office of the separate law enforcement officer to which subsection (e)(1) applies.".

(C) Section 107 (relating to entitlements of State governments) is amended by adding at the end thereof the following new subsection:

"(c) CROSS REFERENCE.—

"For reduction of State government entitlement because of provision for separate law enforcement officers, see section 108(e).".

(d) CURRENCY OF DATA.—

(1) Section 109(a)(7) (relating to data used and uniformity of data) is amended—

(A) in subparagraph (A) by striking out "subparagraph (B)" and inserting in lieu thereof "subparagraph (B) or (C)", and

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

"(C) TAX COLLECTIONS.—Data with respect to tax collections for a period more recent than the most recent reporting year for an entitlement period (as defined in subsection (c)(2)(B)) shall not be used in the determination of entitlements for such period.".

(2) Section 109(c)(2)(B) (defining "most recent reporting year") is amended by striking out "made before the close of such period." and inserting in lieu thereof "made before the beginning of such period.".

(e) LIMITATION ON ADJUSTMENT OF PAYMENTS.—Section 102 (relating to payments to State and local governments) is amended—

(1) by striking out "Except" and inserting in lieu thereof "(a) IN GENERAL.—Except"; and

(2) adding at the end thereof the following new subsection:

"(b) LIMITATIONS ON ADJUSTMENTS.—No adjustment shall be made to increase or decrease a payment made for any entitlement period beginning after December 31, 1976, to a State government or a unit of local government, unless a demand therefor shall have been made by such government or the Secretary within 1 year of the end of the entitlement period with respect to which the payment was made.".

(f) RESERVES FOR ADJUSTMENTS.—Section 102 (relating to payments to State and local governments), as amended by subsection (e), is amended by adding at the end thereof the following new subsection:

"(c) RESERVES FOR ADJUSTMENTS.—The Secretary may reserve such percentage (not exceeding 0.5 percent) of the total entitlement payment for any entitlement period with respect to any State government and all units of local government within such State as he deems necessary to insure that there will be sufficient funds available to pay adjustments due after the final allocation of funds among such governments.".

(g) RECOVERY OF CERTAIN OVERPAYMENTS.—In the case of an adjustment to decrease a payment made for an entitlement period ending before January 1, 1977, under title I of the State and Local Fiscal Assistance Act of 1972 to a unit of local government (as defined in section 108(d)(1) of that Act), the amount of such adjustment shall be withheld from the reserves for adjustments established by the Secretary under section 102(c) of such Act for the State within which such units of local government are located. Amounts withheld under this subsection shall be covered into the State and Local Government Fiscal Assistance Trust Fund.

SEC. 7. CITIZEN PARTICIPATION; REPORTS, ENFORCEMENT.

(a) CITIZENS PARTICIPATION.—Section 121 (relating to reports on use of funds and publication of reports) is amended to read as follows:

"SEC. 121. REPORT ON USE OF FUNDS; PUBLICATION AND PUBLIC HEARINGS.

(a) REPORTS ON USE OF FUNDS.—Each State government and units of local government which receives funds under subtitle A shall, after the close of each fiscal year, submit a report to the Secretary (which report shall be available to the public for inspection setting forth the amounts and purposes for which funds received under subtitle A have been appropriated, spent, or obligated during such period and showing the relationship of those funds to the relevant functional items in the government's budget. Such report shall identify differences between the actual use of funds received and the proposed use of such funds. Such reports shall be in such form and detail and shall be submitted at such time as the Secretary may prescribe.

"(1) HEARING ON PROPOSED USE.—Not less than 7 calendar days before its budget is presented to the governmental body responsible for enacting the budget, each State government or unit of local government which expends funds received under subtitle A in any fiscal period, the budget for which is to be enacted on or after January 1, 1977, shall, after adequate public notice, have at least one public hearing at which citizens shall have the opportunity to provide written and oral comment on the possible uses of such funds before the governmental authority responsible for presenting the proposed budget to such body.

"(2) BUDGET HEARING.—Each State government or unit of local government which expends funds received under subtitle A in any fiscal period, the budget for which is to be enacted on or after January 1, 1977, shall have at least one public hearing on the proposed use of such funds in relation to its entire budget. At such hearing, citizens shall have the opportunity to provide written and oral comment to the body responsible for enacting the budget, and to ask questions concerning the entire budget and the relation thereto of funds made available under subtitle A. Such hearing shall be at a place and time that permits and encourages public attendance and participation.

"(3) WAIVER.—The provisions of paragraph (1) may be waived in whole or in part in accordance with regulations of the Secretary if the cost of such a requirement would be unreasonably burdensome in relation to the entitlement of such State government or unit of local government to funds made available under subtitle A. The provisions of paragraph (2) may be waived in whole or in part in accordance with regulations of the Secretary if the budget processes required under applicable State or local laws or charter provisions assure the opportunity for public attendance and participation contemplated by the provisions of this subsection and a portion of such process includes a hearing on the proposed use of funds made available under subtitle A in relation to its entire budget.

"(c) NOTIFICATION AND PUBLICITY OF PUBLIC HEARINGS; ACCESS TO BUDGET SUMMARY AND PROPOSED USE OF FUNDS.—

"(1) IN GENERAL.—Each State government and unit of local government which expends funds received under subtitle A in any fiscal period, the budget for which is to be enacted on or after January 1, 1977, shall—

(A) at least 10 days prior to the public hearing required by subsection (b)(2)—

"(b) PUBLIC HEARINGS REQUIRED.—

"(i) publish, in at least one newspaper of general circulation, the proposed uses of funds made available under subtitle A together with a summary of its proposed budget and a notice of the time and place of such public hearing; and

"(ii) make available for inspection by the public at the principal office of such State government or unit of local government a statement of the proposed use of funds, together with a summary of its proposed budget; and

"(B) within 30 days after adoption of its budget as provided for under State or local law—

"(i) make a summary of the adopted budget, including the proposed use of funds made available under subtitle A, available for inspection by the public at the principal office of such State government or unit of local government; and

"(ii) publish in at least one newspaper of general circulation a notice of the availability for inspection of the information referred to in clause (i).

"(2) WAIVER.—The provisions of paragraph (1) may be waived, in whole or in part, with respect to publication of the proposed use of funds and the summaries, in accordance with regulations of the Secretary, where the cost of such publication would be unreasonably burdensome in relation to the entitlement of such State government or unit of local government to funds made available under subtitle A, or where such publication is otherwise impractical or infeasible. In addition, the 10-day provisions of paragraph (1)(A) may be modified to the maximum extent necessary to comply with applicable State and local law if the Secretary is satisfied that the citizens of such State or local government will receive adequate notification of the proposed use of funds consistent with the intent of this section.

"(d) REPORT SUBMITTED TO THE GOVERNOR.—The Secretary shall furnish to the Governor of the State in which any unit of local government which receives funds under subtitle A is located, a copy of each report filed with the Secretary as required under subsection (a), in such manner and form as the Secretary may prescribe by regulation.

"(e) BUDGETS.—The Secretary shall promulgate regulations for the application of this section to circumstances under which the State government or unit of local government does not adopt a budget.

"(f) REPORT OF THE SECRETARY.—The Secretary shall include with the report required under section 105(a)(2) a report to the Congress on the implementation and administration of this Act during the preceding fiscal year. Such report shall include, but not be limited to, a comprehensive and detailed analysis of—

"(1) the measures taken to comply with section 122, including a description of the nature and extent of any noncompliance and the status of all pending complaints;

"(2) the extent to which recipient jurisdictions have complied with section 123, including a description of the nature and extent of any noncompliance and of measures taken to ensure the independence of audits conducted pursuant to subsection (c) of such section;

"(3) the manner in which funds distributed under subtitle A have been distributed in recipient jurisdictions; and

"(4) any significant problems arising in the administration of the Act and the proposals to remedy such problems through appropriate legislation.

"(g) PARTICIPATION BY SENIOR CITIZENS.—In conducting any hearing required under this section, or under its own budget processes, a State or unit of local government shall endeavor to provide senior citizens and their organizations with an opportunity to be heard prior to the final allocation of any funds provided under the Act pursuant to such a hearing.".

(b) ENFORCEMENT.—Subtitle B (relating to administrative provisions) is amended by adding at the end thereof the following new sections:

"SEC. 124. PRIVATE CIVIL ACTIONS.

"(a) STANDING.—Whenever a State government or a unit of local government, or any officer or employee thereof acting in an official capacity, has engaged or is engaging in any act or practice prohibited by this Act, upon exhaustion of administrative remedies, a civil action may be instituted by the person aggrieved in an appropriate United States district court or in a State court of general jurisdiction.

"(b) RELIEF.—The court may grant as relief to the plaintiff any temporary restraining order, preliminary or permanent injunction or other order, including the suspension, termination, or repayment of funds, or placing any further payments under this title in escrow pending the outcome of the litigation.

SEC. 8. NONDISCRIMINATION PROVISIONS.

(a) IN GENERAL.—Section 122 (relating to nondiscrimination provisions) is amended to read as follows:

"SEC. 122. NONDISCRIMINATION PROVISIONS.

"(a) Prohibition.—

"(1) IN GENERAL.—No person in the United States shall, on the ground of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of a State government or unit of local government, which government or unit receives funds made available under subtitle A. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in section 504 of the Rehabilitation Act of 1973 shall also apply to any such program or activity. Any prohibition against discrimination on the basis of religion, or any exemption from such prohibition, as provided in the Civil Rights Act of 1964 or title VIII of the Act of April 11, 1968, hereafter referred to as Civil Rights Act of 1968, shall also apply to any such program or activity.

"(2) EXCEPTIONS.—

"(A) FUNDING.—The provisions of paragraph (1) of this subsection shall not apply where any State government or unit of local government demonstrates, by clear and convincing evidence, that the program or activity with respect to which the allegation of discrimination has been made is not funded in whole or in part with funds made available under subtitle A.

"(B) CONSTRUCTION PROJECTS IN PROGRESS.—The provisions of paragraph (1), relating to discrimination on the basis of handicapped status, shall not apply with respect to construction projects commenced prior to January 1, 1977.

"(b) DETERMINATION BY THE SECRETARY.—

"(1) NOTICE OF NONCOMPLIANCE.—Within 10 days after the Secretary has received a holding described in subsection (c)(1) or has made a finding described in subsection (c)(4), with respect to a State government or a unit of local government, he shall send a notice of noncompliance to such government setting forth the basis of such holding or finding.

"(2) PROCEDURE BEFORE SECRETARY; SUSPENSION OF PAYMENT OF REVENUE SHARING FUNDS.—Within 30 days after a notice of noncompliance has been sent to a State government or a unit of local government in accordance with paragraph (1), such government may informally present evidence to the Secretary regarding the issues of—

"(A) (except in the case of a holding described in subsection (c)(1)) whether there has been exclusion, denial, or discrimination on account of race, color, national origin, or sex, or a violation of any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, or with respect to an 'otherwise qualified handicapped individual', as provided in section 504 of the Rehabilitation Act of 1973, or a violation of any prohibition against discrimination on the basis of religion as provided in the Civil Rights Act of 1964 or title VIII of the Civil Rights Act of 1968, and

"(B) whether the program or activity in connection with which such exclusion, denial, discrimination, or violation is charged has been funded in whole or in part with funds made available under subtitle A.

Before the end of the such 30-day period, unless a compliance agreement is entered into with such government, the Secretary shall issue a determination as to whether such government failed to comply with subsection (a). If the Secretary determines that such government has failed to comply with subsection (a), the Secretary shall suspend the payment of funds under subtitle A to such government unless such government within the 10 day period following such determination enters into a compliance agreement or requests a hearing with respect to such determination.

"(3) HEARINGS BEFORE ADMINISTRATIVE LAW JUDGE; SUSPENSION OR TERMINATION OF PAYMENT OF REVENUE SHARING FUND.—

"(A) Hearings requested by a State government or a unit of local government pursuant to paragraph (2) shall begin before an administrative law judge within 30 days after the Secretary receives the request for the hearing.

"(B) Within 30 days after the beginning of the hearing provided under subparagraph (A), the administrative law judge conducting the hearing shall, on the record then before him, issue a preliminary finding (which shall be consistent with subsection (c)(2)) as to whether such government has failed to comply with subsection (a). If the administrative law judge issues a preliminary finding that such government is not likely to prevail, on the basis of the evidence presented, in demonstrating compliance with subsection (a), then the Secretary shall suspend the payment of funds under subtitle A to such government. No such preliminary finding shall be issued in any case where a determination has previously been issued under subparagraph (C).

"(C) If, after the completion of such hearing, the administrative law judge issues a determination (consistently with subsection (c)(2) that such government has failed to comply with subsection (a), then, unless such government enters into a compliance agreement before the 31st day after such issuance, the Secretary, subject to the provisions of subparagraph (D), shall suspend the payment of funds under subtitle A to such government; if a suspension in accordance with subparagraph (B) is still in effect, then, subject to the provisions of subparagraph (D), that suspension is to be continued.

"(D) In the event of a determination described in subparagraph (C), the administrative law judge may, in his discretion, order the termination of payment of funds under subtitle A to such government or unit.

"(E) If, after the completion of such hearing, the administrative law judge issues a determination (consistently with subsection (c)(2)) that there has not been a failure to comply with subsection (a), and a suspension is in effect in accordance with subparagraph (B), such suspension shall be promptly discontinued.

"(c) HOLDING BY COURT OR GOVERNMENTAL AGENCY; FINDING BY SECRETARY.—

"(1) DESCRIPTION.—A holding is described in this paragraph if it is a holding by a Federal Court, a State Court, or a Federal administrative law judge, with respect to a State government or a unit of local government which expends funds received under subtitle A that such government has, in the case of a person in the United States, excluded such person from participation in, denied such person the benefits of, or subjected such person to discrimination under any program or activity on the ground of race, color, national origin, or sex, or violated any prohibition against discrimination (A) on the basis of age under the Age Discrimination Act of 1975 or (B) with respect to an 'otherwise qualified handicapped individual', as provided in section 504 of the Rehabilitation Act of 1973 or (C) on the basis of religion

as provided in the Civil Rights Act of 1964 or title VIII of the Civil Rights Act of 1968, in connection with any such program or activity.

"(2) EFFECT ON PROCEEDINGS OR HEARING.—If there has been a holding described in paragraph (1) with respect to a State government or a unit of local government, then, in the case of proceedings by the Secretary pursuant to subsection (b)(2) or a hearing pursuant to subsection (b)(3) with respect to such government, such proceedings or such hearing shall relate only to the question of whether the program or activity in which the exclusion, denial, discrimination, or violation occurred is funded in whole or in part with funds made available under subtitle A. In such proceedings or hearing, the holding described in paragraph (1), to the effect that there has been exclusion, denial, or discrimination on account of race, color, national origin, or sex, or a violation of any prohibition against discrimination (A) on the basis of age effected by the Age Discrimination Act of 1975, (B) with respect to an 'otherwise qualified handicapped individual', as provided in section 504 of the Rehabilitation Act of 1973 (C) on the basis of religion as provided in the Civil Rights Act of 1964 or title VIII of the Civil Rights Act of 1968, shall be treated as conclusive.

"(3) EFFECT OF REVERSAL.—If a holding described in paragraph (1) is reversed by an appellate tribunal, then proceedings under subsection (b) which are dependent upon such holding shall be discontinued; any suspension or termination of payments resulting from such proceedings shall also be discontinued.

"(4) FINDING BY SECRETARY.—A finding is described in this paragraph if it is a finding by the Secretary with respect to a complaint referred to in section 124(d), a determination by a State or local administrative agency, or other information (pursuant to procedures provided in regulations prescribed by the Secretary) that it is more likely than not that a State government or unit of local government has failed to comply with subsection (a).

"(d) COMPLIANCE AGREEMENT.—For purposes of this section and section 124, a compliance agreement is an agreement between—

"(1) the governmental office or agency responsible for prosecuting the claim or complaint which is the basis of the holding described in subsection (c)(1) and the chief executive officer of the State government or the unit of local government that has failed to comply with subsection (a), if such agreement is approved by the Secretary, or

"(2) the Secretary and such chief executive officer, setting forth the terms and conditions with which such government or unit has agreed to comply that would satisfy the obligations of such government under subsection (a). Such agreement shall cover all the matters which had been determined or would constitute failures to comply with subsection (a), and may consist of a series of agreements which, in the aggregate, dispose of all such matters. Within 15 days after the execution of such agreement (or, in the case of an agreement under paragraph (1), the approval of

such agreement by the Secretary, if later), the Secretary shall send a copy of such agreement to each person who has filed a complaint referred to in section 124(d) with respect to such failure to comply with subsection (a), or, in the case of an agreement under paragraph (1), to each person who has filed a complaint with the governmental office or agency (described in such paragraph) with respect to such failure to comply with subsection (a).

"(e) RESUMPTION OF SUSPENDED PAYMENTS.—If payment to a State government or a unit of local government of funds made available under subtitle A has been suspended under subsection (b)(2) or (b)(3), payment of such funds shall be resumed only if—

"(1) such government enters into a compliance agreement (but only at the times and under the circumstances set forth in such agreement, or, in the case of any agreement under subsection (d)(1), only at the times and under the circumstances set forth in the Secretary's approval of such agreement);

"(2) such government complies fully with the holding of a Federal or State court, or Federal administrative law judge, if that holding covers all the matters raised by the Secretary in the notice pursuant to subsection (b)(1), or if such government is found to be in compliance with subsection (a) by such court or Federal administrative law judge;

"(3) in the case of a hearing before an administrative law judge under subsection (b)(3), the judge determines that such government is in compliance with subsection (a); or

"(4) the provisions of subsection (c)(3) (relating to reversal of holding of discrimination) require such suspension of payment to be discontinued.

For purposes of this section, compliance by a government may include the satisfying of a requirement of the payment of restitution to persons injured by the failure of such government to comply with subsection (a).

"(f) RESUMPTION OF TERMINATED PAYMENTS.—If payment to a State government or unit of local government of funds made available under subtitle A has been terminated under subsection (b)(3)(E), payment of such funds shall be resumed only if the determination resulting in such termination is reversed by an appellate tribunal.

"(g) AUTHORITY OF ATTORNEY GENERAL.—Whenever the Attorney General has reason to believe that a State government or a unit of local government has engaged or is engaging in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in an appropriate United States district court. Such court may grant as relief any temporary restraining order, preliminary or permanent injunction, or other order, as necessary or appropriate to insure the full enjoyment of the rights described in this section, including the suspension, termination, or repayment of funds made available under subtitle A, or placing any further payments under subtitle A in escrow pending the outcome of the litigation.

"(h) AGREEMENTS BETWEEN AGENCIES.—The Secretary shall endeavor to enter into agreements with State agencies and with other Federal agencies authorizing such agencies to investigate noncompliance with subsection (a). The agreements shall describe the cooperative efforts to be undertaken (including the sharing of civil rights enforcement personnel and resources) to secure compliance with this section, and shall provide for the immediate notification of the Secretary of any actions instituted by such agencies against a State government or a unit of local government alleging a violation of any Federal civil rights statute or regulations issued thereunder.".

"(c) INTERVENTION BY ATTORNEY GENERAL.—In any action instituted under this section to enforce compliance with section 122(a), the Attorney General, or a specially designated assistant for or in the name of the United States, may intervene upon timely application if he certifies that the action is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

"(d) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—As used in this section, administrative remedies shall be deemed to be exhausted upon the expiration of 90 days after the date the administrative complaints were filed with the Secretary or with an Agency with which the Secretary has an agreement under section 122(h) if, within such period, the Secretary or such Agency—

"(1) issues a determination that such Government under unit has not failed to comply with this Act; or

"(2) fails to issue a determination on such complaint.

"(e) ATTORNEY FEES.—In any action under this section to enforce section 122(a), the court, in its discretion, may allow to the prevailing party, other than the United States, reasonable attorney fees, and the United States shall be liable for fees and costs the same as a private person.

"SEC. 125. INVESTIGATIONS AND COMPLIANCE REVIEWS.

"By March 31, 1977, the Secretary shall promulgate regulations establishing—

"(1) reasonable and specific time limits (in no event to exceed 90 days) for the Secretary to conduct an investigation and make a finding after receiving a complaint (described in section 124(d)), a determination by a State or local administrative agency, or other information relating to the possible violation of the provisions of this Act;

"(2) reasonable and specific time limits for the Secretary to conduct audits and reviews (including investigations of allegations) relating to possible violations of the provisions of this Act.

The regulations promulgated pursuant to paragraphs (1) and (2) shall also establish reasonable and specific time limits for the Secretary to advise any complainant of the status of his investigation, audit, or review of any allegation of violation of section 122(a) or any other provision of this Act.".

(c) JUDICIAL REVIEW.—Section 143(a) (relating to petitions for judicial review) is amended by striking out "receives a notice of withholding of payments under section 104(b) or 123(b)," and inserting in lieu thereof "receives a notice of withholding of payments under section 104(b) or 123(b) a determination under section 122(b)(3)(C) that payments be suspended, or a determination under section 122(b)(3)(D) that payments be terminated,".

SEC. 9. ACCOUNTING AND AUDITING PROVISIONS.

Section 123(c) (relating to accounting, auditing, and evaluation) is amended—

(1) by redesignating paragraph (2) as paragraph (9), and

(2) by striking out paragraph (1) and inserting in lieu thereof the following new paragraphs:

"(1) INDEPENDENT AUDITS.—Each State government and unit of local government which expects to receive funds under subtitle A for any entitlement period beginning on or after January 1, 1977 (other than a government to which an election under paragraph (2) applies with respect to such entitlement period), shall have an independent audit of its financial statements conducted for the purpose of determining compliance with this title, in accordance with generally accepted auditing standards, not less often than once every 3 years.

"(2) ELECTION.—Paragraph (1) shall not apply to any State or unit of local government whose financial statements are audited by independent auditors under State or local law not less often than every 3 years, if (A) such government makes an election under this paragraph that the provisions of paragraph (1) shall not apply, and (B) such government certifies that such audits under State or local law will be conducted in accordance with generally accepted auditing standards. Such election shall include a brief description of the auditing standards to be applied. Such election shall apply to audits of funds received under subtitle A for such entitlement periods as are specified in such election and as to which such State or local law auditing provisions are applicable.

"(3) SERIES OF AUDITS.—If a series of audits conducted over a period not exceeding 3 fiscal years covers, in the aggregate, all of the funds of accounts in the financial activity of such a government, then such series of audits shall be treated as a single audit for purposes of paragraph (1) and paragraph (2).

"(4) ENTITLEMENTS UNDER $25,000.—

"(A) The requirements of paragraph (1) shall not apply to a State government or unit of local government for any fiscal period in which such government receives less than $25,000 of funds made available under subtitle A, unless subparagraph (B) applies for such fiscal period.

"(B) In the case of a fiscal period which is described in subparagraph (A), if State or local law requires an audit of such government's financial statements, then the conducting of such audit shall constitute compliance with the requirements of paragraph (1).

"(5) WAIVER.—The Secretary may waive the requirements of paragraph (1) or paragraph (2), in whole or in part, with respect to any State government or unit of local government for any fiscal period as to which he finds (in accordance with regulations prescribed by the Secretary) (A) that the financial accounts of such governments for such period are not auditable, and (B) that such government demonstrates substantial progress toward making such financial accounts auditable.

"(6) COORDINATION WITH OTHER FEDERALLY REQUIRED AUDITS.—An audit of the financial statements of a State government or unit of local government for a fiscal period, conducted in accordance with the provisions of any Federal law other than this title, shall be accepted as an audit which satisfies the requirements of paragraph (1) with respect to the fiscal period for which such audit is conducted, if such audit substantially complies with the requirements for audits conducted under paragraph (1).

"(7) AUDIT OPINIONS.—Any opinions rendered with respect to audits made pursuant to this subsection shall be provided to the Secretary, in such form and at such times as he may require.

"(8) COMPTROLLER GENERAL SHALL REVIEW COMPLIANCE.—The Comptroller General of the United States shall make such reviews of the work as done by the Secretary, the State governments, and the units of local government as may be necessary for the Congress to evaluate compliance and operations under this title.".

SEC. 10. MISCELLANEOUS PROVISIONS.

(a) BUDGET ACT.—In accordance with section 401(d)(2) of the Congressional Budget Act of 1974 (31 U.S.C. 1351(d)(2); 88 Stat. 297, 318), subsections (a) and (b) of section 401 of such Act shall not apply to this Act.

(b) DEFINITION OF "UNIT OF LOCAL GOVERNMENT".—Section 108(d)(1) (defining "unit of local government") is amended by striking out "municipality, township, or other unit of local government below the State which is a unit of general government" and inserting in lieu thereof "municipality, or township, which is a unit of general government below the State".

SEC. 11. STUDY OF REVENUE SHARING AND FEDERALISM.

Subtitle C (relating to general provisions) is amended by adding at the end thereof the following new section:

"SEC. 145. STUDY OF REVENUE SHARING AND FEDERALISM.

"(a) STUDY.—The Advisory Commission on Intergovernmental Relations shall study and evaluate the American Federal fiscal system in terms of the allocation and coordination of public resources among Federal, State, and local governments including, but not limited to, a study and evaluation of—

"(1) the allocation and coordination of taxing and spending authorities between levels of government, including a comparison of other Federal Government systems;

"(2) State and local governmental organization from both legal and operational viewpoints to determine how general local governments do and ought to relate to each other, to special districts, and to State governments in terms of service and financing responsibilities, as well as annexation and incorporation responsibilities;

"(3) the effectiveness of Federal Government stabilization policies on State and local areas and the effects of State and local fiscal decisions on aggregate economic activity;

"(4) the legal and operational aspects of citizen participation in Federal, State, and local governmental fiscal decisions;

"(5) *forces likely to affect the nature of the American Federal system in the short-term and long-term future and possible adjustments to such system, if any, which may be desirable, in light of future developments.*

"(b) COOPERATION OF OTHER FEDERAL AGENCIES.—

"(1) *Each department, agency, and instrumentality of the Federal Government is authorized and directed to furnish to the Commission, upon request made by the Chairman, and to the extent permitted by law and within the limits of available funds, such data, reports, and other information as the Commission deems necessary to carry out its functions under this section.*

"(2) *The head of each department or agency of the Federal Government is authorized to provide to the Commission such services as the Commission requests on such basis, reimbursable and otherwise, as may be agreed between the department or agency and the Chairman of the Commission. All such requests shall be made by the Chairman of the Commission.*

"(3) *The Administrator of General Services shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.*

"(c) REPORTS.—*The Commission shall submit to the President and the Congress such interim reports as it deems advisable, and not later than three years after the day on which the first appropriation is made available under subsection (d), a final report containing a detailed statement of the findings and conclusions of the Commission, together with such recommendations for legislation as it deems advisable.*

"(d) AUTHORIZATION OF APPROPRIATIONS.—*There are authorized to be appropriated to the Commission, effective with the fiscal year beginning October 1, 1977, such sums as may be necessary to carry out the provisions of this section.*".

SEC. 12. PROHIBITION ON USE FOR LOBBYING PURPOSES.

Section 123 (relating to miscellaneous provisions) is amended by adding at the end thereof the following new subsection:

"(e) PROHIBITION OF USE FOR LOBBYING PURPOSES.—*No State government or unit of local government may use any part of the funds it receives under subtitle A for the purpose of lobbying or other activities intended to influence any legislation regarding the provisions of this Act. For the purpose of this subsection, dues paid to National or State associations shall be deemed not to have been paid from funds received under subtitle A.*".

SEC. 13. EFFECTIVE DATES.

(a) *Except as otherwise provided in this Act, the amendments made by this Act shall apply to entitlement periods beginning on or after January 1, 1977.*

(b) *The amendment made by section 11 takes effect on February 1, 1977.*

And the Senate agree to the same.

JACK BROOKS,
L. H. FOUNTAIN,
DON FUQUA,
EDWARD MEZVINSKY,
BARBARA JORDAN,
JOHN BURTON,
ROBERT F. DRINAN,
FRANK HORTON,
JOHN W. WYDLER,
CLARENCE J. BROWN,

Managers on the part of the House.

RUSSELL B. LONG,
HERMAN TALMADGE,
GAYLORD NELSON,
MIKE GRAVEL,
W. D. HATHAWAY,
PAUL FANNIN,
CLIFF HANSEN,
BOB PACKWOOD,

Managers on the part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill HR 13367 to extend and award the State and local Fiscal Assistance Act of 1972, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the bill struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a complete substitute for the Senate amendment, and the Senate agrees to the same. The differences among the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

Short Title

House bill

The House bill is entitled the "Fiscal Assistance Amendments of 1976."

Senate amendment

The Senate amendment is entitled the "State and Local Fiscal Assistance Amendments of 1976."

Conference substitute

The conference substitute is the same as the Senate amendment.

Amendment of 1972 Act

House bill

The House bill provides that all references to "the Act" are references to the State and Local Fiscal Assistance Act of 1972.

Senate amendment

The Senate amendment provides that all references to section numbers are to section numbers of the State and Local Fiscal Assistance Act of 1972, as amended.

Conference substitute

The conference substitute is the same as the Senate amendment.

Elimination of Expenditure Categories

The House bill, the Senate amendment, and the Conference substitute provide in section 3, that section 103 of the Act is repealed and

section 123(a) of the Act is amended by striking out paragraph (3), thus eliminating the expenditure categories of the 1972 Act.

Elimination of Prohibition on Use of Funds for Matching

The House bill, the Senate amendment, and the Conference substitute provide in section 4, that section 104 of the Act is repealed and that section 143(a) of the Act is amended by striking out the words, "104(b) or," thus eliminating the prohibition on State and local governments against the use of revenue sharing funds to match Federal grants received under other programs.

AMOUNT OF FUNDING

House bill

The House bill provides for an annual basic entitlement of $6.65 billion and noncontiguous State adjustment of $4,780,000. The chart below summarizes the House funding level provision for each entitlement period.

[In millions of dollars]

Entitlement period	House bill		
	Basic	Noncontiguous [1]	Total [1]
(8) Jan. 1, 1977 to Sept. 30, 1977	4,987.5	3.59	4,991.09
(9) Oct. 1, 1977 to Sept. 30, 1978	6,650.0	4.78	6,654.78
(10) Oct. 1, 1978 to Sept. 30, 1979	6,650.0	4.78	6,654.78
(11) Oct. 1, 1979 to Sept. 30, 1980	6,650.0	4.78	6,654.78
Total	24,937.50	[1] 17.93	[1] 24,955.43

[1] Rounded to the nearest 10,000's.

Senate amendment

The Senate bill provides the same basic funding level as the House bill but includes a $200 million annual increment. The chart below summarizes the Senate funding level provision for each entitlement period.

[In thousands of dollars]

Entitlement period	Senate amendment		
	Basic	Noncontiguous [1]	Total [1]
(8) Jan. 1, 1977 to Sept. 30, 1977	4,987.5	3.59	4,991.09
(9) Oct. 1, 1977 to Sept. 30, 1978	6,850.0	4.92	6,854.92
(10) Oct. 1, 1978 to Sept. 30, 1979	7,050.0	5.07	7,055.07
(11) Oct. 1, 1979 to Sept. 30, 1980	7,250.0	5.21	7,255.21
(12) Oct. 1, 1980 to Sept. 30, 1981	7,450.0	5.36	7,455.36
(13) Oct. 1, 1981 to Sept. 30, 1982	7,650.0	5.50	7,655.50
Total	41,252.5	[1] 29.65	[1] 41,267.15

[1] Rounded to the nearest 10,000's.

Conference substitute

The conference substitute differs from both the House and Senate provision. The dollar amount of the entitlement was raised from $6.65 billion annually to $6.85 billion annually after October 1, 1977. The chart below summarizes the conference substitute.

[In thousands of dollars]

Entitlement period	Conference substitute		
	Basic	Noncontiguous [1]	Total [1]
(8) Jan. 1, 1977 to Sept. 30, 1977	4,987.5	3.59	4,991.09
(9) Oct. 1, 1977 to Sept. 30, 1978	6,850.0	4.92	6,854.92
(10) Oct. 1, 1978 to Sept. 30, 1979	6,850.0	4.92	6,854.92
(11) Oct. 1, 1979 to Sept. 30, 1980	6,850.0	4.92	6,854.92
Total	25,537.5	[1] 18.35	[1] 25,555.85

[1] Rounded to the nearest 10,000's.

Length of Renewal Period

House bill

The House bill extends the program for 3¾ years: January 1, 1977 through September 30, 1980. The three-quarter year segment synchronizes the program with the Federal government's new fiscal year, which begins on October 1 each year and terminates on September 30 of the following year.

Senate amendment

The Senate bill extends the program for 5¾ years: January 1, 1977 through September 30, 1982.

Conference substitute

The conference substitute is the same as the House bill.

Method of Payment

House bill

The House bill uses an entitlement procedure in lieu of the authorization-appropriation procedure followed in the 1972 Act. The Congressional Budget Impoundment Control Act of 1974 contains a provision permitting the enactment of spending authority by way of entitlement. Use of the entitlement procedure guarantees the provision of funds at the stipulated amounts for each of the entitlement periods.

Senate amendment

The Senate bill makes no change from the House entitlement provision.

Conference substitute

The conference substitute is the same as the House bill.

Sec. 5(b)1—Noncontiguous State Adjustment Amounts

House bill

Present law provides that noncontiguous States which benefit under the 3-factor formula for allocation of funds among States benefit from the noncontiguous-State adjustment. The adjustment provides that the States of Alaska and Hawaii will receive increased amounts which reflect differential cost-of-living adjustments available in other laws. The adjustments, however, may not exceed the amount of funding annually provided.

The House bill continues to apply the noncontiguous State adjustment to the 3-factor formula of present law, and provides that funds

of up to $4.78 million be made available for entitlements ($3.585 million for the period January 1, 1977-September 30, 1977).

Senate amendment

The Senate amendment applies the noncontiguous State adjustment to both the 3-factor and 5-factor formulas of present law and provides that the entitlement funding of up to $4.9 million be available in fiscal year 1978. The funding grows through the renewal period to $5.5 million in fiscal year 1982.

Conference substitute

The conference substitute applies the noncontiguous State adjustment to both the 3-factor and 5-factor formulas, and provides entitlement funding of up to $3.585 million for the 9-month period January 1, 1977-September 30, 1977, and $4.924 million for fiscal year 1978, 1979, and 1980.

State Maintenance of Effort

House bill

Present law requires that for any entitlement period beginning on or after July 1, 1973, a State government's revenue sharing payment will be reduced by the amount which the average of local transfers from its own sources for that period and the immediately preceding period is less than the similar total for the one year period beginning July 1, 1971. A two-year moving average is compared against the base year amount to measure compliance.

Present law allows adjustments in the base amount (one year beginning July 1, 1971) to reflect State assumption of new expenditure categories or the granting of new taxing powers to local governments. Special rules are also provided for the two entitlement periods beginning July 1, 1973, and July 1, 1976. The House bill requires that States maintain their intergovernmental transfers at fiscal year 1976 levels, or the most recent similar one-year period prior to 1976 for which data is available.

The Senate amendment provides that State governments must maintain a 2-year average of their intergovernmental transfers to localities. This average must equal or exceed the average of such transfers for the immediately preceding 2 years. In both instances the period of time to which the requirement applies is the State's fiscal period, and the information to be used is the most recent data which is available. It is expected that the Secretary of the Treasury will rely on the Bureau of the Census to collect such information on intergovernmental transfers and apply procedures which will identify transfers made by the State out of its own resources. Also, the amendment provides that where the Federal government assumes a local responsibility which was previously funded (in whole or in part) by the State, such transfers by the State are not to be included in the application of the maintenance of effort requirement. The amendment further provides for a special rule for the 9-month period January 1, 1977–September 30, 1977.

Conference substitute

The conference substitute adopts the Senate provision. It is understood that the provision for the situation in which the Federal Government assumes such a responsibility is not to be construed to be encouragement of such Federal action by the conference agreement.

Treatment of Waivers by Indian Tribes and Alaskan Native Villages

House bill

No provision.

Senate amendment

Under present law, waived entitlements of cities and townships go to the county government; waived entitlements of Indian tribes and Alaskan native villages to proportionately to county governments and all cities and townships. The Senate amendment provides that the waived entitlements of Indian tribes and Alaskan native villages are to go to county governments, as waived entitlements of cities and townships are now treated.

Conference substitute

The conference substitute follows the Senate amendment.

Separate Law Enforcement Officers in Louisiana

House bill

No provision.

Senate amendment

Under present law, the office of sheriff for each of the Louisiana parishes is not treated as a unit of local government eligible to receive revenue sharing funds. The Senate amendment provides that, except in the parish of Orleans, the office of sheriff is to be treated as a unit of local government eligible to receive revenue sharing funds. This office is to receive 15 percent of what would otherwise be the entitlement of the parish government. The entitlements of the parish government and the State government each are to be reduced by half the amount going to the sheriff.

Currency of Data

House bill

No provision.

Senate amendment

Under present law, the data to be used must be the most recently available, and where such data provided by the Bureau of the Census are not current enough or not comprehensive enough to provide equitable allocations, the Secretary may use additional data, including data based on estimates as provided by regulations. Present law also provides, except as provided otherwise by regulations, that computations of allocation for an entitlement period be made 3 months prior to the beginning of the entitlement period.

The Senate amendment provides that the Secretary must use tax data which relates to the period ending before the entitlement period in question. Thus, the Secretary must use tax data throughout an entitlement period without introducing new data (e.g., for a more recent period) until the beginning of the next entitlement period.

Conference substitute

The conference substitute adopts the Senate provision.

Limitation on Adjustment of Payments

House bill

No provision.

Senate amendment

Present law provides that the Secretary may make payments on the basis of estimates. Proper adjustment is to be made if governments are under or overpaid.

The Senate amendment prohibits the Secretary of the Treasury from decreasing a payment previously made to a recipient government, unless the Secretary makes a demand for such payment within a year after the close of any entitlement period beginning on or after January 1, 1972.

Also the amendment prohibits increasing a payment unless the recipient government makes a demand for such increase within a year after the close of any entitlement period beginning on or after January 1, 1977.

Conference substitute

The conference substitute modifies the Senate provision so that increases or decreases, demanded by the Secretary or recipient within one year after entitlement periods beginning January 1, 1977, be funded out of the State reserve fund provided for in the conference substitute (described below). Deficiency amounts in dispute for the period January 1, 1972—December 30, 1976 are to be recaptured through the adjustment reserve fund. It is understood that the conference substitute does not preclude the closing of the data for an entitlement period by administrative action and does not require the Secretary to make adjustments to entitlements on the basis of data more current than otherwise required under the currency of data provision in the conference substitute (described above).

Reserves for Adjustments

House bill

No provisions.

Senate amendment

Under present law, the Secretary must make at least quarterly payments to recipient governments, and may adjust amounts to recipients resulting from over and underpayments and has set aside a national reserve fund for such purposes. Under the Senate amendment, the Secretary may reserve up to 0.5 percent of each State area's entitlement to pay adjustment amounts in each entitlement period.

Conference substitute

The conference substitute adopts the Senate amendment.

Public Participation Provisions

Report on use of funds

House bill

Present law requires that reports on planned and actual uses of revenue sharing funds be published in a newspaper of general circulation before and after each entitlement period. The reports are also provided to the Secretary of the Treasury.

Section 8 of the House bill requires a recipient government to report to its constituents on the proposed uses of funds received under this Act and also expands the content of the report required under the present law on the actual uses of funds.

The proposed use (designated "planned use" in the 1972 Act) provisions requires State and local governments which expect to receive funds under this Act to submit proposed use reports to the Secretary of the Treasury (who, in turn, is responsible for providing such reports to the respective Governors) for entitlement periods beginning on or after January 1, 1977. Such governments are required to report on how they expect to spend their entitlements, to provide comparative data on the use of such funds during the two immediately preceding entitlement periods, and information on how past, current, and the proposed use of the funds relate to relevant functional items in the recipient government's budget. It requires further that the report also indicate whether the proposed use is for a new activity, to expand or continue an existing activity, or for tax stabilization or reduction purposes. The Secretary is to prescribe the form and detail of the report in addition to the time when it is to be filed.

The bill provides that each report on the use of funds, which must be submitted to the Secretary of the Treasury (who, in turn, would be responsible for providing such reports to the respective governors) as well as published locally and made available to the public for inspection and reproduction, is to include the following information: how the State or local unit of government's entitlement was spent or obligated; the relationship of these funds to the relevant functional items in the recipient government's budget; and an explanation of differences between the proposed use of funds and how the funds were actually spent during the entitlement period.

Senate amendment

Section 7 of the Senate bill requires each recipient government to prepare a planned use report showing a summary of the entire budget for such government's previous, current and coming fiscal periods. It also requires for each fiscal period a statement of the amount of funds made available under this Act, in addition to other sources of funds, and of total expenditures.

The Senate bill does not provide for a separate report on the use of funds.

Committee substitute

The committee substitute requires a report on the use of funds by each State and local government which receives funds under this Act. That report, which is to be submitted to the Secretary at the close of the recipient government's fiscal period and which is to be available to the public for inspection, must show the amounts and purposes for which the funds have been appropriated, spent or obligated and the relationship of those funds to the relevant functional items in the government's budget. In addition, this report must identify the differences between the actual and proposed use of such funds. The Secretary is authorized to prescribe the form and detail of the report, as well as the time when the report is to be filed.

The Secretary is required to furnish copies of reports on the use of funds submitted by units of local government to the governors of the respective States in which such governments are located. It is expected that this requirement could be satisfied by transmittals of fascimile copies (e.g. a photocopy or photoreduction such as microfiche) or in machine readable form. The manner in which they would be provided would be agreed upon by the Secretary and the Governor.

PUBLICATION

House bill

President law requires that reports on planned and actual uses of revenue sharing funds be published in a newspaper of general circulation before and after each entitlement period. The reports are also provided to the Secretary of the Treasury.

The House bill requires publication in a general circulation newspaper the proposed use report together with a narrative summary explaining the entire proposed budget and notice of the time and place for a hearing on the budget 30 days before the pre-budget hearing is to be held. The budget document and the published report and narrative summary is to be available for public inspection and reproduction at the principal governmental office and in public libraries. In addition, the proposed use report is to be submitted to the metropolitan area planning organization if the local government is located within a metropolitan area.

After adoption of the budget, each recipient State and local unit of government is required to publish (in a general circulation newspaper) a narrative summary of the budget explaining changes made from the proposed budget and the relation of funds received under this Act to items in the budget. In addition, the budget summary is to be made available for public inspection and reproduction at the principal office of the government and the public libraries.

The Secretary is authorized to waive publication requirements if their cost would be unreasonably burdensome in relation to entitlements received under this Act, or if such publication would be impractical or infeasible.

Senate amendment

The Senate amendment would require publication of the planned use report in a newspaper of general circulation prior to the required hearing for each recipient government. This publication is also to provide notice of the time and place of the public hearing. Publication is not required if its cost exceeds 15 percent of the government entitlement or if such publication were impractical.

Conference substitute

The conference substitute requires each State and local government which expends funds received under this Act in any fiscal period on or after January 1, 1977, to take the following actions:

A. at least 10 days prior to the budget hearing—

1. publish in at least one newspaper of general circulation, the proposed uses of such funds together with a summary of its proposed budget and a notice of the time and place of the budget hearing; and

2. make available for inspection by the public at the principal office of the State or local government the proposed use of funds, together with a summary of its proposed budget; and

B. within 30 days after adoption of its budget as provided for under State or local law—

1. make a summary of the adopted budget, including the proposed use of funds made available under this Act, available for inspection by the public at the principal office of such State or local government; and

2. publish in at least one newspaper of general circulation a notice of the availability for inspection of the information referred to immediately above.

The requirements specified in the Act for making available certain information for inspection by the public at the principal office of the State and local governments are intended to be the minimum requirements. It is expected that the documents referred to would normally be made available at other public places, including public libraries, for the convenience of the public.

The committee substitute authorizes the Secretary to waive, in whole or in part, the requirements with respect to the publication of the proposed use of funds and the summaries where the cost of such publication would be unreasonably burdensome in relation to a government's entitlement, or where such publication is otherwise impractical or infeasible.

In addition, the 10 day requirement of the newspaper publication requirement can be waived by the Secretary if applicable State or local law, which requires publication of a budget summary or a newspaper of general circulation, will provide adequate notice to the citizens. Were such a law to require such a publication 7 days prior to the public hearing, it is contemplated that adequate notice would be available. A publication in an evening newspaper the evening of the hearing would not, however, be interpreted to provide adequate notice. It is understood there are some local governments receiving funds which are not served by a newspaper of general circulation. Also, it is contemplated that the Secretary will provide through regulation for situations in which localities consolidate the newspaper publication in a joint publication if such publication clearly identifies each unit's proposed uses and budget summary.

It is contemplated in providing this waiver authority that alternative publication methods, such as making the notice a part of water bills sent out generally, would be acceptable, and that the regulations of the Secretary provide for such alternative publication methods when publication is impractical. With respect to the test of unreasonably burdensome cost for waiver of the publication requirement, it is contemplated that were costs of publication to exceed 15 percent of a recipient's entitlement, the publication costs could be deemed to be unreasonably burdensome.

PUBLIC HEARINGS

House bill

Recipient governments are generally required to expend revenue sharing funds in the same manner as they expend their own funds.

If State or local law requires a public hearing on a recipient's budget, a hearing on the expenditure of revenue sharing is also required.

The bill provides that a pre-report hearing be held, after adequate notice and at least 7 days before submitting a proposed use report to the Secretary, to afford citizens, including specifically senior citizens, an opportunity to provide oral and written comment on the possible uses of entitlements to be received under this Act.

A pre-budget hearing is to be held at least 7 days before the recipient's government budget is adopted. This hearing is to deal with the proposed use of funds received under the Act in relation to the government's entire budget. At this hearing, citizens, including specifically senior citizens, are to have an opportunity to provide written and oral comment and to have their questions answered. The bill requires that the hearing be held at a time and place that will encourage public participation and be held before the body responsible for enacting the budget.

The House bill authorizes the Secretary to waive a pre-report hearing if the cost would be unreasonably burdensome in relation to the amount of entitlement, and to waive the pre-budget hearing if the budget processes required under applicable State or local laws or charter provisions assure an opportunity for public participation, including a hearing on the proposed use of revenue sharing funds.

Senate amendment

Senate amendment provides that each State and local government which receives funds under this Act hold a public hearing on its proposed budget at least 7 days before its adoption. Such hearing is to be held at a time and place convenient for general public attendance and citizens are to have the opportunity to provide written and oral comment to the body responsible for enacting the budget concerning the use of these funds. Each recipient government is to be permitted to waive the public hearing requirement if it certifies that it will hold a public hearing at which citizens may give written and oral comment upon adequate notice. The election must describe the hearing and reporting process as it relates to its own revenues and expenditures.

Conference substitute

The conference substitute provides for both a hearing on the proposed use of funds received under this Act and a budget hearing.

The hearing on the proposed use of funds is to be held, after adequate public notice, not less than 7 calendar days before the budget of a recipient government is presented to the governmental body responsible for enacting the budget. At this hearing, citizens must have the opportunity to provide written and oral comment on the possible uses of funds. It is contemplated that this first hearing would be held after adequate notice before the executive branch prior to its finalization of a budget to be submitted to a legislative body.

The budget hearing is intended to afford citizens the opportunity to provide written and oral comment (to the body responsible for enacting the budget) on the proposed use of funds received under this Act in relation to the government's entire budget. At such hearing, citizens are to be given an opportunity to ask questions concerning the

entire budget and the relationship of funds received under this Act to that budget. It is intended that meaningful efforts be made to permit maximum citizen participation in the budget hearing and that those officials responsible for holding the hearing will make every effort to respond to questions raised. The hearing is to be held at a place and time that permits and encourages public attendance and participation.

The hearing on the proposed use of funds may be waived in whole or in part if the cost of such a requirement would be unreasonably burdensome in relation to funds received under this Act by any State government or unit of local government. For example, were the costs of such hearing to exceed 15 percent of the revenue sharing entitlement, the requirement could be waived. The second public hearing may be waived in whole or in part by the Secretary if the budget process, under generally applicable state or local law which governs the expenditure of a recipient's own funds, permits citizens to give written and oral comment on the proposed uses of revenue sharing funds when a hearing is held on the recipient's budget. Similarly, if state or local law requires the publication of a summary of a recipient's budget, the Secretary may waive the publication of the proposed uses of revenue sharing funds if the publication were to provide adequately for notification of the proposed uses of revenue sharing funds as contemplated by the general requirement.

The requirement for the budget hearing may be waived in whole or in part if the budget processes required under applicable State or local laws or charter provisions assure the opportunity for public attendance and participation contemplated by the provisions of this subsection and a portion of such process includes a hearing on the proposed use of funds received under this Act in relation to the government's entire budget.

In addition to this waiver authority, the Secretary is required to promulgate regulations to deal with situations in which a recipient government does not formally enact or adopt a single budget, as is generally contemplated in the general public hearing requirements. Such regulations are to provide that information will be provided to the public and public hearings will be held at such point in the development of budget acts, appropriations, authorizing legislation, etc., as to permit and encourage the type of public participation in the authorization on expenditure process intended by this section. For example, where a State legislature does not adopt a single omnibus appropriation act, public hearings before the appropriations committees of the two Houses prior to their actions on the executive proposed budget, are to constitute hearing consistent with the intention of the requirements.

Nondiscrimination Section

TYPE OF DISCRIMINATION PROHIBITED

House bill

The House bill broadens the present nondiscrimination provision by adding further prohibitions against discrimination on the basis of age, handicapped status, and religion. It directs that the prohibition

against discrimination on account of race, color, religion, sex, or national origin be interpreted in accordance with Title II, III, IV, VI, and VII of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, and Title IX of the Education Amendments Act of 1972.

Senate amendment

The Senate amendment is substantially the same as the House bill except for (1) some clarifying language with respect to the application of the Civil Rights Acts in interpreting the prohibition against religious discrimination and (2) the prohibition aganst discrimination on account of age will not take effect until the effective date of the Age Discrimination Act of 1975.

Conference substitute

The conference substitute is the same as the Senate bill except that:

1. The prohibition against discrimination on account of handicapped status is not to apply to construction projects commenced prior to January 1, 1977.

2. The provision pertaining to discrimination on the ground of handicapped status shall refer to discrimination with respect to "an otherwise qualified handicapped individual."

APPLICATION OF PROHIBITIONS

House bill

The prohibitions are applied to all the programs and activities of a government except those programs and activities which the government proves, by clear and convincing evidence, are not funded in whole or in part, directly or indirectly, with revenue sharing funds.

Senate amendment

The prohibitions are applied to those programs and activities of a government which are (1) designated as being funded, in whole or in part, with revenue sharing funds, or (2) under all the facts and circumstances, demonstrated to be funded, in whole or in part, with revenue sharing funds.

Conference substitute

The conference substitute adopts the House provision with the deletion of the words "directly or indirectly". By this deletion, it is intended that, if the recipient government demonstrates by clear and convincing evidence that the challenged program or activity is not directly funded with revenue sharing funds, then that program or activity does not violate the nondiscrimination provision.

AUTHORITY OF THE SECRETARY AND PROCEDURE IN WITHHOLDING FUNDS

House bill

The central feature is a trigger mechanism which determines when the Secretary will begin compliance proceedings by sending appropriate notices to the noncomplying recipients. Such notification will be triggered under two circumstances:

1. When a Federal or State court or administrative agency, after notice and opportunity for the recipient to be heard, makes a finding

of discrimination on the basis of race, color, religion, sex, national origin, age, or handicapped status; and

2. When the Secretary, after affording the recipient an opportunity to make a documentary submission, makes an initial determination of noncompliance based on his own investigation.

After the notification, the recipient has 90 days to end the discrimination and take whatever affirmative steps are necessary to conform its practices to the law. The recipient may request a hearing on the merits which the Secretary is required to initiate within 30 days of the request. At that hearing the recipient may raise any defense available under the law, including the contention that the shared revenues were not used in the program or activity in which the alleged discrimination occurred.

In advance of the hearing on the merits, the recipient may also request a preliminary hearing before an administrative law judge when the notification to the recipient is based on the Secretary's initial determination of noncompliance. Such a preliminary hearing must be requested within 30 days of the notification of noncompliance and must be completed within the 90-day period. If the recipient demonstrates that it is likely to prevail on the merits at a subsequent full hearing, the administrative judge is authorized to order a deferral of a fund suspension which would otherwise automatically occur at the conclusion of the 90 days if compliance is not achieved.

At the end of the 90 days, the payment of shared revenues is automatically suspended if a compliance agreement has not been signed, or if compliance itself has not been achieved, or if an administrative law judge has not entered an appropriate order. The suspension of funds applies only to a local government which is the subject of the notification from the Secretary. The payment of funds to other governments in the state or the state itself remains unaffected. The suspension then remains in effect for a period of 120 days, or 30 days after the conclusion of a hearing on the merits, whichever is later. During this period of suspension, the Secretary is obligated to make a final determination of compliance or noncompliance. If insufficient evidence of noncompliance is presented to the Secretary, then the suspended payments and all future payments are paid to the recipient. If noncompliance is found, the funds are terminated and the Attorney General is notified. The recipient government could, of course, seek resumption of payments when it achieved compliance with the Act.

Senate amendment

A central feature of the Senate amendment regarding procedure is a trigger mechanism which determines when the Secretary will begin compliance proceedings. His notification to the recipient is triggered under similar circumstances to that of the House bill, with a distinction being made, however, between federal administrative agency findings and state administrative agency findings.

After the notification, the recipient has 60 days within which to present its side of the case to the Secretary. After such time, the Secretary is required to make a determination as to whether the recipient has violated the nondiscrimination provision. Within the next 60 days following the Secretary's determination that the nondiscrimination

provision has been violated, a compliance negotiation period ensues in which a compliance agreement may be executed between the recipient and the Office of Revenue Sharing. If within this 60 day period a compliance agreement is not executed, the recipient would have ten days in which to request a hearing before an administrative law judge. The hearing must commence within 30 days of the request. Within 60 days of the commencement of the hearing, the Administrative Law Judge would be required to make a preliminary finding as to whether the recipient would not prevail on the merits. Such a determination would result in a suspension of funds, pending the outcome of the hearing. At the conclusion of the hearing, the Administrative Law Judge would make a final determination as to whether the recipient has violated the nondiscrimination provision. A finding to this effect would result in an indefinite suspension of funds within 30 days of the determination, unless within that time period a compliance agreement is entered into.

Conference substitute

The conference substitute essentially adopts the Senate procedure with a reduction in some of the time periods. It also provides the administrative law judge with discretion to terminate funds. The conferees adopted the following procedure.

The initial formal step of the procedure involves the Secretary's sending of noncompliance notice to a revenue sharing recipient. This notice will be triggered by and must be sent within 10 days of:

(1) actual receipt by the Secretary of a holding by a Federal or State court or by a Federal administrative law judge of discrimination on the grounds of either race, color, national origin, sex, age, handicapped status, or religion in any of the State's or local unit's activities or programs. A Federal administrative law judge's holding must have been preceded by a notice and opportunity for a hearing and it must be rendered pursuant to the provisions of the Administrative Procedures Act; or

(2) a finding by the Secretary, as a result of an investigation, that it is more likely than not that the recipient has failed to comply with the nondiscrimination provision. This finding will be made with respect to any complaint, information, or holding from any source other than the holding of a court or Federal administrative law judge. If after the Secretary receives a complaint, information (including information generated within the Office of Revenue Sharing), or a holding by a State or local administrative agency pertaining to discrimination on the grounds of either race, color, national origin, sex, age, handicapped status, or religion, he finds that it is more likely than not that the recipient has failed to comply with the nondiscrimination provision, he will send a noncompliance notice to the recipient.

In the 30 days following notification by the Secretary, the recipient will have the opportunity to informally presents its evidence and contentions to the Secretary. In those instances where the notice was triggered by a holding of discrimination by a court or Federal administrative law judge, the question of discrimination will be considered resolved against the recipient so long as the Secretary's notice was restricted to the particular holding of the court or Federal administrative law judge. The only issue in this instance would be whether the particular program or activity was funded with revenue sharing funds.

In those instances where the notice was triggered by a complaint, information or State or local administrative agency finding, both the issues of discrimination and funding would be subject to discussion during this 30-day period.

By the end of the initial 30-day period following notification, the Secretary must issue a determination as to whether the recipient has failed to comply with the nondiscrimination provision.

The recipient has 10 days from the date of the Secretary's adverse determination to request a full hearing before an administrative law judge. This hearing must commence within 30 days after the request. Within this 40-day period, before the hearing begins, the recipient may enter into a voluntary compliance agreement.

In those instances where the notice was triggered by a holding of a Federal or State court or by a Federal administrative law judge, a compliance-type agreement entered into between the recipient and the Federal administrative agency involved, or with the authorities (including the Attorney General) which brought the action in the Federal or State court, would constitute a compliance agreement for purposes of these provisions. The Secretary, however, will have the discretion to reject the agreement involved if he determines that it does not adequately remedy the discrimination involved.

In those instances where the compliance agreement is between the Secretary and a State government, the necessary signators will be the Secretary and the Governor of the affected State. In those instances where the compliance agreement is between a locality and the Secretary, the necessary signators will be the Secretary and the chief executive officer of the locality.

If the recipient fails to request a hearing within 10 days of the Secretary's determination, the Secretary will be required to immediately suspend payment of revenue sharing funds to the recipient.

Within 30 days of the request for a hearing, a Federal administrative law judge must commence a hearing. If a finding of discrimination has already been made by a court or a Federal administrative law judge, the hearing would only pertain to whether the program or activity involved received revenue sharing funds. Within 30 days of commencement of the hearing, the administrative law judge will be required to make a preliminary finding on the record of evidence then before him as to whether it is likely that the recipient would not prevail on the issues to which the hearing pertained. Within this 30-day period, something akin to a summary hearing would be held, where both parties, through affidavits and other evidence, would present their sides of the case.

A preliminary finding by the administrative law judge in favor of the Secretary within the 30-day period following the commencement of the hearing will result in the immediate suspension of any further payments of revenue sharing funds to the recipient pending the outcome of the full hearing, unless a compliance agreement has been entered into. At the conclusion of the hearing, the administrative law judge will make a finding based upon the complete record of evidence. If the Secretary prevails upon the issues, an indefinite suspension of the payment of funds will occur within 30 days after the

rendering of the finding by the administrative law judge, unless within that 30-day period a compliance agreement is entered into.

In lieu of the suspension of funds, the administrative law judge has the discretion to order the termination of the payment of funds made available under subtitle A. The administrative law judge's determination is subject to the applicable appellate procedures.

Payment of suspended funds is to be resumed in the following instances: (1) when a compliance agreement is entered into or the Secretary determines that the recipient has complied with certain provisions of a compliance agreement, such determination being a condition precedent to the resumption of payments; (2) after a hearing before an administrative law judge, where a preliminary suspension of funds has occurred, the administrative law judge holds that the recipient is in compliance with the nondiscrimination provision; (3) the recipient complies fully with the order of a court or Federal administrative law judge if that order covers all the matters raised by the secretary in his notice of noncompliance; (4) upon a rehearing or similar proceeding, the court or administrative law judge which originally held that the recipient had discriminated on the grounds of either race, color, national origin, sex, age, handicapped status, or religion, holds that the recipient did not so discriminate; or (5) an appellate court reverses the findings of discrimination by a lower court or administrative law judge, such initial findings having triggered the notice of noncompliance and ultimately the suspension of funds by the Secretary.

Authority of an Attorney General

The House bill, the Senate amendment, and the Conference substitute are all the same.

The Attorney General's authority is expanded so that whenever he believes that a State government or unit of local government has engaged in a pattern or practice of discriminatory actions in violation of the nondiscrimination provision, he may bring a civil action seeking as relief any temporary restraining order, preliminary or permanent injunction, or other order calling for, among other things, the suspension, termination, repayment, or placing of revenue sharing funds in escrow pending the outcome of the litigation.

Agreements Between Agencies

House bill

The House bill provides that the Secretary is to enter into agreements with State agencies and with other Federal agencies authorizing these agencies to investigate allegations of noncompliance with the nondiscrimination provision. Each agreement is to describe the cooperative efforts to be undertaken (including the sharing of civil rights enforcement personnel and resources) to secure compliance and will provide for immediate notification to the Secretary of any actions instituted against a State government or unit of local government alleging a violation of any Federal civil rights statute or regulations issued thereunder.

Senate amendment

The Senate amendment is substantially the same as the House bill except that it provides that the Secretary is to "endeavor" to enter

into agreements, as opposed to mandating the Secretary to enter into agreements.

Conference substitute

The conferees adopted the Senate provision. It is contemplated that the Secretary will make vigorous efforts to enter into these cooperative agreements.

Citizen Remedies

House bill

The House bill provides that upon exhaustion of administrative remedies, a civil action may be instituted by an aggrieved person in an appropriate United States District Court or State Court. This action, alleging any violation of the provisions of this Act by a State government or a unit of local government, could seek such relief as a temporary restraining order, preliminary or permanent injunction, or other order providing of the suspension, termination, repayment of funds, or placing any further payments of revenue sharing funds in escrow pending the outcome of the litigation.

Senate amendment

The Senate amendment is the same as the House bill except that it limits private citizen suits to actions alleging a violation of the nondiscrimination provision of the Act.

Conference substitute

The Conference substitute adopts the House provision.

Exhaustion of Administrative Remedies

House bill

In the House bill, administrative remedies will be considered "exhausted" upon the expiration of the 60-day period following the date an administrative complaint is filed with the Office of Revenue Sharing or any other administrative enforcement agency, unless within this time period the agency involved makes a determination on the merits of the complaint, in which case the administrative remedies will not be considered exhausted until the determination becomes final.

Senate amendment

In the Senate amendment, administrative remedies will be considered "exhausted" upon:

(a) the expiration of the 60-day period following the date the complaint is filed with the Office of Revenue Sharing, during which time it either (i) fails to issue a determination on the merits of the complaint, (ii) issues a determination that the recipient did not violate the nondiscrimination provision, or (iii) refers the complaint to the Department of Justice, and

(b) the expiration of the subsequent 60-day period where the complaint is filed with or referred to the Department of Justice, during which time it either (i) fails to issue a determination on the merits of the complaint or, (ii) issues a determination that the recipient did not violate the non-discrimination provision.

Conference substitute

Under the conference agreement, administrative remedies will be considered "exhausted" upon expiration of the 90-day period following

the date an administrative complaint is filed with the Office of Revenue Sharing or any other administrative enforcement agency which has entered into a cooperative agreement with the Office of Revenue Sharing, if within this time period the Office of Revenue Sharing or other administrative enforcement agency (1) fails to issue a determination on the merits of the complaint or (2) issues a determination that the recipient did not violate the non-discrimination provision. It is contemplated that the other administrative agencies to which this provision applies will, pursuant to the cooperative agreement with the Office of Revenue Sharing, provide the Office of Revenue Sharing with notice of the complaint filed with that agency.

REGULATIONS

House bill

The Secretary is directed to promulgate regulations by March 31, 1977, which set forth reasonable and specific time limits for response by the Secretary or the appropriate cooperating agency to a complaint by any person alleging a violation of the provisions of the Act by a State Government or unit of local government. Moreover, the regulations are to establish reasonable and specific time limits for the Secretary to conduct independent audits and review of State governments and units of local government regarding compliance with the provisions of the Act.

Senate amendment

Senate amendment has no comparable provision.

Conference substitute

The conference adopts essentially the House provision, providing that the reasonable and specific time limit for the Secretary to conduct investigations and make findings in response to citizen complaints, State and local administrative agency findings, or other information is not to exceed 90 days. The conferees do not intend a violation of this provision to in any way relate to the validity of a notice sent by the Secretary under section 122(b).

ATTORNEYS FEES

House bill

No provisions.

Senate amendment

The Senate provides that in private citizen actions to enforce the nondiscrimination provision, the court, in its discretion, may allow reasonable attorney fees to the prevailing party (other than the United States).

Conference substitute

The Conference substitute adopts the Senate provision.

ACCOUNTING AND AUDITING PROVISIONS

House bill

Recipient governments, under existing law, are required to use fiscal accounting and audit procedures in conformity with guidelines

developed by the Secretary of the Treasury, after consultation with the Comptroller General. A recipient government also is required to grant access to its books and documents to the Secretary and the Comptroller General for the purpose of monitoring compliance. The House bill requires each recipient to conduct an annual independent financial audit in accordance with generally accepted auditing standards. The Secretary, after consultation with the Comptroller General, is directed to promulgate regulations including such requirements as may be necessary to assure that independent audits are conducted in accordance with generally accepted audit standards. The Secretary may provide for less formal reviews of financial information or less frequent audits to the extent necessary to ensure that the cost of such audits will not be unreasonably burdensome in relation to the payments made to recipient units of government. The Comptroller General is required to review the efforts of the Secretary and recipient governments for the purpose of enabling Congressional evaluation of compliance and operations with respect to these auditing and accounting requirements.

Senate amendment

The Senate amendment generally requires an independent financial and compliance audit for recipient governments. Governments receiving less than $25,000 in revenue sharing entitlements for any fiscal period are exempt from this requirement. An exception is also provided where a recipient government's financial statements are audited pursuant to generally applicable State or local audit requirements. If a recipient government is unauditable, under either the general audit requirement or under State or local audit requirements, the Secretary may waive the audit requirement if the recipient government demonstrates that it is making progress toward making its financial accounts auditable. Under the general audit and accounting requirement, an independent financial and compliance audit of a recipient government's financial statements, according to generally accepted auditing standards and generally accepted accounting principles, is required at least every three years. A series of audits which aggregate the entire financial activity of the recipient government and which are performed over not more than three fiscal years would meet this requirement. The amendment also provides that other Federally-required independent audits in accordance with generally accepted auditing standards shall be accepted as satisfactory by the Secretary. Where a recipient government's financial statements are subject to an independent audit under State or local law, the recipient must certify that such audits will be conducted in accordance with generally accepted auditing standards. It also must include a brief description of the auditing standards to be applied.

Any opinion rendered with respect to the required audits are to be provided to the Secretary pursuant to regulations setting forth the form and time for such submissions.

Conference agreement

The conference agreement generally follows the Senate amendment. However, the conference agreement requires that a recipient government which is found to be unauditable by the Secretary must demon-

strate in accordance with regulations, that it is making substantial progress toward becoming auditable. In addition, the conference agreement adopts the provision of the House bill under which the Comptroller General is directed to review the efforts of the Secretary and recipient governments for the purpose of enabling Congressional evaluation of compliance and operations with respect to these auditing and accounting requirements.

Eligibility Requirements

House bill

Under present law, to receive revenue sharing funds a recipient government must be a State government or a unit of local government as defined by the Bureau of the Census for general statistical purposes. The House bill provides, in addition to the requirement of current law that a unit of local government meet the Bureau of the Census definition, it must also perform certain functions to continue to receive revenue sharing payments. A unit of local government must impose taxes or receive intergovernmental transfers for substantial performance of two of fourteen enumerated categories: (1) police protection, (2) courts and corrections, (3) fire protection, (4) health services, (5) social services for the poor or aged, (6) public recreation, (7) public libraries, (8) zoning or land use planning, (9) sewage disposal or water supply, (10) solid waste disposal, (11) pollution abatement, (12 road or street construction, (13) mass transportation, and (14) education. In addition, at least 10% of the local government's expenditures must be within each of two of these fourteen service categories. This requirement would not apply where the locality substantially performs four or more of these enumerated services. Finally, the House bill eliminates the reference in current law to "other units of local government."

Senate amendment

The Senate amendment makes no substantive change in the definition of "units of local government." The Senate amendment eliminates the reference to "other units of local government."

Conference agreement

The conference agreement follows the Senate amendment.

Study of Revenue Sharing and Federalism

House bill

No provision.

Senate amendment

The Senate amendment provides that the Advisory Commission on Intergovernmental Relations (ACIR) shall conduct a 3-year study and evaluation of the American federal fiscal system in terms of the allocation and coordination of public resources among Federal, State, and local governments including (but not limited to) the following specific areas: (1) the allocation and coordination of taxing and spending authorities among levels of government; (2) State and local governmental organizations; (3) effectiveness of Federal stabilization policies on State and local governments and impact of State and local fiscal decisions on aggregate economic activity; (4) quality of financial

control and audit procedures in Federal, State, and local governments; (5) citizen participation in Federal, State, and local government fiscal decisions; (6) the specific relationship of revenue sharing to other Federal grant-in-aid programs and its role in Federal, State, and local fiscal interrelationships; (7) forces likely to affect the nature of American federalism in long and short run; (8) the processes whereby State and local governments designate Federal revenue sharing funds among projects, as well as the role of revenue sharing in long-term planning in State and local governments. A final report (along with any recommendations for legislation) is to be submitted to the President and Congress at the end of the study. Appropriations are authorized as may be necessary, beginning with fiscal year 1978.

Conference substitute

The Conference substitute deletes from the scope of the study the subject areas identified in items (4), (6) and (8) of the Senate amendment. In addition, the Conference deleted provisions: (a) authorizing and directing Federal departments and agencies to furnish requested information, since a similar provision is already contained in P.L. 86-380, the statute under which ACIR was established, and (b) directing the Administrator of General Services to provide administrative support services to the Commission on a reimbursable basis; this provision was found to be unnecessary because ACIR itself possesses adequate support services for the purposes of this section. The Conference also changes the time limit for a final report from 3 years after the appointment of Commission members to 3 years after an initial appropriation is made for the study; this change was made because ACIR, as an existing, continuing body, would not require the appointment of members for the purposes of this section.

Prohibition of Use for Lobbying Purposes

House bill

The House bill provides that no state and local government recipient is to use, directly or indirectly, any part of its allocation of funds received under this Act for lobbying activities which are for the purpose of influencing legislation relating to the provisions of this Act. Dues paid to National or State associations are not deemed to have been paid from funds received under subtitle A.

Senate amendment

No comparable provision.

Conference substitute

The conference substitute eliminates the words "directly or indirectly" from the House provision.

Suburban Improvement Districts in Arkansas

House bill

No provision.

Senate amendment

Under present law, the Arkansas suburban improvement districts are not regarded as units of local government entitled to receive

revenue sharing funds. The Senate amendment provides that such a district is to be entitled to receive reevnue sharing funds if they perform at least 2 of 14 enumerated categories of governmental functions and at least 10 percent of the district's total budget is for each of 2 categories of governmental functions.

Conference substitute

The conference substitute omits the provision.

Frequency of Payment

House bill

No provision.

Senate amendment

Current law provides for quarterly payments, within five days after the close of each quarter.

The Senate bill amends this provision to require that governments receiving less than $4,000 annually be paid on an annual basis receiving their full year's payment within five days after the close of the first quarter.

Conference substitute

The conference substitute drops the Senate amendment.

Optional Formula

House bill

Under present law, a State may use a variation of the within-State formula for allocating revenue sharing funds if it passes a law to that effect and notifies the Secretary of the Treasury. Any such formula, once enacted, remains in effect until December 31, 1976. The House bill provides that any such formula is to remain in effect until September 30, 1980.

Senate amendment

The Senate amendment provides that any such formula is to remain in effect until September 30, 1982; it also forbids Louisiana from enacting any such formula change.

Conference substitute

The conference substitute follows the House bill.

Suburban Improvement Districts in Arkansas

House bill

No provision.

Senate amendment

Under present law, the Arkansas suburban improvement districts are not regarded as units of local government entitled to receive revenue sharing funds. The Senate amendment provides that such a district is to be entitled to receive revenue sharing funds if they perform at least 2 of 14 enumerated categories of governmental functions and at least 10 percent of the district's total budget is for each of 2 categories of governmental functions.

Conference substitute

The conference substitute omits the provision.

Economic and Technical Assistance

House bill

No provision.

Senate amendment

Under the Senate amendment, the Director of the Office of Revenue Sharing is directed to provide upon request, economic and technical assistance necessary to encourage, develop, and implement long-range planning. Present law and the House bill do not contain a similar provision.

Conference substitute

The conference substitute deletes the Senate amendment.

Jack Brooks,
L. H. Fountain,
Don Fuqua,
Edward Mezvinsky,
Barbara Jordan,
John Burton,
Robert F. Drinan,
Frank Horton,
John W. Wydler,
Clarence J. Brown,
Managers on the Part of the House.

Russell B. Long,
Herman Talmadge,
Gaylord Nelson,
Mike Gravel,
W. D. Hathaway,
Paul Fannin,
Cliff Hansen,
Bob Packwood,
Managers on the Part of the Senate.

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CORRECTED SHEET

H. R. 13367

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the nineteenth day of January, one thousand nine hundred and seventy-six

An Act

To extend and amend the State and Local Fiscal Assistance Act of 1972, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "State and Local Fiscal Assistance Amendments of 1976".

SEC. 2. AMENDMENT OF STATE AND LOCAL FISCAL ASSISTANCE ACT OF 1972.

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 State and Local Fiscal Assistance Act of 1972, as amended (31 U.S.C. 1221 et seq.; 86 Stat. 919).

SEC. 3. ELIMINATION OF EXPENDITURE CATEGORIES.

(a) Section 103 (relating to requirement that local governments use revenue sharing funds only for priority expenditures) is repealed.

(b) Section 123(a) (relating to assurances to the Secretary of the Treasury) is amended by striking out paragraph (3).

SEC. 4. ELIMINATION OF PROHIBITION ON USE OF FUNDS FOR MATCHING.

(a) Section 104 (relating to prohibition on use of revenue sharing funds as matching funds) is repealed.

(b) Section 143(a) (relating to judicial review of withholding of payments) is amended by striking out "104(b) or".

SEC. 5. EXTENSION OF PROGRAM AND FUNDING.

(a) IN GENERAL.—Section 105 (relating to funding for revenue sharing) is amended—

(1) by inserting "or (c)" immediately after "as provided in subsection (b)" in subsection (a)(1);

(2) by redesignating subsection (c) as subsection (d);

(3) by inserting immediately after subsection (b) the following new subsection:

"(c) AUTHORIZATION OF APPROPRIATIONS FOR ENTITLEMENTS.—

"(1) IN GENERAL.—In the case of any entitlement period described in paragraph (3), there are authorized to be appropriated to the Trust Fund to pay the entitlements hereinafter provided for such entitlement period an amount equal to $6,650,000,000 times a fraction—

"(A) the numerator of which is the amount of the Federal individual income taxes collected in the last calendar year ending more than one year before the end of such entitlement period, and

"(B) the denominator of which is the amount of the Federal individual income taxes collected in the calendar year 1975.

The amount determined under this paragraph is not to exceed $6,850,000,000.

"(2) NONCONTIGUOUS STATES ADJUSTMENT AMOUNTS.—In the case of any entitlement period described in paragraph (3), there are authorized to be appropriated to the Trust Fund to pay the entitlements hereinafter provided for such entitlement period an amount equal to $4,780,000 times a fraction—

"(A) the numerator of which is the amount of the Federal individual income taxes collected in the last calendar year ending more than one year before the end of such entitlement period, and

"(B) the denominator of which is the amount of the Federal individual income taxes collected in the calendar year 1975.

The amount determined under this paragraph is not to exceed $4,923,759.

"(3) ENTITLEMENT PERIODS.—The following entitlement periods are described in this paragraph:

"(A) The entitlement period beginning January 1, 1977, and ending September 30, 1977;

"(B) The entitlement period beginning October 1, 1977, and ending September 30, 1978;

"(C) The entitlement period beginning October 1, 1978, and ending September 30, 1979; and

"(D) The entitlement period beginning October 1, 1979, and ending September 30, 1980.

"(4) SHORT ENTITLEMENT PERIOD.—In the case of an entitlement period of 9 months which follows an entitlement period of 6 months—

"(A) the amount determined under paragraph (1) for such 9-month period shall be reduced by one-half the amount appropriated for such 6-month period under subsection (b)(1), and

"(B) the amount determined under paragraph (2) for such entitlement period shall be reduced by one-half the amount appropriated for such 6-month entitlement period under subsection (b)(2)."

(4) by inserting "; AUTHORIZATIONS FOR ENTITLEMENTS" in the heading of such section immediately after "APPROPRIATIONS".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 106 (relating to general rule for allocation among States) is amended to read as follows:

"(a) IN GENERAL.—There shall be allocated an entitlement to each State—

"(1) for each entitlement period beginning before December 31, 1976, out of amounts appropriated under section 105(b)(1) for that entitlement period, an amount which bears the same ratio to the amount appropriated under that section for that period as the amount allocable to that State under subsection (b) bears to the sum of the amounts allocable to all States under subsection (b); and

"(2) for each entitlement period beginning on or after January 1, 1977, out of amounts authorized under section 105(c)(1) for that entitlement period, an amount which bears the same ratio to the amount authorized under that section for that period as the

amount allocable to that State under subsection (b) bears to the sum of the amounts allocable to all States under subsection (b).".

(2) Paragraph (1) of section 106(b) (relating to general rule for determining allocable amounts) is amended to read as follows:

"(1) IN GENERAL.—For purposes of subsection (a), the amount allocable to a State under this subsection for any entitlement period shall be determined under paragraph (2), except that such amount shall be determined under paragraph (3) if—

"(A) in the case of an entitlement period beginning before December 31, 1976, the amount allocable to such State under paragraph (3) is greater than the sum of the amounts allocable to such State under paragraph (2) and subsection (c); and

"(B) in the case of an entitlement period beginning on or after January 1, 1977, the amount allocable to such State under paragraph (3) is greater than the amount allocable to such State under paragraph (2).".

(3) Paragraph (1) of section 106(c) (general rule for noncontiguous State adjustment) is amended to read as follows:

"(1) IN GENERAL.—In addition to the amounts allocated to the States under subsection (a), there shall be allocated for each entitlement period an additional amount to any State in which civilian employees of the United States Government receive an allowance under section 5941 of title 5, United States Code—

"(A) in the case of an entitlement period beginning before December 31, 1976, out of amounts appropriated under section 105(b)(2), if the allocation of such State under subsection (b) is determined by the formula set forth in paragraph (2) of that subsection; and

"(B) in the case of an entitlement period beginning on or after January 1, 1977, out of amounts authorized under section 105(c)(2).".

(4) Section 106(c)(2) (relating to amount of noncontiguous State adjustments) is amended—

(A) by striking out "subsection (b)(2)" and inserting in lieu thereof "subsection (b)", and

(B) by inserting immediately after "section 105(b)(2) for any entitlement period" the following: "beginning before December 31, 1976, or authorized under section 105(c)(2) for any entitlement period beginning on or after January 1, 1977,".

(5) Section 108(b)(6)(D)(i) (relating to entitlements less than $200) is amended by inserting after "6 months" the following: ", $150 for an entitlement period of 9 months".

(6) Section 108(c)(1)(C) (relating to optional formula for allocation among local governments) is amended by striking out "December 31, 1976," and inserting in lieu thereof "September 30, 1980,".

(7) Section 141(b) (relating to definition of "entitlement period") is amended by inserting at the end thereof the following new paragraphs:

"(6) The period beginning January 1, 1977, and ending September 30, 1977.

"(7) The one-year periods beginning October 1 of 1977, 1978, and 1979.".

SEC. 6. SPECIAL ENTITLEMENT RULES.

(a) STATE MAINTENANCE OF TRANSFERS TO LOCAL GOVERNMENTS.—

(1) Paragraph (1) of section 107(b) (relating to general rule for State maintenance of transfers to local governments) is amended to read as follows:

"(1) GENERAL RULE.—

"(A) PRE-1977 ENTITLEMENT PERIODS.—The entitlement of any State government for any entitlement period beginning on or after July 1, 1973, and before December 31, 1976, shall be reduced by the amount (if any) by which—

"(i) the average of the aggregate amounts transferred by the State government (out of its own sources) during such period and the preceding entitlement period to all units of local government in such State, is less than,

"(ii) the similar aggregate amount for the one-year period beginning July 1, 1971.

"(B) POST-1976 ENTITLEMENT PERIODS.—The entitlement of any State government for any entitlement period beginning on or after January 1, 1977, shall be reduced by the amount (if any) by which—

"(i) one-half of the aggregate amounts transferred by the State government (out of its own sources) during the 24-month period ending on the last day of the last fiscal year of such State for which the relevant data are available (in accordance with regulations prescribed by the Secretary) on the first day of such entitlement period, to all units of local government in such State, is less than,

"(ii) one-half of the similar aggregate amount for the 24-month period ending on the day before the start of the 24-month period described in clause (i).

"(C) For purposes of subparagraphs (A)(i) and (B)(i), the amount of any reduction in the entitlement of a State government under this subsection for any entitlement period shall, for subsequent entitlement periods, be treated as an amount transferred by the State government (out of its own sources) during such period to units of local government in such State.".

(2) Section 107(b)(2) (relating to adjustment where State assumes responsibility for category of expenditures) is amended—

(A) by striking out "under paragraph (1)(B)" and inserting in lieu thereof "under paragraph (1)(A)(ii) or (1)(B)(ii)"; and

(B) by striking out "the one-year period beginning July 1, 1971," and inserting in lieu thereof "the period utilized for purposes of such paragraph".

(3) Section 107(b)(3) (relating to adjustments in the case of new taxing powers) is amended by striking out "paragraph (1)(B)" and inserting in lieu thereof "paragraph (1)(A)(ii) (in the case of an entitlement period beginning before December 31, 1976) or paragraph (1)(B)(ii) (in the case of an entitlement period beginning on or after January 1, 1977)".

(4) Section 107(b) (relating to State maintenance of support to local governments) is amended by redesignating paragraphs (6) and (7) as paragraphs (8) and (9), respectively, and by inserting after paragraph (5) the following new paragraphs:

"(6) SPECIAL RULE FOR THE PERIOD BEGINNING JANUARY 1, 1977.—In the case of the entitlement period beginning January 1, 1977, and ending September 30, 1977, the aggregate amounts taken into

account under clauses (i) and (ii) of paragraph (1)(B) shall be three-fourths of the amount which (but for this paragraph) would be taken into account.

"(7) ADJUSTMENT WHERE FEDERAL GOVERNMENT ASSUMES RESPONSIBILITY FOR CATEGORY OF EXPENDITURES.—If, for an entitlement period beginning on or after January 1, 1977, a State government establishes to the satisfaction of the Secretary that during all or part of the period utilized for purposes of paragraph (1)(B)(i), the Federal Government has assumed responsibility for a category of expenditures for which such State government transferred amounts which (but for this paragraph) would be included in the aggregate amount taken into account under paragraph (1)(B)(ii) for the period utilized for purposes of such paragraph, then (under regulations prescribed by the Secretary) the aggregate amount taken into account under paragraph (1)(B)(ii) shall be reduced to the extent that increased Federal Government spending in that State for such category of expenditures has replaced corresponding amounts which such State government had transferred to units of local government during the period utilized for purposes of paragraph (1)(B)(ii).".

(b) WAIVERS BY INDIAN TRIBES AND ALASKAN NATIVE VILLAGES.—

(1) Paragraph (4) of section 108(b) (relating to Indian tribes and Alaskan native villages) is amended by striking out the last sentence.

(2) Paragraph (6)(D) of such section (relating to effect of waivers) is amended by adding at the end thereof the following: "If the entitlement of an Indian tribe or Alaskan native village is waived for any entitlement period by the governing body of that tribe or village, then the amount of such entitlement for such period shall (in lieu of being paid to such tribe or village) be added to, and shall become a part of, the entitlement for such period of the county government of the county area in which such tribe or village is located.".

(c) SEPARATE LAW ENFORCEMENT OFFICERS.—

(1) GENERAL RULE.—Section 108 (relating to entitlements of local governments) is amended by adding at the end thereof the following new subsection:

"(e) SEPARATE LAW ENFORCEMENT OFFICERS.—

"(1) ENTITLEMENT OF SEPARATE LAW ENFORCEMENT OFFICERS.—The office of the separate law enforcement officer for any county area in the State of Louisiana, other than the parish of East Baton Rouge, shall be entitled to receive for each entitlement period beginning on or after January 1, 1977, an amount equal to 15 percent of the amount which would (but for the provisions of this subsection) be the entitlement of the government of such county area. The office of the separate law enforcement officer for the parish of East Baton Rouge shall be entitled to receive for each entitlement period beginning on or after January 1, 1977, an amount equal to 7.5 percent of the sum of the amounts which would (but for the provisions of this subsection) be the entitlements of the governments of Baton Rouge, Baker, and Zachary, Louisiana, for each such entitlement period.

"(2) REDUCTION OF ENTITLEMENT OF COUNTY GOVERNMENT.—The entitlement of the government of a county area for an entitlement period shall be reduced by an amount equal to one half of the entitlement for the separate law enforcement officer for such county area for such entitlement period. For the purpose of

applying this paragraph to the parish of East Baton Rouge, Louisiana, the entitlements of the governments of Baton Rouge, Baker, and Zachary, Louisiana, for each entitlement period shall each be reduced by an amount equal to 3.75 percent of the amount which would (but for the provisions of this paragraph) be the entitlement of each such government.

"(3) REDUCTION OF ENTITLEMENT OF STATE GOVERNMENT.—The entitlement of the State government of Louisiana for an entitlement period shall be reduced by an amount equal to the sum of the reductions provided under paragraph (2) for governments of county areas in such State for such entitlement period. For purposes of this paragraph—

"(A) the reductions provided under paragraph (2) for the governments of Baton Rouge, Baker, and Zachary, Louisiana, shall be considered as reductions of entitlements of governments of county areas, and

"(B) the entitlement of the parish of Orleans for an entitlement period shall be considered to have been reduced by an amount equal to the additional amount provided for such parish for that entitlement period under paragraph (4).

"(4) ENTITLEMENT OF PARISH OF ORLEANS.—In the case of the parish of Orleans, Louisiana, paragraphs (1) and (2) shall not apply, and such parish shall be entitled to receive, for each entitlement period beginning after December 31, 1976, an additional amount equal to 7.5 percent of the amount which would otherwise be the entitlement of such parish.".

(2) CONFORMING AMENDMENTS.—

(A) Section 108(b)(7)(A) (relating to general rule for adjustment of entitlement) is amended by striking out "and any adjustment required under paragraph (6)(D) last." and inserting in lieu thereof "any adjustment required under paragraph (6)(D) next, and any adjustment required under subsection (e) last.".

(B) Section 108(d)(1) (defining "unit of local government") is amended by adding at the end thereof the following: "Such term also means (but only for purposes of subtitles B and C) the office of the separate law enforcement officer to which subsection (e)(1) applies.".

(C) Section 107 (relating to entitlements of State governments) is amended by adding at the end thereof the following new subsection:

"(c) CROSS REFERENCE.—

"For reduction of State government entitlement because of provision for separate law enforcement officers, see section 108(e).".

(d) CURRENCY OF DATA.—

(1) Section 109(a)(7) (relating to data used and uniformity of data) is amended—

(A) in subparagraph (A) by striking out "subparagraph (B)" and inserting in lieu thereof "subparagraph (B) or (C)", and

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

"(C) TAX COLLECTIONS.—Data with respect to tax collections for a period more recent than the most recent reporting year for an entitlement period (as defined in subsection (c)(2)(B)) shall not be used in the determination of entitlements for such period.".

(2) Section 109(c)(2)(B) (defining "most recent reporting year") is amended by striking out "made before the close of such period." and inserting in lieu thereof "made before the beginning of such period.".

(e) LIMITATION ON ADJUSTMENT OF PAYMENTS.—Section 102 (relating to payments to State and local governments) is amended—

(1) by striking out "Except" and inserting in lieu thereof "(a) IN GENERAL.—Except"; and

(2) adding at the end thereof the following new subsection:

"(b) LIMITATIONS ON ADJUSTMENTS.—No adjustment shall be made to increase or decrease a payment made for any entitlement period beginning after December 31, 1976, to a State government or a unit of local government, unless a demand therefor shall have been made by such government or the Secretary within 1 year of the end of the entitlement period with respect to which the payment was made.".

(f) RESERVES FOR ADJUSTMENTS.—Section 102 (relating to payments to State and local governments), as amended by subsection (e), is amended by adding at the end thereof the following subsection:

"(c) RESERVES FOR ADJUSTMENTS.—The Secretary may reserve such percentage (not exceeding 0.5 percent) of the total entitlement payment for any entitlement period with respect to any State government and all units of local government within such State as he deems necessary to insure that there will be sufficient funds available to pay adjustments due after the final allocation of funds among such governments.".

(g) RECOVERY OF CERTAIN OVERPAYMENTS.—In the case of an adjustment to decrease a payment made for an entitlement period ending before January 1, 1977, under title I of the State and Local Fiscal Assistance Act of 1972 to a unit of local government (as defined in section 108(d)(1) of that Act), the amount of such adjustment shall be withheld from the reserves for adjustments established by the Secretary under section 102(c) of such Act for the State within which such units of local government are located. Amounts withheld under this subsection shall be covered into the State and Local Government Fiscal Assistance Trust Fund.

SEC. 7. CITIZEN PARTICIPATION; REPORTS, ENFORCEMENTS.

(a) CITIZENS PARTICIPATION.—Section 121 (relating to reports on use of funds and publication of reports) is amended to read as follows:

"SEC. 121. REPORT ON USE OF FUNDS; PUBLICATION AND PUBLIC HEARINGS.

"(a) REPORTS ON USE OF FUNDS.—Each State government and unit of local government which receives funds under subtitle A shall, after the close of each fiscal year, submit a report to the Secretary (which report shall be available to the public for inspection) setting forth the amounts and purposes for which funds received under subtitle A have been appropriated, spent, or obligated during such period and showing the relationship of those funds to the relevant functional items in the government's budget. Such report shall identify differences between the actual use of funds received and the proposed use of such funds. Such reports shall be in such form and detail and shall be submitted at such time as the Secretary may prescribe.

"(b) PUBLIC HEARINGS REQUIRED.—

"(1) HEARING ON PROPOSED USE.—Not less than 7 calendar days before its budget is presented to the governmental body responsible for enacting the budget, each State government or unit of local government which expends funds received under subtitle A

in any fiscal period, the budget for which is to be enacted on or after January 1, 1977, shall, after adequate public notice, have at least one public hearing at which citizens shall have the opportunity to provide written and oral comment on the possible uses of such funds before the governmental authority responsible for presenting the proposed budget to such body.

"(2) BUDGET HEARING.—Each State government or unit of local government which expends fund received under subtitle A in any fiscal period, the budget for which is to be enacted on or after January 1, 1977, shall have at least one public hearing on the proposed use of such funds in relation to its entire budget. At such hearing, citizens shall have the opportunity to provide written and oral comment to the body responsible for enacting the budget, and to ask questions concerning the entire budget and the relation thereto of funds made available under subtitle A. Such hearing shall be at a place and time that permits and encourages public attendance and participation.

"(3) WAIVER.—The provisions of paragraph (1) may be waived in whole or in part in accordance with regulations of the Secretary if the cost of such a requirement would be unreasonably burdensome in relation to the entitlement of such State government or unit of local government to funds made available under subtitle A. The provisions of paragraph (2) may be waived in whole or in part in accordance with regulations of the Secretary if the budget processes required under applicable State or local laws or charter provisions assure the opportunity for public attendance and participation contemplated by the provisions of this subsection and a portion of such process includes a hearing on the proposed use of funds made available under subtitle A in relation to its entire budget.

"(c) NOTIFICATION AND PUBLICITY OF PUBLIC HEARINGS; ACCESS TO BUDGET SUMMARY AND PROPOSED USE OF FUNDS.—

"(1) IN GENERAL.—Each State government and unit of local government which expends funds received under subtitle A in any fiscal period, the budget for which is to be enacted on or after January 1, 1977, shall—

"(A) at least 10 days prior to the public hearing required by subsection (b)(2)—

"(i) publish, in at least one newspaper of general circulation, the proposed uses of funds made available under subtitle A together with a summary of its proposed budget and a notice of the time and place of such public hearing; and

"(ii) make available for inspection by the public at the principal office of such State government or unit of local government a statement of the proposed use of funds, together with a summary of its proposed budget; and

"(B) within 30 days after adoption of its budget as provided for under State or local law—

"(i) make a summary of the adopted budget, including the proposed use of funds made available under subtitle A, available for inspection by the public at the principal office of such State government or unit of local government; and

"(ii) publish in at least one newspaper of general circulation a notice of the availability for inspection of the information referred to in clause (i).

"(2) WAIVER.—The provisions of paragraph (1) may be waived, in whole or in part, with respect to publication of the proposed use of funds and the summaries, in accordance with regulations of the Secretary, where the cost of such publication would be unreasonably burdensome in relation to the entitlement of such State government or unit of local government to funds made available under subtitle A, or where such publication is otherwise impractical or infeasible. In addition, the 10-day provisions of paragraph (1)(A) may be modified to the maximum extent necessary to comply with applicable State and local law if the Secretary is satisfied that the citizens of such State or local government will receive adequate notification of the proposed use of funds consistent with the intent of this section.

"(d) REPORT SUBMITTED TO THE GOVERNOR.—The Secretary shall furnish to the Governor of the State in which any unit of local government which receives funds under subtitle A is located, a copy of each report filed with the Secretary as required under subsection (a), in such manner and form as the Secretary may prescribe by regulation.

"(e) BUDGETS.—The Secretary shall promulgate regulations for the application of this section to circumstances under which the State government or unit of local government does not adopt a budget.

"(f) REPORT OF THE SECRETARY.—The Secretary shall include with the report required under section 105(a)(2) a report to the Congress on the implementation and administration of this Act during the preceding fiscal year. Such report shall include, but not be limited to, a comprehensive and detailed analysis of—

"(1) the measures taken to comply with section 122, including a description of the nature and extent of any noncompliance and the status of all pending complaints;

"(2) the extent to which recipient jurisdictions have complied with section 123, including a description of the nature and extent of any noncompliance and of measures taken to ensure the independence of audits conducted pursuant to subsection (c) of such section;

"(3) the manner in which funds distributed under subtitle A have been distributed in recipient jurisdictions; and

"(4) any significant problems arising in the administration of the Act and the proposals to remedy such problems through appropriate legislation.

"(g) PARTICIPATION BY SENIOR CITIZENS.—In conducting any hearing required under this section, or under its own budget processes, a State or unit of local government shall endeavor to provide senior citizens and their organizations with an opportunity to be heard prior to the final allocation of any funds provided under the Act pursuant to such a hearing.".

(b) ENFORCEMENT.—Subtitle B (relating to administrative provisions) is amended by adding at the end thereof the following new sections:

"SEC. 124. PRIVATE CIVIL ACTIONS.

"(a) STANDING.—Whenever a State government or a unit of local government, or any officer or employee thereof acting in an official capacity, has engaged or is engaging in any act or practice prohibited by this Act, upon exhaustion of administrative remedies, a civil action may be instituted by the person aggrieved in an appropriate United States district court or in a State court of general jurisdiction.

"(b) RELIEF.—The court may grant as relief to the plaintiff any temporary restraining order, preliminary or permanent injunction or

other order, including the suspension, termination, or repayment of funds, or placing any further payments under this title in escrow pending the outcome of the litigation.

"(c) INTERVENTION BY ATTORNEY GENERAL.—In any action instituted under this section to enforce compliance with section 122(a), the Attorney General, or a specially designated assistant for or in the name of the United States, may intervene upon timely application if he certifies that the action is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

"(d) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—As used in this section, administrative remedies shall be deemed to be exhausted upon the expiration of 90 days after the date the administrative complaints were filed with the Secretary or with an Agency with which the Secretary has an agreement under section 122(h) if, within such period, the Secretary or such Agency—

"(1) issues a determination that such Government under unit has not failed to comply with this Act; or

"(2) fails to issue a determination on such complaint.

"(e) ATTORNEY FEES.—In any action under this section to enforce section 122(a), the court, in its discretion, may allow to the prevailing party, other than the United States, reasonable attorney fees, and the United States shall be liable for fees and costs the same as a private person.

"SEC. 125. INVESTIGATIONS AND COMPLIANCE REVIEWS.

"By March 31, 1977, the Secretary shall promulgate regulations establishing—

"(1) reasonable and specific time limits (in no event to exceed 90 days) for the Secretary to conduct an investigation and make a finding after receiving a complaint (described in section 124(d)), a determination by a State or local administrative agency, or other information relating to the possible violation of the provisions of this Act;

"(2) reasonable and specific time limits for the Secretary to conduct audits and reviews (including investigations of allegations) relating to possible violations of the provisions of this Act.

The regulations promulgated pursuant to paragraphs (1) and (2) shall also establish reasonable and specific time limits for the Secretary to advise any complainant of the status of his investigation, audit, or review of any allegation of violation of section 122(a) or any other provision of this Act.".

(c) JUDICIAL REVIEW.—Section 143(a) (relating to petitions for judicial review) is amended by striking out "receives a notice of withholding of payments under section 104(b) or 123(b)," and inserting in lieu thereof "receives a notice of withholding of payments under section 104(b) or 123(b) a determination under section 122(b)(3)(C) that payments be suspended, or a determination under section 122(b)(3)(D) that payments be terminated,".

SEC. 8. NONDISCRIMINATION PROVISIONS.

(a) IN GENERAL.—Section 122 (relating to nondiscrimination provisions) is amended to read as follows:

"SEC. 122. NONDISCRIMINATION PROVISIONS.

"(a) PROHIBITION.—

"(1) IN GENERAL.—No person in the United States shall, on the ground of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to

discrimination under any program or activity of a State government or unit of local government, which government or unit receives funds made available under subtitle A. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in section 504 of the Rehabilitation Act of 1973 shall also apply to any such program or activity. Any prohibition against discrimination on the basis of religion, or any exemption from such prohibition, as provided in the Civil Rights Act of 1964 or title VIII of the Act of April 11, 1968, hereafter referred to as Civil Rights Act of 1968, shall also apply to any such program or activity.

"(2) EXCEPTIONS.—

"(A) FUNDING.—The provisions of paragraph (1) of this subsection shall not apply where any State government or unit of local government demonstrates, by clear and convincing evidence, that the program or activity with respect to which the allegation of discrimination has been made is not funded in whole or in part with funds made available under subtitle A.

"(B) CONSTRUCTION PROJECTS IN PROGRESS.—The provisions of paragraph (1), relating to discrimination on the basis of handicapped status, shall not apply with respect to construction projects commenced prior to January 1, 1977.

"(b) DETERMINATION BY THE SECRETARY.—

"(1) NOTICE OF NONCOMPLIANCE.—Within 10 days after the Secretary has received a holding described in subsection (c)(1) or has made a finding described in subsection (c)(4), with respect to a State government or a unit of local government, he shall send a notice of noncompliance to such government setting forth the basis of such holding or finding.

"(2) PROCEDURE BEFORE SECRETARY; SUSPENSION OF PAYMENT OF REVENUE SHARING FUNDS.—Within 30 days after a notice of noncompliance has been sent to a State government or a unit of local government in accordance with paragraph (1), such government may informally present evidence to the Secretary regarding the issues of—

"(A) (except in the case of a holding described in subsection (c)(1)) whether there has been exclusion, denial, or discrimination on account of race, color, national orgin, or sex, or a violation of any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, or with respect to an 'otherwise qualified handicapped individual', as provided in section 504 of the Rehabilitation Act of 1973, or a violation of any prohibition against discrimination on the basis of religion as provided in the Civil Rights Act of 1964 or title VIII of the Civil Rights Act of 1968, and

"(B) whether the program or activity in connection with which such exclusion, denial, discrimination, or violation is charged has been funded in whole or in part with funds made available under subtitle A.

Before the end of such 30-day period, unless a compliance agreement is entered into with such government, the Secretary shall issue a determination as to whether such government failed to comply with subsection (a). If the Secretary determines that such government has failed to comply with subsection (a), the Secretary shall suspend the payment of funds under subtitle A to such government unless such government within the 10 day period

following such determination enters into a compliance agreement or requests a hearing with respect to such determination.

"(3) HEARINGS BEFORE ADMINISTRATIVE LAW JUDGE; SUSPENSION OR TERMINATION OF PAYMENT OF REVENUE SHARING FUNDS.—

"(A) Hearings requested by a State government or a unit of local government pursuant to paragraph (2) shall begin before an administrative law judge within 30 days after the Secretary receives the request for the hearing.

"(B) Within 30 days after the beginning of the hearing provided under subparagraph (A), the administrative law judge conducting the hearing shall, on the record then before him, issue a preliminary finding (which shall be consistent with subsection (c)(2)) as to whether such government has failed to comply with subsection (a). If the administrative law judge issues a preliminary finding that such government is not likely to prevail, on the basis of the evidence presented, in demonstrating compliance with subsection (a), then the Secretary shall suspend the payment of funds under subtitle A to such government. No such preliminary finding shall be issued in any case where a determination has previously been issued under subparagraph (C).

"(C) If, after the completion of such hearing, the administrative law judge issues a determination (consistently with subsection (c)(2)) that such government has failed to comply with subsection (a), then, unless such government enters into a compliance agreement before the 31st day after such issuance, the Secretary, subject to the provisions of subparagraph (D), shall suspend the payment of funds under subtitle A to such government; if a suspension in accordance with subparagraph (B) is still in effect, then, subject to the provisions of subparagraph (D), that suspension is to be continued.

"(D) In the event of a determination described in subparagraph (C), the administrative law judge may, in his discretion, order the termination of payment of funds under subtitle A to such government or unit.

"(E) If, after the completion of such hearing, the administrative law judge issues a determination (consistently with subsection (c)(2)) that there has not been a failure to comply with subsection (a), and a suspension is in effect in accordance with subparagraph (B), such suspension shall be promptly discontinued.

"(c) HOLDING BY COURT OR GOVERNMENTAL AGENCY; FINDING BY SECRETARY.—

"(1) DESCRIPTION.—A holding is described in this paragraph if it is a holding by a Federal Court, a State Court, or a Federal administrative law judge, with respect to a State government or a unit of local government which expends funds received under subtitle A that such government has, in the case of a person in the United States, excluded such person from participation in, denied such person the benefits of, or subjected such person to discrimination under any program or activity on the ground of race, color, national origin, or sex, or violated any prohibition against discrimination (A) on the basis of age under the Age Discrimination Act of 1975 or (B) with respect to an 'otherwise qualified handicapped individual', as provided in section 504 of the Rehabilitation Act of 1973 or (C) on the basis of religion as provided

in the Civil Rights Act of 1964 or title VIII of the Civil Rights Act of 1968, in connection with any such program or activity.

"(2) EFFECT ON PROCEEDINGS OR HEARING.—If there has been a holding described in paragraph (1) with respect to a State government or a unit of local government, then, in the case of proceedings by the Secretary pursuant to subsection (b)(2) or a hearing pursuant to subsection (b)(3) with respect to such government, such proceedings or such hearing shall relate only to the question of whether the program or activity in which the exclusion, denial, discrimination, or violation occurred is funded in whole or in part with funds made available under subtitle A. In such proceedings or hearing, the holding described in paragraph (1), to the effect that there has been exclusion, denial, or discrimination on account of race, color, national origin, or sex, or a violation of any prohibition against discrimination (A) on the basis of age effected by the Age Discrimination Act of 1975, (B) with respect to an 'otherwise qualified handicapped individual', as provided in section 504 of the Rehabilitation Act of 1973, (C) on the basis of religion as provided in the Civil Rights Act of 1964 or title VIII of the Civil Rights Act of 1968, shall be treated as conclusive.

"(3) EFFECT OF REVERSAL.—If a holding described in paragraph (1) is reversed by an appellate tribunal, then proceedings under subsection (b) which are dependent upon such holding shall be discontinued; any suspension or termination of payments resulting from such proceedings shall also be discontinued.

"(4) FINDING BY SECRETARY.—A finding is described in this paragraph if it is a finding by the Secretary with respect to a complaint referred to in section 124(d), a determination by a State or local administrative agency, or other information (pursuant to procedures provided in regulations prescribed by the Secretary) that it is more likely than not that a State government or unit of local government has failed to comply with subsection (a).

"(d) COMPLIANCE AGREEMENT.—For purposes of this section and section 124, a compliance agreement is an agreement between—

"(1) the governmental office or agency responsible for prosecuting the claim or complaint which is the basis of the holding described in subsection (c)(1) and the chief executive officer of the State government or the unit of local government that has failed to comply with subsection (a), if such agreement is approved by the Secretary, or

"(2) the Secretary and such chief executive officer, setting forth the terms and conditions with which such government or unit has agreed to comply that would satisfy the obligations of such government under subsection (a). Such agreement shall cover all the matters which had been determined or would constitute failures to comply with subsection (a), and may consist of a series of agreements which, in the aggregate, dispose of all such matters. Within 15 days after the execution of such agreement (or, in the case of an agreement under paragraph (1), the approval of such agreement by the Secretary, if later), the Secretary shall send a copy of such agreement to each person who has filed a complaint referred to in section 124(d) with respect to such failure to comply with subsection (a), or, in the case of an agreement under paragraph (1), to each person who has filed a complaint with the governmental office or agency (described in such paragraph) with respect to such failure to comply with subsection (a).

"(e) RESUMPTION OF SUSPENDED PAYMENTS.—If payment to a State

government or a unit of local government of funds made available under subtitle A has been suspended under subsection (b)(2) or (b)(3), payment of such funds shall be resumed only if—

"(1) such government enters into a compliance agreement (but only at the times and under the circumstances set forth in such agreement, or, in the case of any agreement under subsection (d)(1), only at the times and under the circumstances set forth in the Secretary's approval of such agreement);

"(2) such government complies fully with the holding of a Federal or State court, or Federal administrative law judge, if that holding covers all the matters raised by the Secretary in the notice pursuant to subsection (b)(1), or if such government is found to be in compliance with subsection (a) by such court or Federal administrative law judge;

"(3) in the case of a hearing before an administrative law judge under subsection (b)(3), the judge determines that such government is in compliance with subsection (a); or

"(4) the provisions of subsection (c)(3) (relating to reversal of holding of discrimination) require such suspension of payment to be discontinued.

For purposes of this section, compliance by a government may include the satisfying of a requirement of the payment of restitution to persons injured by the failure of such government to comply with subsection (a).

"(f) RESUMPTION OF TERMINATED PAYMENTS.—If payment to a State government or unit of local government of funds made available under subtitle A has been terminated under subsection (b)(3)(D), payment of such funds shall be resumed only if the determination resulting in such termination is reversed by an appellate tribunal.

"(g) AUTHORITY OF ATTORNEY GENERAL.—Whenever the Attorney General has reason to believe that a State government or a unit of local government has engaged or is engaging in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in an appropriate United States district court. Such court may grant as relief any temporary restraining order, preliminary or permanent injunction, or other order, as necessary or appropriate to insure the full enjoyment of the rights described in this section, including the suspension, termination, or repayment of funds made available under subtitle A, or placing any further payments under subtitle A in escrow pending the outcome of the litigation.

"(h) AGREEMENTS BETWEEN AGENCIES.—The Secretary shall endeavor to enter into agreements with State agencies and with other Federal agencies authorizing such agencies to investigate noncompliance with subsection (a). The agreements shall describe the cooperative efforts to be undertaken (including the sharing of civil rights enforcement personnel and resources) to secure compliance with this section, and shall provide for the immediate notification of the Secretary of any actions instituted by such agencies against a State government or a unit of local government alleging a violation of any Federal civil rights statute or regulations issued thereunder.".

SEC. 9. ACCOUNTING AND AUDITING PROVISIONS.

Section 123(c) (relating to accounting, auditing, and evaluation) is amended—

(1) by redesignating paragraph (2) as paragraph (9), and

(2) by striking out paragraph (1) and inserting in lieu thereof the following new paragraphs:

"(1) INDEPENDENT AUDITS.—Each State government and unit of local government which expects to receive funds under subtitle A for any entitlement period beginning on or after Janu-

ary 1, 1977 (other than a government to which an election under paragraph (2) applies with respect to such entitlement period), shall have an independent audit of its financial statements conducted for the purpose of determining compliance with this title, in accordance with generally accepted auditing standards, not less often than once every 3 years.

"(2) ELECTION.—Paragraph (1) shall not apply to any State or unit of local government whose financial statements are audited by independent auditors under State or local law not less often than every 3 years, if (A) such government makes an election under this paragraph that the provisions of paragraph (1) shall not apply, and (B) such government certifies that such audits under State or local law will be conducted in accordance with generally accepted auditing standards. Such election shall include a brief description of the auditing standards to be applied. Such election shall apply to audits of funds received under subtitle A for such entitlement periods as are specified in such election and as to which such State or local law auditing provisions are applicable.

"(3) SERIES OF AUDITS.—If a series of audits conducted over a period not exceeding 3 fiscal years covers, in the aggregate, all of the funds of accounts in the financial activity of such a government, then such series of audits shall be treated as a single audit for purposes of paragraph (1) and paragraph (2).

"(4) ENTITLEMENTS UNDER $25,000.—

"(A) The requirements of paragraph (1) shall not apply to a State government or unit of local government for any fiscal period in which such government receives less than $25,000 of funds made available under subtitle A, unless subparagraph (B) applies for such fiscal period.

"(B) In the case of a fiscal period which is described in subparagraph (A), if State or local law requires an audit of such government's financial statements, then the conducting of such audit shall constitute compliance with the requirements of paragraph (1).

"(5) WAIVER.—The Secretary may waive the requirements of paragraph (1) or paragraph (2), in whole or in part, with respect to any State government or unit of local government for any fiscal period as to which he finds (in accordance with regulations prescribed by the Secretary) (A) that the financial accounts of such governments for such period are not auditable, and (B) that such government demonstrates substantial progress toward making such financial accounts auditable.

"(6) COORDINATION WITH OTHER FEDERALLY REQUIRED AUDITS.—An audit of the financial statements of a State government or unit of local government for a fiscal period, conducted in accordance with the provisions of any Federal law other than this title, shall be accepted as an audit which satisfies the requirements of paragraph (1) with respect to the fiscal period for which such audit is conducted, if such audit substantially complies with the requirements for audits conducted under paragraph (1).

"(7) AUDIT OPINIONS.—Any opinions rendered with respect to audits made pursuant to this subsection shall be provided to the Secretary, in such form and at such times as he may require.

"(8) COMPTROLLER GENERAL SHALL REVIEW COMPLIANCE.—The Comptroller General of the United States shall make such reviews of the work as done by the Secretary, the State governments and

the units of local government as may be necessary for the Congress to evaluate compliance and operations under this title.".

SEC. 10. MISCELLANEOUS PROVISIONS.

(a) BUDGET ACT.—In accordance with section 401(d)(2) of the Congressional Budget Act of 1974 (31 U.S.C. 1351(d)(2); 88 Stat. 297, 318), subsections (a) and (b) of section 401 of such Act shall not apply to this Act.

(b) DEFINITION OF "UNIT OF LOCAL GOVERNMENT".—Section 108(d)(1) (defining "unit of local government") is amended by striking out "municipality, township, or other unit of local government below the State which is a unit of general government" and inserting in lieu thereof "municipality, or township, which is a unit of general government below the State".

SEC. 11. STUDY OF REVENUE SHARING AND FEDERALISM.

Subtitle C (relating to general provisions) is amended by adding at the end thereof the following new section:

"SEC. 145. STUDY OF REVENUE SHARING AND FEDERALISM.

"(a) STUDY.—The Advisory Commission on Intergovernmental Relations shall study and evaluate the American Federal fiscal system in terms of the allocation and coordination of public resources among Federal, State, and local governments including, but not limited to, a study and evaluation of—

"(1) the allocation and coordination of taxing and spending authorities between levels of government, including a comparison of other Federal Government systems;

"(2) State and local governmental organization from both legal and operational viewpoints to determine how general local governments do and ought to relate to each other, to special districts, and to State governments in terms of service and financing responsibilities, as well as annexation and incorporation responsibilities;

"(3) the effectiveness of Federal Government stabilization policies on State and local areas and the effects of State and local fiscal decisions on aggregate economic activity;

"(4) the legal and operational aspects of citizen participation in Federal, State, and local governmental fiscal decisions;

"(5) forces likely to affect the nature of the American Federal system in the short-term and long-term future and possible adjustments to such system, if any, which may be desirable, in light of future developments.

"(b) COOPERATION OF OTHER FEDERAL AGENCIES.—

"(1) Each department, agency, and instrumentality of the Federal Government is authorized and directed to furnish to the Commission, upon request made by the Chairman, and to the extent permitted by law and within the limits of available funds, such data, reports, and other information as the Commission deems necessary to carry out its functions under this section.

"(2) The head of each department or agency of the Federal Government is authorized to provide to the Commission such services as the Commission requests on such basis, reimbursable and otherwise, as may be agreed between the department or agency and the Chairman of the Commission. All such requests shall be made by the Chairman of the Commission.

"(3) The Administrator of General Services shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

"(c) REPORTS.—The Commission shall submit to the President and the Congress such interim reports as it deems advisable, and not later than three years after the day on which the first appropriation is made available under subsection (d), a final report containing a detailed statement of the findings and conclusions of the Commission, together with such recommendations for legislation as it deems advisable.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission, effective with the fiscal year beginning October 1, 1977, such sums as may be necessary to carry out the provisions of this section.".

SEC. 12. PROHIBITION ON USE FOR LOBBYING PURPOSES.

Section 123 (relating to miscellaneous provisions) is amended by adding at the end thereof the following new subsection:

"(e) PROHIBITION OF USE FOR LOBBYING PURPOSES.—No State government or unit of local government may use any part of the funds it receives under subtitle A for the purpose of lobbying or other activities intended to influence any legislation regarding the provisions of this Act. For the purpose of this subsection, dues paid to National or State associations shall be deemed not to have been paid from funds received under subtitle A.".

SEC. 13. EFFECTIVE DATES.

(a) Except as otherwise provided in this Act, the amendments made by this Act shall apply to entitlement periods beginning on or after January 1, 1977.

(b) The amendment made by section 11 takes effect on February 1, 1977.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

EMBARGOED FOR RELEASE
UNTIL 9:00 A.M., EDT,
WEDNESDAY, OCTOBER 13, 1976

OCTOBER 12, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

FACT SHEET

GENERAL REVENUE SHARING

STATE AND LOCAL FISCAL ASSISTANCE AMENDMENTS
OF 1976 (H.R. 13367)

The President today signed H.R. 13367, a three and three-quarters year extension of the Federal Revenue Sharing program.

The bill provides a total of $25,555,856,277 to be distributed over the 45-month period (January 1, 1977 through September 30, 1980) to eligible State and local governments.

BACKGROUND

° History - The General Revenue Sharing program was authorized by Title I of the State and Local Fiscal Assistance Act of 1972, which was signed into law on October 20, 1972. The present law expires on December 31, 1976. Under the current program States and local governments will have received $30.2 billion.

° Use - State and local governments have used these funds to maintain and expand a wide range of programs and services. According to the testimony of governors, mayors, and county officials, failure to extend the General Revenue Sharing program would have resulted in increased property taxes, cutbacks in essential services or more unemployment.

° Provisions - The bill which cleared the Congress on September 30, 1976, closely follows President Ford's legislative recommendations to preserve the essential concept of the current Act, provide continued growth in funding, and improve and strengthen the program.

° Renewal - President Ford recommended renewal of the General Revenue Sharing program on April 25, 1975, urging "that the Congress act to continue this highly successful and important new element of American Federalism well in advance of the expiration date, in order that State and local governments can make sound fiscal plans."

° Extension and Funding - H.R. 13367 extends the General Revenue Sharing program through fiscal year 1980, from January 1, 1977, through September 30, 1980. It authorizes funds to be appropriated to the State and Local Government Fiscal Assistance Trust Fund to pay revenue sharing entitlements in the following amounts: for the period January 1, 1977, to September 30, 1977, $4.99 billion; for each of fiscal years 1978, 1979, and 1980 a maximum of $6.85 billion. The actual authorization for each of these

more

years will be determined by multiplying $6.65 billion by the ratio of individual Federal income tax receipts for the calendar year ending more than one year before the end of the entitlement period, to 1975 receipts.

This funding compares to the current annual funding rate of $6.65 billion. The Concurrent Resolution for Fiscal Year 1977 includes outlays of $6.7 billion for the program.

Present law provides for the appropriation of revenue sharing funds in the authorizing Act which removes them from the annual appropriations process. H.R. 13367 requires annual appropriation action.

° Nondiscrimination provisions - H.R. 13367 significantly amends the nondiscrimination provisions of the existing bill by broadening their coverage and providing new expedited enforcement mechanisms. Prohibitions against discrimination on the basis of age, handicapped status, and religion are added to those in present law of race, color, national origin, and sex in programs or activities funded in whole or in part with revenue sharing funds. When an allegation of discrimination is made, the unit of government will have to meet a new test of "clear and convincing evidence" that the program or activity is not directly receiving revenue sharing funds.

The bill requires the Secretary of the Treasury to endeavor to enter into agreements with State and Federal agencies to investigate noncompliance with the nondiscrimination provisions. It adds an expedited process for determining noncompliance and ending payments, including hearings by administrative law judges. H.R. 13367 authorizes civil suits by private citizens, after exhaustion of administrative remedies, for redress of any act or practice prohibited by law, and authorizes the Attorney General to intervene in private actions "of general public importance" brought for violation of the nondiscrimination provisions. Courts are authorized to award reasonable attorney fees to a prevailing plaintiff or defendant, other than the United States.

° Other major provisions of H.R. 13367:

-- provides for greater public participation by requiring at least one public hearing on the possible uses of revenue sharing funds and at least one public hearing on the proposed use of revenue sharing funds in relation to the unit of government's entire budget.

-- requires more detailed reporting by State and local governments on the use of revenue sharing funds, including setting forth the amounts and purposes for which the funds have been appropriated, spent, or obligated and showing their relationship to functional items in the government's budget and identifying differences between the actual use of funds received and their proposed use.

-- requires units of government which expect to receive revenue sharing funds to have an independent audit of all their financial statements, in accordance with generally accepted auditing standards, to determine compliance with the revenue sharing law, at least once every three years. This requirement is waived for periods in which a unit of government receives less than $25,000. Present law does not require an independent audit, nor does it include waiver authority.

-- repeals the provision limiting the use by local governments of revenue sharing funds to priority expenditure categories such as maintenance and operating expenses for public safety, environmental protection, public transportation, health, and capital expenditures authorized by law. This will give units of local government more flexibility in deciding how to use revenue sharing funds.

-- repeals the prohibition on the use of revenue sharing funds by State or local governments for the matching share needed to receive other Federal grant funds.

-- requires the Advisory Commission on Intergovernmental Relations (ACIR), effective February 1, 1977, to study and evaluate the American Federal fiscal system in terms of the allocation and coordination of public resources among Federal, State and local governments and to report within three years of the first appropriation for the study, to the President and the Congress on its findings and conclusions together with recommendations for legislation it deems advisable.

-- amends the provisions on State maintenance of transfers to local governments to require that States maintain transfers at or above the average of their intergovernmental transfers to localities during the immediately preceding two years. Present law compares the level of transfers to those made in fiscal year 1972.

-- requires the Secretary of the Treasury to report to the Congress not later than March 1 of each year on compliance with requirements on the use of funds by recipients, and to make proposals to remedy significant problems in the administration of the Act through appropriate legislation.

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