

111TH CONGRESS
1ST SESSION

H. R. 1

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 2009

Ordered to be printed with the amendment of the Senate
[Strike out all after the enacting clause and insert the part printed in italic]

AN ACT

Making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for the fiscal year ending September 30, 2009, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “~~American Recovery~~
5 ~~and Reinvestment Act of 2009~~”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

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1 **SEC. 3. PURPOSES AND PRINCIPLES.**

2 (a) STATEMENT OF PURPOSES.—The purposes of
 3 this Act include the following:

4 (1) To preserve and create jobs and promote
 5 economic recovery.

6 (2) To assist those most impacted by the recess-
 7 sion.

8 (3) To provide investments needed to increase
 9 economic efficiency by spurring technological ad-
 10 vances in science and health.

11 (4) To invest in transportation, environmental
 12 protection, and other infrastructure that will provide
 13 long-term economic benefits.

14 (5) To stabilize State and local government
 15 budgets, in order to minimize and avoid reductions

1 in essential services and counterproductive state and
2 local tax increases.

3 (b) **GENERAL PRINCIPLES CONCERNING USE OF**
4 **FUNDS.**—The President and the heads of Federal depart-
5 ments and agencies shall manage and expend the funds
6 made available in this Act so as to achieve the purposes
7 specified in subsection (a), including commencing expendi-
8 tures and activities as quickly as possible consistent with
9 prudent management.

10 **SEC. 4. REFERENCES.**

11 Except as expressly provided otherwise, any reference
12 to “this Act” contained in any division of this Act shall
13 be treated as referring only to the provisions of that divi-
14 sion.

15 **SEC. 5. EMERGENCY DESIGNATIONS.**

16 (a) **IN GENERAL.**—Each amount in this Act is des-
17 ignated as an emergency requirement and necessary to
18 meet emergency needs pursuant to section 204(a) of S.
19 Con. Res. 21 (110th Congress) and section 301(b)(2) of
20 S. Con. Res. 70 (110th Congress), the concurrent resolu-
21 tions on the budget for fiscal years 2008 and 2009.

22 (b) **PAY-AS-YOU-GO.**—All applicable provisions in
23 this Act are designated as an emergency for purposes of
24 pay-as-you-go principles.

1 **DIVISION A—APPROPRIATION**
2 **PROVISIONS**

3 **SEC. 1001. STATEMENT OF APPROPRIATIONS.**

4 The following sums in this Act are appropriated, out
5 of any money in the Treasury not otherwise appropriated,
6 for the fiscal year ending September 30, 2009, and for
7 other purposes.

8 **TITLE I—GENERAL PROVISIONS**
9 **Subtitle A—Use of Funds**

10 **SEC. 1101. RELATIONSHIP TO OTHER APPROPRIATIONS.**

11 Each amount appropriated or made available in this
12 Act is in addition to amounts otherwise appropriated for
13 the fiscal year involved. Enactment of this Act shall have
14 no effect on the availability of amounts under the Con-
15 tinuing Appropriations Resolution, 2009 (division A of
16 Public Law 110–329).

17 **SEC. 1102. PREFERENCE FOR QUICK-START ACTIVITIES.**

18 In using funds made available in this Act for infra-
19 structure investment, recipients shall give preference to
20 activities that can be started and completed expeditiously,
21 including a goal of using at least 50 percent of the funds
22 for activities that can be initiated not later than 120 days
23 after the date of the enactment of this Act. Recipients
24 shall also use grant funds in a manner that maximizes
25 job creation and economic benefit.

1 **SEC. 1103. REQUIREMENT OF TIMELY AWARD OF GRANTS.**

2 (a) **FORMULA GRANTS.**—Formula grants using funds
3 made available in this Act shall be awarded not later than
4 30 days after the date of the enactment of this Act (or,
5 in the case of appropriations not available upon enact-
6 ment, not later than 30 days after the appropriation be-
7 comes available for obligation); unless expressly provided
8 otherwise in this Act.

9 (b) **COMPETITIVE GRANTS.**—Competitive grants
10 using funds made available in this Act shall be awarded
11 not later than 90 days after the date of the enactment
12 of this Act (or, in the case of appropriations not available
13 upon enactment, not later than 90 days after the appro-
14 priation becomes available for obligation); unless expressly
15 provided otherwise in this Act.

16 (c) **ADDITIONAL PERIOD FOR NEW PROGRAMS.**—The
17 time limits specified in subsections (a) and (b) may each
18 be extended by up to 30 days in the case of grants for
19 which funding was not provided in fiscal year 2008.

20 **SEC. 1104. USE IT OR LOSE IT REQUIREMENTS FOR GRANT-**
21 **EES.**

22 (a) **DEADLINE FOR BINDING COMMITMENTS.**—Each
23 recipient of a grant made using amounts made available
24 in this Act in any account listed in subsection (c) shall
25 enter into contracts or other binding commitments not
26 later than 1 year after the date of the enactment of this

1 Act (or not later than 9 months after the grant is award-
2 ed, if later) to make use of 50 percent of the funds award-
3 ed, and shall enter into contracts or other binding commit-
4 ments not later than 2 years after the date of the enact-
5 ment of this Act (or not later than 21 months after the
6 grant is awarded, if later) to make use of the remaining
7 funds. In the case of activities to be carried out directly
8 by a grant recipient (rather than by contracts, subgrants,
9 or other arrangements with third parties), a certification
10 by the recipient specifying the amounts, planned timing,
11 and purpose of such expenditures shall be deemed a bind-
12 ing commitment for purposes of this section.

13 (b) REDISTRIBUTION OF UNCOMMITTED FUNDS.—
14 The head of the Federal department or agency involved
15 shall recover or deobligate any grant funds not committed
16 in accordance with subsection (a), and redistribute such
17 funds to other recipients eligible under the grant program
18 and able to make use of such funds in a timely manner
19 (including binding commitments within 120 days after the
20 reallocation).

21 (c) APPROPRIATIONS TO WHICH THIS SECTION AP-
22 PLIES.—This section shall apply to grants made using
23 amounts appropriated in any of the following accounts
24 within this Act:

1 (1) “Environmental Protection Agency—State
2 and Tribal Assistance Grants”.

3 (2) “Department of Transportation—Federal
4 Aviation Administration—Grants-in-Aid for Air-
5 ports”.

6 (3) “Department of Transportation—Federal
7 Railroad Administration—Capital Assistance for
8 Intercity Passenger Rail Service”.

9 (4) “Department of Transportation—Federal
10 Transit Administration—Capital Investment
11 Grants”.

12 (5) “Department of Transportation—Federal
13 Transit Administration—Fixed Guideway Infra-
14 structure Investment”.

15 (6) “Department of Transportation—Federal
16 Transit Administration—Transit Capital Assist-
17 ance”.

18 (7) “Department of Housing and Urban Devel-
19 opment—Public and Indian Housing—Public Hous-
20 ing Capital Fund”.

21 (8) “Department of Housing and Urban Devel-
22 opment—Public and Indian Housing—Elderly, Dis-
23 abled, and Section 8 Assisted Housing Energy Ret-
24 rofit”.

1 (9) “Department of Housing and Urban Devel-
2 opment—Public and Indian Housing—Native Amer-
3 ican Housing Block Grants”.

4 (10) “Department of Housing and Urban De-
5 velopment—Community Planning and Develop-
6 ment—HOME Investment Partnerships Program”.

7 (11) “Department of Housing and Urban De-
8 velopment—Community Planning and Develop-
9 ment—Self-Help and Assisted Homeownership Op-
10 portunity Program”.

11 **SEC. 1105. PERIOD OF AVAILABILITY.**

12 (a) **IN GENERAL.**—All funds appropriated in this Act
13 shall remain available for obligation until September 30,
14 2010, unless expressly provided otherwise in this Act.

15 (b) **REOBLIGATION.**—Amounts that are not needed
16 or cannot be used under title X of this Act for the activity
17 for which originally obligated may be deobligated and, not-
18 withstanding the limitation on availability specified in sub-
19 section (a), reobligated for other activities that have re-
20 ceived funding from the same account or appropriation in
21 such title.

22 **SEC. 1106. SET-ASIDE FOR MANAGEMENT AND OVERSIGHT.**

23 Unless other provision is made in this Act (or in other
24 applicable law) for such expenses, up to 0.5 percent of
25 each amount appropriated in this Act may be used for the

1 expenses of management and oversight of the programs,
2 grants, and activities funded by such appropriation, and
3 may be transferred by the head of the Federal department
4 or agency involved to any other appropriate account within
5 the department or agency for that purpose. Funds set
6 aside under this section shall remain available for obliga-
7 tion until September 30, 2012.

8 **SEC. 1107. APPROPRIATIONS FOR INSPECTORS GENERAL.**

9 In addition to funds otherwise made available in this
10 Act, there are hereby appropriated the following sums to
11 the specified Offices of Inspector General, to remain avail-
12 able until September 30, 2013, for oversight and audit of
13 programs, grants, and projects funded under this Act:

14 (1) “Department of Agriculture—Office of In-
15 spector General”, \$22,500,000.

16 (2) “Department of Commerce—Office of In-
17 spector General”, \$10,000,000.

18 (3) “Department of Defense—Office of the In-
19 spector General”, \$15,000,000.

20 (4) “Department of Education—Departmental
21 Management—Office of the Inspector General”,
22 \$14,000,000.

23 (5) “Department of Energy—Office of Inspec-
24 tor General”, \$15,000,000.

1 (6) “Department of Health and Human Serv-
2 ices—Office of the Secretary—Office of Inspector
3 General”, \$19,000,000.

4 (7) “Department of Homeland Security—Office
5 of Inspector General”, \$2,000,000.

6 (8) “Department of Housing and Urban Devel-
7 opment—Management and Administration—Office
8 of Inspector General”, \$15,000,000.

9 (9) “Department of the Interior—Office of In-
10 spector General”, \$15,000,000.

11 (10) “Department of Justice—Office of Inspee-
12 tor General”, \$2,000,000.

13 (11) “Department of Labor—Departmental
14 Management—Office of Inspector General”,
15 \$6,000,000.

16 (12) “Department of Transportation—Office of
17 Inspector General”, \$20,000,000.

18 (13) “Department of Veterans Affairs—Office
19 of Inspector General”, \$1,000,000.

20 (14) “Environmental Protection Agency—Office
21 of Inspector General”, \$20,000,000.

22 (15) “General Services Administration—Gen-
23 eral Activities—Office of Inspector General”,
24 \$15,000,000.

1 (16) “National Aeronautics and Space Adminis-
2 tration—Office of Inspector General”, \$2,000,000.

3 (17) “National Science Foundation—Office of
4 Inspector General”, \$2,000,000.

5 (18) “Small Business Administration—Office of
6 Inspector General”, \$10,000,000.

7 (19) “Social Security Administration—Office of
8 Inspector General”, \$2,000,000.

9 (20) “Corporation for National and Community
10 Service—Office of Inspector General”, \$1,000,000.

11 **SEC. 1108. APPROPRIATION FOR GOVERNMENT ACCOUNT-**
12 **ABILITY OFFICE.**

13 There is hereby appropriated as an additional amount
14 for “Government Accountability Office—Salaries and Ex-
15 penses” \$25,000,000, for oversight activities relating to
16 this Act.

17 **SEC. 1109. PROHIBITED USES.**

18 None of the funds appropriated or otherwise made
19 available in this Act may be used for any casino or other
20 gambling establishment, aquarium, zoo, golf course, or
21 swimming pool.

22 **SEC. 1110. USE OF AMERICAN IRON AND STEEL.**

23 (a) IN GENERAL.—None of the funds appropriated
24 or otherwise made available by this Act may be used for
25 a project for the construction, alteration, maintenance, or

1 repair of a public building or public work unless all of the
2 iron and steel used in the project is produced in the United
3 States.

4 (b) EXCEPTIONS.—Subsection (a) shall not apply in
5 any case in which the head of the Federal department or
6 agency involved finds that—

7 (1) applying subsection (a) would be incon-
8 sistent with the public interest;

9 (2) iron and steel are not produced in the
10 United States in sufficient and reasonably available
11 quantities and of a satisfactory quality; or

12 (3) inclusion of iron and steel produced in the
13 United States will increase the cost of the overall
14 project by more than 25 percent.

15 (c) WRITTEN JUSTIFICATION FOR WAIVER.—If the
16 head of a Federal department or agency determines that
17 it is necessary to waive the application of subsection (a)
18 based on a finding under subsection (b), the head of the
19 department or agency shall publish in the Federal Register
20 a detailed written justification as to why the provision is
21 being waived.

22 (d) DEFINITIONS.—In this section, the terms “public
23 building” and “public work” have the meanings given such
24 terms in section 1 of the Buy American Act (41 U.S.C.
25 10c) and include airports, bridges, canals, dams, dikes,

1 pipelines, railroads, multiline mass transit systems, roads,
2 tunnels, harbors, and piers.

3 **SEC. 1111. WAGE RATE REQUIREMENTS.**

4 Notwithstanding any other provision of law and in
5 a manner consistent with other provisions in this Act, all
6 laborers and mechanics employed by contractors and sub-
7 contractors on projects funded directly by or assisted in
8 whole or in part by and through the Federal Government
9 pursuant to this Act shall be paid wages at rates not less
10 than those prevailing on projects of a character similar
11 in the locality as determined by the Secretary of Labor
12 in accordance with subchapter IV of chapter 31 of title
13 40, United States Code. With respect to the labor stand-
14 ards specified in this section, the Secretary of Labor shall
15 have the authority and functions set forth in Reorganiza-
16 tion Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C.
17 App.) and section 3145 of title 40, United States Code.

18 **SEC. 1112. ADDITIONAL ASSURANCE OF APPROPRIATE USE**
19 **OF FUNDS.**

20 None of the funds provided by this Act may be made
21 available to the State of Illinois, or any agency of the
22 State, unless: (1) the use of such funds by the State is
23 approved in legislation enacted by the State after the date
24 of the enactment of this Act; or (2) Rod R. Blagojevich
25 no longer holds the office of Governor of the State of Illi-

1 nois. The preceding sentence shall not apply to any funds
2 provided directly to a unit of local government: (1) by a
3 Federal department or agency; or (2) by an established
4 formula from the State.

5 **SEC. 1113. PERSISTENT POVERTY COUNTIES.**

6 (a) ALLOCATION REQUIREMENT.—Of the amount ap-
7 propriated in this Act for “Department of Agriculture—
8 Rural Development Programs—Rural Community Ad-
9 vancement Program”, at least 10 percent shall be allo-
10 cated for assistance in persistent poverty counties.

11 (b) DEFINITION.—For purposes of this section, the
12 term “persistent poverty counties” means any county that
13 has had 20 percent or more of its population living in pov-
14 erty over the past 30 years, as measured by the 1980,
15 1990, and 2000 decennial censuses.

16 **SEC. 1114. REQUIRED PARTICIPATION IN E-VERIFY PRO-**
17 **GRAM.**

18 None of the funds made available in this Act may
19 be used to enter into a contract with an entity that does
20 not participate in the E-verify program described in sec-
21 tion 401(b) of the Illegal Immigration Reform and Immig-
22 rant Responsibility Act of 1996 (8 U.S.C. 1324a note).

1 **SEC. 1115. ADDITIONAL FUNDING DISTRIBUTION AND AS-**
 2 **SURANCE OF APPROPRIATE USE OF FUNDS.**

3 (a) **CERTIFICATION BY GOVERNOR.**—Not later than
 4 45 days after the date of enactment of this Act, for funds
 5 provided to any State or agency thereof, the Governor of
 6 the State shall certify that the State will request and use
 7 funds provided by this Act.

8 (b) **ACCEPTANCE BY STATE LEGISLATURE.**—If funds
 9 provided to any State in any division of this Act are not
 10 accepted for use by the Governor, then acceptance by the
 11 State legislature, by means of the adoption of a concurrent
 12 resolution, shall be sufficient to provide funding to such
 13 State.

14 (c) **DISTRIBUTION.**—After the adoption of a State
 15 legislature’s concurrent resolution, funding to the State
 16 will be for distribution to local governments, councils of
 17 government, public entities, and public-private entities
 18 within the State either by formula or at the State’s discre-
 19 tion.

20 **Subtitle B—Accountability in**
 21 **Recovery Act Spending**

22 **PART 1—TRANSPARENCY AND OVERSIGHT**
 23 **REQUIREMENTS**

24 **SEC. 1201. TRANSPARENCY REQUIREMENTS.**

25 (a) **REQUIREMENTS FOR FEDERAL AGENCIES.**—
 26 Each Federal agency shall publish on the website Recov-

1 ery.gov (as established under section 1226 of this sub-
2 title)—

3 (1) a plan for using funds made available in
4 this Act to the agency; and

5 (2) all announcements for grant competitions,
6 allocations of formula grants, and awards of com-
7 petitive grants using those funds.

8 (b) REQUIREMENTS FOR FEDERAL, STATE, AND
9 LOCAL GOVERNMENT AGENCIES.—

10 (1) INFRASTRUCTURE INVESTMENT FUND-
11 ING.—With respect to funds made available under
12 this Act for infrastructure investments to Federal,
13 State, or local government agencies, the following re-
14 quirements apply:

15 (A) Each such agency shall notify the pub-
16 lic of funds obligated to particular infrastruc-
17 ture investments by posting the notification on
18 the website Recovery.gov.

19 (B) The notification required by subpara-
20 graph (A) shall include the following:

21 (i) A description of the infrastructure
22 investment funded.

23 (ii) The purpose of the infrastructure
24 investment.

1 (iii) The total cost of the infrastruc-
2 ture investment.

3 (iv) The rationale of the agency for
4 funding the infrastructure investment with
5 funds made available under this Act.

6 (v) The name of the person to contact
7 at the agency if there are concerns with
8 the infrastructure investment and, with re-
9 spect to Federal agencies, an email address
10 for the Federal official in the agency whom
11 the public can contact.

12 (vi) In the case of State or local agen-
13 cies, a certification from the Governor,
14 mayor, or other chief executive, as appro-
15 priate, that the infrastructure investment
16 has received the full review and vetting re-
17 quired by law and that the chief executive
18 accepts responsibility that the infrastruc-
19 ture investment is an appropriate use of
20 taxpayer dollars. A State or local agency
21 may not receive infrastructure investment
22 funding from funds made available in this
23 Act unless this certification is made.

24 (2) OPERATIONAL FUNDING.—With respect to
25 funds made available under this Act in the form of

1 grants for operational purposes to State or local gov-
2 ernment agencies or other organizations, the agency
3 or organization shall publish on the website Recov-
4 ery.gov a description of the intended use of the
5 funds, including the number of jobs sustained or cre-
6 ated.

7 (c) **AVAILABILITY ON INTERNET OF CONTRACTS AND**
8 **GRANTS.**—Each contract awarded or grant issued using
9 funds made available in this Act shall be posted on the
10 Internet and linked to the website Recovery.gov. Propri-
11 etary data that is required to be kept confidential under
12 applicable Federal or State law or regulation shall be re-
13 dacted before posting.

14 **SEC. 1202. INSPECTOR GENERAL REVIEWS.**

15 (a) **REVIEWS.**—Any inspector general of a Federal
16 department or executive agency shall review, as appro-
17 priate, any concerns raised by the public about specific
18 investments using funds made available in this Act. Any
19 findings of an inspector general resulting from such a re-
20 view shall be relayed immediately to the head of each de-
21 partment and agency. In addition, the findings of such re-
22 views, along with any audits conducted by any inspector
23 general of funds made available in this Act, shall be posted
24 on the Internet and linked to the website Recovery.gov.

1 (b) EXAMINATION OF RECORDS.—The Inspector
2 General of the agency concerned may examine any records
3 related to obligations of funds made available in this Act.

4 **SEC. 1203. GOVERNMENT ACCOUNTABILITY OFFICE RE-**
5 **VIEWS AND REPORTS.**

6 (a) REVIEWS AND REPORTS.—The Comptroller Gen-
7 eral of the United States shall conduct bimonthly reviews
8 and prepare reports on such reviews on the use by selected
9 States and localities of funds made available in this Act.
10 Such reports, along with any audits conducted by the
11 Comptroller General of such funds, shall be posted on the
12 Internet and linked to the website Recovery.gov.

13 (b) EXAMINATION OF RECORDS.—The Comptroller
14 General may examine any records related to obligations
15 of funds made available in this Act.

16 **SEC. 1204. COUNCIL OF ECONOMIC ADVISERS REPORTS.**

17 The Chairman of the Council of Economic Advisers,
18 in consultation with the Director of the Office of Manage-
19 ment and Budget and the Secretary of the Treasury, shall
20 submit quarterly reports to Congress detailing the esti-
21 mated impact of programs under this Act on employment,
22 economic growth, and other key economic indicators.

23 **SEC. 1205. SPECIAL CONTRACTING PROVISIONS.**

24 The Federal Acquisition Regulation shall apply to
25 contracts awarded with funds made available in this Act.

1 To the maximum extent possible, such contracts shall be
2 awarded as fixed-price contracts through the use of com-
3 petitive procedures. Existing contracts so awarded may be
4 utilized in order to obligate such funds expeditiously. Any
5 contract awarded with such funds that is not fixed-price
6 and not awarded using competitive procedures shall be
7 posted in a special section of the website Recovery.gov.

8 **PART 2—ACCOUNTABILITY AND TRANSPARENCY**
9 **BOARD**

10 **SEC. 1221. ESTABLISHMENT OF THE ACCOUNTABILITY AND**
11 **TRANSPARENCY BOARD.**

12 There is established a board to be known as the “Re-
13 covery Act Accountability and Transparency Board”
14 (hereafter in this subtitle referred to as the “Board”) to
15 coordinate and conduct oversight of Federal spending
16 under this Act to prevent waste, fraud, and abuse.

17 **SEC. 1222. COMPOSITION OF BOARD.**

18 (a) **MEMBERSHIP.**—The Board shall be composed of
19 seven members as follows:

20 (1) The Chief Performance Officer of the Presi-
21 dent, who shall chair the Board.

22 (2) Six members designated by the President
23 from the inspectors general and deputy secretaries
24 of the Departments of Education, Energy, Health
25 and Human Services, Transportation, and other

1 Federal departments and agencies to which funds
2 are made available in this Act.

3 (b) TERMS.—Each member of the Board shall serve
4 for a term to be determined by the President.

5 **SEC. 1223. FUNCTIONS OF THE BOARD.**

6 (a) OVERSIGHT.—The Board shall coordinate and
7 conduct oversight of spending under this Act to prevent
8 waste, fraud, and abuse. In addition to responsibilities set
9 forth in this subtitle, the responsibilities of the Board shall
10 include the following:

11 (1) Ensuring that the reporting of information
12 regarding contract and grants under this Act meets
13 applicable standards and specifies the purpose of the
14 contract or grant and measures of performance.

15 (2) Verifying that competition requirements ap-
16 plicable to contracts and grants under this Act and
17 other applicable Federal law have been satisfied.

18 (3) Investigating spending under this Act to de-
19 termine whether wasteful spending, poor contract or
20 grant management, or other abuses are occurring.

21 (4) Reviewing whether there are sufficient
22 qualified acquisition and grant personnel overseeing
23 spending under this Act.

24 (5) Reviewing whether acquisition and grant
25 personnel receive adequate training and whether

1 there are appropriate mechanisms for interagency
2 collaboration.

3 (b) REPORTS.—

4 (1) FLASH AND OTHER REPORTS.—The Board
5 shall submit to Congress reports, to be known as
6 “flash reports”, on potential management and fund-
7 ing problems that require immediate attention. The
8 Board also shall submit to Congress such other re-
9 ports as the Board considers appropriate on the use
10 and benefits of funds made available in this Act.

11 (2) QUARTERLY.—The Board shall submit to
12 the President and Congress quarterly reports sum-
13 marizing its findings and the findings of agency in-
14 spectors general and may issue additional reports as
15 appropriate.

16 (3) ANNUALLY.—On an annual basis, the
17 Board shall prepare a consolidated report on the use
18 of funds under this Act. All reports shall be publicly
19 available and shall be posted on the Internet website
20 Recovery.gov, except that portions of reports may be
21 redacted if the portions would disclose information
22 that is protected from public disclosure under sec-
23 tion 552 of title 5, United States Code (popularly
24 known as the Freedom of Information Act).

1 (c) **RECOMMENDATIONS TO AGENCIES.**—The Board
2 shall make recommendations to Federal agencies on meas-
3 ures to prevent waste, fraud, and abuse. A Federal agency
4 shall, within 30 days after receipt of any such rec-
5 ommendation, submit to the Board, the President, and the
6 congressional committees of jurisdiction a report on
7 whether the agency agrees or disagrees with the rec-
8 ommendations and what steps, if any, the agency plans
9 to take to implement the recommendations.

10 **SEC. 1224. POWERS OF THE BOARD.**

11 (a) **COORDINATION OF AUDITS AND INVESTIGATIONS**
12 **BY AGENCY INSPECTORS GENERAL.**—The Board shall co-
13 ordinate the audits and investigations of spending under
14 this Act by agency inspectors general.

15 (b) **CONDUCT OF REVIEWS BY BOARD.**—The Board
16 may conduct reviews of spending under this Act and may
17 collaborate on such reviews with any inspector general.

18 (c) **MEETINGS.**—The Board may, for the purpose of
19 carrying out its duties under this Act, hold public meet-
20 ings, sit and act at times and places, and receive informa-
21 tion as the Board considers appropriate. The Board shall
22 meet at least once a month.

23 (d) **OBTAINING OFFICIAL DATA.**—The Board may
24 secure directly from any department or agency of the
25 United States information necessary to enable it to carry

1 out its duties under this Act. Upon request of the Chair-
2 man of the Board, the head of that department or agency
3 shall furnish that information to the Board.

4 (e) **CONTRACTS.**—The Board may enter into con-
5 tracts to enable the Board to discharge its duties under
6 this Act.

7 **SEC. 1225. STAFFING.**

8 (a) **EXECUTIVE DIRECTOR.**—The Chairman of the
9 Board may appoint and fix the compensation of an execu-
10 tive director and other personnel as may be required to
11 carry out the functions of the Board. The Director shall
12 be paid at the rate of basic pay for level IV of the Execu-
13 tive Schedule.

14 (b) **STAFF OF FEDERAL AGENCIES.**—Upon request
15 of the Board, the head of any Federal department or agen-
16 cy may detail any Federal official or employee, including
17 officials and employees of offices of inspector general, to
18 the Board without reimbursement from the Board, and
19 such detailed staff shall retain the rights, status, and
20 privileges of his or her regular employment without inter-
21 ruption.

22 (c) **OFFICE SPACE.**—Office space shall be provided
23 to the Board within the Executive Office of the President.

1 **SEC. 1226. RECOVERY.GOV.**

2 (a) **REQUIREMENT TO ESTABLISH WEBSITE.**—The
3 Board shall establish and maintain a website on the Inter-
4 net to be named Recovery.gov, to foster greater account-
5 ability and transparency in the use of funds made avail-
6 able in this Act.

7 (b) **PURPOSE.**—Recovery.gov shall be a portal or
8 gateway to key information related to this Act and provide
9 a window to other Government websites with related infor-
10 mation.

11 (c) **MATTERS COVERED.**—In establishing the website
12 Recovery.gov, the Board shall ensure the following:

13 (1) The website shall provide materials explain-
14 ing what this Act means for citizens. The materials
15 shall be easy to understand and regularly updated.

16 (2) The website shall provide accountability in-
17 formation, including a database of findings from au-
18 dits, inspectors general, and the Government Ac-
19 countability Office.

20 (3) The website shall provide data on relevant
21 economic, financial, grant, and contract information
22 in user-friendly visual presentations to enhance pub-
23 lic awareness of the use funds made available in this
24 Act.

25 (4) The website shall provide detailed data on
26 contracts awarded by the Government for purposes

1 of carrying out this Act, including information about
2 the competitiveness of the contracting process; noti-
3 fication of solicitations for contracts to be awarded,
4 and information about the process that was used for
5 the award of contracts.

6 (5) The website shall include printable reports
7 on funds made available in this Act obligated by
8 month to each State and congressional district.

9 (6) The website shall provide a means for the
10 public to give feedback on the performance of con-
11 tracts awarded for purposes of carrying out this Act.

12 (7) The website shall be enhanced and updated
13 as necessary to carry out the purposes of this sub-
14 title.

15 (8) The website shall provide, by location, links
16 to and information on how to access job opportuni-
17 ties created at or by entities receiving funding under
18 this Act, including, if possible, links to or informa-
19 tion about local employment agencies; state, local
20 and other public agencies receiving funding; and pri-
21 vate firms contracted to perform work funded by
22 this Act.

1 **SEC. 1227. PRESERVATION OF THE INDEPENDENCE OF IN-**
2 **SPECTORS GENERAL.**

3 Inspectors general shall retain independent authority
4 to determine whether to conduct an audit or investigation
5 of spending under this Act. If the Board requests that
6 an inspector general conduct or refrain from conducting
7 an audit or investigation and the inspector general rejects
8 the request in whole or in part, the inspector general shall,
9 within 30 days after receipt of the request, submit to the
10 Board, the agency head, and the congressional committees
11 of jurisdiction a report explaining why the inspector gen-
12 eral has rejected the request in whole or in part.

13 **SEC. 1228. COORDINATION WITH THE COMPTROLLER GEN-**
14 **ERAL AND STATE AUDITORS.**

15 The Board shall coordinate its oversight activities
16 with the Comptroller General of the United States and
17 State auditor generals.

18 **SEC. 1229. INDEPENDENT ADVISORY PANEL.**

19 (a) **ESTABLISHMENT.**—There is established a panel
20 to be known as the “Independent Advisory Panel” to ad-
21 vise the Board.

22 (b) **MEMBERSHIP.**—The Panel shall be composed of
23 five members appointed by the President from among indi-
24 viduals with expertise in economics, public finance, con-
25 tracting, accounting, or other relevant fields.

1 (e) **FUNCTIONS.**—The Panel shall make rec-
2 ommendations to the Board on actions the Board could
3 take to prevent waste, fraud, and abuse in Federal spend-
4 ing under this Act.

5 (d) **TRAVEL EXPENSES.**—Each member of the Panel
6 shall receive travel expenses, including per diem in lieu
7 of subsistence, in accordance with applicable provisions
8 under subchapter I of chapter 57 of title 5, United States
9 Code.

10 **SEC. 1230. FUNDING.**

11 There is hereby appropriated to the Board
12 \$14,000,000 to carry out this subtitle.

13 **SEC. 1231. BOARD TERMINATION.**

14 The Board shall terminate 12 months after 90 per-
15 cent of the funds made available under this Act have been
16 expended, as determined by the Director of the Office of
17 Management and Budget.

18 **PART 3—ADDITIONAL ACCOUNTABILITY AND**

19 **TRANSPARENCY PROVISIONS**

20 **SEC. 1241. LIMITATION ON THE LENGTH OF CERTAIN NON-**

21 **COMPETITIVE CONTRACTS.**

22 No contract entered into using funds made available
23 in this Act pursuant to the authority provided in section
24 303(c)(2) of the Federal Property and Administrative
25 Services Act of 1949 (41 U.S.C. 253(c)(2)) that is for an

1 amount greater than the simplified acquisition threshold
 2 (as defined in section 4(11) of the Office of Federal Pro-
 3 curement Policy Act (41 U.S.C. (4)(11))—

4 (1) may exceed the time necessary—

5 (A) to meet the unusual and compelling re-
 6 quirements of the work to be performed under
 7 the contract; and

8 (B) for the executive agency to enter into
 9 another contract for the required goods or serv-
 10 ices through the use of competitive procedures;
 11 and

12 (2) may exceed one year unless the head of the
 13 executive agency entering into such contract deter-
 14 mines that exceptional circumstances apply.

15 **SEC. 1242. ACCESS OF GOVERNMENT ACCOUNTABILITY OF-**
 16 **FICE AND OFFICES OF INSPECTOR GENERAL**
 17 **TO CERTAIN EMPLOYEES.**

18 (a) ACCESS.—Each contract awarded using funds
 19 made available in this Act shall provide that the Comp-
 20 troller General and his representatives, and any represent-
 21 atives of an appropriate inspector general appointed under
 22 section 3 or 8G of the Inspector General Act of 1978 (5
 23 U.S.C. App.), are authorized—

24 (1) to examine any records of the contractor or
 25 any of its subcontractors, or any State or local agen-

1 ey administering such contract, that directly pertain
 2 to, and involve transactions relating to, the contract
 3 or subcontract; and

4 (2) to interview any current employee regarding
 5 such transactions.

6 (b) ~~RELATIONSHIP TO EXISTING AUTHORITY.—~~

7 Nothing in this section shall be interpreted to limit or re-
 8 strict in any way any existing authority of the Comptroller
 9 General or an Inspector General.

10 **SEC. 1243. PROTECTING STATE AND LOCAL GOVERNMENT**
 11 **AND CONTRACTOR WHISTLEBLOWERS.**

12 (a) ~~PROHIBITION OF REPRISALS.—~~An employee of
 13 any non-Federal employer receiving funds made available
 14 in this Act may not be discharged, demoted, or otherwise
 15 discriminated against as a reprisal for disclosing to the
 16 Board, an inspector general, the Comptroller General, a
 17 member of Congress, or a Federal agency head, or their
 18 representatives, information that the employee reasonably
 19 believes is evidence of—

20 (1) gross mismanagement of an executive agen-
 21 cy contract or grant;

22 (2) a gross waste of executive agency funds;

23 (3) a substantial and specific danger to public
 24 health or safety; or

1 ~~(4)~~ a violation of law related to an executive
2 agency contract (including the competition for or ne-
3 gotiation of a contract) or grant awarded or issued
4 to carry out this Act.

5 ~~(b)~~ INVESTIGATION OF COMPLAINTS.—

6 ~~(1)~~ A person who believes that the person has
7 been subjected to a reprisal prohibited by subsection
8 ~~(a)~~ may submit a complaint to the inspector general
9 of the executive agency that awarded the contract or
10 issued the grant. Unless the inspector general deter-
11 mines that the complaint is frivolous, the inspector
12 general shall investigate the complaint and, upon
13 completion of such investigation, submit a report of
14 the findings of the investigation to the person, the
15 person's employer, the head of the Federal agency
16 that awarded the contract or issued the grant, and
17 the Board.

18 ~~(2)(A)~~ Except as provided under subparagraph
19 ~~(B)~~, the inspector general shall make a determina-
20 tion that a complaint is frivolous or submit a report
21 under paragraph ~~(1)~~ within 180 days after receiving
22 the complaint.

23 ~~(B)~~ If the inspector general is unable to com-
24 plete an investigation in time to submit a report
25 within the 180-day period specified in subparagraph

1 (A) and the person submitting the complaint agrees
2 to an extension of time, the inspector general shall
3 submit a report under paragraph (1) within such ad-
4 ditional period of time as shall be agreed upon be-
5 tween the inspector general and the person submit-
6 ting the complaint.

7 (c) REMEDY AND ENFORCEMENT AUTHORITY.—

8 (1) Not later than 30 days after receiving an
9 inspector general report pursuant to subsection (b),
10 the head of the agency concerned shall determine
11 whether there is sufficient basis to conclude that the
12 non-Federal employer has subjected the complainant
13 to a reprisal prohibited by subsection (a) and shall
14 either issue an order denying relief or shall take one
15 or more of the following actions:

16 (A) Order the employer to take affirmative
17 action to abate the reprisal.

18 (B) Order the employer to reinstate the
19 person to the position that the person held be-
20 fore the reprisal, together with the compensa-
21 tion (including back pay), employment benefits,
22 and other terms and conditions of employment
23 that would apply to the person in that position
24 if the reprisal had not been taken.

1 (C) Order the employer to pay the com-
2 plainant an amount equal to the aggregate
3 amount of all costs and expenses (including at-
4 torneys' fees and expert witnesses' fees) that
5 were reasonably incurred by the complainant
6 for, or in connection with, bringing the com-
7 plaint regarding the reprisal, as determined by
8 the head of the agency.

9 (2) If the head of an executive agency issues an
10 order denying relief under paragraph (1) or has not
11 issued an order within 210 days after the submission
12 of a complaint under subsection (b), or in the case
13 of an extension of time under paragraph (b)(2)(B),
14 not later than 30 days after the expiration of the ex-
15 tension of time, and there is no showing that such
16 delay is due to the bad faith of the complainant, the
17 complainant shall be deemed to have exhausted all
18 administrative remedies with respect to the com-
19 plaint, and the complainant may bring a de novo ac-
20 tion at law or equity against the employer to seek
21 compensatory damages and other relief available
22 under this section in the appropriate district court
23 of the United States, which shall have jurisdiction
24 over such an action without regard to the amount in
25 controversy. Such an action shall, at the request of

1 either party to the action, be tried by the court with
2 a jury.

3 ~~(3) An inspector general determination and an~~
4 ~~agency head order denying relief under paragraph~~
5 ~~(2) shall be admissible in evidence in any de novo~~
6 ~~action at law or equity brought pursuant to this sub-~~
7 ~~section.~~

8 (4) Whenever a person fails to comply with an
9 order issued under paragraph (1), the head of the
10 agency shall file an action for enforcement of such
11 order in the United States district court for a dis-
12 trict in which the reprisal was found to have oc-
13 curred. In any action brought under this paragraph,
14 the court may grant appropriate relief, including in-
15 junctive relief and compensatory and exemplary
16 damages.

17 (5) Any person adversely affected or aggrieved
18 by an order issued under paragraph (1) may obtain
19 review of the order's conformance with this sub-
20 section, and any regulations issued to carry out this
21 section, in the United States court of appeals for a
22 circuit in which the reprisal is alleged in the order
23 to have occurred. No petition seeking such review
24 may be filed more than 60 days after issuance of the

1 order by the head of the agency. Review shall con-
2 form to chapter 7 of title 5.

3 (d) CONSTRUCTION.—Nothing in this section may be
4 construed to authorize the discharge of, demotion of, or
5 discrimination against an employee for a disclosure other
6 than a disclosure protected by subsection (a) or to modify
7 or derogate from a right or remedy otherwise available to
8 the employee.

9 (e) DEFINITIONS.—

10 (1) NON-FEDERAL EMPLOYER RECEIVING
11 FUNDS UNDER THIS ACT.—The term “non-Federal
12 employer receiving funds made available in this Act”
13 means—

14 (A) with respect to a Federal contract
15 awarded or Federal grant issued to carry out
16 this Act, the contractor or grantee, as the case
17 may be, if the contractor or grantee is an em-
18 ployer; or

19 (B) a State or local government, if the
20 State or local government has received funds
21 made available in this Act.

22 (2) EXECUTIVE AGENCY.—The term “executive
23 agency” has the meaning given that term in section
24 4 of the Office of Federal Procurement Policy Act
25 (41 U.S.C. 403).

1 (3) STATE OR LOCAL GOVERNMENT.—The term
2 “State or local government” means—

3 (A) the government of each of the several
4 States, the District of Columbia, the Common-
5 wealth of Puerto Rico, Guam, American Samoa,
6 the Virgin Islands, the Northern Mariana Is-
7 lands, or any other territory or possession of
8 the United States; or

9 (B) the government of any political sub-
10 division of a government listed in subparagraph
11 (A).

12 **PART 4—FURTHER ACCOUNTABILITY AND**
13 **TRANSPARENCY PROVISIONS**

14 **SEC. 1261. SHORT TITLE; TABLE OF CONTENTS.**

15 (a) SHORT TITLE.—This part may be cited as the
16 “Whistleblower Protection Enhancement Act of 2009”.

17 (b) TABLE OF CONTENTS.—The table of contents for
18 this part is as follows:

PART 4—FURTHER ACCOUNTABILITY AND TRANSPARENCY PROVISIONS

- Sec. 1261. Short title; table of contents.
- Sec. 1262. Clarification of disclosures covered.
- Sec. 1263. Definitional amendments.
- Sec. 1264. Rebuttable presumption.
- Sec. 1265. Nondisclosure policies, forms, and agreements.
- Sec. 1266. Exclusion of agencies by the President.
- Sec. 1267. Disciplinary action.
- Sec. 1268. Government Accountability Office study on revocation of security clearances.
- Sec. 1269. Alternative recourse.
- Sec. 1270. National security whistleblower rights.
- Sec. 1271. Enhancement of contractor employee whistleblower protections.
- Sec. 1272. Prohibited personnel practices affecting the Transportation Security Administration.

Sec. 1273. Clarification of whistleblower rights relating to scientific and other research.
Sec. 1274. Effective date.

1 **SEC. 1262. CLARIFICATION OF DISCLOSURES COVERED.**

2 (a) IN GENERAL.—Section 2302(b)(8) of title 5,
3 United States Code, is amended—

4 (1) in subparagraph (A)—

5 (A) by striking “which the employee or ap-
6 plicant reasonably believes evidences” and in-
7 serting “, without restriction as to time, place,
8 form, motive, context, forum, or prior disclosure
9 made to any person by an employee or appli-
10 cant, including a disclosure made in the ordi-
11 nary course of an employee’s duties, that the
12 employee or applicant reasonably believes is evi-
13 dence of”; and

14 (B) in clause (i), by striking “a violation”
15 and inserting “any violation”; and

16 (2) in subparagraph (B)—

17 (A) by striking “which the employee or ap-
18 plicant reasonably believes evidences” and in-
19 serting “, without restriction as to time, place,
20 form, motive, context, forum, or prior disclosure
21 made to any person by an employee or appli-
22 cant, including a disclosure made in the ordi-
23 nary course of an employee’s duties, of informa-

1 tion that the employee or applicant reasonably
2 believes is evidence of”; and

3 (B) in clause (i), by striking “a violation”
4 and inserting “any violation (other than a viola-
5 tion of this section)”.

6 (b) **PROHIBITED PERSONNEL PRACTICES UNDER**
7 **SECTION 2302(b)(9).**—Title 5, United States Code, is
8 amended in subsections (a)(3), (b)(4)(A), and (b)(4)(B)(i)
9 of section 1214 and in subsections (a) and (c)(1) of sec-
10 tion 1221 by inserting “or 2302(b)(9)(B)–(D)” after “sec-
11 tion 2302(b)(8)” each place it appears.

12 **SEC. 1263. DEFINITIONAL AMENDMENTS.**

13 (a) **DISCLOSURE.**—Section 2302(a)(2) of title 5,
14 United States Code, is amended—

15 (1) in subparagraph (B)(ii), by striking “and”
16 at the end;

17 (2) in subparagraph (C)(iii), by striking the pe-
18 riod at the end and inserting “; and”; and

19 (3) by adding at the end the following:

20 “(D) ‘disclosure’ means a formal or informal
21 communication, but does not include a communica-
22 tion concerning policy decisions that lawfully exer-
23 cise discretionary authority unless the employee or
24 applicant providing the disclosure reasonably believes
25 that the disclosure evidences—

1 “(i) any violation of any law, rule, or regula-
2 tion; or

3 “(ii) gross mismanagement, a gross waste
4 of funds, an abuse of authority, or a substantial
5 and specific danger to public health or safety.”.

6 (b) ~~CLEAR AND CONVINCING EVIDENCE.~~—Sections
7 1214(b)(4)(B)(ii) and 1221(e)(2) of title 5, United States
8 Code, are amended by adding at the end the following:
9 “For purposes of the preceding sentence, ‘clear and con-
10 vincing evidence’ means evidence indicating that the mat-
11 ter to be proved is highly probable or reasonably certain.”.

12 **SEC. 1264. REBUTTABLE PRESUMPTION.**

13 Section 2302(b) of title 5, United States Code, is
14 amended by adding at the end the following: “For pur-
15 poses of paragraph (8), any presumption relating to the
16 performance of a duty by an employee who has authority
17 to take, direct others to take, recommend, or approve any
18 personnel action may be rebutted by substantial evidence.
19 For purposes of paragraph (8), a determination as to
20 whether an employee or applicant reasonably believes that
21 such employee or applicant has disclosed information that
22 evidences any violation of law, rule, regulation, gross mis-
23 management, a gross waste of funds, an abuse of author-
24 ity, or a substantial and specific danger to public health
25 or safety shall be made by determining whether a disin-

1 terested observer with knowledge of the essential facts
 2 known to or readily ascertainable by the employee or appli-
 3 cant could reasonably conclude that the actions of the
 4 Government evidence such violations, mismanagement,
 5 waste, abuse, or danger.”.

6 **SEC. 1265. NONDISCLOSURE POLICIES, FORMS, AND AGREE-**
 7 **MENTS.**

8 (a) **PERSONNEL ACTION.**—Section 2302(a)(2)(A) of
 9 title 5, United States Code, is amended—

10 (1) in clause (x), by striking “and” at the end;

11 (2) by redesignating clause (xi) as clause (xii);

12 and

13 (3) by inserting after clause (x) the following:

14 “(xi) the implementation or enforcement of
 15 any nondisclosure policy, form, or agreement;
 16 and”.

17 (b) **PROHIBITED PERSONNEL PRACTICE.**—Section
 18 2302(b) of title 5, United States Code, is amended—

19 (1) in paragraph (11), by striking “or” at the
 20 end;

21 (2) by redesignating paragraph (12) as para-
 22 graph (14); and

23 (3) by inserting after paragraph (11) the fol-
 24 lowing:

1 “(12) implement or enforce any nondisclosure
2 policy, form, or agreement, if such policy, form, or
3 agreement does not contain the following statement:
4 ‘These provisions are consistent with and do not su-
5 percede, conflict with, or otherwise alter the em-
6 ployee obligations, rights, or liabilities created by
7 Executive Order No. 12958; section 7211 of title 5,
8 United States Code (governing disclosures to Con-
9 gress); section 1034 of title 10, United States Code
10 (governing disclosures to Congress by members of
11 the military); section 2302(b)(8) of title 5, United
12 States Code (governing disclosures of illegality,
13 waste, fraud, abuse, or public health or safety
14 threats); the Intelligence Identities Protection Act of
15 1982 (50 U.S.C. 421 and following) (governing dis-
16 closures that could expose confidential Government
17 agents); and the statutes which protect against dis-
18 closures that could compromise national security, in-
19 cluding sections 641, 793, 794, 798, and 952 of title
20 18, United States Code, and section 4(b) of the Sub-
21 versive Activities Control Act of 1950 (50 U.S.C.
22 783(b)). The definitions, requirements, obligations,
23 rights, sanctions, and liabilities created by such Ex-
24 ecutive order and such statutory provisions are in-
25 corporated into this agreement and are controlling.’;

1 “~~(13)~~ conduct, or cause to be conducted, an in-
2 vestigation, other than any ministerial or nondis-
3 cretionary factfinding activities necessary for the
4 agency to perform its mission, of an employee or ap-
5 plicant for employment because of any activity pro-
6 tected under this section; or”.

7 **SEC. 1266. EXCLUSION OF AGENCIES BY THE PRESIDENT.**

8 Section 2302(a)(2)(C) of title 5, United States Code,
9 is amended by striking clause (ii) and inserting the fol-
10 lowing:

11 “(ii)(I) the Federal Bureau of Investiga-
12 tion, the Central Intelligence Agency, the De-
13 fense Intelligence Agency, the National
14 Geospatial-Intelligence Agency, or the National
15 Security Agency; or

16 “(II) as determined by the President, any
17 Executive agency or unit thereof the principal
18 function of which is the conduct of foreign in-
19 telligence or counterintelligence activities, if the
20 determination (as that determination relates to
21 a personnel action) is made before that per-
22 sonnel action; or”.

23 **SEC. 1267. DISCIPLINARY ACTION.**

24 Section 1215(a)(3) of title 5, United States Code, is
25 amended to read as follows:

1 “(3)(A) A final order of the Board may impose—

2 “(i) disciplinary action consisting of removal,
3 reduction in grade, debarment from Federal employ-
4 ment for a period not to exceed 5 years, suspension,
5 or reprimand;

6 “(ii) an assessment of a civil penalty not to ex-
7 ceed \$1,000; or

8 “(iii) any combination of disciplinary actions
9 described under clause (i) and an assessment de-
10 scribed under clause (ii).

11 “(B) In any case in which the Board finds that an
12 employee has committed a prohibited personnel practice
13 under paragraph (8) or (9) of section 2302(b), the Board
14 shall impose disciplinary action if the Board finds that the
15 activity protected under such paragraph (8) or (9) (as the
16 case may be) was the primary motivating factor, unless
17 that employee demonstrates, by a preponderance of the
18 evidence, that the employee would have taken, failed to
19 take, or threatened to take or fail to take the same per-
20 sonnel action, in the absence of such protected activity.”.

21 **SEC. 1268. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**

22 **ON REVOCATION OF SECURITY CLEARANCES.**

23 (a) **REQUIREMENT.**—The Comptroller General shall
24 conduct a study of security clearance revocations, taking
25 effect after 1996, with respect to personnel that filed

1 claims under chapter 12 of title 5, United States Code,
2 in connection therewith. The study shall consist of an ex-
3 amination of the number of such clearances revoked, the
4 number restored, and the relationship, if any, between the
5 resolution of claims filed under such chapter and the res-
6 toration of such clearances.

7 (b) REPORT.—Not later than 270 days after the date
8 of the enactment of this Act, the Comptroller General shall
9 submit to the Committee on Oversight and Government
10 Reform of the House of Representatives and the Com-
11 mittee on Homeland Security and Governmental Affairs
12 of the Senate a report on the results of the study required
13 by subsection (a).

14 **SEC. 1269. ALTERNATIVE RECOURSE.**

15 (a) IN GENERAL.—Section 1221 of title 5, United
16 States Code, is amended by adding at the end the fol-
17 lowing:

18 “(k)(1) If, in the case of an employee, former em-
19 ployee, or applicant for employment who seeks corrective
20 action (or on behalf of whom corrective action is sought)
21 from the Merit Systems Protection Board based on an al-
22 leged prohibited personnel practice described in section
23 2302(b)(8) or 2302(b)(9)(B)–(D), no final order or deci-
24 sion is issued by the Board within 180 days after the date
25 on which a request for such corrective action has been duly

1 submitted (or, in the event that a final order or decision
2 is issued by the Board, whether within that 180-day period
3 or thereafter, then, within 90 days after such final order
4 or decision is issued, and so long as such employee, former
5 employee, or applicant has not filed a petition for judicial
6 review of such order or decision under subsection (h))—

7 “(A) such employee, former employee, or appli-
8 cant may, after providing written notice to the
9 Board, bring an action at law or equity for de novo
10 review in the appropriate United States district
11 court, which shall have jurisdiction over such action
12 without regard to the amount in controversy, and
13 which action shall, at the request of either party to
14 such action, be tried by the court with a jury; and

15 “(B) in any such action, the court—

16 “(i) shall apply the standards set forth in
17 subsection (e); and

18 “(ii) may award any relief which the court
19 considers appropriate, including any relief de-
20 scribed in subsection (g).

21 An appeal from a final decision of a district court in an
22 action under this paragraph may, at the election of the
23 appellant, be taken to the Court of Appeals for the Federal
24 Circuit (which shall have jurisdiction of such appeal), in

1 lieu of the United States court of appeals for the circuit
2 embracing the district in which the action was brought.

3 “(2) For purposes of this subsection, the term ‘appro-
4 priate United States district court’, as used with respect
5 to an alleged prohibited personnel practice, means the
6 United States district court for the district in which the
7 prohibited personnel practice is alleged to have been com-
8 mitted, the judicial district in which the employment
9 records relevant to such practice are maintained and ad-
10 ministered, or the judicial district in which resides the em-
11 ployee, former employee, or applicant for employment al-
12 legedly affected by such practice.

13 “(3) This subsection applies with respect to any ap-
14 peal, petition, or other request for corrective action duly
15 submitted to the Board, whether pursuant to section
16 1214(b)(2), the preceding provisions of this section, sec-
17 tion 7513(d), or any otherwise applicable provisions of
18 law, rule, or regulation.”

19 (b) REVIEW OF MSPB DECISIONS.—Section 7703(b)
20 of such title 5 is amended—

21 (1) in the first sentence of paragraph (1), by
22 striking “the United States Court of Appeals for the
23 Federal Circuit” and inserting “the appropriate
24 United States court of appeals”; and

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

1 “(3) For purposes of the first sentence of paragraph
2 (1), the term ‘appropriate United States court of appeals’
3 means the United States Court of Appeals for the Federal
4 Circuit, except that in the case of a prohibited personnel
5 practice described in section 2302(b)(8) or
6 2302(b)(9)(B)–(D) (other than a case that, disregarding
7 this paragraph, would otherwise be subject to paragraph
8 (2)), such term means the United States Court of Appeals
9 for the Federal Circuit and any United States court of
10 appeals having jurisdiction over appeals from any United
11 States district court which, under section 1221(k)(2),
12 would be an appropriate United States district court for
13 purposes of such prohibited personnel practice.”.

14 (e) COMPENSATORY DAMAGES.—Section
15 1221(g)(1)(A)(ii) of such title 5 is amended by striking
16 all after “travel expenses,” and inserting “any other rea-
17 sonable and foreseeable consequential damages, and com-
18 pensatory damages (including attorney’s fees, interest,
19 reasonable expert witness fees, and costs).”.

20 (d) CONFORMING AMENDMENTS.—

21 (1) Section 1221(h) of such title 5 is amended
22 by adding at the end the following:

23 “(3) Judicial review under this subsection shall not
24 be available with respect to any decision or order as to

1 which the employee, former employee, or applicant has
 2 filed a petition for judicial review under subsection (k).”.

3 (2) Section 7703(e) of such title 5 is amended
 4 by striking “court.” and inserting “court, and in the
 5 case of a prohibited personnel practice described in
 6 section 2302(b)(8) or 2302(b)(9)(B)–(D) brought
 7 under any provision of law, rule, or regulation de-
 8 scribed in section 1221(k)(3), the employee or appli-
 9 cant shall have the right to de novo review in accord-
 10 ance with section 1221(k).”.

11 **SEC. 1270. NATIONAL SECURITY WHISTLEBLOWER RIGHTS.**

12 (a) IN GENERAL.—Chapter 23 of title 5, United
 13 States Code, is amended by inserting after section 2303
 14 the following:

15 **“§ 2303a. National security whistleblower rights**

16 “(a) PROHIBITION OF REPRISALS.—

17 “(1) IN GENERAL.—In addition to any rights
 18 provided in section 2303 of this title, title VII of
 19 Public Law 105–272, or any other provision of law,
 20 an employee or former employee in a covered agency
 21 may not be discharged, demoted, or otherwise dis-
 22 criminated against (including by denying, sus-
 23 pending, or revoking a security clearance, or by oth-
 24 erwise restricting access to classified or sensitive in-

1 formation) as a reprisal for making a disclosure de-
2 scribed in paragraph (2).

3 “(2) DISCLOSURES DESCRIBED.—A disclosure
4 described in this paragraph is any disclosure of cov-
5 ered information which is made—

6 “(A) by an employee or former employee in
7 a covered agency (without restriction as to time,
8 place, form, motive, context, or prior disclosure
9 made to any person by an employee or former
10 employee, including a disclosure made in the
11 course of an employee’s duties); and

12 “(B) to an authorized Member of Con-
13 gress, an authorized official of an Executive
14 agency, or the Inspector General of the covered
15 agency in which such employee or former em-
16 ployee is or was employed.

17 “(b) INVESTIGATION OF COMPLAINTS.—An employee
18 or former employee in a covered agency who believes that
19 such employee or former employee has been subjected to
20 a reprisal prohibited by subsection (a) may submit a com-
21 plaint to the Inspector General and the head of the cov-
22 ered agency. The Inspector General shall investigate the
23 complaint and, unless the Inspector General determines
24 that the complaint is frivolous, submit a report of the find-
25 ings of the investigation within 120 days to the employee

1 or former employee (as the case may be) and to the head
2 of the covered agency.

3 ~~“(c) REMEDY.—~~

4 ~~“(1) Within 180 days of the filing of the com-~~
5 ~~plaint, the head of the covered agency shall, taking~~
6 ~~into consideration the report of the Inspector Gen-~~
7 ~~eral under subsection (b) (if any), determine whether~~
8 ~~the employee or former employee has been subjected~~
9 ~~to a reprisal prohibited by subsection (a), and shall~~
10 ~~either issue an order denying relief or shall imple-~~
11 ~~ment corrective action to return the employee or~~
12 ~~former employee, as nearly as possible, to the posi-~~
13 ~~tion he would have held had the reprisal not oc-~~
14 ~~curred, including voiding any directive or order de-~~
15 ~~nying, suspending, or revoking a security clearance~~
16 ~~or otherwise restricting access to classified or sen-~~
17 ~~sitive information that constituted a reprisal, as well~~
18 ~~as providing back pay and related benefits, medical~~
19 ~~costs incurred, travel expenses, any other reasonable~~
20 ~~and foreseeable consequential damages, and compen-~~
21 ~~satory damages (including attorney’s fees, interest,~~
22 ~~reasonable expert witness fees, and costs). If the~~
23 ~~head of the covered agency issues an order denying~~
24 ~~relief, he shall issue a report to the employee or~~
25 ~~former employee detailing the reasons for the denial.~~

1 “(2)(A) If the head of the covered agency, in
2 the process of implementing corrective action under
3 paragraph (1), voids a directive or order denying,
4 suspending, or revoking a security clearance or oth-
5 erwise restricting access to classified or sensitive in-
6 formation that constituted a reprisal, the head of the
7 covered agency may re-initiate procedures to issue a
8 directive or order denying, suspending, or revoking
9 a security clearance or otherwise restricting access
10 to classified or sensitive information only if those re-
11 initiated procedures are based exclusively on national
12 security concerns and are unrelated to the actions
13 constituting the original reprisal.

14 “(B) In any case in which the head of a covered
15 agency re-initiates procedures under subparagraph
16 (A), the head of the covered agency shall issue an
17 unclassified report to its Inspector General and to
18 authorized Members of Congress (with a classified
19 annex, if necessary), detailing the circumstances of
20 the agency’s re-initiated procedures and describing
21 the manner in which those procedures are based ex-
22 clusively on national security concerns and are unre-
23 lated to the actions constituting the original reprisal.
24 The head of the covered agency shall also provide
25 periodic updates to the Inspector General and au-

1 thorized Members of Congress detailing any signifi-
2 cant actions taken as a result of those procedures,
3 and shall respond promptly to inquiries from author-
4 ized Members of Congress regarding the status of
5 those procedures.

6 “(3) If the head of the covered agency has not
7 made a determination under paragraph (1) within
8 180 days of the filing of the complaint (or he has
9 issued an order denying relief, in whole or in part,
10 whether within that 180-day period or thereafter,
11 then, within 90 days after such order is issued), the
12 employee or former employee may bring an action at
13 law or equity for de novo review to seek any correc-
14 tive action described in paragraph (1) in the appro-
15 priate United States district court (as defined by
16 section 1221(k)(2)), which shall have jurisdiction
17 over such action without regard to the amount in
18 controversy. An appeal from a final decision of a dis-
19 trict court in an action under this paragraph may,
20 at the election of the appellant, be taken to the
21 Court of Appeals for the Federal Circuit (which
22 shall have jurisdiction of such appeal), in lieu of the
23 United States court of appeals for the circuit em-
24 bracing the district in which the action was brought.

1 “(4) An employee or former employee adversely
2 affected or aggrieved by an order issued under para-
3 graph (1), or who seeks review of any corrective ac-
4 tion determined under paragraph (1), may obtain ju-
5 dicial review of such order or determination in the
6 United States Court of Appeals for the Federal Cir-
7 cuit or any United States court of appeals having ju-
8 risdiction over appeals from any United States dis-
9 trict court which, under section 1221(k)(2), would
10 be an appropriate United States district court. No
11 petition seeking such review may be filed more than
12 60 days after issuance of the order or the deter-
13 mination to implement corrective action by the head
14 of the agency. Review shall conform to chapter 7.

15 “(5)(A) If, in any action for damages or relief
16 under paragraph (3) or (4), an Executive agency
17 moves to withhold information from discovery based
18 on a claim that disclosure would be inimical to na-
19 tional security by asserting the privilege commonly
20 referred to as the ‘state secrets privilege’, and if the
21 assertion of such privilege prevents the employee or
22 former employee from establishing an element in
23 support of the employee’s or former employee’s
24 claim, the court shall resolve the disputed issue of
25 fact or law in favor of the employee or former em-

1 ployee, provided that an Inspector General investiga-
2 tion under subsection (b) has resulted in substantial
3 confirmation of that element, or those elements, of
4 the employee's or former employee's claim.

5 “(B) In any case in which an Executive agency
6 asserts the privilege commonly referred to as the
7 ‘state secrets privilege’, whether or not an Inspector
8 General has conducted an investigation under sub-
9 section (b), the head of that agency shall, at the
10 same time it asserts the privilege, issue a report to
11 authorized Members of Congress, accompanied by a
12 classified annex if necessary, describing the reasons
13 for the assertion, explaining why the court hearing
14 the matter does not have the ability to maintain the
15 protection of classified information related to the as-
16 sertation, detailing the steps the agency has taken to
17 arrive at a mutually agreeable settlement with the
18 employee or former employee, setting forth the date
19 on which the classified information at issue will be
20 declassified, and providing all relevant information
21 about the underlying substantive matter.

22 “(d) ~~APPLICABILITY TO NON-COVERED AGENCIES.—~~

23 An employee or former employee in an Executive agency
24 (or element or unit thereof) that is not a covered agency
25 shall, for purposes of any disclosure of covered information

1 (as described in subsection (a)(2)) which consists in whole
2 or in part of classified or sensitive information, be entitled
3 to the same protections, rights, and remedies under this
4 section as if that Executive agency (or element or unit
5 thereof) were a covered agency.

6 “(e) CONSTRUCTION.—Nothing in this section may
7 be construed—

8 “(1) to authorize the discharge of, demotion of,
9 or discrimination against an employee or former em-
10 ployee for a disclosure other than a disclosure pro-
11 tected by subsection (a) or (d) of this section or to
12 modify or derogate from a right or remedy otherwise
13 available to an employee or former employee; or

14 “(2) to preempt, modify, limit, or derogate any
15 rights or remedies available to an employee or
16 former employee under any other provision of law,
17 rule, or regulation (including the Lloyd-La Follette
18 Act).

19 No court or administrative agency may require the ex-
20 haustion of any right or remedy under this section as a
21 condition for pursuing any other right or remedy otherwise
22 available to an employee or former employee under any
23 other provision of law, rule, or regulation (as referred to
24 in paragraph (2)).

25 “(f) DEFINITIONS.—For purposes of this section—

1 “(1) the term ‘covered information’, as used
2 with respect to an employee or former employee,
3 means any information (including classified or sen-
4 sitive information) which the employee or former
5 employee reasonably believes evidences—

6 “(A) any violation of any law, rule, or reg-
7 ulation; or

8 “(B) gross mismanagement, a gross waste
9 of funds, an abuse of authority, or a substantial
10 and specific danger to public health or safety;

11 “(2) the term ‘covered agency’ means—

12 “(A) the Federal Bureau of Investigation,
13 the Office of the Director of National Intel-
14 ligence, the Central Intelligence Agency, the
15 Defense Intelligence Agency, the National
16 Geospatial-Intelligence Agency, the National Se-
17 curity Agency, and the National Reconnaissance
18 Office; and

19 “(B) any other Executive agency, or ele-
20 ment or unit thereof, determined by the Presi-
21 dent under section 2302(a)(2)(C)(ii)(II) to have
22 as its principal function the conduct of foreign
23 intelligence or counterintelligence activities;

24 “(3) the term ‘authorized Member of Congress’
25 means—

1 “(A) with respect to covered information
2 about sources and methods of the Central Intel-
3 ligence Agency, the Director of National Intel-
4 ligence, and the National Intelligence Program
5 (as defined in section 3(6) of the National Se-
6 curity Act of 1947), a member of the House
7 Permanent Select Committee on Intelligence,
8 the Senate Select Committee on Intelligence, or
9 any other committees of the House of Rep-
10 resentatives or Senate to which this type of in-
11 formation is customarily provided;

12 “(B) with respect to special access pro-
13 grams specified in section 119 of title 10, an
14 appropriate member of the Congressional de-
15 fense committees (as defined in such section);
16 and

17 “(C) with respect to other covered informa-
18 tion, a member of the House Permanent Select
19 Committee on Intelligence, the Senate Select
20 Committee on Intelligence, the House Com-
21 mittee on Oversight and Government Reform,
22 the Senate Committee on Homeland Security
23 and Governmental Affairs, or any other com-
24 mittees of the House of Representatives or the

1 Senate that have oversight over the program
2 which the covered information concerns; and

3 “(4) the term ‘authorized official of an Execu-
4 tive agency’ shall have such meaning as the Office
5 of Personnel Management shall by regulation pre-
6 scribe, except that such term shall, with respect to
7 any employee or former employee in an agency, in-
8 clude the head, the general counsel, and the ombuds-
9 man of such agency.”.

10 (b) CLERICAL AMENDMENT.—The table of sections
11 for chapter 23 of title 5, United States Code, is amended
12 by inserting after the item relating to section 2303 the
13 following:

“2303a. National security whistleblower rights.”.

14 **SEC. 1271. ENHANCEMENT OF CONTRACTOR EMPLOYEE**
15 **WHISTLEBLOWER PROTECTIONS.**

16 (a) CIVILIAN AGENCY CONTRACTS.—Section 315(e)
17 of the Federal Property and Administrative Services Act
18 of 1949 (41 U.S.C. 265(e)) is amended—

19 (1) in paragraph (1), by striking “If the head”
20 and all that follows through “actions.” and inserting
21 the following: “Not later than 180 days after sub-
22 mission of a complaint under subsection (b), the
23 head of the executive agency concerned shall deter-
24 mine whether the contractor concerned has subjected
25 the complainant to a reprisal prohibited by sub-

1 section (a) and shall either issue an order denying
2 relief or shall take one or more of the following ac-
3 tions:” and

4 (2) by redesignating paragraph (3) as para-
5 graph (4) and adding after paragraph (2) the fol-
6 lowing new paragraph (3):

7 “(3) If the head of an executive agency has not issued
8 an order within 180 days after the submission of a com-
9 plaint under subsection (b) and there is no showing that
10 such delay is due to the bad faith of the complainant, the
11 complainant shall be deemed to have exhausted his admin-
12 istrative remedies with respect to the complaint, and the
13 complainant may bring an action at law or equity for de
14 novo review to seek compensatory damages and other re-
15 lief available under this section in the appropriate district
16 court of the United States, which shall have jurisdiction
17 over such an action without regard to the amount in con-
18 troversy, and which action shall, at the request of either
19 party to such action, be tried by the court with a jury.”

20 (b) ARMED SERVICES CONTRACTS.—Section 2409(e)
21 of title 10, United States Code, is amended—

22 (1) in paragraph (1), by striking “If the head”
23 and all that follows through “actions:” and inserting
24 the following: “Not later than 180 days after sub-
25 mission of a complaint under subsection (b), the

1 head of the agency concerned shall determine whether
2 er the contractor concerned has subjected the complainant to a reprisal prohibited by subsection (a)
3 and shall either issue an order denying relief or shall
4 take one or more of the following actions:”;

5 and
6 (2) by redesignating paragraph (3) as paragraph (4) and adding after paragraph (2) the following new paragraph (3):

7
8
9 “(3) If the head of an agency has not issued an order
10 within 180 days after the submission of a complaint under
11 subsection (b) and there is no showing that such delay
12 is due to the bad faith of the complainant, the complainant
13 shall be deemed to have exhausted his administrative remedies with respect to the complaint, and the complainant
14 may bring an action at law or equity for de novo review
15 to seek compensatory damages and other relief available
16 under this section in the appropriate district court of the
17 United States, which shall have jurisdiction over such an
18 action without regard to the amount in controversy, and
19 which action shall, at the request of either party to such
20 action, be tried by the court with a jury.”.

1 **SEC. 1272. PROHIBITED PERSONNEL PRACTICES AFFECT-**
2 **ING THE TRANSPORTATION SECURITY AD-**
3 **MINISTRATION.**

4 (a) IN GENERAL.—Chapter 23 of title 5, United
5 States Code, is amended—

6 (1) by redesignating sections 2304 and 2305 as
7 sections 2305 and 2306, respectively; and

8 (2) by inserting after section 2303a (as inserted
9 by section 1270) the following:

10 **“§ 2304. Prohibited personnel practices affecting the**
11 **Transportation Security Administration**

12 “(a) IN GENERAL.—Notwithstanding any other pro-
13 vision of law, any individual holding or applying for a posi-
14 tion within the Transportation Security Administration
15 shall be covered by—

16 “(1) the provisions of section 2302(b)(1), (8),
17 and (9);

18 “(2) any provision of law implementing section
19 2302(b)(1), (8), or (9) by providing any right or
20 remedy available to an employee or applicant for em-
21 ployment in the civil service; and

22 “(3) any rule or regulation prescribed under
23 any provision of law referred to in paragraph (1) or
24 (2).

25 “(b) RULE OF CONSTRUCTION.—Nothing in this sec-
26 tion shall be construed to affect any rights, apart from

1 those described in subsection (a), to which an individual
 2 described in subsection (a) might otherwise be entitled
 3 under law.

4 “(c) **EFFECTIVE DATE.**—This section shall take ef-
 5 fect as of the date of the enactment of this section.”.

6 (b) **CLERICAL AMENDMENT.**—The table of sections
 7 for chapter 23 of title 5, United States Code, is amended
 8 by striking the items relating to sections 2304 and 2305,
 9 respectively, and by inserting the following:

“2304. Prohibited personnel practices affecting the Transportation Security Ad-
 ministration.

“2305. Responsibility of the Government Accountability Office.

“2306. Coordination with certain other provisions of law.”.

10 **SEC. 1273. CLARIFICATION OF WHISTLEBLOWER RIGHTS**
 11 **RELATING TO SCIENTIFIC AND OTHER RE-**
 12 **SEARCH.**

13 (a) **IN GENERAL.**—Section 2302 of title 5, United
 14 States Code, is amended by adding at the end the fol-
 15 lowing:

16 “(f) As used in section 2302(b)(8), the term ‘abuse
 17 of authority’ includes—

18 “(1) any action that compromises the validity
 19 or accuracy of federally funded research or analysis;

20 “(2) the dissemination of false or misleading
 21 scientific, medical, or technical information;

22 “(3) any action that restricts or prevents an
 23 employee or any person performing federally funded

1 research or analysis from publishing in peer-reviewed
2 journals or other scientific publications or making
3 oral presentations at professional society meetings or
4 other meetings of their peers; and

5 “(4) any action that discriminates for or
6 against any employee or applicant for employment
7 on the basis of religion, as defined by section
8 1273(b) of the Whistleblower Protection Enhance-
9 ment Act of 2009.”.

10 (b) DEFINITION.—As used in section 2302(f)(3) of
11 title 5, United States Code (as amended by subsection
12 (a)), the term “on the basis of religion” means—

13 (1) prohibiting personal religious expression by
14 Federal employees to the greatest extent possible,
15 consistent with requirements of law and interests in
16 workplace efficiency;

17 (2) requiring religious participation or non-par-
18 ticipation as a condition of employment, or permit-
19 ting religious harassment;

20 (3) failing to accommodate employees’ exercise
21 of their religion;

22 (4) failing to treat all employees with the same
23 respect and consideration, regardless of their religion
24 (or lack thereof);

1 (5) restricting personal religious expression by
2 employees in the Federal workplace except where the
3 employee's interest in the expression is outweighed
4 by the government's interest in the efficient provi-
5 sion of public services or where the expression in-
6 trudes upon the legitimate rights of other employees
7 or creates the appearance, to a reasonable observer,
8 of an official endorsement of religion;

9 (6) regulating employees' personal religious ex-
10 pression on the basis of its content or viewpoint, or
11 suppressing employees' private religious speech in
12 the workplace while leaving unregulated other pri-
13 vate employee speech that has a comparable effect
14 on the efficiency of the workplace, including ideolog-
15 ical speech on politics and other topics;

16 (7) failing to exercise their authority in an
17 evenhanded and restrained manner, and with regard
18 for the fact that Americans are used to expressions
19 of disagreement on controversial subjects, including
20 religious ones;

21 (8) failing to permit an employee to engage in
22 private religious expression in personal work areas
23 not regularly open to the public to the same extent
24 that they may engage in nonreligious private expres-

1 sion, subject to reasonable content- and viewpoint-
2 neutral standards and restrictions;

3 (9) failing to permit an employee to engage in
4 religious expression with fellow employees, to the
5 same extent that they may engage in comparable
6 nonreligious private expression, subject to reasonable
7 and content-neutral standards and restrictions;

8 (10) failing to permit an employee to engage in
9 religious expression directed at fellow employees, and
10 may even attempt to persuade fellow employees of
11 the correctness of their religious views, to the same
12 extent as those employees may engage in comparable
13 speech not involving religion;

14 (11) inhibiting an employee from urging a col-
15 league to participate or not to participate in reli-
16 gious activities to the same extent that, consistent
17 with concerns of workplace efficiency, they may urge
18 their colleagues to engage in or refrain from other
19 personal endeavors, except that the employee must
20 refrain from such expression when a fellow employee
21 asks that it stop or otherwise demonstrates that it
22 is unwelcome;

23 (12) failing to prohibit expression that is part
24 of a larger pattern of verbal attacks on fellow em-

1 ployees (or a specific employee) not sharing the faith
2 of the speaker;

3 ~~(13)~~ preventing an employee from—

4 ~~(A)~~ wearing personal religious jewelry ab-
5 sent special circumstances (such as safety con-
6 cerns) that might require a ban on all similar
7 nonreligious jewelry; or

8 ~~(B)~~ displaying religious art and literature
9 in their personal work areas to the same extent
10 that they may display other art and literature,
11 so long as the viewing public would reasonably
12 understand the religious expression to be that
13 of the employee acting in her personal capacity,
14 and not that of the government itself;

15 ~~(14)~~ prohibiting an employee from using their
16 private time to discuss religion with willing cowork-
17 ers in public spaces to the same extent as they may
18 discuss other subjects; so long as the public would
19 reasonably understand the religious expression to be
20 that of the employees acting in their personal capae-
21 ities;

22 ~~(15)~~ discriminating against an employee on the
23 basis of their religion, religious beliefs, or views con-
24 cerning their religion by promoting, refusing to pro-
25 mote, hiring, refusing to hire, or otherwise favoring

1 or disfavoring, an employee or potential employee
2 because of his or her religion, religious beliefs, or
3 views concerning religion, or by explicitly or implic-
4 itly, insisting that the employee participate in reli-
5 gious activities as a condition of continued employ-
6 ment, promotion, salary increases, preferred job as-
7 signments, or any other incidents of employment or
8 insisting that an employee refrain from participating
9 in religious activities outside the workplace except
10 pursuant to otherwise legal, neutral restrictions that
11 apply to employees' off-duty conduct and expression
12 in general (such as restrictions on political activities
13 prohibited by the Hatch Act);

14 (16) prohibiting a supervisor's religious expres-
15 sion where it is not coercive and is understood to be
16 his or her personal view, in the same way and to the
17 same extent as other constitutionally valued speech;

18 (17) permitting a hostile environment, or reli-
19 gious harassment, in the form of religiously discrimi-
20 natory intimidation, or pervasive or severe religious
21 ridicule or insult, whether by supervisors or fellow
22 workers, as determined by its frequency or repet-
23 itiveness, and severity;

24 (18) failing to accommodate an employee's exer-
25 cise of their religion unless such accommodation

1 would impose an undue hardship on the conduct of
2 the agency's operations, based on real rather than
3 speculative or hypothetical cost and without
4 disfavoring other, nonreligious accommodations; and

5 (19) in those cases where an agency's work rule
6 imposes a substantial burden on a particular em-
7 ployee's exercise of religion, failing to grant the em-
8 ployee an exemption from that rule, absent a com-
9 pelling interest in denying the exemption and where
10 there is no less restrictive means of furthering that
11 interest.

12 (c) **RULE OF CONSTRUCTION.**—Nothing in this sec-
13 tion shall be construed to create any new right, benefit,
14 or trust responsibility, substantive or procedural, enforce-
15 able at law or equity by a party against the United States,
16 its agencies, its officers, or any person.

17 **SEC. 1274. EFFECTIVE DATE.**

18 This part shall take effect 30 days after the date of
19 the enactment of this Act, except as provided in the
20 amendment made by section 1272(a)(2).

1 **TITLE II—AGRICULTURE, NUTRI-**
2 **TION, AND RURAL DEVELOP-**
3 **MENT**

4 DEPARTMENT OF AGRICULTURE
5 AGRICULTURE BUILDINGS AND FACILITIES AND RENTAL
6 PAYMENTS

7 For an additional amount for “Agriculture Buildings
8 and Facilities and Rental Payments”, \$44,000,000, for
9 necessary construction, repair, and improvement activities:
10 *Provided*, That section 1106 of this Act shall not apply
11 to this appropriation.

12 AGRICULTURAL RESEARCH SERVICE
13 BUILDINGS AND FACILITIES

14 For an additional amount for “Buildings and Facili-
15 ties”, \$209,000,000, for work on deferred maintenance at
16 Agricultural Research Service facilities: *Provided*, That
17 priority in the use of such funds shall be given to critical
18 deferred maintenance, to projects that can be completed,
19 and to activities that can commence promptly following
20 enactment of this Act.

21 FARM SERVICE AGENCY
22 SALARIES AND EXPENSES

23 For an additional amount for “Salaries and Ex-
24 penses,” \$245,000,000, for the purpose of maintaining
25 and modernizing the information technology system: *Pro-*

1 *vided*, That section 1106 of this Act shall not apply to
2 this appropriation.

3 NATURAL RESOURCES CONSERVATION SERVICE

4 WATERSHED AND FLOOD PREVENTION OPERATIONS

5 For an additional amount for “Watershed and Flood
6 Prevention Operations”, \$350,000,000, of which
7 \$175,000,000 is for necessary expenses to purchase and
8 restore floodplain easements as authorized by section 403
9 of the Agricultural Credit Act of 1978 (16 U.S.C. 2203)
10 (except that no more than \$50,000,000 of the amount pro-
11 vided for the purchase of floodplain easements may be ob-
12 ligated for projects in any one State): *Provided*, That sec-
13 tion 1106 of this Act shall not apply to this appropriation:
14 *Provided further*, That priority in the use of such funds
15 shall be given to projects that can be fully funded and
16 completed with the funds appropriated in this Act, and
17 to activities that can commence promptly following enact-
18 ment of this Act.

19 WATERSHED REHABILITATION PROGRAM

20 For an additional amount for “Watershed Rehabilita-
21 tion Program”, \$50,000,000, for necessary expenses to
22 carry out rehabilitation of structural measures: *Provided*,
23 That section 1106 of this Act shall not apply to this ap-
24 propriation: *Provided further*, That priority in the use of
25 such funds shall be given to projects that can be fully

1 funded and completed with the funds appropriated in this
2 Act, and to activities that can commence promptly fol-
3 lowing enactment of this Act.

4 **RURAL DEVELOPMENT PROGRAMS**

5 **RURAL COMMUNITY ADVANCEMENT PROGRAM**

6 **(INCLUDING TRANSFERS OF FUNDS)**

7 For an additional amount for gross obligations for
8 the principal amount of direct and guaranteed loans as
9 authorized by sections 306 and 310B and described in sec-
10 tions 381E(d)(1), 381E(d)(2), and 381E(d)(3) of the
11 Consolidated Farm and Rural Development Act, to be
12 available from the rural community advancement pro-
13 gram, as follows: \$5,838,000,000, of which
14 \$1,102,000,000 is for rural community facilities direct
15 loans, of which \$2,000,000,000 is for business and indus-
16 try guaranteed loans, and of which \$2,736,000,000 is for
17 rural water and waste disposal direct loans.

18 For an additional amount for the cost of direct loans,
19 loan guarantees, and grants, including the cost of modi-
20 fying loans, as defined in section 502 of the Congressional
21 Budget Act of 1974, as follows: \$1,800,000,000, of which
22 \$63,000,000 is for rural community facilities direct loans,
23 of which \$137,000,000 is for rural community facilities
24 grants authorized under section 306(a) of the Consoli-
25 dated Farm and Rural Development Act, of which

1 \$87,000,000 is for business and industry guaranteed
2 loans, of which \$13,000,000 is for rural business enter-
3 prise grants authorized under section 310B of the Consoli-
4 dated Farm and Rural Development Act, of which
5 \$400,000,000 is for rural water and waste disposal direct
6 loans, and of which \$1,100,000,000 is for rural water and
7 waste disposal grants authorized under section 306(a):
8 *Provided*, That the amounts appropriated under this head-
9 ing shall be transferred to, and merged with, the appro-
10 priation for "Rural Housing Service, Rural Community
11 Facilities Program Account", the appropriation for
12 "Rural Business-Cooperative Service, Rural Business Pro-
13 gram Account", and the appropriation for "Rural Utilities
14 Service, Rural Water and Waste Disposal Program Ac-
15 count": *Provided further*, That priority for awarding such
16 funds shall be given to project applications that dem-
17 onstrate that, if the application is approved, all project
18 elements will be fully funded: *Provided further*, That pri-
19 ority for awarding such funds shall be given to project ap-
20 plications for activities that can be completed if the re-
21 quested funds are provided: *Provided further*, That priority
22 for awarding such funds shall be given to activities that
23 can commence promptly following enactment of this Act.

24 In addition to other available funds, the Secretary of
25 Agriculture may use not more than 3 percent of the funds

1 made available under this account for administrative costs
 2 to carry out loans, loan guarantees, and grants funded
 3 under this account, which shall be transferred and merged
 4 with the appropriation for “Rural Development, Salaries
 5 and Expenses”² and shall remain available until September
 6 30, 2012: *Provided*, That the authority provided in this
 7 paragraph shall apply to appropriations under this head-
 8 ing in lieu of the provisions of section 1106 of this Act.

9 Funds appropriated by this Act to the Rural Commu-
 10 nity Advancement Program for rural community facilities,
 11 rural business, and rural water and waste disposal direct
 12 loans, loan guarantees and grants may be transferred
 13 among these programs: *Provided*, That the Committees on
 14 Appropriations of the House of Representatives and the
 15 Senate shall be notified at least 15 days in advance of
 16 any transfer.

17 RURAL HOUSING SERVICE

18 RURAL HOUSING INSURANCE FUND PROGRAM ACCOUNT

19 (INCLUDING TRANSFERS OF FUNDS)

20 For an additional amount of gross obligations for the
 21 principal amount of direct and guaranteed loans as au-
 22 thorized by title V of the Housing Act of 1949, to be avail-
 23 able from funds in the rural housing insurance fund, as
 24 follows: \$22,129,000,000 for loans to section 502 bor-
 25 rowers, of which \$4,018,000,000 shall be for direct loans;

1 and of which \$18,111,000,000 shall be for unsubsidized
2 guaranteed loans.

3 For an additional amount for the cost of direct and
4 guaranteed loans, including the cost of modifying loans,
5 as defined in section 502 of the Congressional Budget Act
6 of 1974, as follows: section 502 loans, \$500,000,000, of
7 which \$270,000,000 shall be for direct loans, and of which
8 \$230,000,000 shall be for unsubsidized guaranteed loans.

9 In addition to other available funds, the Secretary of
10 Agriculture may use not more than 3 percent of the funds
11 made available under this account for administrative costs
12 to carry out loans and loan guarantees funded under this
13 account, of which \$1,750,000 will be committed to agency
14 projects associated with maintaining the compliance, safe-
15 ty, and soundness of the portfolio of loans guaranteed
16 through the section 502 guaranteed loan program: *Pro-*
17 *vided*, These funds shall be transferred and merged with
18 the appropriation for "Rural Development, Salaries and
19 Expenses": *Provided further*, That the authority provided
20 in this paragraph shall apply to appropriations under this
21 heading in lieu of the provisions of section 1106 of this
22 Act.

23 Funds appropriated by this Act to the Rural Housing
24 Insurance Fund Program account for section 502 direct
25 loans and unsubsidized guaranteed loans may be trans-

1 ferred between these programs: *Provided*, That the Com-
2 mittees on Appropriations of the House of Representatives
3 and the Senate shall be notified at least 15 days in ad-
4 vance of any transfer.

5 RURAL UTILITIES SERVICE

6 DISTANCE LEARNING, TELEMEDICINE, AND BROADBAND

7 PROGRAM

8 (INCLUDING TRANSFERS OF FUNDS)

9 For an additional amount for the cost of broadband
10 loans and loan guarantees, as authorized by the Rural
11 Electrification Act of 1936 (7 U.S.C. 901 et seq.) and for
12 grants, \$2,825,000,000: *Provided*, That the cost of direct
13 and guaranteed loans shall be as defined in section 502
14 of the Congressional Budget Act of 1974: *Provided fur-*
15 *ther*, That, notwithstanding title VI of the Rural Elec-
16 trification Act of 1936, this amount is available for grants,
17 loans and loan guarantees for open access broadband in-
18 frastructure in any area of the United States: *Provided*
19 *further*, That at least 75 percent of the area to be served
20 by a project receiving funds from such grants, loans or
21 loan guarantees shall be in a rural area without sufficient
22 access to high speed broadband service to facilitate rural
23 economic development, as determined by the Secretary of
24 Agriculture: *Provided further*, That priority for awarding
25 funds made available under this paragraph shall be given

1 to projects that provide service to the most rural residents
2 that do not have access to broadband service: *Provided fur-*
3 *ther*, That priority shall be given for project applications
4 from borrowers or former borrowers under title II of the
5 Rural Electrification Act of 1936 and for project applica-
6 tions that include such borrowers or former borrowers:
7 *Provided further*, That notwithstanding section 1103 of
8 this Act, 50 percent of the grants, loans, and loan guaran-
9 tees made available under this heading shall be awarded
10 not later than September 30, 2009: *Provided further*, That
11 priority for awarding such funds shall be given to project
12 applications that demonstrate that, if the application is
13 approved, all project elements will be fully funded: *Pro-*
14 *vided further*, That priority for awarding such funds shall
15 be given to project applications for activities that can be
16 completed if the requested funds are provided: *Provided*
17 *further*, That priority for awarding such funds shall be
18 given to activities that can commence promptly following
19 enactment of this Act: *Provided further*, That no area of
20 a project funded with amounts made available under this
21 paragraph may receive funding to provide broadband serv-
22 ice under the Broadband Deployment Grant Program:
23 *Provided further*, That the Secretary shall submit a report
24 on planned spending and actual obligations describing the
25 use of these funds not later than 90 days after the date

1 of enactment of this Act, and quarterly thereafter until
2 all funds are obligated, to the Committees on Appropria-
3 tions of the House of Representatives and the Senate.

4 In addition to other available funds, the Secretary
5 may use not more than 3 percent of the funds made avail-
6 able under this account for administrative costs to carry
7 out loans, loan guarantees, and grants funded under this
8 account, which shall be transferred and merged with the
9 appropriation for "Rural Development, Salaries and Ex-
10 penses" and shall remain available until September 30,
11 2012: *Provided*, That the authority provided in this para-
12 graph shall apply to appropriations under this heading in
13 lieu of the provisions of section 1106 of this Act.

14 FOOD AND NUTRITION SERVICE

15 SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR

16 WOMEN, INFANTS, AND CHILDREN (WIC)

17 For an additional amount for the special supple-
18 mental nutrition program as authorized by section 17 of
19 the Child Nutrition Act of 1966 (42 U.S.C. 1786),
20 \$100,000,000, for the purposes specified in section
21 17(h)(10)(B)(ii) for the Secretary of Agriculture to pro-
22 vide assistance to State agencies to implement new man-
23 agement information systems or improve existing manage-
24 ment information systems for the program.

1 EMERGENCY FOOD ASSISTANCE PROGRAM

2 For an additional amount for the emergency food as-
 3 sistance program as authorized by section 27(a) of the
 4 Food and Nutrition Act of 2008 (7 U.S.C. 2036(a)) and
 5 section 204(a)(1) of the Emergency Food Assistance Act
 6 of 1983 (7 U.S.C. 7508(a)(1)), \$150,000,000, of which
 7 \$100,000,000 is for the purchase of commodities and of
 8 which \$50,000,000 is for costs associated with the dis-
 9 tribution of commodities.

10 GENERAL PROVISIONS, THIS TITLE

11 **SEC. 2001. TEMPORARY INCREASE IN BENEFITS UNDER**
 12 **THE SUPPLEMENTAL NUTRITION ASSIST-**
 13 **ANCE PROGRAM.**

14 (a) MAXIMUM BENEFIT INCREASE.—

15 (1) IN GENERAL.—Beginning the first month
 16 that begins not less than 25 days after the date of
 17 enactment of this Act, the value of benefits deter-
 18 mined under section 8(a) of the Food and Nutrition
 19 Act of 2008 and consolidated block grants for Puer-
 20 to Rico and American Samoa determined under sec-
 21 tion 19(a) of such Act shall be calculated using
 22 113.6 percent of the June 2008 value of the thrifty
 23 food plan as specified under section 3(e) of such
 24 Act.

25 (2) TERMINATION.—

1 (A) The authority provided by this sub-
2 section shall terminate after September 30,
3 2009.

4 (B) Notwithstanding subparagraph (A),
5 the Secretary of Agriculture may not reduce the
6 value of the maximum allotment below the level
7 in effect for fiscal year 2009 as a result of
8 paragraph (1).

9 (b) REQUIREMENTS FOR THE SECRETARY.—In ear-
10 rying out this section, the Secretary shall—

11 (1) consider the benefit increases described in
12 subsection (a) to be a “mass change”;

13 (2) require a simple process for States to notify
14 households of the increase in benefits;

15 (3) consider section 16(e)(3)(A) of the Food
16 and Nutrition Act of 2008 (7 U.S.C. 2025(e)(3)(A))
17 to apply to any errors in the implementation of this
18 section, without regard to the 120-day limit de-
19 scribed in that section; and

20 (4) have the authority to take such measures as
21 necessary to ensure the efficient administration of
22 the benefits provided in this section.

23 (c) ADMINISTRATIVE EXPENSES.—

24 (1) IN GENERAL.—For the costs of State ad-
25 ministrative expenses associated with carrying out

1 this section, the Secretary shall make available
2 \$150,000,000 in each of fiscal years 2009 and 2010,
3 to remain available through September 30, 2012, of
4 which \$4,500,000 is for necessary expenses of the
5 Food and Nutrition Service for management and
6 oversight of the program and for monitoring the in-
7 tegrity and evaluating the effects of the payments
8 made under this section.

9 (2) AVAILABILITY OF FUNDS.—Funds described
10 in paragraph (1) shall be made available as grants
11 to State agencies based on each State's share of
12 households that participate in the Supplemental Nu-
13 trition Assistance Program as reported to the De-
14 partment of Agriculture for the 12-month period
15 ending with June, 2008.

16 (d) TREATMENT OF JOBLESS WORKERS.—Beginning
17 with the first month that begins not less than 25 days
18 after the date of enactment of this Act, and for each sub-
19 sequent month through September 30, 2010, jobless
20 adults who comply with work registration and employment
21 and training requirements under section 6, section 20, or
22 section 26 of the Food and Nutrition Act of 2008 (7
23 U.S.C. 2015, 2029, or 2035) shall not be disqualified from
24 the Supplemental Nutrition Assistance Program because
25 of the provisions of section 6(o)(2) of such Act (7 U.S.C.

1 ~~2015(o)(2))~~. Beginning on October 1, 2010, for the pur-
 2 poses of section 6(o), a State agency shall disregard any
 3 period during which an individual received Supplemental
 4 Nutrition Assistance Program benefits prior to October 1,
 5 2010.

6 (e) FUNDING.—There is appropriated to the Sec-
 7 retary of Agriculture such sums as are necessary to carry
 8 out this section, to remain available until expended. Sec-
 9 tion 1106 of this Act shall not apply to this appropriation.

10 **SEC. 2002. AFTERSCHOOL FEEDING PROGRAM FOR AT-RISK**
 11 **CHILDREN.**

12 Section 17(r) of the Richard B. Russell National
 13 School Lunch Act (42 U.S.C. 1766(r)) is amended by
 14 striking paragraph (5).

15 **TITLE III—COMMERCE, JUSTICE,**
 16 **AND SCIENCE**

17 **Subtitle A—Commerce**

18 **DEPARTMENT OF COMMERCE**

19 **ECONOMIC DEVELOPMENT ADMINISTRATION**

20 **ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS**

21 **(INCLUDING TRANSFER OF FUNDS)**

22 For an additional amount for “Economic Develop-
 23 ment Assistance Programs”, \$250,000,000: *Provided,*
 24 That the amount set aside from this appropriation pursu-
 25 ant to section 1106 of this Act shall not exceed 2 percent

1 instead of the percentage specified in such section: *Pro-*
2 *vided further*, That the amount set aside pursuant to the
3 previous proviso shall be transferred to and merged with
4 the appropriation for “Salaries and Expenses” for pur-
5 poses of program administration and oversight: *Provided*
6 *further*, That up to \$50,000,000 may be transferred to
7 federally authorized regional economic development com-
8 missions.

9 BUREAU OF THE CENSUS

10 PERIODIC CENSUSES AND PROGRAMS

11 For an additional amount for “Periodic Censuses and
12 Programs”, \$1,000,000,000: *Provided*, That section 1106
13 of this Act shall not apply to funds provided under this
14 heading.

15 NATIONAL TELECOMMUNICATIONS AND INFORMATION

16 ADMINISTRATION

17 SALARIES AND EXPENSES

18 For an additional amount for “Salaries and Ex-
19 penses”, \$350,000,000, to remain available until Sep-
20 tember 30, 2011: *Provided*, That funds shall be available
21 to establish the State Broadband Data and Development
22 Grant Program, as authorized by Public Law 110-385,
23 for the development and implementation of statewide ini-
24 tiatives to identify and track the availability and adoption
25 of broadband services within each State, and to develop

1 Deployment Grants and Broadband Deployment Grants
2 may be transferred between these programs: *Provided fur-*
3 *ther*, That the Committees on Appropriations of the House
4 of Representatives and the Senate shall be notified at least
5 15 days in advance of any transfer.

6 ~~DIGITAL-TO-ANALOG CONVERTER BOX PROGRAM~~

7 Notwithstanding any other provision of law, and in
8 addition to amounts otherwise provided in any other Act,
9 for costs associated with the Digital-to-Analog Converter
10 Box Program, \$650,000,000, to be available until Sep-
11 tember 30, 2009: *Provided*, That these funds shall be
12 available for coupons and related activities, including but
13 not limited to education, consumer support and outreach,
14 as deemed appropriate and necessary to ensure a timely
15 conversion of analog to digital television.

16 NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

17 SCIENTIFIC AND TECHNICAL RESEARCH AND SERVICES

18 For an additional amount for “Scientific and Tech-
19 nical Research and Services”, \$100,000,000.

20 INDUSTRIAL TECHNOLOGY SERVICES

21 For an additional amount for “Industrial Technology
22 Services”, \$100,000,000, of which \$70,000,000 shall be
23 available for the necessary expenses of the Technology In-
24 novation Program and \$30,000,000 shall be available for

1 the necessary expenses of the Hollings Manufacturing Ex-
 2 tension Partnership.

3 CONSTRUCTION OF RESEARCH FACILITIES

4 For an additional amount for “Construction of Re-
 5 search Facilities”, as authorized by sections ~~13~~ through
 6 ~~15~~ of the Act of March ~~13~~, 1901 (~~15 U.S.C. 278e–278e~~),
 7 \$~~300,000,000~~, for a competitive construction grant pro-
 8 gram for research science buildings: *Provided further*,
 9 That for peer-reviewed grants made under this heading,
 10 the time limitation provided in section ~~1103~~(b) of this Act
 11 shall be ~~120~~ days.

12 NATIONAL OCEANIC AND ATMOSPHERIC
 13 ADMINISTRATION
 14 OPERATIONS, RESEARCH, AND FACILITIES

15 For an additional amount for “Operations, Research,
 16 and Facilities”, \$400,000,000, for habitat restoration and
 17 mitigation activities.

18 PROCUREMENT, ACQUISITION AND CONSTRUCTION

19 For an additional amount for “Procurement, Acquisi-
 20 tion and Construction”, \$600,000,000, for accelerating
 21 satellite development and acquisition, acquiring climate
 22 sensors and climate modeling capacity, and establishing
 23 climate data records: *Provided further*, That not less than
 24 \$140,000,000 shall be available for climate data modeling.

Subtitle B—Justice

DEPARTMENT OF JUSTICE

STATE AND LOCAL LAW ENFORCEMENT ACTIVITIES

OFFICE OF JUSTICE PROGRAMS

STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE

For an additional amount for “State and Local Law Enforcement Assistance”, \$3,000,000,000, to be available for the Edward Byrne Memorial Justice Assistance Grant Program as authorized by subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968, (except that section 1001(e), and the special rules for Puerto Rico under section 505(g), of such Act shall not apply for purposes of this Act): *Provided*, That section 1106 of this Act shall not apply to funds provided under this heading.

COMMUNITY ORIENTED POLICING SERVICES

For an additional amount for “Community Oriented Policing Services”, \$1,000,000,000, to be available for grants under section 1701 of title I of the 1968 Act (42 U.S.C. 3796dd) for the hiring and rehiring of additional career law enforcement officers under part Q of such title notwithstanding subsection (i) of such section: *Provided*, That for peer-reviewed grants made under this heading, the time limitation provided in section 1103(b) of this Act shall be 120 days.

1

2 GENERAL PROVISIONS, THIS SUBTITLE

3 **SEC. 3201. WAIVER OF MATCHING REQUIREMENT AND SAL-**4 **ARY LIMIT UNDER COPS PROGRAM.**

5 Sections 1701(g) and 1704(e) of the Omnibus Crime

6 Control and Safe Street Act of 1968 (42 U.S.C.

7 3796dd(g) and 3796dd-3(e)) shall not apply with respect

8 to funds appropriated in this or any other Act making ap-

9 propriations for fiscal year 2009 or 2010 for Community

10 Oriented Policing Services authorized under part Q of

11 such Act of 1968.

12 **Subtitle C—Science**

13 NATIONAL AERONAUTICS AND SPACE

14 ADMINISTRATION

15 SCIENCE

16 For an additional amount for “Science”,

17 \$400,000,000, of which not less than \$250,000,000 shall

18 be solely for accelerating the development of the tier 1 set

19 of Earth science climate research missions recommended

20 by the National Academies Decadal Survey.

21 AERONAUTICS

22 For an additional amount for “Aeronautics”,

23 \$150,000,000.

1 CROSS AGENCY SUPPORT PROGRAMS

2 For an additional amount for “Cross Agency Support
3 Programs”, for necessary expenses for restoration and
4 mitigation of National Aeronautics and Space Administra-
5 tion owned infrastructure and facilities related to the con-
6 sequences of hurricanes, floods, and other natural disas-
7 ters occurring during 2008 for which the President de-
8 clared a major disaster under title IV of the Robert T.
9 Stafford Disaster Relief and Emergency Assistance Act of
10 1974, \$50,000,000.

11 NATIONAL SCIENCE FOUNDATION

12 RESEARCH AND RELATED ACTIVITIES

13 For an additional amount for “Research and Related
14 Activities”, \$2,500,000,000: *Provided*, That \$300,000,000
15 shall be available solely for the Major Research Instru-
16 mentation program and \$200,000,000 shall be for activi-
17 ties authorized by title II of Public Law 100-570 for aca-
18 demic research facilities modernization: *Provided*, That for
19 peer-reviewed grants made under this heading, the time
20 limitation provided in section 1103(b) of this Act shall be
21 120 days.

22 EDUCATION AND HUMAN RESOURCES

23 For an additional amount for “Education and
24 Human Resources”, \$100,000,000: *Provided*, That
25 \$60,000,000 shall be for activities authorized by section

1 7030 of Public Law 110–69 and \$40,000,000 shall be for
 2 activities authorized by section 9 of the National Science
 3 Foundation Authorization Act of 2002 (42 U.S.C. 1862n).

4 MAJOR RESEARCH EQUIPMENT AND FACILITIES

5 CONSTRUCTION

6 For an additional amount for “Major Research
 7 Equipment and Facilities Construction”, \$400,000,000,
 8 which shall be available only for approved projects.

9 TITLE IV—DEFENSE

10 DEPARTMENT OF DEFENSE

11 FACILITY INFRASTRUCTURE INVESTMENTS, DEFENSE

12 For expenses, not otherwise provided for, to improve,
 13 repair and modernize Department of Defense facilities, re-
 14 store and modernize Army barracks, and invest in the en-
 15 ergy efficiency of Department of Defense facilities,
 16 \$4,500,000,000, for Facilities Sustainment, Restoration
 17 and Modernization programs of the Department of De-
 18 fense (including minor construction and major mainte-
 19 nance and repair), which shall be available as follows:

20 (1) “Operation and Maintenance, Army”,
 21 \$1,490,804,000.

22 (2) “Operation and Maintenance, Navy”,
 23 \$624,380,000.

24 (3) “Operation and Maintenance, Marine
 25 Corps”, \$128,499,000.

1 (4) “Operation and Maintenance, Air Force”,
2 \$1,236,810,000.

3 (5) “Defense Health Program”, \$454,658,000.

4 (6) “Operation and Maintenance, Army Re-
5 serve”, \$110,899,000.

6 (7) “Operation and Maintenance, Navy Re-
7 serve”, \$62,162,000.

8 (8) “Operation and Maintenance, Marine Corps
9 Reserve”, \$45,038,000.

10 (9) “Operation and Maintenance, Air Force Re-
11 serve”, \$14,881,000.

12 (10) “Operation and Maintenance, Army Na-
13 tional Guard”, \$302,700,000.

14 (11) “Operation and Maintenance, Air National
15 Guard”, \$29,169,000.

16 ENERGY RESEARCH AND DEVELOPMENT, DEFENSE

17 For expenses, not otherwise provided for, for re-
18 search, development, test and evaluation programs for im-
19 provements in energy generation, transmission, regulation,
20 use, and storage, for military installations, military vehi-
21 cles, and other military equipment, \$350,000,000, which
22 shall be available as follows:

23 (1) “Research, Development, Test and Evalua-
24 tion, Army”, \$87,500,000.

1 (2) “Research, Development, Test and Evalua-
2 tion, Navy”, \$87,500,000.

3 (3) “Research, Development, Test and Evalua-
4 tion, Air Force”, \$87,500,000.

5 (4) “Research, Development, Test and Evalua-
6 tion, Defense-Wide”, \$87,500,000

7 **TITLE V—ENERGY AND WATER**

8 DEPARTMENT OF THE ARMY

9 CORPS OF ENGINEERS—CIVIL

10 CONSTRUCTION

11 For an additional amount for “Construction”,
12 \$2,000,000,000: *Provided*, That section 102 of Public
13 Law 109–103 (33 U.S.C. 2221) shall not apply to funds
14 provided in this paragraph: *Provided further*, That not-
15 withstanding any other provision of law, funds provided
16 in this paragraph shall not be cost shared with the Inland
17 Waterways Trust Fund as authorized in Public Law 99–
18 662: *Provided further*, That funds provided in this para-
19 graph may only be used for programs, projects or activities
20 previously funded: *Provided further*, That the Corps of En-
21 gineers is directed to prioritize funding for activities based
22 on the ability to accelerate existing contracts or fully fund
23 project elements and contracts for such elements in a time
24 period of 2 years after the date of enactment of this Act
25 giving preference to projects and activities that are labor

1 intensive: *Provided further*, That funds provided in this
2 paragraph shall be used for elements of projects, programs
3 or activities that can be completed using funds provided
4 herein: *Provided further*, That funds appropriated in this
5 paragraph may be used by the Secretary of the Army, act-
6 ing through the Chief of Engineers, to undertake work au-
7 thorized to be carried out in accordance with one or more
8 of section 14 of the Flood Control Act of 1946 (33 U.S.C.
9 701r), section 205 of the Flood Control Act of 1948 (33
10 U.S.C. 701s), section 206 of the Water Resources Devel-
11 opment Act of 1996 (33 U.S.C. 2330), and section 1135
12 of the Water Resources Development Act of 1986 (33
13 U.S.C. 2309a), notwithstanding the program cost limita-
14 tions set forth in those sections: *Provided further*, That
15 the limitation concerning total project costs in section 902
16 of the Water Resources Development Act of 1986, as
17 amended (33 U.S.C. 2280), shall not apply during fiscal
18 year 2009 to any project that received funds provided in
19 this title: *Provided further*, That for projects that are
20 being completed with funds appropriated in this Act that
21 are otherwise expired or lapsed for obligation, expired or
22 lapsed funds appropriated in this Act may be used to pay
23 the cost of associated supervision, inspection, overhead,
24 engineering and design on those projects and on subse-
25 quent claims, if any: *Provided further*, That the Secretary

1 of the Army shall submit a quarterly report to the Com-
2 mittees on Appropriations of the House of Representatives
3 and the Senate detailing the allocation, obligation and ex-
4 penditures of these funds, beginning not later than 45
5 days after enactment of this Act.

6 MISSISSIPPI RIVER AND TRIBUTARIES

7 For an additional amount for “Mississippi River and
8 Tributaries”, \$250,000,000: *Provided*, That funds pro-
9 vided in this paragraph may only be used for programs,
10 projects, or activities previously funded: *Provided further*,
11 That the Corps of Engineers is directed to prioritize fund-
12 ing for activities based on the ability to accelerate existing
13 contracts or fully fund project elements and contracts for
14 such elements in a time period of 2 years after the date
15 of enactment of this Act giving preference to projects and
16 activities that are labor intensive: *Provided further*, That
17 funds provided in this paragraph shall be used for ele-
18 ments of projects, programs, or activities that can be com-
19 pleted using funds provided herein: *Provided further*, That
20 for projects that are being completed with funds appro-
21 priated in this Act that are otherwise expired or lapsed
22 for obligation, expired or lapsed funds appropriated in this
23 Act may be used to pay the cost of associated supervision,
24 inspection, overhead, engineering and design on those
25 projects and on subsequent claims, if any: *Provided fur-*

1 *ther*, That the Secretary of the Army shall submit a quar-
2 terly report to the Committees on Appropriations of the
3 House of Representatives and the Senate detailing the al-
4 location, obligation and expenditures of these funds, begin-
5 ning not later than 45 days after enactment of this Act.

6 OPERATION AND MAINTENANCE

7 For an additional amount for “Operation and Main-
8 tenance”, \$2,225,000,000: *Provided*, That the Corps of
9 Engineers is directed to prioritize funding for activities
10 based on the ability to accelerate existing contracts or fully
11 fund project elements and contracts for such elements in
12 a time period of 2 years after the date of enactment of
13 this Act giving preference to projects and activities that
14 are labor intensive: *Provided further*, That funds provided
15 in this paragraph shall be used for elements of projects,
16 programs, or activities that can be completed using funds
17 provided herein: *Provided further*, That for projects that
18 are being completed with funds appropriated in this Act
19 that are otherwise expired or lapsed for obligation, expired
20 or lapsed funds appropriated in this Act may be used to
21 pay the cost of associated supervision, inspection, over-
22 head, engineering and design on those projects and on
23 subsequent claims, if any: *Provided further*, That the Sec-
24 retary of the Army shall submit a quarterly report to the
25 Committees on Appropriations of the House of Represent-

1 atives and the Senate detailing the allocation, obligation
2 and expenditures of these funds, beginning not later than
3 45 days after enactment of this Act.

4 REGULATORY PROGRAM

5 For an additional amount for “Regulatory Program”,
6 \$25,000,000.

7 DEPARTMENT OF THE INTERIOR

8 BUREAU OF RECLAMATION

9 WATER AND RELATED RESOURCES

10 For an additional amount for “Water and Related
11 Resources”, \$500,000,000: *Provided*, That of the amount
12 appropriated under this heading, not less than
13 \$126,000,000 shall be used for water reclamation and
14 reuse projects authorized under title XVI of Public Law
15 102-575: *Provided further*, That of the amount appro-
16 priated under this heading, not less than \$80,000,000
17 shall be used for rural water projects and these funds shall
18 be expended primarily on water intake and treatment fa-
19 cilities of such projects: *Provided further*, That the costs
20 of reimbursable activities, other than for maintenance and
21 rehabilitation, carried out with funds made available under
22 this heading shall be repaid pursuant to existing authori-
23 ties and agreements: *Provided further*, That the costs of
24 maintenance and rehabilitation activities carried out with
25 funds provided in this Act shall be repaid pursuant to ex-

1 isting authority, except the length of repayment period
 2 shall be determined on needs-based criteria to be estab-
 3 lished and adopted by the Commissioner of the Bureau
 4 of Reclamation, but in no case shall the repayment period
 5 exceed 25 years.

6 DEPARTMENT OF ENERGY

7 ENERGY PROGRAMS

8 ENERGY EFFICIENCY AND RENEWABLE ENERGY

9 For an additional amount for “Energy Efficiency and
 10 Renewable Energy”, \$18,500,000,000, which shall be used
 11 as follows:

12 (1) \$2,000,000,000 shall be for expenses nec-
 13 essary for energy efficiency and renewable energy re-
 14 search, development, demonstration and deployment
 15 activities, to accelerate the development of tech-
 16 nologies, to include advanced batteries, of which not
 17 less than \$800,000,000 is for biomass and
 18 \$400,000,000 is for geothermal technologies.

19 (2) \$500,000,000 shall be for expenses nec-
 20 essary to implement the programs authorized under
 21 part E of title III of the Energy Policy and Con-
 22 servation Act (42 U.S.C. 6341 et seq.).

23 (3) \$1,000,000,000 shall be for the cost of
 24 grants to institutional entities for energy sustain-
 25 ability and efficiency under section 399A of the En-

1 ergy Policy and Conservation Act (42 U.S.C.
2 6371h-1).

3 (4) \$6,200,000,000 shall be for the Weatheriza-
4 tion Assistance Program under part A of title IV of
5 the Energy Conservation and Production Act (42
6 U.S.C. 6861 et seq.).

7 (5) \$3,500,000,000 shall be for Energy Effi-
8 ciency and Conservation Block Grants, for imple-
9 mentation of programs authorized under subtitle E
10 of title V of the Energy Independence and Security
11 Act of 2007 (42 U.S.C. 17151 et seq.).

12 (6) \$3,400,000,000 shall be for the State En-
13 ergy Program authorized under part D of title III
14 of the Energy Policy and Conservation Act (42
15 U.S.C. 6321).

16 (7) \$200,000,000 shall be for expenses nec-
17 essary to implement the programs authorized under
18 section 131 of the Energy Independence and Secu-
19 rity Act of 2007 (42 U.S.C. 17011).

20 (8) \$300,000,000 shall be for expenses nec-
21 essary to implement the program authorized under
22 section 124 of the Energy Policy Act of 2005 (42
23 U.S.C. 15821) and the Energy Star program.

24 (9) \$400,000,000 shall be for expenses nec-
25 essary to implement the program authorized under

1 section 721 of the Energy Policy Act of 2005 (42
2 U.S.C. 16071).

3 ~~(10) \$1,000,000,000 shall be for expenses nec-~~
4 ~~essary for the manufacturing of advanced batteries~~
5 ~~authorized under section 136(b)(1)(B) of the Energy~~
6 ~~Independence and Security Act of 2007 (42 U.S.C.~~
7 ~~17013(b)(1)(B)).~~

8 *Provided*, That notwithstanding section 3304 of title 5,
9 United States Code, and without regard to the provisions
10 of sections 3309 through 3318 of such title 5, the Sec-
11 retary of Energy may, upon a determination that there
12 is a severe shortage of candidates or a critical hiring need
13 for particular positions, recruit and directly appoint highly
14 qualified individuals into the competitive service: *Provided*
15 *further*, That such authority shall not apply to positions
16 in the Excepted Service or the Senior Executive Service:
17 *Provided further*, That any action authorized herein shall
18 be consistent with the merit principles of section 2301 of
19 such title 5, and the Department shall comply with the
20 public notice requirements of section 3327 of such title
21 5.

22 ELECTRICITY DELIVERY AND ENERGY RELIABILITY

23 For an additional amount for “Electricity Delivery
24 and Energy Reliability,” \$4,500,000,000: *Provided*, That
25 funds shall be available for expenses necessary for elec-

1 tricity delivery and energy reliability activities to mod-
2 ernize the electric grid, enhance security and reliability of
3 the energy infrastructure, energy storage research, devel-
4 opment, demonstration and deployment, and facilitate re-
5 covery from disruptions to the energy supply, and for im-
6 plementation of programs authorized under title XIII of
7 the Energy Independence and Security Act of 2007 (42
8 U.S.C. 17381 et seq.): *Provided further*, That of such
9 amounts, \$100,000,000 shall be for worker training: *Pro-*
10 *vided further*, That the Secretary of Energy may use or
11 transfer amounts provided under this heading to carry out
12 new authority for transmission improvements, if such au-
13 thority is enacted in any subsequent Act, consistent with
14 existing fiscal management practices and procedures.

15 ADVANCED BATTERY LOAN GUARANTEE PROGRAM

16 For the cost of guaranteed loans as authorized by
17 section 135 of the Energy Independence and Security Act
18 of 2007 (42 U.S.C. 17012), \$1,000,000,000, to remain
19 available until expended: *Provided*, That of such amount,
20 \$10,000,000 shall be used for administrative expenses in
21 carrying out the guaranteed loan program, and shall be
22 in lieu of the amount set aside under section 1106 of this
23 Act: *Provided further*, That the cost of such loans, includ-
24 ing the cost of modifying such loans, shall be as defined
25 in section 502 of the Congressional Budget Act of 1974.

1 INSTITUTIONAL LOAN GUARANTEE PROGRAM

2 For the cost of guaranteed loans as authorized by
3 section ~~399A~~ of the Energy Policy and Conservation Act
4 (~~42 U.S.C. 6371h-1~~), \$500,000,000: *Provided*, That of
5 such amount, \$10,000,000 shall be used for administra-
6 tive expenses in carrying out the guaranteed loan pro-
7 gram, and shall be in lieu of the amount set aside under
8 section 1106 of this Act: *Provided further*, That the cost
9 of such loans, including the cost of modifying such loans,
10 shall be as defined in section 502 of the Congressional
11 Budget Act of 1974.

12 INNOVATIVE TECHNOLOGY LOAN GUARANTEE PROGRAM

13 For an additional amount for “Innovative Technology
14 Loan Guarantee Program” for the cost of guaranteed
15 loans authorized by section 1705 of the Energy Policy Act
16 of 2005, \$8,000,000,000: *Provided*, That of such amount,
17 \$25,000,000 shall be used for administrative expenses in
18 carrying out the guaranteed loan program, and shall be
19 in lieu of the amount set aside under section 1106 of this
20 Act: *Provided further*, That the cost of such loans, includ-
21 ing the cost of modifying such loans, shall be as defined
22 in section 502 of the Congressional Budget Act of 1974.

23 FOSSIL ENERGY

24 For an additional amount for “Fossil Energy”,
25 \$2,400,000,000 for necessary expenses to demonstrate

1 carbon capture and sequestration technologies as author-
 2 ized under section 702 of the Energy Independence and
 3 Security Act of 2007.

4 SCIENCE

5 For an additional amount for “Science”,
 6 \$2,000,000,000: *Provided*, That of such amounts, not less
 7 than \$400,000,000 shall be used for the Advanced Re-
 8 search Projects Agency—Energy authorized under section
 9 5012 of the America COMPETES Act (42 U.S.C. 16538):
 10 *Provided further*, That of such amounts, not less than
 11 \$100,000,000 shall be used for advanced scientific com-
 12 puting.

13 ENVIRONMENTAL AND OTHER DEFENSE

14 ACTIVITIES

15 DEFENSE ENVIRONMENTAL CLEANUP

16 For an additional amount for “Defense Environ-
 17 mental Cleanup,” \$500,000,000: *Provided*, That such
 18 amounts shall be used for elements of projects, programs,
 19 or activities that can be completed using funds provided
 20 herein.

21 GENERAL PROVISIONS, THIS TITLE

22 **SEC. 5001. WESTERN AREA POWER ADMINISTRATION BOR-** 23 **ROWING AUTHORITY.**

24 The Hoover Power Plant Act of 1984 (Public Law
 25 98–381) is amended by adding at the end the following:

1 **“TITLE III—BORROWING**
2 **AUTHORITY**

3 **“SEC. 301. WESTERN AREA POWER ADMINISTRATION BOR-**
4 **ROWING AUTHORITY.**

5 “(a) DEFINITIONS.—In this section—

6 “(1) ADMINISTRATOR.—The term ‘Adminis-

7 trator’ means the Administrator of the Western

8 Area Power Administration.

9 “(2) SECRETARY.—The term ‘Secretary’ means

10 the Secretary of the Treasury.

11 “(b) AUTHORITY.—

12 “(1) IN GENERAL.—Notwithstanding any other

13 provision of law, subject to paragraphs (2) through

14 (5)—

15 “(A) the Western Area Power Administra-

16 tion may borrow funds from the Treasury; and

17 “(B) the Secretary shall, without further

18 appropriation and without fiscal year limitation,

19 loan to the Western Area Power Administra-

20 tion, on such terms as may be fixed by the Ad-

21 ministrator and the Secretary, such sums (not

22 to exceed, in the aggregate (including deferred

23 interest), \$3,250,000,000 in outstanding repay-

24 able balances at any 1 time) as, in the judge-

1 ment of the Administrator, are from time to
2 time required for the purpose of—

3 “(i) constructing, financing, facili-
4 tating, or studying construction of new or
5 upgraded electric power transmission lines
6 and related facilities with at least 1 ter-
7 minus within the area served by the West-
8 ern Area Power Administration; and

9 “(ii) delivering or facilitating the de-
10 livery of power generated by renewable en-
11 ergy resources constructed or reasonably
12 expected to be constructed after the date
13 of enactment of this section.

14 “(2) INTEREST.—The rate of interest to be
15 charged in connection with any loan made pursuant
16 to this subsection shall be fixed by the Secretary,
17 taking into consideration market yields on out-
18 standing marketable obligations of the United States
19 of comparable maturities as of the date of the loan.

20 “(3) REFINANCING.—The Western Area Power
21 Administration may refinance loans taken pursuant
22 to this section within the Treasury.

23 “(4) PARTICIPATION.—The Administrator may
24 permit other entities to participate in projects fi-
25 nanced under this section.

1 “(5) CONGRESSIONAL REVIEW OF DISBURSE-
2 MENT.—Effective upon the date of enactment of this
3 section, the Administrator shall have the authority
4 to have utilized \$1,750,000,000 at any one time. If
5 the Administrator seeks to borrow funds above
6 \$1,750,000,000, the funds will be disbursed unless
7 there is enacted, within 90 calendar days of the first
8 such request, a joint resolution that rescinds the re-
9 mainder of the balance of the borrowing authority
10 provided in this section.

11 “(e) TRANSMISSION LINE AND RELATED FACILITY
12 PROJECTS.—

13 “(1) IN GENERAL.—For repayment purposes,
14 each transmission line and related facility project in
15 which the Western Area Power Administration partici-
16 pates pursuant to this section shall be treated as
17 separate and distinct from—

18 “(A) each other such project; and

19 “(B) all other Western Area Power Admin-
20 istration power and transmission facilities.

21 “(2) PROCEEDS.—The Western Area Power
22 Administration shall apply the proceeds from the use
23 of the transmission capacity from an individual
24 project under this section to the repayment of the
25 principal and interest of the loan from the Treasury

1 attributable to that project, after reserving such
2 funds as the Western Area Power Administration
3 determines are necessary—

4 “(A) to pay for any ancillary services that
5 are provided; and

6 “(B) to meet the costs of operating and
7 maintaining the new project from which the
8 revenues are derived.

9 “(3) SOURCE OF REVENUE.—Revenue from the
10 use of projects under this section shall be the only
11 source of revenue for—

12 “(A) repayment of the associated loan for
13 the project; and

14 “(B) payment of expenses for ancillary
15 services and operation and maintenance.

16 “(4) LIMITATION ON AUTHORITY.—Nothing in
17 this section confers on the Administrator any obliga-
18 tion to provide ancillary services to users of trans-
19 mission facilities developed under this section.

20 “(d) CERTIFICATION.—

21 “(1) IN GENERAL.—For each project in which
22 the Western Area Power Administration participates
23 pursuant to this section, the Administrator shall cer-
24 tify, prior to committing funds for any such project,
25 that—

1 “(A) the project is in the public interest;

2 “(B) the project will not adversely impact
3 system reliability or operations, or other statu-
4 tory obligations; and

5 “(C) it is reasonable to expect that the
6 proceeds from the project shall be adequate to
7 make repayment of the loan.

8 “(2) FORGIVENESS OF BALANCES.—

9 “(A) IN GENERAL.—If, at the end of the
10 useful life of a project, there is a remaining bal-
11 ance owed to the Treasury under this section,
12 the balance shall be forgiven.

13 “(B) UNCONSTRUCTED PROJECTS.—Funds
14 expended to study projects that are considered
15 pursuant to this section but that are not con-
16 structed shall be forgiven.

17 “(C) NOTIFICATION.—The Administrator
18 shall notify the Secretary of such amounts as
19 are to be forgiven under this paragraph.

20 “(e) PUBLIC PROCESSES.—

21 “(1) POLICIES AND PRACTICES.—Prior to re-
22 questing any loans under this section, the Adminis-
23 trator shall use a public process to develop practices
24 and policies that implement the authority granted by
25 this section.

1 “(2) REQUESTS FOR INTERESTS.—In the
2 course of selecting potential projects to be funded
3 under this section, the Administrator shall seek re-
4 quests for interest from entities interested in identi-
5 fying potential projects through one or more notices
6 published in the Federal Register.”.

7 **SEC. 5002. BONNEVILLE POWER ADMINISTRATION.**

8 For the purposes of providing funds to assist in fi-
9 nancing the construction, acquisition, and replacement of
10 the transmission system of the Bonneville Power Adminis-
11 tration and to implement the authority of the Adminis-
12 trator under the Pacific Northwest Electric Power Plan-
13 ning and Conservation Act (16 U.S.C. 839 et seq.), an
14 additional \$3,250,000,000 in borrowing authority is made
15 available under the Federal Columbia River Transmission
16 System Act (16 U.S.C. 838 et seq.), to remain outstanding
17 at any time.

18 **SEC. 5003. APPROPRIATIONS TRANSFER AUTHORITY.**

19 Not to exceed 20 percent of the amounts made avail-
20 able in this Act to the Department of Energy for “Energy
21 Efficiency and Renewable Energy”, “Electricity Delivery
22 and Energy Reliability”, and “Advanced Battery Loan
23 Guarantee Program” may be transferred within and be-
24 tween such accounts, except that no amount specified
25 under any such heading may be increased or decreased

1 by more than a total of 20 percent by such transfers, and
 2 notification of such transfers shall be submitted promptly
 3 to the Committees on Appropriations of the House of Rep-
 4 resentatives and the Senate.

5 **TITLE VI—FINANCIAL SERVICES**
 6 **AND GENERAL GOVERNMENT**

7 **Subtitle A—General Services**

8 GENERAL SERVICES ADMINISTRATION

9 FEDERAL BUILDINGS FUND

10 LIMITATIONS ON AVAILABILITY OF REVENUE

11 (INCLUDING TRANSFER OF FUNDS)

12 For an additional amount to be deposited in the Fed-
 13 eral Buildings Fund, \$7,700,000,000 for real property ac-
 14 tivities with priority given to activities that can commence
 15 promptly following enactment of this Act; of which up to
 16 \$1,000,000,000 shall be used for construction, repair, and
 17 alteration of border facilities and land ports of entry; of
 18 which not less than \$6,000,000,000 shall be used for con-
 19 struction, repair, and alteration of Federal buildings for
 20 projects that will create the greatest impact on energy effi-
 21 ciency and conservation; of which \$108,000,000 shall re-
 22 main available until September 30, 2012, and shall be
 23 used for rental of space costs associated with the construc-
 24 tion, repair, and alteration of these projects; *Provided,*
 25 That of the amounts provided, \$160,000,000 shall remain

1 available until September 30, 2012, and shall be for build-
2 ing operations in support of the activities described in this
3 paragraph: *Provided further*, That the preceding proviso
4 shall apply to this appropriation in lieu of the provisions
5 of section 1106 of this Act: *Provided further*, That the Ad-
6 ministrator of General Services is authorized to initiate
7 design, construction, repair, alteration, leasing, and other
8 projects through existing authorities of the Administrator:
9 *Provided further*, That the Administrator shall submit a
10 detailed plan, by project, regarding the use of funds to
11 the Committees on Appropriations of the House of Rep-
12 resentatives and the Senate within 30 days after enact-
13 ment of this Act, and shall provide notification to the
14 Committees within 15 days prior to any changes regarding
15 the use of these funds: *Provided further*, That the Admin-
16 istrator shall report to the Committees on the obligation
17 of these funds on a quarterly basis beginning on June 30,
18 2009: *Provided further*, That of the amounts provided,
19 \$4,000,000 shall be transferred to and merged with “Gov-
20 ernment-Wide Policy”, for the Office of Federal High-Per-
21 formance Green Buildings as authorized in the Energy
22 Independence and Security Act of 2007 (Public Law 110-
23 140).

1 ENERGY EFFICIENT FEDERAL MOTOR VEHICLE FLEET
2 PROCUREMENT

3 For capital expenditures and necessary expenses of
4 the General Services Administration's Motor Vehicle Ac-
5 quisition and Motor Vehicle Leasing programs for the ac-
6 quisition of motor vehicles, including plug-in and alter-
7 native fuel vehicles, \$600,000,000: *Provided*, That the
8 amount set aside from this appropriation pursuant to sec-
9 tion 1106 of this Act shall be 1 percent instead of the
10 percentage specified in such section: *Provided further*,
11 That none of these funds may be obligated until the Ad-
12 ministrator of General Services submits to the Committees
13 on Appropriations of the House of Representatives and the
14 Senate, within 90 days after enactment of this Act, a plan
15 for expenditure of the funds that details the current inven-
16 tory of the Federal fleet owned by the General Services
17 Administration, as well as other Federal agencies, and the
18 strategy to expend these funds to replace a portion of the
19 Federal fleet with the goal of substantially increasing en-
20 ergy efficiency over the current status, including increas-
21 ing fuel efficiency and reducing emissions: *Provided fur-*
22 *ther*, That the Administrator shall report to the Commit-
23 tees on the obligation of these funds on a quarterly basis
24 beginning on June 30, 2009.

1 **Subtitle B—Small Business**

2 SMALL BUSINESS ADMINISTRATION

3 BUSINESS LOANS PROGRAM ACCOUNT

4 (INCLUDING TRANSFERS OF FUNDS)

5 For the cost of direct loans and loan guarantees au-
 6 thorized by sections 6202 through 6205 of this Act,
 7 \$426,000,000: *Provided*, That such cost, including the
 8 cost of modifying such loans, shall be as defined in section
 9 502 of the Congressional Budget Act of 1974. In addition,
 10 for administrative expenses to carry out the direct loan
 11 and loan guarantee programs authorized by this Act,
 12 \$4,000,000, which may be transferred to and merged with
 13 the appropriations for Salaries and Expenses: *Provided*,
 14 That this sentence shall apply to this appropriation in lieu
 15 of the provisions of section 1106 of this Act.

16 GENERAL PROVISIONS, THIS SUBTITLE

17 **SEC. 6201. ECONOMIC STIMULUS LENDING PROGRAM FOR**
 18 **SMALL BUSINESSES.**

19 (a) PURPOSE.—The purpose of this section is to per-
 20 mit the Small Business Administration to guarantee up
 21 to 95 percent of qualifying small business loans made by
 22 eligible lenders.

23 (b) DEFINITIONS.—For purposes of this section:

24 (1) The term “Administrator” means the Ad-
 25 ministrator of the Small Business Administration.

1 (2) The term “qualifying small business loan”
2 means any loan to a small business concern that
3 would be eligible for a loan guarantee under section
4 7(a) of the Small Business Act (15 U.S.C. 636) or
5 title V of the Small Business Investment Act of
6 1958 (15 U.S.C. 695 and following).

7 (3) The term “small business concern” has the
8 same meaning as provided by section 3 of the Small
9 Business Act (15 U.S.C. 632).

10 (c) APPLICATION.—In order to participate in the loan
11 guarantee program under this section a lender shall sub-
12 mit an application to the Administrator for the guarantee
13 of up to 95 percent of the principal amount of a qualifying
14 small business loan. The Administrator shall approve or
15 deny each such application within 5 business days after
16 receipt thereof. The Administrator may not delegate to
17 lenders the authority to approve or disapprove such appli-
18 cations.

19 (d) FEES.—The Administrator may charge fees for
20 guarantees issued under this section. Such fees shall not
21 exceed the fees permitted for loan guarantees under sec-
22 tion 7(a) of the Small Business Act (15 U.S.C. 631 and
23 following).

24 (e) INTEREST RATES.—The Administrator may not
25 guarantee under this section any loan that bears interest

1 at a rate higher than 3 percent above the higher of either
2 of the following as quoted in the Wall Street Journal on
3 the first business day of the week in which such guarantee
4 is issued:

5 (1) The London interbank offered rate
6 (LIBOR) for a 3-month period.

7 (2) The Prime Rate.

8 (f) QUALIFIED BORROWERS.—

9 (1) ALIENS UNLAWFULLY PRESENT IN THE
10 UNITED STATES.—A loan guarantee may not be
11 made under this section for a loan made to a con-
12 cern if an individual who is an alien unlawfully
13 present in the United States—

14 (A) has an ownership interest in that con-
15 cern; or

16 (B) has an ownership interest in another
17 concern that itself has an ownership interest in
18 that concern.

19 (2) FIRMS IN VIOLATION OF IMMIGRATION
20 LAWS.—No loan guarantee may be made under this
21 section for a loan to any entity found, based on a
22 determination by the Secretary of Homeland Secu-
23 rity or the Attorney General to have engaged in a
24 pattern or practice of hiring, recruiting or referring

1 for a fee, for employment in the United States an
2 alien knowing the person is an unauthorized alien.

3 (g) ~~CRIMINAL BACKGROUND CHECKS.~~—Prior to the
4 approval of any loan guarantee under this section, the Ad-
5 ministrator may verify the applicant's criminal back-
6 ground, or lack thereof, through the best available means,
7 including, if possible, use of the National Crime Informa-
8 tion Center computer system at the Federal Bureau of In-
9 vestigation.

10 (h) ~~APPLICATION OF OTHER LAW.~~—Nothing in this
11 section shall be construed to exempt any activity of the
12 Administrator under this section from the Federal Credit
13 Reform Act of 1990 (title V of the Congressional Budget
14 and Impoundment Control Act of 1974; 2 U.S.C. 661 and
15 following).

16 (i) ~~SUNSET.~~—Loan guarantees may not be issued
17 under this section after the date 90 days after the date
18 of establishment (as determined by the Administrator) of
19 the economic recovery program under section 6204.

20 (j) ~~SMALL BUSINESS ACT PROVISIONS.~~—The provi-
21 sions of the Small Business Act applicable to loan guaran-
22 tees under section 7 of that Act shall apply to loan guaran-
23 tees under this section except as otherwise provided in this
24 section.

1 (k) AUTHORIZATION.—There are authorized to be ap-
2 propriated such sums as may be necessary to carry out
3 this section.

4 **SEC. 6202. ESTABLISHMENT OF SBA SECONDARY MARKET**
5 **LENDING AUTHORITY.**

6 (a) PURPOSE.—The purpose of this section is to pro-
7 vide the Small Business Administration with the authority
8 to establish a Secondary Market Lending Authority within
9 the SBA to make loans to the systemically important SBA
10 secondary market broker-dealers who operate the SBA
11 secondary market.

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

13 (1) The term “Administrator” means the Ad-
14 ministrator of the SBA.

15 (2) The term “SBA” means the Small Business
16 Administration.

17 (3) The terms “Secondary Market Lending Au-
18 thority” and “Authority” mean the office established
19 under subsection (c).

20 (4) The term “SBA secondary market” means
21 the market for the purchase and sale of loans origi-
22 nated, underwritten, and closed under the Small
23 Business Act.

24 (5) The term “Systemically Important Sec-
25 ondary Market Broker-Dealers” mean those entities

1 designated under subsection (c)(1) as vital to the
2 continued operation of the SBA secondary market
3 by reason of their purchase and sale of the govern-
4 ment guaranteed portion of loans, or pools of loans,
5 originated, underwritten, and closed under the Small
6 Business Act.

7 (c) RESPONSIBILITIES, AUTHORITIES, ORGANIZA-
8 TION, AND LIMITATIONS.—

9 (1) DESIGNATION OF SYSTEMICALLY IMPOR-
10 TANT SBA SECONDARY MARKET BROKER-DEAL-
11 ERS.—The Administrator shall establish a process to
12 designate, in consultation with the Board of Gov-
13 ernors of the Federal Reserve and the Secretary of
14 the Treasury, Systemically Important Secondary
15 Market Broker-Dealers.

16 (2) ESTABLISHMENT OF SBA SECONDARY MAR-
17 KET LENDING AUTHORITY.—

18 (A) ORGANIZATION.—

19 (i) The Administrator shall establish
20 within the SBA an office to provide loans
21 to Systemically Important Secondary Mar-
22 ket Broker-dealers to be used for the pur-
23 pose of financing the inventory of the gov-
24 ernment guaranteed portion of loans, origi-

1 nated, underwritten, and closed under the
2 Small Business Act or pools of such loans.

3 (ii) The Administrator shall appoint a
4 Director of the Authority who shall report
5 to the Administrator.

6 (iii) The Administrator is authorized
7 to hire such personnel as are necessary to
8 operate the Authority.

9 (iv) The Administrator may contract
10 such Authority operations as he determines
11 necessary to qualified third-party compa-
12 nies or individuals.

13 (v) The Administrator is authorized to
14 contract with private sector fiduciary and
15 custodial agents as necessary to operate
16 the Authority.

17 (B) LOANS.—

18 (i) The Administrator shall establish
19 by rule a process under which Systemically
20 Important SBA Secondary Market Broker-
21 Dealers designated under paragraph (1)
22 may apply to the Administrator for loans
23 under this section.

24 (ii) The rule under clause (i) shall
25 provide a process for the Administrator to

1 consider and make decisions regarding
2 whether or not to extend a loan applied for
3 under this section. Such rule shall include
4 provisions to assure each of the following:

5 (I) That loans made under this
6 section are for the sole purpose of fi-
7 nancing the inventory of the govern-
8 ment guaranteed portion of loans,
9 originated, underwritten, and closed
10 under the Small Business Act or pools
11 of such loans.

12 (II) That loans made under this
13 section are fully collateralized to the
14 satisfaction of the Administrator.

15 (III) That there is no limit to the
16 frequency in which a borrower may
17 borrow under this section unless the
18 Administrator determines that doing
19 so would create an undue risk of loss
20 to the agency or the United States.

21 (IV) That there is no limit on the
22 size of a loan, subject to the discretion
23 of the Administrator.

24 (iii) Interest on loans under this sec-
25 tion shall not exceed the Federal Funds

1 target rate as established by the Federal
2 Reserve Board of Governors plus 25 basis
3 points.

4 (iv) The rule under this section shall
5 provide for such loan documents, legal cov-
6 enants, collateral requirements and other
7 required documentation as necessary to
8 protect the interests of the agency, the
9 United States, and the taxpayer.

10 (v) The Administrator shall establish
11 custodial accounts to safeguard any collat-
12 eral pledged to the SBA in connection with
13 a loan under this section.

14 (vi) The Administrator shall establish
15 a process to disburse and receive funds to
16 and from borrowers under this section.

17 (C) LIMITATIONS ON USE OF LOAN PRO-
18 CEEDS BY SYSTEMICALLY IMPORTANT SEC-
19 ONDARY MARKET BROKER-DEALERS.—The Ad-
20 ministrator shall ensure that borrowers under
21 this section are using funds provided under this
22 section only for the purpose specified in sub-
23 paragraph (B)(ii)(I). If the Administrator finds
24 that such funds were used for any other pur-
25 pose, the Administrator shall—

1 (i) require immediate repayment of
2 outstanding loans;

3 (ii) prohibit the borrower, its affili-
4 ates, or any future corporate manifestation
5 of the borrower from using the Authority;
6 and

7 (iii) take any other actions the Ad-
8 ministrator, in consultation with the Attor-
9 ney General of the United States, deems
10 appropriate.

11 (d) REPORT TO CONGRESS.—The Administrator shall
12 submit a report to Congress not later than the third busi-
13 ness day of each month containing a statement of each
14 of the following:

15 (1) The aggregate loan amounts extended dur-
16 ing the preceding month under this section.

17 (2) The aggregate loan amounts repaid under
18 this section during the preceding month.

19 (3) The aggregate loan amount outstanding
20 under this section.

21 (4) The aggregate value of assets held as collat-
22 eral under this section.

23 (5) The amount of any defaults or delinquencies
24 on loans made under this section.

1 (6) The identity of any borrower found by the
2 Administrator to misuse funds made available under
3 this section.

4 (7) Any other information the Administrator
5 deems necessary to fully inform Congress of undue
6 risk of financial loss to the United States in connec-
7 tion with loans made under this section.

8 (e) DURATION.—The authority of this section shall
9 remain in effect for a period of 2 years after the date of
10 enactment of this section.

11 (f) FUNDING.—Such sums as necessary are author-
12 ized to be appropriated to carry out the provisions of this
13 section.

14 (g) BUDGET TREATMENT.—Nothing in this section
15 shall be construed to exempt any activity of the Adminis-
16 trator under this section from the Federal Credit Reform
17 Act of 1990 (title V of the Congressional Budget and Im-
18 poundment Control Act of 1974; 2 U.S.C. 661 and fol-
19 lowing).

20 (h) EMERGENCY RULEMAKING AUTHORITY.—The
21 Administrator shall promulgate regulations under this sec-
22 tion within 15 days after the date of enactment of enact-
23 ment of this section. In promulgating these regulations,
24 the Administrator the notice requirements of section
25 553(b) of title 5 of the United States Code shall not apply.

1 **SEC. 6203. ESTABLISHMENT OF SBA SECONDARY MARKET**
2 **GUARANTEE AUTHORITY.**

3 (a) **PURPOSE.**—The purpose of this section is to pro-
4 vide the Administrator with the authority to establish the
5 SBA Secondary Market Guarantee Authority within the
6 SBA to provide a Federal guarantee for pools of first lien
7 504 loans that are to be sold to third-party investors.

8 (b) **DEFINITIONS.**—For purposes of this section:

9 (1) The term “Administrator” means the Ad-
10 ministrator of the Small Business Administration.

11 (2) The term “first lien position 504 loan”
12 means the first mortgage position, non-federally
13 guaranteed loans made by private sector lenders
14 made under title V of the Small Business Invest-
15 ment Act.

16 (c) **ESTABLISHMENT OF AUTHORITY.**—

17 (1) **ORGANIZATION.**—

18 (A) The Administrator shall establish a
19 Secondary Market Guarantee Authority within
20 the Small Business Administration.

21 (B) The Administrator shall appoint a Di-
22 rector of the Authority who shall report to the
23 Administrator.

24 (C) The Administrator is authorized to
25 hire such personnel as are necessary to operate
26 the Authority and may contract such operations

1 of the Authority as necessary to qualified third-
2 party companies or individuals.

3 (D) The Administrator is authorized to
4 contract with private sector fiduciary and custo-
5 dial agents as necessary to operate the Author-
6 ity.

7 (2) GUARANTEE PROCESS.—

8 (A) The Administrator shall establish, by
9 rule, a process in which private sector entities
10 may apply to the Administration for a Federal
11 guarantee on pools of first lien position 504
12 loans that are to be sold to third-party inves-
13 tors.

14 (B) The Administrator shall appoint a Di-
15 rector of the Authority who shall report to the
16 Administrator.

17 (C) The Administrator is authorized to
18 hire such personnel as are necessary to operate
19 the Authority and may contract such operations
20 of the Authority as necessary to qualified third-
21 party companies or individuals.

22 (D) The Administrator is authorized to
23 contract with private sector fiduciary and custo-
24 dial agents as necessary to operate the Author-
25 ity.

1 (3) RESPONSIBILITIES.—

2 (A) The Administrator shall establish, by
3 rule, a process in which private sector entities
4 may apply to the SBA for a Federal guarantee
5 on pools of first lien position 504 loans that are
6 to be sold to third-party investors.

7 (B) The rule under this section shall pro-
8 vide for a process for the Administrator to con-
9 sider and make decisions regarding whether to
10 extend a Federal guarantee referred to in
11 clause (i). Such rule shall also provide that:

12 (i) The seller of the pools purchasing
13 a guarantee under this section retains not
14 less than 5 percent of the dollar amount of
15 the pools to be sold to third-party inves-
16 tors.

17 (ii) The seller of such pools shall ab-
18 sorb any and all losses resulting from a
19 shortage or excess of monthly cash flows.

20 (iii) The Administrator shall receive a
21 monthly fee of not more than 50 basis
22 points on the outstanding balance of the
23 dollar amount of the pools that are guar-
24 anteed.

1 (iv) The Administrator may guarantee
2 not more than \$3,000,000,000 of pools
3 under this authority.

4 (C) The Administrator shall establish doc-
5 uments, legal covenants, and other required
6 documentation to protect the interests of the
7 United States.

8 (D) The Administrator shall establish a
9 process to receive and disburse funds to entities
10 under the authority established in this section.

11 (d) LIMITATIONS.—

12 (1) The Administrator shall ensure that entities
13 purchasing a guarantee under this section are using
14 such guarantee for the purpose of selling 504 first
15 lien position pools to third-party investors.

16 (2) If the Administrator finds that any such
17 guarantee was used for a purpose other than that
18 specified in paragraph (1), the Administrator shall—

19 (A) terminate such guarantee immediately;

20 (B) prohibit the purchaser of the guar-
21 antee or its affiliates (within the meaning of the
22 regulations under 13 CFR 121.103) from using
23 the authority of this section in the future; and

1 (C) take any other actions the Adminis-
2 trator, in consultation with the Attorney Gen-
3 eral of the United States deems appropriate.

4 (e) OVERSIGHT.—The Administrator shall submit a
5 report to Congress not later than the third business day
6 of each month setting forth each of the following:

7 (1) The aggregate amount of guarantees ex-
8 tended under this section during the preceding
9 month.

10 (2) The aggregate amount of guarantees out-
11 standing.

12 (3) Defaults and payments on defaults made
13 under this section.

14 (4) The identity of each purchaser of a guar-
15 antee found by the Administrator to have misused
16 guarantees under this section.

17 (5) Any other information the Administrator
18 deems necessary to fully inform Congress of undue
19 risk to the United States associated with the
20 issuance of guarantees under this section.

21 (f) DURATION OF PROGRAM.—The authority of this
22 section shall terminate on the date 2 years after the date
23 of enactment of this section.

1 (g) FUNDING.—Such sums as necessary are author-
2 ized to be appropriated to carry out the provisions of this
3 section.

4 (h) BUDGET TREATMENT.—Nothing in this section
5 shall be construed to exempt any activity of the Adminis-
6 trator under this section from the Federal Credit Reform
7 Act of 1990 (title V of the Congressional Budget and Im-
8 poundment Control Act of 1974; 2 U.S.C. 661 and fol-
9 lowing).

10 (i) EMERGENCY RULEMAKING AUTHORITY.—The
11 Administrator shall issue regulations under this section
12 within 15 days after the date of enactment of this section.
13 The notice requirements of section 553(b) of Title 5,
14 United States Code shall not apply to the promulgation
15 of such regulations.

16 **SEC. 6204. ECONOMIC RECOVERY PROGRAM.**

17 (a) PURPOSE.—The purpose of this section is to es-
18 tablish a new lending and refinancing authority within the
19 Small Business Administration.

20 (b) DEFINITIONS.—For purposes of this section:

21 (1) The term “Administrator” means the Ad-
22 ministrator of the Small Business Administration.

23 (2) The term “small business concern” has the
24 same meaning as provided by section 3 of the Small
25 Business Act (15 U.S.C. 632).

1 (c) REFINANCING AUTHORITY.—

2 (1) IN GENERAL.—Upon application from a
3 lender (and with consent of the borrower), the Ad-
4 ministrator may refinance existing non-Small Busi-
5 ness Administration or Small Business Administra-
6 tion loans (including loans under sections 7(a) and
7 504 of the Small Business Act) made to small busi-
8 ness concerns.

9 (2) ELIGIBLE LOANS.—In order to be eligible
10 for refinancing under this section—

11 (A) the amount of the loan refinanced may
12 not exceed \$10,000,000 and a first lien must be
13 conveyed to the Administrator;

14 (B) the lender shall offer to accept from
15 the Administrator as full repayment of the loan
16 an amount equal to less than 100 percent but
17 more than 85 percent of the remaining balance
18 of the principal of the loan; and

19 (C) the loan to be refinanced was made be-
20 fore the date of enactment of this Act and for
21 a purpose that would have been eligible for a
22 loan under any Small Business Administration
23 lending program.

24 (3) TERMS.—The term of the refinancing by
25 the Administrator under this section shall not be

1 less than remaining term on the loan that is refi-
2 nanced but shall not exceed a term of 20 years. The
3 rate of interest on the loan refinanced under this
4 section shall be fixed by the Administrator at a level
5 that the Administrator determines will result in
6 manageable monthly payments for the borrower.

7 (4) LIMIT.—The Administrator may not refi-
8 nance amounts under this section that are greater
9 than the amount the lender agrees to accept from
10 the Administrator as full repayment of the loan as
11 provided in paragraph (2)(B).

12 (d) UNDERWRITING AND OTHER LOAN SERVICES.—

13 (1) IN GENERAL.—The Administrator is au-
14 thorized to engage in underwriting, loan closing,
15 funding, and servicing of loans made to small busi-
16 ness concerns and to guarantee loans made by other
17 entities to small business concerns.

18 (2) APPLICATION PROCESS.—The Adminis-
19 trator shall by rule establish a process in which
20 small business concerns may submit applications to
21 the Administrator for the purposes of securing a
22 loan under this subsection. The Administrator shall,
23 at a minimum, collect all information necessary to
24 determine the creditworthiness and repayment abil-
25 ity of the borrower.

1 ~~(3) PARTICIPATION OF LENDERS.—~~

2 (A) The Administrator shall by rule estab-
3 lish a process in which the Administrator makes
4 available loan applications and all accom-
5 panying information to lenders for the purpose
6 of such lenders originating, underwriting, clos-
7 ing, and servicing such loans.

8 (B) Lenders are eligible to receive loan ap-
9 plications and accompanying information under
10 this paragraph if they participate in the pro-
11 grams established in section 7(a) of the Small
12 Business Act (15 U.S.C. 636) or title V of the
13 Small Business Investment Act (15 U.S.C.
14 695).

15 (C) The Administrator shall first make
16 available such loan applications and accom-
17 panying information to lenders within 100 miles
18 of a loan applicant's principal office.

19 (D) If a lender described in subparagraph
20 (C) does not agree to originate, underwrite,
21 close, and service such loans within 5 business
22 days of receiving the loan applications, the Ad-
23 ministrator shall subsequently make available
24 such loan applications and accompanying infor-
25 mation to lenders in the Preferred Lenders Pro-

1 gram under section 7(a)(2)(C)(ii) of the Small
2 Business Act (15 U.S.C. 636).

3 ~~(E)~~ If a lender described in subparagraph
4 ~~(C)~~ or ~~(D)~~ does not agree to originate, under-
5 write, close, and service such loans within 10
6 business days of receiving the loan applications,
7 the Administrator may originate, underwrite,
8 close, and service such loans as described in
9 paragraph ~~(1)~~ of this subsection.

10 ~~(4)~~ ASSET SALES.—The Administrator shall
11 offer to sell loans made or refinanced by the Admin-
12 istrator under this section. Such sales shall be made
13 through semi-annual public solicitation (in the Fed-
14 eral Register and in other media) of offers to pur-
15 chase. The Administrator may contract with vendors
16 for due diligence, asset valuation, and other services
17 related to such sales. The Administrator may not
18 sell any loan under this section for less than 90 per-
19 cent of the net present value of the loan, as deter-
20 mined and certified by a qualified third-party.

21 ~~(5)~~ LOANS NOT SOLD.—The Administrator
22 shall maintain and service loans made by the Admin-
23 istrator under this section that are not sold through
24 the asset sales under this section.

1 (e) DURATION.— The authority of this section shall
2 terminate on the date two years after the date on which
3 the program under this section becomes operational (as
4 determined by the Administrator).

5 (f) APPLICATION OF OTHER LAW.—Nothing in this
6 section shall be construed to exempt any activity of the
7 Administrator under this section from the Federal Credit
8 Reform Act of 1990 (title V of the Congressional Budget
9 and Impoundment Control Act of 1974; 2 U.S.C. 661 and
10 following).

11 (g) QUALIFIED LOANS.—

12 (1) ALIENS UNLAWFULLY PRESENT IN THE
13 UNITED STATES.—A loan to any concern shall not
14 be subject to this section if an individual who is an
15 alien unlawfully present in the United States—

16 (A) has an ownership interest in that con-
17 cern; or

18 (B) has an ownership interest in another
19 concern that itself has an ownership interest in
20 that concern.

21 (2) FIRMS IN VIOLATION OF IMMIGRATION
22 LAWS.—No loan shall be subject to this section if
23 the borrower is an entity found, based on a deter-
24 mination by the Secretary of Homeland Security or
25 the Attorney General to have engaged in a pattern

1 or practice of hiring, recruiting or referring for a
2 fee, for employment in the United States an alien
3 knowing the person is an unauthorized alien.

4 (h) REPORTS.—The Administrator shall submit a re-
5 port to Congress semi-annually setting forth the aggregate
6 amount of loans and geographic dispersion of such loans
7 made, underwritten, closed, funded, serviced, sold, guaran-
8 teed, or held by the Administrator under the authority of
9 this section. Such report shall also set forth information
10 concerning loan defaults, prepayments, and recoveries re-
11 lated to loans made under the authority of this section.

12 (i) AUTHORIZATION.—There are authorized to be ap-
13 propriated such sums as may be necessary to carry out
14 this section.

15 **SEC. 6205. STIMULUS FOR COMMUNITY DEVELOPMENT**
16 **LENDING.**

17 (a) REFINANCING UNDER THE LOCAL DEVELOP-
18 MENT BUSINESS LOAN PROGRAM.—Section 502 of the
19 Small Business Investment Act of 1958 (15 U.S.C. 696)
20 is amended by adding at the end the following:

21 “(7) PERMISSIBLE DEBT REFINANCING.—

22 “(A) IN GENERAL.—Any financing ap-
23 proved under this title may include a limited
24 amount of debt refinancing.

1 “(B) EXPANSIONS.—If the project involves
2 expansion of a small business concern which
3 has existing indebtedness collateralized by fixed
4 assets, any amount of existing indebtedness
5 that does not exceed 1/2 of the project cost of
6 the expansion may be refinanced and added to
7 the expansion cost, if—

8 “(i) the proceeds of the indebtedness
9 were used to acquire land, including a
10 building situated thereon, to construct a
11 building thereon, or to purchase equip-
12 ment;

13 “(ii) the borrower has been current on
14 all payments due on the existing debt for
15 not less than 1 year preceding the date of
16 refinancing; and

17 “(iii) the financing under section 504
18 will provide better terms or rate of interest
19 than exists on the debt at the time of refi-
20 nancing.”.

21 (b) JOB CREATION GOALS.—Section 501(e)(1) and
22 section 501(e)(2) of the Small Business Investment Act
23 (15 U.S.C. 695) are each amended by striking “\$50,000”
24 and inserting “\$65,000”.

1 **SEC. 6206. INCREASING SMALL BUSINESS INVESTMENT.**

2 (a) **SIMPLIFIED MAXIMUM LEVERAGE LIMITS.**—Sec-
3 tion 303(b) of the Small Business Investment Act of 1958
4 (15 U.S.C. 683(b)) is amended—

5 (1) by striking so much of paragraph (2) as
6 precedes subparagraphs (C) and (D) and inserting
7 the following:

8 “(2) **MAXIMUM LEVERAGE.**—

9 “(A) **IN GENERAL.**—The maximum
10 amount of outstanding leverage made available
11 to any one company licensed under section
12 301(e) of this Act may not exceed the lesser
13 of—

14 “(i) 300 percent of such company’s
15 private capital; or

16 “(ii) \$150,000,000.

17 “(B) **MULTIPLE LICENSES UNDER COM-**
18 **MON CONTROL.**—The maximum amount of out-
19 standing leverage made available to two or more
20 companies licensed under section 301(e) of this
21 Act that are commonly controlled (as deter-
22 mined by the Administrator) and not under
23 capital impairment may not exceed
24 \$225,000,000.”; and

25 (2) by striking paragraph (4).

1 (b) SIMPLIFIED AGGREGATE INVESTMENT LIMITA-
2 TIONS.—Section 306(a) of the Small Business Investment
3 Act of 1958 (15 U.S.C. 686(a)) is amended to read as
4 follows:

5 “(a) PERCENTAGE LIMITATION ON PRIVATE CAP-
6 ITAL.—If any small business investment company has ob-
7 tained financing from the Administrator and such financ-
8 ing remains outstanding, the aggregate amount of securi-
9 ties acquired and for which commitments may be issued
10 by such company under the provisions of this title for any
11 single enterprise shall not, without the approval of the Ad-
12 ministrator, exceed 10 percent of the sum of—

13 “(1) the private capital of such company; and

14 “(2) the total amount of leverage projected by
15 the company in the company’s business plan that
16 was approved by the Administrator at the time of
17 the grant of the company’s license.”

18 **SEC. 6207. GAO REPORT.**

19 (a) REPORT.—Not later than 30 days after the enact-
20 ment of this Act, the Comptroller General of the United
21 States shall report to the Congress on the actions of the
22 Administrator in implementing the authority established
23 in sections 6201 through 6206 of this Act.

24 (b) INCLUDED ITEM.—The report under this section
25 shall include a summary of the activity of the Adminis-

1 trator under this section and an analysis of whether he
2 is accomplishing the purpose of increasing liquidity in the
3 secondary market for Small Business Administration
4 loans.

5 **TITLE VII—HOMELAND** 6 **SECURITY**

7 DEPARTMENT OF HOMELAND SECURITY

8 U.S. CUSTOMS AND BORDER PROTECTION

9 SALARIES AND EXPENSES

10 For an additional amount for “Salaries and Ex-
11 penses”, \$100,000,000, for non-intrusive detection tech-
12 nology to be deployed at sea ports of entry.

13 CONSTRUCTION

14 For an additional amount for “Construction”,
15 \$150,000,000, to repair and construct inspection facilities
16 at land border ports of entry.

17 TRANSPORTATION SECURITY ADMINISTRATION

18 AVIATION SECURITY

19 For an additional amount for “Aviation Security”,
20 \$500,000,000, for the purchase and installation of explo-
21 sive detection systems and emerging checkpoint tech-
22 nologies: *Provided*, That the Assistant Secretary of Home-
23 land Security (Transportation Security Administration)
24 shall prioritize the award of these funds to accelerate the

1 installations at locations with completed design plans and
2 to expeditiously award new letters of intent.

3 COAST GUARD

4 ALTERATION OF BRIDGES

5 For an additional amount for “Alteration of
6 Bridges”, \$150,000,000, for alteration or removal of ob-
7 structive bridges, as authorized by section 6 of the Tru-
8 man-Hobbs Act (33 U.S.C. 516): *Provided*, That the
9 Coast Guard shall award these funds to those bridges that
10 are ready to proceed to construction.

11 FEDERAL EMERGENCY MANAGEMENT AGENCY

12 EMERGENCY FOOD AND SHELTER

13 For an additional amount for “Emergency Food and
14 Shelter”, \$200,000,000, to carry out the emergency food
15 and shelter program pursuant to title III of the McKin-
16 ney-Vento Homeless Assistance Act (42 U.S.C. 11331 et
17 seq.): *Provided*, That for the purposes of this appropria-
18 tion, the redistribution required by section 1104(b) shall
19 be carried out by the Federal Emergency Management
20 Agency and the National Board, who may reallocate and
21 obligate any funds that are unclaimed or returned to the
22 program: *Provided further*, That the amount set aside
23 from this appropriation pursuant to section 1106 of this
24 Act shall be 3.5 percent instead of the percentage specified
25 in such section.

1 GENERAL PROVISIONS, THIS TITLE

2 **SEC. 7001. EXTENSION OF PROGRAMS.**

3 Section 401(b) of the Illegal Immigration Reform and
4 Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a
5 note) is amended by striking “11-year period” and insert-
6 ing “16-year period”.

7 **SEC. 7002. PROTECTION OF SOCIAL SECURITY ADMINIS-**
8 **TRATION PROGRAMS.**

9 (a) **FUNDING UNDER AGREEMENT.**—Effective for
10 fiscal years beginning on or after October 1, 2008, the
11 Commissioner of Social Security and the Secretary of
12 Homeland Security shall enter into and maintain an
13 agreement which shall—

14 (1) provide funds to the Commissioner for the
15 full costs of the responsibilities of the Commissioner
16 under section 404 of the Illegal Immigration Reform
17 and Immigrant Responsibility Act of 1996 (8 U.S.C.
18 1324a note); including (but not limited to)—

19 (A) acquiring, installing, and maintaining
20 technological equipment and systems necessary
21 for the fulfillment of the responsibilities of the
22 Commissioner under such section 404, but only
23 that portion of such costs that are attributable
24 exclusively to such responsibilities; and

1 ~~(B)~~ responding to individuals who contest
2 a tentative nonconfirmation provided by the
3 basic pilot confirmation system established
4 under such section;

5 ~~(2)~~ provide such funds quarterly in advance of
6 the applicable quarter based on estimating method-
7 ology agreed to by the Commissioner and the Sec-
8 retary (except in such instances where the delayed
9 enactment of an annual appropriation may preclude
10 such quarterly payments); and

11 ~~(3)~~ require an annual accounting and reconcili-
12 ation of the actual costs incurred and the funds pro-
13 vided under the agreement, which shall be reviewed
14 by the Office of Inspector General of the Social Se-
15 curity Administration and the Department of Home-
16 land Security.

17 ~~(b) CONTINUATION OF EMPLOYMENT VERIFICATION~~
18 ~~IN ABSENCE OF TIMELY AGREEMENT.~~—In any case in
19 which the agreement required under subsection (a) for any
20 fiscal year beginning on or after October 1, 2008, has not
21 been reached as of October 1 of such fiscal year, the latest
22 agreement between the Commissioner and the Secretary
23 of Homeland Security providing for funding to cover the
24 costs of the responsibilities of the Commissioner under
25 section 404 of the Illegal Immigration Reform and Immi-

1 grant Responsibility Act of 1996 (8 U.S.C. 1324a note)
2 shall be deemed in effect on an interim basis for such fis-
3 cal year until such time as an agreement required under
4 subsection (a) is subsequently reached, except that the
5 terms of such interim agreement shall be modified by the
6 Director of the Office of Management and Budget to ad-
7 just for inflation and any increase or decrease in the vol-
8 ume of requests under the basic pilot confirmation system.
9 In any case in which an interim agreement applies for any
10 fiscal year under this subsection, the Commissioner and
11 the Secretary shall, not later than October 1 of such fiscal
12 year, notify the Committee on Ways and Means, the Com-
13 mittee on the Judiciary, and the Committee on Appropria-
14 tions of the House of Representatives and the Committee
15 on Finance, the Committee on the Judiciary, and the
16 Committee on Appropriations of the Senate of the failure
17 to reach the agreement required under subsection (a) for
18 such fiscal year. Until such time as the agreement re-
19 quired under subsection (a) has been reached for such fis-
20 cal year, the Commissioner and the Secretary shall, not
21 later than the end of each 90-day period after October
22 1 of such fiscal year, notify such Committees of the status
23 of negotiations between the Commissioner and the Sec-
24 retary in order to reach such an agreement.

1 **SEC. 7003. GAO STUDY OF BASIC PILOT CONFIRMATION**
2 **SYSTEM.**

3 (a) **IN GENERAL.**—As soon as practicable after the
4 date of the enactment of this Act, the Comptroller General
5 of the United States shall conduct a study regarding erro-
6 neous tentative nonconfirmations under the basic pilot
7 confirmation system established under section 404(a) of
8 the Illegal Immigration Reform and Immigrant Responsi-
9 bility Act of 1996 (8 U.S.C. 1324a note).

10 (b) **MATTERS TO BE STUDIED.**—In the study re-
11 quired under subsection (a), the Comptroller General shall
12 determine and analyze—

13 (1) the causes of erroneous tentative noncon-
14 firmations under the basic pilot confirmation system;

15 (2) the processes by which such erroneous ten-
16 tative nonconfirmations are remedied; and

17 (3) the effect of such erroneous tentative non-
18 confirmations on individuals, employers, and Federal
19 agencies.

20 (c) **REPORT.**—Not later than 2 years after the date
21 of the enactment of this Act, the Comptroller General shall
22 submit the results of the study required under subsection
23 (a) to the Committee on Ways and Means and the Com-
24 mittee on the Judiciary of the House of Representatives
25 and the Committee on Finance and the Committee on the
26 Judiciary of the Senate.

1 **SEC. 7004. GAO STUDY OF EFFECTS OF BASIC PILOT PRO-**
2 **GRAM ON SMALL ENTITIES.**

3 (a) **IN GENERAL.**—Not later than 2 years after the
4 date of the enactment of this Act, the Comptroller General
5 of the United States shall submit to the Committees on
6 the Judiciary of the United States House of Representa-
7 tives and the Senate a report containing the Comptroller
8 General's analysis of the effects of the basic pilot program
9 described in section 403(a) of the Illegal Immigration Re-
10 form and Immigrant Responsibility Act of 1996 (8 U.S.C.
11 1324a note) on small entities (as defined in section 601
12 of title 5, United States Code). The report shall detail—

13 (1) the costs of compliance with such program
14 on small entities;

15 (2) a description and an estimate of the number
16 of small entities enrolled and participating in such
17 program or an explanation of why no such estimate
18 is available;

19 (3) the projected reporting, recordkeeping and
20 other compliance requirements of such program on
21 small entities;

22 (4) factors that impact small entities' enroll-
23 ment and participation in such program, including
24 access to appropriate technology, geography, entity
25 size, and class of entity; and

1 (5) the steps, if any, the Secretary of Homeland
2 Security has taken to minimize the economic impact
3 of participating in such program on small entities.

4 (b) **DIRECT AND INDIRECT EFFECTS.**—The report
5 shall cover, and treat separately, direct effects (such as
6 wages, time, and fees spent on compliance) and indirect
7 effects (such as the effect on cash flow, sales, and competi-
8 tiveness).

9 (c) **SPECIFIC CONTENTS.**—The report shall provide
10 specific and separate details with respect to—

11 (1) small businesses (as defined in section 601
12 of title 5, United States Code) with fewer than 50
13 employees; and

14 (2) small entities operating in States that have
15 mandated use of the basic pilot program.

16 **SEC. 7005. WAIVER OF MATCHING REQUIREMENT UNDER**
17 **SAFER PROGRAM.**

18 Subparagraph (E) of section 34(a)(1) of the Federal
19 Fire Prevention and Control Act of 1974 (15 U.S.C.
20 2229a(a)(1)(E)) shall not apply with respect to funds ap-
21 propriated in this or any other Act making appropriations
22 for fiscal year 2009 or 2010 for grants under such section
23 34.

1 **SEC. 7006. PROCUREMENT FOR DEPARTMENT OF HOME-**
2 **LAND SECURITY.**

3 (a) **REQUIREMENT.**—Except as provided in sub-
4 sections (e) through (e), funds appropriated or otherwise
5 available to the Department of Homeland Security may
6 not be used for the procurement of an item described in
7 subsection (b) if the item is not grown, reprocessed, re-
8 used, or produced in the United States.

9 (b) **COVERED ITEMS.**—An item referred to in sub-
10 section (a) is any of the following, if the item is directly
11 related to the national security interests of the United
12 States:

13 (1) An article or item of—

14 (A) clothing and the materials and compo-
15 nents thereof, other than sensors, electronics, or
16 other items added to, and not normally associ-
17 ated with, clothing (and the materials and com-
18 ponents thereof);

19 (B) tents, tarpaulins, or covers;

20 (C) cotton and other natural fiber prod-
21 ucts, woven silk or woven silk blends, spun silk
22 yarn for cartridge cloth, synthetic fabric or
23 coated synthetic fabric (including all textile fi-
24 bers and yarns that are for use in such fabrics),
25 canvas products, or wool (whether in the form

1 of fiber or yarn or contained in fabrics, mate-
2 rials, or manufactured articles); or

3 (D) any item of individual equipment man-
4 ufactured from or containing such fibers, yarns,
5 fabrics, or materials.

6 (c) AVAILABILITY EXCEPTION.—Subsection (a) does
7 not apply to the extent that the Secretary of Homeland
8 Security determines that satisfactory quality and suffi-
9 cient quantity of any such article or item described in sub-
10 section (b)(1) grown, reprocessed, reused, or produced in
11 the United States cannot be procured as and when needed.

12 (d) EXCEPTION FOR CERTAIN PROCUREMENTS OUT-
13 SIDE THE UNITED STATES.—Subsection (a) does not
14 apply to the following:

15 (1) Procurements by vessels in foreign waters.

16 (2) Emergency procurements.

17 (e) EXCEPTION FOR SMALL PURCHASES.—Sub-
18 section (a) does not apply to purchases for amounts not
19 greater than the simplified acquisition threshold referred
20 to in section 2304(g) of title 10, United States Code.

21 (f) APPLICABILITY TO CONTRACTS AND SUB-
22 CONTRACTS FOR PROCUREMENT OF COMMERCIAL
23 ITEMS.—This section is applicable to contracts and sub-
24 contracts for the procurement of commercial items not-

1 withstanding section 34 of the Office of Federal Procure-
2 ment Policy Act (41 U.S.C. 430).

3 (g) GEOGRAPHIC COVERAGE.—In this section, the
4 term “United States” includes the possessions of the
5 United States.

6 (h) NOTIFICATION REQUIRED WITHIN 7 DAYS
7 AFTER CONTRACT AWARD IF CERTAIN EXCEPTIONS AP-
8 PLIED.—In the case of any contract for the procurement
9 of an item described in subsection (b)(1), if the Secretary
10 of Homeland Security applies an exception set forth in
11 subsection (e) with respect to that contract, the Secretary
12 shall, not later than 7 days after the award of the con-
13 tract, post a notification that the exception has been ap-
14 plied on the Internet site maintained by the General Serv-
15 ices Administration know as FedBizOps.gov (or any suc-
16 cessor site).

17 (i) TRAINING DURING FISCAL YEAR 2008.—

18 (1) IN GENERAL.—The Secretary of Homeland
19 Security shall ensure that each member of the acqui-
20 sition workforce in the Department of Homeland Se-
21 curity who participates personally and substantially
22 in the acquisition of textiles on a regular basis re-
23 ceives training during fiscal year 2009 on the re-
24 quirements of this section and the regulations imple-
25 menting this section.

1 ~~(2) INCLUSION OF INFORMATION IN NEW~~
2 ~~TRAINING PROGRAMS.—~~The Secretary shall ensure
3 ~~that any training program for the acquisition work~~
4 ~~force developed or implemented after the date of the~~
5 ~~enactment of this Act includes comprehensive infor-~~
6 ~~mation on the requirements described in paragraph~~
7 ~~(1).~~

8 ~~(j) CONSISTENCY WITH INTERNATIONAL AGREE-~~
9 ~~MENTS.—~~

10 ~~(1) IN GENERAL.—~~No provision of this section
11 ~~shall apply to the extent the Secretary of Homeland~~
12 ~~Security, in consultation with the United States~~
13 ~~Trade Representative, determines that it is in incon-~~
14 ~~sistent with United States obligations under an~~
15 ~~international agreement.~~

16 ~~(2) REPORT.—~~The Secretary of Homeland Se-
17 ~~curity shall submit a report each year to Congress~~
18 ~~containing, with respect to the year covered by the~~
19 ~~report—~~

20 ~~(A) a list of each provision of this section~~
21 ~~that did not apply during that year pursuant to~~
22 ~~a determination by the Secretary under para-~~
23 ~~graph (1); and~~

24 ~~(B) a list of each contract awarded by the~~
25 ~~Department of Homeland Security during that~~

1 year without regard to a provision in this sec-
 2 tion because that provision was made inappli-
 3 cable pursuant to such a determination.

4 (k) EFFECTIVE DATE.—This section applies with re-
 5 spect to contracts entered into by the Department of
 6 Homeland Security after the date of the enactment of this
 7 Act.

8 **TITLE VIII—INTERIOR AND**
 9 **ENVIRONMENT**

10 DEPARTMENT OF THE INTERIOR

11 BUREAU OF LAND MANAGEMENT

12 CONSTRUCTION

13 (INCLUDING TRANSFERS OF FUNDS)

14 For an additional amount for “Construction”,
 15 \$325,000,000, for priority road, bridge, and trail repair
 16 or decommissioning, critical deferred maintenance
 17 projects, facilities construction and renovation, hazardous
 18 fuels reduction, and remediation of abandoned mine or
 19 well sites: *Provided*, That funds may be transferred to
 20 other appropriate accounts of the Bureau of Land man-
 21 agement: *Provided further*, That the amount set aside
 22 from this appropriation pursuant to section 1106 of this
 23 Act shall be not more than 5 percent instead of the per-
 24 centage specified in such section.

1 UNITED STATES FISH AND WILDLIFE SERVICE

2 CONSTRUCTION

3 (INCLUDING TRANSFER OF FUNDS)

4 For an additional amount for “Construction”,
5 \$300,000,000, for priority road and bridge repair and re-
6 placement, and critical deferred maintenance and improve-
7 ment projects on National Wildlife Refuges, National Fish
8 Hatcheries, and other Service properties: *Provided*, That
9 funds may be transferred to “Resource Management”:
10 *Provided further*, That the amount set aside from this ap-
11 propriation pursuant to section 1106 of this Act shall be
12 not more than 5 percent instead of the percentage speci-
13 fied in such section.

14 NATIONAL PARK SERVICE

15 CONSTRUCTION

16 (INCLUDING TRANSFER OF FUNDS)

17 For an additional amount for “Construction”,
18 \$1,700,000,000, for projects to address critical deferred
19 maintenance needs within the National Park System, in-
20 cluding roads, bridges and trails, and for other critical in-
21 frastructure projects: *Provided*, That funds may be trans-
22 ferred to “Operation of the National Park System”: *Pro-*
23 *vided further*, That \$200,000,000 of these funds shall be
24 for projects related to the preservation and repair of his-
25 torical and cultural resources within the National Park

1 UNITED STATES GEOLOGICAL SURVEY

2 SURVEYS, INVESTIGATIONS, AND RESEARCH

3 For an additional amount for “Surveys, Investiga-
4 tions, and Research”, \$200,000,000, for repair and res-
5 toration of facilities; equipment replacement and upgrades
6 including stream gages; and seismic and volcano moni-
7 toring systems; national map activities; and other critical
8 deferred maintenance and improvement projects: *Pro-*
9 *vided*, That the amount set aside from this appropriation
10 pursuant to section 1106 of this Act shall be not more
11 than 5 percent instead of the percentage specified in such
12 section.

13 BUREAU OF INDIAN AFFAIRS

14 CONSTRUCTION

15 (INCLUDING TRANSFER OF FUNDS)

16 For an additional amount for “Construction”,
17 \$500,000,000, for priority repair and replacement of
18 schools, detention centers, roads, bridges, employee hous-
19 ing, and critical deferred maintenance projects: *Provided*,
20 That not less than \$250,000,000 shall be used for new
21 and replacement schools and detention centers: *Provided*
22 *further*, That funds may be transferred to “Operation of
23 Indian Programs”: *Provided further*, That the amount set
24 aside from this appropriation pursuant to section 1106 of

1 this Act shall be not more than 5 percent instead of the
2 percentage specified in such section.

3 ENVIRONMENTAL PROTECTION AGENCY

4 HAZARDOUS SUBSTANCE SUPERFUND

5 For an additional amount for “Hazardous Substance
6 Superfund”, \$800,000,000, which shall be used for the
7 Superfund Remedial program: *Provided*, That amounts
8 available by law from this appropriation for management
9 and administration shall take the place of the set-aside
10 under section 1106 of this Act.

11 LEAKING UNDERGROUND STORAGE TANK TRUST FUND

12 PROGRAM

13 For an additional amount for “Leaking Underground
14 Storage Tank Trust Fund Program”, to carry out leaking
15 underground storage tank cleanup activities authorized by
16 subtitle I of the Solid Waste Disposal Act, \$200,000,000,
17 which shall be used to carry out leaking underground stor-
18 age tank cleanup activities authorized by section 9003(h)
19 of the Solid Waste Disposal Act, except that such funds
20 shall not be subject to the State matching requirements
21 in section 9003(h)(7)(B): *Provided*, That amounts avail-
22 able by law from this appropriation for management and
23 administration shall take the place of the set-aside under
24 section 1106 of this Act.

1 STATE AND TRIBAL ASSISTANCE GRANTS

2 For an additional amount for “State and Tribal As-
3 sistance Grants”, \$8,400,000,000, which shall be used as
4 follows:

5 (1) \$6,000,000,000 shall be for capitalization
6 grants for the Clean Water State Revolving Funds
7 under title VI of the Federal Water Pollution Con-
8 trol Act (33 U.S.C. 1381 et seq.), except that such
9 funds shall not be subject to the State matching re-
10 quirements in paragraphs (2) and (3) of section
11 602(b) of such Act or to the Federal cost share limi-
12 tations in section 202 of such Act: *Provided*, That
13 the amount set aside from this appropriation pursu-
14 ant to section 1106 of this Act shall be not more
15 than 2 percent instead of the percentage specified in
16 such section: *Provided further*, That, notwith-
17 standing the limitation on amounts specified in sec-
18 tion 518(e) of the Federal Water Pollution Control
19 Act, up to a total of 1.5 percent of such funds may
20 be reserved by the Administrator of the Environ-
21 mental Protection Agency for grants under section
22 518(e) of such Act: *Provided further*, That the re-
23 quirements of section 513 of such Act shall apply to
24 the construction of treatment works carried out in
25 whole or in part with assistance made available

1 under this heading by a Clean Water State Revolv-
2 ing Fund under title VI of such Act, or with assist-
3 ance made available under section 205(m) of such
4 Act, or both: *Provided further*, That, notwith-
5 standing the requirements of section 603(d) of such
6 Act, each State shall use 50 percent of the amount
7 of the capitalization grant received by the State
8 under title VI of such Act to provide assistance, in
9 the form of additional subsidization, including for-
10 giveness of principal, negative interest loans, and
11 grants, to municipalities (as defined in section 502
12 of such Act) for projects that are included on the
13 State's priority list established under section 603(g)
14 of such Act, of which 80 percent shall be for projects
15 to benefit municipalities that meet affordability cri-
16 teria as determined by the Governor of the State
17 and 20 percent shall be for projects to address
18 water-efficiency goals, address energy-efficiency
19 goals, mitigate stormwater runoff, or encourage en-
20 vironmentally sensitive project planning, design, and
21 construction, to the extent that there are sufficient
22 project applications eligible for such assistance.

23 (2) \$2,000,000,000 shall be for capitalization
24 grants for the Drinking Water State Revolving
25 Funds under section 1452 of the Safe Drinking

1 Water Act (~~42 U.S.C. 300j-12~~), except that such
2 funds shall not be subject to the State matching re-
3 quirements of section 1452(e) of such Act: *Provided*,
4 That the amount set aside from this appropriation
5 pursuant to section 1106 of this Act shall be not
6 more than 2 percent instead of the percentage speci-
7 fied in such section: *Provided further*, That section
8 1452(k) of the Safe Drinking Water Act shall not
9 apply to such funds: *Provided further*, That the re-
10 quirements of section 1450(e) of such Act (~~42~~
11 ~~U.S.C. 300j-9(e)~~) shall apply to the construction
12 carried out in whole or part with assistance made
13 available under this heading by a Drinking Water
14 State Revolving fund under section 1452 of such
15 Act: *Provided further*, That, notwithstanding the re-
16 quirements of section 1452(a)(2) of such Act, each
17 State shall use 50 percent of the amount of the cap-
18 italization grant received by the State under section
19 1452 of such Act to provide assistance, in the form
20 of additional subsidization, including forgiveness of
21 principal, negative interest loans, and grants, to mu-
22 nicipalities (as defined in section 1401 of such Act)
23 for projects that are included on the State's priority
24 list established under section 1452(b)(3) of such
25 Act.

1 ~~(3)~~ \$300,000,000 shall be for grants under title
 2 VII, Subtitle G of the Energy Policy Act of 2005:
 3 *Provided*, That the amount set aside from this ap-
 4 propriation pursuant to section 1106 of this Act
 5 shall be not more than ~~3~~ percent instead of the per-
 6 centage specified in such section.

7 ~~(4)~~ \$100,000,000 shall be to carry out section
 8 104(k) of the Comprehensive Environmental Re-
 9 sponse, Compensation, and Liability Act of 1980:
 10 *Provided*, That the amount set aside from this ap-
 11 propriation pursuant to section 1106 of this Act
 12 shall be not more than ~~3~~ percent instead of the per-
 13 centage specified in such section.

14 DEPARTMENT OF AGRICULTURE

15 FOREST SERVICE

16 CAPITAL IMPROVEMENT AND MAINTENANCE

17 (INCLUDING TRANSFER OF FUNDS)

18 For an additional amount for “Capital Improvement
 19 and Maintenance”, ~~\$650,000,000~~, for reconstruction, cap-
 20 ital improvement, decommissioning, and maintenance of
 21 forest roads, bridges and trails; alternative energy tech-
 22 nologies; energy efficiency enhancements and deferred
 23 maintenance at Federal facilities; and for remediation of
 24 abandoned mine sites; removal of fish passage barriers;
 25 and other critical habitat; forest improvement and water-

1 shed enhancement projects on Federal lands and waters:
2 *Provided*, That funds may be transferred to “National
3 Forest System”: *Provided further*, That the amount set
4 aside from this appropriation pursuant to section 1106 of
5 this Act shall be not more than 5 percent instead of the
6 percentage specified in such section.

7 WILDLAND FIRE MANAGEMENT

8 (INCLUDING TRANSFERS OF FUNDS)

9 For an additional amount for “Wildland Fire Man-
10 agement”, \$850,000,000, of which \$300,000,000 is for
11 hazardous fuels reduction, forest health, wood to energy
12 grants and rehabilitation and restoration activities on
13 Federal lands, and of which \$550,000,000 is for State fire
14 assistance hazardous fuels projects, volunteer fire assist-
15 ance, cooperative forest health projects, city forest en-
16 hancements, and wood to energy grants on State and pri-
17 vate lands: *Provided*, That amounts in this paragraph may
18 be transferred to “State and Private Forestry” and “Na-
19 tional Forest System”: *Provided further*, That the amount
20 set aside from this appropriation pursuant to section 1106
21 of this Act shall be not more than 5 percent instead of
22 the percentage specified in such section.

1 DEPARTMENT OF HEALTH AND HUMAN
2 SERVICES

3 INDIAN HEALTH SERVICE

4 INDIAN HEALTH FACILITIES

5 For an additional amount for “Indian Health Facili-
6 ties”, ~~\$550,000,000~~, for priority health care facilities con-
7 struction projects and deferred maintenance, and the pur-
8 chase of equipment and related services, including but not
9 limited to health information technology: *Provided*, That
10 notwithstanding any other provision of law, the amounts
11 available under this paragraph shall be allocated at the
12 discretion of the Director of the Indian Health Service:
13 *Provided further*, That the amount set aside from this ap-
14 propriation pursuant to section 1106 of this Act shall be
15 not more than 5 percent instead of the percentage speci-
16 fied in such section.

17 OTHER RELATED AGENCIES

18 SMITHSONIAN INSTITUTION

19 FACILITIES CAPITAL

20 (INCLUDING TRANSFER OF FUNDS)

21 For an additional amount for “Facilities Capital”,
22 ~~\$150,000,000~~, for deferred maintenance projects, and for
23 repair, revitalization, and alteration of facilities owned or
24 occupied by the Smithsonian Institution, by contract or
25 otherwise, as authorized by section 2 of the Act of August

1 22, 1949 (63 Stat. 623): *Provided*, That funds may be
2 transferred to “Salaries and Expenses”: *Provided further*,
3 That the amount set aside from this appropriation pursu-
4 ant to section 1106 of this Act shall be not more than
5 5 percent instead of the percentage specified in such see-
6 tion.

7 NATIONAL FOUNDATION ON THE ARTS AND THE

8 HUMANITIES

9 NATIONAL ENDOWMENT FOR THE ARTS

10 GRANTS AND ADMINISTRATION

11 For an additional amount for “Grants and Adminis-
12 tration”, \$50,000,000, to be distributed in direct grants
13 to fund arts projects and activities which preserve jobs in
14 the non-profit arts sector threatened by declines in philan-
15 thropic and other support during the current economic
16 downturn: *Provided*, That 40 percent of such funds shall
17 be distributed to State arts agencies and regional arts or-
18 ganizations in a manner similar to the agency’s current
19 practice and 60 percent of such funds shall be for competi-
20 tively selected arts projects and activities according to see-
21 tions 2 and 5(e) of the National Foundation on the Arts
22 and Humanities Act of 1965 (20 U.S.C. 951, 954(e)):
23 *Provided further*, That matching requirements under see-
24 tion 5(e) of such Act shall be waived: *Provided further*,
25 That the amount set aside from this appropriation pursu-

1 ant to section 1106 of this Act shall be not more than
 2 5 percent instead of the percentage specified in such see-
 3 tion.

4 **TITLE IX—LABOR, HEALTH AND**
 5 **HUMAN SERVICES, AND EDU-**
 6 **CATION**

7 **Subtitle A—Labor**

8 DEPARTMENT OF LABOR

9 EMPLOYMENT AND TRAINING ADMINISTRATION

10 TRAINING AND EMPLOYMENT SERVICES

11 For an additional amount for “Training and Employ-
 12 ment Services” for activities under the Workforce Invest-
 13 ment Act of 1998 (“WIA”), \$4,000,000,000, which shall
 14 be available for obligation on the date of enactment of this
 15 Act, as follows:

16 (1) \$500,000,000 for grants to the States for
 17 adult employment and training activities.

18 (2) \$1,200,000,000 for grants to the States for
 19 youth activities, including summer jobs for youth:
 20 *Provided*, That the work readiness performance indi-
 21 cator described in section 136(b)(2)(A)(ii)(I) of the
 22 WIA shall be the only measure of performance used
 23 to assess the effectiveness of summer jobs for youth
 24 provided with such funds: *Provided further*, That
 25 with respect to the youth activities provided with

1 such funds, section 101(13)(A) of the WIA shall be
2 applied by substituting “age 24” for “age 21”: *Pro-*
3 *vided further,* That no portion of the additional
4 funds provided herein shall be reserved to carry out
5 section 127(b)(1)(A) of the WIA: *Provided further,*
6 That for purposes of section 127(b)(1)(C)(iv) of the
7 WIA, such funds shall be allotted as if the total
8 amount of funding available for youth activities in
9 the fiscal year does not exceed \$1,000,000,000.

10 (3) \$1,000,000,000 for grants to the States for
11 dislocated worker employment and training activi-
12 ties.

13 (4) \$500,000,000 for the dislocated workers as-
14 sistance national reserve to remain available for
15 Federal obligation through June 30, 2010: *Provided,*
16 That such funds shall be made available for grants
17 only to eligible entities that serve areas of high un-
18 employment or high poverty and only for the pur-
19 poses described in subsection 173(a)(1) of the WIA:
20 *Provided further,* That the Secretary of Labor shall
21 ensure that applicants for such funds demonstrate
22 how income support, child care, and other supportive
23 services necessary for an individual’s participation in
24 job training will be provided.

1 (5) \$50,000,000 for YouthBuild activities,
2 which shall remain available for Federal obligation
3 through June 30, 2010.

4 (6) \$750,000,000 for a program of competitive
5 grants for worker training and placement in high
6 growth and emerging industry sectors (including
7 projects funded under section 6002 of division B of
8 this Act): *Provided*, That \$500,000,000 shall be for
9 research, labor exchange and job training projects
10 that prepare workers for careers in the energy effi-
11 ciency and renewable energy industries specified in
12 section 171(e)(1)(B)(ii) of the WIA (as amended by
13 the Green Jobs Act of 2007): *Provided further*, That
14 in awarding grants from those funds not designated
15 in the preceding proviso, the Secretary of Labor
16 shall give priority to projects that prepare workers
17 for careers in the health care sector: *Provided fur-*
18 *ther*, That the provisions of section 1103 of this Act
19 shall not apply to this appropriation:

20 *Provided*, That the additional funds provided to States
21 under this heading are not subject to section 191(a) of
22 the WIA: *Provided further*, That notwithstanding section
23 1106 of this Act, there shall be no amount set aside from
24 the appropriations made in subsections (1) through (3)
25 under this heading and the amount set aside for sub-

1 of the sums to be allotted in accordance with section
2 132(b)(2)(B)(ii)(III) of the Workforce Investment Act of
3 1998: *Provided further*, That not less than \$250,000,000
4 of the amount provided under this heading shall be used
5 by States for reemployment services for unemployment in-
6 surance claimants (including the integrated Employment
7 Service and Unemployment Insurance information tech-
8 nology required to identify and serve the needs of such
9 claimants): *Provided further*, That the Secretary of Labor
10 shall establish planning and reporting procedures nec-
11 essary to provide oversight of funds used for reemploy-
12 ment services.

13 DEPARTMENTAL MANAGEMENT

14 SALARIES AND EXPENSES

15 (INCLUDING TRANSFER OF FUNDS)

16 For an additional amount for “Departmental Man-
17 agement”, \$80,000,000, for the enforcement of worker
18 protection laws and regulations, oversight, and coordina-
19 tion activities related to the infrastructure and unemploy-
20 ment insurance investments in this Act: *Provided*, That
21 the Secretary of Labor may transfer such sums as nec-
22 essary to “Employment and Standards Administration”,
23 “Occupational Safety and Health Administration”, and
24 “Employment and Training Administration—Program
25 Administration” for enforcement, oversight, and coordina-

1 tion activities: *Provided further*, That the provisions of sec-
2 tion 1106 of this Act shall not apply to this appropriation.

3 OFFICE OF JOB CORPS

4 For an additional amount for “Office of Job Corps”,
5 \$300,000,000, for construction, rehabilitation and acquisi-
6 tion of Job Corps Centers, which shall be available upon
7 the date of enactment of this Act and remain available
8 for obligation through June 30, 2010: *Provided*, That sec-
9 tion 1552(a) of title 31, United States Code shall not
10 apply to up to 30 percent of such funds, if such funds
11 are used for a multi-year lease agreement that will result
12 in construction activities that can commence within 120
13 days of enactment of this Act: *Provided further*, That not-
14 withstanding section 3324(a) of title 31, United States
15 Code, the funds referred to in the preceding proviso may
16 be used for advance, progress, and other payments: *Pro-*
17 *vided further*, That the Secretary of Labor may transfer
18 up to 15 percent of such funds to meet the operational
19 needs of such centers, which may include the provision of
20 additional training for careers in the energy efficiency and
21 renewable energy industries: *Provided further*, That pri-
22 ority should be given to activities that can commence
23 promptly following enactment and to those projects that
24 will create the greatest impact on the energy efficiency of
25 Job Corps facilities: *Provided further*, That the Secretary

1 shall provide to the Committees on Appropriations of the
 2 House of Representatives and the Senate a report on the
 3 actual obligations, expenditures, and unobligated balances
 4 for each activity funded under this heading not later than
 5 September 30, 2009 and quarterly thereafter as long as
 6 funding provided under this heading is available for obli-
 7 gation or expenditure.

8 GENERAL PROVISIONS, THIS SUBTITLE
 9 **SEC. 9101. ELIGIBLE EMPLOYEES IN THE RECREATIONAL**
 10 **MARINE INDUSTRY.**

11 Section 2(3)(F) of the Longshore and Harbor Work-
 12 ers' Compensation Act (33 U.S.C. 902(3)(F)) is amend-
 13 ed—

- 14 (1) by striking “, repair, or dismantle”; and
 15 (2) by striking the semicolon and inserting “, or
 16 individuals employed to repair any recreational ves-
 17 sel, or to dismantle any part of a recreational vessel
 18 in connection with the repair of such vessel;”.

19 **Subtitle B—Health and Human**
 20 **Services**

21 DEPARTMENT OF HEALTH AND HUMAN
 22 SERVICES

23 HEALTH RESOURCES AND SERVICES

24 For an additional amount for “Health Resources and
 25 Services”, \$2,188,000,000 which shall be used as follows:

1 (1) ~~\$500,000,000, of which \$250,000,000 shall~~
2 ~~not be available until October 1, 2009, shall be for~~
3 ~~grants to health centers authorized under section~~
4 ~~330 of the Public Health Service Act (“PHS Act”).~~

5 (2) ~~\$1,000,000,000 shall be available for ren-~~
6 ~~ovation and repair of health centers authorized~~
7 ~~under section 330 of the PHS Act and for the acqui-~~
8 ~~sition by such centers of health information tech-~~
9 ~~nology systems: *Provided*, That the timeframe for~~
10 ~~the award of grants pursuant to section 1103(b) of~~
11 ~~this Act shall not be later than 180 days after the~~
12 ~~date of enactment of this Act instead of the time-~~
13 ~~frame specified in such section.~~

14 (3) ~~\$88,000,000 shall be for fit-out and other~~
15 ~~costs related to moving into a facility to be secured~~
16 ~~through a competitive lease procurement to replace~~
17 ~~or renovate a headquarters building for Public~~
18 ~~Health Service agencies and other components of the~~
19 ~~Department of Health and Human Services.~~

20 (4) ~~\$600,000,000, of which \$300,000,000 shall~~
21 ~~not be available until October 1, 2009, shall be for~~
22 ~~the training of nurses and primary care physicians~~
23 ~~and dentists as authorized under titles VII and VIII~~
24 ~~of the PHS Act, for the provision of health care per-~~
25 ~~sonnel under the National Health Service Corps pro-~~

1 gram authorized under title III of the PHS Act, and
2 for the patient navigator program authorized under
3 title III of the PHS Act.

4 CENTERS FOR DISEASE CONTROL AND PREVENTION
5 DISEASE CONTROL, RESEARCH, AND TRAINING

6 For an additional amount for “Disease Control, Re-
7 search, and Training” for equipment, construction, and
8 renovation of facilities, including necessary repairs and
9 improvements to leased laboratories, \$462,000,000: *Pro-*
10 *vided*, That notwithstanding any other provision of law,
11 the Centers for Disease Control and Prevention may
12 award a single contract or related contracts for develop-
13 ment and construction of facilities that collectively include
14 the full scope of the project: *Provided further*, That the
15 solicitation and contract shall contain the clause “avail-
16 ability of funds” found at 48 CFR 52.232-18: *Provided*
17 *further*, That in accordance with applicable authorities,
18 policies, and procedures, the Centers for Disease Control
19 and Prevention shall acquire real property, and make any
20 necessary improvements thereon, to relocate and consoli-
21 date property and facilities of the National Institute for
22 Occupational Safety and Health.

1 NATIONAL INSTITUTES OF HEALTH

2 NATIONAL CENTER FOR RESEARCH RESOURCES

3 For an additional amount for “National Center for
4 Research Resources”, \$1,500,000,000 for grants or con-
5 tracts under section 481A of the Public Health Service
6 Act to renovate or repair existing non-Federal research fa-
7 cilities: *Provided*, That sections 481A(e)(1)(B)(ii), para-
8 graphs (1), (3), and (4) of section 481A(e), and section
9 481B of such Act shall not apply to the use of such funds:
10 *Provided further*, That the references to “20 years” in sub-
11 sections (e)(1)(B)(i) and (f) of section 481A of such Act
12 are deemed to be references to “10 years” for purposes
13 of using such funds: *Provided further*, That the National
14 Center for Research Resources may also use such funds
15 to provide, under the authority of section 301 and title
16 IV of such Act, shared instrumentation and other capital
17 research equipment to recipients of grants and contracts
18 under section 481A of such Act and other appropriate en-
19 tities: *Provided further*, That the Director of the Center
20 shall provide to the Committees on Appropriations of the
21 House of Representatives and the Senate an annual report
22 indicating the number of institutions receiving awards of
23 a grant or contract under section 481A of such Act, the
24 proposed use of the funding, the average award size, a
25 list of grant or contract recipients, and the amount of each

1 award: *Provided further*, That the Center, in obligating
2 such funds, shall require that each entity that applies for
3 a grant or contract under section 481A for any project
4 shall include in its application an assurance described in
5 section 1621(b)(1)(I) of the Public Health Service Act:
6 *Provided further*, That the Center shall give priority in the
7 award of grants and contracts under section 481A of such
8 Act to those applications that are expected to generate de-
9 monstrable energy-saving or beneficial environmental ef-
10 fects: *Provided further*, That the provisions of section 1103
11 of this Act shall not apply to the peer-reviewed grants
12 awarded under this heading.

13 OFFICE OF THE DIRECTOR

14 (INCLUDING TRANSFER OF FUNDS)

15 For an additional amount for “Office of the Direc-
16 tor”, \$1,500,000,000, of which \$750,000,000 shall not be
17 available until October 1, 2009: *Provided*, That such funds
18 shall be transferred to the Institutes and Centers of the
19 National Institutes of Health and to the Common Fund
20 established under section 402A(e)(1) of the Public Health
21 Service Act in proportion to the appropriations otherwise
22 made to such Institutes, Centers, and Common Fund for
23 fiscal year 2009: *Provided further*, That these funds shall
24 be used to support additional scientific research and shall
25 be merged with and be available for the same purposes

1 as the appropriation or fund to which transferred: *Pro-*
 2 *vided further*, That this transfer authority is in addition
 3 to any other transfer authority available to the National
 4 Institutes of Health: *Provided further*, That none of these
 5 funds may be transferred to “National Institutes of
 6 Health—Buildings and Facilities”, the Center for Sci-
 7 entific Review, the Center for Information Technology, the
 8 Clinical Center, the Global Fund for HIV/AIDS, Tuber-
 9 culosis and Malaria, or the Office of the Director (except
 10 for the transfer to the Common Fund): *Provided further*,
 11 That the provisions of section 1103 of this Act shall not
 12 apply to the peer-reviewed grants awarded under this
 13 heading.

14 BUILDINGS AND FACILITIES

15 For an additional amount for “Buildings and Facili-
 16 ties”, \$500,000,000, to fund high priority repair and im-
 17 provement projects for National Institutes of Health facili-
 18 ties on the Bethesda, Maryland campus and other agency
 19 locations.

20 AGENCY FOR HEALTHCARE RESEARCH AND QUALITY

21 HEALTHCARE RESEARCH AND QUALITY

22 (INCLUDING TRANSFER OF FUNDS)

23 For an additional amount for “Healthcare Research
 24 and Quality” to carry out titles III and IX of the Public
 25 Health Service Act, part A of title XI of the Social Secu-

1 rity Act, and section 1013 of the Medicare Prescription
2 Drug, Improvement, and Modernization Act of 2003,
3 \$700,000,000 for comparative effectiveness research: *Pro-*
4 *vided*, That of the amount appropriated in this paragraph,
5 \$400,000,000 shall be transferred to the Office of the Di-
6 rector of the National Institutes of Health (“Office of the
7 Director”) to conduct or support comparative effectiveness
8 research: *Provided further*, That funds transferred to the
9 Office of the Director may be transferred to the national
10 research institutes and national centers of the National
11 Institutes of Health and to the Common Fund established
12 under section 402A(c)(1) of the Public Health Service Act:
13 *Provided further*, That this transfer authority is in addi-
14 tion to any other transfer authority available to the Na-
15 tional Institutes of Health: *Provided further*, That the pro-
16 visions of section 1103 of this Act shall not apply to the
17 peer-reviewed grants awarded under this paragraph: *Pro-*
18 *vided further*, That the amount set aside from this appro-
19 priation pursuant to section 1106 of this Act shall be not
20 more than 1 percent instead of the percentage specified
21 in such section.

22 In addition, \$400,000,000 shall be available for com-
23 parative effectiveness research to be allocated at the dis-
24 cretion of the Secretary of Health and Human Services
25 (“Secretary”): *Provided*, That the funding appropriated in

1 this paragraph shall be used to accelerate the development
2 and dissemination of research assessing the comparative
3 effectiveness of health care treatments and strategies, in-
4 cluding through efforts that: (1) conduct, support, or syn-
5 thesize research that compares the clinical outcomes, ef-
6 fectiveness, and appropriateness of items, services, and
7 procedures that are used to prevent, diagnose, or treat dis-
8 eases, disorders, and other health conditions; and (2) en-
9 courage the development and use of clinical registries, clin-
10 ical data networks, and other forms of electronic health
11 data that can be used to generate or obtain outcomes data:
12 *Provided further,* That the Secretary shall enter into a
13 contract with the Institute of Medicine, for which no more
14 than \$1,500,000 shall be made available from funds pro-
15 vided in this paragraph, to produce and submit a report
16 to the Congress and the Secretary by not later than June
17 30, 2009, that includes recommendations on the national
18 priorities for comparative effectiveness research to be con-
19 ducted or supported with the funds provided in this para-
20 graph and that considers input from stakeholders: *Pro-*
21 *vided further,* That the Secretary shall consider any rec-
22 ommendations of the Federal Coordinating Council for
23 Comparative Effectiveness Research established by section
24 9201 of this Act and any recommendations included in
25 the Institute of Medicine report pursuant to the preceding

1 proviso in designating activities to receive funds provided
2 in this paragraph and may make grants and contracts
3 with appropriate entities, which may include agencies
4 within the Department of Health and Human Services and
5 other governmental agencies, as well as private sector enti-
6 ties, that have demonstrated experience and capacity to
7 achieve the goals of comparative effectiveness research:
8 *Provided further,* That the Secretary shall publish infor-
9 mation on grants and contracts awarded with the funds
10 provided under this heading within a reasonable time of
11 the obligation of funds for such grants and contracts and
12 shall disseminate research findings from such grants and
13 contracts to clinicians, patients, and the general public,
14 as appropriate: *Provided further,* That, to the extent fea-
15 sible, the Secretary shall ensure that the recipients of the
16 funds provided by this paragraph offer an opportunity for
17 public comment on the research: *Provided further,* That
18 the provisions of section 1103 of this Act shall not apply
19 to the peer-reviewed grants awarded under this paragraph:
20 *Provided further,* That the Secretary shall provide the
21 Committees on Appropriations of the House of Represent-
22 atives and the Senate, the Committee on Energy and Com-
23 merce and the Committee on Ways and Means of the
24 House of Representatives, and the Committee on Health,
25 Education, Labor, and Pensions and the Committee on Fi-

1 nance of the Senate with an annual report on the research
2 conducted or supported through the funds provided under
3 this heading: *Provided further*, That the Secretary, jointly
4 with the Directors of the Agency for Healthcare Research
5 and Quality and the National Institutes of Health, shall
6 provide the Committees on Appropriations of the House
7 of Representatives and the Senate a fiscal year 2009 oper-
8 ating plan for the funds appropriated under this heading
9 prior to making any Federal obligations of such funds in
10 fiscal year 2009, but not later than 90 days after the date
11 of enactment of this Act, and a fiscal year 2010 operating
12 plan for such funds prior to making any Federal obliga-
13 tions of such funds in fiscal year 2010, but not later than
14 November 1, 2009, that detail the type of research being
15 conducted or supported, including the priority conditions
16 addressed; and specify the allocation of resources within
17 the Department of Health and Human Services: *Provided*
18 *further*, That the Secretary jointly with the Directors of
19 the Agency for Healthcare Research and Quality and the
20 National Institutes of Health, shall provide to the Com-
21 mittees on Appropriations of the House of Representatives
22 and the Senate a report on the actual obligations, expendi-
23 tures, and unobligated balances for each activity funded
24 under this heading not later than November 1, 2009, and
25 every 6 months thereafter as long as funding provided

1 under this heading is available for obligation or expendi-
2 ture.

3 ADMINISTRATION FOR CHILDREN AND FAMILIES

4 LOW-INCOME HOME ENERGY ASSISTANCE

5 For an additional amount for “Low-Income Home
6 Energy Assistance” for making payments under section
7 2602(b) and section 2602(d) of the Low-Income Home
8 Energy Assistance Act of 1981, \$1,000,000,000, which
9 shall become available on October 1, 2009: *Provided*, That
10 the provisions of section 1106 of this Act shall not apply
11 to this appropriation.

12 PAYMENTS TO STATES FOR THE CHILD CARE AND

13 DEVELOPMENT BLOCK GRANT

14 For an additional amount for “Payments to States
15 for the Child Care and Development Block Grant”,
16 \$2,000,000,000, of which \$1,000,000,000 shall become
17 available on October 1, 2009, which shall be used to sup-
18 plement, not supplant State general revenue funds for
19 child care assistance for low-income families: *Provided*,
20 That the provisions of section 1106 of this Act shall not
21 apply to this appropriation.

22 CHILDREN AND FAMILIES SERVICES PROGRAMS

23 For an additional amount for “Children and Families
24 Services Programs”, \$3,200,000,000, which shall be used
25 as follows:

1 (1) ~~\$1,000,000,000~~ for carrying out activities
2 under the Head Start Act, of which ~~\$500,000,000~~
3 shall become available on October 1, 2009.

4 (2) ~~\$1,100,000,000~~ for expansion of Early
5 Head Start programs, as described in section 645A
6 of the Head Start Act, of which ~~\$550,000,000~~ shall
7 become available on October 1, 2009: *Provided*, That
8 of the funds provided in this sentence, up to 10 per-
9 cent shall be available for the provision of training
10 and technical assistance to such programs consistent
11 with section 645A(g)(2) of such Act, and up to 3
12 percent shall be available for monitoring the oper-
13 ation of such programs consistent with section 641A
14 of such Act: *Provided further*, That the preceding
15 proviso shall apply to this appropriation in lieu of
16 the provisions of section 1106 of this Act: *Provided*
17 *further*, That the provisions of section 1103 of this
18 Act shall not apply to this appropriation.

19 (3) ~~\$1,000,000,000~~ for carrying out activities
20 under sections 674 through 679 of the Community
21 Services Block Grant Act, of which ~~\$500,000,000~~
22 shall become available on October 1, 2009, and of
23 which no part shall be subject to paragraphs (2) and
24 (3) of section 674(b) of such Act: *Provided*, That
25 notwithstanding section 675C(a)(1) of such Act, 100

1 percent of the funds made available to a State from
2 this additional amount shall be distributed to eligible
3 entities as defined in section 673(1) of such Act.
4 *Provided further*, That for services furnished under
5 such Act during fiscal years 2009 and 2010, States
6 may apply the last sentence of section 673(2) of
7 such Act by substituting “200 percent” for “125
8 percent”: *Provided further*, That the provisions of
9 section 1106 of this Act shall not apply to this ap-
10 propriation.

11 (4) \$100,000,000 for carrying out activities
12 under section 1110 of the Social Security Act, of
13 which \$50,000,000 shall become available on Octo-
14 ber 1, 2009: *Provided*, That the Secretary of Health
15 and Human Services shall distribute such amount
16 under the Compassion Capital Fund to eligible faith-
17 based and community organizations: *Provided fur-*
18 *ther*, That the provisions of section 1106 of this Act
19 shall not apply to this appropriation.

20 ADMINISTRATION ON AGING

21 AGING SERVICES PROGRAMS

22 For an additional amount for “Aging Services Pro-
23 grams” under section 311, and subparts 1 and 2 of part
24 C, of title III of the Older Americans Act of 1965,
25 \$200,000,000, of which \$100,000,000 shall become avail-

1 able on October 1, 2009: *Provided*, That the provisions
2 of section 1106 of this Act shall not apply to this appro-
3 priation.

4 OFFICE OF THE SECRETARY

5 OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH
6 INFORMATION TECHNOLOGY

7 (INCLUDING TRANSFER OF FUNDS)

8 For an additional amount for “Office of the National
9 Coordinator for Health Information Technology” to carry
10 out section 9202 of this Act, \$2,000,000,000, to remain
11 available until expended: *Provided*, That of such amount,
12 the Secretary of Health and Human Services shall trans-
13 fer \$20,000,000 to the Director of the National Institute
14 of Standards and Technology in the Department of Com-
15 merce for continued work on advancing health care infor-
16 mation enterprise integration through activities such as
17 technical standards analysis and establishment of con-
18 formance testing infrastructure, so long as such activities
19 are coordinated with the Office of the National Coordi-
20 nator for Health Information Technology: *Provided fur-*
21 *ther*, That the provisions of section 1103 of this Act shall
22 not apply to this appropriation: *Provided further*, That the
23 amount set aside from this appropriation pursuant to sec-
24 tion 1106 of this Act shall be 0.25 percent instead of the
25 percentage specified in such section: *Provided further*,

1 That funds available under this heading shall become
2 available for obligation only upon submission of an annual
3 operating plan by the Secretary to the Committees on Ap-
4 propriations of the House of Representatives and the Sen-
5 ate: *Provided further*, That the fiscal year 2009 operating
6 plan shall be provided not later than 90 days after enact-
7 ment of this Act and that subsequent annual operating
8 plans shall be provided not later than November 1 of each
9 year: *Provided further*, That these operating plans shall
10 describe how expenditures are aligned with the specific ob-
11 jectives, milestones, and metrics of the Federal Health In-
12 formation Technology Strategic Plan, including any subse-
13 quent updates to the Plan; the allocation of resources
14 within the Department of Health and Human Services and
15 other Federal agencies; and the identification of programs
16 and activities that are supported: *Provided further*, That
17 the Secretary shall provide to the Committees on Appro-
18 priations of the House of Representatives and the Senate
19 a report on the actual obligations, expenditures, and unob-
20 ligated balances for each major set of activities not later
21 than November 1, 2009, and every 6 months thereafter
22 as long as funding provided under this heading is available
23 for obligation or expenditure: *Provided further*, That the
24 Comptroller General of the United States shall review on
25 an annual basis the expenditures from funds provided

1 under this heading to determine if such funds are used
2 in a manner consistent with the purpose and requirements
3 under this heading.

4 PUBLIC HEALTH AND SOCIAL SERVICES EMERGENCY
5 FUND
6 (INCLUDING TRANSFER OF FUNDS)

7 For an additional amount for “Public Health and So-
8 cial Services Emergency Fund” to support advanced re-
9 search and development pursuant to section 319L of the
10 Public Health Service Act, \$430,000,000: *Provided*, That
11 the provisions of section 1103 of this Act shall not apply
12 to this appropriation.

13 For an additional amount for “Public Health and So-
14 cial Services Emergency Fund” to prepare for and re-
15 spond to an influenza pandemic, including the develop-
16 ment and purchase of vaccine, antivirals, necessary med-
17 ical supplies, diagnostics, and other surveillance tools,
18 \$420,000,000: *Provided*, That the provisions of section
19 1103 of this Act shall not apply to this appropriation: *Pro-*
20 *vided further*, That products purchased with these funds
21 may, at the discretion of the Secretary of Health and
22 Human Services (“Secretary”), be deposited in the Stra-
23 tegic National Stockpile: *Provided further*, That notwith-
24 standing section 496(b) of the Public Health Service Act,
25 funds may be used for the construction or renovation of

1 privately owned facilities for the production of pandemic
2 influenza vaccine and other biologics, where the Secretary
3 finds such a contract necessary to secure sufficient sup-
4 plies of such vaccines or biologics: *Provided further*, That
5 funds appropriated in this paragraph may be transferred
6 to other appropriation accounts of the Department of
7 Health and Human Services, as determined by the Sec-
8 retary to be appropriate, to be used for the purposed speci-
9 fied in this sentence.

10 For an additional amount for “Public Health and So-
11 cial Services Emergency Fund” to improve information
12 technology security at the Department of Health and
13 Human Services, \$50,000,000: *Provided*, That the Sec-
14 retary shall prepare and submit a report by not later than
15 November 1, 2009, and by not later than 15 days after
16 the end of each month thereafter, updating the status of
17 actions taken and funds obligated in this and previous ap-
18 propriations Acts for pandemic influenza preparedness
19 and response activities, biomedical advanced research and
20 development activities, Project BioShield, and Cyber Secu-
21 rity.

22 PREVENTION AND WELLNESS FUND

23 (INCLUDING TRANSFER OF FUNDS)

24 For necessary expenses for a “Prevention and
25 Wellness Fund” to be administered through the Depart-

1 ment of Health and Human Services Office of the Sec-
2 retary, \$3,000,000,000: *Provided*, That the provisions of
3 section ~~1103~~ of this Act shall not apply to this appropria-
4 tion: *Provided further*, That of the amount appropriated
5 under this heading not less than \$2,350,000,000 shall be
6 transferred to the Centers for Disease Control and Pre-
7 vention as follows:

8 (1) Not less than \$954,000,000 shall be used as
9 an additional amount to carry out the immunization
10 program authorized by section ~~317~~(a), (j), and
11 (k)(1) of the Public Health Service Act (“section
12 ~~317~~ immunization program”), of which
13 \$649,900,000 shall be available on October 1, 2009.

14 (2) Not less than \$296,000,000 shall be used as
15 an additional amount to carry out Part A of title
16 XIX of the Public Health Service Act, of which
17 \$148,000,000 shall be available on October 1, 2009.

18 (3) Not less than \$545,000,000 shall be used as
19 an additional amount to carry out chronic disease,
20 health promotion, and genomics programs, as jointly
21 determined by the Secretary of Health and Human
22 Services (“Secretary”) and the Director of the Cen-
23 ters for Disease Control and Prevention (“Direc-
24 tor”).

1 (4) Not less than \$335,000,000 shall be used as
2 an additional amount to carry out domestic HIV/
3 AIDS, viral hepatitis, sexually-transmitted diseases,
4 and tuberculosis prevention programs, as jointly de-
5 termined by the Secretary and the Director.

6 (5) Not less than \$60,000,000 shall be used as
7 an additional amount to carry out environmental
8 health programs, as jointly determined by the Sec-
9 retary and the Director.

10 (6) Not less than \$50,000,000 shall be used as
11 an additional amount to carry out injury prevention
12 and control programs, as jointly determined by the
13 Secretary and the Director.

14 (7) Not less than \$30,000,000 shall be used as
15 an additional amount for public health workforce de-
16 velopment activities, as jointly determined by the
17 Secretary and the Director.

18 (8) Not less than \$40,000,000 shall be used as
19 an additional amount for the National Institute for
20 Occupational Safety and Health to carry out re-
21 search activities within the National Occupational
22 Research Agenda.

23 (9) Not less than \$40,000,000 shall be used as
24 an additional amount for the National Center for
25 Health Statistics.

1 *Provided further,* That of the amount appropriated under
2 this heading not less than \$150,000,000 shall be available
3 for an additional amount to carry out activities to imple-
4 ment a national action plan to prevent healthcare-associ-
5 ated infections, as determined by the Secretary, of which
6 not less \$50,000,000 shall be provided to States to imple-
7 ment healthcare-associated infection reduction strategies:

8 *Provided further,* That of the amount appropriated under
9 this heading \$500,000,000 shall be used to carry out evi-
10 dence-based clinical and community-based prevention and
11 wellness strategies and public health workforce develop-
12 ment activities authorized by the Public Health Service
13 Act, as determined by the Secretary, that deliver specific,
14 measurable health outcomes that address chronic and in-
15 fectious disease rates and health disparities, which shall
16 include evidence-based interventions in obesity, diabetes,
17 heart disease, cancer, tobacco cessation and smoking pre-
18 vention, and oral health, and which may be used for the
19 Healthy Communities program administered by the Cen-
20 ters for Disease Control and Prevention and other existing
21 community-based programs administered by the Depart-
22 ment of Health and Human Services: *Provided further,*
23 That funds appropriated in the preceding proviso may be
24 transferred to other appropriation accounts of the Depart-
25 ment of Health and Human Services, as determined by

1 the Secretary to be appropriate: *Provided further*, That the
2 Secretary shall, directly or through contracts with public
3 or private entities, provide for annual evaluations of pro-
4 grams carried out with funds provided under this heading
5 in order to determine the quality and effectiveness of the
6 programs: *Provided further*, That the Secretary shall, not
7 later than 1 year after the date of enactment of this Act,
8 submit to the Committees on Appropriations of the House
9 of Representatives and the Senate, the Committee on En-
10 ergy and Commerce of the House of Representatives, and
11 the Committee on Health, Education, Labor, and Pen-
12 sions of the Senate, a report: (1) summarizing the annual
13 evaluations of programs from the preceding proviso; and
14 (2) making recommendations concerning future spending
15 on prevention and wellness activities, including any rec-
16 ommendations made by the United States Preventive
17 Services Task Force in the area of clinical preventive serv-
18 ices and the Task Force on Community Preventive Serv-
19 ices in the area of community preventive services: *Provided*
20 *further*, That the Secretary shall enter into a contract with
21 the Institute of Medicine, for which no more than
22 \$1,500,000 shall be made available from funds provided
23 in this paragraph, to produce and submit a report to the
24 Congress and the Secretary by no later than 1 year after
25 the date of enactment of this Act that includes rec-

1 ommendations on the national priorities for clinical and
2 community-based prevention and wellness activities that
3 will have a positive impact in preventing illness or reduc-
4 ing healthcare costs and that considers input from stake-
5 holders: *Provided further*, That the Secretary shall provide
6 to the Committees on Appropriations of the House of Rep-
7 resentatives and the Senate a fiscal year 2009 operating
8 plan for the Prevention and Wellness Fund prior to mak-
9 ing any Federal obligations of funds provided under this
10 heading in fiscal year 2009 (excluding funds to carry out
11 the section 317 immunization program); but not later than
12 90 days after the date of enactment of this Act, and a
13 fiscal year 2010 operating plan for the Prevention and
14 Wellness Fund prior to making any Federal obligations
15 of funds provided under this heading in fiscal year 2010
16 (excluding funds to carry out the section 317 immuniza-
17 tion program); but not later than November 1, 2009, that
18 indicate the prevention priorities to be addressed; provide
19 measurable goals for each prevention priority; detail the
20 allocation of resources within the Department of Health
21 and Human Services; and identify which programs or ac-
22 tivities are supported, including descriptions of any new
23 programs or activities: *Provided further*, That the Sec-
24 retary shall provide to the Committees on Appropriations
25 of the House of Representatives and the Senate a report

1 on the actual obligations, expenditures, and unobligated
2 balances for each activity funded under this heading not
3 later than November 1, 2009, and every 6 months there-
4 after as long as funding provided under this heading is
5 available for obligation or expenditure.

6 **GENERAL PROVISIONS, THIS SUBTITLE**

7 **SEC. 9201. FEDERAL COORDINATING COUNCIL FOR COM-**
8 **PARATIVE EFFECTIVENESS RESEARCH.**

9 (a) **ESTABLISHMENT.**—There is hereby established a
10 Federal Coordinating Council for Comparative Effective-
11 ness Research (in this section referred to as the “Coun-
12 cil”).

13 (b) **PURPOSE; DUTIES.**—The Council shall—

14 (1) assist the offices and agencies of the Fed-
15 eral Government, including the Departments of
16 Health and Human Services, Veterans Affairs, and
17 Defense, and other Federal departments or agencies,
18 to coordinate the conduct or support of comparative
19 effectiveness and related health services research;
20 and

21 (2) advise the President and Congress on—

22 (A) strategies with respect to the infra-
23 structure needs of comparative effectiveness re-
24 search within the Federal Government;

1 (B) appropriate organizational expendi-
2 tures for comparative effectiveness research by
3 relevant Federal departments and agencies; and

4 (C) opportunities to assure optimum co-
5 ordination of comparative effectiveness and re-
6 lated health services research conducted or sup-
7 ported by relevant Federal departments and
8 agencies, with the goal of reducing duplicative
9 efforts and encouraging coordinated and com-
10 plementary use of resources.

11 (e) MEMBERSHIP.—

12 (1) NUMBER AND APPOINTMENT.—The Council
13 shall be composed of not more than 15 members, all
14 of whom are senior Federal officers or employees
15 with responsibility for health-related programs, ap-
16 pointed by the President, acting through the Sec-
17 retary of Health and Human Services (in this sec-
18 tion referred to as the “Secretary”). Members shall
19 first be appointed to the Council not later than 30
20 days after the date of the enactment of this Act.

21 (2) MEMBERS.—

22 (A) IN GENERAL.—The members of the
23 Council shall include one senior officer or em-
24 ployee from each of the following agencies:

1 (i) The Agency for Healthcare Re-
2 search and Quality.

3 (ii) The Centers for Medicare and
4 Medicaid Services.

5 (iii) The National Institutes of
6 Health.

7 (iv) The Office of the National Coor-
8 dinator for Health Information Tech-
9 nology.

10 (v) The Food and Drug Administra-
11 tion.

12 (vi) The Veterans Health Administra-
13 tion within the Department of Veterans
14 Affairs.

15 (vii) The office within the Department
16 of Defense responsible for management of
17 the Department of Defense Military
18 Health Care System.

19 (B) QUALIFICATIONS.—At least half of the
20 members of the Council shall be physicians or
21 other experts with clinical expertise.

22 (3) CHAIRMAN; VICE CHAIRMAN.—The Sec-
23 retary shall serve as Chairman of the Council and
24 shall designate a member to serve as Vice Chairman.

25 (d) REPORTS.—

1 (1) INITIAL REPORT.—Not later than June 30,
2 2009, the Council shall submit to the President and
3 the Congress a report containing information de-
4 scribing Federal activities on comparative effective-
5 ness research and recommendations for additional
6 investments in such research conducted or supported
7 from funds made available for allotment by the Sec-
8 retary for comparative effectiveness research in this
9 Act.

10 (2) ANNUAL REPORT.—The Council shall sub-
11 mit to the President and Congress an annual report
12 regarding its activities and recommendations con-
13 cerning the infrastructure needs, appropriate organi-
14 zational expenditures and opportunities for better
15 coordination of comparative effectiveness research by
16 relevant Federal departments and agencies.

17 (e) STAFFING; SUPPORT.—From funds made avail-
18 able for allotment by the Secretary for comparative effec-
19 tiveness research in this Act, the Secretary shall make
20 available not more than 1 percent to the Council for staff
21 and administrative support.

22 **SEC. 9202. INVESTMENT IN HEALTH INFORMATION TECH-**
23 **NOLOGY.**

24 (a) IN GENERAL.—The Secretary of Health and
25 Human Services shall invest in the infrastructure nec-

1 essary to allow for and promote the electronic exchange
2 and use of health information for each individual in the
3 United States consistent with the goals outlined in the
4 Strategic Plan developed by the Office of the National Co-
5 ordinator for Health Information Technology. Such invest-
6 ment shall include investment in at least the following:

7 (1) Health information technology architecture
8 that will support the nationwide electronic exchange
9 and use of health information in a secure, private,
10 and accurate manner, including connecting health
11 information exchanges, and which may include up-
12 dating and implementing the infrastructure nec-
13 essary within different agencies of the Department
14 of Health and Human Services to support the elec-
15 tronic use and exchange of health information.

16 (2) Integration of health information tech-
17 nology, including electronic medical records, into the
18 initial and ongoing training of health professionals
19 and others in the healthcare industry who would be
20 instrumental to improving the quality of healthcare
21 through the smooth and accurate electronic use and
22 exchange of health information as determined by the
23 Secretary.

24 (3) Training on and dissemination of informa-
25 tion on best practices to integrate health information

1 technology, including electronic records, into a pro-
2 vider's delivery of care, including community health
3 centers receiving assistance under section 330 of the
4 Public Health Service Act and providers partici-
5 pating in one or more of the programs under titles
6 XVIII, XIX, and XXI of the Social Security Act (re-
7 lating to Medicare, Medicaid, and the State Chil-
8 dren's Health Insurance Program).

9 (4) Infrastructure and tools for the promotion
10 of telemedicine, including coordination among Fed-
11 eral agencies in the promotion of telemedicine.

12 (5) Promotion of the interoperability of clinical
13 data repositories or registries.

14 The Secretary shall implement paragraph (3) in coordina-
15 tion with State agencies administering the Medicaid pro-
16 gram and the State Children's Health Insurance Program.

17 (b) LIMITATION.—None of the funds appropriated to
18 carry out this section may be used to make significant in-
19 vestments in, or provide significant funds for, the acquisi-
20 tion of hardware or software or for the use of an electronic
21 health or medical record, or significant components there-
22 of, unless such investments or funds are for certified prod-
23 ucts that would permit the full and accurate electronic ex-
24 change and use of health information in a medical record,
25 including standards for security, privacy, and quality im-

1 improvement functions adopted by the Office of the National
2 Coordinator for Health Information Technology.

3 (c) REPORT.—The Secretary shall annually report to
4 the Committees on Energy and Commerce, on Ways and
5 Means, on Science and Technology, and on Appropriations
6 of the House of Representatives and the Committees on
7 Finance, on Health, Education, Labor, and Pensions, and
8 on Appropriations of the Senate on the uses of these funds
9 and their impact on the infrastructure for the electronic
10 exchange and use of health information.

11 **Subtitle C—Education**

12 DEPARTMENT OF EDUCATION

13 EDUCATION FOR THE DISADVANTAGED

14 For an additional amount for “Education for the Dis-
15 advantaged” to carry out title I of the Elementary and
16 Secondary Education Act of 1965 (“ESEA”);
17 \$13,000,000,000: *Provided*, That \$5,500,000,000 shall be
18 available for targeted grants under section 1125 of the
19 ESEA, of which \$2,750,000,000 shall become available on
20 July 1, 2009, and shall remain available through Sep-
21 tember 30, 2010, and \$2,750,000,000 shall become avail-
22 able on July 1, 2010, and shall remain available through
23 September 30, 2011: *Provided further*, That
24 \$5,500,000,000 shall be available for education finance in-
25 centive grants under section 1125A of the ESEA, of which

1 ~~\$2,750,000,000~~ shall become available on July 1, 2009,
 2 and shall remain available through September 30, 2010,
 3 and ~~\$2,750,000,000~~ shall become available on July 1,
 4 2010, and shall remain available through September 30,
 5 2011: *Provided further*, That ~~\$2,000,000,000~~ shall be for
 6 school improvement grants under section ~~1003(g)~~ of the
 7 ESEA, of which ~~\$1,000,000,000~~ shall become available on
 8 July 1, 2009, and shall remain available through Sep-
 9 tember 30, 2010, and ~~\$1,000,000,000~~ shall become avail-
 10 able on July 1, 2010, and shall remain available through
 11 September 30, 2011: *Provided further*, That the provisions
 12 of section 1106 of this Act shall not apply to this appro-
 13 priation.

14 IMPACT AID

15 For an additional amount for “Impact Aid” to carry
 16 out section 8007 of title VIII of the Elementary and Sec-
 17 ondary Education Act of 1965, ~~\$100,000,000~~, which shall
 18 remain available through September 30, 2010: *Provided*,
 19 That the amount set aside from this appropriation pursu-
 20 ant to section 1106 of this Act shall be 1 percent instead
 21 of the percentage specified in such section.

22 SCHOOL IMPROVEMENT PROGRAMS

23 For an additional amount for “School Improvement
 24 Programs” to carry out subpart 1, part D of title II of
 25 the Elementary and Secondary Education Act of 1965

1 (“ESEA”), and subtitle B of title VII of the McKinney-
2 Vento Homeless Assistance Act, \$1,066,000,000: *Pro-*
3 *vided*, That \$1,000,000,000 shall be available for subpart
4 1, part D of title II of the ESEA, of which \$500,000,000
5 shall become available on July 1, 2009, and shall remain
6 available through September 30, 2010, and \$500,000,000
7 shall become available on July 1, 2010, and remain avail-
8 able through September 30, 2011: *Provided further*, That
9 the provisions of section 1106 of this Act shall not apply
10 to these funds: *Provided further*, That \$66,000,000 shall
11 be available for subtitle B of title VII of the McKinney-
12 Vento Homeless Assistance Act, of which \$33,000,000
13 shall become available on July 1, 2009, and shall remain
14 available through September 30, 2010, and \$33,000,000
15 shall become available on July 1, 2010, and remain avail-
16 able through September 30, 2011.

17 INNOVATION AND IMPROVEMENT

18 For an additional amount for “Innovation and Im-
19 provement” to carry out subpart 1, part D and subpart
20 2, part B of title V of the Elementary and Secondary Edu-
21 cation Act of 1965 (“ESEA”), \$225,000,000: *Provided*,
22 That \$200,000,000 shall be available for subpart 1, part
23 D of title V of the ESEA: *Provided further*, That these
24 funds shall be expended as directed in the fifth, sixth, and
25 seventh provisos under the heading “Innovation and Im-

1 improvement² in the Department of Education Appropria-
2 tions Act, 2008: *Provided further*, That a portion of these
3 funds shall also be used for a rigorous national evaluation
4 by the Institute of Education Sciences, utilizing random-
5 ized controlled methodology to the extent feasible, that as-
6 sesses the impact of performance-based teacher and prin-
7 cipal compensation systems supported by the funds pro-
8 vided in this Act on teacher and principal recruitment and
9 retention in high-need schools and subjects: *Provided fur-*
10 *ther*, That \$25,000,000 shall be available for subpart 2,
11 part B of title V of the ESEA: *Provided further*, That the
12 amount set aside from this appropriation pursuant to sec-
13 tion 1106 of this Act shall be 1 percent instead of the
14 percentage specified in such section.

15 SPECIAL EDUCATION

16 For an additional amount for “Special Education”
17 for carrying out section 611 and part C of the Individuals
18 with Disabilities Education Act (“IDEA”),
19 \$13,600,000,000: *Provided*, That \$13,000,000,000 shall
20 be available for section 611 of the IDEA, of which
21 \$6,000,000,000 shall become available on July 1, 2009,
22 and remain available through September 30, 2010, and
23 \$7,000,000,000 shall become available on July 1, 2010,
24 and remain available through September 30, 2011: *Pro-*
25 *vided further*, That \$600,000,000 shall be available for

1 part C of the IDEA, of which \$300,000,000 shall become
2 available on July 1, 2009, and remain available through
3 September 30, 2010, and \$300,000,000 shall become
4 available on July 1, 2010, and remain available through
5 September 30, 2011: *Provided further*, That by July 1,
6 2009, the Secretary of Education shall reserve the amount
7 needed for grants under section 643(e) of the IDEA from
8 funds available for obligation on July 1, 2009, with any
9 remaining funds to be allocated in accordance with section
10 643(e) of the IDEA: *Provided further*, That by July 1,
11 2010, the Secretary shall reserve the amount needed for
12 grants under section 643(e) of the IDEA from funds avail-
13 able for obligation on July 1, 2010, with any remaining
14 funds to be allocated in accordance with section 643(e)
15 of the IDEA: *Provided further*, That if every State, as de-
16 fined by section 602(31) of the IDEA, reaches its max-
17 imum allocation under section 611(d)(3)(B)(iii) of the
18 IDEA, and there are remaining funds, such funds shall
19 be proportionally allocated to each State subject to the
20 maximum amounts contained in section 611(a)(2) of the
21 IDEA: *Provided further*, That the provisions of section
22 1106 of this Act shall not apply to this appropriation:

23 REHABILITATION SERVICES AND DISABILITY RESEARCH

24 For an additional amount for “Rehabilitation Serv-
25 ices and Disability Research” for providing grants to

1 States to carry out the Vocational Rehabilitation Services
2 program under part B of title I and parts B and C of
3 chapter 1 and chapter 2 of title VII of the Rehabilitation
4 Act of 1973, \$700,000,000: *Provided*, That \$500,000,000
5 shall be available for part B of title I of the Rehabilitation
6 Act, of which \$250,000,000 shall become available on Oc-
7 tober 1, 2009: *Provided further*, That funds provided here-
8 in shall not be considered in determining the amount re-
9 quired to be appropriated under section 100(b)(1) of the
10 Rehabilitation Act of 1973 in any fiscal year: *Provided fur-*
11 *ther*, That, notwithstanding section 7(14)(A), the Federal
12 share of the costs of vocational rehabilitation services pro-
13 vided with the funds provided herein shall be 100 percent:
14 *Provided further*, That the provisions of section 1106 of
15 this Act shall not apply to these funds: *Provided further*,
16 That \$200,000,000 shall be available for parts B and C
17 of chapter 1 and chapter 2 of title VII of the Rehabilita-
18 tion Act, of which \$100,000,000 shall become available on
19 October 1, 2009: *Provided further*, That \$34,775,000 shall
20 be for State Grants, \$114,581,000 shall be for inde-
21 pendent living centers, and \$50,644,000 shall be for serv-
22 ices for older blind individuals.

23 STUDENT FINANCIAL ASSISTANCE

24 For an additional amount for “Student Financial As-
25 sistance” to carry out subpart 1 of part A and part C

1 of title IV of the Higher Education Act of 1965 (“HEA”),
2 \$16,126,000,000, which shall remain available through
3 September 30, 2011: *Provided*, That \$15,636,000,000
4 shall be available for subpart 1 of part A of title IV of the
5 HEA: *Provided further*, That \$490,000,000 shall be avail-
6 able for part C of title IV of the HEA, of which
7 \$245,000,000 shall become available on October 1, 2009:
8 *Provided further*, That the provisions of section 1106 of
9 this Act shall not apply to this appropriation.

10 The maximum Pell Grant for which a student shall
11 be eligible during award year 2009–2010 shall be \$4,860.

12 STUDENT AID ADMINISTRATION

13 For an additional amount for “Student Aid Adminis-
14 tration” to carry out part D of title I, and subparts 1,
15 3, and 4 of part A, and parts B, C, D, and E of title
16 IV of the Higher Education Act of 1965, \$50,000,000,
17 which shall remain available through September 30, 2011:
18 *Provided*, That such amount shall also be available for an
19 independent audit of programs and activities authorized
20 under section 459A of such Act: *Provided further*, That
21 the provisions of section 1106 of this Act shall not apply
22 to this appropriation.

23 HIGHER EDUCATION

24 For an additional amount for “Higher Education” to
25 carry out part A of title II of the Higher Education Act

1 of 1965, \$100,000,000: *Provided*, That section 203(e)(1)
2 of such Act shall not apply to awards made with these
3 funds.

4 INSTITUTE OF EDUCATION SCIENCES

5 For an additional amount for Institute of Education
6 Sciences to carry out section 208 of the Educational Tech-
7 nical Assistance Act, \$250,000,000, which may be used
8 for Statewide data systems that include postsecondary and
9 workforce information, of which up to \$5,000,000 may be
10 used for State data coordinators and for awards to public
11 or private organizations or agencies to improve data co-
12 ordination: *Provided*, That the amount set aside from this
13 appropriation pursuant to section 1106 of this Act shall
14 be 1 percent instead of the percentage specified in such
15 section.

16 SCHOOL MODERNIZATION, RENOVATION, AND REPAIR

17 For carrying out section 9301 of this Act,
18 \$14,000,000,000: *Provided*, That amount available under
19 section 9301 of this Act for administration and oversight
20 shall take the place of the set-aside under section 1106
21 of this Act.

22 HIGHER EDUCATION MODERNIZATION, RENOVATION, 23 AND REPAIR

24 For carrying out section 9302 of this Act,
25 \$6,000,000,000: *Provided*, That amount available under

1 section 9302 of this Act for administration and oversight
2 shall take the place of the set-aside under section 1106
3 of this Act.

4 GENERAL PROVISIONS, THIS SUBTITLE
5 **SEC. 9301. 21ST CENTURY GREEN HIGH-PERFORMING PUB-**
6 **LIC SCHOOL FACILITIES.**

7 (a) DEFINITIONS.—In this section:

8 (1) The term “Bureau-funded school” has the
9 meaning given to such term in section 1141 of the
10 Education Amendments of 1978 (25 U.S.C. 2021).

11 (2) The term “charter school” has the meaning
12 given such term in section 5210 of the Elementary
13 and Secondary Education Act of 1965.

14 (3) The term “local educational agency”—

15 (A) has the meaning given to that term in
16 section 9101 of the Elementary and Secondary
17 Education Act of 1965, and shall also include
18 the Recovery School District of Louisiana and
19 the New Orleans Public Schools; and

20 (B) includes any public charter school that
21 constitutes a local educational agency under
22 State law.

23 (4) The term “outlying area”—

24 (A) means the United States Virgin Is-
25 lands, Guam, American Samoa, and the Com-

1 monwealth of the Northern Mariana Islands;
2 and

3 (B) includes the freely associated states of
4 the Republic of the Marshall Islands, the Fed-
5 erated States of Micronesia, and the Republic
6 of Palau.

7 (5) The term “public school facilities” includes
8 charter schools.

9 (6) The term “State” means each of the 50
10 States, the District of Columbia, and the Common-
11 wealth of Puerto Rico.

12 (7) The term “LEED Green Building Rating
13 System” means the United States Green Building
14 Council Leadership in Energy and Environmental
15 Design green building rating standard referred to as
16 the LEED Green Building Rating System.

17 (8) The term “Energy Star” means the Energy
18 Star program of the United States Department of
19 Energy and the United States Environmental Pro-
20 tection Agency.

21 (9) The term “CHPS Criteria” means the
22 green building rating program developed by the Col-
23 laborative for High Performance Schools.

1 (10) The term “Green Globes” means the
2 Green Building Initiative environmental design and
3 rating system referred to as Green Globes.

4 (b) PURPOSE.—Grants under this section shall be for
5 the purpose of modernizing, renovating, or repairing pub-
6 lic school facilities, based on their need for such improve-
7 ments, to be safe, healthy, high-performing, and up-to-
8 date technologically.

9 (c) ALLOCATION OF FUNDS.—

10 (1) RESERVATIONS.—

11 (A) IN GENERAL.—From the amount ap-
12 propriated to carry out this section, the Sec-
13 retary of Education shall reserve 1 percent of
14 such amount, consistent with the purpose de-
15 scribed in subsection (b)—

16 (i) to provide assistance to the out-
17 lying areas; and

18 (ii) for payments to the Secretary of
19 the Interior to provide assistance to Bu-
20 reau-funded schools.

21 (B) ADMINISTRATION AND OVERSIGHT.—

22 The Secretary may, in addition, reserve up to
23 \$6,000,000 of such amount for administration
24 and oversight of this section.

25 (2) ALLOCATION TO STATES.—

1 (A) ~~STATE-BY-STATE ALLOCATION.~~—Of
2 the amount appropriated to carry out this sec-
3 tion, and not reserved under paragraph (1),
4 each State shall be allocated an amount in pro-
5 portion to the amount received by all local edu-
6 cational agencies in the State under part A of
7 title I of the Elementary and Secondary Edu-
8 cation Act of 1965 for fiscal year 2008 relative
9 to the total amount received by all local edu-
10 cational agencies in every State under such part
11 for such fiscal year.

12 (B) ~~STATE ADMINISTRATION.~~—A State
13 may reserve up to 1 percent of its allocation
14 under subparagraph (A) to carry out its respon-
15 sibilities under this section, including—

16 (i) providing technical assistance to
17 local educational agencies;

18 (ii) developing, within 6 months of re-
19 ceiving its allocation under subparagraph
20 (A), a plan to develop a database that in-
21 cludes an inventory of public school facili-
22 ties in the State and the modernization,
23 renovation, and repair needs of, energy use
24 by, and the carbon footprint of such
25 schools; and

1 (iii) developing a school energy effi-
2 ciency quality plan.

3 (C) GRANTS TO LOCAL EDUCATIONAL
4 AGENCIES.—From the amount allocated to a
5 State under subparagraph (A), each local edu-
6 cational agency in the State that meets the re-
7 quirements of section 1112(a) of the Elemen-
8 tary and Secondary Education Act of 1965
9 shall receive an amount in proportion to the
10 amount received by such local educational agen-
11 cy under part A of title I of that Act for fiscal
12 year 2008 relative to the total amount received
13 by all local educational agencies in the State
14 under such part for such fiscal year, except that
15 no local educational agency that received funds
16 under part A of title I of that Act for such fis-
17 cal year shall receive a grant of less than
18 \$5,000.

19 (D) SPECIAL RULE.—Section 1122(c)(3)
20 of the Elementary and Secondary Education
21 Act of 1965 shall not apply to subparagraph
22 (A) or (C).

23 (3) SPECIAL RULES.—

24 (A) DISTRIBUTIONS BY SECRETARY.—The
25 Secretary of Education shall make and dis-

1 tribute the reservations and allocations de-
2 scribed in paragraphs (1) and (2) not later than
3 30 days after the date of the enactment of this
4 Act.

5 (B) DISTRIBUTIONS BY STATES.—A State
6 shall make and distribute the allocations de-
7 scribed in paragraph (2)(C) within 30 days of
8 receiving such funds from the Secretary.

9 (d) USE IT OR LOSE IT REQUIREMENTS.—

10 (1) DEADLINE FOR BINDING COMMITMENTS.—
11 Each local educational agency receiving funds under
12 this section shall enter into contracts or other bind-
13 ing commitments not later than 1 year after the
14 date of the enactment of this Act (or not later than
15 9 months after such funds are awarded, if later) to
16 make use of 50 percent of such funds, and shall
17 enter into contracts or other binding commitments
18 not later than 2 years after the date of the enact-
19 ment of this Act (or not later than 21 months after
20 such funds are awarded, if later) to make use of the
21 remaining funds. In the case of activities to be ear-
22 ried out directly by a local educational agency (rath-
23 er than by contracts, subgrants, or other arrange-
24 ments with third parties), a certification by the
25 agency specifying the amounts, planned timing, and

1 purpose of such expenditures shall be deemed a
2 binding commitment for purposes of this subsection.

3 ~~(2) REDISTRIBUTION OF UNCOMMITTED~~
4 ~~FUNDS.—A State shall recover or deobligate any~~
5 ~~funds not committed in accordance with paragraph~~
6 ~~(1), and redistribute such funds to other local edu-~~
7 ~~cational agencies eligible under this section and able~~
8 ~~to make use of such funds in a timely manner (in-~~
9 ~~cluding binding commitments within 120 days after~~
10 ~~the reallocation).~~

11 ~~(e) ALLOWABLE USES OF FUNDS.—A local edu-~~
12 ~~cational agency receiving a grant under this section shall~~
13 ~~use the grant for modernization, renovation, or repair of~~
14 ~~public school facilities, including—~~

15 ~~(1) repairing, replacing, or installing roofs, in-~~
16 ~~cluding extensive, intensive or semi-intensive green~~
17 ~~roofs, electrical wiring, plumbing systems, sewage~~
18 ~~systems, lighting systems, or components of such~~
19 ~~systems, windows, or doors, including security doors;~~

20 ~~(2) repairing, replacing, or installing heating,~~
21 ~~ventilation, air conditioning systems, or components~~
22 ~~of such systems (including insulation), including in-~~
23 ~~door air quality assessments;~~

24 ~~(3) bringing public schools into compliance with~~
25 ~~fire, health, and safety codes, including professional~~

1 installation of fire/life safety alarms, including mod-
2 ernizations, renovations, and repairs that ensure
3 that schools are prepared for emergencies, such as
4 improving building infrastructure to accommodate
5 security measures;

6 (4) modifications necessary to make public
7 school facilities accessible to comply with the Ameri-
8 cans with Disabilities Act of 1990 (42 U.S.C. 12101
9 et seq.) and section 504 of the Rehabilitation Act of
10 1973 (29 U.S.C. 794), except that such modifica-
11 tions shall not be the primary use of the grant;

12 (5) asbestos or polychlorinated biphenyls abate-
13 ment or removal from public school facilities;

14 (6) implementation of measures designed to re-
15 duce or eliminate human exposure to lead-based
16 paint hazards through methods including interim
17 controls, abatement, or a combination of each;

18 (7) implementation of measures designed to re-
19 duce or eliminate human exposure to mold or mil-
20 dew;

21 (8) upgrading or installing educational tech-
22 nology infrastructure to ensure that students have
23 access to up-to-date educational technology;

1 (9) technology activities that are carried out in
2 connection with school repair and renovation, includ-
3 ing—

4 (A) wiring;

5 (B) acquiring hardware and software;

6 (C) acquiring connectivity linkages and re-
7 sources; and

8 (D) acquiring microwave, fiber optics,
9 cable, and satellite transmission equipment;

10 (10) modernization, renovation, or repair of
11 science and engineering laboratory facilities, librar-
12 ies, and career and technical education facilities, in-
13 cluding those related to energy efficiency and renew-
14 able energy, and improvements to building infra-
15 structure to accommodate bicycle and pedestrian ac-
16 cess;

17 (11) renewable energy generation and heating
18 systems, including solar, photovoltaic, wind, geo-
19 thermal, or biomass, including wood pellet, systems
20 or components of such systems;

21 (12) other modernization, renovation, or repair
22 of public school facilities to—

23 (A) improve teachers' ability to teach and
24 students' ability to learn;

1 ~~(B)~~ ensure the health and safety of stu-
2 dents and staff;

3 ~~(C)~~ make them more energy efficient; or

4 ~~(D)~~ reduce class size; and

5 ~~(13)~~ required environmental remediation related
6 to public school modernization, renovation, or repair
7 described in paragraphs ~~(1)~~ through ~~(12)~~.

8 ~~(f)~~ IMPERMISSIBLE USES OF FUNDS.—No funds re-
9 ceived under this section may be used for—

10 ~~(1)~~ payment of maintenance costs; or

11 ~~(2)~~ stadiums or other facilities primarily used
12 for athletic contests or exhibitions or other events
13 for which admission is charged to the general public.

14 ~~(g)~~ SUPPLEMENT, NOT SUPPLANT.—A local edu-
15 cational agency receiving a grant under this section shall
16 use such Federal funds only to supplement and not sup-
17 plant the amount of funds that would, in the absence of
18 such Federal funds, be available for modernization, ren-
19 ovation, or repair of public school facilities.

20 ~~(h)~~ PROHIBITION REGARDING STATE AID.—A State
21 shall not take into consideration payments under this sec-
22 tion in determining the eligibility of any local educational
23 agency in that State for State aid, or the amount of State
24 aid, with respect to free public education of children.

1 (i) SPECIAL RULE ON CONTRACTING.—Each local
2 educational agency receiving a grant under this section
3 shall ensure that, if the agency carries out modernization,
4 renovation, or repair through a contract, the process for
5 any such contract ensures the maximum number of quali-
6 fied bidders, including local, small, minority, and women-
7 and veteran-owned businesses, through full and open com-
8 petition.

9 (j) SPECIAL RULE ON USE OF IRON AND STEEL
10 PRODUCED IN THE UNITED STATES.—

11 (1) IN GENERAL.—A local educational agency
12 shall not obligate or expend funds received under
13 this section for a project for the modernization, ren-
14 ovation, or repair of a public school facility unless all
15 of the iron and steel used in such project is pro-
16 duced in the United States.

17 (2) EXCEPTIONS.—The provisions of paragraph
18 (1) shall not apply in any case in which the local
19 educational agency finds that—

20 (A) their application would be inconsistent
21 with the public interest;

22 (B) iron and steel are not produced in the
23 United States in sufficient and reasonably
24 available quantities and of a satisfactory qual-
25 ity; or

1 (C) inclusion of iron and steel produced in
2 the United States will increase the cost of the
3 overall project contract by more than 25 per-
4 cent.

5 (k) APPLICATION OF GEPA.—The grant program
6 under this section is an applicable program (as that term
7 is defined in section 400 of the General Education Provi-
8 sions Act (20 U.S.C. 1221)) subject to section 439 of such
9 Act (20 U.S.C. 1232b).

10 (l) CHARTER SCHOOLS.—A local educational agency
11 receiving an allocation under this section shall use an equi-
12 table portion of that allocation for allowable activities ben-
13 efitting charter schools within its jurisdiction, as deter-
14 mined based on the percentage of students from low-in-
15 come families in the schools of the agency who are enrolled
16 in charter schools and on the needs of those schools as
17 determined by the agency.

18 (m) GREEN SCHOOLS.—

19 (1) IN GENERAL.—A local educational agency
20 shall use not less than 25 percent of the funds re-
21 ceived under this section for public school mod-
22 ernization, renovation, or repairs that are certified,
23 verified, or consistent with any applicable provisions
24 of—

1 (A) the LEED Green Building Rating Sys-
2 tem;

3 (B) Energy Star;

4 (C) the CHPS Criteria;

5 (D) Green Globes; or

6 (E) an equivalent program adopted by the
7 State or another jurisdiction with authority over
8 the local educational agency.

9 (2) TECHNICAL ASSISTANCE.—The Secretary,
10 in consultation with the Secretary of Energy and the
11 Administrator of the Environmental Protection
12 Agency, shall provide outreach and technical assist-
13 ance to States and school districts concerning the
14 best practices in school modernization, renovation,
15 and repair, including those related to student aca-
16 demic achievement and student and staff health, en-
17 ergy efficiency, and environmental protection.

18 (n) YOUTHBUILD PROGRAMS.—The Secretary of
19 Education, in consultation with the Secretary of Labor,
20 shall work with recipients of funds under this section to
21 promote appropriate opportunities for participants in a
22 YouthBuild program (as defined in section 173A of the
23 Workforce Investment Act of 1998 (29 U.S.C. 2918a)) to
24 gain employment experience on modernization, renovation,
25 and repair projects funded under this section.

1 (0) REPORTING.—

2 (1) REPORTS BY LOCAL EDUCATIONAL AGEN-
3 CIES.—Local educational agencies receiving a grant
4 under this section shall compile, and submit to the
5 State educational agency (which shall compile and
6 submit such reports to the Secretary), a report de-
7 scribing the projects for which such funds were used,
8 including—

9 (A) the number of public schools in the
10 agency, including the number of charter
11 schools;

12 (B) the total amount of funds received by
13 the local educational agency under this section
14 and the amount of such funds expended, includ-
15 ing the amount expended for modernization,
16 renovation, and repair of charter schools;

17 (C) the number of public schools in the
18 agency with a metro-centric locale code of 41,
19 42, or 43 as determined by the National Center
20 for Education Statistics and the percentage of
21 funds received by the agency under this section
22 that were used for projects at such schools;

23 (D) the number of public schools in the
24 agency that are eligible for schoolwide programs
25 under section 1114 of the Elementary and Sec-

1 ondary Education Act of 1965 and the percent-
2 age of funds received by the agency under this
3 section that were used for projects at such
4 schools;

5 (E) the cost of each project, which, if any,
6 of the standards described in subsection (k)(1)
7 the project met, and any demonstrable or ex-
8 pected academic, energy, or environmental ben-
9 efits as a result of the project;

10 (F) if flooring was installed, whether—

11 (i) it was low- or no-VOC (Volatile
12 Organic Compounds) flooring;

13 (ii) it was made from sustainable ma-
14 terials; and

15 (iii) use of flooring described in clause
16 (i) or (ii) was cost effective; and

17 (G) the total number and amount of con-
18 tracts awarded, and the number and amount of
19 contracts awarded to local, small, minority-
20 owned, women-owned, and veteran-owned busi-
21 nesses.

22 (2) REPORTS BY SECRETARY.—Not later than
23 December 31, 2011, the Secretary of Education
24 shall submit to the Committees on Education and
25 Labor and Appropriations of the House of Rep-

1 representatives and the Committees on Health, Edu-
2 cation, Labor, and Pensions and Appropriations of
3 the Senate a report on grants made under this sec-
4 tion, including the information described in para-
5 graph (1), the types of modernization, renovation,
6 and repair funded, and the number of students im-
7 pacted, including the number of students counted
8 under section 1113(a)(5) of the Elementary and
9 Secondary Education Act of 1965.

10 **SEC. 9302. HIGHER EDUCATION MODERNIZATION, RENOVA-**
11 **TION, AND REPAIR.**

12 (a) **PURPOSE.**—Grants awarded under this section
13 shall be for the purpose of modernizing, renovating, and
14 repairing institution of higher education facilities that are
15 primarily used for instruction, research, or student hous-
16 ing.

17 (b) **GRANTS TO STATE HIGHER EDUCATION AGEN-**
18 **ENCIES.**—

19 (1) **FORMULA.**—From the amounts appro-
20 priated to carry out this section, the Secretary of
21 Education shall allocate funds to State higher edu-
22 cation agencies based on the number of students at-
23 tending institutions of higher education, with the
24 State higher education agency in each State receiv-
25 ing an amount that is in proportion to the number

1 of full-time equivalent undergraduate students at-
2 tending institutions of higher education in such
3 State for the most recent fiscal year for which there
4 are data available, relative to the total number of
5 full-time equivalent undergraduate students attend-
6 ing institutions of higher education in all States for
7 such fiscal year.

8 (2) APPLICATION.—To be eligible to receive an
9 allocation from the Secretary under paragraph (1),
10 a State higher education agency shall submit an ap-
11 plication to the Secretary at such time and in such
12 manner as the Secretary may reasonably require.

13 (3) REALLOCATION.—Amounts allocated to a
14 State higher education agency under this section
15 that are not obligated by such agency within 6
16 months of the date the agency receives such
17 amounts shall be returned to the Secretary, and the
18 Secretary shall reallocate such amounts to State
19 higher education agencies in other States on the
20 same basis as the original allocations under para-
21 graph (1)(B).

22 (4) ADMINISTRATION AND OVERSIGHT EX-
23 PENSES.—From the amounts appropriated to carry
24 out this section, not more than \$6,000,000 shall be
25 available to the Secretary for administrative and

1 oversight expenses related to carrying out this sec-
2 tion.

3 (c) USE OF GRANTS BY STATE HIGHER EDUCATION
4 AGENCIES.—

5 (1) SUBGRANTS TO INSTITUTIONS OF HIGHER
6 EDUCATION.—

7 (A) IN GENERAL.—Except as provided in
8 paragraph (2), each State higher education
9 agency receiving an allocation under subsection
10 (b)(1) shall use the amount allocated to award
11 subgrants to institutions of higher education
12 within the State to carry out projects in accord-
13 ance with subsection (d)(1).

14 (B) SUBGRANT AWARD ALLOCATION.—A
15 State higher education agency shall award sub-
16 grants to institutions of higher education under
17 this section based on the demonstrated need of
18 each institution for facility modernization, ren-
19 ovation, and repair.

20 (C) PRIORITY CONSIDERATIONS.—In
21 awarding subgrants under this section, each
22 State higher education agency shall give pri-
23 ority consideration to institutions of higher edu-
24 cation with any of the following characteristics:

1 (i) The institution is eligible for Fed-
2 eral assistance under title III or title V of
3 the Higher Education Act of 1965.

4 (ii) The institution was impacted by a
5 major disaster or emergency declared by
6 the President (as defined in section 102(2)
7 of the Robert T. Stafford Disaster Relief
8 and Emergency Assistance Act (42 U.S.C.
9 5122(2))), including an institution affected
10 by a Gulf hurricane disaster, as such term
11 is defined in section 824(g)(1) of the High-
12 er Education Act of 1965 (20 U.S.C.
13 11611-3(g)(1)).

14 (iii) The institution demonstrates that
15 the proposed project or projects to be ear-
16 ried out with a subgrant under this section
17 will increase the energy efficiency of the in-
18 stitution's facilities and comply with the
19 LEED Green Building Rating System.

20 (2) ADMINISTRATIVE AND OVERSIGHT EX-
21 PENSES.—Of the allocation amount received under
22 subsection (b)(1), a State higher education agency
23 may reserve not more than 5 percent of such
24 amount, or \$500,000, whichever is less, for adminis-

1 trative and oversight expenses related to carrying
2 out this section.

3 (d) USE OF SUBGRANTS BY INSTITUTIONS OF HIGH-
4 ER EDUCATION.—

5 (1) PERMISSIBLE USES OF FUNDS.—An institu-
6 tion of higher education receiving a subgrant under
7 this section shall use such subgrant to modernize,
8 renovate, or repair facilities of the institution that
9 are primarily used for instruction, research, or stu-
10 dent housing, which may include any of the fol-
11 lowing:

12 (A) Repair, replacement, or installation of
13 roofs, electrical wiring, plumbing systems, sew-
14 age systems, or lighting systems.

15 (B) Repair, replacement, or installation of
16 heating, ventilation, or air conditioning systems
17 (including insulation).

18 (C) Compliance with fire and safety codes,
19 including—

20 (i) professional installation of fire or
21 life safety alarms; and

22 (ii) modernizations, renovations, and
23 repairs that ensure that the institution's
24 facilities are prepared for emergencies;

1 such as improving building infrastructure
2 to accommodate security measures.

3 (D) Retrofitting necessary to increase the
4 energy efficiency of the institution's facilities.

5 (E) Renovations to the institution's facili-
6 ties necessary to comply with accessibility re-
7 quirements in the Americans with Disabilities
8 Act of 1990 (42 U.S.C. 12101 et seq.) and sec-
9 tion 504 of the Rehabilitation Act of 1973 (29
10 U.S.C. 794).

11 (F) Abatement or removal of asbestos from
12 the institution's facilities.

13 (G) Modernization, renovation, and repair
14 relating to improving science and engineering
15 laboratories, libraries, and instructional facili-
16 ties.

17 (H) Upgrading or installation of edu-
18 cational technology infrastructure.

19 (I) Installation or upgrading of renewable
20 energy generation and heating systems, includ-
21 ing solar, photovoltaic, wind, biomass (including
22 wood pellet), or geothermal systems, or compo-
23 nents of such systems.

1 (~~J~~) Other modernization, renovation, or re-
2 pair projects that are primarily for instruction,
3 research, or student housing.

4 (~~2~~) GREEN SCHOOL REQUIREMENT.—An insti-
5 tution of higher education receiving a subgrant
6 under this section shall use not less than 25 percent
7 of such subgrant to carry out projects for mod-
8 ernization, renovation, or repair that are certified,
9 verified, or consistent with the applicable provisions
10 of—

11 (~~A~~) the LEED Green Building Rating Sys-
12 tem;

13 (~~B~~) Energy Star;

14 (~~C~~) the CHPS Criteria;

15 (~~D~~) Green Globes; or

16 (~~E~~) an equivalent program adopted by the
17 State or the State higher education agency.

18 (~~3~~) PROHIBITED USES OF FUNDS.—No funds
19 awarded under this section may be used for—

20 (~~A~~) the maintenance of systems, equip-
21 ment, or facilities, including maintenance asso-
22 ciated with any permissible uses of funds de-
23 scribed in paragraph (1);

24 (~~B~~) modernization, renovation, or repair of
25 stadiums or other facilities primarily used for

1 athletic contests or exhibitions or other events
2 for which admission is charged to the general
3 public;

4 (C) modernization, renovation, or repair of
5 facilities—

6 (i) used for sectarian instruction, reli-
7 gious worship, or a school or department
8 of divinity; or

9 (ii) in which a substantial portion of
10 the functions of the facilities are subsumed
11 in a religious mission; or

12 (D) construction of new facilities.

13 (4) USE IT OR LOSE IT REQUIREMENTS.—

14 (A) DEADLINE FOR BINDING COMMIT-
15 MENTS.—Each institution of higher education
16 receiving a subgrant under this section shall
17 enter into contracts or other binding commit-
18 ments not later than 1 year after the date of
19 the enactment of this Act (or not later than 9
20 months after the subgrant is awarded, if later)
21 to make use of 50 percent of the funds award-
22 ed; and shall enter into contracts or other bind-
23 ing commitments not later than 2 years after
24 the date of the enactment of this Act (or not
25 later than 21 months after the subgrant is

1 awarded; if later) to make use of the remaining
2 funds. In the case of activities to be carried out
3 directly by an institution of higher education re-
4 ceiving such a subgrant (rather than by con-
5 tracts, subgrants, or other arrangements with
6 third parties); a certification by the institution
7 specifying the amounts, planned timing, and
8 purpose of such expenditures shall be deemed a
9 binding commitment for purposes of this sec-
10 tion.

11 (B) REDISTRIBUTION OF UNCOMMITTED
12 FUNDS.—A State higher education agency shall
13 recover or deobligate any subgrant funds not
14 committed in accordance with subparagraph
15 (A); and redistribute such funds to other insti-
16 tutions of higher education that are—

17 (i) eligible for subgrants under this
18 section; and

19 (ii) able to make use of such funds in
20 a timely manner (including binding com-
21 mitments within 120 days after the re-
22 allocation).

23 (c) APPLICATION OF GEPA.—The grant program au-
24 thorized in this section is an applicable program (as that
25 term is defined in section 400 of the General Education

1 Provisions Act (~~20 U.S.C. 1221~~) subject to section 439
2 of such Act (~~20 U.S.C. 1232b~~). The Secretary shall, not-
3 withstanding section 437 of such Act (~~20 U.S.C. 1232~~)
4 and section 553 of title 5, United States Code, establish
5 such program rules as may be necessary to implement
6 such grant program by notice in the Federal Register.

7 (f) REPORTING.—

8 (1) REPORTS BY INSTITUTIONS.—Not later
9 than September 30, 2011, each institution of higher
10 education receiving a subgrant under this section
11 shall submit to the State higher education agency
12 awarding such subgrant a report describing the
13 projects for which such subgrant was received, in-
14 cluding—

15 (A) a description of each project carried
16 out, or planned to be carried out, with such
17 subgrant, including the types of modernization,
18 renovation, and repair to be completed by each
19 such project;

20 (B) the total amount of funds received by
21 the institution under this section and the
22 amount of such funds expended, as of the date
23 of the report, on the such projects;

24 (C) the actual or planned cost of each such
25 project and any demonstrable or expected aca-

1 demic, energy, or environmental benefits result-
2 ing from such project; and

3 (D) the total number of contracts, and
4 amount of funding for such contracts, awarded
5 by the institution to carry out such projects, as
6 of the date of such report, including the num-
7 ber of contracts, and amount of funding for
8 such contracts, awarded to local, small, minor-
9 ity-owned, women-owned, and veteran-owned
10 businesses, as such terms are defined by the
11 Small Business Act.

12 (2) REPORTS BY STATES.—Not later than De-
13 cember 31, 2011, each State higher education agen-
14 cy receiving a grant under this section shall submit
15 to the Secretary a report containing a compilation of
16 all of the reports under paragraph (1) submitted to
17 the agency by institutions of higher education.

18 (3) REPORTS BY THE SECRETARY.—Not later
19 than March 31, 2012, the Secretary shall submit to
20 the Committee on Education and Labor in the
21 House of Representatives and the Committee on
22 Health, Education, Labor, and Pensions in the Sen-
23 ate and Committees on Appropriations of the House
24 of Representatives and the Senate a report on

1 grants and subgrants made under this section, in-
2 cluding the information described in paragraph (1).

3 (g) DEFINITIONS.—In this section:

4 (1) CHIPS CRITERIA.—The term “CHIPS Cri-
5 teria” means the green building rating program de-
6 veloped by the Collaborative for High Performance
7 Schools.

8 (2) ENERGY STAR.—The term “Energy Star”
9 means the Energy Star program of the United
10 States Department of Energy and the United States
11 Environmental Protection Agency.

12 (3) GREEN GLOBES.—The term “Green
13 Globes” means the Green Building Initiative envi-
14 ronmental design and rating system referred to as
15 Green Globes.

16 (4) INSTITUTION OF HIGHER EDUCATION.—The
17 term “institution of higher education” has the
18 meaning given such term in section 101 of the High-
19 er Education Act of 1965.

20 (5) LEED GREEN BUILDING RATING SYS-
21 TEM.—The term “LEED Green Building Rating
22 System” means the United States Green Building
23 Council Leadership in Energy and Environmental
24 Design green building rating standard referred to as
25 the LEED Green Building Rating System.

1 (6) SECRETARY.—The term “Secretary” means
2 the Secretary of Education.

3 (7) STATE.—The term “State” has the mean-
4 ing given such term in section 103 of the Higher
5 Education Act of 1965 (20 U.S.C. 1003).

6 (8) STATE HIGHER EDUCATION AGENCY.—The
7 term “State higher education agency” has the mean-
8 ing given such term in section 103 of the Higher
9 Education Act of 1965 (20 U.S.C. 1003).

10 **SEC. 9303. MANDATORY PELL GRANTS.**

11 Section 401(b)(9)(A) of the Higher Education Act of
12 1965 (20 U.S.C. 1070a(b)(9)(A)) is amended—

13 (1) in clause (ii), by striking “\$2,090,000,000”
14 and inserting “\$2,733,000,000”; and

15 (2) in clause (iii), by striking “\$3,030,000,000”
16 and inserting “\$3,861,000,000”.

17 **SEC. 9304. INCREASE STUDENT LOAN LIMITS.**

18 (a) AMENDMENTS.—Section 428H(d) of the Higher
19 Education Act of 1965 (20 U.S.C. 1078–8(d)) is amend-
20 ed—

21 (1) in paragraph (3)—

22 (A) in subparagraph (A), by striking
23 “\$2,000” and inserting “\$4,000”; and

24 (B) in subparagraph (B), by striking
25 “\$31,000” and inserting “\$39,000”; and

1 (2) in paragraph (4)—

2 (A) in subparagraph (A)—

3 (i) in clause (i)(I) and clause (iii)(I),
4 by striking “\$6,000” each place it appears
5 and inserting “\$8,000”; and

6 (ii) in clause (ii)(I) and clause
7 (iii)(II), by striking “\$7,000” each place it
8 appears and inserting “\$9,000”; and

9 (B) in subparagraph (B), by striking
10 “\$57,500” and inserting “\$65,500”.

11 (b) **EFFECTIVE DATE.**—The amendments made by
12 this section shall be effective for loans first disbursed on
13 or after January 1, 2009.

14 **SEC. 9305. STUDENT LENDER SPECIAL ALLOWANCE.**

15 (a) **TEMPORARY CALCULATION RULE.**—Section
16 438(b)(2)(I) of the Higher Education Act of 1965 (20
17 U.S.C. 1087–1(b)(2)(I)) is amended by adding at the end
18 the following new clause:

19 “(vii) **TEMPORARY CALCULATION**
20 **RULE DURING UNSTABLE COMMERCIAL**
21 **PAPER MARKETS.**—

22 “(I) **CALCULATION BASED ON**
23 **LIBOR.**—For the calendar quarter be-
24 ginning on October 1, 2008, and end-
25 ing on December 31, 2008, in com-

1 puting the special allowance paid pur-
2 suant to this subsection with respect
3 to loans for which the first disburse-
4 ment is made on or after January 1,
5 2000, clause (i)(I) of this subpara-
6 graph shall be applied by substituting
7 ‘the rate that is the average rate of
8 the 3-month London Inter Bank Of-
9 fered Rate (LIBOR) for United
10 States dollars in effect for each of the
11 days in such quarter as compiled and
12 released by the British Bankers Asso-
13 ciation, minus 0.13 percent,’ for ‘the
14 average of the bond equivalent rates
15 of the quotes of the 3-month commer-
16 cial paper (financial) rates in effect
17 for each of the days in such quarter
18 as reported by the Federal Reserve in
19 Publication H-15 (or its successor)
20 for such 3-month period’.

21 “(H) PARTICIPATION INTER-
22 ESTS.—Notwithstanding subclause (I)
23 of this clause, the special allowance
24 paid on any loan held by a lender that
25 has sold participation interests in

1 such loan to the Secretary shall be the
 2 rate computed under this subpara-
 3 graph without regard to subclause (I)
 4 of this clause, unless the lender agrees
 5 that the participant's yield with re-
 6 spect to such participation interest is
 7 to be calculated in accordance with
 8 subclause (I) of this clause.”.

9 (b) CONFORMING AMENDMENTS.—Section
 10 438(b)(2)(I) of the Higher Education Act of 1965 (20
 11 U.S.C. 1087–1(b)(2)(I)) is further amended—

12 (1) in clause (i)(II), by striking “such average
 13 bond equivalent rate” and inserting “the rate deter-
 14 mined under subclause (I)”; and

15 (2) in clause (v)(III), by striking “(iv), and
 16 (vi)” and inserting “(iv), (vi), and (vii)”.

17 **Subtitle D—Related Agencies**

18 CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

19 OPERATING EXPENSES

20 For an additional amount for “Operating Expenses”
 21 to carry out the Domestic Volunteer Service Act of 1973
 22 and the National and Community Service Act of 1990
 23 (“1990 Act”), \$160,000,000, which shall be used to ex-
 24 pand existing AmeriCorps grants: *Provided*, That funds
 25 made available under this heading may be used to provide

1 adjustments to awards made prior to September 30, 2010
2 in order to waive the match requirement authorized in sec-
3 tion 121(e)(4) of part I of subtitle C of the 1990 Act,
4 if the Chief Executive Officer of the Corporation for Na-
5 tional and Community Service (“CEO”) determines that
6 the grantee has reduced capacity to meet this requirement:
7 *Provided further,* That in addition to requirements identi-
8 fied herein, funds provided under this heading shall be
9 subject to the terms and conditions under which funds are
10 appropriated in fiscal year 2009: *Provided further,* That
11 the CEO shall provide the Committees on Appropriations
12 of the House of Representatives and the Senate a fiscal
13 year 2009 operating plan for the funds appropriated under
14 this heading prior to making any Federal obligations of
15 such funds in fiscal year 2009, but not later than 90 days
16 after the date of enactment of this Act, and a fiscal year
17 2010 operating plan for such funds prior to making any
18 Federal obligations of such funds in fiscal year 2010, but
19 not later than November 1, 2009, that detail the allocation
20 of resources and the increased number of volunteers sup-
21 ported by the AmeriCorps programs: *Provided further,*
22 That the CEO shall provide to the Committees on Appro-
23 priations of the House of Representatives and the Senate
24 a report on the actual obligations, expenditures, and unob-
25 ligated balances for each activity funded under this head-

1 ing not later than November 1, 2009, and every 6 months
2 thereafter as long as funding provided under this heading
3 is available for obligation or expenditure.

4 NATIONAL SERVICE TRUST

5 (INCLUDING TRANSFER OF FUNDS)

6 For an additional amount for “National Service
7 Trust” established under subtitle D of title I of the Na-
8 tional and Community Service Act of 1990 (“1990 Act”),
9 \$40,000,000, which shall remain available until expended:
10 *Provided*, That the Corporation for National and Commu-
11 nity Service may transfer additional funds from the
12 amount provided within “Operating Expenses” for grants
13 made under subtitle C of the 1990 Act to this appropria-
14 tion upon determination that such transfer is necessary
15 to support the activities of national service participants
16 and after notice is transmitted to the Committees on Ap-
17 propriations of the House of Representatives and the Sen-
18 ate: *Provided further*, That the amount appropriated for
19 or transferred to the National Service Trust may be in-
20 vested under section 145(b) of the 1990 Act without re-
21 gard to the requirement to apportion funds under 31
22 U.S.C. 1513(b).

1 SOCIAL SECURITY ADMINISTRATION

2 LIMITATION ON ADMINISTRATIVE EXPENSES

3 (INCLUDING TRANSFER OF FUNDS)

4 For an additional amount for “Limitation on Admin-
5 istrative Expenses”, \$900,000,000, which shall be used as
6 follows:

7 (1) \$400,000,000 for the construction and asso-
8 ciated costs to establish a new National Computer
9 Center, which may include lease or purchase of real
10 property: *Provided*, That the construction plan and
11 site selection for such center shall be subject to re-
12 view and approval by the Office of Management and
13 Budget: *Provided further*, That the Committees on
14 Appropriations of the House of Representatives and
15 the Senate shall be notified 15 days in advance of
16 the lease or purchase of such site: *Provided further*,
17 That such center shall continue to be a government-
18 operated facility.

19 (2) \$500,000,000 for processing disability and
20 retirement workloads: *Provided*, That up to
21 \$40,000,000 may be used by the Commissioner of
22 Social Security for health information technology re-
23 search and activities to facilitate the adoption of
24 electronic medical records in disability claims, in-
25 cluding the transfer of funds to “Supplemental Se-

1 security Income Program” to carry out activities
2 under section 1110 of the Social Security Act.

3 **TITLE X—MILITARY CONSTRUCTION AND VETERANS AFFAIRS**

6 DEPARTMENT OF DEFENSE

7 MILITARY CONSTRUCTION, ARMY

8 For an additional amount for “Military Construction,
9 Army”, \$920,000,000: *Provided*, That notwithstanding
10 any other provision of law, such funds may be obligated
11 and expended to carry out planning and design and mili-
12 tary construction projects in the United States not other-
13 wise authorized by law: *Provided further*, That of the
14 amount provided under this heading, \$600,000,000 shall
15 be for training and recruit troop housing, \$220,000,000
16 shall be for permanent party troop housing, and
17 \$100,000,000 shall be for child development centers: *Pro-*
18 *vided further*, That not later than 30 days after the date
19 of enactment of this Act, the Secretary of Defense shall
20 submit to the Committees on Appropriations of the House
21 of Representatives and the Senate an expenditure plan for
22 funds provided under this heading.

23 MILITARY CONSTRUCTION, NAVY AND MARINE CORPS

24 For an additional amount for “Military Construction,
25 Navy and Marine Corps”, \$350,000,000: *Provided*, That

1 notwithstanding any other provision of law, such funds
2 may be obligated and expended to carry out planning and
3 design and military construction projects in the United
4 States not otherwise authorized by law: *Provided further,*
5 That of the amount provided under this heading,
6 \$170,000,000 shall be for sailor and marine housing and
7 \$180,000,000 shall be for child development centers: *Pro-*
8 *vided further,* That not later than 30 days after the date
9 of enactment of this Act, the Secretary of Defense shall
10 submit to the Committees on Appropriations of the House
11 of Representatives and the Senate an expenditure plan for
12 funds provided under this heading.

13 MILITARY CONSTRUCTION, AIR FORCE

14 For an additional amount for “Military Construction,
15 Air Force”, \$280,000,000: *Provided,* That notwith-
16 standing any other provision of law, such funds may be
17 obligated and expended to carry out planning and design
18 and military construction projects in the United States not
19 otherwise authorized by law: *Provided further,* That of the
20 amount provided under this heading, \$200,000,000 shall
21 be for airmen housing and \$80,000,000 shall be for child
22 development centers: *Provided further,* That not later than
23 30 days after the date of enactment of this Act, the Sec-
24 retary of Defense shall submit to the Committees on Ap-
25 propriations of the House of Representatives and the Sen-

1 ate an expenditure plan for funds provided under this
2 heading.

3 ~~MILITARY CONSTRUCTION, DEFENSE-WIDE~~

4 For an additional amount for “Military Construction,
5 Defense-Wide”, \$3,750,000,000, for the construction of
6 hospitals and ambulatory surgery centers: *Provided*, That
7 notwithstanding any other provision of law, such funds
8 may be obligated and expended to carry out planning and
9 design and military construction projects in the United
10 States not otherwise authorized by law: *Provided further*,
11 That not later than 30 days after the date of enactment
12 of this Act, the Secretary of Defense shall submit to the
13 Committees on Appropriations of the House of Represent-
14 atives and the Senate an expenditure plan for funds pro-
15 vided under this heading.

16 ~~MILITARY CONSTRUCTION, ARMY NATIONAL GUARD~~

17 For an additional amount for “Military Construction,
18 Army National Guard”, \$140,000,000: *Provided*, That
19 notwithstanding any other provision of law, such funds
20 may be obligated and expended to carry out planning and
21 design and military construction projects in the United
22 States not otherwise authorized by law: *Provided further*,
23 That not later than 30 days after the date of enactment
24 of this Act, the Secretary of Defense shall submit to the
25 Committees on Appropriations of the House of Represent-

1 atives and the Senate an expenditure plan for funds pro-
2 vided under this heading.

3 MILITARY CONSTRUCTION, AIR NATIONAL GUARD

4 For an additional amount for “Military Construction,
5 Air National Guard”, \$70,000,000: *Provided*, That not-
6 withstanding any other provision of law, such funds may
7 be obligated and expended to carry out planning and de-
8 sign and military construction projects in the United
9 States not otherwise authorized by law: *Provided further*,
10 That not later than 30 days after the date of enactment
11 of this Act, the Secretary of Defense shall submit to the
12 Committees on Appropriations of the House of Represent-
13 atives and the Senate an expenditure plan for funds pro-
14 vided under this heading.

15 MILITARY CONSTRUCTION, ARMY RESERVE

16 For an additional amount for “Military Construction,
17 Army Reserve”, \$100,000,000: *Provided*, That notwith-
18 standing any other provision of law, such funds may be
19 obligated and expended to carry out planning and design
20 and military construction projects in the United States not
21 otherwise authorized by law: *Provided further*, That not
22 later than 30 days after the date of enactment of this Act,
23 the Secretary of Defense shall submit to the Committees
24 on Appropriations of the House of Representatives and the

1 Senate an expenditure plan for funds provided under this
2 heading:

3 MILITARY CONSTRUCTION, NAVY RESERVE

4 For an additional amount for “Military Construction,
5 Navy Reserve”, \$30,000,000: *Provided*, That notwith-
6 standing any other provision of law, such funds may be
7 obligated and expended to carry out planning and design
8 and military construction projects in the United States not
9 otherwise authorized by law: *Provided further*, That not
10 later than 30 days after the date of enactment of this Act,
11 the Secretary of Defense shall submit to the Committees
12 on Appropriations of the House of Representatives and the
13 Senate an expenditure plan for funds provided under this
14 heading:

15 MILITARY CONSTRUCTION, AIR FORCE RESERVE

16 For an additional amount for “Military Construction,
17 Air Force Reserve”, \$60,000,000: *Provided*, That notwith-
18 standing any other provision of law, such funds may be
19 obligated and expended to carry out planning and design
20 and military construction projects in the United States not
21 otherwise authorized by law: *Provided further*, That not
22 later than 30 days after the date of enactment of this Act,
23 the Secretary of Defense shall submit to the Committees
24 on Appropriations of the House of Representatives and the

1 Senate an expenditure plan for funds provided under this
2 heading:

3 DEPARTMENT OF DEFENSE BASE CLOSURE ACCOUNT

4 1990

5 For an additional amount to be deposited into the
6 Department of Defense Base Closure Account 1990, es-
7 tablished by section 2906(a)(1) of the Defense Base Clo-
8 sure and Realignment Act of 1990 (10 U.S.C. 2687 note),
9 \$300,000,000: *Provided*, That not later than 30 days after
10 the date of enactment of this Act, the Secretary of Defense
11 shall submit to the Committees on Appropriations of the
12 House of Representatives and the Senate an expenditure
13 plan for funds provided under this heading:

14 DEPARTMENT OF VETERANS AFFAIRS

15 VETERANS HEALTH ADMINISTRATION

16 MEDICAL FACILITIES

17 For an additional amount for “Medical Facilities” for
18 non-recurring maintenance, including energy projects,
19 \$950,000,000: *Provided*, That not later than 30 days after
20 the date of enactment of this Act, the Secretary of Vet-
21 erans Affairs shall submit to the Committees on Appro-
22 priations of the House of Representatives and the Senate
23 an expenditure plan for funds provided under this head-
24 ing:

1 NATIONAL CEMETERY ADMINISTRATION

2 For an additional amount for “National Cemetery
3 Administration” for monument and memorial repairs,
4 \$50,000,000: *Provided*, That not later than 30 days after
5 the date of enactment of this Act, the Secretary of Vet-
6 erans Affairs shall submit to the Committees on Appro-
7 priations of the House of Representatives and the Senate
8 an expenditure plan for funds provided under this head-
9 ing.

10 **TITLE XI—DEPARTMENT OF**
11 **STATE**

12 DEPARTMENT OF STATE

13 ADMINISTRATION OF FOREIGN AFFAIRS

14 CAPITAL INVESTMENT FUND

15 For an additional amount for “Capital Investment
16 Fund”, \$276,000,000, of which up to \$120,000,000 shall
17 be available for the design and construction of a backup
18 information management facility in the United States to
19 support mission-critical operations and projects, and up
20 to \$98,527,000 shall be available to carry out the Depart-
21 ment of State’s responsibilities under the Comprehensive
22 National Cybersecurity Initiative: *Provided*, That the Sec-
23 retary of State shall submit to the Committees on Appro-
24 priations of the House of Representatives and the Senate

1 within 90 days of enactment of this Act a detailed spend-
2 ing plan for funds appropriated under this heading.

3 INTERNATIONAL COMMISSIONS

4 INTERNATIONAL BOUNDARY AND WATER COMMISSION,

5 UNITED STATES AND MEXICO

6 CONSTRUCTION

7 (INCLUDING TRANSFER OF FUNDS)

8 For an additional amount for “Construction” for the
9 water quantity program to meet immediate repair and re-
10 habilitation requirements, \$224,000,000: *Provided*, That
11 up to \$2,000,000 may be transferred to, and merged with,
12 funds available under the heading “International Bound-
13 ary and Water Commission, United States and Mexico—
14 Salaries and Expenses”, and such amount shall be in lieu
15 of amounts available under section 1106 of this Act: *Pro-*
16 *vided*, That the Secretary of State shall submit to the
17 Committees on Appropriations of the House of Represent-
18 atives and the Senate within 90 days of enactment of this
19 Act a detailed spending plan for funds appropriated under
20 this heading.

1 **TITLE XII—TRANSPORTATION,**
2 **AND HOUSING AND URBAN**
3 **DEVELOPMENT**

4 DEPARTMENT OF TRANSPORTATION

5 FEDERAL AVIATION ADMINISTRATION

6 GRANTS-IN-AID FOR AIRPORTS

7 For an additional amount for “Grants-in-Aid for Air-
8 ports”, to enable the Secretary of Transportation to make
9 grants for discretionary projects as authorized by sub-
10 chapter I of chapter 471 and subchapter I of chapter 475
11 of title 49, United States Code, \$3,000,000,000: *Provided,*
12 That such funds shall not be subject to apportionment for-
13 mulas, special apportionment categories, or minimum per-
14 centages under chapter 471: *Provided further,* That the
15 conditions, certifications, and assurances required for
16 grants under subchapter I of chapter 471 of such title
17 apply: *Provided further,* That for purposes of applying sec-
18 tion 1104 of this Act to this appropriation, the deadline
19 for grantees to enter into contracts or other binding com-
20 mitments to make use of not less than 50 percent of the
21 funds awarded shall be 90 days after award of the grant.

22 FEDERAL HIGHWAY ADMINISTRATION

23 HIGHWAY INFRASTRUCTURE INVESTMENT

24 For projects and activities eligible under section 133
25 of title 23, United States Code, section 144 of such title

1 (without regard to subsection (g)), and sections 103, 119,
2 134, 148, and 149 of such title, ~~\$30,000,000,000~~, of
3 which ~~\$300,000,000~~ shall be for Indian reservation roads
4 under section 204 of such title; ~~\$250,000,000~~ shall be for
5 park roads and parkways under section 204 of such title;
6 ~~\$20,000,000~~ shall be for highway surface transportation
7 and technology training under section 140(b) of such title;
8 and ~~\$20,000,000~~ shall be for disadvantaged business en-
9 terprises bonding assistance under section ~~332~~(e) of title
10 49, United States Code: *Provided*, That the amount set
11 aside from this appropriation pursuant to section 1106 of
12 this Act shall not be more than 0.2 percent of the funds
13 made available under this heading instead of the percent-
14 age specified in such section: *Provided further*, That, after
15 making the set-asides authorized by the previous provisos,
16 the funds made available under this heading shall be dis-
17 tributed among the States, and Puerto Rico, American
18 Samoa, Guam, the Virgin Islands, and the Commonwealth
19 of the Northern Mariana Islands, in the same ratio as the
20 obligation limitation for fiscal year 2008 was distributed
21 among the States in accordance with the formula specified
22 in section 120(a)(6) of division K of Public Law 110-161,
23 but, in the case of the Puerto Rico Highway Program and
24 the Territorial Highway Program, under section 120(a)(5)
25 of such division: *Provided further*, That 45 percent of the

1 funds distributed to a State under this heading shall be
2 suballocated within the State in the manner and for the
3 purposes described in section 133(d) of title 23, United
4 States Code, (without regard to the comparison to fiscal
5 year 2005 in paragraph (2)): *Provided further*, That in
6 selecting projects to be funded, recipients shall give pri-
7 ority to projects that can award contracts within 90 days
8 of enactment of this Act, are included in an approved
9 Statewide Transportation Improvement Program (STIP)
10 and/or Metropolitan Transportation Improvement Pro-
11 gram (TIP), are projected for completion within a three-
12 year time frame, and are located in economically dis-
13 tressed areas as defined by section 301 of the Public
14 Works and Economic Development Act of 1965, as
15 amended (42 U.S.C. 3161): *Provided further*, That funds
16 made available under this heading shall be administered
17 as if apportioned under chapter 1 of title 23, United
18 States Code, except for funds made available for Indian
19 reservation roads and park roads and parkways which
20 shall be administered in accordance with chapter 2 of title
21 23, United States Code: *Provided further*, That the Fed-
22 eral share payable on account of any project or activity
23 carried out with funds made available under this heading
24 shall, at the option of the recipient, be up to 100 percent
25 of the total cost thereof: *Provided further*, That funds

1 made available by this Act shall not be obligated for the
2 purposes authorized under section 115(b) of title 23,
3 United States Code: *Provided further*, That the provisions
4 of section 1101(b) of Public Law 109-59 shall apply to
5 funds made available under this heading: *Provided further*,
6 That, in lieu of the redistribution required by section
7 1104(b) of this Act, if less than 50 percent of the funds
8 made available to each State and territory under this
9 heading are obligated within 90 days after the date of dis-
10 tribution of those funds to the States and territories, then
11 the portion of the 50 percent of the total funding distrib-
12 uted to the State or territory that has not been obligated
13 shall be redistributed, in the manner described in section
14 120(e) of division K of Public Law 110-161, to those
15 States and territories that have obligated at least 50 per-
16 cent of the funds made available under this heading and
17 are able to obligate amounts in addition to those pre-
18 viously distributed, except that, for those funds suballo-
19 cated within the State, if less than 50 percent of the funds
20 so suballocated within the State are obligated within 75
21 days of suballocation, then the portion of the 50 percent
22 of funding so suballocated that has not been obligated will
23 be returned to the State for use anywhere in the State
24 prior to being redistributed in accordance with the first
25 part of this proviso: *Provided further*, That, in lieu of the

1 redistribution required by section 1104(b) of this Act, any
2 funds made available under this heading that are not obli-
3 gated by August 1, 2010, shall be redistributed, in the
4 manner described in section 120(c) of division K of Public
5 Law 110–161, to those States able to obligate amounts
6 in addition to those previously distributed, except that
7 funds suballocated within the State that are not obligated
8 by June 1, 2010, will be returned to the State for use
9 anywhere in the State prior to being redistributed in ac-
10 cordance with the first part of this proviso: *Provided fur-*
11 *ther*, That notwithstanding section 1103 of this Act, funds
12 made available under this heading shall be apportioned not
13 later than 7 days after the date of enactment of this Act.

14 FEDERAL RAILROAD ADMINISTRATION

15 CAPITAL ASSISTANCE FOR INTERCITY PASSENGER RAIL

16 SERVICE

17 For an additional amount for “Capital Assistance for
18 Intercity Passenger Rail Service” to enable the Secretary
19 of Transportation to make grants for capital costs as au-
20 thorized by chapter 244 of title 49 United States Code,
21 \$300,000,000: *Provided*, That notwithstanding section
22 1103 of this Act, the Secretary shall give preference to
23 projects for the repair, rehabilitation, upgrade, or pur-
24 chase of railroad assets or infrastructure that can be
25 awarded within 90 days of enactment of this Act: *Provided*

1 *further*, That in awarding grants for the acquisition of a
2 piece of rolling stock or locomotive, the Secretary shall
3 give preference to FRA-compliant rolling stock and loco-
4 motives: *Provided further*, That the Secretary shall give
5 preference to projects that support the development of
6 intercity high speed rail service: *Provided further*, That the
7 Federal share shall be, at the option of the recipient, up
8 to 100 percent.

9 CAPITAL AND DEBT SERVICE GRANTS TO THE NATIONAL
10 RAILROAD PASSENGER CORPORATION

11 For an additional amount for “Capital and Debt
12 Service Grants to the National Railroad Passenger Cor-
13 poration”² (Amtrak) to enable the Secretary of Transpor-
14 tation to make capital grants to Amtrak as authorized by
15 section 101(c) of the Passenger Rail Investment and Im-
16 provement Act of 2008 (Public Law 110-432),
17 \$800,000,000: *Provided*, That priority shall be given to
18 projects for the repair, rehabilitation, or upgrade of rail-
19 road assets or infrastructure: *Provided further*, That none
20 of the funds under this heading shall be used to subsidize
21 the operating losses of Amtrak: *Provided further*, Notwith-
22 standing section 1103 of this Act, funds made available
23 under this heading shall be awarded not later than 7 days
24 after the date of enactment of this Act.

1 FEDERAL TRANSIT ADMINISTRATION

2 TRANSIT CAPITAL ASSISTANCE

3 For transit capital assistance grants, \$6,000,000,000
4 (increased by \$1,500,000,000), of which \$5,400,000,000
5 (increased by \$1,350,000,000) shall be for grants under
6 section 5307 of title 49, United States Code and shall be
7 apportioned in accordance with section 5336 of such title
8 (other than subsections (i)(1) and (j)) but may not be
9 combined or commingled with any other funds apportioned
10 under such section 5336, and of which \$600,000,000 (in-
11 creased by \$150,000,000) shall be for grants under sec-
12 tion 5311 of such title and shall be apportioned in accord-
13 ance with such section 5311 but may not be combined or
14 commingled with any other funds apportioned under that
15 section: *Provided*, That of the funds provided for section
16 5311 under this heading, 3 percent shall be made available
17 for section 5311(e)(1): *Provided further*, That applicable
18 chapter 53 requirements shall apply except that the Fed-
19 eral share of the costs for which a grant is made under
20 this heading shall be, at the option of the recipient, up
21 to 100 percent: *Provided further*, In lieu of the require-
22 ments of section 1103 of this Act, funds made available
23 under this heading shall be apportioned not later than 7
24 days after the date of enactment of this Act: *Provided fur-*
25 *ther*, That for purposes of applying section 1104 of this

1 Act to this appropriation, the deadline for grantees to
2 enter into obligations to make use of not less than 50 per-
3 cent of the funds awarded shall be 90 days after appor-
4 tionment: *Provided further*, That the provisions of section
5 1101(b) of Public Law 109–59 shall apply to funds made
6 available under this heading: *Provided further*, That not-
7 withstanding any other provision of law, of the funds ap-
8 portioned in accordance with section 5336, up to three-
9 quarters of 1 percent shall be available for administrative
10 expenses and program management oversight and of the
11 funds apportioned in accordance with section 5311, up to
12 one-half of 1 percent shall be available for administrative
13 expenses and program management oversight and both
14 amounts shall remain available for obligation until Sep-
15 tember 30, 2012: *Provided further*, That the preceding
16 proviso shall apply in lieu of the provisions in section 1106
17 of this Act.

18 FIXED GUIDEWAY INFRASTRUCTURE INVESTMENT

19 For an amount for capital expenditures authorized
20 under section 5309(b)(2) of title 49, United States Code,
21 \$2,000,000,000: *Provided*, That the Secretary of Trans-
22 portation shall apportion funds under this heading pursu-
23 ant to the formula set forth in section 5337 of title 49,
24 United States Code: *Provided further*, That the funds ap-
25 propriated under this heading shall not be commingled

1 with funds available under the Formula and Bus Grants
2 account: *Provided further*, In lieu of the requirements of
3 section ~~1103~~ of this Act, funds made available under this
4 heading shall be apportioned not later than 7 days after
5 the date of enactment of this Act: *Provided further*, That
6 for purposes of applying section 1104 of this Act to this
7 appropriation, the deadline for grantees to enter into obli-
8 gations to make use of not less than 50 percent of the
9 funds awarded shall be 90 days after apportionment: *Pro-*
10 *vided further*, That applicable chapter ~~53~~ requirements
11 shall apply except that the Federal share of the costs for
12 which a grant is made under this heading shall be, at the
13 option of the recipient, up to 100 percent: *Provided fur-*
14 *ther*, That the provisions of section 1101(b) of Public Law
15 ~~109-59~~ shall apply to funds made available under this
16 heading: *Provided further*, That notwithstanding any other
17 provision of law, up to 1 percent of the funds under this
18 heading shall be available for administrative expenses and
19 program management oversight and shall remain available
20 for obligation until September 30, 2012: *Provided further*,
21 That the preceding proviso shall apply in lieu of the provi-
22 sions in section 1106 of this Act.

23 CAPITAL INVESTMENT GRANTS

24 For an additional amount for “Capital Investment
25 Grants”, as authorized under section ~~5338~~(c)(4) of title

1 49, United States Code, and allocated under section
2 5309(m)(2)(A) of such title, to enable the Secretary of
3 Transportation to make discretionary grants as authorized
4 by section 5309(d) and (e) of such title, \$1,000,000,000
5 (increased by \$1,500,000,000): *Provided*, That such
6 amount shall be allocated without regard to the limitation
7 under section 5309(m)(2)(A)(i): *Provided further*, That in
8 selecting projects to be funded, priority shall be given to
9 projects that are currently in construction or are able to
10 award contracts based on bids within 90 days of enact-
11 ment of this Act: *Provided further*, That for purposes of
12 applying section 1104 of this Act to this appropriation,
13 the deadline for grantees to enter into contracts or other
14 binding commitments to make use of not less than 50 per-
15 cent of the funds awarded shall be 90 days after award:
16 *Provided further*, That the provisions of section 1101(b)
17 of Public Law 109-59 shall apply to funds made available
18 under this heading: *Provided further*, That applicable
19 chapter 53 requirements shall apply, except that notwith-
20 standing any other provision of law, up to 1 percent of
21 the funds under this heading shall be available for admin-
22 istrative expenses and program management oversight and
23 shall remain available for obligation until September 30,
24 2012: *Provided further*, That the preceding proviso shall
25 apply in lieu of the provisions in section 1106 of this Act.

1 DEPARTMENT OF HOUSING AND URBAN
2 DEVELOPMENT
3 PUBLIC AND INDIAN HOUSING
4 PUBLIC HOUSING CAPITAL FUND

5 For an additional amount for “Public Housing Cap-
6 ital Fund” to carry out capital and management activities
7 for public housing agencies, as authorized under section
8 9 of the United States Housing Act of 1937 (42 U.S.C.
9 1437g) (“the Act”), \$5,000,000,000: *Provided*, That the
10 Secretary of Housing and Urban Development shall dis-
11 tribute at least \$4,000,000,000 of this amount by the
12 same formula used for amounts made available in fiscal
13 year 2008: *Provided further*, That public housing authori-
14 ties shall give priority to capital projects that can award
15 contracts based on bids within 120 days from the date
16 the funds are made available to the public housing au-
17 thorities: *Provided further*, That public housing agencies
18 shall give priority consideration to the rehabilitation of va-
19 cant rental units: *Provided further*, That notwithstanding
20 any other provision of the Act or regulations: (1) funding
21 provided herein may not be used for Operating Fund ac-
22 tivities pursuant to section 9(g) of the Act; and (2) any
23 restriction of funding to replacement housing uses shall
24 be inapplicable: *Provided further*, That public housing
25 agencies shall prioritize capital projects underway or at-

1 ready in their 5-year plans: *Provided further*, That of the
2 amount provided under this heading, the Secretary may
3 obligate up to \$1,000,000,000, for competitive grants to
4 public housing authorities for activities including: (1) in-
5 vestments that leverage private sector funding or financ-
6 ing for housing renovations and energy conservation ret-
7 rofit investments; (2) rehabilitation of units using sustain-
8 able materials and methods that improve energy efficiency,
9 reduce energy costs, or preserve and improve units with
10 good access to public transportation or employment cen-
11 ters; (3) increase the availability of affordable rental hous-
12 ing by expediting rehabilitation projects to bring vacant
13 units into use or by filling the capital investment gap for
14 redevelopment or replacement housing projects which have
15 been approved or are otherwise ready to proceed but are
16 stalled due to the inability to obtain anticipated private
17 capital; or (4) address the needs of seniors and persons
18 with disabilities through improvements to housing and re-
19 lated facilities which attract or promote the coordinated
20 delivery of supportive services: *Provided further*, That the
21 Secretary may waive statutory or regulatory provisions re-
22 lated to the obligation and expenditure of capital funds
23 if necessary to facilitate the timely expenditure of funds
24 (except for requirements related to fair housing, non-
25 discrimination, labor standards, and the environment).

1 ELDERLY, DISABLED, AND SECTION 8 ASSISTED HOUSING
2 ENERGY RETROFIT

3 For grants or loans to owners of properties receiving
4 project-based assistance pursuant to section 202 of the
5 Housing Act of 1959 (42 U.S.C. 17012), section 811 of
6 the Cranston-Gonzalez National Affordable Housing Act
7 (42 U.S.C. 8013), or section 8 of the United States Hous-
8 ing Act of 1937 (42 U.S.C. 1437f), to accomplish energy
9 retrofit investments, \$2,500,000,000: *Provided*, That such
10 loans or grants shall be provided through the Office of
11 Affordable Housing Preservation of the Department of
12 Housing and Urban Development, on such terms and con-
13 ditions as the Secretary of Housing and Urban Develop-
14 ment deems appropriate: *Provided further*, That eligible
15 owners must have at least a satisfactory management re-
16 view rating, be in substantial compliance with applicable
17 performance standards and legal requirements, and com-
18 mit to an additional period of affordability determined by
19 the Secretary: *Provided further*, That the Secretary shall
20 undertake appropriate underwriting and oversight with re-
21 spect to such transactions: *Provided further*, That the Sec-
22 retary may set aside funds made available under this
23 heading for an efficiency incentive payable upon satisfac-
24 tory completion of energy retrofit investments, and may
25 provide additional incentives if such investments resulted

1 in extraordinary job creation for low-income and very low-
2 income persons: *Provided further*, that of the funds pro-
3 vided under this heading, 1 percent shall be available only
4 for staffing, training, technical assistance, technology,
5 monitoring, research and evaluation activities.

6 NATIVE AMERICAN HOUSING BLOCK GRANTS

7 For an additional amount for “Native American
8 Housing Block Grants”, as authorized under title I of the
9 Native American Housing Assistance and Self-Determina-
10 tion Act of 1996 (“NAHASDA”) (25 U.S.C. 4111 et
11 seq.), \$500,000,000: *Provided*, That \$250,000,000 of the
12 amount appropriated under this heading shall be distrib-
13 uted according to the same funding formula used in fiscal
14 year 2008: *Provided further*, That in selecting projects to
15 be funded, recipients shall give priority to projects that
16 can award contracts based on bids within 120 days from
17 the date that funds are available to the recipients: *Pro-*
18 *vided further*, That in allocating the funds appropriated
19 under this heading, the Secretary of Housing and Urban
20 Development shall not require an additional action plan
21 from grantees: *Provided further*, That the Secretary may
22 obligate \$250,000,000 of the amount appropriated under
23 this heading for competitive grants to eligible entities that
24 apply for funds as authorized under NAHASDA: *Provided*
25 *further*, That in awarding competitive funds, the Secretary

1 shall give priority to projects that will spur construction
2 and rehabilitation and will create employment opportuni-
3 ties for low-income and unemployed persons.

4 COMMUNITY PLANNING AND DEVELOPMENT

5 COMMUNITY DEVELOPMENT FUND

6 For an additional amount for “Community Develop-
7 ment Fund” \$1,000,000,000, to carry out the community
8 development block grant program under title I of the
9 Housing and Community Development Act of 1974 (42
10 U.S.C. 5301 et seq.): *Provided*, That the amount appro-
11 priated in this paragraph shall be distributed according
12 to the same funding formula used in fiscal year 2008: *Pro-*
13 *vided further*, That in allocating the funds appropriated
14 in this paragraph, the Secretary of Housing and Urban
15 Development shall not require an additional action plan
16 from grantees: *Provided further*, That in selecting projects
17 to be funded, recipients shall give priority to projects that
18 can award contracts based on bids within 120 days from
19 the date the funds are made available to the recipients;
20 *Provided further*, That in administering funds provided in
21 this paragraph, the Secretary may waive any provision of
22 any statute or regulation that the Secretary administers
23 in connection with the obligation by the Secretary or the
24 use by the recipient of these funds (except for require-
25 ments related to fair housing, nondiscrimination, labor

1 standards, and the environment); upon a finding that such
2 waiver is required to facilitate the timely use of such funds
3 and would not be inconsistent with the overall purpose of
4 the statute.

5 For a further additional amount for “Community De-
6 velopment Fund”, \$4,190,000,000, to be used for neigh-
7 borhood stabilization activities related to emergency as-
8 sistance for the redevelopment of abandoned and fore-
9 closed homes as authorized under division B, title III of
10 the Housing and Economic Recovery Act of 2008 (Public
11 Law 110–289), of which—

12 (1) not less than \$3,440,000,000 shall be allo-
13 cated by a competition for which eligible entities
14 shall be States, units of general local government,
15 and nonprofit entities or consortia of nonprofit enti-
16 ties: *Provided*, That the award criteria for such com-
17 petition shall include grantee capacity, leveraging
18 potential, targeted impact of foreclosure prevention,
19 and any additional factors determined by the Sec-
20 retary of Housing and Urban Development: *Provided*
21 *further*, that the Secretary may establish a minimum
22 grant size: *Provided further*, That amounts made
23 available under this Section may be used to: (A) es-
24 tablish financing mechanisms for purchase and rede-
25 velopment of foreclosed-upon homes and residential

1 properties, including such mechanisms as soft-sec-
2 onds, loan loss reserves, and shared-equity loans for
3 low- and moderate-income homebuyers; ~~(B)~~ purchase
4 and rehabilitate homes and residential properties
5 that have been abandoned or foreclosed upon, in
6 order to sell or rent such homes and properties; ~~(C)~~
7 establish and operate land banks for homes that
8 have been foreclosed upon; ~~(D)~~ demolish foreclosed
9 properties that have become blighted structures; and
10 ~~(E)~~ redevelop demolished or vacant foreclosed prop-
11 erties in order to sell or rent such properties; and
12 ~~(2)~~ up to \$750,000,000 shall be awarded by
13 competition to nonprofit entities or consortia of non-
14 profit entities to provide community stabilization as-
15 sistance by: ~~(A)~~ accelerating state and local govern-
16 ment and nonprofit productivity; ~~(B)~~ increasing the
17 scale and efficiency of property transfers of fore-
18 closed and vacant residential properties from finan-
19 cial institutions and government entities to qualified
20 local housing providers in order to return the prop-
21 erties to productive affordable housing use; ~~(C)~~
22 building industry and property management capac-
23 ity; and ~~(D)~~ partnering with private sector real es-
24 tate developers and contractors and leveraging pri-
25 vate sector capital: *Provided further*, That such com-

1 community stabilization assistance shall be provided pri-
2 marily in States and areas with high rates of de-
3 faults and foreclosures to support the acquisition, re-
4 habilitation and property management of single-fam-
5 ily and multi-family homes and to work in partner-
6 ship with the private sector real estate industry and
7 to leverage available private and public funds for
8 those purposes: *Provided further*, That for purposes
9 of this paragraph qualified local housing providers
10 shall be nonprofit organizations with demonstrated
11 capabilities in real estate development or acquisition
12 and rehabilitation or property management of single-
13 or multi-family homes, or local or state governments
14 or instrumentalities of such governments: *Provided*
15 *further*, That qualified local housing providers shall
16 be expected to utilize and leverage additional local
17 nonprofit, governmental, for-profit and private re-
18 sources:

19 *Provided further*, That in the case of any foreclosure on
20 any dwelling or residential real property acquired with any
21 amounts made available under this heading, any successor
22 in interest in such property pursuant to the foreclosure
23 shall assume such interest subject to: (1) the provision by
24 such successor in interest of a notice to vacate to any bona
25 fide tenant at least 90 days before the effective date of

1 such notice; and (2) the rights of any bona fide tenant,
2 as of the date of such notice of foreclosure: (A) under any
3 bona fide lease entered into before the notice of foreclosure
4 to occupy the premises until the end of the remaining term
5 of the lease, except that a successor in interest may termi-
6 nate a lease effective on the date of sale of the unit to
7 a purchaser who will occupy the unit as a primary resi-
8 dence, subject to the receipt by the tenant of the 90-day
9 notice under this paragraph; or (B) without a lease or with
10 a lease terminable at will under State law, subject to the
11 receipt by the tenant of the 90-day notice under this para-
12 graph, except that nothing in this paragraph shall affect
13 the requirements for termination of any Federal or State-
14 subsidized tenancy or of any State or local law that pro-
15 vides longer time periods or other additional protections
16 for tenants: *Provided further*, That, for purposes of this
17 paragraph, a lease or tenancy shall be considered bona fide
18 only if: (1) the mortgagor under the contract is not the
19 tenant; (2) the lease or tenancy was the result of an arms-
20 length transaction; and (3) the lease or tenancy requires
21 the receipt of rent that is not substantially less than fair
22 market rent for the property: *Provided further*, That the
23 recipient of any grant or loan from amounts made avail-
24 able under this heading may not refuse to lease a dwelling
25 unit in housing assisted with such loan or grant to a hold-

1 er of a voucher or certificate of eligibility under section
2 8 of the United States Housing Act of 1937 (42 U.S.C.
3 1437f) because of the status of the prospective tenant as
4 such a holder: *Provided further*, That in the case of any
5 qualified foreclosed housing for which funds made avail-
6 able under this heading are used and in which a recipient
7 of assistance under section 8(o) of the U.S. Housing Act
8 of 1937 resides at the time of acquisition or financing,
9 the owner and any successor in interest shall be subject
10 to the lease and to the housing assistance payments con-
11 tract for the occupied unit: *Provided further*, That
12 vacating the property prior to sale shall not constitute
13 good cause for termination of the tenancy unless the prop-
14 erty is unmarketable while occupied or unless the owner
15 or subsequent purchaser desires the unit for personal or
16 family use: *Provided further*, That this paragraph shall not
17 preempt any State or local law that provides more protec-
18 tion for tenants: *Provided further*, That amounts made
19 available under this heading may be used for the costs
20 of demolishing foreclosed housing that is deteriorated or
21 unsafe: *Provided further*, That the amount for demolition
22 of such housing may not exceed 10 percent of amounts
23 allocated under this paragraph to States and units of gen-
24 eral local government: *Provided further*, That no amounts
25 from a grant made under this paragraph may be used to

1 demolish any public housing (as such term is defined in
2 section 3 of the United States Housing Act of 1937 (42
3 U.S.C. 1437a)): *Provided further*, That section 2301(d)(4)
4 of the Housing and Economic Recovery Act of 2008 (Pub-
5 lie Law 110–289) is repealed.

6 HOME INVESTMENT PARTNERSHIPS PROGRAM

7 For an additional amount for “HOME Investment
8 Partnerships Program” as authorized under Title II of the
9 Cranston-Gonzalez National Affordable Housing Act (“the
10 Act”), \$1,500,000,000: *Provided*, That the amount appro-
11 priated under this heading shall be distributed according
12 to the same funding formula used in fiscal year 2008: *Pro-*
13 *vided further*, That the Secretary of Housing and Urban
14 Development may waive statutory or regulatory provisions
15 related to the obligation of such funds if necessary to fa-
16 cilitate the timely expenditure of funds (except for require-
17 ments related to fair housing, nondiscrimination, labor
18 standards, and the environment): *Provided further*, That
19 in selecting projects to be funded, recipients shall give pri-
20 ority to projects that can award contracts based on bids
21 within 120 days from the date that funds are available
22 to the recipients.

1 SELF-HELP AND ASSISTED HOMEOWNERSHIP
2 OPPORTUNITY PROGRAM

3 For an additional amount for “Self-Help and As-
4 sisted Homeownership Opportunity Program”, as author-
5 ized under section 11 of the Housing Opportunity Pro-
6 gram Extension Act of 1996, \$10,000,000: *Provided*, That
7 in awarding competitive grant funds, the Secretary of
8 Housing and Urban Development shall give priority to the
9 provision and rehabilitation of sustainable, affordable sin-
10 gle and multifamily units in low-income, high-need rural
11 areas: *Provided further*, That in selecting projects to be
12 funded, grantees shall give priority to projects that can
13 award contracts based on bids within 120 days from the
14 date the funds are made available to the grantee.

15 HOMELESS ASSISTANCE GRANTS

16 For an additional amount for “Homeless Assistance
17 Grants”, for the emergency shelter grants program as au-
18 thorized under subtitle B of tile IV of the McKinney-Vento
19 Homeless Assistance Act, \$1,500,000,000: *Provided*, That
20 in addition to homeless prevention activities specified in
21 the emergency shelter grant program, funds provided
22 under this heading may be used for the provision of short-
23 term or medium-term rental assistance; housing relocation
24 and stabilization services including housing search, medi-
25 ation or outreach to property owners, legal services, credit

1 repair, resolution of security or utility deposits, utility pay-
 2 ments, rental assistance for a final month at a location,
 3 and moving costs assistance; or other appropriate home-
 4 lessness prevention activities; *Provided further*, That these
 5 funds shall be allocated pursuant to the formula author-
 6 ized by section 413 of such Act: *Provided further*, That
 7 the Secretary of Housing and Urban Development may
 8 waive statutory or regulatory provisions related to the obli-
 9 gation and use of emergency shelter grant funds necessary
 10 to facilitate the timely expenditure of funds.

11 OFFICE OF HEALTHY HOMES AND LEAD HAZARD

12 CONTROL

13 LEAD HAZARD REDUCTION

14 For an additional amount for “Lead Hazard Redue-
 15 tion”, for the Lead Hazard Reduction Program as author-
 16 ized by section 1011 of the Residential Lead-Based Paint
 17 Hazard Reduction Act of 1992, \$100,000,000: *Provided*,
 18 That for purposes of environmental review, pursuant to
 19 the National Environmental Policy Act of 1969 (42 U.S.C.
 20 4321 et seq.) and other provisions of law that further the
 21 purposes of such Act, a grant under the Healthy Homes
 22 Initiative, Operation Lead Elimination Action Plan
 23 (LEAP), or the Lead Technical Studies program under
 24 this heading or under prior appropriations Acts for such
 25 purposes under this heading, shall be considered to be

1 funds for a special project for purposes of section 305(e)
2 of the Multifamily Housing Property Disposition Reform
3 Act of 1994: *Provided further*, That of the total amount
4 made available under this heading, \$30,000,000 shall be
5 made available on a competitive basis for areas with the
6 highest lead paint abatement needs.

7 GENERAL PROVISIONS, THIS TITLE

8 **SEC. 12001. MAINTENANCE OF EFFORT AND REPORTING**

9 **REQUIREMENTS TO ENSURE TRANSPARENCY**

10 **AND ACCOUNTABILITY.**

11 (a) MAINTENANCE OF EFFORT.—Not later than 30
12 days after the date of enactment of this Act, for each
13 amount that is distributed to a State or agency thereof
14 from an appropriation in this Act for a covered program,
15 the Governor of the State shall certify that the State will
16 maintain its effort with regard to State funding for the
17 types of projects that are funded by the appropriation. As
18 part of this certification, the Governor shall submit to the
19 covered agency a statement identifying the amount of
20 funds the State planned to expend as of October 1, 2008,
21 from non-Federal sources in the period beginning on the
22 date of enactment of this Act through September 30,
23 2010, for the types of projects that are funded by the ap-
24 propriation.

1 (b) ~~FAILURE TO MAINTAIN EFFORT.~~—If a Governor
2 is unable to certify that Federal funds will not supplant
3 non-Federal funds pursuant to subsection (a), then the
4 Federal funds apportioned to that State under this Act
5 that will supplant non-Federal funds will be recaptured
6 by the appropriate Federal agency and redistributed to
7 States or agencies that can spend the Federal funds with-
8 out supplanting non-Federal funds.

9 (c) ~~PERIODIC REPORTS.~~—

10 (1) ~~IN GENERAL.~~—Notwithstanding any other
11 provision of law, each grant recipient shall submit to
12 the covered agency from which they received funding
13 periodic reports on the use of the funds appropriated
14 in this Act for covered programs. Such reports shall
15 be collected and compiled by the covered agency and
16 transmitted to Congress.

17 (2) ~~CONTENTS OF REPORTS.~~—For amounts re-
18 ceived under each covered program by a grant re-
19 cipient under this Act, the grant recipient shall in-
20 clude in the periodic reports information tracking—

21 (A) the amount of Federal funds appro-
22 priated, allocated, obligated, and outlayed under
23 the appropriation;

24 (B) the number of projects that have been
25 put out to bid under the appropriation and the

1 amount of Federal funds associated with such
2 projects;

3 (C) the number of projects for which con-
4 tracts have been awarded under the appropria-
5 tion and the amount of Federal funds associ-
6 ated with such contracts;

7 (D) the number of projects for which work
8 has begun under such contracts and the
9 amount of Federal funds associated with such
10 contracts;

11 (E) the number of projects for which work
12 has been completed under such contracts and
13 the amount of Federal funds associated with
14 such contracts;

15 (F) the number of jobs created or sus-
16 tained by the Federal funds provided for
17 projects under the appropriation, including in-
18 formation on job sectors and pay levels; and

19 (G) for each covered program report infor-
20 mation tracking the actual aggregate expendi-
21 tures by each grant recipient from non-Federal
22 sources for projects eligible for funding under
23 the program during the period beginning on the
24 date of enactment of this Act through Sep-
25 tember 30, 2010, as compared to the level of

1 such expenditures that were planned to occur
2 during such period as of the date of enactment
3 of this Act.

4 (3) TIMING OF REPORTS.—Each grant recipient
5 shall submit the first of the periodic reports required
6 under this subsection not later than 30 days after
7 the date of enactment of this Act and shall submit
8 updated reports not later than 60 days, 120 days,
9 180 days, 1 year, and 3 years after such date of en-
10 actment.

11 (d) DEFINITIONS.—In this section, the following defi-
12 nitions apply:

13 (1) COVERED AGENCY.—The term “covered
14 agency” means the Federal Aviation Administration,
15 the Federal Highway Administration, the Federal
16 Railroad Administration, and the Federal Transit
17 Administration of the Department of Transpor-
18 tation.

19 (2) COVERED PROGRAM.—The term “covered
20 program” means funds appropriated in this Act for
21 “Grants-in-Aid for Airports” to the Federal Aviation
22 Administration; for “Highway Infrastructure Invest-
23 ment” to the Federal Highway Administration; for
24 “Capital Assistance for Intercity Passenger Rail
25 Service” to the Federal Railroad Administration; for

1 “Transit Capital Assistance”, “Fixed Guideway In-
2 frastructure Investment”, and “Capital Investment
3 Grants” to the Federal Transit Administration.

4 (3) GRANT RECIPIENT.—The term “grant re-
5 cipient” means a State or other recipient of assist-
6 ance provided under a covered program in this Act.
7 Such term does not include a Federal department or
8 agency.

9 **SEC. 12002. FHA LOAN LIMITS FOR 2009.**

10 (a) LOAN LIMIT FLOOR BASED ON 2008 LEVELS.—
11 For mortgages for which the mortgagee issues credit ap-
12 proval for the borrower during calendar year 2009, if the
13 dollar amount limitation on the principal obligation of a
14 mortgage determined under section 203(b)(2) of the Na-
15 tional Housing Act (12 U.S.C. 1709(b)(2)) for any size
16 residence for any area is less than such dollar amount lim-
17 itation that was in effect for such size residence for such
18 area for 2008 pursuant to section 202 of the Economic
19 Stimulus Act of 2008 (Public Law 110–185; 122 Stat.
20 620), notwithstanding any other provision of law, the max-
21 imum dollar amount limitation on the principal obligation
22 of a mortgage for such size residence for such area for
23 purposes of such section 203(b)(2) shall be considered (ex-
24 cept for purposes of section 255(g) of such Act (12 U.S.C.

1 ~~1715z-20(g))~~ to be such dollar amount limitation in ef-
2 feet for such size residence for such area for 2008.

3 (b) ~~DISCRETIONARY AUTHORITY FOR SUB-AREAS.—~~

4 Notwithstanding any other provision of law, if the Sec-
5 retary of Housing and Urban Development determines, for
6 any geographic area that is smaller than an area for which
7 dollar amount limitations on the principal obligation of a
8 mortgage are determined under section 203(b)(2) of the
9 National Housing Act, that a higher such maximum dollar
10 amount limitation is warranted for any particular size or
11 sizes of residences in such sub-area by higher median
12 home prices in such sub-area, the Secretary may, for mort-
13 gages for which the mortgagee issues credit approval for
14 the borrower during calendar year 2009, increase the max-
15 imum dollar amount limitation for such size or sizes of
16 residences for such sub-area that is otherwise in effect (in-
17 cluding pursuant to subsection (a) of this section), but in
18 no case to an amount that exceeds the amount specified
19 in section 202(a)(2) of the Economic Stimulus Act of
20 2008.

21 **SEC. 12003. GSE CONFORMING LOAN LIMITS FOR 2009.**

22 (a) ~~LOAN LIMIT FLOOR BASED ON 2008 LEVELS.—~~

23 For mortgages originated during calendar year 2009, if
24 the limitation on the maximum original principal obliga-
25 tion of a mortgage that may purchased by the Federal

1 National Mortgage Association or the Federal Home Loan
2 Mortgage Corporation determined under section 302(b)(2)
3 of the Federal National Mortgage Association Charter Act
4 (12 U.S.C. 1717(b)(2)) or section 305(a)(2) of the Fed-
5 eral Home Loan Mortgage Corporation Act (12 U.S.C.
6 1754(a)(2)), respectively, for any size residence for any
7 area is less than such maximum original principal obliga-
8 tion limitation that was in effect for such size residence
9 for such area for 2008 pursuant to section 201 of the Eco-
10 nomic Stimulus Act of 2008 (Public Law 110-185; 122
11 Stat. 619), notwithstanding any other provision of law, the
12 limitation on the maximum original principal obligation of
13 a mortgage for such Association and Corporation for such
14 size residence for such area shall be such maximum limita-
15 tion in effect for such size residence for such area for
16 2008.

17 (b) DISCRETIONARY AUTHORITY FOR SUB-AREAS.—
18 Notwithstanding any other provision of law, if the Direc-
19 tor of the Federal Housing Finance Agency determines,
20 for any geographic area that is smaller than an area for
21 which limitations on the maximum original principal obli-
22 gation of a mortgage are determined for the Federal Na-
23 tional Mortgage Association or the Federal Home Loan
24 Mortgage Corporation, that a higher such maximum origi-
25 nal principal obligation limitation is warranted for any

1 particular size or sizes of residences in such sub-area by
2 higher median home prices in such sub-area, the Director
3 may, for mortgages originated during 2009, increase the
4 maximum original principal obligation limitation for such
5 size or sizes of residences for such sub-area that is other-
6 wise in effect (including pursuant to subsection (a) of this
7 section) for such Association and Corporation, but in no
8 case to an amount that exceeds the amount specified in
9 the matter following the comma in section 201(a)(1)(B)
10 of the Economic Stimulus Act of 2008.

11 **SEC. 12004. FHA REVERSE MORTGAGE LOAN LIMITS FOR**
12 **2009.**

13 For mortgages for which the mortgagee issues credit
14 approval for the borrower during calendar year 2009, the
15 second sentence of section 255(g) of the National Housing
16 Act (12 U.S.C. 171520(g)) shall be considered to require
17 that in no case may the benefits of insurance under such
18 section 255 exceed 150 percent of the maximum dollar
19 amount in effect under the sixth sentence of section
20 305(a)(2) of the Federal Home Loan Mortgage Corpora-
21 tion Act (12 U.S.C. 1454(a)(2)).

1 **TITLE XIII—STATE FISCAL**
 2 **STABILIZATION FUND**

3 DEPARTMENT OF EDUCATION

4 STATE FISCAL STABILIZATION FUND

5 For necessary expenses for a State Fiscal Stabiliza-
 6 tion Fund, \$79,000,000,000, which shall be administered
 7 by the Department of Education, of which
 8 ~~\$39,500,000,000~~ shall become available on July 1, 2009,
 9 and remain available through September 30, 2010, and
 10 ~~\$39,500,000,000~~ shall become available on July 1, 2010,
 11 and remain available through September 30, 2011: *Pro-*
 12 *vided*, That the provisions of section 1103 of this Act shall
 13 not apply to the funds reserved under section 13001(e)
 14 of this title: *Provided further*, That the amount made
 15 available under section 13001(b) of this title for adminis-
 16 tration and oversight shall take the place of the set-aside
 17 under section 1106 of this Act.

18 GENERAL PROVISIONS, THIS TITLE

19 **SEC. 13001. ALLOCATIONS.**

20 (a) **OUTLYING AREAS.**—From each year's appropria-
 21 tion to carry out this title, the Secretary of Education
 22 shall first allocate one half of 1 percent to the outlying
 23 areas on the basis of their respective needs, as determined
 24 by the Secretary, for activities consistent with this title

1 under such terms and conditions as the Secretary may de-
2 termine.

3 (b) ADMINISTRATION AND OVERSIGHT.—The Sec-
4 retary may, in addition, reserve up to \$12,500,000 each
5 year for administration and oversight of this title, includ-
6 ing for program evaluation.

7 (c) RESERVATION FOR ADDITIONAL PROGRAMS.—
8 After reserving funds under subsections (a) and (b), the
9 Secretary shall reserve \$7,500,000,000 each year for
10 grants under sections 13006 and 13007.

11 (d) STATE ALLOCATIONS.—After carrying out sub-
12 sections (a), (b), and (c), the Secretary shall allocate the
13 remaining funds made available to carry out this title to
14 the States as follows:

15 (1) 61 percent on the basis of their relative
16 population of individuals aged 5 through 24.

17 (2) 39 percent on the basis of their relative
18 total population.

19 (e) STATE GRANTS.—From funds allocated under
20 subsection (d), the Secretary shall make grants to the
21 Governor of each State.

22 (f) REALLOCATION.—The Governor shall return to
23 the Secretary any funds received under subsection (e) that
24 the Governor does not obligate within one year of receiving

1 a grant, and the Secretary shall reallocate such funds to
2 the remaining States in accordance with subsection (d).

3 **SEC. 13002. STATE USES OF FUNDS.**

4 (a) **EDUCATION FUND.**—

5 (1) **IN GENERAL.**—For each fiscal year, the
6 Governor shall use at least 61 percent of the State's
7 allocation under section 13001 for the support of el-
8 ementary, secondary, and postsecondary education.

9 (2) **RESTORING 2008 STATE SUPPORT FOR EDU-**
10 **CATION.**—

11 (A) **IN GENERAL.**—The Governor shall
12 first use the funds described in paragraph (1)—

13 (i) to provide the amount of funds,
14 through the State's principal elementary
15 and secondary funding formula, that is
16 needed to restore State support for elemen-
17 tary and secondary education to the fiscal
18 year 2008 level; and

19 (ii) to provide the amount of funds to
20 public institutions of higher education in
21 the State that is needed to restore State
22 support for postsecondary education to the
23 fiscal year 2008 level.

24 (B) **SHORTFALL.**—If the Governor deter-
25 mines that the amount of funds available under

1 paragraph (1) is insufficient to restore State
2 support for education to the levels described in
3 clauses (i) and (ii) of subparagraph (A); the
4 Governor shall allocate those funds between
5 those clauses in proportion to the relative short-
6 fall in State support for the education sectors
7 described in those clauses.

8 ~~(3) SUBGRANTS TO IMPROVE BASIC PROGRAMS~~
9 ~~OPERATED BY LOCAL EDUCATIONAL AGENCIES.—~~

10 After carrying out paragraph (2), the Governor shall
11 use any funds remaining under paragraph (1) to
12 provide local educational agencies in the State with
13 subgrants based on their relative shares of funding
14 under part A of title I of the Elementary and Sec-
15 ondary Education Act of 1965 (20 U.S.C. 6311 et
16 seq.) for the most recent year for which data are
17 available.

18 ~~(b) OTHER GOVERNMENT SERVICES.—~~For each fis-
19 cal year, the Governor may use up to 39 percent of the
20 State's allocation under section 1301 for public safety and
21 other government services, which may include assistance
22 for elementary and secondary education and public institu-
23 tions of higher education.

1 **SEC. 13003. USES OF FUNDS BY LOCAL EDUCATIONAL**
2 **AGENCIES.**

3 (a) **IN GENERAL.**—A local educational agency that
4 receives funds under this title may use the funds for any
5 activity authorized by the Elementary and Secondary Edu-
6 cation Act of 1965 (20 U.S.C. 6301 et seq.) (“ESEA”);
7 the Individuals with Disabilities Education Act (20 U.S.C.
8 1400 et seq.) (“IDEA”); or the Carl D. Perkins Career
9 and Technical Education Act of 2006 (20 U.S.C. 2301
10 et seq.) (“the Perkins Act”).

11 (b) **PROHIBITION.**—A local educational agency may
12 not use funds received under this title for capital projects
13 unless authorized by ESEA, IDEA, or the Perkins Act.

14 **SEC. 13004. USES OF FUNDS BY INSTITUTIONS OF HIGHER**
15 **EDUCATION.**

16 (a) **IN GENERAL.**—A public institution of higher edu-
17 cation that receives funds under this title shall use the
18 funds for education and general expenditures, and in such
19 a way as to mitigate the need to raise tuition and fees
20 for in-State students.

21 (b) **PROHIBITION.**—An institution of higher edu-
22 cation may not use funds received under this title to in-
23 crease its endowment.

24 (c) **ADDITIONAL PROHIBITION.**—An institution of
25 higher education may not use funds received under this
26 title for construction, renovation, or facility repair.

1 **SEC. 13005. STATE APPLICATIONS.**

2 (a) **IN GENERAL.**—The Governor of a State desiring
3 to receive an allocation under section 13001 shall submit
4 an annual application at such time, in such manner, and
5 containing such information as the Secretary may reason-
6 ably require.

7 (b) **FIRST YEAR APPLICATION.**—In the first of such
8 applications, the Governor shall—

9 (1) include the assurances described in sub-
10 section (e);

11 (2) provide baseline data that demonstrates the
12 State's current status in each of the areas described
13 in such assurances; and

14 (3) describe how the State intends to use its al-
15 location.

16 (c) **SECOND YEAR APPLICATION.**—In the second year
17 application, the Governor shall—

18 (1) include the assurances described in sub-
19 section (e); and

20 (2) describe how the State intends to use its al-
21 location.

22 (d) **INCENTIVE GRANT APPLICATION.**—The Governor
23 of a State seeking a grant under section 13006 shall—

24 (1) submit an application for consideration;

25 (2) describe the status of the State's progress
26 in each of the areas described in subsection (e); and

1 the strategies the State is employing to help ensure
2 that high-need students in the State continue mak-
3 ing progress towards meeting the State's student
4 academic achievement standards;

5 (3) describe how the State would use its grant
6 funding, including how it will allocate the funds to
7 give priority to high-need schools and local edu-
8 cational agencies; and

9 (4) include a plan for evaluating its progress in
10 closing achievement gaps.

11 (e) ASSURANCES.—An application under subsection
12 (b) or (c) shall include the following assurances:

13 (1) MAINTENANCE OF EFFORT.—

14 (A) ELEMENTARY AND SECONDARY EDU-
15 CATION.—The State will, in each of fiscal years
16 2009 and 2010, maintain State support for ele-
17 mentary and secondary education at least at
18 the level of such support in fiscal year 2006.

19 (B) HIGHER EDUCATION.—The State will,
20 in each of fiscal years 2009 and 2010, maintain
21 State support for public institutions of higher
22 education (not including support for capital
23 projects or for research and development) at
24 least at the level of such support in fiscal year
25 2006.

1 (2) ACHIEVING EQUITY IN TEACHER DISTRIBUTION.—The State will take actions to comply with
2 section 1111(b)(8)(C) of ESEA (20 U.S.C.
3 6311(b)(8)(C)) in order to address inequities in the
4 distribution of teachers between high- and low-pov-
5 erty schools, and to ensure that low-income and mi-
6 nority children are not taught at higher rates than
7 other children by inexperienced, unqualified, or out-
8 of-field teachers.
9

10 (3) IMPROVING COLLECTION AND USE OF
11 DATA.—The State will establish a longitudinal data
12 system that includes the elements described in sec-
13 tion 6401(e)(2)(D) of the America COMPETES Act
14 (20 U.S.C. 9871).

15 (4) ASSESSMENTS.—The State—

16 (A) will enhance the quality of academic
17 assessments described in section 1111(b)(3) of
18 ESEA (20 U.S.C. 6311(b)(3)) through activi-
19 ties such as those described in section 6112(a)
20 of such Act (20 U.S.C. 7301a(a)); and

21 (B) will comply with the requirements of
22 paragraphs 3(C)(ix) and (6) of section 1111(b)
23 of ESEA (20 U.S.C. 6311(b)) and section
24 612(a)(16) of IDEA (20 U.S.C. 1412(a)(16))
25 related to the inclusion of children with disabil-

1 ities and limited English proficient students in
2 State assessments; the development of valid and
3 reliable assessments for those students; and the
4 provision of accommodations that enable their
5 participation in State assessments.

6 **SEC. 13006. STATE INCENTIVE GRANTS.**

7 (a) **IN GENERAL.**—From the total amount reserved
8 under section 13001(e) that is not used for section 13007,
9 the Secretary shall, in fiscal year 2010, make grants to
10 States that have made significant progress in meeting the
11 objectives of paragraphs (2), (3), and (4) of section
12 13005(e).

13 (b) **BASIS FOR GRANTS.**—The Secretary shall deter-
14 mine which States receive grants under this section, and
15 the amount of those grants, on the basis of information
16 provided in State applications under section 13005 and
17 such other criteria as the Secretary determines appro-
18 priate.

19 (c) **SUBGRANTS TO LOCAL EDUCATIONAL AGEN-**
20 **CIES.**—Each State receiving a grant under this section
21 shall use at least 50 percent of the grant to provide local
22 educational agencies in the State with subgrants based on
23 their relative shares of funding under part A of title I of
24 ESEA (20 U.S.C. 6311 et seq.) for the most recent year.

1 **SEC. 13007. INNOVATION FUND.**

2 (a) IN GENERAL.—

3 (1) PROGRAM ESTABLISHED.—From the total
4 amount reserved under section 13001(e), the Sec-
5 retary may reserve up to \$225,000,000 each year to
6 establish an Innovation Fund, which shall consist of
7 academic achievement awards that recognize States,
8 local educational agencies, or schools that meet the
9 requirements described in subsection (b).

10 (2) BASIS FOR AWARDS.—The Secretary shall
11 make awards to States, local educational agencies,
12 or schools that have made significant gains in clos-
13 ing the achievement gap as described in subsection
14 (b)(1)—

15 (A) to allow such States, local educational
16 agencies, and schools to expand their work and
17 serve as models for best practices;

18 (B) to allow such States, local educational
19 agencies, and schools to work in partnership
20 with the private sector and the philanthropic
21 community; and

22 (C) to identify and document best practices
23 that can be shared, and taken to scale based on
24 demonstrated success.

25 (b) ELIGIBILITY.—To be eligible for such an award,
26 a State, local educational agency, or school shall—

1 (1) have significantly closed the achievement
2 gaps between groups of students described in section
3 1111(b)(2) of ESEA (20 U.S.C. 6311(b)(2));

4 (2) have exceeded the State's annual measur-
5 able objectives consistent with such section
6 1111(b)(2) for 2 or more consecutive years or have
7 demonstrated success in significantly increasing stu-
8 dent academic achievement for all groups of stu-
9 dents described in such section through another
10 measure, such as measures described in section
11 1111(e)(2) of ESEA;

12 (3) have made significant improvement in other
13 areas, such as graduation rates or increased recruit-
14 ment and placement of high-quality teachers and
15 school leaders, as demonstrated with meaningful
16 data; and

17 (4) demonstrate that they have established
18 partnerships with the private sector, which may in-
19 clude philanthropic organizations, and that the pri-
20 vate sector will provide matching funds in order to
21 help bring results to scale.

22 **SEC. 13008. STATE REPORTS.**

23 For each year of the program under this title, a State
24 receiving funds under this title shall submit a report to

1 the Secretary, at such time and in such manner as the
2 Secretary may require, that describes—

3 (1) the uses of funds provided under this title
4 within the State;

5 (2) how the State distributed the funds it re-
6 ceived under this title;

7 (3) the number of jobs that the Governor esti-
8 mates were saved or created with funds the State re-
9 ceived under this title;

10 (4) tax increases that the Governor estimates
11 were averted because of the availability of funds
12 from this title;

13 (5) the State's progress in reducing inequities
14 in the distribution of teachers, in implementing a
15 State student longitudinal data system, and in devel-
16 oping and implementing valid and reliable assess-
17 ments for limited English proficient students and
18 children with disabilities;

19 (6) the tuition and fee increases for in-State
20 students imposed by public institutions of higher
21 education in the State during the period of avail-
22 ability of funds under this title, and a description of
23 any actions taken by the State to limit those in-
24 creases; and

1 (7) the extent to which public institutions of
2 higher education maintained, increased, or decreased
3 enrollment of in-State students, including students
4 eligible for Pell Grants or other need-based financial
5 assistance.

6 **SEC. 13009. EVALUATION.**

7 The Comptroller General of the United States shall
8 conduct evaluations of the programs under sections 13006
9 and 13007 which shall include, but not be limited to, the
10 criteria used for the awards made, the States selected for
11 awards, award amounts, how each State used the award
12 received, and the impact of this funding on the progress
13 made toward closing achievement gaps.

14 **SEC. 13010. SECRETARY'S REPORT TO CONGRESS.**

15 The Secretary shall submit a report to the Committee
16 on Education and Labor of the House of Representatives,
17 the Committee on Health, Education, Labor, and Pen-
18 sions of the Senate, and the Committees on Appropria-
19 tions of the House of Representatives and of the Senate,
20 not less than 6 months following the submission of State
21 reports, that evaluates the information provided in the
22 State reports under section 13008.

1 **SEC. 13011. PROHIBITION ON PROVISION OF CERTAIN AS-**
2 **SISTANCE.**

3 No recipient of funds under this title shall use such
4 funds to provide financial assistance to students to attend
5 private elementary or secondary schools.

6 **SEC. 13012. DEFINITIONS.**

7 Except as otherwise provided in this title, as used in
8 this title—

9 (1) the term “institution of higher education”
10 has the meaning given such term in section 101 of
11 the Higher Education Act of 1965 (20 U.S.C.
12 1001);

13 (2) the term “Secretary” means the Secretary
14 of Education;

15 (3) the term “State” means each of the 50
16 States, the District of Columbia, and the Common-
17 wealth of Puerto Rico; and

18 (4) any other term used in this title that is de-
19 fined in section 9101 of ESEA (20 U.S.C. 7801)
20 shall have the meaning given the term in that sec-
21 tion.

1 **DIVISION B—OTHER**
 2 **PROVISIONS**
 3 **TITLE I—TAX PROVISIONS**

4 **SEC. 1000. SHORT TITLE, ETC.**

5 (a) **SHORT TITLE.**—This title may be cited as the
 6 “American Recovery and Reinvestment Tax Act of 2009”.

7 (b) **REFERENCE.**—Except as otherwise expressly pro-
 8 vided, whenever in this title an amendment or repeal is
 9 expressed in terms of an amendment to, or repeal of, a
 10 section or other provision, the reference shall be consid-
 11 ered to be made to a section or other provision of the In-
 12 ternal Revenue Code of 1986.

13 (c) **TABLE OF CONTENTS.**—The table of contents for
 14 this title is as follows:

Sec. 1000. Short title, etc.

 Subtitle A—Making Work Pay

Sec. 1001. Making work pay credit.

 Subtitle B—Additional Tax Relief for Families With Children

Sec. 1101. Increase in earned income tax credit.

Sec. 1102. Increase of refundable portion of child credit.

 Subtitle C—American Opportunity Tax Credit

Sec. 1201. American opportunity tax credit.

 Subtitle D—Housing Incentives

Sec. 1301. Waiver of requirement to repay first-time homebuyer credit.

Sec. 1302. Coordination of low-income housing credit and low-income housing
 grants.

 Subtitle E—Tax Incentives for Business

 PART 1—TEMPORARY INVESTMENT INCENTIVES

Sec. 1401. Special allowance for certain property acquired during 2009.

Sec. 1402. Temporary increase in limitations on expensing of certain depreciable business assets.

PART 2—5-YEAR CARRYBACK OF OPERATING LOSSES

Sec. 1411. 5-year carryback of operating losses.

Sec. 1412. Exception for TARP recipients.

PART 3—INCENTIVES FOR NEW JOBS

Sec. 1421. Incentives to hire unemployed veterans and disconnected youth.

PART 4—CLARIFICATION OF REGULATIONS RELATED TO LIMITATIONS ON CERTAIN BUILT-IN LOSSES FOLLOWING AN OWNERSHIP CHANGE

Sec. 1431. Clarification of regulations related to limitations on certain built-in losses following an ownership change.

Subtitle F—Fiscal Relief for State and Local Governments

PART 1—IMPROVED MARKETABILITY FOR TAX-EXEMPT BONDS

Sec. 1501. De minimis safe harbor exception for tax-exempt interest expense of financial institutions.

Sec. 1502. Modification of small issuer exception to tax-exempt interest expense allocation rules for financial institutions.

Sec. 1503. Temporary modification of alternative minimum tax limitations on tax-exempt bonds.

PART 2—TAX CREDIT BONDS FOR SCHOOLS

Sec. 1511. Qualified school construction bonds.

Sec. 1512. Extension and expansion of qualified zone academy bonds.

PART 3—TAXABLE BOND OPTION FOR GOVERNMENTAL BONDS

Sec. 1521. Taxable bond option for governmental bonds.

PART 4—RECOVERY ZONE BONDS

Sec. 1531. Recovery zone bonds.

Sec. 1532. Tribal economic development bonds.

PART 5—REPEAL OF WITHHOLDING TAX ON GOVERNMENT CONTRACTORS

Sec. 1541. Repeal of withholding tax on government contractors.

Subtitle G—Energy Incentives

PART 1—RENEWABLE ENERGY INCENTIVES

Sec. 1601. Extension of credit for electricity produced from certain renewable resources.

Sec. 1602. Election of investment credit in lieu of production credit.

Sec. 1603. Repeal of certain limitations on credit for renewable energy property.

Sec. 1604. Coordination with renewable energy grants.

PART 2—INCREASED ALLOCATIONS OF NEW CLEAN RENEWABLE ENERGY BONDS AND QUALIFIED ENERGY CONSERVATION BONDS

Sec. 1611. Increased limitation on issuance of new clean renewable energy bonds.

Sec. 1612. Increased limitation and expansion of qualified energy conservation bonds.

PART 3—ENERGY CONSERVATION INCENTIVES

Sec. 1621. Extension and modification of credit for nonbusiness energy property.

Sec. 1622. Modification of credit for residential energy efficient property.

Sec. 1623. Temporary increase in credit for alternative fuel vehicle refueling property.

PART 4—ENERGY RESEARCH INCENTIVES

Sec. 1631. Increased research credit for energy research.

Subtitle H—Other Provisions

PART 1—APPLICATION OF CERTAIN LABOR STANDARDS TO PROJECTS FINANCED WITH CERTAIN TAX-FAVORED BONDS

Sec. 1701. Application of certain labor standards to projects financed with certain tax-favored bonds.

PART 2—GRANTS TO PROVIDE FINANCING FOR LOW-INCOME HOUSING

Sec. 1711. Grants to States for low-income housing projects in lieu of low-income housing credit allocations for 2009.

PART 3—GRANTS FOR SPECIFIED ENERGY PROPERTY IN LIEU OF TAX CREDITS

Sec. 1721. Grants for specified energy property in lieu of tax credits.

PART 4—STUDY OF ECONOMIC, EMPLOYMENT, AND RELATED EFFECTS OF THIS ACT

Sec. 1731. Study of economic, employment, and related effects of this Act.

1 **Subtitle A—Making Work Pay**

2 **SEC. 1001. MAKING WORK PAY CREDIT.**

3 (a) **IN GENERAL.**—Subpart C of part IV of sub-
4 chapter A of chapter 1 is amended by inserting after sec-
5 tion 36 the following new section:

6 **“SEC. 36A. MAKING WORK PAY CREDIT.**

7 “(a) **ALLOWANCE OF CREDIT.**—In the case of an eli-
8 gible individual, there shall be allowed as a credit against

1 the tax imposed by this subtitle for the taxable year an
2 amount equal to the lesser of—

3 “(1) 6.2 percent of earned income of the tax-
4 payer, or

5 “(2) \$500 (\$1,000 in the case of a joint re-
6 turn).

7 “(b) LIMITATION BASED ON MODIFIED ADJUSTED
8 GROSS INCOME.—

9 “(1) IN GENERAL.—The amount allowable as a
10 credit under subsection (a) (determined without re-
11 gard to this paragraph) for the taxable year shall be
12 reduced (but not below zero) by 2 percent of so
13 much of the taxpayer’s modified adjusted gross in-
14 come as exceeds \$75,000 (\$150,000 in the case of
15 a joint return).

16 “(2) MODIFIED ADJUSTED GROSS INCOME.—
17 For purposes of subparagraph (A), the term ‘modi-
18 fied adjusted gross income’ means the adjusted
19 gross income of the taxpayer for the taxable year in-
20 creased by any amount excluded from gross income
21 under section 911, 931, or 933.

22 “(c) DEFINITIONS.—For purposes of this section—

23 “(1) ELIGIBLE INDIVIDUAL.—The term ‘eligible
24 individual’ means any individual other than—

25 “(A) any nonresident alien individual,

1 “(B) any individual with respect to whom
2 a deduction under section 151 is allowable to
3 another taxpayer for a taxable year beginning
4 in the calendar year in which the individual’s
5 taxable year begins; and

6 “(C) an estate or trust.

7 Such term shall not include any individual unless the
8 requirements of section 32(e)(1)(E) are met with re-
9 spect to such individual.

10 “(2) EARNED INCOME.—The term ‘earned in-
11 come’ has the meaning given such term by section
12 32(e)(2), except that such term shall not include net
13 earnings from self-employment which are not taken
14 into account in computing taxable income. For pur-
15 poses of the preceding sentence, any amount ex-
16 cluded from gross income by reason of section 112
17 shall be treated as earned income which is taken
18 into account in computing taxable income for the
19 taxable year.

20 “(d) TERMINATION.—This section shall not apply to
21 taxable years beginning after December 31, 2010.”.

22 (b) TREATMENT OF POSSESSIONS.—

23 (1) PAYMENTS TO POSSESSIONS.—

24 (A) MIRROR CODE POSSESSION.—The Sec-
25 retary of the Treasury shall pay to each posses-

1 sion of the United States with a mirror code
2 tax system amounts equal to the loss to that
3 possession by reason of the amendments made
4 by this section with respect to taxable years be-
5 ginning in 2009 and 2010. Such amounts shall
6 be determined by the Secretary of the Treasury
7 based on information provided by the govern-
8 ment of the respective possession.

9 (B) OTHER POSSESSIONS.—The Secretary
10 of the Treasury shall pay to each possession of
11 the United States which does not have a mirror
12 code tax system amounts estimated by the Sec-
13 retary of the Treasury as being equal to the ag-
14 gregate benefits that would have been provided
15 to residents of such possession by reason of the
16 amendments made by this section for taxable
17 years beginning in 2009 and 2010 if a mirror
18 code tax system had been in effect in such pos-
19 session. The preceding sentence shall not apply
20 with respect to any possession of the United
21 States unless such possession has a plan, which
22 has been approved by the Secretary of the
23 Treasury, under which such possession will
24 promptly distribute such payments to the resi-
25 dents of such possession.

1 (2) COORDINATION WITH CREDIT ALLOWED
2 AGAINST UNITED STATES INCOME TAXES.—No cred-
3 it shall be allowed against United States income
4 taxes for any taxable year under section 36A of the
5 Internal Revenue Code of 1986 (as added by this
6 section) to any person—

7 (A) to whom a credit is allowed against
8 taxes imposed by the possession by reason of
9 the amendments made by this section for such
10 taxable year, or

11 (B) who is eligible for a payment under a
12 plan described in paragraph (1)(B) with respect
13 to such taxable year.

14 (3) DEFINITIONS AND SPECIAL RULES.—

15 (A) POSSESSION OF THE UNITED
16 STATES.—For purposes of this subsection, the
17 term “possession of the United States” includes
18 the Commonwealth of Puerto Rico and the
19 Commonwealth of the Northern Mariana Is-
20 lands.

21 (B) MIRROR CODE TAX SYSTEM.—For pur-
22 poses of this subsection, the term “mirror code
23 tax system” means, with respect to any posses-
24 sion of the United States, the income tax sys-
25 tem of such possession if the income tax liabil-

1 ity of the residents of such possession under
2 such system is determined by reference to the
3 income tax laws of the United States as if such
4 possession were the United States.

5 (C) TREATMENT OF PAYMENTS.—For pur-
6 poses of section 1324(b)(2) of title 31, United
7 States Code, the payments under this sub-
8 section shall be treated in the same manner as
9 a refund due from the credit allowed under sec-
10 tion 36A of the Internal Revenue Code of 1986
11 (as added by this section).

12 (c) REFUNDS DISREGARDED IN THE ADMINISTRA-
13 TION OF FEDERAL PROGRAMS AND FEDERALLY AS-
14 SISTED PROGRAMS.—Any credit or refund allowed or
15 made to any individual by reason of section 36A of the
16 Internal Revenue Code of 1986 (as added by this section)
17 or by reason of subsection (b) of this section shall not be
18 taken into account as income and shall not be taken into
19 account as resources for the month of receipt and the fol-
20 lowing 2 months, for purposes of determining the eligi-
21 bility of such individual or any other individual for benefits
22 or assistance, or the amount or extent of benefits or assist-
23 ance, under any Federal program or under any State or
24 local program financed in whole or in part with Federal
25 funds.

1 (d) CONFORMING AMENDMENTS.—

2 (1) Section 6211(b)(4)(A) is amended by insert-
3 ing “36A,” after “36,”.

4 (2) Section 1324(b)(2) of title 31, United
5 States Code, is amended by inserting “36A,” after
6 “36,”.

7 (3) The table of sections for subpart C of part
8 IV of subchapter A of chapter 1 is amended by in-
9 serting after the item relating to section 36 the fol-
10 lowing new item:

“Sec. 36A. Making work pay credit.”.

11 (e) EFFECTIVE DATE.—This section shall apply to
12 taxable years beginning after December 31, 2008.

13 **Subtitle B—Additional Tax Relief**
14 **for Families With Children**

15 **SEC. 1101. INCREASE IN EARNED INCOME TAX CREDIT.**

16 (a) IN GENERAL.—Subsection (b) of section 32 is
17 amended by adding at the end the following new para-
18 graph:

19 “(3) SPECIAL RULES FOR 2009 AND 2010.—In
20 the case of any taxable year beginning in 2009 or
21 2010—

22 “(A) INCREASED CREDIT PERCENTAGE
23 FOR 3 OR MORE QUALIFYING CHILDREN.—In
24 the case of a taxpayer with 3 or more qualifying
25 children, the credit percentage is 45 percent.

1 “(B) REDUCTION OF MARRIAGE PEN-
2 ALTY.—

3 “(i) IN GENERAL.—The dollar amount
4 in effect under paragraph (2)(B) shall be
5 \$5,000.

6 “(ii) INFLATION ADJUSTMENT.—In
7 the case of any taxable year beginning in
8 2010, the \$5,000 amount in clause (i)
9 shall be increased by an amount equal to—

10 “(I) such dollar amount, multi-
11 plied by

12 “(II) the cost of living adjust-
13 ment determined under section 1(f)(3)
14 for the calendar year in which the tax-
15 able year begins determined by sub-
16 stituting ‘calendar year 2008’ for ‘cal-
17 endar year 1992’ in subparagraph (B)
18 thereof.

19 “(iii) ROUNDING.—Subparagraph (A)
20 of subsection (j)(2) shall apply after taking
21 into account any increase under clause
22 (ii).”.

23 (b) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to taxable years beginning after
25 December 31, 2008.

1 **SEC. 1102. INCREASE OF REFUNDABLE PORTION OF CHILD**
 2 **CREDIT.**

3 (a) **IN GENERAL.**—Paragraph (4) of section 24(d) is
 4 amended to read as follows:

5 “(4) **SPECIAL RULE FOR 2009 AND 2010.**—Not-
 6 withstanding paragraph (3), in the case of any tax-
 7 able year beginning in 2009 or 2010, the dollar
 8 amount in effect for such taxable year under para-
 9 graph (1)(B)(i) shall be zero.”.

10 (b) **EFFECTIVE DATE.**—The amendments made by
 11 this section shall apply to taxable years beginning after
 12 December 31, 2008.

13 **Subtitle C—American Opportunity**
 14 **Tax Credit**

15 **SEC. 1201. AMERICAN OPPORTUNITY TAX CREDIT.**

16 (a) **IN GENERAL.**—Section 25A (relating to Hope
 17 scholarship credit) is amended by redesignating subsection
 18 (i) as subsection (j) and by inserting after subsection (h)
 19 the following new subsection:

20 “(i) **AMERICAN OPPORTUNITY TAX CREDIT.**—In the
 21 case of any taxable year beginning in 2009 or 2010—

22 “(1) **INCREASE IN CREDIT.**—The Hope Scholar-
 23 ship Credit shall be an amount equal to the sum
 24 of—

25 “(A) 100 percent of so much of the quali-
 26 fied tuition and related expenses paid by the

1 taxpayer during the taxable year (for education
2 furnished to the eligible student during any
3 academic period beginning in such taxable year)
4 as does not exceed \$2,000, plus

5 “(B) 25 percent of such expenses so paid
6 as exceeds \$2,000 but does not exceed \$4,000.

7 “(2) CREDIT ALLOWED FOR FIRST 4 YEARS OF
8 POST-SECONDARY EDUCATION.—Subparagraphs (A)
9 and (C) of subsection (b)(2) shall be applied by sub-
10 stituting ‘4’ for ‘2’.

11 “(3) QUALIFIED TUITION AND RELATED EX-
12 PENSES TO INCLUDE REQUIRED COURSE MATE-
13 RIALS.—Subsection (f)(1)(A) shall be applied by
14 substituting ‘tuition, fees, and course materials’ for
15 ‘tuition and fees’.

16 “(4) INCREASE IN AGI LIMITS FOR HOPE
17 SCHOLARSHIP CREDIT.—In lieu of applying sub-
18 section (d) with respect to the Hope Scholarship
19 Credit, such credit (determined without regard to
20 this paragraph) shall be reduced (but not below
21 zero) by the amount which bears the same ratio to
22 such credit (as so determined) as—

23 “(A) the excess of—

1 “(i) the taxpayer’s modified adjusted
2 gross income (as defined in subsection
3 (d)(3)) for such taxable year, over

4 “(ii) \$80,000 (\$160,000 in the case of
5 a joint return), bears to

6 “(B) \$10,000 (\$20,000 in the case of a
7 joint return).

8 “(5) CREDIT ALLOWED AGAINST ALTERNATIVE
9 MINIMUM TAX.—In the case of a taxable year to
10 which section 26(a)(2) does not apply, so much of
11 the credit allowed under subsection (a) as is attrib-
12 utable to the Hope Scholarship Credit shall not ex-
13 ceed the excess of—

14 “(A) the sum of the regular tax liability
15 (as defined in section 26(b)) plus the tax im-
16 posed by section 55, over

17 “(B) the sum of the credits allowable
18 under this subpart (other than this subsection
19 and sections 23, 25D, and 30D) and section 27
20 for the taxable year.

21 Any reference in this section or section 24, 25, 26,
22 25B, 904, or 1400C to a credit allowable under this
23 subsection shall be treated as a reference to so much
24 of the credit allowable under subsection (a) as is at-
25 tributable to the Hope Scholarship Credit.

1 “(6) PORTION OF CREDIT MADE REFUND-
2 ABLE.—40 percent of so much of the credit allowed
3 under subsection (a) as is attributable to the Hope
4 Scholarship Credit (determined after application of
5 paragraph (4) and without regard to this paragraph
6 and section 26(a)(2) or paragraph (5), as the case
7 may be) shall be treated as a credit allowable under
8 subpart C (and not allowed under subsection (a)).
9 The preceding sentence shall not apply to any tax-
10 payer for any taxable year if such taxpayer is a child
11 to whom subsection (g) of section 1 applies for such
12 taxable year.

13 “(7) COORDINATION WITH MIDWESTERN DIS-
14 ASTER AREA BENEFITS.—In the case of a taxpayer
15 with respect to whom section 702(a)(1)(B) of the
16 Heartland Disaster Tax Relief Act of 2008 applies
17 for any taxable year, such taxpayer may elect to
18 waive the application of this subsection to such tax-
19 payer for such taxable year.”

20 (b) CONFORMING AMENDMENTS.—

21 (1) Section 24(b)(3)(B) is amended by inserting
22 “25A(i),” after “23,”.

23 (2) Section 25(e)(1)(C)(ii) is amended by in-
24 serting “25A(i),” after “24,”.

1 (3) Section 26(a)(1) is amended by inserting
2 “25A(i),” after “24.”

3 (4) Section 25B(g)(2) is amended by inserting
4 “25A(i),” after “23.”

5 (5) Section 904(i) is amended by inserting
6 “25A(i),” after “24.”

7 (6) Section 1400C(d)(2) is amended by insert-
8 ing “25A(i),” after “24.”

9 (7) Section 1324(b)(2) of title 31, United
10 States Code, is amended by inserting “25A,” before
11 “35.”

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to taxable years beginning after
14 December 31, 2008.

15 (d) APPLICATION OF EGTRRA SUNSET.—The
16 amendment made by subsection (b)(1) shall be subject to
17 title IX of the Economic Growth and Tax Relief Reconcili-
18 ation Act of 2001 in the same manner as the provision
19 of such Act to which such amendment relates.

20 (e) TREASURY STUDIES REGARDING EDUCATION IN-
21 CENTIVES.—

22 (1) STUDY REGARDING COORDINATION WITH
23 NON-TAX EDUCATIONAL INCENTIVES.—The Sec-
24 retary of the Treasury, or the Secretary’s delegate,
25 shall study how to coordinate the credit allowed

1 under section 25A of the Internal Revenue Code of
2 1986 with the Federal Pell Grant program under
3 section 401 of the Higher Education Act of 1965.

4 (2) STUDY REGARDING IMPOSITION OF COMMU-
5 NITY SERVICE REQUIREMENTS.—The Secretary of
6 the Treasury, or the Secretary’s delegate, shall study
7 the feasibility of requiring students to perform com-
8 munity service as a condition of taking their tuition
9 and related expenses into account under section 25A
10 of the Internal Revenue Code of 1986.

11 (3) REPORT.—Not later than 1 year after the
12 date of the enactment of this Act, the Secretary of
13 the Treasury, or the Secretary’s delegate, shall re-
14 port to Congress on the results of the studies con-
15 ducted under this paragraph.

16 **Subtitle D—Housing Incentives**

17 **SEC. 1301. WAIVER OF REQUIREMENT TO REPAY FIRST-** 18 **TIME HOMEBUYER CREDIT.**

19 (a) IN GENERAL.—Paragraph (4) of section 36(f) is
20 amended by adding at the end the following new subpara-
21 graph:

22 “(D) WAIVER OF RECAPTURE FOR PUR-
23 CHASES IN 2009.—In the case of any credit al-
24 lowed with respect to the purchase of a prin-

1 principal residence after December 31, 2008, and
 2 before July 1, 2009—

3 “(i) paragraph (1) shall not apply,

4 and

5 “(ii) paragraph (2) shall apply only if
 6 the disposition or cessation described in
 7 paragraph (2) with respect to such resi-
 8 dence occurs during the 36-month period
 9 beginning on the date of the purchase of
 10 such residence by the taxpayer.”.

11 (b) CONFORMING AMENDMENT.—Subsection (g) of
 12 section 36 is amended by striking “subsection (e)” and
 13 inserting “subsections (e) and (f)(4)(D)”.

14 (c) EFFECTIVE DATE.—The amendments made by
 15 this section shall apply to residences purchased after De-
 16 cember 31, 2008.

17 **SEC. 1302. COORDINATION OF LOW-INCOME HOUSING**
 18 **CREDIT AND LOW-INCOME HOUSING GRANTS.**

19 Subsection (i) of section 42 of the Internal Revenue
 20 Code of 1986 is amended by adding at the end the fol-
 21 lowing new paragraph:

22 “(9) COORDINATION WITH LOW-INCOME HOUS-
 23 ING GRANTS.—

24 “(A) REDUCTION IN STATE HOUSING
 25 CREDIT CEILING FOR LOW-INCOME HOUSING

1 GRANTS RECEIVED IN 2009.—For purposes of
 2 this section, the amounts described in clauses
 3 (i) through (iv) of subsection (h)(3)(C) with re-
 4 spect to any State for 2009 shall each be re-
 5 duced by so much of such amount as is taken
 6 into account in determining the amount of any
 7 grant to such State under section 1711 of the
 8 American Recovery and Reinvestment Tax Act
 9 of 2009.

10 “(B) SPECIAL RULE FOR BASIS.—Basis of
 11 a qualified low-income building shall not be re-
 12 duced by the amount of any grant described in
 13 subparagraph (A).”.

14 **Subtitle E—Tax Incentives for** 15 **Business**

16 **PART 1—TEMPORARY INVESTMENT INCENTIVES**

17 **SEC. 1401. SPECIAL ALLOWANCE FOR CERTAIN PROPERTY** 18 **ACQUIRED DURING 2009.**

19 (a) IN GENERAL.—Paragraph (2) of section 168(k)
 20 is amended—

21 (1) by striking “January 1, 2010” and insert-
 22 ing “January 1, 2011”, and

23 (2) by striking “January 1, 2009” each place
 24 it appears and inserting “January 1, 2010”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) The heading for subsection (k) of section
2 168 is amended by striking “JANUARY 1, 2009” and
3 inserting “JANUARY 1, 2010”.

4 (2) The heading for clause (ii) of section
5 168(k)(2)(B) is amended by striking “PRE-JANUARY
6 1, 2009” and inserting “PRE-JANUARY 1, 2010”.

7 (3) Subparagraph (D) of section 168(k)(4) is
8 amended—

9 (A) by striking “and” at the end of clause

10 (i),

11 (B) by redesignating clause (ii) as clause

12 (v), and

13 (C) by inserting after clause (i) the fol-

14 lowing new clauses:

15 “(ii) ‘April 1, 2008’ shall be sub-
16 stituted for ‘January 1, 2008’ in subpara-
17 graph (A)(iii)(I) thereof,

18 “(iii) ‘January 1, 2009’ shall be sub-
19 stituted for ‘January 1, 2010’ each place it
20 appears,

21 “(iv) ‘January 1, 2010’ shall be sub-
22 stituted for ‘January 1, 2011’ in subpara-
23 graph (A)(iv) thereof, and”.

1 (4) Subparagraph (B) of section 168(l)(5) is
2 amended by striking “January 1, 2009” and insert-
3 ing “January 1, 2010”.

4 (5) Subparagraph (B) of section 1400N(d)(3)
5 is amended by striking “January 1, 2009” and in-
6 serting “January 1, 2010”.

7 (c) EFFECTIVE DATES.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (2), the amendments made by this section
10 shall apply to property placed in service after De-
11 cember 31, 2008, in taxable years ending after such
12 date.

13 (2) TECHNICAL AMENDMENT.—Section
14 168(k)(4)(D)(ii) of the Internal Revenue Code of
15 1986, as added by subsection (b)(3)(C), shall apply
16 to taxable years ending after March 31, 2008.

17 **SEC. 1402. TEMPORARY INCREASE IN LIMITATIONS ON EX-**
18 **PENSING OF CERTAIN DEPRECIABLE BUSI-**
19 **NESS ASSETS.**

20 (a) IN GENERAL.—Paragraph (7) of section 179(b)
21 is amended—

22 (1) by striking “2008” and inserting “2008, or
23 2009”, and

24 (2) by striking “2008” in the heading thereof
25 and inserting “2008, AND 2009”.

1 number which is one less than the
2 whole number substituted under sub-
3 clause (H) for ‘2’, and

4 “(IV) subparagraph (F) shall not
5 apply.

6 “(ii) APPLICABLE 2008 OR 2009 NET
7 OPERATING LOSS.—For purposes of this
8 subparagraph, the term ‘applicable 2008
9 or 2009 net operating loss’ means—

10 “(I) the taxpayer’s net operating
11 loss for any taxable year ending in
12 2008 or 2009, or

13 “(II) if the taxpayer elects to
14 have this subclause apply in lieu of
15 subclause (I), the taxpayer’s net oper-
16 ating loss for any taxable year begin-
17 ning in 2008 or 2009.

18 “(iii) ELECTION.—Any election under
19 this subparagraph shall be made in such
20 manner as may be prescribed by the Sec-
21 retary, and shall be made by the due date
22 (including extension of time) for filing the
23 taxpayer’s return for the taxable year of
24 the net operating loss. Any such election,
25 once made, shall be irrevocable.

1 “(iv) COORDINATION WITH ALTER-
 2 NATIVE TAX NET OPERATING LOSS DEDUC-
 3 TION.—In the case of a taxpayer who
 4 elects to have clause (ii)(II) apply, section
 5 56(d)(1)(A)(ii) shall be applied by sub-
 6 stituting ‘ending during 2001 or 2002 or
 7 beginning during 2008 or 2009’ for ‘end-
 8 ing during 2001, 2002, 2008, or 2009’.”.

9 (b) ALTERNATIVE TAX NET OPERATING LOSS DE-
 10 DUCTION.—Subclause (I) of section 56(d)(1)(A)(ii) is
 11 amended to read as follows:

12 “(I) the amount of such deduc-
 13 tion attributable to the sum of
 14 carrybacks of net operating losses
 15 from taxable years ending during
 16 2001, 2002, 2008, or 2009 and
 17 carryovers of net operating losses to
 18 such taxable years, or”.

19 (c) LOSS FROM OPERATIONS OF LIFE INSURANCE
 20 COMPANIES.—Subsection (b) of section 810 is amended
 21 by adding at the end the following new paragraph:

22 “(4) CARRYBACK FOR 2008 AND 2009 LOSSES.—
 23 “(A) IN GENERAL.—In the case of an ap-
 24 plicable 2008 or 2009 loss from operations with

1 respect to which the taxpayer has elected the
2 application of this paragraph—

3 “(i) such loss from operations shall be
4 reduced by 10 percent of such loss (deter-
5 mined without regard to this paragraph),
6 and

7 “(ii) paragraph (1)(A) shall be ap-
8 plied, at the election of the taxpayer, by
9 substituting ‘5’ or ‘4’ for ‘3’.

10 “(B) APPLICABLE 2008 OR 2009 LOSS FROM
11 OPERATIONS.—For purposes of this paragraph,
12 the term ‘applicable 2008 or 2009 loss from op-
13 erations’ means—

14 “(i) the taxpayer’s loss from oper-
15 ations for any taxable year ending in 2008
16 or 2009, or

17 “(ii) if the taxpayer elects to have this
18 clause apply in lieu of clause (i), the tax-
19 payer’s loss from operations for any tax-
20 able year beginning in 2008 or 2009.

21 “(C) ELECTION.—Any election under this
22 paragraph shall be made in such manner as
23 may be prescribed by the Secretary, and shall
24 be made by the due date (including extension of
25 time) for filing the taxpayer’s return for the

1 taxable year of the loss from operations. Any
2 such election, once made, shall be irrevocable.

3 ~~“(D) COORDINATION WITH ALTERNATIVE~~
4 ~~TAX NET OPERATING LOSS DEDUCTION.—~~In the
5 ease of a taxpayer who elects to have subpara-
6 graph (B)(ii) apply, section 56(d)(1)(A)(ii) shall
7 be applied by substituting ‘ending during 2001
8 or 2002 or beginning during 2008 or 2009’ for
9 ‘ending during 2001, 2002, 2008, or 2009.’”.

10 (d) ~~CONFORMING AMENDMENT.—~~Section 172 is
11 amended by striking subsection (k).

12 (e) ~~EFFECTIVE DATE.—~~

13 (1) ~~IN GENERAL.—~~Except as otherwise pro-
14 vided in this subsection, the amendments made by
15 this section shall apply to net operating losses aris-
16 ing in taxable years ending after December 31,
17 2007.

18 (2) ~~ALTERNATIVE TAX NET OPERATING LOSS~~
19 ~~DEDUCTION.—~~The amendment made by subsection
20 (b) shall apply to taxable years ending after 1997.

21 (3) ~~LOSS FROM OPERATIONS OF LIFE INSUR-~~
22 ~~ANCE COMPANIES.—~~The amendment made by sub-
23 section (d) shall apply to losses from operations aris-
24 ing in taxable years ending after December 31,
25 2007.

1 (4) TRANSITIONAL RULE.—In the case of a net
2 operating loss (or, in the case of a life insurance
3 company, a loss from operations) for a taxable year
4 ending before the date of the enactment of this
5 Act—

6 (A) any election made under section
7 172(b)(3) or 810(b)(3) of the Internal Revenue
8 Code of 1986 with respect to such loss may
9 (notwithstanding such section) be revoked be-
10 fore the applicable date;

11 (B) any election made under section
12 172(b)(1)(H) or 810(b)(4) of such Code with
13 respect to such loss shall (notwithstanding such
14 section) be treated as timely made if made be-
15 fore the applicable date; and

16 (C) any application under section 6411(a)
17 of such Code with respect to such loss shall be
18 treated as timely filed if filed before the appli-
19 cable date.

20 For purposes of this paragraph, the term “applica-
21 ble date” means the date which is 60 days after the
22 date of the enactment of this Act.

23 **SEC. 1412. EXCEPTION FOR TARP RECIPIENTS.**

24 The amendments made by this part shall not apply
25 to—

1 (1) any taxpayer if—

2 (A) the Federal Government acquires, at
3 any time, an equity interest in the taxpayer
4 pursuant to the Emergency Economic Stabiliza-
5 tion Act of 2008, or

6 (B) the Federal Government acquires, at
7 any time, any warrant (or other right) to ac-
8 quire any equity interest with respect to the
9 taxpayer pursuant to such Act,

10 (2) the Federal National Mortgage Association
11 and the Federal Home Loan Mortgage Corporation,
12 and

13 (3) any taxpayer which at any time in 2008 or
14 2009 is a member of the same affiliated group (as
15 defined in section 1504 of the Internal Revenue
16 Code of 1986, determined without regard to sub-
17 section (b) thereof) as a taxpayer described in para-
18 graph (1) or (2).

19 **PART 3—INCENTIVES FOR NEW JOBS**

20 **SEC. 1421. INCENTIVES TO HIRE UNEMPLOYED VETERANS**

21 **AND DISCONNECTED YOUTH.**

22 (a) **IN GENERAL.**—Subsection (d) of section 51 is
23 amended by adding at the end the following new para-
24 graph:

1 “(14) CREDIT ALLOWED FOR UNEMPLOYED
2 VETERANS AND DISCONNECTED YOUTH HIRED IN
3 2009 OR 2010.—

4 “(A) IN GENERAL.—Any unemployed vet-
5 eran or disconnected youth who begins work for
6 the employer during 2009 or 2010 shall be
7 treated as a member of a targeted group for
8 purposes of this subpart.

9 “(B) DEFINITIONS.—For purposes of this
10 paragraph—

11 “(i) UNEMPLOYED VETERAN.—The
12 term ‘unemployed veteran’ means any vet-
13 eran (as defined in paragraph (3)(B), de-
14 termined without regard to clause (ii)
15 thereof) who is certified by the designated
16 local agency as—

17 “(I) having been discharged or
18 released from active duty in the
19 Armed Forces during 2008, 2009, or
20 2010, and

21 “(II) being in receipt of unem-
22 ployment compensation under State or
23 Federal law for not less than 4 weeks
24 during the 1-year period ending on
25 the hiring date.

1 “(ii) **DISCONNECTED YOUTH.**—The
2 term ‘disconnected youth’ means any indi-
3 vidual who is certified by the designated
4 local agency—

5 “(I) as having attained age 16
6 but not age 25 on the hiring date,

7 “(II) as not regularly attending
8 any secondary, technical, or post-sec-
9 ondary school during the 6-month pe-
10 riod preceding the hiring date,

11 “(III) as not regularly employed
12 during such 6-month period, and

13 “(IV) as not readily employable
14 by reason of lacking a sufficient num-
15 ber of basic skills.”.

16 (b) **EFFECTIVE DATE.**—The amendments made by
17 this section shall apply to individuals who begin work for
18 the employer after December 31, 2008.

1 **PART 4—CLARIFICATION OF REGULATIONS RE-**
2 **LATED TO LIMITATIONS ON CERTAIN BUILT-**
3 **IN LOSSES FOLLOWING AN OWNERSHIP**
4 **CHANGE**

5 **SEC. 1431. CLARIFICATION OF REGULATIONS RELATED TO**
6 **LIMITATIONS ON CERTAIN BUILT-IN LOSSES**
7 **FOLLOWING AN OWNERSHIP CHANGE.**

8 (a) FINDINGS.—Congress finds as follows:

9 (1) The delegation of authority to the Secretary
10 of the Treasury under section 382(m) of the Inter-
11 nal Revenue Code of 1986 does not authorize the
12 Secretary to provide exemptions or special rules that
13 are restricted to particular industries or classes of
14 taxpayers.

15 (2) Internal Revenue Service Notice 2008–83 is
16 inconsistent with the congressional intent in enact-
17 ing such section 382(m).

18 (3) The legal authority to prescribe Internal
19 Revenue Service Notice 2008–83 is doubtful.

20 (4) However, as taxpayers should generally be
21 able to rely on guidance issued by the Secretary of
22 the Treasury legislation is necessary to clarify the
23 force and effect of Internal Revenue Service Notice
24 2008–83 and restore the proper application under
25 the Internal Revenue Code of 1986 of the limitation

1 on built-in losses following an ownership change of
2 a bank.

3 (b) DETERMINATION OF FORCE AND EFFECT OF IN-
4 TERNAL REVENUE SERVICE NOTICE 2008-83 EXEMPT-
5 ING BANKS FROM LIMITATION ON CERTAIN BUILT-IN
6 LOSSES FOLLOWING OWNERSHIP CHANGE.—

7 (1) IN GENERAL.—Internal Revenue Service
8 Notice 2008-83—

9 (A) shall be deemed to have the force and
10 effect of law with respect to any ownership
11 change (as defined in section 382(g) of the In-
12 ternal Revenue Code of 1986) occurring on or
13 before January 16, 2009, and

14 (B) shall have no force or effect with re-
15 spect to any ownership change after such date.

16 (2) BINDING CONTRACTS.—Notwithstanding
17 paragraph (1), Internal Revenue Service Notice
18 2008-83 shall have the force and effect of law with
19 respect to any ownership change (as so defined)
20 which occurs after January 16, 2009 if such
21 change—

22 (A) is pursuant to a written binding con-
23 tract entered into on or before such date, or

24 (B) is pursuant to a written agreement en-
25 tered into on or before such date and such

1 agreement was described on or before such date
2 in a public announcement or in a filing with the
3 Securities and Exchange Commission required
4 by reason of such ownership change.

5 **Subtitle F—Fiscal Relief for State**
6 **and Local Governments**

7 **PART 1—IMPROVED MARKETABILITY FOR TAX-**
8 **EXEMPT BONDS**

9 **SEC. 1501. DE MINIMIS SAFE HARBOR EXCEPTION FOR TAX-**
10 **EXEMPT INTEREST EXPENSE OF FINANCIAL**
11 **INSTITUTIONS.**

12 (a) IN GENERAL.—Subsection (b) of section 265 is
13 amended by adding at the end the following new para-
14 graph:

15 “(7) DE MINIMIS EXCEPTION FOR BONDS
16 ISSUED DURING 2009 OR 2010.—

17 “(A) IN GENERAL.—In applying paragraph
18 (2)(A), there shall not be taken into account
19 tax-exempt obligations issued during 2009 or
20 2010.

21 “(B) LIMITATION.—The amount of tax-ex-
22 empt obligations not taken into account by rea-
23 son of subparagraph (A) shall not exceed 2 per-
24 cent of the amount determined under para-
25 graph (2)(B).

1 “(i) INCREASE IN LIMITATION.—In
2 the case of obligations issued during 2009
3 or 2010, subparagraphs (C)(i), (D)(i), and
4 (D)(iii)(II) shall each be applied by sub-
5 stituting ‘\$30,000,000’ for ‘\$10,000,000’.

6 “(ii) QUALIFIED 501(C)(3) BONDS
7 TREATED AS ISSUED BY EXEMPT ORGANI-
8 ZATION.—In the case of a qualified
9 501(c)(3) bond (as defined in section 145)
10 issued during 2009 or 2010, this para-
11 graph shall be applied by treating the
12 501(c)(3) organization for whose benefit
13 such bond was issued as the issuer.

14 “(iii) SPECIAL RULE FOR QUALIFIED
15 FINANCINGS.—In the case of a qualified fi-
16 nancing issue issued during 2009 or
17 2010—

18 “(I) subparagraph (F) shall not
19 apply, and

20 “(II) any obligation issued as a
21 part of such issue shall be treated as
22 a qualified tax-exempt obligation if
23 the requirements of this paragraph
24 are met with respect to each qualified
25 portion of the issue (determined by

1 treating each qualified portion as a
2 separate issue issued by the qualified
3 borrower with respect to which such
4 portion relates).

5 “(iv) QUALIFIED FINANCING ISSUE.—
6 For purposes of this subparagraph, the
7 term ‘qualified financing issue’ means any
8 composite, pooled, or other conduit financ-
9 ing issue the proceeds of which are used
10 directly or indirectly to make or finance
11 loans to one or more ultimate borrowers
12 each of whom is a qualified borrower.

13 “(v) QUALIFIED PORTION.—For pur-
14 poses of this subparagraph, the term
15 ‘qualified portion’ means that portion of
16 the proceeds which are used with respect
17 to each qualified borrower under the issue.

18 “(vi) QUALIFIED BORROWER.—For
19 purposes of this subparagraph, the term
20 ‘qualified borrower’ means a borrower
21 which is a State or political subdivision
22 thereof or an organization described in sec-
23 tion 501(c)(3) and exempt from taxation
24 under section 501(a).”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to obligations issued after Decem-
3 ber 31, 2008.

4 **SEC. 1503. TEMPORARY MODIFICATION OF ALTERNATIVE**
5 **MINIMUM TAX LIMITATIONS ON TAX-EXEMPT**
6 **BONDS.**

7 (a) INTEREST ON PRIVATE ACTIVITY BONDS ISSUED
8 DURING 2009 AND 2010 NOT TREATED AS TAX PREF-
9 ERENCE ITEM.—Subparagraph (C) of section 57(a)(5) is
10 amended by adding at the end a new clause:

11 “(vi) EXCEPTION FOR BONDS ISSUED
12 IN 2009 AND 2010.—For purposes of clause
13 (i), the term ‘private activity bond’ shall
14 not include any bond issued after Decem-
15 ber 31, 2008, and before January 1, 2011.
16 For purposes of the preceding sentence, a
17 refunding bond (whether a current or ad-
18 vance refunding) shall be treated as issued
19 on the date of the issuance of the refunded
20 bond (or in the case of a series of
21 refundings, the original bond).”.

22 (b) NO ADJUSTMENT TO ADJUSTED CURRENT
23 EARNINGS FOR INTEREST ON TAX-EXEMPT BONDS
24 ISSUED AFTER 2008.—Subparagraph (B) of section

1 56(g)(4) is amended by adding at the end the following
2 new clause:

3 “(iv) TAX EXEMPT INTEREST ON
4 BONDS ISSUED IN 2009 AND 2010.—Clause
5 (i) shall not apply in the case of any inter-
6 est on a bond issued after December 31,
7 2008, and before January 1, 2011. For
8 purposes of the preceding sentence, a re-
9 funding bond (whether a current or ad-
10 vance refunding) shall be treated as issued
11 on the date of the issuance of the refunded
12 bond (or in the case of a series of
13 refundings, the original bond).”.

14 (e) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to obligations issued after Decem-
16 ber 31, 2008.

17 **PART 2—TAX CREDIT BONDS FOR SCHOOLS**

18 **SEC. 1511. QUALIFIED SCHOOL CONSTRUCTION BONDS.**

19 (a) IN GENERAL.—Subpart I of part IV of sub-
20 chapter A of chapter 1 is amended by adding at the end
21 the following new section:

22 **“SEC. 54F. QUALIFIED SCHOOL CONSTRUCTION BONDS.**

23 “(a) QUALIFIED SCHOOL CONSTRUCTION BOND.—
24 For purposes of this subchapter, the term ‘qualified school

1 construction bond' means any bond issued as part of an
2 issue if—

3 “(1) 100 percent of the available project pro-
4 ceeds of such issue are to be used for the construc-
5 tion, rehabilitation, or repair of a public school facil-
6 ity or for the acquisition of land on which such a fa-
7 cility is to be constructed with part of the proceeds
8 of such issue,

9 “(2) the bond is issued by a State or local gov-
10 ernment within the jurisdiction of which such school
11 is located, and

12 “(3) the issuer designates such bond for pur-
13 poses of this section.

14 “(b) LIMITATION ON AMOUNT OF BONDS DES-
15 IGNATED.—The maximum aggregate face amount of
16 bonds issued during any calendar year which may be des-
17 ignated under subsection (a) by any issuer shall not exceed
18 the sum of—

19 “(1) the limitation amount allocated under sub-
20 section (d) for such calendar year to such issuer,
21 and

22 “(2) if such issuer is a large local educational
23 agency (as defined in subsection (e)(4)) or is issuing
24 on behalf of such an agency, the limitation amount

1 allocated under subsection (e) for such calendar year
2 to such agency.

3 “(e) NATIONAL LIMITATION ON AMOUNT OF BONDS
4 DESIGNATED.—There is a national qualified school con-
5 struction bond limitation for each calendar year. Such lim-
6 itation is—

7 “(1) \$11,000,000,000 for 2009,

8 “(2) \$11,000,000,000 for 2010, and

9 “(3) except as provided in subsection (f), zero
10 after 2010.

11 “(d) 60 PERCENT OF LIMITATION ALLOCATED
12 AMONG STATES.—

13 “(1) IN GENERAL.—60 percent of the limitation
14 applicable under subsection (e) for any calendar year
15 shall be allocated by the Secretary among the States
16 in proportion to the respective numbers of children
17 in each State who have attained age 5 but not age
18 18 for the most recent fiscal year ending before such
19 calendar year. The limitation amount allocated to a
20 State under the preceding sentence shall be allocated
21 by the State to issuers within such State.

22 “(2) MINIMUM ALLOCATIONS TO STATES.—

23 “(A) IN GENERAL.—The Secretary shall
24 adjust the allocations under this subsection for

1 any calendar year for each State to the extent
2 necessary to ensure that the sum of—

3 “(i) the amount allocated to such
4 State under this subsection for such year,
5 and

6 “(ii) the aggregate amounts allocated
7 under subsection (e) to large local edu-
8 cational agencies in such State for such
9 year;

10 is not less than an amount equal to such
11 State’s adjusted minimum percentage of the
12 amount to be allocated under paragraph (1) for
13 the calendar year.

14 “(B) ADJUSTED MINIMUM PERCENTAGE.—

15 A State’s adjusted minimum percentage for any
16 calendar year is the product of—

17 “(i) the minimum percentage de-
18 scribed in section 1124(d) of the Elemen-
19 tary and Secondary Education Act of 1965
20 (20 U.S.C. 6334(d)) for such State for the
21 most recent fiscal year ending before such
22 calendar year, multiplied by

23 “(ii) 1.68.

24 “(3) ALLOCATIONS TO CERTAIN POSSES-
25 SIONS.—The amount to be allocated under para-

1 graph (1) to any possession of the United States
2 other than Puerto Rico shall be the amount which
3 would have been allocated if all allocations under
4 paragraph (1) were made on the basis of respective
5 populations of individuals below the poverty line (as
6 defined by the Office of Management and Budget).
7 In making other allocations, the amount to be allo-
8 cated under paragraph (1) shall be reduced by the
9 aggregate amount allocated under this paragraph to
10 possessions of the United States.

11 “(4) ALLOCATIONS FOR INDIAN SCHOOLS.—In
12 addition to the amounts otherwise allocated under
13 this subsection, \$200,000,000 for calendar year
14 2009, and \$200,000,000 for calendar year 2010,
15 shall be allocated by the Secretary of the Interior for
16 purposes of the construction, rehabilitation, and re-
17 pair of schools funded by the Bureau of Indian Af-
18 fairs. In the case of amounts allocated under the
19 preceding sentence, Indian tribal governments (as
20 defined in section 7701(a)(40)) shall be treated as
21 qualified issuers for purposes of this subchapter.

22 “(e) 40 PERCENT OF LIMITATION ALLOCATED
23 AMONG LARGEST SCHOOL DISTRICTS.—

24 “(1) IN GENERAL.—40 percent of the limitation
25 applicable under subsection (e) for any calendar year

1 shall be allocated under paragraph (2) by the Sec-
2 retary among local educational agencies which are
3 large local educational agencies for such year.

4 “(2) ALLOCATION FORMULA.—The amount to
5 be allocated under paragraph (1) for any calendar
6 year shall be allocated among large local educational
7 agencies in proportion to the respective amounts
8 each such agency received for Basic Grants under
9 subpart 2 of part A of title I of the Elementary and
10 Secondary Education Act of 1965 (20 U.S.C. 6331
11 et seq.) for the most recent fiscal year ending before
12 such calendar year.

13 “(3) ALLOCATION OF UNUSED LIMITATION TO
14 STATE.—The amount allocated under this subsection
15 to a large local educational agency for any calendar
16 year may be reallocated by such agency to the State
17 in which such agency is located for such calendar
18 year. Any amount reallocated to a State under the
19 preceding sentence may be allocated as provided in
20 subsection (d)(1).

21 “(4) LARGE LOCAL EDUCATIONAL AGENCY.—
22 For purposes of this section, the term ‘large local
23 educational agency’ means, with respect to a cal-
24 endar year, any local educational agency if such
25 agency is—

1 “(A) among the 100 local educational
2 agencies with the largest numbers of children
3 aged 5 through 17 from families living below
4 the poverty level, as determined by the Sec-
5 retary using the most recent data available
6 from the Department of Commerce that are
7 satisfactory to the Secretary, or

8 “(B) 1 of not more than 25 local edu-
9 cational agencies (other than those described in
10 subparagraph (A)) that the Secretary of Edu-
11 cation determines (based on the most recent
12 data available satisfactory to the Secretary) are
13 in particular need of assistance, based on a low
14 level of resources for school construction, a high
15 level of enrollment growth, or such other factors
16 as the Secretary deems appropriate.

17 “(f) CARRYOVER OF UNUSED LIMITATION.—If for
18 any calendar year—

19 “(1) the amount allocated under subsection (d)
20 to any State, exceeds

21 “(2) the amount of bonds issued during such
22 year which are designated under subsection (a) pur-
23 suant to such allocation,

24 the limitation amount under such subsection for such
25 State for the following calendar year shall be increased

1 by the amount of such excess. A similar rule shall apply
2 to the amounts allocated under subsection (d)(4) or (e).”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Paragraph (1) of section 54A(d) is amended
5 by striking “or” at the end of subparagraph (C), by
6 inserting “or” at the end of subparagraph (D), and
7 by inserting after subparagraph (D) the following
8 new subparagraph:

9 “(E) a qualified school construction
10 bond.”.

11 (2) Subparagraph (C) of section 54A(d)(2) is
12 amended by striking “and” at the end of clause (iii),
13 by striking the period at the end of clause (iv) and
14 inserting “, and”, and by adding at the end the fol-
15 lowing new clause:

16 “(v) in the case of a qualified school
17 construction bond, a purpose specified in
18 section 54F(a)(1).”.

19 (3) The table of sections for subpart I of part
20 IV of subchapter A of chapter 1 is amended by add-
21 ing at the end the following new item:

“Sec. 54F. Qualified school construction bonds.”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to obligations issued after Decem-
24 ber 31, 2008.

1 **SEC. 1512. EXTENSION AND EXPANSION OF QUALIFIED**
 2 **ZONE ACADEMY BONDS.**

3 (a) **IN GENERAL.**—Section 54E(c)(1) is amended by
 4 striking “and 2009” and inserting “and \$1,400,000,000
 5 for 2009 and 2010”.

6 (b) **EFFECTIVE DATE.**—The amendment made by
 7 this section shall apply to obligations issued after Decem-
 8 ber 31, 2008.

9 **PART 3—TAXABLE BOND OPTION FOR**
 10 **GOVERNMENTAL BONDS**

11 **SEC. 1521. TAXABLE BOND OPTION FOR GOVERNMENTAL**
 12 **BONDS.**

13 (a) **IN GENERAL.**—Part IV of subchapter A of chap-
 14 ter 1 is amended by adding at the end the following new
 15 subpart:

16 **“Subpart J—Taxable Bond Option for Governmental**
 17 **Bonds**

“Sec. 54AA. Taxable bond option for governmental bonds.

18 **“SEC. 54AA. TAXABLE BOND OPTION FOR GOVERNMENTAL**
 19 **BONDS.**

20 “(a) **IN GENERAL.**—If a taxpayer holds a taxable
 21 governmental bond on one or more interest payment dates
 22 of the bond during any taxable year, there shall be allowed
 23 as a credit against the tax imposed by this chapter for
 24 the taxable year an amount equal to the sum of the credits

1 determined under subsection (b) with respect to such
2 dates.

3 “(b) AMOUNT OF CREDIT.—The amount of the credit
4 determined under this subsection with respect to any in-
5 terest payment date for a taxable governmental bond is
6 35 percent of the amount of interest payable by the issuer
7 with respect to such date.

8 “(c) LIMITATION BASED ON AMOUNT OF TAX.—

9 “(1) IN GENERAL.—The credit allowed under
10 subsection (a) for any taxable year shall not exceed
11 the excess of—

12 “(A) the sum of the regular tax liability
13 (as defined in section 26(b)) plus the tax im-
14 posed by section 55, over

15 “(B) the sum of the credits allowable
16 under this part (other than subpart C and this
17 subpart).

18 “(2) CARRYOVER OF UNUSED CREDIT.—If the
19 credit allowable under subsection (a) exceeds the
20 limitation imposed by paragraph (1) for such taxable
21 year, such excess shall be carried to the succeeding
22 taxable year and added to the credit allowable under
23 subsection (a) for such taxable year (determined be-
24 fore the application of paragraph (1) for such suc-
25 ceeding taxable year).

1 “(d) TAXABLE GOVERNMENTAL BOND.—

2 “(1) IN GENERAL.—For purposes of this sec-
3 tion, the term ‘taxable governmental bond’ means
4 any obligation (other than a private activity bond)
5 if—

6 “(A) the interest on such obligation would
7 (but for this section) be excludable from gross
8 income under section 103, and

9 “(B) the issuer makes an irrevocable elec-
10 tion to have this section apply.

11 “(2) APPLICABLE RULES.—For purposes of ap-
12 plying paragraph (1)—

13 “(A) a taxable governmental bond shall not
14 be treated as federally guaranteed by reason of
15 the credit allowed under subsection (a) or sec-
16 tion 6432,

17 “(B) the yield on a taxable governmental
18 bond shall be determined without regard to the
19 credit allowed under subsection (a), and

20 “(C) a bond shall not be treated as a tax-
21 able governmental bond if the issue price has
22 more than a de minimis amount (determined
23 under rules similar to the rules of section
24 1273(a)(3)) of premium over the stated prin-
25 cipal amount of the bond.

1 “(e) INTEREST PAYMENT DATE.—For purposes of
2 this section, the term ‘interest payment date’ means any
3 date on which the holder of record of the taxable govern-
4 mental bond is entitled to a payment of interest under
5 such bond.

6 “(f) SPECIAL RULES.—

7 “(1) INTEREST ON TAXABLE GOVERNMENTAL
8 BONDS INCLUDIBLE IN GROSS INCOME FOR FED-
9 ERAL INCOME TAX PURPOSES.—For purposes of this
10 title, interest on any taxable governmental bond
11 shall be includible in gross income.

12 “(2) APPLICATION OF CERTAIN RULES.—Rules
13 similar to the rules of subsections (f), (g), (h), and
14 (i) of section 54A shall apply for purposes of the
15 credit allowed under subsection (a).

16 “(g) SPECIAL RULE FOR QUALIFIED BONDS ISSUED
17 BEFORE 2011.—In the case of a qualified bond issued be-
18 fore January 1, 2011—

19 “(1) ISSUER ALLOWED REFUNDABLE CRED-
20 IT.—In lieu of any credit allowed under this section
21 with respect to such bond, the issuer of such bond
22 shall be allowed a credit as provided in section 6432.

23 “(2) QUALIFIED BOND.—For purposes of this
24 subsection, the term ‘qualified bond’ means any tax-

1 able governmental bond issued as part of an issue
2 if—

3 “(A) 100 percent of the available project
4 proceeds (as defined in section 54A) of such
5 issue are to be used for capital expenditures;
6 and

7 “(B) the issuer makes an irrevocable elec-
8 tion to have this subsection apply.

9 “(h) REGULATIONS.—The Secretary may prescribe
10 such regulations and other guidance as may be necessary
11 or appropriate to carry out this section and section
12 6432.”.

13 (b) CREDIT FOR QUALIFIED BONDS ISSUED BEFORE
14 2011.—Subchapter B of chapter 65, as amended by this
15 Act, is amended by adding at the end the following new
16 section:

17 **“SEC. 6432. CREDIT FOR QUALIFIED BONDS ALLOWED TO**
18 **ISSUER.**

19 “(a) IN GENERAL.—In the case of a qualified bond
20 issued before January 1, 2011, the issuer of such bond
21 shall be allowed a credit with respect to each interest pay-
22 ment under such bond which shall be payable by the Sec-
23 retary as provided in subsection (b).

24 “(b) PAYMENT OF CREDIT.—The Secretary shall pay
25 (contemporaneously with each interest payment date

1 under such bond) to the issuer of such bond (or to any
2 person who makes such interest payments on behalf of the
3 issuer) 35 percent of the interest payable under such bond
4 on such date.

5 “(e) APPLICATION OF ARBITRAGE RULES.—For pur-
6 poses of section 148, the yield on a qualified bond shall
7 be reduced by the credit allowed under this section.

8 “(d) INTEREST PAYMENT DATE.—For purposes of
9 this subsection, the term ‘interest payment date’ means
10 each date on which interest is payable by the issuer under
11 the terms of the bond.

12 “(e) QUALIFIED BOND.—For purposes of this sub-
13 section, the term ‘qualified bond’ has the meaning given
14 such term in section 54AA(h).”.

15 (e) CONFORMING AMENDMENTS.—

16 (1) Section 1324(b)(2) of title 31, United
17 States Code, is amended by striking “or 6428” and
18 inserting “6428, or 6432.”.

19 (2) Section 54A(e)(1)(B) is amended by strik-
20 ing “subpart C” and inserting “subparts C and J”.

21 (3) Sections 54(e)(2), 1397E(e)(2), and
22 1400N(l)(3)(B) are each amended by striking “and
23 I” and inserting “, I, and J”.

24 (4) Section 6401(b)(1) is amended by striking
25 “and I” and inserting “I, and J”.

1 (5) The table of subparts for part IV of sub-
 2 chapter A of chapter 1 is amended by adding at the
 3 end the following new item:

“Subpart J. Taxable bond option for governmental bonds.”.

4 (6) The table of sections for subchapter B of
 5 chapter 65, as amended by this Act, is amended by
 6 adding at the end the following new item:

“Sec. 6432. Credit for qualified bonds allowed to issuer on advance basis.”.

7 (d) **TRANSITIONAL COORDINATION WITH STATE**
 8 **LAW.**—Except as otherwise provided by a State after the
 9 date of the enactment of this Act, the interest on any tax-
 10 able governmental bond (as defined in section 54AA of
 11 the Internal Revenue Code of 1986, as added by this sec-
 12 tion) and the amount of any credit determined under such
 13 section with respect to such bond shall be treated for pur-
 14 poses of the income tax laws of such State as being exempt
 15 from Federal income tax.

16 (e) **EFFECTIVE DATE.**—The amendments made by
 17 this section shall apply to obligations issued after the date
 18 of the enactment of this Act.

19 **PART 4—RECOVERY ZONE BONDS**

20 **SEC. 1531. RECOVERY ZONE BONDS.**

21 (a) **IN GENERAL.**—Subchapter Y of chapter 1 is
 22 amended by adding at the end the following new part:

23 **“PART III—RECOVERY ZONE BONDS**

“Sec. 1400U-1. Allocation of recovery zone bonds.

~~“Sec. 1400U-2. Recovery zone economic development bonds.~~

~~“Sec. 1400U-3. Recovery zone facility bonds.~~

1 **“SEC. 1400U-1. ALLOCATION OF RECOVERY ZONE BONDS.**

2 ~~“(a) ALLOCATIONS.—~~

3 ~~“(1) IN GENERAL.—The Secretary shall allo-~~
 4 ~~cate the national recovery zone economic develop-~~
 5 ~~ment bond limitation and the national recovery zone~~
 6 ~~facility bond limitation among the States in the pro-~~
 7 ~~portion that each such State’s 2008 State employ-~~
 8 ~~ment decline bears to the aggregate of the 2008~~
 9 ~~State employment declines for all of the States.~~

10 ~~“(2) 2008 STATE EMPLOYMENT DECLINE.—For~~
 11 ~~purposes of this subsection, the term ‘2008 State~~
 12 ~~employment decline’ means, with respect to any~~
 13 ~~State, the excess (if any) of—~~

14 ~~“(A) the number of individuals employed~~
 15 ~~in such State determined for December 2007,~~
 16 ~~over~~

17 ~~“(B) the number of individuals employed~~
 18 ~~in such State determined for December 2008.~~

19 ~~“(3) ALLOCATIONS BY STATES.—~~

20 ~~“(A) IN GENERAL.—Each State with re-~~
 21 ~~spect to which an allocation is made under~~
 22 ~~paragraph (1) shall reallocate such allocation~~
 23 ~~among the counties and large municipalities in~~
 24 ~~such State in the proportion the each such~~

1 county's or municipality's 2008 employment de-
2 cline bears to the aggregate of the 2008 em-
3 ployment declines for all the counties and mu-
4 nicipalities in such State.

5 “(B) LARGE MUNICIPALITIES.—For pur-
6 poses of subparagraph (A), the term ‘large mu-
7 nicipality’ means a municipality with a popu-
8 lation of more than 100,000.

9 “(C) DETERMINATION OF LOCAL EMPLOY-
10 MENT DECLINES.—For purposes of this para-
11 graph, the employment decline of any munici-
12 pality or county shall be determined in the
13 same manner as determining the State employ-
14 ment decline under paragraph (2), except that
15 in the case of a municipality any portion of
16 which is in a county, such portion shall be
17 treated as part of such municipality and not
18 part of such county.

19 “(4) NATIONAL LIMITATIONS.—

20 “(A) RECOVERY ZONE ECONOMIC DEVEL-
21 OPMENT BONDS.—There is a national recovery
22 zone economic development bond limitation of
23 \$10,000,000,000.

1 “(B) RECOVERY ZONE FACILITY BONDS.—

2 There is a national recovery zone facility bond
3 limitation of \$15,000,000,000.

4 “(b) RECOVERY ZONE.—For purposes of this part,
5 the term ‘recovery zone’ means—

6 “(1) any area designated by the issuer as hav-
7 ing significant poverty, unemployment, home fore-
8 closures, or general distress; and

9 “(2) any area for which a designation as an em-
10 powerment zone or renewal community is in effect.

11 **“SEC. 1400U-2. RECOVERY ZONE ECONOMIC DEVELOPMENT**
12 **BONDS.**

13 “(a) IN GENERAL.—In the case of a recovery zone
14 economic development bond—

15 “(1) such bond shall be treated as a qualified
16 bond for purposes of section 6432, and

17 “(2) subsection (b) of such section shall be ap-
18 plied by substituting ‘55 percent’ for ‘35 percent’.

19 “(b) RECOVERY ZONE ECONOMIC DEVELOPMENT
20 BOND.—

21 “(1) IN GENERAL.—For purposes of this sec-
22 tion, the term ‘recovery zone economic development
23 bond’ means any taxable governmental bond (as de-
24 fined in section 54AA(d)) issued before January 1,
25 2011, as part of issue if—

1 “(A) 100 percent of the available project
2 proceeds (as defined in section 54A) of such
3 issue are to be used for one or more qualified
4 economic development purposes; and

5 “(B) the issuer designates such bond for
6 purposes of this section.

7 ~~“(2) LIMITATION ON AMOUNT OF BONDS DES-~~
8 ~~IGNATED.—~~The maximum aggregate face amount of
9 bonds which may be designated by any issuer under
10 ~~paragraph (1)~~ shall not exceed the amount of the re-
11 covery zone economic development bond limitation
12 allocated to such issuer under section 1400U-1.

13 ~~“(c) QUALIFIED ECONOMIC DEVELOPMENT PUR-~~
14 ~~POSE.—~~For purposes of this section, the term ‘qualified
15 economic development purpose’ means expenditures for
16 purposes of promoting development or other economic ac-
17 tivity in a recovery zone, including—

18 ~~“(1) capital expenditures paid or incurred with~~
19 ~~respect to property located in such zone;~~

20 ~~“(2) expenditures for public infrastructure and~~
21 ~~construction of public facilities; and~~

22 ~~“(3) expenditures for job training and edu-~~
23 ~~ational programs.~~

1 **“SEC. 1400U-3. RECOVERY ZONE FACILITY BONDS.**

2 “(a) **IN GENERAL.**—For purposes of part IV of sub-
3 chapter B (relating to tax exemption requirements for
4 State and local bonds), the term ‘exempt facility bond’ in-
5 cludes any recovery zone facility bond.

6 “(b) **RECOVERY ZONE FACILITY BOND.**—

7 “(1) **IN GENERAL.**—For purposes of this sec-
8 tion, the term ‘recovery zone facility bond’ means
9 any bond issued as part of an issue if—

10 “(A) 95 percent or more of the net pro-
11 ceeds (as defined in section 150(a)(3)) of such
12 issue are to be used for recovery zone property;

13 “(B) such bond is issued before January 1,
14 2011, and

15 “(C) the issuer designates such bond for
16 purposes of this section.

17 “(2) **LIMITATION ON AMOUNT OF BONDS DES-**
18 **IGNATED.**—The maximum aggregate face amount of
19 bonds which may be designated by any issuer under
20 paragraph (1) shall not exceed the amount of recov-
21 ery zone facility bond limitation allocated to such
22 issuer under section 1400U-1.

23 “(c) **RECOVERY ZONE PROPERTY.**—For purposes of
24 this section—

1 “(1) IN GENERAL.—The term ‘recovery zone
2 property’ means any property to which section 168
3 applies (or would apply but for section 179) if—

4 “(A) such property was acquired by the
5 taxpayer by purchase (as defined in section
6 179(d)(2)) after the date on which the designa-
7 tion of the recovery zone took effect;

8 “(B) the original use of which in the recov-
9 ery zone commences with the taxpayer; and

10 “(C) substantially all of the use of which
11 is in the recovery zone and is in the active con-
12 duct of a qualified business by the taxpayer in
13 such zone.

14 “(2) QUALIFIED BUSINESS.—The term ‘quali-
15 fied business’ means any trade or business except
16 that—

17 “(A) the rental to others of real property
18 located in a recovery zone shall be treated as a
19 qualified business only if the property is not
20 residential rental property (as defined in section
21 168(e)(2)); and

22 “(B) such term shall not include any trade
23 or business consisting of the operation of any
24 facility described in section 144(e)(6)(B).

1 “(3) SPECIAL RULES FOR SUBSTANTIAL REN-
 2 OVATIONS AND SALE-LEASEBACK.—Rules similar to
 3 the rules of subsections (a)(2) and (b) of section
 4 1397D shall apply for purposes of this subsection.

5 “(d) NONAPPLICATION OF CERTAIN RULES.—Sec-
 6 tions 146 (relating to volume cap) and 147(d) (relating
 7 to acquisition of existing property not permitted) shall not
 8 apply to any recovery zone facility bond.”.

9 (b) CLERICAL AMENDMENT.—The table of parts for
 10 subchapter Y of chapter 1 of such Code is amended by
 11 adding at the end the following new item:

“PART III. RECOVERY ZONE BONDS.”.

12 (c) EFFECTIVE DATE.—The amendments made by
 13 this section shall apply to obligations issued after the date
 14 of the enactment of this Act.

15 **SEC. 1532. TRIBAL ECONOMIC DEVELOPMENT BONDS.**

16 (a) IN GENERAL.—Section 7871 is amended by add-
 17 ing at the end the following new subsection:

18 “(f) TRIBAL ECONOMIC DEVELOPMENT BONDS.—

19 “(1) ALLOCATION OF LIMITATION.—

20 “(A) IN GENERAL.—The Secretary shall
 21 allocate the national tribal economic develop-
 22 ment bond limitation among the Indian tribal
 23 governments in such manner as the Secretary,
 24 in consultation with the Secretary of the Inte-
 25 rior, determines appropriate.

1 “(B) NATIONAL LIMITATION.—There is a
2 national tribal economic development bond limi-
3 tation of \$2,000,000,000.

4 “(2) BONDS TREATED AS EXEMPT FROM
5 TAX.—In the case of a tribal economic development
6 bond—

7 “(A) notwithstanding subsection (c), such
8 bond shall be treated for purposes of this title
9 in the same manner as if such bond were issued
10 by a State, and

11 “(B) section 146 shall not apply.

12 “(3) TRIBAL ECONOMIC DEVELOPMENT
13 BOND.—

14 “(A) IN GENERAL.—For purposes of this
15 section, the term ‘tribal economic development
16 bond’ means any bond issued by an Indian trib-
17 al government—

18 “(i) the interest on which is not ex-
19 empt from tax under section 103 by reason
20 of subsection (c) (determined without re-
21 gard to this subsection) but would be so
22 exempt if issued by a State or local govern-
23 ment, and

24 “(ii) which is designated by the In-
25 dian tribal government as a tribal eco-

1 nomic development bond for purposes of
2 this subsection.

3 “(B) EXCEPTIONS.—The term tribal eco-
4 nomic development bond shall not include any
5 bond issued as part of an issue if any portion
6 of the proceeds of such issue are used to fi-
7 nance—

8 “(i) any portion of a building in which
9 class II or class III gaming (as defined in
10 section 4 of the Indian Gaming Regulatory
11 Act) is conducted or housed or any other
12 property actually used in the conduct of
13 such gaming; or

14 “(ii) any facility located outside the
15 Indian reservation (as defined in section
16 168(j)(6)).

17 “(C) LIMITATION ON AMOUNT OF BONDS
18 DESIGNATED.—The maximum aggregate face
19 amount of bonds which may be designated by
20 any Indian tribal government under subpara-
21 graph (A) shall not exceed the amount of na-
22 tional tribal economic development bond limita-
23 tion allocated to such government under para-
24 graph (1).”.

1 (b) **STUDY.**—The Secretary of the Treasury, or the
 2 Secretary’s delegate, shall conduct a study of the effects
 3 of the amendment made by subsection (a). Not later than
 4 1 year after the date of the enactment of this Act, the
 5 Secretary of the Treasury, or the Secretary’s delegate,
 6 shall report to Congress on the results of the studies con-
 7 ducted under this paragraph, including the Secretary’s
 8 recommendations regarding such amendment.

9 (c) **EFFECTIVE DATE.**—The amendment made by
 10 subsection (a) shall apply to obligations issued after the
 11 date of the enactment of this Act.

12 **PART 5—REPEAL OF WITHHOLDING TAX ON**
 13 **GOVERNMENT CONTRACTORS**

14 **SEC. 1541. REPEAL OF WITHHOLDING TAX ON GOVERN-**
 15 **MENT CONTRACTORS.**

16 Section 3402 is amended by striking subsection (t).

17 **Subtitle G—Energy Incentives**

18 **PART 1—RENEWABLE ENERGY INCENTIVES**

19 **SEC. 1601. EXTENSION OF CREDIT FOR ELECTRICITY PRO-**
 20 **DUCED FROM CERTAIN RENEWABLE RE-**
 21 **SOURCES.**

22 (a) **IN GENERAL.**—Subsection (d) of section 45 is
 23 amended—

24 (1) by striking “2010” in paragraph (1) and in-
 25 serting “2013”,

1 “(A) IN GENERAL.—In the case of any
2 qualified investment credit facility placed in
3 service in 2009 or 2010—

4 “(i) such facility shall be treated as
5 energy property for purposes of this sec-
6 tion, and

7 “(ii) the energy percentage with re-
8 spect to such property shall be 30 percent.

9 “(B) DENIAL OF PRODUCTION CREDIT.—
10 No credit shall be allowed under section 45 for
11 any taxable year with respect to any qualified
12 investment credit facility.

13 “(C) QUALIFIED INVESTMENT CREDIT FA-
14 CILITY.—For purposes of this paragraph, the
15 term ‘qualified investment credit facility’ means
16 any facility described in paragraph (1), (2), (3),
17 (4), (6), (7), (9), or (11) of section 45(d) if no
18 credit has been allowed under section 45 with
19 respect to such facility and the taxpayer makes
20 an irrevocable election to have this paragraph
21 apply to such facility.”.

22 (b) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to facilities placed in service after
24 December 31, 2008.

1 **SEC. 1603. REPEAL OF CERTAIN LIMITATIONS ON CREDIT**
2 **FOR RENEWABLE ENERGY PROPERTY.**

3 (a) **REPEAL OF LIMITATION ON CREDIT FOR QUALI-**
4 **FIED SMALL WIND ENERGY PROPERTY.**—Paragraph (4)
5 of section 48(e) is amended by striking subparagraph (B)
6 and by redesignating subparagraphs (C) and (D) as sub-
7 paragraphs (B) and (C).

8 (b) **REPEAL OF LIMITATION ON PROPERTY FI-**
9 **NANCED BY SUBSIDIZED ENERGY FINANCING.**—

10 (1) **IN GENERAL.**—Subsection (a) of section 48
11 is amended by striking paragraph (4).

12 (2) **CONFORMING AMENDMENTS.**—

13 (A) Section 25C(e)(1) is amended by strik-
14 ing “(8), and (9)” and inserting “and (8)”.

15 (B) Section 25D(e) is amended by striking
16 paragraph (9).

17 (c) **EFFECTIVE DATE.**—

18 (1) **IN GENERAL.**—Except as provided in para-
19 graph (2), the amendment made by this section shall
20 apply to periods after December 31, 2008, under
21 rules similar to the rules of section 48(m) of the In-
22 ternal Revenue Code of 1986 (as in effect on the day
23 before the date of the enactment of the Revenue
24 Reconciliation Act of 1990).

1 (2) CONFORMING AMENDMENTS.—The amend-
2 ments made by subsection (b)(2) shall apply to tax-
3 able years beginning after December 31, 2008.

4 **SEC. 1604. COORDINATION WITH RENEWABLE ENERGY**
5 **GRANTS.**

6 Section 48 is amended by adding at the end the fol-
7 lowing new subsection:

8 “(d) COORDINATION WITH DEPARTMENT OF EN-
9 ERGY GRANTS.—In the case of any property with respect
10 to which the Secretary of Energy makes a grant under
11 section 1721 of the American Recovery and Reinvestment
12 Tax Act of 2009—

13 “(1) DENIAL OF PRODUCTION AND INVEST-
14 MENT CREDITS.—No credit shall be determined
15 under this section or section 45 with respect to such
16 property for the taxable year in which such grant is
17 made or any subsequent taxable year.

18 “(2) RECAPTURE OF CREDITS FOR PROGRESS
19 EXPENDITURES MADE BEFORE GRANT.—If a credit
20 was determined under this section with respect to
21 such property for any taxable year ending before
22 such grant is made—

23 “(A) the tax imposed under subtitle A on
24 the taxpayer for the taxable year in which such

1 grant is made shall be increased by so much of
2 such credit as was allowed under section 38,

3 “(B) the general business carryforwards
4 under section 39 shall be adjusted so as to re-
5 capture the portion of such credit which was
6 not so allowed, and

7 “(C) the amount of such grant shall be de-
8 termined without regard to any reduction in the
9 basis of such property by reason of such credit.

10 “(3) TREATMENT OF GRANTS.—Any such grant
11 shall—

12 “(A) not be includible in the gross income
13 of the taxpayer, but

14 “(B) shall be taken into account in deter-
15 mining the basis of the property to which such
16 grant relates, except that the basis of such
17 property shall be reduced under section 50(e) in
18 the same manner as a credit allowed under sub-
19 section (a).”.

1 **PART 2—INCREASED ALLOCATIONS OF NEW**
2 **CLEAN RENEWABLE ENERGY BONDS AND**
3 **QUALIFIED ENERGY CONSERVATION BONDS**

4 **SEC. 1611. INCREASED LIMITATION ON ISSUANCE OF NEW**
5 **CLEAN RENEWABLE ENERGY BONDS.**

6 Subsection (e) of section 54C is amended by adding
7 at the end the following new paragraph:

8 “(4) **ADDITIONAL LIMITATION.**—The national
9 new clean renewable energy bond limitation shall be
10 increased by \$1,600,000,000. Such increase shall be
11 allocated by the Secretary consistent with the rules
12 of paragraphs (2) and (3).”.

13 **SEC. 1612. INCREASED LIMITATION AND EXPANSION OF**
14 **QUALIFIED ENERGY CONSERVATION BONDS.**

15 (a) **INCREASED LIMITATION.**—Subsection (e) of sec-
16 tion 54D is amended by adding at the end the following
17 new paragraph:

18 “(4) **ADDITIONAL LIMITATION.**—The national
19 qualified energy conservation bond limitation shall
20 be increased by \$2,400,000,000. Such increase shall
21 be allocated by the Secretary consistent with the
22 rules of paragraphs (1), (2), and (3).”.

23 (b) **LOANS AND GRANTS TO IMPLEMENT GREEN**
24 **COMMUNITY PROGRAMS.**—

25 (1) **IN GENERAL.**—Subparagraph (A) of section
26 54D(f)(1) is amended by inserting “(or loans or

1 grants for capital expenditures to implement any
2 green community program)” after “Capital expendi-
3 tures”.

4 ~~(2) BONDS TO IMPLEMENT GREEN COMMUNITY~~
5 ~~PROGRAMS NOT TREATED AS PRIVATE ACTIVITY~~
6 ~~BONDS FOR PURPOSES OF LIMITATIONS ON QUALI-~~
7 ~~FIED ENERGY CONSERVATION BONDS .—Subsection~~
8 ~~(e) of section 54D is amended by adding at the end~~
9 ~~the following new paragraph:~~

10 ~~“(4) BONDS TO IMPLEMENT GREEN COMMU-~~
11 ~~NITY PROGRAMS NOT TREATED AS PRIVATE ACTIV-~~
12 ~~ITY BONDS.—For purposes of paragraph (3) and~~
13 ~~subsection (f)(2), a bond shall not be treated as a~~
14 ~~private activity bond solely because proceeds of the~~
15 ~~issue of which such bond is a part are to be used~~
16 ~~for loans or grants for capital expenditures to imple-~~
17 ~~ment any green community program.”.~~

18 ~~(c) EFFECTIVE DATE.—The amendments made by~~
19 ~~this section shall apply to obligations issued after the date~~
20 ~~of the enactment of this Act.~~

1 **PART 3—ENERGY CONSERVATION INCENTIVES**
2 **SEC. 1621. EXTENSION AND MODIFICATION OF CREDIT FOR**
3 **NONBUSINESS ENERGY PROPERTY.**

4 (a) **IN GENERAL.**—Section 25C is amended by strik-
5 ing subsections (a) and (b) and inserting the following new
6 subsections:

7 “(a) **ALLOWANCE OF CREDIT.**—In the case of an in-
8 dividual, there shall be allowed as a credit against the tax
9 imposed by this chapter for the taxable year an amount
10 equal to 30 percent of the sum of—

11 “(1) the amount paid or incurred by the tax-
12 payer during such taxable year for qualified energy
13 efficiency improvements, and

14 “(2) the amount of the residential energy prop-
15 erty expenditures paid or incurred by the taxpayer
16 during such taxable year.

17 “(b) **LIMITATION.**—The aggregate amount of the
18 credits allowed under this section for taxable years begin-
19 ning in 2009 and 2010 with respect to any taxpayer shall
20 not exceed \$1,500.”.

21 (b) **EXTENSION.**—Section 25C(g)(2) is amended by
22 striking “December 31, 2009” and inserting “December
23 31, 2010”.

24 (c) **EFFECTIVE DATE.**—The amendments made by
25 this section shall apply to taxable years beginning after
26 December 31, 2008.

1 **SEC. 1622. MODIFICATION OF CREDIT FOR RESIDENTIAL**
2 **ENERGY EFFICIENT PROPERTY.**

3 (a) **REMOVAL OF CREDIT LIMITATION FOR PROP-**
4 **ERTY PLACED IN SERVICE.—**

5 (1) **IN GENERAL.—**Paragraph (1) of section
6 25D(b) is amended to read as follows:

7 “(1) **MAXIMUM CREDIT FOR FUEL CELLS.—**In
8 the case of any qualified fuel cell property expendi-
9 ture, the credit allowed under subsection (a) (deter-
10 mined without regard to subsection (c)) for any tax-
11 able year shall not exceed \$500 with respect to each
12 half kilowatt of capacity of the qualified fuel cell
13 property (as defined in section 48(e)(1)) to which
14 such expenditure relates.”.

15 (2) **CONFORMING AMENDMENT.—**Paragraph (4)
16 of section 25D(e) is amended—

17 (A) by striking all that precedes subpara-
18 graph (B) and inserting the following:

19 “(4) **FUEL CELL EXPENDITURE LIMITATIONS**
20 **IN CASE OF JOINT OCCUPANCY.—**In the case of any
21 dwelling unit with respect to which qualified fuel cell
22 property expenditures are made and which is jointly
23 occupied and used during any calendar year as a
24 residence by two or more individuals the following
25 rules shall apply:

1 “(A) **MAXIMUM EXPENDITURES FOR FUEL**
2 **CELLS.**—The maximum amount of such ex-
3 penditures which may be taken into account
4 under subsection (a) by all such individuals
5 with respect to such dwelling unit during such
6 calendar year shall be \$1,667 in the case of
7 each half kilowatt of capacity of qualified fuel
8 cell property (as defined in section 48(e)(1))
9 with respect to which such expenditures re-
10 late.”, and

11 (B) by striking subparagraph (C).

12 (b) **EFFECTIVE DATE.**—The amendments made by
13 this section shall apply to taxable years beginning after
14 December 31, 2008.

15 **SEC. 1623. TEMPORARY INCREASE IN CREDIT FOR ALTER-**
16 **NATIVE FUEL VEHICLE REFUELING PROP-**
17 **ERTY.**

18 (a) **IN GENERAL.**—Section 30C(e) is amended by
19 adding at the end the following new paragraph:

20 “(6) **SPECIAL RULE FOR PROPERTY PLACED IN**
21 **SERVICE DURING 2009 AND 2010.**—In the case of
22 property placed in service in taxable years beginning
23 after December 31, 2008, and before January 1,
24 2011—

1 “(A) in the case of any such property
2 which does not relate to hydrogen—

3 “(i) subsection (a) shall be applied by
4 substituting ‘50 percent’ for ‘30 percent’,

5 “(ii) subsection (b)(1) shall be applied
6 by substituting ‘\$50,000’ for ‘\$30,000’,

7 and

8 “(iii) subsection (b)(2) shall be ap-
9 plied by substituting ‘\$2,000’ for ‘\$1,000’,

10 and

11 “(B) in the case of any such property
12 which relates to hydrogen, subsection (b) shall
13 be applied by substituting ‘\$200,000’ for
14 ‘\$30,000’.”.

15 (b) **EFFECTIVE DATE.**—The amendment made by
16 this section shall apply to taxable years beginning after
17 December 31, 2008.

18 **PART 4—ENERGY RESEARCH INCENTIVES**

19 **SEC. 1631. INCREASED RESEARCH CREDIT FOR ENERGY RE-**
20 **SEARCH.**

21 (a) **IN GENERAL.**—Section 41 is amended by redesignig-
22 nating subsection (h) as subsection (i) and by inserting
23 after subsection (g) the following new subsection:

24 “(h) **ENERGY RESEARCH CREDIT.**—In the case of
25 any taxable year beginning in 2009 or 2010—

1 “(1) IN GENERAL.—The credit determined
2 under subsection (a)(1) shall be increased by 20 per-
3 cent of the qualified energy research expenses for
4 the taxable year.

5 “(2) QUALIFIED ENERGY RESEARCH EX-
6 PENSES.—For purposes of this subsection, the term
7 ‘qualified energy research expenses’ means so much
8 of the taxpayer’s qualified research expenses as are
9 related to the fields of fuel cells and battery tech-
10 nology, renewable energy, energy conservation tech-
11 nology, efficient transmission and distribution of
12 electricity, and carbon capture and sequestration.

13 “(3) COORDINATION WITH OTHER RESEARCH
14 CREDITS.—

15 “(A) INCREMENTAL CREDIT.—The amount
16 of qualified energy research expenses taken into
17 account under subsection (a)(1)(A) shall not ex-
18 ceed the base amount.

19 “(B) ALTERNATIVE SIMPLIFIED CREDIT.—
20 For purposes of subsection (e)(5), the amount
21 of qualified energy research expenses taken into
22 account for the taxable year for which the cred-
23 it is being determined shall not exceed—

24 “(i) in the case of subsection
25 (e)(5)(A), 50 percent of the average quali-

1 fied research expenses for the 3 taxable
2 years preceding the taxable year for which
3 the credit is being determined, and

4 “(ii) in the case of subsection
5 (e)(5)(B)(ii), zero.

6 “(C) BASIC RESEARCH AND ENERGY RE-
7 SEARCH CONSORTIUM PAYMENTS.—Any amount
8 taken into account under paragraph (1) shall
9 not be taken into account under paragraph (2)
10 or (3) of subsection (a).”.

11 (b) CONFORMING AMENDMENT.—Subparagraph (B)
12 of section 41(i)(1)(B), as redesignated by subsection (a),
13 is amended by inserting “(in the case of the increase in
14 the credit determined under subsection (h), December 31,
15 2010)” after “December 31, 2009”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to taxable years beginning after
18 December 31, 2008.

1 **Subtitle H—Other Provisions**

2 **PART 1—APPLICATION OF CERTAIN LABOR**
3 **STANDARDS TO PROJECTS FINANCED WITH**
4 **CERTAIN TAX-FAVORED BONDS**

5 **SEC. 1701. APPLICATION OF CERTAIN LABOR STANDARDS**
6 **TO PROJECTS FINANCED WITH CERTAIN TAX-**
7 **FAVORED BONDS.**

8 Subchapter IV of chapter 31 of the title 40, United
9 States Code, shall apply to projects financed with the pro-
10 ceeds of—

11 (1) any qualified clean renewable energy bond
12 (as defined in section 54C of the Internal Revenue
13 Code of 1986) issued after the date of the enact-
14 ment of this Act,

15 (2) any qualified energy conservation bond (as
16 defined in section 54D of the Internal Revenue Code
17 of 1986) issued after the date of the enactment of
18 this Act,

19 (3) any qualified zone academy bond (as de-
20 fined in section 54E of the Internal Revenue Code
21 of 1986) issued after the date of the enactment of
22 this Act,

23 (4) any qualified school construction bond (as
24 defined in section 54F of the Internal Revenue Code
25 of 1986); and

1 (5) any recovery zone economic development
2 bond (as defined in section 1400U-2 of the Internal
3 Revenue Code of 1986).

4 **PART 2—GRANTS TO PROVIDE FINANCING FOR**
5 **LOW-INCOME HOUSING**

6 **SEC. 1711. GRANTS TO STATES FOR LOW-INCOME HOUSING**
7 **PROJECTS IN LIEU OF LOW-INCOME HOUS-**
8 **ING CREDIT ALLOCATIONS FOR 2009.**

9 (a) **IN GENERAL.**—The Secretary of the Treasury
10 shall make a grant to the housing credit agency of each
11 State in an amount equal to such State’s low-income hous-
12 ing grant election amount.

13 (b) **LOW-INCOME HOUSING GRANT ELECTION**
14 **AMOUNT.**—For purposes of this section, the term “low-
15 income housing grant election amount” means, with re-
16 spect to any State, such amount as the State may elect
17 which does not exceed 85 percent of the product of—

18 (1) the sum of—

19 (A) 100 percent of the State housing credit
20 ceiling for 2009 which is attributable to
21 amounts described in clauses (i) and (iii) of sec-
22 tion 42(h)(3)(C) of the Internal Revenue Code
23 of 1986, and

24 (B) 40 percent of the State housing credit
25 ceiling for 2009 which is attributable to

1 amounts described in clauses (ii) and (iv) of
2 such section, multiplied by
3 ~~(2)~~ 10.

4 ~~(c) SUBAWARDS FOR LOW-INCOME BUILDINGS.—~~

5 (1) IN GENERAL.—A State housing credit agen-
6 cy receiving a grant under this section shall use such
7 grant to make subawards to finance the construction
8 or acquisition and rehabilitation of qualified low-in-
9 come buildings. A subaward under this section may
10 be made to finance a qualified low-income building
11 with or without an allocation under section 42 of the
12 Internal Revenue Code of 1986, except that a State
13 housing credit agency may make subawards to fi-
14 nance qualified low-income buildings without an allo-
15 cation only if it makes a determination that such use
16 will increase the total funds available to the State to
17 build and rehabilitate affordable housing. In com-
18 plying with such determination requirement, a State
19 housing credit agency shall establish a process in
20 which applicants that are allocated credits are re-
21 quired to demonstrate good faith efforts to obtain
22 investment commitments for such credits before the
23 agency makes such subawards.

24 ~~(2) SUBAWARDS SUBJECT TO SAME REQUIRE-~~
25 ~~MENTS AS LOW-INCOME HOUSING CREDIT ALLOCA-~~

1 TIONS.—Any such subaward with respect to any
2 qualified low-income building shall be made in the
3 same manner and shall be subject to the same limi-
4 tations (including rent, income, and use restrictions
5 on such building) as an allocation of housing credit
6 dollar amount allocated by such State housing credit
7 agency under section 42 of the Internal Revenue
8 Code of 1986, except that such subawards shall not
9 be limited by, or otherwise affect (except as provided
10 in subsection (h)(3)(J) of such section), the State
11 housing credit ceiling applicable to such agency.

12 ~~(3) COMPLIANCE AND ASSET MANAGEMENT.—~~
13 The State housing credit agency shall perform asset
14 management functions to ensure compliance with
15 section 42 of the Internal Revenue Code of 1986
16 and the long-term viability of buildings funded by
17 any subaward under this section. The State housing
18 credit agency may collect reasonable fees from a
19 subaward recipient to cover expenses associated with
20 the performance of its duties under this paragraph.
21 The State housing credit agency may retain an
22 agent or other private contractor to satisfy the re-
23 quirements of this paragraph.

24 ~~(4) RECAPTURE.—~~The State housing credit
25 agency shall impose conditions or restrictions, in-

1 cluding a requirement providing for recapture, on
2 any subaward under this section so as to assure that
3 the building with respect to which such subaward is
4 made remains a qualified low-income building during
5 the compliance period. Any such recapture shall be
6 payable to the Secretary of the Treasury for deposit
7 in the general fund of the Treasury and may be en-
8 forced by means of liens or such other methods as
9 the Secretary of the Treasury determines appro-
10 priate.

11 (d) RETURN OF UNUSED GRANT FUNDS.—Any grant
12 funds not used to make subawards under this section be-
13 fore January 1, 2011, shall be returned to the Secretary
14 of the Treasury on such date. Any subawards returned
15 to the State housing credit agency on or after such date
16 shall be promptly returned to the Secretary of the Treas-
17 ury. Any amounts returned to the Secretary of the Treas-
18 ury under this subsection shall be deposited in the general
19 fund of the Treasury.

20 (e) DEFINITIONS.—Any term used in this section
21 which is also used in section 42 of the Internal Revenue
22 Code of 1986 shall have the same meaning for purposes
23 of this section as when used in such section 42. Any ref-
24 erence in this section to the Secretary of the Treasury
25 shall be treated as including the Secretary's delegate.

1 (f) APPROPRIATIONS.—There is hereby appropriated
2 to the Secretary of the Treasury such sums as may be
3 necessary to carry out this section.

4 **PART 3—GRANTS FOR SPECIFIED ENERGY**
5 **PROPERTY IN LIEU OF TAX CREDITS**

6 **SEC. 1721. GRANTS FOR SPECIFIED ENERGY PROPERTY IN**
7 **LIEU OF TAX CREDITS.**

8 (a) IN GENERAL.—Upon application, the Secretary
9 of Energy shall, within 60 days of the application and sub-
10 ject to the requirements of this section, provide a grant
11 to each person who places in service specified energy prop-
12 erty during 2009 or 2010 to reimburse such person for
13 a portion of the expense of such facility as provided in
14 subsection (b).

15 (b) GRANT AMOUNT.—

16 (1) IN GENERAL.—The amount of the grant
17 under subsection (a) with respect to any specified
18 energy property shall be the applicable percentage of
19 the basis of such facility.

20 (2) APPLICABLE PERCENTAGE.—For purposes
21 of paragraph (1), the term “applicable percentage”
22 means—

23 (A) 30 percent in the case of any property
24 described in paragraphs (1) through (4) of sub-
25 section (c); and

1 (B) 10 percent in the case of any other
2 property.

3 (3) DOLLAR LIMITATIONS.—In the case of
4 property described in paragraph (2), (6), or (7) of
5 subsection (e), the amount of any grant under this
6 section with respect to such property shall not ex-
7 ceed the limitation described in section 48(e)(1)(B),
8 48(e)(2)(B), or 48(e)(3)(B) of the Internal Revenue
9 Code of 1986, respectively, with respect to such
10 property.

11 (e) SPECIFIED ENERGY PROPERTY.—For purposes
12 of this section, the term “specified energy property”
13 means any of the following:

14 (1) QUALIFIED FACILITIES.—Any facility de-
15 scribed in paragraph (1), (2), (3), (4), (6), (7), (9),
16 or (11) of section 45(d) of the Internal Revenue
17 Code of 1986.

18 (2) QUALIFIED FUEL CELL PROPERTY.—Any
19 qualified fuel cell property (as defined in section
20 48(e)(1) of such Code).

21 (3) SOLAR PROPERTY.—Any property described
22 in clause (i) or (ii) of section 48(a)(3)(A) of such
23 Code.

1 (4) QUALIFIED SMALL WIND ENERGY PROP-
2 ERTY.—Any qualified small wind energy property
3 (as defined in section 48(e)(4) of such Code).

4 (5) GEOTHERMAL PROPERTY.—Any property
5 described in clause (iii) of section 48(a)(3)(A) of
6 such Code.

7 (6) QUALIFIED MICROTURBINE PROPERTY.—
8 Any qualified microturbine property (as defined in
9 section 48(e)(2) of such Code).

10 (7) COMBINED HEAT AND POWER SYSTEM
11 PROPERTY.—Any combined heat and power system
12 property (as defined in section 48(e)(3) of such
13 Code).

14 (8) GEOTHERMAL HEATPUMP PROPERTY.—Any
15 property described in clause (vii) of section
16 48(a)(3)(A) of such Code.

17 (d) APPLICATION OF CERTAIN RULES.—In making
18 grants under this section, the Secretary of Energy shall
19 apply rules similar to the rules of section 50 of the Inter-
20 nal Revenue Code of 1986. In applying such rules, if the
21 facility is disposed of, or otherwise ceases to be a qualified
22 renewable energy facility, the Secretary of Energy shall
23 provide for the recapture of the appropriate percentage of
24 the grant amount in such manner as the Secretary of En-
25 ergy determines appropriate.

1 (e) EXCEPTION FOR CERTAIN NON-TAXPAYERS.—

2 The Secretary of Energy shall not make any grant under
3 this section to any Federal, State, or local government (or
4 any political subdivision, agency, or instrumentality there-
5 of) or any organization described in section 501(e) of the
6 Internal Revenue Code of 1986 and exempt from tax
7 under section 501(a) of such Code.

8 (f) DEFINITIONS.—Terms used in this section which
9 are also used in section 45 or 48 of the Internal Revenue
10 Code of 1986 shall have the same meaning for purposes
11 of this section as when used in such section 45 or 48.
12 Any reference in this section to the Secretary of the Treas-
13 ury shall be treated as including the Secretary's delegate.

14 (g) COORDINATION BETWEEN DEPARTMENTS OF
15 TREASURY AND ENERGY.—The Secretary of the Treasury
16 shall provide the Secretary of Energy with such technical
17 assistance as the Secretary of Energy may require in ear-
18 rying out this section. The Secretary of Energy shall pro-
19 vide the Secretary of the Treasury with such information
20 as the Secretary of the Treasury may require in carrying
21 out the amendment made by section 1604.

22 (h) APPROPRIATIONS.—There is hereby appropriated
23 to the Secretary of Energy such sums as may be necessary
24 to carry out this section.

1 (i) ~~TERMINATION.~~—The Secretary of Energy shall
2 not make any grant to any person under this section un-
3 less the application of such person for such grant is re-
4 ceived before October 1, 2011.

5 **PART 4—STUDY OF ECONOMIC, EMPLOYMENT,**
6 **AND RELATED EFFECTS OF THIS ACT**

7 **SEC. 1731. STUDY OF ECONOMIC, EMPLOYMENT, AND RE-**
8 **LATED EFFECTS OF THIS ACT.**

9 On February 1, 2010, and every 3 months thereafter
10 in calendar year 2010, the Comptroller General of the
11 United States shall submit to the Committee on Ways and
12 Means a written report on the most recent national (and,
13 where available, State-by-State) information on—

14 (1) the economic effects of this Act;

15 (2) the employment effects of this Act, includ-
16 ing—

17 (A) a comparison of the number of jobs
18 preserved and the number of jobs created as a
19 result of this Act; and

20 (B) a comparison of the numbers of jobs
21 preserved and the number of jobs created in
22 each of the public and private sectors;

23 (3) the share of tax and non-tax expenditures
24 provided under this Act that were spent or saved, by
25 group and income class;

1 (4) how the funds provided to States under this
2 Act have been spent, including a breakdown of—

3 (A) funds used for services provided to citi-
4 zens; and

5 (B) wages and other compensation for
6 public employees; and

7 (5) a description of any funds made available
8 under this Act that remain unspent, and the reasons
9 why.

10 **TITLE II—ASSISTANCE FOR UN-**
11 **EMPLOYED WORKERS AND**
12 **STRUGGLING FAMILIES**

13 **SEC. 2000. SHORT TITLE.**

14 This title may be cited as the “Assistance for Unem-
15 ployed Workers and Struggling Families Act”.

16 **Subtitle A—Unemployment**
17 **Insurance**

18 **SEC. 2001. EXTENSION OF EMERGENCY UNEMPLOYMENT**
19 **COMPENSATION PROGRAM.**

20 (a) **IN GENERAL.**—Section 4007 of the Supplemental
21 Appropriations Act, 2008 (Public Law 110–252; 26
22 U.S.C. 3304 note), as amended by section 4 of the Unem-
23 ployment Compensation Extension Act of 2008 (Public
24 Law 110–449; 122 Stat. 5015), is amended—

1 (1) by striking “March 31, 2009” each place it
2 appears and inserting “December 31, 2009”;

3 (2) in the heading for subsection (b)(2), by
4 striking “MARCH 31, 2009” and inserting “DECEM-
5 BER 31, 2009”; and

6 (3) in subsection (b)(3), by striking “August
7 27, 2009” and inserting “May 31, 2010”.

8 (b) FINANCING PROVISIONS.—Section 4004 of such
9 Act is amended by adding at the end the following:

10 “(c) TRANSFER OF FUNDS.—Notwithstanding any
11 other provision of law, the Secretary of the Treasury shall
12 transfer from the general fund of the Treasury (from
13 funds not otherwise appropriated)—

14 “(1) to the extended unemployment compensa-
15 tion account (as established by section 905 of the
16 Social Security Act) such sums as the Secretary of
17 Labor estimates to be necessary to make payments
18 to States under this title by reason of the amend-
19 ments made by section 2001(a) of the Assistance for
20 Unemployed Workers and Struggling Families Act;
21 and

22 “(2) to the employment security administration
23 account (as established by section 901 of the Social
24 Security Act) such sums as the Secretary of Labor
25 estimates to be necessary for purposes of assisting

1 States in meeting administrative costs by reason of
2 the amendments referred to in paragraph (1).
3 There are appropriated from the general fund of the
4 Treasury, without fiscal year limitation, the sums referred
5 to in the preceding sentence and such sums shall not be
6 required to be repaid.”.

7 **SEC. 2002. INCREASE IN UNEMPLOYMENT COMPENSATION**
8 **BENEFITS.**

9 (a) ~~FEDERAL-STATE AGREEMENTS.~~—Any State
10 which desires to do so may enter into and participate in
11 an agreement under this section with the Secretary of
12 Labor (hereinafter in this section referred to as the “Sec-
13 retary”). Any State which is a party to an agreement
14 under this section may, upon providing 30 days’ written
15 notice to the Secretary, terminate such agreement.

16 (b) ~~PROVISIONS OF AGREEMENT.~~—

17 (1) ~~ADDITIONAL COMPENSATION.~~—Any agree-
18 ment under this section shall provide that the State
19 agency of the State will make payments of regular
20 compensation to individuals in amounts and to the
21 extent that they would be determined if the State
22 law of the State were applied, with respect to any
23 week for which the individual is (disregarding this
24 section) otherwise entitled under the State law to re-
25 ceive regular compensation, as if such State law had

1 been modified in a manner such that the amount of
2 regular compensation (including dependents' allow-
3 ances) payable for any week shall be equal to the
4 amount determined under the State law (before the
5 application of this paragraph) plus an additional
6 \$25.

7 (2) ALLOWABLE METHODS OF PAYMENT.—Any
8 additional compensation provided for in accordance
9 with paragraph (1) shall be payable either—

10 (A) as an amount which is paid at the
11 same time and in the same manner as any reg-
12 ular compensation otherwise payable for the
13 week involved; or

14 (B) at the option of the State, by pay-
15 ments which are made separately from, but on
16 the same weekly basis as, any regular com-
17 pensation otherwise payable.

18 (c) NONREDUCTION RULE.—An agreement under
19 this section shall not apply (or shall cease to apply) with
20 respect to a State upon a determination by the Secretary
21 that the method governing the computation of regular
22 compensation under the State law of that State has been
23 modified in a manner such that—

24 (1) the average weekly benefit amount of reg-
25 ular compensation which will be payable during the

1 period of the agreement (determined disregarding
2 any additional amounts attributable to the modifica-
3 tion described in subsection (b)(1)) will be less than
4 (2) the average weekly benefit amount of reg-
5 ular compensation which would otherwise have been
6 payable during such period under the State law, as
7 in effect on December 31, 2008.

8 (d) PAYMENTS TO STATES.—

9 (1) IN GENERAL.—

10 (A) FULL REIMBURSEMENT.—There shall
11 be paid to each State which has entered into an
12 agreement under this section an amount equal
13 to 100 percent of—

14 (i) the total amount of additional
15 compensation (as described in subsection
16 (b)(1)) paid to individuals by the State
17 pursuant to such agreement; and

18 (ii) any additional administrative ex-
19 penses incurred by the State by reason of
20 such agreement (as determined by the Sec-
21 retary).

22 (B) TERMS OF PAYMENTS.—Sums payable
23 to any State by reason of such State's having
24 an agreement under this section shall be pay-
25 able, either in advance or by way of reimburse-

1 ment (as determined by the Secretary), in such
2 amounts as the Secretary estimates the State
3 will be entitled to receive under this section for
4 each calendar month, reduced or increased, as
5 the case may be, by any amount by which the
6 Secretary finds that his estimates for any prior
7 calendar month were greater or less than the
8 amounts which should have been paid to the
9 State. Such estimates may be made on the
10 basis of such statistical, sampling, or other
11 method as may be agreed upon by the Secretary
12 and the State agency of the State involved.

13 (2) CERTIFICATIONS.—The Secretary shall
14 from time to time certify to the Secretary of the
15 Treasury for payment to each State the sums pay-
16 able to such State under this section.

17 (3) APPROPRIATION.—There are appropriated
18 from the general fund of the Treasury, without fiscal
19 year limitation, such sums as may be necessary for
20 purposes of this subsection.

21 (c) APPLICABILITY.—

22 (1) IN GENERAL.—An agreement entered into
23 under this section shall apply to weeks of unemploy-
24 ment—

1 (A) beginning after the date on which such
2 agreement is entered into; and

3 (B) ending before January 1, 2010.

4 (2) ~~TRANSITION RULE FOR INDIVIDUALS RE-~~
5 ~~MAINING ENTITLED TO REGULAR COMPENSATION AS~~
6 ~~OF JANUARY 1, 2010.~~—In the case of any individual
7 who, as of the date specified in paragraph (1)(B),
8 has not yet exhausted all rights to regular com-
9 pensation under the State law of a State with re-
10 spect to a benefit year that began before such date,
11 additional compensation (as described in subsection
12 (b)(1)) shall continue to be payable to such indi-
13 vidual for any week beginning on or after such date
14 for which the individual is otherwise eligible for reg-
15 ular compensation with respect to such benefit year.

16 (3) ~~TERMINATION.~~—Notwithstanding any other
17 provision of this subsection, no additional compensa-
18 tion (as described in subsection (b)(1)) shall be pay-
19 able for any week beginning after June 30, 2010.

20 (f) ~~FRAUD AND OVERPAYMENTS.~~—The provisions of
21 section 4005 of the Supplemental Appropriations Act,
22 2008 (Public Law 110–252; 122 Stat. 2356) shall apply
23 with respect to additional compensation (as described in
24 subsection (b)(1)) to the same extent and in the same

1 manner as in the case of emergency unemployment com-
2 pensation.

3 ~~(g) APPLICATION TO OTHER UNEMPLOYMENT BENE-~~
4 ~~FITS.—~~

5 ~~(1) IN GENERAL.—~~Each agreement under this
6 section shall include provisions to provide that the
7 purposes of the preceding provisions of this section
8 shall be applied with respect to unemployment bene-
9 fits described in subsection ~~(h)(3)~~ to the same extent
10 and in the same manner as if those benefits were
11 regular compensation.

12 ~~(2) ELIGIBILITY AND TERMINATION RULES.—~~
13 Additional compensation (as described in subsection
14 ~~(b)(1)~~)—

15 ~~(A)~~ shall not be payable, pursuant to this
16 subsection, with respect to any unemployment
17 benefits described in subsection ~~(h)(3)~~ for any
18 week beginning on or after the date specified in
19 subsection ~~(e)(1)(B)~~, except in the case of an
20 individual who was eligible to receive additional
21 compensation (as so described) in connection
22 with any regular compensation or any unem-
23 ployment benefits described in subsection ~~(h)(3)~~
24 for any period of unemployment ending before
25 such date; and

1 (B) shall in no event be payable for any
2 week beginning after the date specified in sub-
3 section (c)(3).

4 (h) **DISREGARD OF ADDITIONAL COMPENSATION FOR**
5 **PURPOSES OF MEDICAID AND SCHIP.**—The monthly
6 equivalent of any additional compensation paid under this
7 section shall be disregarded in considering the amount of
8 income of an individual for any purposes under title XIX
9 and title XXI of the Social Security Act.

10 (i) **DEFINITIONS.**—For purposes of this section—

11 (1) the terms “compensation”, “regular com-
12 pensation”, “benefit year”, “State”, “State agency”,
13 “State law”, and “week” have the respective mean-
14 ings given such terms under section 205 of the Fed-
15 eral-State Extended Unemployment Compensation
16 Act of 1970 (26 U.S.C. 3304 note);

17 (2) the term “emergency unemployment com-
18 pensation” means emergency unemployment com-
19 pensation under title IV of the Supplemental Appro-
20 priations Act, 2008 (Public Law 110–252; 122 Stat.
21 2353); and

22 (3) any reference to unemployment benefits de-
23 scribed in this paragraph shall be considered to refer
24 to—

1 (A) extended compensation (as defined by
2 section 205 of the Federal-State Extended Un-
3 employment Compensation Act of 1970); and

4 (B) unemployment compensation (as de-
5 fined by section 85(b) of the Internal Revenue
6 Code of 1986) provided under any program ad-
7 ministered by a State under an agreement with
8 the Secretary.

9 **SEC. 2003. SPECIAL TRANSFERS FOR UNEMPLOYMENT**
10 **COMPENSATION MODERNIZATION.**

11 (a) **IN GENERAL.**—Section 903 of the Social Security
12 Act (42 U.S.C. 1103) is amended by adding at the end
13 the following:

14 “Special Transfers in Fiscal Years 2009, 2010, and 2011
15 for Modernization

16 “(f)(1)(A) In addition to any other amounts, the Sec-
17 retary of Labor shall provide for the making of unemploy-
18 ment compensation modernization incentive payments
19 (hereinafter ‘incentive payments’) to the accounts of the
20 States in the Unemployment Trust Fund, by transfer from
21 amounts reserved for that purpose in the Federal unem-
22 ployment account, in accordance with succeeding provi-
23 sions of this subsection.

24 “(B) The maximum incentive payment allowable
25 under this subsection with respect to any State shall, as

1 determined by the Secretary of Labor, be equal to the
2 amount obtained by multiplying \$7,000,000,000 by the
3 same ratio as would apply under subsection (a)(2)(B) for
4 purposes of determining such State's share of any excess
5 amount (as described in subsection (a)(1)) that would
6 have been subject to transfer to State accounts, as of Oc-
7 tober 1, 2008, under the provisions of subsection (a).

8 “(C) Of the maximum incentive payment determined
9 under subparagraph (B) with respect to a State—

10 “(i) one-third shall be transferred to the ac-
11 count of such State upon a certification under para-
12 graph (4)(B) that the State law of such State meets
13 the requirements of paragraph (2); and

14 “(ii) the remainder shall be transferred to the
15 account of such State upon a certification under
16 paragraph (4)(B) that the State law of such State
17 meets the requirements of paragraph (3).

18 “(2) The State law of a State meets the requirements
19 of this paragraph if such State law—

20 “(A) uses a base period that includes the most
21 recently completed calendar quarter before the start
22 of the benefit year for purposes of determining eligi-
23 bility for unemployment compensation; or

24 “(B) provides that, in the case of an individual
25 who would not otherwise be eligible for unemploy-

1 ment compensation under the State law because of
2 the use of a base period that does not include the
3 most recently completed calendar quarter before the
4 start of the benefit year, eligibility shall be deter-
5 mined using a base period that includes such cal-
6 endar quarter.

7 “(3) The State law of a State meets the requirements
8 of this paragraph if such State law includes provisions to
9 carry out at least 2 of the following subparagraphs:

10 “(A) An individual shall not be denied regular
11 unemployment compensation under any State law
12 provisions relating to availability for work, active
13 search for work, or refusal to accept work, solely be-
14 cause such individual is seeking only part-time work
15 (as defined by the Secretary of Labor), except that
16 the State law provisions carrying out this subpara-
17 graph may exclude an individual if a majority of the
18 weeks of work in such individual’s base period do
19 not include part-time work (as so defined).

20 “(B) An individual shall not be disqualified
21 from regular unemployment compensation for sepa-
22 rating from employment if that separation is for any
23 compelling family reason. For purposes of this sub-
24 paragraph, the term ‘compelling family reason’
25 means the following:

1 “(i) Domestic violence, verified by such
2 reasonable and confidential documentation as
3 the State law may require, which causes the in-
4 dividual reasonably to believe that such individ-
5 ual’s continued employment would jeopardize
6 the safety of the individual or of any member
7 of the individual’s immediate family (as defined
8 by the Secretary of Labor).

9 “(ii) The illness or disability of a member
10 of the individual’s immediate family (as those
11 terms are defined by the Secretary of Labor).

12 “(iii) The need for the individual to accom-
13 pany such individual’s spouse—

14 “(I) to a place from which it is im-
15 practical for such individual to commute;
16 and

17 “(II) due to a change in location of
18 the spouse’s employment.

19 “(C) Weekly unemployment compensation is
20 payable under this subparagraph to any individual
21 who is unemployed (as determined under the State
22 unemployment compensation law), has exhausted all
23 rights to regular unemployment compensation under
24 the State law, and is enrolled and making satisfac-
25 tory progress in a State-approved training program

1 or in a job training program authorized under the
2 Workforce Investment Act of 1998. Such programs
3 shall prepare individuals who have been separated
4 from a declining occupation, or who have been invol-
5 untarily and indefinitely separated from employment
6 as a result of a permanent reduction of operations
7 at the individual's place of employment, for entry
8 into a high-demand occupation. The amount of un-
9 employment compensation payable under this sub-
10 paragraph to an individual for a week of unemploy-
11 ment shall be equal to the individual's average week-
12 ly benefit amount (including dependents' allowances)
13 for the most recent benefit year, and the total
14 amount of unemployment compensation payable
15 under this subparagraph to any individual shall be
16 equal to at least 26 times the individual's average
17 weekly benefit amount (including dependents' allow-
18 ances) for the most recent benefit year.

19 “(D) Dependents' allowances are provided, in
20 the case of any individual who is entitled to receive
21 regular unemployment compensation and who has
22 any dependents (as defined by State law), in an
23 amount equal to at least \$15 per dependent per
24 week, subject to any aggregate limitation on such al-
25 lowances which the State law may establish (but

1 which aggregate limitation on the total allowance for
2 dependents paid to an individual may not be less
3 than \$50 for each week of unemployment or 50 per-
4 cent of the individual's weekly benefit amount for
5 the benefit year, whichever is less).

6 “(4)(A) Any State seeking an incentive payment
7 under this subsection shall submit an application therefor
8 at such time, in such manner, and complete with such in-
9 formation as the Secretary of Labor may within 60 days
10 after the date of the enactment of this subsection prescribe
11 (whether by regulation or otherwise), including informa-
12 tion relating to compliance with the requirements of para-
13 graph (2) or (3), as well as how the State intends to use
14 the incentive payment to improve or strengthen the State's
15 unemployment compensation program. The Secretary of
16 Labor shall, within 30 days after receiving a complete ap-
17 plication, notify the State agency of the State of the Sec-
18 retary's findings with respect to the requirements of para-
19 graph (2) or (3) (or both).

20 “(B)(i) If the Secretary of Labor finds that the State
21 law provisions (disregarding any State law provisions
22 which are not then currently in effect as permanent law
23 or which are subject to discontinuation) meet the require-
24 ments of paragraph (2) or (3), as the case may be, the
25 Secretary of Labor shall thereupon make a certification

1 to that effect to the Secretary of the Treasury, together
2 with a certification as to the amount of the incentive pay-
3 ment to be transferred to the State account pursuant to
4 that finding. The Secretary of the Treasury shall make
5 the appropriate transfer within 7 days after receiving such
6 certification.

7 “(ii) For purposes of clause (i), State law provisions
8 which are to take effect within 12 months after the date
9 of their certification under this subparagraph shall be con-
10 sidered to be in effect as of the date of such certification.

11 “(C)(i) No certification of compliance with the re-
12 quirements of paragraph (2) or (3) may be made with re-
13 spect to any State whose State law is not otherwise eligible
14 for certification under section 303 or approvable under
15 section 304 of the Federal Unemployment Tax Act.

16 “(ii) No certification of compliance with the require-
17 ments of paragraph (3) may be made with respect to any
18 State whose State law is not in compliance with the re-
19 quirements of paragraph (2).

20 “(iii) No application under subparagraph (A) may be
21 considered if submitted before the date of the enactment
22 of this subsection or after the latest date necessary (as
23 specified by the Secretary of Labor) to ensure that all in-
24 centive payments under this subsection are made before
25 October 1, 2011.

1 “(5)(A) Except as provided in subparagraph (B), any
2 amount transferred to the account of a State under this
3 subsection may be used by such State only in the payment
4 of cash benefits to individuals with respect to their unem-
5 ployment (including for dependents’ allowances and for
6 unemployment compensation under paragraph (3)(C)), ex-
7 clusive of expenses of administration.

8 “(B) A State may, subject to the same conditions as
9 set forth in subsection (c)(2) (excluding subparagraph (B)
10 thereof, and deeming the reference to ‘subsections (a) and
11 (b)’ in subparagraph (D) thereof to include this sub-
12 section); use any amount transferred to the account of
13 such State under this subsection for the administration
14 of its unemployment compensation law and public employ-
15 ment offices.

16 “(6) Out of any money in the Federal unemployment
17 account not otherwise appropriated, the Secretary of the
18 Treasury shall reserve \$7,000,000,000 for incentive pay-
19 ments under this subsection. Any amount so reserved shall
20 not be taken into account for purposes of any determina-
21 tion under section 902, 910, or 1203 of the amount in
22 the Federal unemployment account as of any given time.
23 Any amount so reserved for which the Secretary of the
24 Treasury has not received a certification under paragraph
25 (4)(B) by the deadline described in paragraph (4)(C)(iii)

1 shall, upon the close of fiscal year 2011, become unre-
2 stricted as to use as part of the Federal unemployment
3 account.

4 “(7) For purposes of this subsection, the terms ‘ben-
5 efit year’, ‘base period’, and ‘week’ have the respective
6 meanings given such terms under section 205 of the Fed-
7 eral-State Extended Unemployment Compensation Act of
8 1970 (26 U.S.C. 3304 note).

9 “Special Transfer in Fiscal Year 2009 for Administration

10 “(g)(1) In addition to any other amounts, the Sec-
11 retary of the Treasury shall transfer from the employment
12 security administration account to the account of each
13 State in the Unemployment Trust Fund, within 30 days
14 after the date of the enactment of this subsection, the
15 amount determined with respect to such State under para-
16 graph (2).

17 “(2) The amount to be transferred under this sub-
18 section to a State account shall (as determined by the Sec-
19 retary of Labor and certified by such Secretary to the Sec-
20 retary of the Treasury) be equal to the amount obtained
21 by multiplying \$500,000,000 by the same ratio as deter-
22 mined under subsection (f)(1)(B) with respect to such
23 State.

24 “(3) Any amount transferred to the account of a
25 State as a result of the enactment of this subsection may

1 be used by the State agency of such State only in the pay-
2 ment of expenses incurred by it for—

3 “(A) the administration of the provisions of its
4 State law carrying out the purposes of subsection
5 (f)(2) or any subparagraph of subsection (f)(3);

6 “(B) improved outreach to individuals who
7 might be eligible for regular unemployment com-
8 pensation by virtue of any provisions of the State
9 law which are described in subparagraph (A);

10 “(C) the improvement of unemployment benefit
11 and unemployment tax operations, including re-
12 sponding to increased demand for unemployment
13 compensation; and

14 “(D) staff-assisted reemployment services for
15 unemployment compensation claimants.”.

16 (b) REGULATIONS.—The Secretary of Labor may
17 prescribe any regulations, operating instructions, or other
18 guidance necessary to carry out the amendment made by
19 subsection (a).

20 **Subtitle B—Assistance for**
21 **Vulnerable Individuals**

22 **SEC. 2101. EMERGENCY FUND FOR TANF PROGRAM.**

23 (a) IN GENERAL.—Section 403 of the Social Security
24 Act (42 U.S.C. 603) is amended by adding at the end the
25 following:

1 “(c) EMERGENCY FUND.—

2 “(1) ESTABLISHMENT.—There is established in
3 the Treasury of the United States a fund which
4 shall be known as the ‘Emergency Contingency
5 Fund for State Temporary Assistance for Needy
6 Families Programs’ (in this subsection referred to as
7 the ‘Emergency Fund’).

8 “(2) DEPOSITS INTO FUND.—Out of any money
9 in the Treasury of the United States not otherwise
10 appropriated, there are appropriated such sums as
11 are necessary for payment to the Emergency Fund.

12 “(3) GRANTS.—

13 “(A) GRANT RELATED TO CASELOAD IN-
14 CREASES.—

15 “(i) IN GENERAL.—For each calendar
16 quarter in fiscal year 2009 or 2010, the
17 Secretary shall make a grant from the
18 Emergency Fund to each State that—

19 “(I) requests a grant under this
20 subparagraph for the quarter; and

21 “(II) meets the requirement of
22 clause (ii) for the quarter.

23 “(ii) CASELOAD INCREASE REQUIRE-
24 MENT.—A State meets the requirement of
25 this clause for a quarter if the average

1 monthly assistance caseload of the State
2 for the quarter exceeds the average month-
3 ly assistance caseload of the State for the
4 corresponding quarter in the emergency
5 fund base year of the State.

6 “(iii) AMOUNT OF GRANT.—Subject to
7 paragraph (5), the amount of the grant to
8 be made to a State under this subpara-
9 graph for a quarter shall be 80 percent of
10 the amount (if any) by which the total ex-
11 penditures of the State for basic assistance
12 (as defined by the Secretary) in the quar-
13 ter, whether under the State program
14 funded under this part or as qualified
15 State expenditures, exceeds the total ex-
16 penditures of the State for such assistance
17 for the corresponding quarter in the emer-
18 gency fund base year of the State.

19 “(B) GRANT RELATED TO INCREASED EX-
20 PENDITURES FOR NON-RECURRENT SHORT
21 TERM BENEFITS.—

22 “(i) IN GENERAL.—For each calendar
23 quarter in fiscal year 2009 or 2010, the
24 Secretary shall make a grant from the
25 Emergency Fund to each State that—

1 “(I) requests a grant under this
2 subparagraph for the quarter; and

3 “(II) meets the requirement of
4 clause (ii) for the quarter.

5 “(ii) NON-RECURRENT SHORT TERM
6 EXPENDITURE REQUIREMENT.—A State
7 meets the requirement of this clause for a
8 quarter if the total expenditures of the
9 State for non-recurrent short term benefits
10 in the quarter, whether under the State
11 program funded under this part or as
12 qualified State expenditures, exceeds the
13 total such expenditures of the State for
14 non-recurrent short term benefits in the
15 corresponding quarter in the emergency
16 fund base year of the State.

17 “(iii) AMOUNT OF GRANT.—Subject to
18 paragraph (5), the amount of the grant to
19 be made to a State under this subpara-
20 graph for a quarter shall be an amount
21 equal to 80 percent of the excess described
22 in clause (ii).

23 “(C) GRANT RELATED TO INCREASED EX-
24 PENDITURES FOR SUBSIDIZED EMPLOYMENT.—

1 “(i) IN GENERAL.—For each calendar
2 quarter in fiscal year 2009 or 2010, the
3 Secretary shall make a grant from the
4 Emergency Fund to each State that—

5 “(I) requests a grant under this
6 subparagraph for the quarter; and

7 “(II) meets the requirement of
8 clause (ii) for the quarter.

9 “(ii) SUBSIDIZED EMPLOYMENT EX-
10 PENDITURE REQUIREMENT.—A State
11 meets the requirement of this clause for a
12 quarter if the total expenditures of the
13 State for subsidized employment in the
14 quarter, whether under the State program
15 funded under this part or as qualified
16 State expenditures, exceeds the total of
17 such expenditures of the State in the cor-
18 responding quarter in the emergency fund
19 base year of the State.

20 “(iii) AMOUNT OF GRANT.—Subject to
21 paragraph (5), the amount of the grant to
22 be made to a State under this subpara-
23 graph for a quarter shall be an amount
24 equal to 80 percent of the excess described
25 in clause (ii).

1 “(4) AUTHORITY TO MAKE NECESSARY ADJUST-
2 MENTS TO DATA AND COLLECT NEEDED DATA.—In
3 determining the size of the caseload of a State and
4 the expenditures of a State for basic assistance, non-
5 recurrent short-term benefits, and subsidized em-
6 ployment, during any period for which the State re-
7 quests funds under this subsection, and during the
8 emergency fund base year of the State, the Sec-
9 retary may make appropriate adjustments to the
10 data to ensure that the data reflect expenditures
11 under the State program funded under this part and
12 qualified State expenditures. The Secretary may de-
13 velop a mechanism for collecting expenditure data,
14 including procedures which allow States to make
15 reasonable estimates, and may set deadlines for
16 making revisions to the data.

17 “(5) LIMITATION.—The total amount payable
18 to a single State under subsection (b) and this sub-
19 section for a fiscal year shall not exceed 25 percent
20 of the State family assistance grant.

21 “(6) LIMITATIONS ON USE OF FUNDS.—A State
22 to which an amount is paid under this subsection
23 may use the amount only as authorized by section
24 404.

1 “(7) TIMING OF IMPLEMENTATION.—The Sec-
2 retary shall implement this subsection as quickly as
3 reasonably possible, pursuant to appropriate guid-
4 ance to States.

5 “(8) DEFINITIONS.—In this subsection:

6 “(A) AVERAGE MONTHLY ASSISTANCE
7 CASELOAD.—The term ‘average monthly assist-
8 ance caseload’ means, with respect to a State
9 and a quarter, the number of families receiving
10 assistance during the quarter under the State
11 program funded under this part or as qualified
12 State expenditures, subject to adjustment under
13 paragraph (4).

14 “(B) EMERGENCY FUND BASE YEAR.—

15 “(i) IN GENERAL.—The term ‘emer-
16 gency fund base year’ means, with respect
17 to a State and a category described in
18 clause (ii), whichever of fiscal year 2007 or
19 2008 is the fiscal year in which the
20 amount described by the category with re-
21 spect to the State is the lesser.

22 “(ii) CATEGORIES DESCRIBED.—The
23 categories described in this clause are the
24 following:

1 “(I) The average monthly assist-
2 ance caseload of the State.

3 “(II) The total expenditures of
4 the State for non-recurrent short term
5 benefits, whether under the State pro-
6 gram funded under this part or as
7 qualified State expenditures.

8 “(III) The total expenditures of
9 the State for subsidized employment,
10 whether under the State program
11 funded under this part or as qualified
12 State expenditures.

13 “(C) QUALIFIED STATE EXPENDITURES.—
14 The term ‘qualified State expenditures’ has the
15 meaning given the term in section 409(a)(7).”.

16 (b) TEMPORARY MODIFICATION OF CASELOAD RE-
17 DUCTION CREDIT.—Section 407(b)(3)(A)(i) of such Act
18 (42 U.S.C. 607(b)(3)(A)(i)) is amended by inserting “(or
19 if the immediately preceding fiscal year is fiscal year 2009
20 or 2010, then, at State option, during the emergency fund
21 base year of the State with respect to the average monthly
22 assistance caseload of the State (within the meaning of
23 section 403(e)(8)(B)))” before “under the State”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on the date of the enactment
3 of this Act.

4 **SEC. 2102. ONE-TIME EMERGENCY PAYMENT TO SSI RECIPI-**
5 **ENTS.**

6 (a) PAYMENT AUTHORITY.—

7 (1) IN GENERAL.—At the earliest practicable
8 date in calendar year 2009 but not later than 120
9 days after the date of the enactment of this section,
10 the Commissioner of Social Security shall make a
11 one-time payment to each individual who is deter-
12 mined by the Commissioner in calendar year 2009 to
13 be an individual who—

14 (A) is entitled to a cash benefit under the
15 supplemental security income program under
16 title XVI of the Social Security Act (other than
17 pursuant to section 1611(e)(1)(B) of such Act)
18 for at least 1 day in the calendar month in
19 which the first payment under this section is to
20 be made; or

21 (B)(i) was entitled to such a cash benefit
22 (other than pursuant to section 1611(e)(1)(B)
23 of such Act) for at least 1 day in the 2-month
24 period preceding that calendar month; and

1 (ii) whose entitlement to that benefit
2 ceased in that 2-month period solely because
3 the income of the individual (and the income of
4 the spouse, if any, of the individual) exceeded
5 the applicable income limit described in para-
6 graph (1)(A) or (2)(A) of section 1611(a) of
7 such Act.

8 (2) AMOUNT OF PAYMENT.—Subject to sub-
9 section (b)(1) of this section, the amount of the pay-
10 ment shall be—

11 (A) in the case of an individual eligible for
12 a payment under this section who does not have
13 a spouse eligible for such a payment, an
14 amount equal to the average of the cash bene-
15 fits payable in the aggregate under section
16 1611 or 1619(a) of the Social Security Act to
17 eligible individuals who do not have an eligible
18 spouse, for the most recent month for which
19 data on payment of the benefits are available,
20 as determined by the Commissioner of Social
21 Security; or

22 (B) in the case of an individual eligible for
23 a payment under this section who has a spouse
24 eligible for such a payment, an amount equal to
25 the average of the cash benefits payable in the

1 aggregate under section 1611 or 1619(a) of the
2 Social Security Act to eligible individuals who
3 have an eligible spouse; for the most recent
4 month for which data on payment of the bene-
5 fits are available, as so determined.

6 (b) ADMINISTRATIVE PROVISIONS.—

7 (1) AUTHORITY TO WITHHOLD PAYMENT TO
8 RECOVER PRIOR OVERPAYMENT OF SSI BENEFITS.—
9 The Commissioner of Social Security may withhold
10 part or all of a payment otherwise required to be
11 made under subsection (a) of this section to an indi-
12 vidual, in order to recover a prior overpayment of
13 benefits to the individual under the supplemental se-
14 curity income program under title XVI of the Social
15 Security Act, subject to the limitations of section
16 1631(b) of such Act.

17 (2) PAYMENT TO BE DISREGARDED IN DETER-
18 MINING UNDERPAYMENTS UNDER THE SSI PRO-
19 GRAM.—A payment under subsection (a) shall be
20 disregarded in determining whether there has been
21 an underpayment of benefits under the supplemental
22 security income program under title XVI of the So-
23 cial Security Act.

24 (3) NONASSIGNMENT.—The provisions of sec-
25 tion 1631(d) of the Social Security Act shall apply

1 with respect to payments under this section to the
2 same extent as they apply in the case of title XVI
3 of such Act.

4 (c) PAYMENTS TO BE DISREGARDED FOR PURPOSES
5 OF ALL FEDERAL AND FEDERALLY ASSISTED PRO-
6 GRAMS.—A payment under subsection (a) shall not be re-
7 garded as income to the recipient, and shall not be re-
8 garded as a resource of the recipient for the month of re-
9 ceipt and the following 6 months, for purposes of deter-
10 mining the eligibility of any individual for benefits or as-
11 sistance, or the amount or extent of benefits or assistance,
12 under any Federal program or under any State or local
13 program financed in whole or in part with Federal funds.

14 (d) APPROPRIATION.—Out of any sums in the Treas-
15 ury of the United States not otherwise appropriated, there
16 are appropriated such sums as may be necessary to carry
17 out this section.

18 **SEC. 2103. TEMPORARY RESUMPTION OF PRIOR CHILD**
19 **SUPPORT LAW.**

20 During the period that begins with October 1, 2008,
21 and ends with September 30, 2010, section 455(a)(1) of
22 the Social Security Act shall be applied and administered
23 as if the phrase “from amounts paid to the State under
24 section 458 or” did not appear in such section.

1 **TITLE III—HEALTH INSURANCE**
 2 **ASSISTANCE FOR THE UNEM-**
 3 **EMPLOYED**

4 **SEC. 3001. SHORT TITLE AND TABLE OF CONTENTS OF**
 5 **TITLE.**

6 (a) **SHORT TITLE OF TITLE.**—This title may be cited
 7 as the “Health Insurance Assistance for the Unemployed
 8 Act of 2009”.

9 (b) **TABLE OF CONTENTS OF TITLE.**—The table of
 10 contents of this title is as follows:

Sec. 3001. Short title and table of contents of title.

Sec. 3002. Premium assistance for COBRA benefits and extension of COBRA
 benefits for older or long-term employees.

Sec. 3003. Temporary optional Medicaid coverage for the unemployed.

11 **SEC. 3002. PREMIUM ASSISTANCE FOR COBRA BENEFITS**
 12 **AND EXTENSION OF COBRA BENEFITS FOR**
 13 **OLDER OR LONG-TERM EMPLOYEES.**

14 (a) **PREMIUM ASSISTANCE FOR COBRA CONTINU-**
 15 **ATION COVERAGE FOR INDIVIDUALS AND THEIR FAMI-**
 16 **LIES.**—

17 (1) **PROVISION OF PREMIUM ASSISTANCE.**—

18 (A) **REDUCTION OF PREMIUMS PAY-**
 19 **ABLE.**—In the case of any premium for a pe-
 20 riod of coverage beginning on or after the date
 21 of the enactment of this Act for COBRA con-
 22 tinuation coverage with respect to any assist-
 23 ance eligible individual, such individual shall be

1 treated for purposes of any COBRA continu-
2 ation provision as having paid the amount of
3 such premium if such individual pays 35 per-
4 cent of the amount of such premium (as deter-
5 mined without regard to this subsection).

6 (B) PREMIUM REIMBURSEMENT.—For pro-
7 visions providing the balance of such premium;
8 see section 6431 of the Internal Revenue Code
9 of 1986, as added by paragraph (12).

10 (2) LIMITATION OF PERIOD OF PREMIUM AS-
11 SISTANCE.—

12 (A) IN GENERAL.—Paragraph (1)(A) shall
13 not apply with respect to any assistance eligible
14 individual for months of coverage beginning on
15 or after the earlier of—

16 (i) the first date that such individual
17 is eligible for coverage under any other
18 group health plan (other than coverage
19 consisting of only dental, vision, coun-
20 seling, or referral services (or a combina-
21 tion thereof), coverage under a health re-
22 imbursement arrangement or a health
23 flexible spending arrangement, or coverage
24 of treatment that is furnished in an on-site
25 medical facility maintained by the em-

1 ployer and that consists primarily of first-
2 aid services, prevention and wellness care,
3 or similar care (or a combination thereof))
4 or is eligible for benefits under title XVIII
5 of the Social Security Act, or

6 (ii) the earliest of—

7 (I) the date which is 12 months
8 after the first day of the first month
9 that paragraph (1)(A) applies with re-
10 spect to such individual;

11 (II) the date following the expira-
12 tion of the maximum period of con-
13 tinuation coverage required under the
14 applicable COBRA continuation cov-
15 erage provision; or

16 (III) the date following the expi-
17 ration of the period of continuation
18 coverage allowed under paragraph
19 (4)(B)(ii).

20 (B) ~~TIMING OF ELIGIBILITY FOR ADDI-~~
21 ~~TIONAL COVERAGE.~~—For purposes of subpara-
22 graph (A)(i), an individual shall not be treated
23 as eligible for coverage under a group health
24 plan before the first date on which such indi-
25 vidual could be covered under such plan.

1 (C) NOTIFICATION REQUIREMENT.—An
2 assistance eligible individual shall notify in writ-
3 ing the group health plan with respect to which
4 paragraph (1)(A) applies if such paragraph
5 ceases to apply by reason of subparagraph
6 (A)(i). Such notice shall be provided to the
7 group health plan in such time and manner as
8 may be specified by the Secretary of Labor.

9 (3) ASSISTANCE ELIGIBLE INDIVIDUAL.—For
10 purposes of this section, the term “assistance eligible
11 individual” means any qualified beneficiary if—

12 (A) at any time during the period that be-
13 gins with September 1, 2008, and ends with
14 December 31, 2009, such qualified beneficiary
15 is eligible for COBRA continuation coverage;

16 (B) such qualified beneficiary elects such
17 coverage; and

18 (C) the qualifying event with respect to the
19 COBRA continuation coverage consists of the
20 involuntary termination of the covered employ-
21 ee’s employment and occurred during such pe-
22 riod.

23 (4) EXTENSION OF ELECTION PERIOD AND EF-
24 FECT ON COVERAGE.—

1 (A) ~~IN GENERAL.~~—Notwithstanding sec-
2 tion 605(a) of the Employee Retirement Income
3 Security Act of 1974, section 4980B(f)(5)(A) of
4 the Internal Revenue Code of 1986, section
5 2205(a) of the Public Health Service Act, and
6 section 8905a(c)(2) of title 5, United States
7 Code, in the case of an individual who is a
8 qualified beneficiary described in paragraph
9 (3)(A) as of the date of the enactment of this
10 Act and has not made the election referred to
11 in paragraph (3)(B) as of such date, such indi-
12 vidual may elect the COBRA continuation cov-
13 erage under the COBRA continuation coverage
14 provisions containing such sections during the
15 60-day period commencing with the date on
16 which the notification required under paragraph
17 (7)(C) is provided to such individual.

18 (B) ~~COMMENCEMENT OF COVERAGE; NO~~
19 ~~REACH-BACK.~~—Any COBRA continuation cov-
20 erage elected by a qualified beneficiary during
21 an extended election period under subparagraph
22 (A)—

23 (i) shall commence on the date of the
24 enactment of this Act, and

1 (ii) shall not extend beyond the period
2 of COBRA continuation coverage that
3 would have been required under the appli-
4 cable COBRA continuation coverage provi-
5 sion if the coverage had been elected as re-
6 quired under such provision.

7 (C) ~~PREEXISTING CONDITIONS.~~—With re-
8 spect to a qualified beneficiary who elects
9 COBRA continuation coverage pursuant to sub-
10 paragraph (A), the period—

11 (i) beginning on the date of the quali-
12 fying event, and

13 (ii) ending with the day before the
14 date of the enactment of this Act,

15 shall be disregarded for purposes of deter-
16 mining the 63-day periods referred to in section
17 701)(2) of the Employee Retirement Income
18 Security Act of 1974, section 9801(e)(2) of the
19 Internal Revenue Code of 1986, and section
20 2701(e)(2) of the Public Health Service Act.

21 (5) ~~EXPEDITED REVIEW OF DENIALS OF PRE-~~
22 ~~MIUM ASSISTANCE.~~—In any case in which an indi-
23 vidual requests treatment as an assistance eligible
24 individual and is denied such treatment by the group
25 health plan by reason of such individual's ineligi-

1 bility for COBRA continuation coverage, the Sec-
2 retary of Labor (or the Secretary of Health and
3 Human services in connection with COBRA continu-
4 ation coverage which is provided other than pursu-
5 ant to part 6 of subtitle B of title I of the Employee
6 Retirement Income Security Act of 1974), in con-
7 sultation with the Secretary of the Treasury, shall
8 provide for expedited review of such denial. An indi-
9 vidual shall be entitled to such review upon applica-
10 tion to such Secretary in such form and manner as
11 shall be provided by such Secretary. Such Secretary
12 shall make a determination regarding such individ-
13 ual's eligibility within 10 business days after receipt
14 of such individual's application for review under this
15 paragraph.

16 (6) DISREGARD OF SUBSIDIES FOR PURPOSES
17 OF FEDERAL AND STATE PROGRAMS.—Notwith-
18 standing any other provision of law, any premium
19 reduction with respect to an assistance eligible indi-
20 vidual under this subsection shall not be considered
21 income or resources in determining eligibility for, or
22 the amount of assistance or benefits provided under,
23 any other public benefit provided under Federal law
24 or the law of any State or political subdivision there-
25 of.

1 (7) NOTICES TO INDIVIDUALS.—

2 (A) GENERAL NOTICE.—

3 (i) IN GENERAL.—In the case of no-
4 tices provided under section 606(4) of the
5 Employee Retirement Income Security Act
6 of 1974 (29 U.S.C. 1166(4)), section
7 4980B(f)(6)(D) of the Internal Revenue
8 Code of 1986, section 2206(4) of the Pub-
9 lic Health Service Act (42 U.S.C. 300bb-
10 6(4)), or section 8905a(f)(2)(A) of title 5,
11 United States Code, with respect to indi-
12 viduals who, during the period described in
13 paragraph (3)(A), become entitled to elect
14 COBRA continuation coverage, such no-
15 tices shall include an additional notifica-
16 tion to the recipient of the availability of
17 premium reduction with respect to such
18 coverage under this subsection.

19 (ii) ALTERNATIVE NOTICE.—In the
20 ease of COBRA continuation coverage to
21 which the notice provision under such sec-
22 tions does not apply, the Secretary of
23 Labor, in consultation with the Secretary
24 of the Treasury and the Secretary of
25 Health and Human Services, shall, in co-

1 ordination with administrators of the
2 group health plans (or other entities) that
3 provide or administer the COBRA continu-
4 ation coverage involved; provide rules re-
5 quiring the provision of such notice.

6 (iii) FORM.—The requirement of the
7 additional notification under this subpara-
8 graph may be met by amendment of exist-
9 ing notice forms or by inclusion of a sepa-
10 rate document with the notice otherwise
11 required.

12 (B) SPECIFIC REQUIREMENTS.—Each ad-
13 ditional notification under subparagraph (A)
14 shall include—

15 (i) the forms necessary for estab-
16 lishing eligibility for premium reduction
17 under this subsection;

18 (ii) the name, address, and telephone
19 number necessary to contact the plan ad-
20 ministrator and any other person main-
21 taining relevant information in connection
22 with such premium reduction;

23 (iii) a description of the extended elec-
24 tion period provided for in paragraph
25 (4)(A);

1 (iv) a description of the obligation of
2 the qualified beneficiary under paragraph
3 ~~(2)(C)~~ to notify the plan providing continu-
4 ation coverage of eligibility for subsequent
5 coverage under another group health plan
6 or eligibility for benefits under title XVIII
7 of the Social Security Act and the penalty
8 provided for failure to so notify the plan;
9 and

10 (v) a description, displayed in a
11 prominent manner, of the qualified bene-
12 ficiary's right to a reduced premium and
13 any conditions on entitlement to the re-
14 duced premium.

15 ~~(C) NOTICE RELATING TO RETROACTIVE~~
16 ~~COVERAGE.~~—In the case of an individual de-
17 scribed in paragraph ~~(3)(A)~~ who has elected
18 ~~COBRA~~ continuation coverage as of the date of
19 enactment of this Act or an individual described
20 in paragraph ~~(4)(A)~~, the administrator of the
21 group health plan (or other entity) involved
22 shall provide (within 60 days after the date of
23 enactment of this Act) for the additional notifi-
24 cation required to be provided under subpara-
25 graph ~~(A)~~.

1 (D) MODEL NOTICES.—Not later than 30
2 days after the date of enactment of this Act,
3 the Secretary of the Labor, in consultation with
4 the Secretary of the Treasury and the Secretary
5 of Health and Human Services, shall prescribe
6 models for the additional notification required
7 under this paragraph.

8 (8) SAFEGUARDS.—The Secretary of the Treas-
9 ury shall provide such rules, procedures, regulations,
10 and other guidance as may be necessary and appro-
11 priate to prevent fraud and abuse under this sub-
12 section.

13 (9) OUTREACH.—The Secretary of Labor, in
14 consultation with the Secretary of the Treasury and
15 the Secretary of Health and Human Services, shall
16 provide outreach consisting of public education and
17 enrollment assistance relating to premium reduction
18 provided under this subsection. Such outreach shall
19 target employers, group health plan administrators,
20 public assistance programs, States, insurers, and
21 other entities as determined appropriate by such
22 Secretaries. Such outreach shall include an initial
23 focus on those individuals electing continuation cov-
24 erage who are referred to in paragraph (7)(C). In-
25 formation on such premium reduction, including en-

1 rollment, shall also be made available on website of
2 the Departments of Labor, Treasury, and Health
3 and Human Services.

4 (10) DEFINITIONS.—For purposes of this sub-
5 section—

6 (A) ADMINISTRATOR.—The term “admin-
7 istrator” has the meaning given such term in
8 section 3(16) of the Employee Retirement In-
9 come Security Act of 1974.

10 (B) COBRA CONTINUATION COVERAGE.—
11 The term “COBRA continuation coverage”
12 means continuation coverage provided pursuant
13 to part 6 of subtitle B of title I of the Em-
14 ployee Retirement Income Security Act of 1974
15 (other than under section 609), title XXII of
16 the Public Health Service Act, section 4980B of
17 the Internal Revenue Code of 1986 (other than
18 subsection (f)(1) of such section insofar as it
19 relates to pediatric vaccines), or section 8905a
20 of title 5, United States Code, or under a State
21 program that provides continuation coverage
22 comparable to such continuation coverage. Such
23 term does not include coverage under a health
24 flexible spending arrangement.

1 (C) COBRA CONTINUATION PROVISION.—

2 The term “COBRA continuation provision”
3 means the provisions of law described in sub-
4 paragraph (B).

5 (D) COVERED EMPLOYEE.—The term
6 “covered employee” has the meaning given such
7 term in section 607(2) of the Employee Retirement
8 Income Security Act of 1974.

9 (E) QUALIFIED BENEFICIARY.—The term
10 “qualified beneficiary” has the meaning given
11 such term in section 607(3) of the Employee
12 Retirement Income Security Act of 1974.

13 (F) GROUP HEALTH PLAN.—The term
14 “group health plan” has the meaning given
15 such term in section 607(1) of the Employee
16 Retirement Income Security Act of 1974.

17 (G) STATE.—The term “State” includes
18 the District of Columbia, the Commonwealth of
19 Puerto Rico, the Virgin Islands, Guam, Amer-
20 ican Samoa, and the Commonwealth of the
21 Northern Mariana Islands.

22 (11) REPORTS.—

23 (A) INTERIM REPORT.—The Secretary of
24 the Treasury shall submit an interim report to
25 the Committee on Education and Labor, the

1 Committee on Ways and Means, and the Com-
2 mittee on Energy and Commerce of the House
3 of Representatives and the Committee on
4 Health, Education, Labor, and Pensions and
5 the Committee on Finance of the Senate re-
6 garding the premium reduction provided under
7 this subsection that includes—

8 (i) the number of individuals provided
9 such assistance as of the date of the re-
10 port; and

11 (ii) the total amount of expenditures
12 incurred (with administrative expenditures
13 noted separately) in connection with such
14 assistance as of the date of the report.

15 (B) FINAL REPORT.—As soon as prac-
16 ticable after the last period of COBRA continu-
17 ation coverage for which premium reduction is
18 provided under this section, the Secretary of the
19 Treasury shall submit a final report to each
20 Committee referred to in subparagraph (A) that
21 includes—

22 (i) the number of individuals provided
23 premium reduction under this section;

1 (ii) the average dollar amount
2 (monthly and annually) of premium reduc-
3 tions provided to such individuals; and

4 (iii) the total amount of expenditures
5 incurred (with administrative expenditures
6 noted separately) in connection with pre-
7 mium reduction under this section.

8 (12) COBRA PREMIUM ASSISTANCE.—

9 (A) IN GENERAL.—Subchapter B of chap-
10 ter 65 of the Internal Revenue Code of 1986 is
11 amended by adding at the end the following
12 new section:

13 **“SEC. 6431. COBRA PREMIUM ASSISTANCE.**

14 “(a) IN GENERAL.—The entity to whom premiums
15 are payable under COBRA continuation coverage shall be
16 reimbursed for the amount of premiums not paid by plan
17 beneficiaries by reason of section 3002(a) of the Health
18 Insurance Assistance for the Unemployed Act of 2009.
19 Such amount shall be treated as a credit against the re-
20 quirement of such entity to make deposits of payroll taxes
21 and the liability of such entity for payroll taxes. To the
22 extent that such amount exceeds the amount of such
23 taxes, the Secretary shall pay to such entity the amount
24 of such excess. No payment may be made under this sub-
25 section to an entity with respect to any assistance eligible

1 individual until after such entity has received the reduced
2 premium from such individual required under section
3 3002(a)(1)(A) of such Act.

4 “(b) PAYROLL TAXES.—For purposes of this section,
5 the term ‘payroll taxes’ means—

6 “(1) amounts required to be deducted and with-
7 held for the payroll period under section 3401 (relat-
8 ing to wage withholding),

9 “(2) amounts required to be deducted for the
10 payroll period under section 3102 (relating to FICA
11 employee taxes), and

12 “(3) amounts of the taxes imposed for the pay-
13 roll period under section 3111 (relating to FICA em-
14 ployer taxes).

15 “(c) TREATMENT OF CREDIT.—Except as otherwise
16 provided by the Secretary, the credit described in sub-
17 section (a) shall be applied as though the employer had
18 paid to the Secretary, on the day that the qualified bene-
19 ficiary’s premium payment is received, an amount equal
20 to such credit.

21 “(d) TREATMENT OF PAYMENT.—For purposes of
22 section 1324(b)(2) of title 31, United States Code, any
23 payment under this section shall be treated in the same
24 manner as a refund of the credit under section 35.

25 “(e) REPORTING.—

1 “(1) IN GENERAL.—Each entity entitled to re-
2 imbursement under subsection (a) for any period
3 shall submit such reports as the Secretary may re-
4 quire, including—

5 “(A) an attestation of involuntary termi-
6 nation of employment for each covered em-
7 ployee on the basis of whose termination entitle-
8 ment to reimbursement is claimed under sub-
9 section (a); and

10 “(B) a report of the amount of payroll
11 taxes offset under subsection (a) for the report-
12 ing period and the estimated offsets of such
13 taxes for the subsequent reporting period in
14 connection with reimbursements under sub-
15 section (a).

16 “(2) TIMING OF REPORTS RELATING TO
17 AMOUNT OF PAYROLL TAXES.—Reports required
18 under paragraph (1)(B) shall be submitted at the
19 same time as deposits of taxes imposed by chapters
20 21, 22, and 24 or at such time as is specified by the
21 Secretary.

22 “(f) REGULATIONS.—The Secretary may issue such
23 regulations or other guidance as may be necessary or ap-
24 propriate to carry out this section, including the require-
25 ment to report information or the establishment of other

1 methods for verifying the correct amounts of payments
 2 and credits under this section. The Secretary shall issue
 3 such regulations or guidance with respect to the applica-
 4 tion of this section to group health plans that are multiem-
 5 ployer plans (as defined in section 3(37) of the Employee
 6 Retirement Income Security Act of 1974).”.

7 (B) SOCIAL SECURITY TRUST FUNDS HELD
 8 HARMLESS.—In determining any amount trans-
 9 ferred or appropriated to any fund under the
 10 Social Security Act, section 6431 of the Inter-
 11 nal Revenue Code of 1986 shall not be taken
 12 into account.

13 (C) CLERICAL AMENDMENT.—The table of
 14 sections for subchapter B of chapter 65 of the
 15 Internal Revenue Code of 1986 is amended by
 16 adding at the end the following new item:

“Sec. 6431. COBRA premium assistance.”.

17 (D) EFFECTIVE DATE.—The amendments
 18 made by this paragraph shall apply to pre-
 19 miums to which subsection (a)(1)(A) applies.

20 (13) PENALTY FOR FAILURE TO NOTIFY
 21 HEALTH PLAN OF CESSATION OF ELIGIBILITY FOR
 22 PREMIUM ASSISTANCE.—

23 (A) IN GENERAL.—Part I of subchapter B
 24 of chapter 68 of the Internal Revenue Code of

1 1986 is amended by adding at the end the fol-
 2 lowing new section:

3 **“SEC. 6720C. PENALTY FOR FAILURE TO NOTIFY HEALTH**
 4 **PLAN OF CESSATION OF ELIGIBILITY FOR**
 5 **COBRA PREMIUM ASSISTANCE.**

6 “(a) ~~IN GENERAL.~~—Any person required to notify a
 7 group health plan under section ~~3002(a)(2)(C)~~ of the
 8 Health Insurance Assistance for the Unemployed Act of
 9 2009 who fails to make such a notification at such time
 10 and in such manner as the Secretary of Labor may require
 11 shall pay a penalty of 110 percent of the premium reduc-
 12 tion provided under such section after termination of eligi-
 13 bility under such subsection.

14 “(b) ~~REASONABLE CAUSE EXCEPTION.~~—No penalty
 15 shall be imposed under subsection (a) with respect to any
 16 failure if it is shown that such failure is due to reasonable
 17 cause and not to willful neglect.”.

18 ~~(B) CLERICAL AMENDMENT.~~—The table of
 19 sections of part I of subchapter B of chapter 68
 20 of such Code is amended by adding at the end
 21 the following new item:

“Sec. 6720C. Penalty for failure to notify health plan of cessation of eligibility
 for COBRA premium assistance.”.

22 ~~(C) EFFECTIVE DATE.~~—The amendments
 23 made by this paragraph shall apply to failures

1 occurring after the date of the enactment of
2 this Act.

3 (14) COORDINATION WITH HCTC.—

4 (A) IN GENERAL.—Subsection (g) of sec-
5 tion 35 of the Internal Revenue Code of 1986
6 is amended by redesignating paragraph (9) as
7 paragraph (10) and inserting after paragraph
8 (8) the following new paragraph:

9 “(9) COBRA PREMIUM ASSISTANCE.—In the
10 case of an assistance eligible individual who receives
11 premium reduction for COBRA continuation cov-
12 erage under section 3002(a) of the Health Insurance
13 Assistance for the Unemployed Act of 2009 for any
14 month during the taxable year, such individual shall
15 not be treated as an eligible individual, a certified
16 individual, or a qualifying family member for pur-
17 poses of this section or section 7527 with respect to
18 such month.”

19 (B) EFFECTIVE DATE.—The amendment
20 made by subparagraph (A) shall apply to tax-
21 able years ending after the date of the enact-
22 ment of this Act.

23 (15) EXCLUSION OF COBRA PREMIUM ASSIST-
24 ANCE FROM GROSS INCOME.—

1 (A) **IN GENERAL.**—Part III of subchapter
 2 B of chapter 1 of the Internal Revenue Code of
 3 1986 is amended by inserting after section
 4 139B the following new section:

5 **“SEC. 139C. COBRA PREMIUM ASSISTANCE.**

6 “**In the case of an assistance eligible individual (as**
 7 **defined in section 3002 of the Health Insurance Assist-**
 8 **ance for the Unemployed Act of 2009), gross income does**
 9 **not include any premium reduction provided under sub-**
 10 **section (a) of such section.”.**

11 (B) **CLERICAL AMENDMENT.**—The table of
 12 sections for part III of subchapter B of chapter
 13 1 of such Code is amended by inserting after
 14 the item relating to section 139B the following
 15 new item:

“Sec. 139C. COBRA premium assistance.”.

16 (C) **EFFECTIVE DATE.**—The amendments
 17 made by this paragraph shall apply to taxable
 18 years ending after the date of the enactment of
 19 this Act.

20 (b) **EXTENSION OF COBRA BENEFITS FOR OLDER**
 21 **OR LONG-TERM EMPLOYEES.**—

22 (1) **ERISA AMENDMENT.**—Section 602(2)(A)
 23 of the Employee Retirement Income Security Act of
 24 1974 is amended by adding at the end the following
 25 new clauses:

1 “~~(x)~~ SPECIAL RULE FOR OLDER OR
2 LONG-TERM EMPLOYEES GENERALLY.—In
3 the case of a qualifying event described in
4 section ~~603(2)~~ with respect to a covered
5 employee who (as of such qualifying event)
6 has attained age 55 or has completed 10
7 or more years of service with the entity
8 that is the employer at the time of the
9 qualifying event, clauses (i) and (ii) shall
10 not apply. For purposes of this clause, in
11 the case of a group health plan that is a
12 multiemployer plan, service by the covered
13 employee performed for 2 or more employ-
14 ers during periods for which such employ-
15 ers contributed to such plan shall be treat-
16 ed as service performed for the entity re-
17 ferred to in the preceding sentence.

18 “~~(xi)~~ YEAR OF SERVICE.— For pur-
19 poses of this subparagraph, the term ‘year
20 of service’ shall have the meaning provided
21 in section ~~202(a)(3)~~.”.

22 ~~(2)~~ IRC AMENDMENT.—Clause (i) of section
23 4980B(f)(2)(B) of the Internal Revenue Code of
24 1986 is amended by adding at the end the following
25 new subclauses:

1 “~~(X)~~ SPECIAL RULE FOR OLDER
2 OR LONG-TERM EMPLOYEES GEN-
3 ERALLY.—In the case of a qualifying
4 event described in paragraph (3)(B)
5 with respect to a covered employee
6 who (as of such qualifying event) has
7 attained age 55 or has completed 10
8 or more years of service with the enti-
9 ty that is the employer at the time of
10 the qualifying event, subclauses (I)
11 and (II) shall not apply. For purposes
12 of this subclause, in the case of a
13 group health plan that is a multiem-
14 ployer plan (as defined in section
15 3(37) of the Employee Retirement In-
16 come Security Act of 1974), service by
17 the covered employee performed for 2
18 or more employers during periods for
19 which such employers contributed to
20 such plan shall be treated as service
21 performed for the entity referred to in
22 the preceding sentence.

23 “~~(XI)~~ YEAR OF SERVICE.— For
24 purposes of this clause, the term ‘year
25 of service’ shall have the meaning pro-

1 vided in section 202(a)(3) of the Em-
2 ployee Retirement Income Security
3 Act of 1974.”.

4 (3) PHSA AMENDMENT.—Section 2202(2)(A)
5 of the Public Health Service Act is amended by add-
6 ing at the end the following new clauses:

7 “~~(viii)~~ SPECIAL RULE FOR OLDER OR
8 LONG-TERM EMPLOYEES GENERALLY.—In
9 the case of a qualifying event described in
10 section 2203(2) with respect to a covered
11 employee who (as of such qualifying event)
12 has attained age 55 or has completed 10
13 or more years of service with the entity
14 that is the employer at the time of the
15 qualifying event, clauses (i) and (ii) shall
16 not apply. For purposes of this clause, in
17 the case of a group health plan that is a
18 multiemployer plan (as defined in section
19 3(37) of the Employee Retirement Income
20 Security Act of 1974), service by the cov-
21 ered employee performed for 2 or more
22 employers during periods for which such
23 employers contributed to such plan shall be
24 treated as service performed for the entity
25 referred to in the preceding sentence.

1 ~~“(ix) YEAR OF SERVICE.—~~ For pur-
 2 poses of this subparagraph, the term ‘year
 3 of service’ shall have the meaning provided
 4 in section 202(a)(3) of the Employee Re-
 5 tirement Income Security Act of 1974.”.

6 ~~(4) EFFECTIVE DATE OF AMENDMENTS.—~~The
 7 amendments made by this subsection shall apply to
 8 periods of coverage which would (without regard to
 9 the amendments made by this section) end on or
 10 after the date of the enactment of this Act.

11 **SEC. 3003. TEMPORARY OPTIONAL MEDICAID COVERAGE**
 12 **FOR THE UNEMPLOYED.**

13 (a) ~~IN GENERAL.—~~Section 1902 of the Social Secu-
 14 rity Act (42 U.S.C. 1396b) is amended—

15 ~~(1) in subsection (a)(10)(A)(ii)—~~

16 (A) by striking “or” at the end of sub-
 17 clause (XVIII);

18 (B) by adding “or” at the end of subclause
 19 (XIX); and

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

22 ~~“(XX) who are described in sub-~~
 23 section (dd)(1) (relating to certain un-
 24 employed individuals and their fami-
 25 lies);”;

1 (2) by adding at the end the following new sub-
2 section:

3 “(dd)(1) Individuals described in this paragraph
4 are—

5 “(A) individuals who—

6 “(i) are within one or more of the categories de-
7 scribed in paragraph (2), as elected under the State
8 plan; and

9 “(ii) meet the applicable requirements of para-
10 graph (3); and

11 “(B) individuals who—

12 “(i) are the spouse, or dependent child under
13 19 years of age, of an individual described in sub-
14 paragraph (A); and

15 “(ii) meet the requirement of paragraph (3)(B).

16 “(2) The categories of individuals described in this
17 paragraph are each of the following:

18 “(A)(i) Individuals who are receiving unemploy-
19 ment compensation benefits; and

20 “(ii) individuals who were receiving, but have
21 exhausted, unemployment compensation benefits on
22 or after July 1, 2008.

23 “(B) Individuals who are involuntarily unem-
24 ployed and were involuntarily separated from em-
25 ployment on or after September 1, 2008, and before

1 January 1, 2011, whose family gross income does
2 not exceed a percentage specified by the State (not
3 to exceed 200 percent) of the income official poverty
4 line (as defined by the Office of Management and
5 Budget, and revised annually in accordance with sec-
6 tion 673(2) of the Omnibus Budget Reconciliation
7 Act of 1981) applicable to a family of the size in-
8 volved, and who, but for subsection
9 (a)(10)(A)(ii)(XX), are not eligible for medical as-
10 sistance under this title or health assistance under
11 title XXI.

12 “(C) Individuals who are involuntarily unem-
13 ployed and were involuntarily separated from em-
14 ployment on or after September 1, 2008, and before
15 January 1, 2011, who are members of households
16 participating in the supplemental nutrition assist-
17 ance program established under the Food and Nutri-
18 tion Act of 2008 (7 U.S.C. 2011 et seq.); and who,
19 but for subsection (a)(10)(A)(ii)(XX), are not eligi-
20 ble for medical assistance under this title or health
21 assistance under title XXI.

22 “(3) The requirements of this paragraph with respect
23 to an individual are the following:

24 “(A) In the case of individuals within a cat-
25 egory described in subparagraph (A)(i) of paragraph

1 (2), the individual was involuntarily separated from
 2 employment on or after September 1, 2008, and be-
 3 fore January 1, 2011, or meets such comparable re-
 4 quirement as the Secretary specifies through rule,
 5 guidance, or otherwise in the case of an individual
 6 who was an independent contractor.

7 “(B) The individual is not otherwise covered
 8 under creditable coverage, as defined in section
 9 2701(e) of the Public Health Service Act (42 U.S.C.
 10 300gg(e)), but applied without regard to paragraph
 11 (1)(F) of such section and without regard to cov-
 12 erage provided by reason of the application of sub-
 13 section (a)(10)(A)(ii)(XX).

14 “(4)(A) No income or resources test shall be applied
 15 with respect to any category of individuals described in
 16 subparagraph (A) or (C) of paragraph (2) who are eligible
 17 for medical assistance only by reason of the application
 18 of subsection (a)(10)(A)(ii)(XX).

19 “(B) Nothing in this subsection shall be construed
 20 to prevent a State from imposing a resource test for the
 21 category of individuals described in paragraph (2)(B).

22 “(C) In the case of individuals described in paragraph
 23 (2)(A) or (2)(C), the requirements of subsections (i)(22)
 24 and (x) in section 1903 shall not apply.”

25 (b) 100 PERCENT FEDERAL MATCHING RATE.—

1 (1) ~~FMAP FOR TIME-LIMITED PERIOD.~~—The
2 third sentence of section 1905(b) of such Act (42
3 U.S.C. 1396d(b)) is amended by inserting before the
4 period at the end the following: “and for items and
5 services furnished on or after the date of enactment
6 of this Act and before January 1, 2011, to individ-
7 uals who are eligible for medical assistance only by
8 reason of the application of section
9 1902(a)(10)(A)(ii)(XX)”.

10 (2) ~~CERTAIN ENROLLMENT-RELATED ADMINIS-~~
11 ~~TRATIVE COSTS.~~—Notwithstanding any other provi-
12 sion of law, for purposes of applying section 1903(a)
13 of the Social Security Act (42 U.S.C. 1396b(a)),
14 with respect to expenditures incurred on or after the
15 date of the enactment of this Act and before Janu-
16 ary 1, 2011, for costs of administration (including
17 outreach and the modification and operation of eligi-
18 bility information systems) attributable to eligibility
19 determination and enrollment of individuals who are
20 eligible for medical assistance only by reason of the
21 application of section 1902(a)(10)(A)(ii)(XX) of
22 such Act, as added by subsection (a)(1), the Federal
23 matching percentage shall be 100 percent instead of
24 the matching percentage otherwise applicable.

1 (e) CONFORMING AMENDMENTS.—(1) Section
 2 1903(f)(4) of such Act (42 U.S.C. 1396e(f)(4)) is amend-
 3 ed by inserting “1902(a)(10)(A)(ii)(XX); or” after
 4 “1902(a)(10)(A)(ii)(XIX),”.

5 (2) Section 1905(a) of such Act (42 U.S.C.
 6 1396d(a)) is amended, in the matter preceding paragraph
 7 (1)—

8 (A) by striking “or” at the end of clause (xii);

9 (B) by adding “or” at the end of clause (xiii);

10 and

11 (C) by inserting after clause (xiii) the following
 12 new clause:

13 “(xiv) individuals described in section
 14 1902(dd)(1),”.

15 **TITLE IV—HEALTH**

16 **INFORMATION TECHNOLOGY**

17 **SEC. 4001. SHORT TITLE; TABLE OF CONTENTS OF TITLE.**

18 (a) **SHORT TITLE.**—This title may be cited as the
 19 “Health Information Technology for Economic and Clin-
 20 ical Health Act” or the “HITECH Act”.

21 (b) **TABLE OF CONTENTS OF TITLE.**—The table of
 22 contents of this title is as follows:

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

Subtitle A—Promotion of Health Information Technology

PART I—IMPROVING HEALTH CARE QUALITY, SAFETY, AND EFFICIENCY

Sec. 4101. ONCHIT; standards development and adoption.

“TITLE XXX—HEALTH INFORMATION TECHNOLOGY AND
QUALITY

“Sec. 3000. Definitions.

“Subtitle A—Promotion of Health Information Technology

“Sec. 3001. Office of the National Coordinator for Health Information
Technology.

“Sec. 3002. HIT Policy Committee.

“Sec. 3003. HIT Standards Committee.

“Sec. 3004. Process for adoption of endorsed recommendations; adoption
of initial set of standards; implementation specifications;
and certification criteria.

“Sec. 3005. Application and use of adopted standards and implementation
specifications by Federal agencies.

“Sec. 3006. Voluntary application and use of adopted standards and im-
plementation specifications by private entities.

“Sec. 3007. Federal health information technology.

“Sec. 3008. Transitions.

“Sec. 3009. Relation to HIPAA privacy and security law.

“Sec. 3010. Authorization for appropriations.

Sec. 4102. Technical amendment.

PART II—APPLICATION AND USE OF ADOPTED HEALTH INFORMATION
TECHNOLOGY STANDARDS; REPORTS

Sec. 4111. Coordination of Federal activities with adopted standards and imple-
mentation specifications.

Sec. 4112. Application to private entities.

Sec. 4113. Study and reports.

Subtitle B—Testing of Health Information Technology

Sec. 4201. National Institute for Standards and Technology testing.

Sec. 4202. Research and development programs.

Subtitle C—Incentives for the Use of Health Information Technology

PART I—GRANTS AND LOANS FUNDING

Sec. 4301. Grant, loan, and demonstration programs.

“Subtitle B—Incentives for the Use of Health Information Technology

“Sec. 3011. Immediate funding to strengthen the health information tech-
nology infrastructure.

“Sec. 3012. Health information technology implementation assistance.

“Sec. 3013. State grants to promote health information technology.

“Sec. 3014. Competitive grants to States and Indian tribes for the devel-
opment of loan programs to facilitate the widespread
adoption of certified EHR technology.

“Sec. 3015. Demonstration program to integrate information technology
into clinical education.

“Sec. 3016. Information technology professionals on health care.

“Sec. 3017. General grant and loan provisions.

“Sec. 3018. Authorization for appropriations.

PART II—MEDICARE PROGRAM

- Sec. 4311. Incentives for eligible professionals.
- Sec. 4312. Incentives for hospitals.
- Sec. 4313. Treatment of payments and savings; implementation funding.
- Sec. 4314. Study on application of EHR payment incentives for providers not receiving other incentive payments.

PART III—MEDICAID FUNDING

- Sec. 4321. Medicaid provider HIT adoption and operation payments; implementation funding.
- Sec. 4322. Medicaid nursing home grant program.

Subtitle D—Privacy

- Sec. 4400. Definitions.

PART I—IMPROVED PRIVACY PROVISIONS AND SECURITY PROVISIONS

- Sec. 4401. Application of security provisions and penalties to business associates of covered entities; annual guidance on security provisions.
- Sec. 4402. Notification in the case of breach.
- Sec. 4403. Education on Health Information Privacy.
- Sec. 4404. Application of privacy provisions and penalties to business associates of covered entities.
- Sec. 4405. Restrictions on certain disclosures and sales of health information; accounting of certain protected health information disclosures; access to certain information in electronic format.
- Sec. 4406. Conditions on certain contacts as part of health care operations.
- Sec. 4407. Temporary breach notification requirement for vendors of personal health records and other non-HIPAA covered entities.
- Sec. 4408. Business associate contracts required for certain entities.
- Sec. 4409. Clarification of application of wrongful disclosures criminal penalties.
- Sec. 4410. Improved enforcement.
- Sec. 4411. Audits.
- Sec. 4412. Special rule for information to reduce medication errors and improve patient safety.

PART II—RELATIONSHIP TO OTHER LAWS; REGULATORY REFERENCES;
EFFECTIVE DATE; REPORTS

- Sec. 4421. Relationship to other laws.
- Sec. 4422. Regulatory references.
- Sec. 4423. Effective date.
- Sec. 4424. Studies; reports; guidance.

Subtitle E—Miscellaneous Medicare Provisions

- Sec. 4501. Moratoria on certain Medicare regulations.
- Sec. 4502. Long-term care hospital technical corrections.

1 **Subtitle A—Promotion of Health**
 2 **Information Technology**

3 **PART I—IMPROVING HEALTH CARE QUALITY,**
 4 **SAFETY, AND EFFICIENCY**

5 **SEC. 4101. ONCHIT; STANDARDS DEVELOPMENT AND ADOPTI-**
 6 **ON.**

7 The Public Health Service Act (42 U.S.C. 201 et
 8 seq.) is amended by adding at the end the following:

9 **“TITLE XXX—HEALTH INFORMA-**
 10 **TION TECHNOLOGY AND**
 11 **QUALITY**

12 **“SEC. 3000. DEFINITIONS.**

13 “In this title:

14 “(1) **CERTIFIED EHR TECHNOLOGY.**—The term
 15 ‘certified EHR technology’ means a qualified elec-
 16 tronic health record that is certified pursuant to sec-
 17 tion 3001(c)(5) as meeting standards adopted under
 18 section 3004 that are applicable to the type of
 19 record involved (as determined by the Secretary,
 20 such as an ambulatory electronic health record for
 21 office-based physicians or an inpatient hospital elec-
 22 tronic health record for hospitals).

23 “(2) **ENTERPRISE INTEGRATION.**—The term
 24 ‘enterprise integration’ means the electronic linkage
 25 of health care providers, health plans, the govern-

1 ment, and other interested parties, to enable the
2 electronic exchange and use of health information
3 among all the components in the health care infra-
4 structure in accordance with applicable law, and
5 such term includes related application protocols and
6 other related standards.

7 “(3) HEALTH CARE PROVIDER.—The term
8 ‘health care provider’ means a hospital, skilled nurs-
9 ing facility, nursing facility, home health entity or
10 other long term care facility, health care clinic, Fed-
11 erally qualified health center, group practice (as de-
12 fined in section 1877(h)(4) of the Social Security
13 Act), a pharmacist, a pharmacy, a laboratory, a phy-
14 sician (as defined in section 1861(r) of the Social
15 Security Act), a practitioner (as described in section
16 1842(b)(18)(C) of the Social Security Act), a pro-
17 vider operated by, or under contract with, the Indian
18 Health Service or by an Indian tribe (as defined in
19 the Indian Self-Determination and Education Assist-
20 ance Act), tribal organization, or urban Indian orga-
21 nization (as defined in section 4 of the Indian
22 Health Care Improvement Act), a rural health clinic,
23 a covered entity under section 340B, an ambulatory
24 surgical center described in section 1833(i) of the
25 Social Security Act, and any other category of facil-

1 ity or clinician determined appropriate by the Sec-
2 retary.

3 “(4) HEALTH INFORMATION.—The term ‘health
4 information’ has the meaning given such term in
5 section 1171(4) of the Social Security Act.

6 “(5) HEALTH INFORMATION TECHNOLOGY.—
7 The term ‘health information technology’ means
8 hardware, software, integrated technologies and re-
9 lated licenses, intellectual property, upgrades, and
10 packaged solutions sold as services that are specifi-
11 cally designed for use by health care entities for the
12 electronic creation, maintenance, or exchange of
13 health information.

14 “(6) HEALTH PLAN.—The term ‘health plan’
15 has the meaning given such term in section 1171(5)
16 of the Social Security Act.

17 “(7) HIT POLICY COMMITTEE.—The term ‘HIT
18 Policy Committee’ means such Committee estab-
19 lished under section 3002(a).

20 “(8) HIT STANDARDS COMMITTEE.—The term
21 ‘HIT Standards Committee’ means such Committee
22 established under section 3003(a).

23 “(9) INDIVIDUALLY IDENTIFIABLE HEALTH IN-
24 FORMATION.—The term ‘individually identifiable

1 health information' has the meaning given such term
2 in section 1171(6) of the Social Security Act.

3 “(10) LABORATORY.—The term ‘laboratory’
4 has the meaning given such term in section 353(a).

5 “(11) NATIONAL COORDINATOR.—The term
6 ‘National Coordinator’ means the head of the Office
7 of the National Coordinator for Health Information
8 Technology established under section 3001(a).

9 “(12) PHARMACIST.—The term ‘pharmacist’
10 has the meaning given such term in section 804(2)
11 of the Federal Food, Drug, and Cosmetic Act.

12 “(13) QUALIFIED ELECTRONIC HEALTH
13 RECORD.—The term ‘qualified electronic health
14 record’ means an electronic record of health-related
15 information on an individual that—

16 “(A) includes patient demographic and
17 clinical health information, such as medical his-
18 tory and problem lists; and

19 “(B) has the capacity—

20 “(i) to provide clinical decision sup-
21 port;

22 “(ii) to support physician order entry;

23 “(iii) to capture and query informa-
24 tion relevant to health care quality; and

1 “(iv) to exchange electronic health in-
2 formation with, and integrate such infor-
3 mation from other sources.

4 “(14) STATE.—The term ‘State’ means each of
5 the several States, the District of Columbia, Puerto
6 Rico, the Virgin Islands, Guam, American Samoa,
7 and the Northern Mariana Islands.

8 **“Subtitle A—Promotion of Health**
9 **Information Technology**

10 **“SEC. 3001. OFFICE OF THE NATIONAL COORDINATOR FOR**
11 **HEALTH INFORMATION TECHNOLOGY.**

12 “(a) ESTABLISHMENT.—There is established within
13 the Department of Health and Human Services an Office
14 of the National Coordinator for Health Information Tech-
15 nology (referred to in this section as the ‘Office’). The Of-
16 fice shall be headed by a National Coordinator who shall
17 be appointed by the Secretary and shall report directly to
18 the Secretary.

19 “(b) PURPOSE.—The National Coordinator shall per-
20 form the duties under subsection (c) in a manner con-
21 sistent with the development of a nationwide health infor-
22 mation technology infrastructure that allows for the elec-
23 tronic use and exchange of information and that—

1 “(1) ensures that each patient’s health informa-
2 tion is secure and protected, in accordance with ap-
3 plicable law;

4 “(2) improves health care quality, reduces med-
5 ical errors, reduces health disparities, and advances
6 the delivery of patient-centered medical care;

7 “(3) reduces health care costs resulting from
8 inefficiency, medical errors, inappropriate care, du-
9 plicative care, and incomplete information;

10 “(4) provides appropriate information to help
11 guide medical decisions at the time and place of
12 care;

13 “(5) ensures the inclusion of meaningful public
14 input in such development of such infrastructure;

15 “(6) improves the coordination of care and in-
16 formation among hospitals, laboratories, physician
17 offices, and other entities through an effective infra-
18 structure for the secure and authorized exchange of
19 health care information;

20 “(7) improves public health activities and facili-
21 tates the early identification and rapid response to
22 public health threats and emergencies, including bio-
23 terror events and infectious disease outbreaks;

24 “(8) facilitates health and clinical research and
25 health care quality;

1 “(9) promotes prevention of chronic diseases;

2 “(10) promotes a more effective marketplace,
3 greater competition, greater systems analysis, in-
4 creased consumer choice, and improved outcomes in
5 health care services; and

6 “(11) improves efforts to reduce health dispari-
7 ties.

8 “(e) DUTIES OF THE NATIONAL COORDINATOR.—

9 “(1) STANDARDS.—The National Coordinator
10 shall review and determine whether to endorse each
11 standard, implementation specification, and certifi-
12 cation criterion for the electronic exchange and use
13 of health information that is recommended by the
14 HIT Standards Committee under section 3003 for
15 purposes of adoption under section 3004. The Coor-
16 dinator shall make such determination, and report to
17 the Secretary such determination, not later than 45
18 days after the date the recommendation is received
19 by the Coordinator.

20 “(2) HIT POLICY COORDINATION.—

21 “(A) IN GENERAL.—The National Coordi-
22 nator shall coordinate health information tech-
23 nology policy and programs of the Department
24 with those of other relevant executive branch
25 agencies with a goal of avoiding duplication of

1 efforts and of helping to ensure that each agen-
2 cy undertakes health information technology ae-
3 ctivities primarily within the areas of its greatest
4 expertise and technical capability and in a man-
5 ner towards a coordinated national goal.

6 “(B) HIT POLICY AND STANDARDS COM-
7 MITTEES.—The National Coordinator shall be a
8 leading member in the establishment and oper-
9 ations of the HIT Policy Committee and the
10 HIT Standards Committee and shall serve as a
11 liaison among those two Committees and the
12 Federal Government.

13 “(3) STRATEGIC PLAN.—

14 “(A) IN GENERAL.—The National Coordi-
15 nator shall, in consultation with other appro-
16 priate Federal agencies (including the National
17 Institute of Standards and Technology), update
18 the Federal Health IT Strategic Plan (devel-
19 oped as of June 3, 2008) to include specific ob-
20 jectives, milestones, and metrics with respect to
21 the following:

22 “(i) The electronic exchange and use
23 of health information and the enterprise
24 integration of such information.

1 “(ii) The utilization of an electronic
2 health record for each person in the United
3 States by 2014.

4 “(iii) The incorporation of privacy and
5 security protections for the electronic ex-
6 change of an individual’s individually iden-
7 tifiable health information.

8 “(iv) Ensuring security methods to
9 ensure appropriate authorization and elec-
10 tronic authentication of health information
11 and specifying technologies or methodolo-
12 gies for rendering health information unus-
13 able, unreadable, or indecipherable.

14 “(v) Specifying a framework for co-
15 ordination and flow of recommendations
16 and policies under this subtitle among the
17 Secretary, the National Coordinator, the
18 HIT Policy Committee, the HIT Standards
19 Committee, and other health information
20 exchanges and other relevant entities.

21 “(vi) Methods to foster the public un-
22 derstanding of health information tech-
23 nology.

24 “(vii) Strategies to enhance the use of
25 health information technology in improving

1 the quality of health care, reducing medical
2 errors, reducing health disparities, improv-
3 ing public health, and improving the con-
4 tinuity of care among health care settings.

5 “(B) COLLABORATION.—The strategic
6 plan shall be updated through collaboration of
7 public and private entities.

8 “(C) MEASURABLE OUTCOME GOALS.—
9 The strategic plan update shall include measur-
10 able outcome goals.

11 “(D) PUBLICATION.—The National Coordi-
12 nator shall republish the strategic plan, in-
13 cluding all updates.

14 “(4) WEBSITE.—The National Coordinator
15 shall maintain and frequently update an Internet
16 website on which there is posted information on the
17 work, schedules, reports, recommendations, and
18 other information to ensure transparency in pro-
19 motion of a nationwide health information tech-
20 nology infrastructure.

21 “(5) CERTIFICATION.—

22 “(A) IN GENERAL.—The National Coordi-
23 nator, in consultation with the Director of the
24 National Institute of Standards and Tech-
25 nology, shall develop a program (either directly

1 or by contract) for the voluntary certification of
2 health information technology as being in com-
3 pliance with applicable certification criteria
4 adopted under this subtitle. Such program shall
5 include testing of the technology in accordance
6 with section 4201(b) of the HITECH Act.

7 “(B) CERTIFICATION CRITERIA DE-
8 SCRIBED.—In this title, the term ‘certification
9 criteria’ means, with respect to standards and
10 implementation specifications for health infor-
11 mation technology, criteria to establish that the
12 technology meets such standards and implemen-
13 tation specifications.

14 “(6) REPORTS AND PUBLICATIONS.—

15 “(A) REPORT ON ADDITIONAL FUNDING
16 OR AUTHORITY NEEDED.—Not later than 12
17 months after the date of the enactment of this
18 title, the National Coordinator shall submit to
19 the appropriate committees of jurisdiction of
20 the House of Representatives and the Senate a
21 report on any additional funding or authority
22 the Coordinator or the HIT Policy Committee
23 or HIT Standards Committee requires to evalu-
24 ate and develop standards, implementation
25 specifications, and certification criteria, or to

1 achieve full participation of stakeholders in the
2 adoption of a nationwide health information
3 technology infrastructure that allows for the
4 electronic use and exchange of health informa-
5 tion.

6 “(B) IMPLEMENTATION REPORT.—The
7 National Coordinator shall prepare a report
8 that identifies lessons learned from major pub-
9 lic and private health care systems in their im-
10 plementation of health information technology,
11 including information on whether the tech-
12 nologies and practices developed by such sys-
13 tems may be applicable to and usable in whole
14 or in part by other health care providers.

15 “(C) ASSESSMENT OF IMPACT OF HIT ON
16 COMMUNITIES WITH HEALTH DISPARITIES AND
17 UNINSURED, UNDERINSURED, AND MEDICALLY
18 UNDERSERVED AREAS.—The National Coordi-
19 nator shall assess and publish the impact of
20 health information technology in communities
21 with health disparities and in areas with a high
22 proportion of individuals who are uninsured,
23 underinsured, and medically underserved indi-
24 viduals (including urban and rural areas) and
25 identify practices to increase the adoption of

1 such technology by health care providers in
2 such communities.

3 “(D) EVALUATION OF BENEFITS AND
4 COSTS OF THE ELECTRONIC USE AND EX-
5 CHANGE OF HEALTH INFORMATION.—The Na-
6 tional Coordinator shall evaluate and publish
7 evidence on the benefits and costs of the elec-
8 tronic use and exchange of health information
9 and assess to whom these benefits and costs ac-
10 erue.

11 “(E) RESOURCE REQUIREMENTS.—The
12 National Coordinator shall estimate and publish
13 resources required annually to reach the goal of
14 utilization of an electronic health record for
15 each person in the United States by 2014, in-
16 cluding the required level of Federal funding,
17 expectations for regional, State, and private in-
18 vestment, and the expected contributions by vol-
19 unteers to activities for the utilization of such
20 records.

21 “(7) ASSISTANCE.—The National Coordinator
22 may provide financial assistance to consumer advo-
23 cacy groups and not-for-profit entities that work in
24 the public interest for purposes of defraying the cost
25 to such groups and entities to participate under,

1 whether in whole or in part, the National Tech-
2 nology Transfer Act of 1995 (15 U.S.C. 272 note).

3 “(8) GOVERNANCE FOR NATIONWIDE HEALTH
4 INFORMATION NETWORK.—The National Coordi-
5 nator shall establish a governance mechanism for the
6 nationwide health information network.

7 “(d) DETAIL OF FEDERAL EMPLOYEES.—

8 “(1) IN GENERAL.—Upon the request of the
9 National Coordinator, the head of any Federal agen-
10 cy is authorized to detail, with or without reimburse-
11 ment from the Office, any of the personnel of such
12 agency to the Office to assist it in carrying out its
13 duties under this section.

14 “(2) EFFECT OF DETAIL.—Any detail of per-
15 sonnel under paragraph (1) shall—

16 “(A) not interrupt or otherwise affect the
17 civil service status or privileges of the Federal
18 employee; and

19 “(B) be in addition to any other staff of
20 the Department employed by the National Co-
21 ordinator.

22 “(3) ACCEPTANCE OF DETAILEES.—Notwith-
23 standing any other provision of law, the Office may
24 accept detailed personnel from other Federal agen-

1 eies without regard to whether the agency described
2 under paragraph (1) is reimbursed.

3 “(e) CHIEF PRIVACY OFFICER OF THE OFFICE OF
4 THE NATIONAL COORDINATOR.—Not later than 12
5 months after the date of the enactment of this title, the
6 Secretary shall appoint a Chief Privacy Officer of the Of-
7 fice of the National Coordinator, whose duty it shall be
8 to advise the National Coordinator on privacy, security,
9 and data stewardship of electronic health information and
10 to coordinate with other Federal agencies (and similar pri-
11 vacy officers in such agencies), with State and regional
12 efforts, and with foreign countries with regard to the pri-
13 vacy, security, and data stewardship of electronic individ-
14 ually identifiable health information.

15 **“SEC. 3002. HIT POLICY COMMITTEE.**

16 “(a) ESTABLISHMENT.—There is established a HIT
17 Policy Committee to make policy recommendations to the
18 National Coordinator relating to the implementation of a
19 nationwide health information technology infrastructure,
20 including implementation of the strategic plan described
21 in section 3001(e)(3).

22 “(b) DUTIES.—

23 “(1) RECOMMENDATIONS ON HEALTH INFOR-
24 MATION TECHNOLOGY INFRASTRUCTURE.—The HIT
25 Policy Committee shall recommend a policy frame-

1 work for the development and adoption of a nation-
2 wide health information technology infrastructure
3 that permits the electronic exchange and use of
4 health information as is consistent with the strategic
5 plan under section 3001(e)(3) and that includes the
6 recommendations under paragraph (2). The Com-
7 mittee shall update such recommendations and make
8 new recommendations as appropriate.

9 “(2) SPECIFIC AREAS OF STANDARD DEVELOP-
10 MENT.—

11 “(A) IN GENERAL.—The HIT Policy Com-
12 mittee shall recommend the areas in which
13 standards, implementation specifications, and
14 certification criteria are needed for the elec-
15 tronic exchange and use of health information
16 for purposes of adoption under section 3004
17 and shall recommend an order of priority for
18 the development, harmonization, and recogni-
19 tion of such standards, specifications, and cer-
20 tification criteria among the areas so rec-
21 ommended. Such standards and implementation
22 specifications shall include named standards,
23 architectures, and software schemes for the au-
24 thentication and security of individually identifi-
25 able health information and other information

1 as needed to ensure the reproducible develop-
2 ment of common solutions across disparate en-
3 tities.

4 “(B) AREAS REQUIRED FOR CONSIDER-
5 ATION.—For purposes of subparagraph (A), the
6 HIT Policy Committee shall make recommenda-
7 tions for at least the following areas:

8 “(i) Technologies that protect the pri-
9 vacy of health information and promote se-
10 curity in a qualified electronic health
11 record, including for the segmentation and
12 protection from disclosure of specific and
13 sensitive individually identifiable health in-
14 formation with the goal of minimizing the
15 reluctance of patients to seek care (or dis-
16 close information about a condition) be-
17 cause of privacy concerns, in accordance
18 with applicable law, and for the use and
19 disclosure of limited data sets of such in-
20 formation.

21 “(ii) A nationwide health information
22 technology infrastructure that allows for
23 the electronic use and accurate exchange of
24 health information.

1 “(iii) The utilization of a certified
2 electronic health record for each person in
3 the United States by 2014.

4 “(iv) Technologies that as a part of a
5 qualified electronic health record allow for
6 an accounting of disclosures made by a
7 covered entity (as defined for purposes of
8 regulations promulgated under section
9 264(e) of the Health Insurance Portability
10 and Accountability Act of 1996) for pur-
11 poses of treatment, payment, and health
12 care operations (as such terms are defined
13 for purposes of such regulations).

14 “(v) The use of certified electronic
15 health records to improve the quality of
16 health care, such as by promoting the co-
17 ordination of health care and improving
18 continuity of health care among health
19 care providers, by reducing medical errors,
20 by improving population health, by reduc-
21 ing health disparities, and by advancing re-
22 search and education.

23 “(vi) Technologies that allow individ-
24 ually identifiable health information to be
25 rendered unusable, unreadable, or indeci-

1 pherable to unauthorized individuals when
2 such information is transmitted in the na-
3 tionwide health information network or
4 physically transported outside of the se-
5 cured, physical perimeter of a health care
6 provider, health plan, or health care clear-
7 inghouse.

8 “(C) OTHER AREAS FOR CONSIDER-
9 ATION.—In making recommendations under
10 subparagraph (A), the HIT Policy Committee
11 may consider the following additional areas:

12 “(i) The appropriate uses of a nation-
13 wide health information infrastructure, in-
14 cluding for purposes of—

15 “(I) the collection of quality data
16 and public reporting;

17 “(II) biosurveillance and public
18 health;

19 “(III) medical and clinical re-
20 search; and

21 “(IV) drug safety.

22 “(ii) Self-service technologies that fa-
23 cilitate the use and exchange of patient in-
24 formation and reduce wait times.

1 “(iii) Telemedicine technologies, in
2 order to reduce travel requirements for pa-
3 tients in remote areas.

4 “(iv) Technologies that facilitate home
5 health care and the monitoring of patients
6 recuperating at home.

7 “(v) Technologies that help reduce
8 medical errors.

9 “(vi) Technologies that facilitate the
10 continuity of care among health settings.

11 “(vii) Technologies that meet the
12 needs of diverse populations.

13 “(viii) Any other technology that the
14 HIT Policy Committee finds to be among
15 the technologies with the greatest potential
16 to improve the quality and efficiency of
17 health care.

18 “(3) FORUM.—The HIT Policy Committee shall
19 serve as a forum for broad stakeholder input with
20 specific expertise in policies relating to the matters
21 described in paragraphs (1) and (2).

22 “(c) MEMBERSHIP AND OPERATIONS.—

23 “(1) IN GENERAL.—The National Coordinator
24 shall provide leadership in the establishment and op-
25 erations of the HIT Policy Committee.

1 “(2) MEMBERSHIP.—The membership of the
2 HIT Policy Committee shall at least reflect pro-
3 viders, ancillary healthcare workers, consumers, pur-
4 chasers, health plans, technology vendors, research-
5 ers, relevant Federal agencies, and individuals with
6 technical expertise on health care quality, privacy
7 and security, and on the electronic exchange and use
8 of health information.

9 “(3) CONSIDERATION.—The National Coordi-
10 nator shall ensure that the relevant recommenda-
11 tions and comments from the National Committee
12 on Vital and Health Statistics are considered in the
13 development of policies.

14 “(d) APPLICATION OF FACCA.—The Federal Advisory
15 Committee Act (5 U.S.C. App.), other than section 14 of
16 such Act, shall apply to the HIT Policy Committee.

17 “(e) PUBLICATION.—The Secretary shall provide for
18 publication in the Federal Register and the posting on the
19 Internet website of the Office of the National Coordinator
20 for Health Information Technology of all policy rec-
21 ommendations made by the HIT Policy Committee under
22 this section.

23 **“SEC. 3003. HIT STANDARDS COMMITTEE.**

24 “(a) ESTABLISHMENT.—There is established a com-
25 mittee to be known as the HIT Standards Committee to

1 recommend to the National Coordinator standards, imple-
2 mentation specifications, and certification criteria for the
3 electronic exchange and use of health information for pur-
4 poses of adoption under section 3004, consistent with the
5 implementation of the strategic plan described in section
6 3001(c)(3) and beginning with the areas listed in section
7 3002(b)(2)(B) in accordance with policies developed by
8 the HIT Policy Committee.

9 “(b) DUTIES.—

10 “(1) STANDARDS DEVELOPMENT.—

11 “(A) IN GENERAL.—The HIT Standards
12 Committee shall recommend to the National
13 Coordinator standards, implementation speci-
14 fications, and certification criteria described in
15 subsection (a) that have been developed, har-
16 monized, or recognized by the HIT Standards
17 Committee. The HIT Standards Committee
18 shall update such recommendations and make
19 new recommendations as appropriate, including
20 in response to a notification sent under section
21 3004(a)(2)(B). Such recommendations shall be
22 consistent with the latest recommendations
23 made by the HIT Policy Committee.

24 “(B) PILOT TESTING OF STANDARDS AND
25 IMPLEMENTATION SPECIFICATIONS.—In the de-

1 development, harmonization, or recognition of
2 standards and implementation specifications,
3 the HIT Standards Committee shall, as appro-
4 priate, provide for the testing of such standards
5 and specifications by the National Institute for
6 Standards and Technology under section
7 4201(a) of the HITECH Act.

8 “(C) CONSISTENCY.—The standards, im-
9 plementation specifications, and certification
10 criteria recommended under this subsection
11 shall be consistent with the standards for infor-
12 mation transactions and data elements adopted
13 pursuant to section 1173 of the Social Security
14 Act.

15 “(2) FORUM.—The HIT Standards Committee
16 shall serve as a forum for the participation of a
17 broad range of stakeholders to provide input on the
18 development, harmonization, and recognition of
19 standards, implementation specifications, and certifi-
20 cation criteria necessary for the development and
21 adoption of a nationwide health information tech-
22 nology infrastructure that allows for the electronic
23 use and exchange of health information.

24 “(3) SCHEDULE.—Not later than 90 days after
25 the date of the enactment of this title, the HIT

1 Standards Committee shall develop a schedule for
2 the assessment of policy recommendations developed
3 by the HIT Policy Committee under section 3002.
4 The HIT Standards Committee shall update such
5 schedule annually. The Secretary shall publish such
6 schedule in the Federal Register.

7 “(4) PUBLIC INPUT.—The HIT Standards
8 Committee shall conduct open public meetings and
9 develop a process to allow for public comment on the
10 schedule described in paragraph (3) and rec-
11 ommendations described in this subsection. Under
12 such process comments shall be submitted in a time-
13 ly manner after the date of publication of a rec-
14 ommendation under this subsection.

15 “(c) MEMBERSHIP AND OPERATIONS.—

16 “(1) IN GENERAL.—The National Coordinator
17 shall provide leadership in the establishment and op-
18 erations of the HIT Standards Committee.

19 “(2) MEMBERSHIP.—The membership of the
20 HIT Standards Committee shall at least reflect pro-
21 viders, ancillary healthcare workers, consumers, pur-
22 chasers, health plans, technology vendors, research-
23 ers, relevant Federal agencies, and individuals with
24 technical expertise on health care quality, privacy

1 and security, and on the electronic exchange and use
2 of health information.

3 “(3) CONSIDERATION.—The National Coordi-
4 nator shall ensure that the relevant recommenda-
5 tions and comments from the National Committee
6 on Vital and Health Statistics are considered in the
7 development of standards.

8 “(4) ASSISTANCE.—For the purposes of ear-
9 rying out this section, the Secretary may provide or
10 ensure that financial assistance is provided by the
11 HIT Standards Committee to defray in whole or in
12 part any membership fees or dues charged by such
13 Committee to those consumer advocacy groups and
14 not for profit entities that work in the public inter-
15 est as a part of their mission.

16 “(d) APPLICATION OF FACA.—The Federal Advisory
17 Committee Act (5 U.S.C. App.), other than section 14,
18 shall apply to the HIT Standards Committee.

19 “(e) PUBLICATION.—The Secretary shall provide for
20 publication in the Federal Register and the posting on the
21 Internet website of the Office of the National Coordinator
22 for Health Information Technology of all recommenda-
23 tions made by the HIT Standards Committee under this
24 section.

1 **“SEC. 3004. PROCESS FOR ADOPTION OF ENDORSED REC-**
2 **COMMENDATIONS; ADOPTION OF INITIAL SET**
3 **OF STANDARDS, IMPLEMENTATION SPECI-**
4 **FICATIONS, AND CERTIFICATION CRITERIA.**

5 **“(a) PROCESS FOR ADOPTION OF ENDORSED REC-**
6 **COMMENDATIONS.—**

7 **“(1) REVIEW OF ENDORSED STANDARDS, IM-**
8 **PLEMENTATION SPECIFICATIONS, AND CERTIFI-**
9 **CATION CRITERIA.—**Not later than 90 days after the
10 date of receipt of standards, implementation speci-
11 fications, or certification criteria endorsed under sec-
12 tion 3001(e), the Secretary, in consultation with rep-
13 resentatives of other relevant Federal agencies, shall
14 jointly review such standards, implementation speci-
15 fications, or certification criteria and shall determine
16 whether or not to propose adoption of such stand-
17 ards, implementation specifications, or certification
18 criteria.

19 **“(2) DETERMINATION TO ADOPT STANDARDS,**
20 **IMPLEMENTATION SPECIFICATIONS, AND CERTIFI-**
21 **CATION CRITERIA.—**If the Secretary determines—

22 **“(A) to propose adoption of any grouping**
23 **of such standards, implementation specifica-**
24 **tions, or certification criteria, the Secretary**
25 **shall, by regulation, determine whether or not**

1 to adopt such grouping of standards, implemen-
2 tation specifications, or certification criteria; or

3 “(B) not to propose adoption of any group-
4 ing of standards, implementation specifications,
5 or certification criteria, the Secretary shall no-
6 tify the National Coordinator and the HIT
7 Standards Committee in writing of such deter-
8 mination and the reasons for not proposing the
9 adoption of such recommendation.

10 “(3) PUBLICATION.—The Secretary shall pro-
11 vide for publication in the Federal Register of all de-
12 terminations made by the Secretary under para-
13 graph (1).

14 “(b) ADOPTION OF INITIAL SET OF STANDARDS, IM-
15 PLEMENTATION SPECIFICATIONS, AND CERTIFICATION
16 CRITERIA.—

17 “(1) IN GENERAL.—Not later than December
18 31, 2009, the Secretary shall, through the rule-
19 making process described in section 3004(a), adopt
20 an initial set of standards, implementation specifica-
21 tions, and certification criteria for the areas required
22 for consideration under section 3002(b)(2)(B).

23 “(2) APPLICATION OF CURRENT STANDARDS,
24 IMPLEMENTATION SPECIFICATIONS, AND CERTIFI-
25 CATION CRITERIA.—The standards, implementation

1 specifications, and certification criteria adopted be-
2 fore the date of the enactment of this title through
3 the process existing through the Office of the Na-
4 tional Coordinator for Health Information Tech-
5 nology may be applied towards meeting the require-
6 ment of paragraph (1).

7 **“SEC. 3005. APPLICATION AND USE OF ADOPTED STAND-**
8 **ARDS AND IMPLEMENTATION SPECIFICA-**
9 **TIONS BY FEDERAL AGENCIES.**

10 “For requirements relating to the application and use
11 by Federal agencies of the standards and implementation
12 specifications adopted under section 3004, see section
13 4111 of the HITECH Act.

14 **“SEC. 3006. VOLUNTARY APPLICATION AND USE OF ADOPT-**
15 **ED STANDARDS AND IMPLEMENTATION**
16 **SPECIFICATIONS BY PRIVATE ENTITIES.**

17 “(a) IN GENERAL.—Except as provided under section
18 4112 of the HITECH Act, any standard or implementa-
19 tion specification adopted under section 3004 shall be vol-
20 untary with respect to private entities.

21 “(b) RULE OF CONSTRUCTION.—Nothing in this sub-
22 title shall be construed to require that a private entity that
23 enters into a contract with the Federal Government apply
24 or use the standards and implementation specifications

1 adopted under section 3004 with respect to activities not
2 related to the contract.

3 **“SEC. 3007. FEDERAL HEALTH INFORMATION TECH-**
4 **NOLOGY.**

5 “(a) IN GENERAL.—The National Coordinator shall
6 support the development, routine updating, and provision
7 of qualified EHR technology (as defined in section 3000)
8 consistent with subsections (b) and (c) unless the Sec-
9 retary determines that the needs and demands of pro-
10 viders are being substantially and adequately met through
11 the marketplace.

12 “(b) CERTIFICATION.—In making such EHR tech-
13 nology publicly available, the National Coordinator shall
14 ensure that the qualified EHR technology described in
15 subsection (a) is certified under the program developed
16 under section 3001(c)(3) to be in compliance with applica-
17 ble standards adopted under section 3003(a).

18 “(c) AUTHORIZATION TO CHARGE A NOMINAL
19 FEE.—The National Coordinator may impose a nominal
20 fee for the adoption by a health care provider of the health
21 information technology system developed or approved
22 under subsection (a) and (b). Such fee shall take into ac-
23 count the financial circumstances of smaller providers, low
24 income providers, and providers located in rural or other
25 medically underserved areas.

1 “(d) **RULE OF CONSTRUCTION.**—Nothing in this sec-
2 tion shall be construed to require that a private or govern-
3 ment entity adopt or use the technology provided under
4 this section.

5 **“SEC. 3008. TRANSITIONS.**

6 “(a) **ONCHIT.**—To the extent consistent with sec-
7 tion 3001, all functions, personnel, assets, liabilities, and
8 administrative actions applicable to the National Coordi-
9 nator for Health Information Technology appointed under
10 Executive Order No. 13335 or the Office of such National
11 Coordinator on the date before the date of the enactment
12 of this title shall be transferred to the National Coordi-
13 nator appointed under section 3001(a) and the Office of
14 such National Coordinator as of the date of the enactment
15 of this title.

16 “(b) **AHIC.**—

17 “(1) To the extent consistent with sections
18 3002 and 3003, all functions, personnel, assets, and
19 liabilities applicable to the AHIC Successor, Inc.
20 doing business as the National eHealth Collaborative
21 as of the day before the date of the enactment of
22 this title shall be transferred to the HIT Policy
23 Committee or the HIT Standards Committee, estab-
24 lished under section 3002(a) or 3003(a), as appro-
25 priate, as of the date of the enactment of this title.

1 ~~“(2) In carrying out section 3003(b)(1)(A),~~
2 ~~until recommendations are made by the HIT Policy~~
3 ~~Committee, recommendations of the HIT Standards~~
4 ~~Committee shall be consistent with the most recent~~
5 ~~recommendations made by such AHIC Successor,~~
6 ~~Inc.~~

7 ~~“(e) RULES OF CONSTRUCTION.—~~

8 ~~“(1) ONCHIT.—Nothing in section 3001 or~~
9 ~~subsection (a) shall be construed as requiring the~~
10 ~~creation of a new entity to the extent that the Office~~
11 ~~of the National Coordinator for Health Information~~
12 ~~Technology established pursuant to Executive Order~~
13 ~~No. 13335 is consistent with the provisions of sec-~~
14 ~~tion 3001.~~

15 ~~“(2) AHIC.—Nothing in sections 3002 or 3003~~
16 ~~or subsection (b) shall be construed as prohibiting~~
17 ~~the AHIC Successor, Inc. doing business as the Na-~~
18 ~~tional eHealth Collaborative from modifying its char-~~
19 ~~ter, duties, membership, and any other structure or~~
20 ~~function required to be consistent with section 3002~~
21 ~~and 3003 in a manner that would permit the Sec-~~
22 ~~retary to choose to recognize such AHIC Successor,~~
23 ~~Inc. as the HIT Policy Committee or the HIT~~
24 ~~Standards Committee.~~

1 **“SEC. 3009. RELATION TO HIPAA PRIVACY AND SECURITY**
2 **LAW.**

3 “(a) IN GENERAL.—With respect to the relation of
4 this title to HIPAA privacy and security law:

5 “(1) This title may not be construed as having
6 any effect on the authorities of the Secretary under
7 HIPAA privacy and security law.

8 “(2) The purposes of this title include ensuring
9 that the health information technology standards
10 and implementation specifications adopted under
11 section 3004 take into account the requirements of
12 HIPAA privacy and security law.

13 “(b) DEFINITION.—For purposes of this section, the
14 term ‘HIPAA privacy and security law’ means—

15 “(1) the provisions of part C of title XI of the
16 Social Security Act, section 264 of the Health Insur-
17 ance Portability and Accountability Act of 1996, and
18 subtitle D of title IV of the HITECH Act; and

19 “(2) regulations under such provisions.

20 **“SEC. 3010. AUTHORIZATION FOR APPROPRIATIONS.**

21 “There is authorized to be appropriated to the Office
22 of the National Coordinator for Health Information Tech-
23 nology to carry out this subtitle \$250,000,000 for fiscal
24 year 2009.”.

1 **SEC. 4102. TECHNICAL AMENDMENT.**

2 Section 1171(5) of the Social Security Act (42 U.S.C.
3 1320d) is amended by striking “or C” and inserting “C,
4 or D”.

5 **PART II—APPLICATION AND USE OF ADOPTED**
6 **HEALTH INFORMATION TECHNOLOGY**
7 **STANDARDS; REPORTS**

8 **SEC. 4111. COORDINATION OF FEDERAL ACTIVITIES WITH**
9 **ADOPTED STANDARDS AND IMPLEMENTA-**
10 **TION SPECIFICATIONS.**

11 (a) **SPENDING ON HEALTH INFORMATION TECH-**
12 **NOLOGY SYSTEMS.**—As each agency (as defined in the Ex-
13 ecutive order issued on August 22, 2006, relating to pro-
14 moting quality and efficient health care in Federal govern-
15 ment administered or sponsored health care programs) im-
16 plements, acquires, or upgrades health information tech-
17 nology systems used for the direct exchange of individually
18 identifiable health information between agencies and with
19 non-Federal entities, it shall utilize, where available,
20 health information technology systems and products that
21 meet standards and implementation specifications adopted
22 under section 3004 of the Public Health Service Act, as
23 added by section 4101.

24 (b) **FEDERAL INFORMATION COLLECTION ACTIVI-**
25 **TIES.**—With respect to a standard or implementation
26 specification adopted under section 3004 of the Public

1 Health Service Act, as added by section 4101, the Presi-
2 dent shall take measures to ensure that Federal activities
3 involving the broad collection and submission of health in-
4 formation are consistent with such standard or implemen-
5 tation specification, respectively, within three years after
6 the date of such adoption.

7 (c) APPLICATION OF DEFINITIONS.—The definitions
8 contained in section 3000 of the Public Health Service
9 Act, as added by section 4101, shall apply for purposes
10 of this part.

11 **SEC. 4112. APPLICATION TO PRIVATE ENTITIES.**

12 Each agency (as defined in such Executive Order
13 issued on August 22, 2006, relating to promoting quality
14 and efficient health care in Federal government adminis-
15 tered or sponsored health care programs) shall require in
16 contracts or agreements with health care providers, health
17 plans, or health insurance issuers that as each provider,
18 plan, or issuer implements, acquires, or upgrades health
19 information technology systems, it shall utilize, where
20 available, health information technology systems and prod-
21 ucts that meet standards and implementation specifica-
22 tions adopted under section 3004 of the Public Health
23 Service Act, as added by section 4101.

1 **SEC. 4113. STUDY AND REPORTS.**

2 (a) **REPORT ON ADOPTION OF NATIONWIDE SYS-**
3 **TEM.**—Not later than 2 years after the date of the enact-
4 ment of this Act and annually thereafter, the Secretary
5 of Health and Human Services shall submit to the appro-
6 priate committees of jurisdiction of the House of Rep-
7 resentatives and the Senate a report that—

8 (1) describes the specific actions that have been
9 taken by the Federal Government and private enti-
10 ties to facilitate the adoption of a nationwide system
11 for the electronic use and exchange of health infor-
12 mation;

13 (2) describes barriers to the adoption of such a
14 nationwide system; and

15 (3) contains recommendations to achieve full
16 implementation of such a nationwide system.

17 (b) **REIMBURSEMENT INCENTIVE STUDY AND RE-**
18 **PORT.**—

19 (1) **STUDY.**—The Secretary of Health and
20 Human Services shall carry out, or contract with a
21 private entity to carry out, a study that examines
22 methods to create efficient reimbursement incentives
23 for improving health care quality in Federally quali-
24 fied health centers, rural health clinics, and free
25 clinics.

1 (2) REPORT.—Not later than 2 years after the
2 date of the enactment of this Act, the Secretary of
3 Health and Human Services shall submit to the ap-
4 propriate committees of jurisdiction of the House of
5 Representatives and the Senate a report on the
6 study carried out under paragraph (1).

7 (c) AGING SERVICES TECHNOLOGY STUDY AND RE-
8 PORT.—

9 (1) IN GENERAL.—The Secretary of Health and
10 Human Services shall carry out, or contract with a
11 private entity to carry out, a study of matters relat-
12 ing to the potential use of new aging services tech-
13 nology to assist seniors, individuals with disabilities,
14 and their caregivers throughout the aging process.

15 (2) MATTERS TO BE STUDIED.—The study
16 under paragraph (1) shall include—

17 (A) an evaluation of—

18 (i) methods for identifying current,
19 emerging, and future health technology
20 that can be used to meet the needs of sen-
21 iors and individuals with disabilities and
22 their caregivers across all aging services
23 settings, as specified by the Secretary;

24 (ii) methods for fostering scientific in-
25 novation with respect to aging services

1 technology within the business and aca-
2 demic communities; and

3 (iii) developments in aging services
4 technology in other countries that may be
5 applied in the United States; and

6 (B) identification of—

7 (i) barriers to innovation in aging
8 services technology and devising strategies
9 for removing such barriers; and

10 (ii) barriers to the adoption of aging
11 services technology by health care pro-
12 viders and consumers and devising strate-
13 gies to removing such barriers.

14 (3) REPORT.—Not later than 24 months after
15 the date of the enactment of this Act, the Secretary
16 shall submit to the appropriate committees of juris-
17 diction of the House of Representatives and of the
18 Senate a report on the study carried out under para-
19 graph (1).

20 (4) DEFINITIONS.—For purposes of this sub-
21 section:

22 (A) AGING SERVICES TECHNOLOGY.—The
23 term “aging services technology” means health
24 technology that meets the health care needs of

1 seniors, individuals with disabilities, and the
2 caregivers of such seniors and individuals.

3 (B) SENIOR.—The term “senior” has such
4 meaning as specified by the Secretary.

5 **Subtitle B—Testing of Health**
6 **Information Technology**

7 **SEC. 4201. NATIONAL INSTITUTE FOR STANDARDS AND**
8 **TECHNOLOGY TESTING.**

9 (a) PILOT TESTING OF STANDARDS AND IMPLEMEN-
10 TATION SPECIFICATIONS.—In coordination with the HIT
11 Standards Committee established under section 3003 of
12 the Public Health Service Act, as added by section 4101,
13 with respect to the development of standards and imple-
14 mentation specifications under such section, the Director
15 of the National Institute for Standards and Technology
16 shall test such standards and implementation specifica-
17 tions, as appropriate, in order to assure the efficient im-
18 plementation and use of such standards and implementa-
19 tion specifications.

20 (b) VOLUNTARY TESTING PROGRAM.—In coordina-
21 tion with the HIT Standards Committee established under
22 section 3003 of the Public Health Service Act, as added
23 by section 4101, with respect to the development of stand-
24 ards and implementation specifications under such sec-
25 tion, the Director of the National Institute of Standards

1 and Technology shall support the establishment of a con-
2 formance testing infrastructure, including the develop-
3 ment of technical test beds. The development of this con-
4 formance testing infrastructure may include a program to
5 accredit independent, non-Federal laboratories to perform
6 testing.

7 **SEC. 4202. RESEARCH AND DEVELOPMENT PROGRAMS.**

8 (a) **HEALTH CARE INFORMATION ENTERPRISE INTE-**
9 **GRATION RESEARCH CENTERS.—**

10 (1) **IN GENERAL.—**The Director of the National
11 Institute of Standards and Technology, in consulta-
12 tion with the Director of the National Science Foun-
13 dation and other appropriate Federal agencies, shall
14 establish a program of assistance to institutions of
15 higher education (or consortia thereof which may in-
16 clude nonprofit entities and Federal Government
17 laboratories) to establish multidisciplinary Centers
18 for Health Care Information Enterprise Integration.

19 (2) **REVIEW; COMPETITION.—**Grants shall be
20 awarded under this subsection on a merit-reviewed,
21 competitive basis.

22 (3) **PURPOSE.—**The purposes of the Centers de-
23 scribed in paragraph (1) shall be—

24 (A) to generate innovative approaches to
25 health care information enterprise integration

1 by conducting cutting-edge, multidisciplinary
2 research on the systems challenges to health
3 care delivery; and

4 (B) the development and use of health in-
5 formation technologies and other complemen-
6 tary fields.

7 (4) RESEARCH AREAS.—Research areas may in-
8 clude—

9 (A) interfaces between human information
10 and communications technology systems;

11 (B) voice-recognition systems;

12 (C) software that improves interoperability
13 and connectivity among health information sys-
14 tems;

15 (D) software dependability in systems crit-
16 ical to health care delivery;

17 (E) measurement of the impact of informa-
18 tion technologies on the quality and productivity
19 of health care;

20 (F) health information enterprise manage-
21 ment;

22 (G) health information technology security
23 and integrity; and

24 (H) relevant health information technology
25 to reduce medical errors.

1 (5) APPLICATIONS.—An institution of higher
2 education (or a consortium thereof) seeking funding
3 under this subsection shall submit an application to
4 the Director of the National Institute of Standards
5 and Technology at such time, in such manner, and
6 containing such information as the Director may re-
7 quire. The application shall include, at a minimum,
8 a description of—

9 (A) the research projects that will be un-
10 dertaken by the Center established pursuant to
11 assistance under paragraph (1) and the respec-
12 tive contributions of the participating entities;

13 (B) how the Center will promote active col-
14 laboration among scientists and engineers from
15 different disciplines, such as information tech-
16 nology, biologic sciences, management, social
17 sciences, and other appropriate disciplines;

18 (C) technology transfer activities to dem-
19 onstrate and diffuse the research results, tech-
20 nologies, and knowledge; and

21 (D) how the Center will contribute to the
22 education and training of researchers and other
23 professionals in fields relevant to health infor-
24 mation enterprise integration.

1 (b) NATIONAL INFORMATION TECHNOLOGY RE-
2 SEARCH AND DEVELOPMENT PROGRAM.—The National
3 High-Performance Computing Program established by
4 section 101 of the High-Performance Computing Act of
5 1991 (15 U.S.C. 5511) shall coordinate Federal research
6 and development programs related to the development and
7 deployment of health information technology, including ac-
8 tivities related to—

- 9 (1) computer infrastructure;
- 10 (2) data security;
- 11 (3) development of large-scale, distributed, reli-
12 able computing systems;
- 13 (4) wired, wireless, and hybrid high-speed net-
14 working;
- 15 (5) development of software and software-inten-
16 sive systems;
- 17 (6) human-computer interaction and informa-
18 tion management technologies; and
- 19 (7) the social and economic implications of in-
20 formation technology.

1 **Subtitle C—Incentives for the Use**
2 **of Health Information Technology**

3 **PART I—GRANTS AND LOANS FUNDING**

4 **SEC. 4301. GRANT, LOAN, AND DEMONSTRATION PRO-**
5 **GRAMS.**

6 Title XXX of the Public Health Service Act, as added
7 by section 4101, is amended by adding at the end the fol-
8 lowing new subtitle:

9 **“Subtitle B—Incentives for the Use**
10 **of Health Information Technology**

11 **“SEC. 3011. IMMEDIATE FUNDING TO STRENGTHEN THE**
12 **HEALTH INFORMATION TECHNOLOGY INFRA-**
13 **STRUCTURE.**

14 “(a) IN GENERAL.—The Secretary shall, using
15 amounts appropriated under section 3018, invest in the
16 infrastructure necessary to allow for and promote the elec-
17 tronic exchange and use of health information for each
18 individual in the United States consistent with the goals
19 outlined in the strategic plan developed by the National
20 Coordinator (and as available) under section 3001. To the
21 greatest extent practicable, the Secretary shall ensure that
22 any funds so appropriated shall be used for the acquisition
23 of health information technology that meets standards and
24 certification criteria adopted before the date of the enact-
25 ment of this title until such date as the standards are

1 adopted under section 3004. The Secretary shall invest
2 funds through the different agencies with expertise in such
3 goals, such as the Office of the National Coordinator for
4 Health Information Technology, the Health Resources and
5 Services Administration, the Agency for Healthcare Re-
6 search and Quality, the Centers of Medicare & Medicaid
7 Services, the Centers for Disease Control and Prevention,
8 and the Indian Health Service to support the following:

9 “(1) Health information technology architecture
10 that will support the nationwide electronic exchange
11 and use of health information in a secure, private,
12 and accurate manner, including connecting health
13 information exchanges, and which may include up-
14 dating and implementing the infrastructure nec-
15 essary within different agencies of the Department
16 of Health and Human Services to support the elec-
17 tronic use and exchange of health information.

18 “(2) Development and adoption of appropriate
19 certified electronic health records for categories of
20 providers, as defined in section 3000, not eligible for
21 support under title XVIII or XIX of the Social Secu-
22 rity Act for the adoption of such records.

23 “(3) Training on and dissemination of informa-
24 tion on best practices to integrate health information
25 technology, including electronic health records, into

1 a provider's delivery of care, consistent with best
2 practices learned from the Health Information Tech-
3 nology Research Center developed under section
4 3012(b), including community health centers receiv-
5 ing assistance under section 330, covered entities
6 under section 340B, and providers participating in
7 one or more of the programs under titles XVIII,
8 XIX, and XXI of the Social Security Act (relating
9 to Medicare, Medicaid, and the State Children's
10 Health Insurance Program).

11 “(4) Infrastructure and tools for the promotion
12 of telemedicine, including coordination among Fed-
13 eral agencies in the promotion of telemedicine.

14 “(5) Promotion of the interoperability of clinical
15 data repositories or registries.

16 “(6) Promotion of technologies and best prac-
17 tices that enhance the protection of health informa-
18 tion by all holders of individually identifiable health
19 information.

20 “(7) Improvement and expansion of the use of
21 health information technology by public health de-
22 partments.

23 “(8) Provision of \$300 million to support re-
24 gional or sub-national efforts towards health infor-
25 mation exchange.

1 “(b) **COORDINATION.**—The Secretary shall ensure
2 funds under this section are used in a coordinated manner
3 with other health information promotion activities.

4 “(c) **ADDITIONAL USE OF FUNDS.**—In addition to
5 using funds as provided in subsection (a), the Secretary
6 may use amounts appropriated under section 3018 to
7 carry out health information technology activities that are
8 provided for under laws in effect on the date of the enact-
9 ment of this title.

10 **“SEC. 3012. HEALTH INFORMATION TECHNOLOGY IMPLE-**
11 **MENTATION ASSISTANCE.**

12 “(a) **HEALTH INFORMATION TECHNOLOGY EXTEN-**
13 **SION PROGRAM.**—To assist health care providers to adopt,
14 implement, and effectively use certified EHR technology
15 that allows for the electronic exchange and use of health
16 information, the Secretary, acting through the Office of
17 the National Coordinator, shall establish a health informa-
18 tion technology extension program to provide health infor-
19 mation technology assistance services to be carried out
20 through the Department of Health and Human Services.
21 The National Coordinator shall consult with other Federal
22 agencies with demonstrated experience and expertise in in-
23 formation technology services, such as the National Insti-
24 tute of Standards and Technology, in developing and im-
25 plementing this program.

1 “(b) HEALTH INFORMATION TECHNOLOGY RE-
2 SEARCH CENTER.—

3 “(1) IN GENERAL.—The Secretary shall create
4 a Health Information Technology Research Center
5 (in this section referred to as the ‘Center’) to pro-
6 vide technical assistance and develop or recognize
7 best practices to support and accelerate efforts to
8 adopt, implement, and effectively utilize health infor-
9 mation technology that allows for the electronic ex-
10 change and use of information in compliance with
11 standards, implementation specifications, and certifi-
12 cation criteria adopted under section 3004.

13 “(2) INPUT.—The Center shall incorporate
14 input from—

15 “(A) other Federal agencies with dem-
16 onstrated experience and expertise in informa-
17 tion technology services such as the National
18 Institute of Standards and Technology;

19 “(B) users of health information tech-
20 nology, such as providers and their support and
21 clerical staff and others involved in the care and
22 care coordination of patients; from the health
23 care and health information technology indus-
24 try; and

25 “(C) others as appropriate.

1 “(3) PURPOSES.—The purposes of the Center
2 are to—

3 “(A) provide a forum for the exchange of
4 knowledge and experience;

5 “(B) accelerate the transfer of lessons
6 learned from existing public and private sector
7 initiatives, including those currently receiving
8 Federal financial support;

9 “(C) assemble, analyze, and widely dis-
10 seminate evidence and experience related to the
11 adoption, implementation, and effective use of
12 health information technology that allows for
13 the electronic exchange and use of information
14 including through the regional centers described
15 in subsection (c);

16 “(D) provide technical assistance for the
17 establishment and evaluation of regional and
18 local health information networks to facilitate
19 the electronic exchange of information across
20 health care settings and improve the quality of
21 health care;

22 “(E) provide technical assistance for the
23 development and dissemination of solutions to
24 barriers to the exchange of electronic health in-
25 formation; and

1 “(F) learn about effective strategies to
2 adopt and utilize health information technology
3 in medically underserved communities.

4 “(e) HEALTH INFORMATION TECHNOLOGY RE-
5 REGIONAL EXTENSION CENTERS.—

6 “(1) IN GENERAL.—The Secretary shall provide
7 assistance for the creation and support of regional
8 centers (in this subsection referred to as ‘regional
9 centers’) to provide technical assistance and dissemi-
10 nate best practices and other information learned
11 from the Center to support and accelerate efforts to
12 adopt, implement, and effectively utilize health infor-
13 mation technology that allows for the electronic ex-
14 change and use of information in compliance with
15 standards, implementation specifications, and certifi-
16 cation criteria adopted under section 3004. Activities
17 conducted under this subsection shall be consistent
18 with the strategic plan developed by the National
19 Coordinator, (and, as available) under section 3001.

20 “(2) AFFILIATION.—Regional centers shall be
21 affiliated with any United States-based nonprofit in-
22 stitution or organization, or group thereof, that ap-
23 plies and is awarded financial assistance under this
24 section. Individual awards shall be decided on the
25 basis of merit.

1 “(3) OBJECTIVE.—The objective of the regional
2 centers is to enhance and promote the adoption of
3 health information technology through—

4 “(A) assistance with the implementation,
5 effective use, upgrading, and ongoing mainte-
6 nance of health information technology, includ-
7 ing electronic health records, to healthcare pro-
8 viders nationwide;

9 “(B) broad participation of individuals
10 from industry, universities, and State govern-
11 ments;

12 “(C) active dissemination of best practices
13 and research on the implementation, effective
14 use, upgrading, and ongoing maintenance of
15 health information technology, including elec-
16 tronic health records, to health care providers
17 in order to improve the quality of healthcare
18 and protect the privacy and security of health
19 information;

20 “(D) participation, to the extent prac-
21 ticable, in health information exchanges;

22 “(E) utilization, when appropriate, of the
23 expertise and capability that exists in Federal
24 agencies other than the Department; and

1 “(F) integration of health information
2 technology, including electronic health records,
3 into the initial and ongoing training of health
4 professionals and others in the healthcare in-
5 dustry that would be instrumental to improving
6 the quality of healthcare through the smooth
7 and accurate electronic use and exchange of
8 health information.

9 “(4) REGIONAL ASSISTANCE.—Each regional
10 center shall aim to provide assistance and education
11 to all providers in a region, but shall prioritize any
12 direct assistance first to the following:

13 “(A) Public or not-for-profit hospitals or
14 critical access hospitals.

15 “(B) Federally qualified health centers (as
16 defined in section 1861(aa)(4) of the Social Se-
17 curity Act).

18 “(C) Entities that are located in rural and
19 other areas that serve uninsured, underinsured,
20 and medically underserved individuals (regard-
21 less of whether such area is urban or rural).

22 “(D) Individual or small group practices
23 (or a consortium thereof) that are primarily fo-
24 cused on primary care.

1 “(5) FINANCIAL SUPPORT.—The Secretary may
2 provide financial support to any regional center cre-
3 ated under this subsection for a period not to exceed
4 four years. The Secretary may not provide more
5 than 50 percent of the capital and annual operating
6 and maintenance funds required to create and main-
7 tain such a center, except in an instance of national
8 economic conditions which would render this cost-
9 share requirement detrimental to the program and
10 upon notification to Congress as to the justification
11 to waive the cost-share requirement.

12 “(6) NOTICE OF PROGRAM DESCRIPTION AND
13 AVAILABILITY OF FUNDS.—The Secretary shall pub-
14 lish in the Federal Register, not later than 90 days
15 after the date of the enactment of this title, a draft
16 description of the program for establishing regional
17 centers under this subsection. Such description shall
18 include the following:

19 “(A) A detailed explanation of the program
20 and the programs goals.

21 “(B) Procedures to be followed by the ap-
22 plicants.

23 “(C) Criteria for determining qualified ap-
24 plicants.

1 “(D) Maximum support levels expected to
2 be available to centers under the program.

3 “(7) APPLICATION REVIEW.—The Secretary
4 shall subject each application under this subsection
5 to merit review. In making a decision whether to ap-
6 prove such application and provide financial support,
7 the Secretary shall consider at a minimum the mer-
8 its of the application, including those portions of the
9 application regarding—

10 “(A) the ability of the applicant to provide
11 assistance under this subsection and utilization
12 of health information technology appropriate to
13 the needs of particular categories of health care
14 providers;

15 “(B) the types of service to be provided to
16 health care providers;

17 “(C) geographical diversity and extent of
18 service area; and

19 “(D) the percentage of funding and
20 amount of in-kind commitment from other
21 sources.

22 “(8) BIENNIAL EVALUATION.—Each regional
23 center which receives financial assistance under this
24 subsection shall be evaluated biennially by an evalua-
25 tion panel appointed by the Secretary. Each evalua-

1 tion panel shall be composed of private experts, none
2 of whom shall be connected with the center involved,
3 and of Federal officials. Each evaluation panel shall
4 measure the involved center's performance against
5 the objective specified in paragraph (3). The Sec-
6 retary shall not continue to provide funding to a re-
7 gional center unless its evaluation is overall positive.

8 “(9) CONTINUING SUPPORT.—After the second
9 year of assistance under this subsection, a regional
10 center may receive additional support under this
11 subsection if it has received positive evaluations and
12 a finding by the Secretary that continuation of Fed-
13 eral funding to the center was in the best interest
14 of provision of health information technology exten-
15 sion services.

16 **“SEC. 3013. STATE GRANTS TO PROMOTE HEALTH INFOR-**
17 **MATION TECHNOLOGY.**

18 “(a) IN GENERAL.—The Secretary, acting through
19 the National Coordinator, shall establish a program in ac-
20 cordance with this section to facilitate and expand the
21 electronic movement and use of health information among
22 organizations according to nationally recognized stand-
23 ards.

24 “(b) PLANNING GRANTS.—The Secretary may award
25 a grant to a State or qualified State-designated entity (as

1 described in subsection (f)) that submits an application
2 to the Secretary at such time, in such manner, and con-
3 taining such information as the Secretary may specify, for
4 the purpose of planning activities described in subsection
5 (d).

6 “(e) IMPLEMENTATION GRANTS.—The Secretary
7 may award a grant to a State or qualified State designated
8 entity that—

9 “(1) has submitted, and the Secretary has ap-
10 proved, a plan described in subsection (e) (regardless
11 of whether such plan was prepared using amounts
12 awarded under subsection (b); and

13 “(2) submits an application at such time, in
14 such manner, and containing such information as
15 the Secretary may specify.

16 “(d) USE OF FUNDS.—Amounts received under a
17 grant under subsection (e) shall be used to conduct activi-
18 ties to facilitate and expand the electronic movement and
19 use of health information among organizations according
20 to nationally recognized standards through activities that
21 include—

22 “(1) enhancing broad and varied participation
23 in the authorized and secure nationwide electronic
24 use and exchange of health information;

1 “(2) identifying State or local resources avail-
2 able towards a nationwide effort to promote health
3 information technology;

4 “(3) complementing other Federal grants, pro-
5 grams, and efforts towards the promotion of health
6 information technology;

7 “(4) providing technical assistance for the de-
8 velopment and dissemination of solutions to barriers
9 to the exchange of electronic health information;

10 “(5) promoting effective strategies to adopt and
11 utilize health information technology in medically
12 underserved communities;

13 “(6) assisting patients in utilizing health infor-
14 mation technology;

15 “(7) encouraging clinicians to work with Health
16 Information Technology Regional Extension Centers
17 as described in section 3012, to the extent they are
18 available and valuable;

19 “(8) supporting public health agencies’ author-
20 ized use of and access to electronic health informa-
21 tion;

22 “(9) promoting the use of electronic health
23 records for quality improvement including through
24 quality measures reporting; and

1 “(10) such other activities as the Secretary may
2 specify.

3 “(e) PLAN.—

4 “(1) IN GENERAL.—A plan described in this
5 subsection is a plan that describes the activities to
6 be carried out by a State or by the qualified State-
7 designated entity within such State to facilitate and
8 expand the electronic movement and use of health
9 information among organizations according to na-
10 tionally recognized standards and implementation
11 specifications.

12 “(2) REQUIRED ELEMENTS.—A plan described
13 in paragraph (1) shall—

14 “(A) be pursued in the public interest;

15 “(B) be consistent with the strategic plan
16 developed by the National Coordinator, (and, as
17 available) under section 3001;

18 “(C) include a description of the ways the
19 State or qualified State-designated entity will
20 carry out the activities described in subsection
21 (b); and

22 “(D) contain such elements as the Sec-
23 retary may require.

1 ~~“(f) QUALIFIED STATE-DESIGNATED ENTITY.—For~~
2 purposes of this section, to be a qualified State-designated
3 entity, with respect to a State, an entity shall—

4 ~~“(1) be designated by the State as eligible to~~
5 receive awards under this section;

6 ~~“(2) be a not-for-profit entity with broad stake-~~
7 holder representation on its governing board;

8 ~~“(3) demonstrate that one of its principal goals~~
9 is to use information technology to improve health
10 care quality and efficiency through the authorized
11 and secure electronic exchange and use of health in-
12 formation;

13 ~~“(4) adopt nondiscrimination and conflict of in-~~
14 terest policies that demonstrate a commitment to
15 open, fair, and nondiscriminatory participation by
16 stakeholders; and

17 ~~“(5) conform to such other requirements as the~~
18 Secretary may establish.

19 ~~“(g) REQUIRED CONSULTATION.—In carrying out~~
20 activities described in subsections (b) and (e), a State or
21 qualified State-designated entity shall consult with and
22 consider the recommendations of—

23 ~~“(1) health care providers (including providers~~
24 that provide services to low income and underserved
25 populations);

1 ~~“(2) health plans;~~

2 ~~“(3) patient or consumer organizations that~~
3 ~~represent the population to be served;~~

4 ~~“(4) health information technology vendors;~~

5 ~~“(5) health care purchasers and employers;~~

6 ~~“(6) public health agencies;~~

7 ~~“(7) health professions schools, universities and~~
8 ~~colleges;~~

9 ~~“(8) clinical researchers;~~

10 ~~“(9) other users of health information tech-~~
11 ~~nology such as the support and clerical staff of pro-~~
12 ~~viders and others involved in the care and care co-~~
13 ~~ordination of patients; and~~

14 ~~“(10) such other entities, as may be determined~~
15 ~~appropriate by the Secretary.~~

16 ~~“(h) CONTINUOUS IMPROVEMENT.—The Secretary~~
17 ~~shall annually evaluate the activities conducted under this~~
18 ~~section and shall, in awarding grants under this section,~~
19 ~~implement the lessons learned from such evaluation in a~~
20 ~~manner so that awards made subsequent to each such~~
21 ~~evaluation are made in a manner that, in the determina-~~
22 ~~tion of the Secretary, will lead towards the greatest im-~~
23 ~~provement in quality of care, decrease in costs, and the~~
24 ~~most effective authorized and secure electronic exchange~~
25 ~~of health information.~~

1 “(i) REQUIRED MATCH.—

2 “(1) IN GENERAL.—For a fiscal year (begin-
3 ning with fiscal year 2011), the Secretary may not
4 make a grant under this section to a State unless
5 the State agrees to make available non-Federal con-
6 tributions (which may include in-kind contributions)
7 toward the costs of a grant awarded under sub-
8 section (e) in an amount equal to—

9 “(A) for fiscal year 2011, not less than \$1
10 for each \$10 of Federal funds provided under
11 the grant;

12 “(B) for fiscal year 2012, not less than \$1
13 for each \$7 of Federal funds provided under
14 the grant; and

15 “(C) for fiscal year 2013 and each subse-
16 quent fiscal year, not less than \$1 for each \$3
17 of Federal funds provided under the grant.

18 “(2) AUTHORITY TO REQUIRE STATE MATCH
19 FOR FISCAL YEARS BEFORE FISCAL YEAR 2011.—For
20 any fiscal year during the grant program under this
21 section before fiscal year 2011, the Secretary may
22 determine the extent to which there shall be required
23 a non-Federal contribution from a State receiving a
24 grant under this section.

1 **“SEC. 3014. COMPETITIVE GRANTS TO STATES AND INDIAN**
2 **TRIBES FOR THE DEVELOPMENT OF LOAN**
3 **PROGRAMS TO FACILITATE THE WIDE-**
4 **SPREAD ADOPTION OF CERTIFIED EHR TECH-**
5 **NOLOGY.**

6 “(a) **IN GENERAL.**—The National Coordinator may
7 award competitive grants to eligible entities for the estab-
8 lishment of programs for loans to health care providers
9 to conduct the activities described in subsection (c).

10 “(b) **ELIGIBLE ENTITY DEFINED.**—For purposes of
11 this subsection, the term ‘eligible entity’ means a State
12 or Indian tribe (as defined in the Indian Self-Determina-
13 tion and Education Assistance Act) that—

14 “(1) submits to the National Coordinator an
15 application at such time, in such manner, and con-
16 taining such information as the National Coordi-
17 nator may require;

18 “(2) submits to the National Coordinator a
19 strategic plan in accordance with subsection (d) and
20 provides to the National Coordinator assurances that
21 the entity will update such plan annually in accord-
22 ance with such subsection;

23 “(3) provides assurances to the National Coor-
24 dinator that the entity will establish a Loan Fund
25 in accordance with subsection (c);

1 “(4) provides assurances to the National Coordi-
2 nator that the entity will not provide a loan from
3 the Loan Fund to a health care provider unless the
4 provider agrees to—

5 “(A) submit reports on quality measures
6 adopted by the Federal Government (by not
7 later than 90 days after the date on which such
8 measures are adopted), to—

9 “(i) the Administrator of the Centers
10 for Medicare & Medicaid Services (or his
11 or her designee), in the case of an entity
12 participating in the Medicare program
13 under title XVIII of the Social Security
14 Act or the Medicaid program under title
15 XIX of such Act; or

16 “(ii) the Secretary in the case of other
17 entities;

18 “(B) demonstrate to the satisfaction of the
19 Secretary (through criteria established by the
20 Secretary) that any certified EHR technology
21 purchased, improved, or otherwise financially
22 supported under a loan under this section is
23 used to exchange health information in a man-
24 ner that, in accordance with law and standards
25 (as adopted under section 3004) applicable to

1 the exchange of information, improves the qual-
2 ity of health care, such as promoting care co-
3 ordination; and

4 “(C) comply with such other requirements
5 as the entity or the Secretary may require;

6 “(D) include a plan on how health care
7 providers involved intend to maintain and sup-
8 port the certified EHR technology over time;

9 “(E) include a plan on how the health care
10 providers involved intend to maintain and sup-
11 port the certified EHR technology that would
12 be purchased with such loan, including the type
13 of resources expected to be involved and any
14 such other information as the State or Indian
15 Tribe, respectively, may require; and

16 “(5) agrees to provide matching funds in ac-
17 cordance with subsection (h).

18 “(e) ESTABLISHMENT OF FUND.—For purposes of
19 subsection (b)(3), an eligible entity shall establish a cer-
20 tified EHR technology loan fund (referred to in this sub-
21 section as a ‘Loan Fund’) and comply with the other re-
22 quirements contained in this section. A grant to an eligible
23 entity under this section shall be deposited in the Loan
24 Fund established by the eligible entity. No funds author-
25 ized by other provisions of this title to be used for other

1 purposes specified in this title shall be deposited in any
2 Loan Fund.

3 “(d) STRATEGIC PLAN.—

4 “(1) IN GENERAL.—For purposes of subsection
5 (b)(2), a strategic plan of an eligible entity under
6 this subsection shall identify the intended uses of
7 amounts available to the Loan Fund of such entity.

8 “(2) CONTENTS.—A strategic plan under para-
9 graph (1), with respect to a Loan Fund of an eligi-
10 ble entity, shall include for a year the following:

11 “(A) A list of the projects to be assisted
12 through the Loan Fund during such year.

13 “(B) A description of the criteria and
14 methods established for the distribution of
15 funds from the Loan Fund during the year.

16 “(C) A description of the financial status
17 of the Loan Fund as of the date of submission
18 of the plan.

19 “(D) The short-term and long-term goals
20 of the Loan Fund.

21 “(e) USE OF FUNDS.—Amounts deposited in a Loan
22 Fund, including loan repayments and interest earned on
23 such amounts, shall be used only for awarding loans or
24 loan guarantees, making reimbursements described in sub-
25 section (g)(4)(A), or as a source of reserve and security

1 for leveraged loans, the proceeds of which are deposited
2 in the Loan Fund established under subsection (e). Loans
3 under this section may be used by a health care provider
4 to—

5 “(1) facilitate the purchase of certified EHR
6 technology;

7 “(2) enhance the utilization of certified EHR
8 technology;

9 “(3) train personnel in the use of such tech-
10 nology; or

11 “(4) improve the secure electronic exchange of
12 health information.

13 “(f) TYPES OF ASSISTANCE.—Except as otherwise
14 limited by applicable State law, amounts deposited into a
15 Loan Fund under this section may only be used for the
16 following:

17 “(1) To award loans that comply with the fol-
18 lowing:

19 “(A) The interest rate for each loan shall
20 not exceed the market interest rate.

21 “(B) The principal and interest payments
22 on each loan shall commence not later than 1
23 year after the date the loan was awarded, and
24 each loan shall be fully amortized not later than
25 10 years after the date of the loan.

1 “(C) The Loan Fund shall be credited with
2 all payments of principal and interest on each
3 loan awarded from the Loan Fund.

4 “(2) To guarantee, or purchase insurance for,
5 a local obligation (all of the proceeds of which fi-
6 nance a project eligible for assistance under this
7 subsection) if the guarantee or purchase would im-
8 prove credit market access or reduce the interest
9 rate applicable to the obligation involved.

10 “(3) As a source of revenue or security for the
11 payment of principal and interest on revenue or gen-
12 eral obligation bonds issued by the eligible entity if
13 the proceeds of the sale of the bonds will be depos-
14 ited into the Loan Fund.

15 “(4) To earn interest on the amounts deposited
16 into the Loan Fund.

17 “(5) To make reimbursements described in sub-
18 section (g)(4)(A).

19 “(g) ADMINISTRATION OF LOAN FUNDS.—

20 “(1) COMBINED FINANCIAL ADMINISTRATION.—

21 An eligible entity may (as a convenience and to
22 avoid unnecessary administrative costs) combine, in
23 accordance with applicable State law, the financial
24 administration of a Loan Fund established under
25 this subsection with the financial administration of

1 any other revolving fund established by the entity if
2 otherwise not prohibited by the law under which the
3 Loan Fund was established.

4 “(2) COST OF ADMINISTERING FUND.—Each el-
5 igible entity may annually use not to exceed 4 per-
6 cent of the funds provided to the entity under a
7 grant under this section to pay the reasonable costs
8 of the administration of the programs under this
9 section, including the recovery of reasonable costs
10 expended to establish a Loan Fund which are in-
11 curred after the date of the enactment of this title.

12 “(3) GUIDANCE AND REGULATIONS.—The Na-
13 tional Coordinator shall publish guidance and pro-
14 mulgate regulations as may be necessary to carry
15 out the provisions of this section, including—

16 “(A) provisions to ensure that each eligible
17 entity commits and expends funds allotted to
18 the entity under this section as efficiently as
19 possible in accordance with this title and appli-
20 cable State laws; and

21 “(B) guidance to prevent waste, fraud, and
22 abuse.

23 “(4) PRIVATE SECTOR CONTRIBUTIONS.—

24 “(A) IN GENERAL.—A Loan Fund estab-
25 lished under this section may accept contribu-

1 tions from private sector entities, except that
2 such entities may not specify the recipient or
3 recipients of any loan issued under this sub-
4 section. An eligible entity may agree to reim-
5 burse a private sector entity for any contribu-
6 tion made under this subparagraph, except that
7 the amount of such reimbursement may not be
8 greater than the principal amount of the con-
9 tribution made.

10 “(B) AVAILABILITY OF INFORMATION.—

11 An eligible entity shall make publicly available
12 the identity of, and amount contributed by, any
13 private sector entity under subparagraph (A)
14 and may issue letters of commendation or make
15 other awards (that have no financial value) to
16 any such entity.

17 “(h) MATCHING REQUIREMENTS.—

18 “(1) IN GENERAL.—The National Coordinator
19 may not make a grant under subsection (a) to an el-
20 igible entity unless the entity agrees to make avail-
21 able (directly or through donations from public or
22 private entities) non-Federal contributions in cash to
23 the costs of carrying out the activities for which the
24 grant is awarded in an amount equal to not less

1 than \$1 for each \$5 of Federal funds provided under
2 the grant.

3 ~~“(2) DETERMINATION OF AMOUNT OF NON-~~
4 ~~FEDERAL CONTRIBUTION.—~~In determining the
5 amount of non-Federal contributions that an eligible
6 entity has provided pursuant to subparagraph (A),
7 the National Coordinator may not include any
8 amounts provided to the entity by the Federal Gov-
9 ernment.

10 ~~“(i) EFFECTIVE DATE.—~~The Secretary may not
11 make an award under this section prior to January 1,
12 2010.

13 **“SEC. 3015. DEMONSTRATION PROGRAM TO INTEGRATE IN-**
14 **FORMATION TECHNOLOGY INTO CLINICAL**
15 **EDUCATION.**

16 ~~“(a) IN GENERAL.—~~The Secretary may award grants
17 under this section to carry out demonstration projects to
18 develop academic curricula integrating certified EHR
19 technology in the clinical education of health professionals.
20 Such awards shall be made on a competitive basis and
21 pursuant to peer review.

22 ~~“(b) ELIGIBILITY.—~~To be eligible to receive a grant
23 under subsection (a), an entity shall—

1 “(1) submit to the Secretary an application at
2 such time, in such manner, and containing such in-
3 formation as the Secretary may require;

4 “(2) submit to the Secretary a strategic plan
5 for integrating certified EHR technology in the clin-
6 ical education of health professionals to reduce med-
7 ical errors and enhance health care quality;

8 “(3) be—

9 “(A) a school of medicine, osteopathic
10 medicine, dentistry, or pharmacy, a graduate
11 program in behavioral or mental health, or any
12 other graduate health professions school;

13 “(B) a graduate school of nursing or phy-
14 sician assistant studies;

15 “(C) a consortium of two or more schools
16 described in subparagraph (A) or (B); or

17 “(D) an institution with a graduate med-
18 ical education program in medicine, osteopathic
19 medicine, dentistry, pharmacy, nursing, or phy-
20 sician assistance studies;

21 “(4) provide for the collection of data regarding
22 the effectiveness of the demonstration project to be
23 funded under the grant in improving the safety of
24 patients, the efficiency of health care delivery, and
25 in increasing the likelihood that graduates of the

1 grantee will adopt and incorporate certified EHR
2 technology, in the delivery of health care services;
3 and

4 “(5) provide matching funds in accordance with
5 subsection (d).

6 “(e) USE OF FUNDS.—

7 “(1) IN GENERAL.—With respect to a grant
8 under subsection (a), an eligible entity shall—

9 “(A) use grant funds in collaboration with
10 2 or more disciplines; and

11 “(B) use grant funds to integrate certified
12 EHR technology into community-based clinical
13 education.

14 “(2) LIMITATION.—An eligible entity shall not
15 use amounts received under a grant under sub-
16 section (a) to purchase hardware, software, or serv-
17 ices.

18 “(d) FINANCIAL SUPPORT.—The Secretary may not
19 provide more than 50 percent of the costs of any activity
20 for which assistance is provided under subsection (a), ex-
21 cept in an instance of national economic conditions which
22 would render the cost-share requirement under this sub-
23 section detrimental to the program and upon notification
24 to Congress as to the justification to waive the cost-share
25 requirement.

1 “(e) **EVALUATION.**—The Secretary shall take such
2 action as may be necessary to evaluate the projects funded
3 under this section and publish, make available, and dis-
4 seminate the results of such evaluations on as wide a basis
5 as is practicable.

6 “(f) **REPORTS.**—Not later than 1 year after the date
7 of enactment of this title, and annually thereafter, the Sec-
8 retary shall submit to the Committee on Health, Edu-
9 cation, Labor, and Pensions and the Committee on Fi-
10 nance of the Senate, and the Committee on Energy and
11 Commerce of the House of Representatives a report
12 that—

13 “(1) describes the specific projects established
14 under this section; and

15 “(2) contains recommendations for Congress
16 based on the evaluation conducted under subsection
17 (e).

18 **“SEC. 3016. INFORMATION TECHNOLOGY PROFESSIONALS**
19 **ON HEALTH CARE.**

20 “(a) **IN GENERAL.**—The Secretary, in consultation
21 with the Director of the National Science Foundation,
22 shall provide assistance to institutions of higher education
23 (or consortia thereof) to establish or expand medical
24 health informatics education programs, including certifi-
25 cation, undergraduate, and masters degree programs, for

1 both health care and information technology students to
2 ensure the rapid and effective utilization and development
3 of health information technologies (in the United States
4 health care infrastructure).

5 “(b) ACTIVITIES.—Activities for which assistance
6 may be provided under subsection (a) may include the fol-
7 lowing:

8 “(1) Developing and revising curricula in med-
9 ical health informatics and related disciplines.

10 “(2) Recruiting and retaining students to the
11 program involved.

12 “(3) Acquiring equipment necessary for student
13 instruction in these programs, including the installa-
14 tion of testbed networks for student use.

15 “(4) Establishing or enhancing bridge programs
16 in the health informatics fields between community
17 colleges and universities.

18 “(c) PRIORITY.—In providing assistance under sub-
19 section (a), the Secretary shall give preference to the fol-
20 lowing:

21 “(1) Existing education and training programs.

22 “(2) Programs designed to be completed in less
23 than six months.

24 “(d) FINANCIAL SUPPORT.—The Secretary may not
25 provide more than 50 percent of the costs of any activity

1 for which assistance is provided under subsection (a), ex-
2 cept in an instance of national economic conditions which
3 would render the cost-share requirement under this sub-
4 section detrimental to the program and upon notification
5 to Congress as to the justification to waive the cost-share
6 requirement.

7 **“SEC. 3017. GENERAL GRANT AND LOAN PROVISIONS.**

8 “(a) **REPORTS.**—The Secretary may require that an
9 entity receiving assistance under this subtitle shall submit
10 to the Secretary, not later than the date that is 1 year
11 after the date of receipt of such assistance, a report that
12 includes—

13 “(1) an analysis of the effectiveness of the ac-
14 tivities for which the entity receives such assistance;
15 as compared to the goals for such activities; and

16 “(2) an analysis of the impact of the project on
17 health care quality and safety.

18 “(b) **REQUIREMENT TO IMPROVE QUALITY OF CARE**
19 **AND DECREASE IN COSTS.**—The National Coordinator
20 shall annually evaluate the activities conducted under this
21 subtitle and shall, in awarding grants, implement the les-
22 sons learned from such evaluation in a manner so that
23 awards made subsequent to each such evaluation are made
24 in a manner that, in the determination of the National

1 Coordinator, will result in the greatest improvement in the
2 quality and efficiency of health care.

3 **“SEC. 3018. AUTHORIZATION FOR APPROPRIATIONS.**

4 “For the purposes of carrying out this subtitle, there
5 is authorized to be appropriated such sums as may be nee-
6 essary for each of the fiscal years 2009 through 2013.
7 Amounts so appropriated shall remain available until ex-
8 pended.”.

9 **PART II—MEDICARE PROGRAM**

10 **SEC. 4311. INCENTIVES FOR ELIGIBLE PROFESSIONALS.**

11 (a) INCENTIVE PAYMENTS.—Section 1848 of the So-
12 cial Security Act (42 U.S.C. 1395w-4) is amended by add-
13 ing at the end the following new subsection:

14 “(a) INCENTIVES FOR ADOPTION AND MEANINGFUL
15 USE OF CERTIFIED EHR TECHNOLOGY.—

16 “(1) INCENTIVE PAYMENTS.—

17 “(A) IN GENERAL.—Subject to the sue-
18 ceeding subparagraphs of this paragraph, with
19 respect to covered professional services fur-
20 nished by an eligible professional during a pay-
21 ment year (as defined in subparagraph (E)), if
22 the eligible professional is a meaningful EHR
23 user (as determined under paragraph (2)) for
24 the reporting period with respect to such year,
25 in addition to the amount otherwise paid under

1 this part, there also shall be paid to the eligible
2 professional (or to an employer or facility in the
3 cases described in clause (A) of section
4 1842(b)(6)), from the Federal Supplementary
5 Medical Insurance Trust Fund established
6 under section 1841 an amount equal to 75 per-
7 cent of the Secretary's estimate (based on
8 claims submitted not later than 2 months after
9 the end of the payment year) of the allowed
10 charges under this part for all such covered
11 professional services furnished by the eligible
12 professional during such year.

13 “(B) LIMITATIONS ON AMOUNTS OF IN-
14 CENTIVE PAYMENTS.—

15 “(i) IN GENERAL.—In no case shall
16 the amount of the incentive payment pro-
17 vided under this paragraph for an eligible
18 professional for a payment year exceed the
19 applicable amount specified under this sub-
20 paragraph with respect to such eligible
21 professional and such year.

22 “(ii) AMOUNT.—Subject to clause
23 (iii), the applicable amount specified in this
24 subparagraph for an eligible professional is
25 as follows:

1 “(I) For the first payment year
2 for such professional, \$15,000.

3 “(II) For the second payment
4 year for such professional, \$12,000.

5 “(III) For the third payment
6 year for such professional, \$8,000.

7 “(IV) For the fourth payment
8 year for such professional, \$4,000.

9 “(V) For the fifth payment year
10 for such professional, \$2,000.

11 “(VI) For any succeeding pay-
12 ment year for such professional, \$0.

13 “(iii) PHASE DOWN FOR ELIGIBLE
14 PROFESSIONALS FIRST ADOPTING EHR
15 AFTER 2013.—If the first payment year for
16 an eligible professional is after 2013, then
17 the amount specified in this subparagraph
18 for a payment year for such professional is
19 the same as the amount specified in clause
20 (ii) for such payment year for an eligible
21 professional whose first payment year is
22 2013. If the first payment year for an eli-
23 gible professional is after 2015 then the
24 applicable amount specified in this sub-

1 paragraph for such professional for such
2 year and any subsequent year shall be \$0.

3 ~~“(C) NON-APPLICATION TO HOSPITAL-~~
4 ~~BASED ELIGIBLE PROFESSIONALS.—~~

5 ~~“(i) IN GENERAL.—No incentive pay-~~
6 ~~ment may be made under this paragraph~~
7 ~~in the case of a hospital-based eligible pro-~~
8 ~~fessional.~~

9 ~~“(ii) HOSPITAL-BASED ELIGIBLE PRO-~~
10 ~~FSSIONAL.—For purposes of clause (i),~~
11 ~~the term ‘hospital-based eligible profes-~~
12 ~~sional’ means, with respect to covered pro-~~
13 ~~fessional services furnished by an eligible~~
14 ~~professional during the reporting period for~~
15 ~~a payment year, an eligible professional,~~
16 ~~such as a pathologist, anesthesiologist, or~~
17 ~~emergency physician, who furnishes sub-~~
18 ~~stantially all of such services in a hospital~~
19 ~~setting (whether inpatient or outpatient)~~
20 ~~and through the use of the facilities and~~
21 ~~equipment, including computer equipment,~~
22 ~~of the hospital.~~

23 ~~“(D) PAYMENT.—~~

24 ~~“(i) FORM OF PAYMENT.—The pay-~~
25 ~~ment under this paragraph may be in the~~

1 form of a single consolidated payment or
2 in the form of such periodic installments
3 as the Secretary may specify.

4 “(ii) COORDINATION OF APPLICATION
5 OF LIMITATION FOR PROFESSIONALS IN
6 DIFFERENT PRACTICES.—In the case of an
7 eligible professional furnishing covered pro-
8 fessional services in more than one practice
9 (as specified by the Secretary), the Sec-
10 retary shall establish rules to coordinate
11 the incentive payments, including the ap-
12 plication of the limitation on amounts of
13 such incentive payments under this para-
14 graph, among such practices.

15 “(iii) COORDINATION WITH MED-
16 ICAID.—The Secretary shall seek, to the
17 maximum extent practicable, to avoid du-
18 plicative requirements from Federal and
19 State Governments to demonstrate mean-
20 ingful use of certified EHR technology
21 under this title and title XIX. The Sec-
22 retary may also adjust the reporting peri-
23 ods under such title and such subsections
24 in order to carry out this clause.

25 “(E) PAYMENT YEAR DEFINED.—

1 “(i) IN GENERAL.—For purposes of
2 this subsection, the term ‘payment year’
3 means a year beginning with 2011.

4 “(ii) FIRST, SECOND, ETC. PAYMENT
5 YEAR.—The term ‘first payment year’
6 means, with respect to covered professional
7 services furnished by an eligible profes-
8 sional, the first year for which an incentive
9 payment is made for such services under
10 this subsection. The terms ‘second pay-
11 ment year’, ‘third payment year’, ‘fourth
12 payment year’, and ‘fifth payment year’
13 mean, with respect to covered professional
14 services furnished by such eligible profes-
15 sional, each successive year immediately
16 following the first payment year for such
17 professional.

18 “(2) MEANINGFUL EHR USER.—

19 “(A) IN GENERAL.—For purposes of para-
20 graph (1), an eligible professional shall be
21 treated as a meaningful EHR user for a report-
22 ing period for a payment year (or, for purposes
23 of subsection (a)(7), for a reporting period
24 under such subsection for a year) if each of the
25 following requirements is met:

1 “(i) MEANINGFUL USE OF CERTIFIED
2 EHR TECHNOLOGY.—The eligible profes-
3 sional demonstrates to the satisfaction of
4 the Secretary, in accordance with subpara-
5 graph (C)(i), that during such period the
6 professional is using certified EHR tech-
7 nology in a meaningful manner, which
8 shall include the use of electronic pre-
9 scribing as determined to be appropriate
10 by the Secretary.

11 “(ii) INFORMATION EXCHANGE.—The
12 eligible professional demonstrates to the
13 satisfaction of the Secretary, in accordance
14 with subparagraph (C)(i), that during such
15 period such certified EHR technology is
16 connected in a manner that provides, in
17 accordance with law and standards appli-
18 cable to the exchange of information, for
19 the electronic exchange of health informa-
20 tion to improve the quality of health care,
21 such as promoting care coordination.

22 “(iii) REPORTING ON MEASURES
23 USING EHR.—Subject to subparagraph
24 (B)(ii) and using such certified EHR tech-
25 nology, the eligible professional submits in-

1 formation for such period, in a form and
2 manner specified by the Secretary, on such
3 clinical quality measures and such other
4 measures as selected by the Secretary
5 under subparagraph (B)(i).

6 The Secretary may provide for the use of alter-
7 native means for meeting the requirements of
8 clauses (i), (ii), and (iii) in the case of an eligi-
9 ble professional furnishing covered professional
10 services in a group practice (as defined by the
11 Secretary). The Secretary shall seek to improve
12 the use of electronic health records and health
13 care quality over time by requiring more strin-
14 gent measures of meaningful use selected under
15 this paragraph.

16 “(B) REPORTING ON MEASURES.—

17 “(i) SELECTION.—The Secretary shall
18 select measures for purposes of subpara-
19 graph (A)(iii) but only consistent with the
20 following:

21 “(I) The Secretary shall provide
22 preference to clinical quality measures
23 that have been endorsed by the entity
24 with a contract with the Secretary
25 under section 1890(a).

1 “(H) Prior to any measure being
2 selected under this subparagraph, the
3 Secretary shall publish in the Federal
4 Register such measure and provide for
5 a period of public comment on such
6 measure.

7 “(ii) LIMITATION.—The Secretary
8 may not require the electronic reporting of
9 information on clinical quality measures
10 under subparagraph (A)(iii) unless the
11 Secretary has the capacity to accept the in-
12 formation electronically, which may be on
13 a pilot basis.

14 “(iii) COORDINATION OF REPORTING
15 OF INFORMATION.—In selecting such
16 measures, and in establishing the form and
17 manner for reporting measures under sub-
18 paragraph (A)(iii), the Secretary shall seek
19 to avoid redundant or duplicative reporting
20 otherwise required, including reporting
21 under subsection (k)(2)(C).

22 “(C) DEMONSTRATION OF MEANINGFUL
23 USE OF CERTIFIED EHR TECHNOLOGY AND IN-
24 FORMATION EXCHANGE.—

1 “(i) IN GENERAL.—A professional
2 may satisfy the demonstration requirement
3 of clauses (i) and (ii) of subparagraph (A)
4 through means specified by the Secretary,
5 which may include—

6 “(I) an attestation;

7 “(II) the submission of claims
8 with appropriate coding (such as a
9 code indicating that a patient encoun-
10 ter was documented using certified
11 EHR technology);

12 “(III) a survey response;

13 “(IV) reporting under subpara-
14 graph (A)(iii); and

15 “(V) other means specified by the
16 Secretary.

17 “(ii) USE OF PART D DATA.—Not-
18 withstanding sections ~~1860D-15(d)(2)(B)~~
19 and ~~1860D-15(f)(2)~~, the Secretary may
20 use data regarding drug claims submitted
21 for purposes of section ~~1860D-15~~ that are
22 necessary for purposes of subparagraph
23 (A).

24 “(3) APPLICATION.—

1 “(A) PHYSICIAN REPORTING SYSTEM
2 RULES.—Paragraphs (5), (6), and (8) of sub-
3 section (k) shall apply for purposes of this sub-
4 section in the same manner as they apply for
5 purposes of such subsection.

6 “(B) COORDINATION WITH OTHER PAY-
7 MENTS.—The provisions of this subsection shall
8 not be taken into account in applying the provi-
9 sions of subsection (m) of this section and of
10 section 1833(m) and any payment under such
11 provisions shall not be taken into account in
12 computing allowable charges under this sub-
13 section.

14 “(C) LIMITATIONS ON REVIEW.—There
15 shall be no administrative or judicial review
16 under section 1869, section 1878, or otherwise
17 of the determination of any incentive payment
18 under this subsection and the payment adjust-
19 ment under subsection (a)(7), including the de-
20 termination of a meaningful EHR user under
21 paragraph (2), a limitation under paragraph
22 (1)(B), and the exception under subsection
23 (a)(7)(B).

24 “(D) POSTING ON WEBSITE.—The Sec-
25 retary shall post on the Internet website of the

1 Centers for Medicare & Medicaid Services, in an
2 easily understandable format, a list of the
3 names, business addresses, and business phone
4 numbers of the eligible professionals who are
5 meaningful EHR users and, as determined ap-
6 propriate by the Secretary, of group practices
7 receiving incentive payments under paragraph
8 (1).

9 “(4) CERTIFIED EHR TECHNOLOGY DEFINED.—

10 For purposes of this section, the term ‘certified
11 EHR technology’ means a qualified electronic health
12 record (as defined in 3000(13) of the Public Health
13 Service Act) that is certified pursuant to section
14 3001(e)(5) of such Act as meeting standards adopt-
15 ed under section 3004 of such Act that are applica-
16 ble to the type of record involved (as determined by
17 the Secretary, such as an ambulatory electronic
18 health record for office-based physicians or an inpa-
19 tient hospital electronic health record for hospitals).

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

22 “(A) COVERED PROFESSIONAL SERV-
23 ICES.—The term ‘covered professional services’
24 has the meaning given such term in subsection
25 (k)(3).

1 “(B) ELIGIBLE PROFESSIONAL.—The term
2 ‘eligible professional’ means a physician, as de-
3 fined in section 1861(r).

4 “(C) REPORTING PERIOD.—The term ‘re-
5 porting period’ means any period (or periods),
6 with respect to a payment year, as specified by
7 the Secretary.”.

8 (b) INCENTIVE PAYMENT ADJUSTMENT.—Section
9 1848(a) of the Social Security Act (42 U.S.C. 1395w-
10 4(a)) is amended by adding at the end the following new
11 paragraph:

12 “(7) INCENTIVES FOR MEANINGFUL USE OF
13 CERTIFIED EHR TECHNOLOGY.—

14 “(A) ADJUSTMENT.—

15 “(i) IN GENERAL.—Subject to sub-
16 paragraphs (B) and (D), with respect to
17 covered professional services furnished by
18 an eligible professional during 2016 or any
19 subsequent payment year, if the eligible
20 professional is not a meaningful EHR user
21 (as determined under subsection (o)(2)) for
22 a reporting period for the year, the fee
23 schedule amount for such services fur-
24 nished by such professional during the year
25 (including the fee schedule amount for pur-

1 poses of determining a payment based on
2 such amount) shall be equal to the applica-
3 ble percent of the fee schedule amount that
4 would otherwise apply to such services
5 under this subsection (determined after ap-
6 plication of paragraph (3) but without re-
7 gard to this paragraph).

8 “(ii) APPLICABLE PERCENT.—Subject
9 to clause (iii), for purposes of clause (i),
10 the term ‘applicable percent’ means—

11 “(I) for 2016, 99 percent;

12 “(II) for 2017, 98 percent; and

13 “(III) for 2018 and each subse-
14 quent year, 97 percent.

15 “(iii) AUTHORITY TO DECREASE AP-
16 PPLICABLE PERCENTAGE FOR 2019 AND
17 SUBSEQUENT YEARS.—For 2019 and each
18 subsequent year, if the Secretary finds that
19 the proportion of eligible professionals who
20 are meaningful EHR users (as determined
21 under subsection (o)(2)) is less than 75
22 percent, the applicable percent shall be de-
23 creased by 1 percentage point from the ap-
24 plicable percent in the preceding year, but

1 in no case shall the applicable percent be
2 less than 95 percent.

3 “(B) SIGNIFICANT HARDSHIP EXCEP-
4 TION.—The Secretary may, on a case-by-case
5 basis, exempt an eligible professional from the
6 application of the payment adjustment under
7 subparagraph (A) if the Secretary determines,
8 subject to annual renewal, that compliance with
9 the requirement for being a meaningful EHR
10 user would result in a significant hardship, such
11 as in the case of an eligible professional who
12 practices in a rural area without sufficient
13 Internet access. In no case may an eligible pro-
14 fessional be granted an exemption under this
15 subparagraph for more than 5 years.

16 “(C) APPLICATION OF PHYSICIAN REPORT-
17 ING SYSTEM RULES.—Paragraphs (5), (6), and
18 (8) of subsection (k) shall apply for purposes of
19 this paragraph in the same manner as they
20 apply for purposes of such subsection.

21 “(D) NON-APPLICATION TO HOSPITAL-
22 BASED ELIGIBLE PROFESSIONALS.—No pay-
23 ment adjustment may be made under subpara-
24 graph (A) in the case of hospital-based eligible

1 professionals (as defined in subsection
2 (o)(1)(C)(ii)).

3 “(E) DEFINITIONS.—For purposes of this
4 paragraph:

5 “(i) COVERED PROFESSIONAL SERV-
6 ICES.—The term ‘covered professional
7 services’ has the meaning given such term
8 in subsection (k)(3).

9 “(ii) ELIGIBLE PROFESSIONAL.—The
10 term ‘eligible professional’ means a physi-
11 cian, as defined in section 1861(r).

12 “(iii) REPORTING PERIOD.—The term
13 ‘reporting period’ means, with respect to a
14 year, a period specified by the Secretary.”.

15 (c) APPLICATION TO CERTAIN HMO-AFFILIATED
16 ELIGIBLE PROFESSIONALS.—Section 1853 of the Social
17 Security Act (42 U.S.C. 1395w-23) is amended by adding
18 at the end the following new subsection:

19 “(1) APPLICATION OF ELIGIBLE PROFESSIONAL IN-
20 CENTIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOP-
21 TION AND MEANINGFUL USE OF CERTIFIED EHR TECH-
22 NOLOGY.—

23 “(1) IN GENERAL.—Subject to paragraphs (3)
24 and (4), in the case of a qualifying MA organization,
25 the provisions of sections 1848(o) and 1848(a)(7)

1 shall apply with respect to eligible professionals de-
2 scribed in paragraph (2) of the organization who the
3 organization attests under paragraph (6) to be
4 meaningful EHR users in a similar manner as they
5 apply to eligible professionals under such sections.
6 Incentive payments under paragraph (3) shall be
7 made to and payment adjustments under paragraph
8 (4) shall apply to such qualifying organizations.

9 “(2) ELIGIBLE PROFESSIONAL DESCRIBED.—

10 With respect to a qualifying MA organization, an eli-
11 gible professional described in this paragraph is an
12 eligible professional (as defined for purposes of sec-
13 tion 1848(o)) who—

14 “(A)(i) is employed by the organization; or

15 “(ii)(I) is employed by, or is a partner of,
16 an entity that through contract with the organi-
17 zation furnishes at least 80 percent of the enti-
18 ty’s patient care services to enrollees of such or-
19 ganization; and

20 “(II) furnishes at least 80 percent of the
21 professional services of the eligible professional
22 to enrollees of the organization; and

23 “(B) furnishes, on average, at least 20
24 hours per week of patient care services.

1 “(3) ELIGIBLE PROFESSIONAL INCENTIVE PAY-
2 MENTS.—

3 “(A) IN GENERAL.—In applying section
4 1848(o) under paragraph (1), instead of the ad-
5 ditional payment amount under section
6 1848(o)(1)(A) and subject to subparagraph
7 (B), the Secretary may substitute an amount
8 determined by the Secretary to the extent fea-
9 sible and practical to be similar to the esti-
10 mated amount in the aggregate that would be
11 payable if payment for services furnished by
12 such professionals was payable under part B in-
13 stead of this part.

14 “(B) AVOIDING DUPLICATION OF PAY-
15 MENTS.—

16 “(i) IN GENERAL.—If an eligible pro-
17 fessional described in paragraph (2) is eli-
18 gible for the maximum incentive payment
19 under section 1848(o)(1)(A) for the same
20 payment period, the payment incentive
21 shall be made only under such section and
22 not under this subsection.

23 “(ii) METHODS.—In the case of an el-
24 igible professional described in paragraph
25 (2) who is eligible for an incentive payment

1 under section 1848(o)(1)(A) but is not de-
2 scribed in clause (i) for the same payment
3 period, the Secretary shall develop a pro-
4 cess—

5 “(I) to ensure that duplicate pay-
6 ments are not made with respect to
7 an eligible professional both under
8 this subsection and under section
9 1848(o)(1)(A); and

10 “(H) to collect data from Medi-
11 care Advantage organizations to en-
12 sure against such duplicate payments.

13 “(C) FIXED SCHEDULE FOR APPLICATION
14 OF LIMITATION ON INCENTIVE PAYMENTS FOR
15 ALL ELIGIBLE PROFESSIONALS.—In applying
16 section 1848(o)(1)(B)(ii) under subparagraph
17 (A), in accordance with rules specified by the
18 Secretary, a qualifying MA organization shall
19 specify a year (not earlier than 2011) that shall
20 be treated as the first payment year for all eli-
21 gible professionals with respect to such organi-
22 zation.

23 “(4) PAYMENT ADJUSTMENT.—

24 “(A) IN GENERAL.—In applying section
25 1848(a)(7) under paragraph (1), instead of the

1 payment adjustment being an applicable per-
2 cent of the fee schedule amount for a year
3 under such section, subject to subparagraph
4 (D), the payment adjustment under paragraph
5 (1) shall be equal to the percent specified in
6 subparagraph (B) for such year of the payment
7 amount otherwise provided under this section
8 for such year.

9 “(B) SPECIFIED PERCENT.—The percent
10 specified under this subparagraph for a year is
11 100 percent minus a number of percentage
12 points equal to the product of—

13 “(i) the number of percentage points
14 by which the applicable percent (under sec-
15 tion 1848(a)(7)(A)(ii)) for the year is less
16 than 100 percent; and

17 “(ii) the Medicare physician expendi-
18 ture proportion specified in subparagraph
19 (C) for the year.

20 “(C) MEDICARE PHYSICIAN EXPENDITURE
21 PROPORTION.—The Medicare physician expend-
22 iture proportion under this subparagraph for a
23 year is the Secretary’s estimate of the propor-
24 tion, of the expenditures under parts A and B
25 that are not attributable to this part, that are

1 attributable to expenditures for physicians'
2 services.

3 “(D) APPLICATION OF PAYMENT ADJUST-
4 MENT.—In the case that a qualifying MA orga-
5 nization attests that not all eligible profes-
6 sionals are meaningful EHR users with respect
7 to a year, the Secretary shall apply the payment
8 adjustment under this paragraph based on the
9 proportion of such eligible professionals that are
10 not meaningful EHR users for such year.

11 “(5) QUALIFYING MA ORGANIZATION DE-
12 FINED.—In this subsection and subsection (m), the
13 term ‘qualifying MA organization’ means a Medicare
14 Advantage organization that is organized as a health
15 maintenance organization (as defined in section
16 2791(b)(3) of the Public Health Service Act).

17 “(6) MEANINGFUL EHR USER ATTESTATION.—
18 For purposes of this subsection and subsection (m),
19 a qualifying MA organization shall submit an attes-
20 tation, in a form and manner specified by the Sec-
21 retary which may include the submission of such at-
22 testation as part of submission of the initial bid
23 under section 1854(a)(1)(A)(iv), identifying—

24 “(A) whether each eligible professional de-
25 scribed in paragraph (2), with respect to such

1 organization is a meaningful EHR user (as de-
2 fined in section 1848(o)(2)) for a year specified
3 by the Secretary; and

4 “(B) whether each eligible hospital de-
5 scribed in subsection (m)(1), with respect to
6 such organization, is a meaningful EHR user
7 (as defined in section 1886(n)(3)) for an appli-
8 eable period specified by the Secretary.”.

9 (d) CONFORMING AMENDMENTS.—Section 1853 of
10 the Social Security Act (42 U.S.C. 1395w-23) is amend-
11 ed—

12 (1) in subsection (a)(1)(A), by striking “and
13 (i)” and inserting “(i), and (l)”;

14 (2) in subsection (e)—

15 (A) in paragraph (1)(D)(i), by striking
16 “section 1886(h)” and inserting “sections
17 1848(o) and 1886(h)”;

18 (B) in paragraph (6)(A), by inserting after
19 “under part B,” the following: “excluding ex-
20 penditures attributable to subsections (a)(7)
21 and (o) of section 1848,”; and

22 (3) in subsection (f), by inserting “and for pay-
23 ments under subsection (l)” after “with the organi-
24 zation”.

1 (e) CONFORMING AMENDMENTS TO E-PRE-
2 SCRIBING.—

3 (1) Section 1848(a)(5)(A) of the Social Security
4 Act (~~42 U.S.C. 1395w-4(a)(5)(A)~~) is amended—

5 (A) in clause (i), by striking “or any sub-
6 sequent year” and inserting “, 2013, 2014, or
7 2015”; and

8 (B) in clause (ii), by striking “and each
9 subsequent year” and inserting “and 2015”.

10 (2) Section 1848(m)(2) of such Act (~~42 U.S.C.~~
11 ~~1395w-4(m)(2)~~) is amended—

12 (A) in subparagraph (A), by striking “For
13 2009” and inserting “Subject to subparagraph
14 (D), for 2009”; and

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

17 “(D) LIMITATION WITH RESPECT TO EHR
18 INCENTIVE PAYMENTS.—The provisions of this
19 paragraph shall not apply to an eligible profes-
20 sional (or, in the case of a group practice under
21 paragraph (3)(C), to the group practice) if, for
22 the reporting period the eligible professional (or
23 group practice) receives an incentive payment
24 under subsection (o)(1)(A) with respect to a
25 certified EHR technology (as defined in sub-

1 section (o)(4)) that has the capability of elec-
2 tronic prescribing.”.

3 **SEC. 4312. INCENTIVES FOR HOSPITALS.**

4 (a) INCENTIVE PAYMENT.—Section 1886 of the So-
5 cial Security Act (42 U.S.C. 1395ww) is amended by add-
6 ing at the end the following new subsection:

7 “(n) INCENTIVES FOR ADOPTION AND MEANINGFUL
8 USE OF CERTIFIED EHR TECHNOLOGY.—

9 “(1) IN GENERAL.—Subject to the succeeding
10 provisions of this subsection, with respect to inpa-
11 tient hospital services furnished by an eligible hos-
12 pital during a payment year (as defined in para-
13 graph (2)(G)), if the eligible hospital is a meaningful
14 EHR user (as determined under paragraph (3)) for
15 the reporting period with respect to such year, in ad-
16 dition to the amount otherwise paid under this sec-
17 tion, there also shall be paid to the eligible hospital,
18 from the Federal Hospital Insurance Trust Fund es-
19 tablished under section 1817, an amount equal to
20 the applicable amount specified in paragraph (2)(A)
21 for the hospital for such payment year.

22 “(2) PAYMENT AMOUNT.—

23 “(A) IN GENERAL.—Subject to the sue-
24 ceeding subparagraphs of this paragraph, the
25 applicable amount specified in this subpara-

1 graph for an eligible hospital for a payment
2 year is equal to the product of the following:

3 “(i) INITIAL AMOUNT.—The sum of—

4 “(I) the base amount specified in
5 subparagraph (B); plus

6 “(II) the discharge related
7 amount specified in subparagraph (C)
8 for a 12-month period selected by the
9 Secretary with respect to such pay-
10 ment year.

11 “(ii) MEDICARE SHARE.—The Medi-
12 care share as specified in subparagraph
13 (D) for the hospital for a period selected
14 by the Secretary with respect to such pay-
15 ment year.

16 “(iii) TRANSITION FACTOR.—The
17 transition factor specified in subparagraph
18 (E) for the hospital for the payment year.

19 “(B) BASE AMOUNT.—The base amount
20 specified in this subparagraph is \$2,000,000.

21 “(C) DISCHARGE RELATED AMOUNT.—The
22 discharge related amount specified in this sub-
23 paragraph for a 12-month period selected by
24 the Secretary shall be determined as the sum of
25 the amount, based upon total discharges (re-

1 regardless of any source of payment) for the pe-
2 riod, for each discharge up to the 23,000th dis-
3 charge as follows:

4 “(i) For the 1,150th through the
5 23,000th discharge, \$200.

6 “(ii) For any discharge greater than
7 the 23,000th, \$0.

8 “(D) MEDICARE SHARE.—The Medicare
9 share specified under this subparagraph for a
10 hospital for a period selected by the Secretary
11 for a payment year is equal to the fraction—

12 “(i) the numerator of which is the
13 sum (for such period and with respect to
14 the hospital) of—

15 “(I) the number of inpatient-bed-
16 days (as established by the Secretary)
17 which are attributable to individuals
18 with respect to whom payment may be
19 made under part A; and

20 “(II) the number of inpatient-
21 bed-days (as so established) which are
22 attributable to individuals who are en-
23 rolled with a Medicare Advantage or-
24 ganization under part C; and

1 “(ii) the denominator of which is the
2 product of—

3 “(I) the total number of inpa-
4 tient-bed-days with respect to the hos-
5 pital during such period; and

6 “(II) the total amount of the hos-
7 pital’s charges during such period; not
8 including any charges that are attrib-
9 utable to charity care (as such term is
10 used for purposes of hospital cost re-
11 porting under this title); divided by
12 the total amount of the hospital’s
13 charges during such period.

14 Insofar as the Secretary determines that data
15 are not available on charity care necessary to
16 calculate the portion of the formula specified in
17 clause (ii)(II), the Secretary shall use data on
18 uncompensated care and may adjust such data
19 so as to be an appropriate proxy for charity
20 care including a downward adjustment to elimi-
21 nate bad debt data from uncompensated care
22 data. In the absence of the data necessary, with
23 respect to a hospital, for the Secretary to com-
24 pute the amount described in clause (ii)(II), the
25 amount under such clause shall be deemed to

1 be 1. In the absence of data, with respect to a
2 hospital, necessary to compute the amount de-
3 scribed in clause (i)(II), the amount under such
4 clause shall be deemed to be 0.

5 “(E) TRANSITION FACTOR SPECIFIED.—

6 “(i) IN GENERAL.—Subject to clause
7 (ii), the transition factor specified in this
8 subparagraph for an eligible hospital for a
9 payment year is as follows:

10 “(I) For the first payment year
11 for such hospital, 1.

12 “(II) For the second payment
13 year for such hospital, $\frac{3}{4}$.

14 “(III) For the third payment
15 year for such hospital, $\frac{1}{2}$.

16 “(IV) For the fourth payment
17 year for such hospital, $\frac{1}{4}$.

18 “(V) For any succeeding pay-
19 ment year for such hospital, 0.

20 “(ii) PHASE DOWN FOR ELIGIBLE
21 HOSPITALS FIRST ADOPTING EHR AFTER
22 2013.—If the first payment year for an eli-
23 gible hospital is after 2013, then the tran-
24 sition factor specified in this subparagraph
25 for a payment year for such hospital is the

1 same as the amount specified in clause (i)
2 for such payment year for an eligible hos-
3 pital for which the first payment year is
4 2013. If the first payment year for an eli-
5 gible hospital is after 2015 then the transi-
6 tion factor specified in this subparagraph
7 for such hospital and for such year and
8 any subsequent year shall be 0.

9 “(F) FORM OF PAYMENT.—The payment
10 under this subsection for a payment year may
11 be in the form of a single consolidated payment
12 or in the form of such periodic installments as
13 the Secretary may specify.

14 “(G) PAYMENT YEAR DEFINED.—

15 “(i) IN GENERAL.—For purposes of
16 this subsection, the term ‘payment year’
17 means a fiscal year beginning with fiscal
18 year 2011.

19 “(ii) FIRST, SECOND, ETC. PAYMENT
20 YEAR.—The term ‘first payment year’
21 means, with respect to inpatient hospital
22 services furnished by an eligible hospital,
23 the first fiscal year for which an incentive
24 payment is made for such services under
25 this subsection. The terms ‘second pay-

1 ment year’, ‘third payment year’, and
2 ‘fourth payment year’ mean, with respect
3 to an eligible hospital, each successive year
4 immediately following the first payment
5 year for that hospital.

6 “(3) MEANINGFUL EHR USER.—

7 “(A) IN GENERAL.—For purposes of para-
8 graph (1), an eligible hospital shall be treated
9 as a meaningful EHR user for a reporting pe-
10 riod for a payment year (or, for purposes of
11 subsection (b)(3)(B)(ix), for a reporting period
12 under such subsection for a fiscal year) if each
13 of the following requirements are met:

14 “(i) MEANINGFUL USE OF CERTIFIED
15 EHR TECHNOLOGY.—The eligible hospital
16 demonstrates to the satisfaction of the Sec-
17 retary, in accordance with subparagraph
18 (C)(i), that during such period the hospital
19 is using certified EHR technology in a
20 meaningful manner.

21 “(ii) INFORMATION EXCHANGE.—The
22 eligible hospital demonstrates to the satis-
23 faction of the Secretary, in accordance
24 with subparagraph (C)(i), that during such
25 period such certified EHR technology is

1 connected in a manner that provides, in
2 accordance with law and standards appli-
3 cable to the exchange of information, for
4 the electronic exchange of health informa-
5 tion to improve the quality of health care,
6 such as promoting care coordination.

7 “(iii) REPORTING ON MEASURES
8 USING EHR.—Subject to subparagraph
9 (B)(ii) and using such certified EHR tech-
10 nology, the eligible hospital submits infor-
11 mation for such period, in a form and
12 manner specified by the Secretary, on such
13 clinical quality measures and such other
14 measures as selected by the Secretary
15 under subparagraph (B)(i).

16 The Secretary shall seek to improve the use of
17 electronic health records and health care quality
18 over time by requiring more stringent measures
19 of meaningful use selected under this para-
20 graph.

21 “(B) REPORTING ON MEASURES.—

22 “(i) SELECTION.—The Secretary shall
23 select measures for purposes of subpara-
24 graph (A)(iii) but only consistent with the
25 following:

1 “(I) The Secretary shall provide
2 preference to clinical quality measures
3 that have been selected for purposes
4 of applying subsection (b)(3)(B)(viii)
5 or that have been endorsed by the en-
6 tity with a contract with the Secretary
7 under section 1890(a).

8 “(II) Prior to any measure (other
9 than a clinical quality measure that
10 has been selected for purposes of ap-
11 plying subsection (b)(3)(B)(viii))
12 being selected under this subpara-
13 graph, the Secretary shall publish in
14 the Federal Register such measure
15 and provide for a period of public
16 comment on such measure.

17 “(ii) LIMITATIONS.—The Secretary
18 may not require the electronic reporting of
19 information on clinical quality measures
20 under subparagraph (A)(iii) unless the
21 Secretary has the capacity to accept the in-
22 formation electronically, which may be on
23 a pilot basis.

24 “(iii) COORDINATION OF REPORTING
25 OF INFORMATION.—In selecting such

1 measures, and in establishing the form and
2 manner for reporting measures under sub-
3 paragraph (A)(iii), the Secretary shall seek
4 to avoid redundant or duplicative reporting
5 with reporting otherwise required, includ-
6 ing reporting under subsection
7 (b)(3)(B)(viii).

8 “(C) DEMONSTRATION OF MEANINGFUL
9 USE OF CERTIFIED EHR TECHNOLOGY AND IN-
10 FORMATION EXCHANGE.—

11 “(i) IN GENERAL.—A hospital may
12 satisfy the demonstration requirement of
13 clauses (i) and (ii) of subparagraph (A)
14 through means specified by the Secretary,
15 which may include—

16 “(I) an attestation;

17 “(II) the submission of claims
18 with appropriate coding (such as a
19 code indicating that inpatient care
20 was documented using certified EHR
21 technology);

22 “(III) a survey response;

23 “(IV) reporting under subpara-
24 graph (A)(iii); and

1 “(V) other means specified by the
2 Secretary.

3 “(ii) USE OF PART D DATA.—Not-
4 withstanding sections 1860D–15(d)(2)(B)
5 and 1860D–15(f)(2), the Secretary may
6 use data regarding drug claims submitted
7 for purposes of section 1860D–15 that are
8 necessary for purposes of subparagraph
9 (A).

10 “(4) APPLICATION.—

11 “(A) LIMITATIONS ON REVIEW.—There
12 shall be no administrative or judicial review
13 under section 1869, section 1878, or otherwise
14 of the determination of any incentive payment
15 under this subsection and the payment adjust-
16 ment under subsection (b)(3)(B)(ix), including
17 the determination of a meaningful EHR user
18 under paragraph (3), determination of meas-
19 ures applicable to services furnished by eligible
20 hospitals under this subsection, and the excep-
21 tion under subsection (b)(3)(B)(ix)(II).

22 “(B) POSTING ON WEBSITE.—The Sec-
23 retary shall post on the Internet website of the
24 Centers for Medicare & Medicaid Services, in an
25 easily understandable format, a list of the

1 names of the eligible hospitals that are mean-
 2 ingful EHR users under this subsection or sub-
 3 section (b)(3)(B)(ix) and other relevant data as
 4 determined appropriate by the Secretary. The
 5 Secretary shall ensure that a hospital has the
 6 opportunity to review the other relevant data
 7 that are to be made public with respect to the
 8 hospital prior to such data being made public.

9 ~~“(5) CERTIFIED EHR TECHNOLOGY DEFINED.—~~
 10 The term ‘certified EHR technology’ has the mean-
 11 ing given such term in section 1848(o)(4).

12 ~~“(6) DEFINITIONS.—For purposes of this sub-~~
 13 ~~section:~~

14 ~~“(A) ELIGIBLE HOSPITAL.—The term ‘eli-~~
 15 ~~gible hospital’ means a subsection (d) hospital.~~

16 ~~“(B) REPORTING PERIOD.—The term ‘re-~~
 17 ~~porting period’ means any period (or periods),~~
 18 ~~with respect to a payment year, as specified by~~
 19 ~~the Secretary.”.~~

20 ~~(b) INCENTIVE MARKET BASKET ADJUSTMENT.—~~
 21 ~~Section 1886(b)(3)(B) of the Social Security Act (42~~
 22 ~~U.S.C. 1395ww(b)(3)(B)) is amended—~~

23 ~~(1) in clause (viii)(I), by inserting “(or, begin-~~
 24 ~~ning with fiscal year 2016, by one-quarter)” after~~
 25 ~~“2.0 percentage points”; and~~

1 (2) by adding at the end the following new
2 clause:

3 “~~(ix)(I)~~ For purposes of clause (i) for fiscal year
4 2016 and each subsequent fiscal year, in the case of an
5 eligible hospital (as defined in subsection (n)(6)(A)) that
6 is not a meaningful EHR user (as defined in subsection
7 (n)(3)) for the reporting period for such fiscal year, three-
8 quarters of the applicable percentage increase otherwise
9 applicable under clause (i) for such fiscal year shall be
10 reduced by $33\frac{1}{3}$ percent for fiscal year 2016, $66\frac{2}{3}$ per-
11 cent for fiscal year 2017, and 100 percent for fiscal year
12 2018 and each subsequent fiscal year. Such reduction
13 shall apply only with respect to the fiscal year involved
14 and the Secretary shall not take into account such reduc-
15 tion in computing the applicable percentage increase under
16 clause (i) for a subsequent fiscal year.

17 “~~(II)~~ The Secretary may, on a case-by-case basis, ex-
18 empt a subsection (d) hospital from the application of sub-
19 clause (I) with respect to a fiscal year if the Secretary
20 determines, subject to annual renewal, that requiring such
21 hospital to be a meaningful EHR user during such fiscal
22 year would result in a significant hardship, such as in the
23 case of a hospital in a rural area without sufficient Inter-
24 net access. In no case may a hospital be granted an ex-
25 emption under this subclause for more than 5 years.

1 “~~(III)~~ For fiscal year 2016 and each subsequent fis-
2 eal year, a State in which hospitals are paid for services
3 under section 1814(b)(3) shall adjust the payments to
4 each subsection (d) hospital in the State that is not a
5 meaningful EHR user (as defined in subsection (n)(3))
6 in a manner that is designed to result in an aggregate
7 reduction in payments to hospitals in the State that is
8 equivalent to the aggregate reduction that would have oc-
9 curred if payments had been reduced to each subsection
10 (d) hospital in the State in a manner comparable to the
11 reduction under the previous provisions of this clause. The
12 State shall report to the Secretary the methodology it will
13 use to make the payment adjustment under the previous
14 sentence.

15 “~~(IV)~~ For purposes of this clause, the term ‘reporting
16 period’ means, with respect to a fiscal year, any period
17 (or periods), with respect to the fiscal year, as specified
18 by the Secretary.”.

19 ~~(c) APPLICATION TO CERTAIN HMO-AFFILIATED~~
20 ~~ELIGIBLE HOSPITALS.—~~Section 1853 of the Social Secu-
21 rity Act (42 U.S.C. 1395w-23), as amended by section
22 4311(c), is further amended by adding at the end the fol-
23 lowing new subsection:

24 “~~(m) APPLICATION OF ELIGIBLE HOSPITAL INCEN-~~
25 ~~TIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION~~

1 AND MEANINGFUL USE OF CERTIFIED EHR TECH-
2 NOLOGY.—

3 “(1) APPLICATION.—Subject to paragraphs (3)
4 and (4), in the case of a qualifying MA organization,
5 the provisions of sections 1886(n) and
6 1886(b)(3)(B)(ix) shall apply with respect to eligible
7 hospitals described in paragraph (2) of the organiza-
8 tion which the organization attests under subsection
9 (1)(6) to be meaningful EHR users in a similar man-
10 ner as they apply to eligible hospitals under such
11 sections. Incentive payments under paragraph (3)
12 shall be made to and payment adjustments under
13 paragraph (4) shall apply to such qualifying organi-
14 zations.

15 “(2) ELIGIBLE HOSPITAL DESCRIBED.—With
16 respect to a qualifying MA organization, an eligible
17 hospital described in this paragraph is an eligible
18 hospital that is under common corporate governance
19 with such organization and serves individuals en-
20 rolled under an MA plan offered by such organiza-
21 tion.

22 “(3) ELIGIBLE HOSPITAL INCENTIVE PAY-
23 MENTS.—

24 “(A) IN GENERAL.—In applying section
25 1886(n)(2) under paragraph (1), instead of the

1 additional payment amount under section
2 1886(n)(2), there shall be substituted an
3 amount determined by the Secretary to be simi-
4 lar to the estimated amount in the aggregate
5 that would be payable if payment for services
6 furnished by such hospitals was payable under
7 part A instead of this part. In implementing the
8 previous sentence, the Secretary—

9 “(i) shall, insofar as data to deter-
10 mine the discharge related amount under
11 section 1886(n)(2)(C) for an eligible hos-
12 pital are not available to the Secretary, use
13 such alternative data and methodology to
14 estimate such discharge related amount as
15 the Secretary determines appropriate; and

16 “(ii) shall, insofar as data to deter-
17 mine the medicare share described in sec-
18 tion 1886(n)(2)(D) for an eligible hospital
19 are not available to the Secretary, use such
20 alternative data and methodology to esti-
21 mate such share, which data and method-
22 ology may include use of the inpatient bed
23 days (or discharges) with respect to an eli-
24 gible hospital during the appropriate pe-
25 riod which are attributable to both individ-

1 uals for whom payment may be made
2 under part A or individuals enrolled in an
3 MA plan under a Medicare Advantage or-
4 ganization under this part as a proportion
5 of the total number of patient-bed-days (or
6 discharges) with respect to such hospital
7 during such period.

8 “(B) AVOIDING DUPLICATION OF PAY-
9 MENTS.—

10 “(i) IN GENERAL.—In the case of a
11 hospital that for a payment year is an eli-
12 gible hospital described in paragraph (2),
13 is an eligible hospital under section
14 1886(n), and for which at least one-third
15 of their discharges (or bed-days) of Medi-
16 care patients for the year are covered
17 under part A, payment for the payment
18 year shall be made only under section
19 1886(n) and not under this subsection.

20 “(ii) METHODS.—In the case of a
21 hospital that is an eligible hospital de-
22 scribed in paragraph (2) and also is eligi-
23 ble for an incentive payment under section
24 1886(n) but is not described in clause (i)

1 for the same payment period, the Secretary
2 shall develop a process—

3 “(I) to ensure that duplicate pay-
4 ments are not made with respect to
5 an eligible hospital both under this
6 subsection and under section 1886(n);
7 and

8 “(II) to collect data from Medi-
9 care Advantage organizations to en-
10 sure against such duplicate payments.

11 “(4) PAYMENT ADJUSTMENT.—

12 “(A) Subject to paragraph (3), in the case
13 of a qualifying MA organization (as defined in
14 section 1853(l)(5)), if, according to the attesta-
15 tion of the organization submitted under sub-
16 section (l)(6) for an applicable period, one or
17 more eligible hospitals (as defined in section
18 1886(n)(6)(A)) that are under common cor-
19 porate governance with such organization and
20 that serve individuals enrolled under a plan of-
21 fered by such organization are not meaningful
22 EHR users (as defined in section 1886(n)(3))
23 with respect to a period, the payment amount
24 payable under this section for such organization
25 for such period shall be the percent specified in

1 subparagraph (B) for such period of the pay-
2 ment amount otherwise provided under this sec-
3 tion for such period.

4 “(B) SPECIFIED PERCENT.—The percent
5 specified under this subparagraph for a year is
6 100 percent minus a number of percentage
7 points equal to the product of—

8 “(i) the number of the percentage
9 point reduction effected under section
10 1886(b)(3)(B)(ix)(I) for the period; and

11 “(ii) the Medicare hospital expendi-
12 ture proportion specified in subparagraph
13 (C) for the year.

14 “(C) MEDICARE HOSPITAL EXPENDITURE
15 PROPORTION.—The Medicare hospital expendi-
16 ture proportion under this subparagraph for a
17 year is the Secretary’s estimate of the propor-
18 tion, of the expenditures under parts A and B
19 that are not attributable to this part, that are
20 attributable to expenditures for inpatient hos-
21 pital services.

22 “(D) APPLICATION OF PAYMENT ADJUST-
23 MENT.—In the case that a qualifying MA orga-
24 nization attests that not all eligible hospitals
25 are meaningful EHR users with respect to an

1 applicable period, the Secretary shall apply the
2 payment adjustment under this paragraph
3 based on a methodology specified by the Sec-
4 retary, taking into account the proportion of
5 such eligible hospitals, or discharges from such
6 hospitals, that are not meaningful EHR users
7 for such period.”.

8 (d) CONFORMING AMENDMENTS.—

9 (1) Section 1814(b) of the Social Security Act
10 (42 U.S.C. 1395f(b)) is amended—

11 (A) in paragraph (3), in the matter pre-
12 ceeding subparagraph (A), by inserting “, sub-
13 ject to section 1886(d)(3)(B)(ix)(III),” after
14 “then”; and

15 (B) by adding at the end the following:
16 “For purposes of applying paragraph (3), there
17 shall be taken into account incentive payments,
18 and payment adjustments under subsection
19 (b)(3)(B)(ix) or (n) of section 1886.”.

20 (2) Section 1851(i)(1) of the Social Security
21 Act (42 U.S.C. 1395w-21(i)(1)) is amended by
22 striking “and 1886(h)(3)(D)” and inserting
23 “1886(h)(3)(D), and 1853(m)”.

1 (3) Section 1853 of the Social Security Act (42
2 U.S.C. 1395w-23), as amended by section
3 4311(d)(1), is amended—

4 (A) in subsection (c)—

5 (i) in paragraph (1)(D)(i), by striking
6 “1848(o)” and inserting “; 1848(o), and
7 1886(n)”; and

8 (ii) in paragraph (6)(A), by inserting
9 “and subsections (b)(3)(B)(ix) and (n) of
10 section 1886” after “section 1848”; and

11 (B) in subsection (f), by inserting “and
12 subsection (m)” after “under subsection (l)”.

13 **SEC. 4313. TREATMENT OF PAYMENTS AND SAVINGS; IM-**
14 **PLEMENTATION FUNDING.**

15 (a) PREMIUM HOLD HARMLESS.—

16 (1) IN GENERAL.—Section 1839(a)(1) of the
17 Social Security Act (42 U.S.C. 1395r(a)(1)) is
18 amended by adding at the end the following: “In ap-
19 plying this paragraph there shall not be taken into
20 account additional payments under section 1848(o)
21 and section 1853(l)(3) and the Government con-
22 tribution under section 1844(a)(3).”.

23 (2) PAYMENT.—Section 1844(a) of such Act
24 (42 U.S.C. 1395w(a)) is amended—

1 (A) in paragraph (2), by striking the pe-
2 riod at the end and inserting “; plus”; and

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

5 “(3) a Government contribution equal to the
6 amount of payment incentives payable under sec-
7 tions 1848(o) and 1853(1)(3).”.

8 (b) MEDICARE IMPROVEMENT FUND.—Section 1898
9 of the Social Security Act (42 U.S.C. 1395iii), as added
10 by section 7002(a) of the Supplemental Appropriations
11 Act, 2008 (Public Law 110–252) and as amended by sec-
12 tion 188(a)(2) of the Medicare Improvements for Patients
13 and Providers Act of 2008 (Public Law 110–275; 122
14 Stat. 2589) and by section 6 of the QI Program Supple-
15 mental Funding Act of 2008, is amended—

16 (1) in subsection (a)—

17 (A) by inserting “medicare” before “fee-
18 for-service”; and

19 (B) by inserting before the period at the
20 end the following: “including, but not limited
21 to, an increase in the conversion factor under
22 section 1848(d) to address, in whole or in part,
23 any projected shortfall in the conversion factor
24 for 2014 relative to the conversion factor for
25 2008 and adjustments to payments for items

1 and services furnished by providers of services
2 and suppliers under such original medicare fee-
3 for-service program"; and

4 (2) in subsection (b)—

5 (A) in paragraph (1), by striking "during
6 fiscal year 2014," and all that follows and in-
7 serting the following: "during—

8 "(A) fiscal year 2014, \$22,290,000,000;
9 and

10 "(B) fiscal year 2020 and each subsequent
11 fiscal year, the Secretary's estimate, as of July
12 1 of the fiscal year, of the aggregate reduction
13 in expenditures under this title during the pre-
14 ceeding fiscal year directly resulting from the re-
15 duction in payment amounts under sections
16 1848(a)(7), 1853(l)(4), 1853(m)(4), and
17 1886(b)(3)(B)(ix)."; and

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

20 "(4) NO EFFECT ON PAYMENTS IN SUBSE-
21 QUENT YEARS.—In the case that expenditures from
22 the Fund are applied to, or otherwise affect, a pay-
23 ment rate for an item or service under this title for
24 a year, the payment rate for such item or service

1 shall be computed for a subsequent year as if such
2 application or effect had never occurred.”.

3 (c) IMPLEMENTATION FUNDING.—In addition to
4 funds otherwise available, out of any funds in the Treas-
5 ury not otherwise appropriated, there are appropriated to
6 the Secretary of Health and Human Services for the Cen-
7 ter for Medicare & Medicaid Services Program Manage-
8 ment Account, \$60,000,000 for each of fiscal years 2009
9 through 2015 and \$30,000,000 for each succeeding fiscal
10 year through fiscal year 2019, which shall be available for
11 purposes of carrying out the provisions of (and amend-
12 ments made by) this part. Amounts appropriated under
13 this subsection for a fiscal year shall be available until ex-
14 pended.

15 **SEC. 4314. STUDY ON APPLICATION OF EHR PAYMENT IN-**
16 **CENTIVES FOR PROVIDERS NOT RECEIVING**
17 **OTHER INCENTIVE PAYMENTS.**

18 (a) STUDY.—

19 (1) IN GENERAL.—The Secretary of Health and
20 Human Services shall conduct a study to determine
21 the extent to which and manner in which payment
22 incentives (such as under title XVIII or XIX of the
23 Social Security Act) and other funding for purposes
24 of implementing and using certified EHR technology
25 (as defined in section 3000 of the Public Health

1 Service Act) should be made available to health care
2 providers who are receiving minimal or no payment
3 incentives or other funding under this Act, under
4 title XVIII or XIX of the Social Security Act, or
5 otherwise, for such purposes.

6 (2) DETAILS OF STUDY.—Such study shall in-
7 clude an examination of—

8 (A) the adoption rates of certified EHR
9 technology by such health care providers;

10 (B) the clinical utility of such technology
11 by such health care providers;

12 (C) whether the services furnished by such
13 health care providers are appropriate for or
14 would benefit from the use of such technology;

15 (D) the extent to which such health care
16 providers work in settings that might otherwise
17 receive an incentive payment or other funding
18 under this Act, title XVIII or XIX of the Social
19 Security Act, or otherwise;

20 (E) the potential costs and the potential
21 benefits of making payment incentives and
22 other funding available to such health care pro-
23 viders; and

24 (F) any other issues the Secretary deems
25 to be appropriate.

1 (b) REPORT.—Not later than June 30, 2010, the
2 Secretary shall submit to Congress a report on the find-
3 ings and conclusions of the study conducted under sub-
4 section (a).

5 **PART III—MEDICAID FUNDING**

6 **SEC. 4321. MEDICAID PROVIDER HIT ADOPTION AND OPER-**
7 **ATION PAYMENTS; IMPLEMENTATION FUND-**
8 **ING.**

9 (a) IN GENERAL.—Section 1903 of the Social Secu-
10 rity Act (42 U.S.C. 1396b) is amended—

11 (1) in subsection (a)(3)—

12 (A) by striking “and” at the end of sub-
13 paragraph (D);

14 (B) by striking “plus” at the end of sub-
15 paragraph (E) and inserting “and”; and

16 (C) by adding at the end the following new
17 subparagraph:

18 “(F)(i) 100 percent of so much of the
19 sums expended during such quarter as are at-
20 tributable to payments for certified EHR tech-
21 nology (and support services including mainte-
22 nance and training that is for, or is necessary
23 for the adoption and operation of, such tech-
24 nology) by Medicaid providers described in sub-
25 section (t)(1); and

1 “(ii) 90 percent of so much of the sums ex-
2 pended during such quarter as are attributable
3 to payments for reasonable administrative ex-
4 penses related to the administration of pay-
5 ments described in clause (i) if the State meets
6 the condition described in subsection (t)(9);
7 plus”; and

8 (2) by inserting after subsection (s) the fol-
9 lowing new subsection:

10 “(t)(1)(A) For purposes of subsection (a)(3)(F), the
11 payments for certified EHR technology (and support serv-
12 ices including maintenance that is for, or is necessary for
13 the operation of, such technology) by Medicaid providers
14 described in this paragraph are payments made by the
15 State in accordance with this subsection of the applicable
16 percent (as specified in subparagraph (B)) of the net al-
17 lowable costs of Medicaid providers (as defined in para-
18 graph (2)) for such technology (and support services).

19 “(B) For purposes of subparagraph (A), the applica-
20 ble percent is—

21 “(i) in the case of a Medicaid provider de-
22 scribed in paragraph (2)(A), 85 percent; and

23 “(ii) in the case of a Medicaid provider de-
24 scribed in paragraph (2)(B), 100 percent.

1 “(2) In this subsection and subsection (a)(3)(F), the
2 term ‘Medicaid provider’ means—

3 “(A) an eligible professional (as defined in
4 paragraph (3)(B)) who is not hospital-based and has
5 at least 30 percent of the professional’s patient vol-
6 ume (as estimated in accordance with standards es-
7 tablished by the Secretary) attributable to individ-
8 uals who are receiving medical assistance under this
9 title; and

10 “(B)(i) a children’s hospital; (ii) an acute-care
11 hospital that is not described in clause (i) and that
12 has at least 10 percent of the hospital’s patient vol-
13 ume (as estimated in accordance with standards es-
14 tablished by the Secretary) attributable to individ-
15 uals who are receiving medical assistance under this
16 title; or (iii) a Federally-qualified health center or
17 rural health clinic that has at least 30 percent of the
18 center’s or clinic’s patient volume (as estimated in
19 accordance with standards established by the Sec-
20 retary) attributable to individuals who are receiving
21 medical assistance under this title.

22 An eligible professional shall not qualify as a Medicaid
23 provider under this subsection unless the eligible profes-
24 sional has waived, in a manner specified by the Secretary,
25 any right to payment under section 1848(o) with respect

1 to the adoption or support of certified EHR technology
2 by the professional. In applying clauses (ii) and (iii) of
3 subparagraph (B), the standards established by the Sec-
4 retary for patient volume shall include individuals enrolled
5 in a Medicaid managed care plan (under section 1903(m)
6 or section 1932).

7 “(3) In this subsection and subsection (a)(3)(F):

8 “(A) The term ‘certified EHR technology’
9 means a qualified electronic health record (as de-
10 fined in 3000(13) of the Public Health Service Act)
11 that is certified pursuant to section 3001(e)(5) of
12 such Act as meeting standards adopted under sec-
13 tion 3004 of such Act that are applicable to the type
14 of record involved (as determined by the Secretary,
15 such as an ambulatory electronic health record for
16 office-based physicians or an inpatient hospital elec-
17 tronic health record for hospitals).

18 “(B) The term ‘eligible professional’ means a
19 physician as defined in paragraphs (1) and (2) of
20 section 1861(r), and includes a certified nurse mid-
21 wife and a nurse practitioner.

22 “(C) The term ‘hospital-based’ means, with re-
23 spect to an eligible professional, a professional (such
24 as a pathologist, anesthesiologist, or emergency phy-
25 sician) who furnishes substantially all of the individ-

1 ual’s professional services in a hospital setting
2 (whether inpatient or outpatient) and through the
3 use of the facilities and equipment, including com-
4 puter equipment, of the hospital.

5 “(4)(A) The term ‘allowable costs’ means, with re-
6 spect to certified EHR technology of a Medicaid provider,
7 costs of such technology (and support services including
8 maintenance and training that is for, or is necessary for
9 the adoption and operation of, such technology) as deter-
10 mined by the Secretary to be reasonable.

11 “(B) The term ‘net allowable costs’ means allowable
12 costs reduced by any payment that is made to the Med-
13 icaid provider involved from any other source that is di-
14 rectly attributable to payment for certified EHR tech-
15 nology or services described in subparagraph (A).

16 “(C) In no case shall—

17 “(i) the aggregate allowable costs under this
18 subsection (covering one or more years) with respect
19 to a Medicaid provider described in paragraph
20 (2)(A) for purchase and initial implementation of
21 certified EHR technology (and services described in
22 subparagraph (A)) exceed \$25,000 or include costs
23 over a period of longer than 5 years;

24 “(ii) for costs not described in clause (i) relat-
25 ing to the operation, maintenance, or use of certified

1 EHR technology, the annual allowable costs under
2 this subsection with respect to such a Medicaid pro-
3 vider for costs not described in clause (i) for any
4 year exceed \$10,000;

5 “(iii) payment described in paragraph (1) for
6 costs described in clause (ii) be made with respect
7 to such a Medicaid provider over a period of more
8 than 5 years;

9 “(iv) the aggregate allowable costs under this
10 subsection with respect to such a Medicaid provider
11 for all costs exceed \$75,000; or

12 “(v) the allowable costs, whether for purchase
13 and initial implementation, maintenance, or other-
14 wise, for a Medicaid provider described in paragraph
15 (2)(B)(iii) exceed such aggregate or annual limita-
16 tion as the Secretary shall establish, based on an
17 amount determined by the Secretary as being ade-
18 quate to adopt and maintain certified EHR tech-
19 nology, consistent with paragraph (6).

20 “(5) Payments described in paragraph (1) are not in
21 accordance with this subsection unless the following re-
22 quirements are met:

23 “(A) The State provides assurances satisfactory
24 to the Secretary that amounts received under sub-
25 section (a)(3)(F) with respect to costs of a Medicaid

1 provider are paid directly to such provider without
2 any deduction or rebate.

3 ~~“(B) Such Medicaid provider is responsible for~~
4 ~~payment of the costs described in such paragraph~~
5 ~~that are not provided under this title.~~

6 ~~“(C) With respect to payments to such Med-~~
7 ~~icaid provider for costs other than costs related to~~
8 ~~the initial adoption of certified EHR technology, the~~
9 ~~Medicaid provider demonstrates meaningful use of~~
10 ~~certified EHR technology through a means that is~~
11 ~~approved by the State and acceptable to the Sec-~~
12 ~~retary, and that may be based upon the methodolo-~~
13 ~~gies applied under section 1848(o) or 1886(n).~~

14 ~~“(D) To the extent specified by the Secretary,~~
15 ~~the certified EHR technology is compatible with~~
16 ~~State or Federal administrative management sys-~~
17 ~~tems.~~

18 ~~“(6)(A) In no case shall the payments described in~~
19 ~~paragraph (1), with respect to a hospital, exceed in the~~
20 ~~aggregate the product of—~~

21 ~~“(i) the overall hospital EHR amount for the~~
22 ~~hospital computed under subparagraph (B); and~~

23 ~~“(ii) the Medicaid share for such hospital com-~~
24 ~~puted under subparagraph (C).~~

1 “(B) For purposes of this paragraph, the overall hos-
2 pital EHR amount, with respect to a hospital, is the sum
3 of the applicable amounts specified in section
4 1886(n)(2)(A) for such hospital for the first 4 payment
5 years (as estimated by the Secretary) determined as if the
6 Medicare share specified in clause (ii) of such section were
7 1. The Secretary shall publish in the Federal Register the
8 overall hospital EHR amount for each hospital eligible for
9 payments under this subsection. In computing amounts
10 under paragraph 1886(n)(2)(C) for payment years after
11 the first payment year, the Secretary shall assume that
12 in subsequent payment years discharges increase at the
13 average annual rate of growth of the most recent 3 years
14 for which discharge data are available per year.

15 “(C) The Medicaid share computed under this sub-
16 paragraph, for a hospital for a period specified by the Sec-
17 retary, shall be calculated in the same manner as the
18 Medicare share under section 1886(n)(2)(D) for such a
19 hospital and period, except that there shall be substituted
20 for the numerator under clause (i) of such section the
21 amount that is equal to the number of inpatient-bed-days
22 (as established by the Secretary) which are attributable
23 to individuals who are receiving medical assistance under
24 this title and who are not described in section
25 1886(n)(2)(D)(i). In computing inpatient-bed-days under

1 the previous sentence, the Secretary shall take into ac-
2 count inpatient-bed-days attributable to inpatient-bed-
3 days that are paid for individuals enrolled in a Medicaid
4 managed care plan (under section 1903(m) or section
5 1932).

6 “(7) With respect to health care providers other than
7 hospitals, the Secretary shall ensure coordination of the
8 different programs for payment of such health care pro-
9 viders for adoption or use of health information technology
10 (including certified EHR technology), as well as payments
11 for such health care providers provided under this title or
12 title XVIII, to assure no duplication of funding.

13 “(8) In carrying out paragraph (5)(C), the State and
14 Secretary shall seek, to the maximum extent practicable,
15 to avoid duplicative requirements from Federal and State
16 Governments to demonstrate meaningful use of certified
17 EHR technology under this title and title XVIII. In doing
18 so, the Secretary may deem satisfaction of requirements
19 for such meaningful use for a payment year under title
20 XVIII to be sufficient to qualify as meaningful use under
21 this subsection. The Secretary may also specify the report-
22 ing periods under this subsection in order to carry out this
23 paragraph.

24 “(9) In order to be provided Federal financial partici-
25 pation under subsection (a)(3)(F)(ii), a State must dem-

1 onstrate to the satisfaction of the Secretary, that the
2 State—

3 “(A) is using the funds provided for the pur-
4 poses of administering payments under this sub-
5 section, including tracking of meaningful use by
6 Medicaid providers;

7 “(B) is conducting adequate oversight of the
8 program under this subsection, including routine
9 tracking of meaningful use attestations and report-
10 ing mechanisms; and

11 “(C) is pursuing initiatives to encourage the
12 adoption of certified EHR technology to promote
13 health care quality and the exchange of health care
14 information under this title, subject to applicable
15 laws and regulations governing such exchange.

16 “(10) The Secretary shall periodically submit reports
17 to the Committee on Energy and Commerce of the House
18 of Representatives and the Committee on Finance of the
19 Senate on status, progress, and oversight of payments
20 under paragraph (1).”.

21 (b) IMPLEMENTATION FUNDING.—In addition to
22 funds otherwise available, out of any funds in the Treas-
23 ury not otherwise appropriated, there are appropriated to
24 the Secretary of Health and Human Services for the Cen-
25 ter for Medicare & Medicaid Services Program Manage-

1 ment Account, \$40,000,000 for each of fiscal years 2009
2 through 2015 and \$20,000,000 for each succeeding fiscal
3 year through fiscal year 2019, which shall be available for
4 purposes of carrying out the provisions of (and the amend-
5 ments made by) this part. Amounts appropriated under
6 this subsection for a fiscal year shall be available until ex-
7 pended.

8 **SEC. 4322. MEDICAID NURSING FACILITY GRANT PROGRAM.**

9 (a) **IN GENERAL.**—The Secretary shall establish a
10 grant program to enhance the meaningful use of certified
11 electronic health records in nursing facilities. In estab-
12 lishing such program, the Secretary shall use payment in-
13 centives for meaningful use of certified EHR technology,
14 similar to those specified in sections 4311, 4312, and
15 4321, as appropriate. For the purpose of such incentives,
16 the Secretary shall define meaningful use in a manner so
17 as to be consistent with such sections to the extent prac-
18 ticable. The Secretary shall award funds to not more than
19 10 States to carry out activities under this section.

20 (b) **ACTIVITIES.**—The Secretary shall require a State
21 participating in the grant program to—

22 (1) provide payment incentives to nursing facili-
23 ties contingent on the demonstration of meaningful
24 use of certified electronic health records;

1 (2) require participating nursing facilities to en-
2 gage in programs to improve the quality and coordi-
3 nation of care through the use of certified EHR
4 technology, including for persons who are repeatedly
5 admitted to acute care hospitals from the nursing
6 facility and persons who receive services across mul-
7 tiple medical and social services providers (including
8 facility and community-based providers); and

9 (3) provide for training of appropriate per-
10 sonnel in the use of certified electronic health
11 records.

12 (c) TARGETING.—The Secretary shall require a State
13 participating in the grant program to target nursing facili-
14 ties with a significant percentage (but not less than the
15 average in the State) of the facility's patient volume (as
16 estimated in accordance with standards established by the
17 Secretary) attributable to individuals who are receiving
18 medical assistance under title XIX of the Social Security
19 Act.

20 (d) PRIORITY.—In making grants under this section,
21 the Secretary shall give priority to States with a high pro-
22 portion of total national nursing facility days paid under
23 title XIX of the Social Security Act.

24 (e) LIMITATIONS ON USE OF FUNDS.—A State may
25 not make payments to a nursing facility in excess of 90

1 percent of the costs of such nursing facility for the adop-
2 tion and operation of certified EHR technology.

3 (f) APPLICATION.—No grant may be made to a State
4 under this section unless the State submits an application
5 to the Secretary in a form and manner specified by the
6 Secretary.

7 (g) REPORT.—Not later than the end of the 3-year
8 period beginning on the date that grants under this sec-
9 tion are first awarded, the Secretary shall submit a report
10 to Congress on the activities under this grant program and
11 the effect of this program on quality and coordination of
12 care under title XIX of the Social Security Act.

13 (h) APPROPRIATION.—Out of any money in the
14 Treasury not otherwise appropriated, there is appro-
15 priated to the Secretary of Health and Human Services
16 to carry out this section \$600,000,000, to remain available
17 until expended.

18 **Subtitle D—Privacy**

19 **SEC. 4400. DEFINITIONS.**

20 In this subtitle, except as specified otherwise:

21 (1) BREACH.—The term “breach” means the
22 unauthorized acquisition, access, use, or disclosure
23 of protected health information which compromises
24 the security, privacy, or integrity of protected health
25 information maintained by or on behalf of a person.

1 Such term does not include any unintentional acqui-
2 sition, access, use, or disclosure of such information
3 by an employee or agent of the covered entity or
4 business associate involved if such acquisition, ac-
5 cess, use, or disclosure, respectively, was made in
6 good faith and within the course and scope of the
7 employment or other contractual relationship of such
8 employee or agent, respectively, with the covered en-
9 tity or business associate and if such information is
10 not further acquired, accessed, used, or disclosed by
11 such employee or agent.

12 (2) BUSINESS ASSOCIATE.—The term “business
13 associate” has the meaning given such term in sec-
14 tion 160.103 of title 45, Code of Federal Regula-
15 tions.

16 (3) COVERED ENTITY.—The term “covered en-
17 tity” has the meaning given such term in section
18 160.103 of title 45, Code of Federal Regulations.

19 (4) DISCLOSE.—The terms “disclose” and “dis-
20 closure” have the meaning given the term “diselo-
21 sure” in section 160.103 of title 45, Code of Federal
22 Regulations.

23 (5) ELECTRONIC HEALTH RECORD.—The term
24 “electronic health record” means an electronic
25 record of health-related information on an individual

1 that is created, gathered, managed, and consulted by
2 authorized health care clinicians and staff.

3 (6) HEALTH CARE OPERATIONS.—The term
4 “health care operation” has the meaning given such
5 term in section 164.501 of title 45, Code of Federal
6 Regulations.

7 (7) HEALTH CARE PROVIDER.—The term
8 “health care provider” has the meaning given such
9 term in section 160.103 of title 45, Code of Federal
10 Regulations.

11 (8) HEALTH PLAN.—The term “health plan”
12 has the meaning given such term in section 1171(5)
13 of the Social Security Act.

14 (9) NATIONAL COORDINATOR.—The term “Na-
15 tional Coordinator” means the head of the Office of
16 the National Coordinator for Health Information
17 Technology established under section 3001(a) of the
18 Public Health Service Act, as added by section
19 4101.

20 (10) PAYMENT.—The term “payment” has the
21 meaning given such term in section 164.501 of title
22 45, Code of Federal Regulations.

23 (11) PERSONAL HEALTH RECORD.—The term
24 “personal health record” means an electronic record
25 of individually identifiable health information on an

1 individual that can be drawn from multiple sources
2 and that is managed, shared, and controlled by or
3 for the individual.

4 (12) PROTECTED HEALTH INFORMATION.—The
5 term “protected health information” has the mean-
6 ing given such term in section 160.103 of title 45,
7 Code of Federal Regulations.

8 (13) SECRETARY.—The term “Secretary”
9 means the Secretary of Health and Human Services.

10 (14) SECURITY.—The term “security” has the
11 meaning given such term in section 164.304 of title
12 45, Code of Federal Regulations.

13 (15) STATE.—The term “State” means each of
14 the several States, the District of Columbia, Puerto
15 Rico, the Virgin Islands, Guam, American Samoa,
16 and the Northern Mariana Islands.

17 (16) TREATMENT.—The term “treatment” has
18 the meaning given such term in section 164.501 of
19 title 45, Code of Federal Regulations.

20 (17) USE.—The term “use” has the meaning
21 given such term in section 160.103 of title 45, Code
22 of Federal Regulations.

23 (18) VENDOR OF PERSONAL HEALTH
24 RECORDS.—The term “vendor of personal health
25 records” means an entity, other than a covered enti-

1 ty (as defined in paragraph (3)), that offers or
2 maintains a personal health record.

3 **PART I—IMPROVED PRIVACY PROVISIONS AND**
4 **SECURITY PROVISIONS**

5 **SEC. 4401. APPLICATION OF SECURITY PROVISIONS AND**
6 **PENALTIES TO BUSINESS ASSOCIATES OF**
7 **COVERED ENTITIES; ANNUAL GUIDANCE ON**
8 **SECURITY PROVISIONS.**

9 (a) APPLICATION OF SECURITY PROVISIONS.—Sec-
10 tions 164.308, 164.310, 164.312, and 164.316 of title 45,
11 Code of Federal Regulations, shall apply to a business as-
12 sociate of a covered entity in the same manner that such
13 sections apply to the covered entity. The additional re-
14 quirements of this title that relate to security and that
15 are made applicable with respect to covered entities shall
16 also be applicable to such a business associate and shall
17 be incorporated into the business associate agreement be-
18 tween the business associate and the covered entity.

19 (b) APPLICATION OF CIVIL AND CRIMINAL PEN-
20 ALTIES.—In the case of a business associate that violates
21 any security provision specified in subsection (a), sections
22 1176 and 1177 of the Social Security Act (42 U.S.C.
23 1320d-5, 1320d-6) shall apply to the business associate
24 with respect to such violation in the same manner such

1 sections apply to a covered entity that violates such secu-
2 rity provision.

3 (c) **ANNUAL GUIDANCE.**—For the first year begin-
4 ning after the date of the enactment of this Act and annu-
5 ally thereafter, the Secretary of Health and Human Serv-
6 ices shall, in consultation with industry stakeholders, an-
7 nually issue guidance on the most effective and appro-
8 priate technical safeguards for use in carrying out the see-
9 tions referred to in subsection (a) and the security stand-
10 ards in subpart C of part 164 of title 45, Code of Federal
11 Regulations, including the use of standards developed
12 under section 3002(b)(2)(B)(vi) of the Public Health
13 Service Act, as added by section 4101, as such provisions
14 are in effect as of the date before the enactment of this
15 Act.

16 **SEC. 4402. NOTIFICATION IN THE CASE OF BREACH.**

17 (a) **IN GENERAL.**—A covered entity that accesses,
18 maintains, retains, modifies, records, stores, destroys, or
19 otherwise holds, uses, or discloses unsecured protected
20 health information (as defined in subsection (h)(1)) shall,
21 in the case of a breach of such information that is discov-
22 ered by the covered entity, notify each individual whose
23 unsecured protected health information has been, or is
24 reasonably believed by the covered entity to have been,
25 accessed, acquired, or disclosed as a result of such breach.

1 (b) NOTIFICATION OF COVERED ENTITY BY BUSI-
2 NESS ASSOCIATE.—A business associate of a covered enti-
3 ty that accesses, maintains, retains, modifies, records,
4 stores, destroys, or otherwise holds, uses, or discloses un-
5 secured protected health information shall, following the
6 discovery of a breach of such information, notify the cov-
7 ered entity of such breach. Such notice shall include the
8 identification of each individual whose unsecured protected
9 health information has been, or is reasonably believed by
10 the business associate to have been, accessed, acquired,
11 or disclosed during such breach.

12 (c) BREACHES TREATED AS DISCOVERED.—For pur-
13 poses of this section, a breach shall be treated as discov-
14 ered by a covered entity or by a business associate as of
15 the first day on which such breach is known to such entity
16 or associate, respectively, (including any person, other
17 than the individual committing the breach, that is an em-
18 ployee, officer, or other agent of such entity or associate,
19 respectively) or should reasonably have been known to
20 such entity or associate (or person) to have occurred.

21 (d) TIMELINESS OF NOTIFICATION.—

22 (1) IN GENERAL.—Subject to subsection (g), all
23 notifications required under this section shall be
24 made without unreasonable delay and in no case
25 later than 60 calendar days after the discovery of a

1 breach by the covered entity involved (or business
2 associate involved in the case of a notification re-
3 quired under subsection (b)).

4 (2) BURDEN OF PROOF.—The covered entity in-
5 volved (or business associate involved in the case of
6 a notification required under subsection (b)), shall
7 have the burden of demonstrating that all notifica-
8 tions were made as required under this part, includ-
9 ing evidence demonstrating the necessity of any
10 delay.

11 (c) METHODS OF NOTICE.—

12 (1) INDIVIDUAL NOTICE.—Notice required
13 under this section to be provided to an individual,
14 with respect to a breach, shall be provided promptly
15 and in the following form:

16 (A) Written notification by first-class mail
17 to the individual (or the next of kin of the indi-
18 vidual if the individual is deceased) at the last
19 known address of the individual or the next of
20 kin, respectively, or, if specified as a preference
21 by the individual, by electronic mail. The notifi-
22 cation may be provided in one or more mailings
23 as information is available.

24 (B) In the case in which there is insuffi-
25 cient, or out-of-date contact information (in-

1 eluding a phone number, email address, or any
2 other form of appropriate communication) that
3 precludes direct written (or, if specified by the
4 individual under subparagraph (A), electronic)
5 notification to the individual; a substitute form
6 of notice shall be provided, including, in the
7 case that there are 10 or more individuals for
8 which there is insufficient or out-of-date contact
9 information, a conspicuous posting for a period
10 determined by the Secretary on the home page
11 of the Web site of the covered entity involved or
12 notice in major print or broadcast media, in-
13 cluding major media in geographic areas where
14 the individuals affected by the breach likely re-
15 side. Such a notice in media or web posting will
16 include a toll-free phone number where an indi-
17 vidual can learn whether or not the individual's
18 unsecured protected health information is pos-
19 sibly included in the breach.

20 (C) In any case deemed by the covered en-
21 tity involved to require urgency because of pos-
22 sible imminent misuse of unsecured protected
23 health information, the covered entity, in addi-
24 tion to notice provided under subparagraph (A),

1 may provide information to individuals by tele-
2 phone or other means, as appropriate.

3 ~~(2) MEDIA NOTICE.~~—Notice shall be provided
4 to prominent media outlets serving a State or juris-
5 diction, following the discovery of a breach described
6 in subsection (a); if the unsecured protected health
7 information of more than 500 residents of such
8 State or jurisdiction is, or is reasonably believed to
9 have been, accessed, acquired, or disclosed during
10 such breach.

11 ~~(3) NOTICE TO SECRETARY.~~—Notice shall be
12 provided to the Secretary by covered entities of un-
13 secured protected health information that has been
14 acquired or disclosed in a breach. If the breach was
15 with respect to 500 or more individuals than such
16 notice must be provided immediately. If the breach
17 was with respect to less than 500 individuals, the
18 covered entity involved may maintain a log of any
19 such breach occurring and annually submit such a
20 log to the Secretary documenting such breaches oc-
21 curring during the year involved.

22 ~~(4) POSTING ON HHS PUBLIC WEBSITE.~~—The
23 Secretary shall make available to the public on the
24 Internet website of the Department of Health and
25 Human Services a list that identifies each covered

1 entity involved in a breach described in subsection
2 (a) in which the unsecured protected health informa-
3 tion of more than 500 individuals is acquired or dis-
4 closed.

5 (f) CONTENT OF NOTIFICATION.—Regardless of the
6 method by which notice is provided to individuals under
7 this section, notice of a breach shall include, to the extent
8 possible, the following:

9 (1) A brief description of what happened, in-
10 cluding the date of the breach and the date of the
11 discovery of the breach, if known.

12 (2) A description of the types of unsecured pro-
13 tected health information that were involved in the
14 breach (such as full name, Social Security number,
15 date of birth, home address, account number, or dis-
16 ability code).

17 (3) The steps individuals should take to protect
18 themselves from potential harm resulting from the
19 breach.

20 (4) A brief description of what the covered enti-
21 ty involved is doing to investigate the breach, to
22 mitigate losses, and to protect against any further
23 breaches.

24 (5) Contact procedures for individuals to ask
25 questions or learn additional information, which

1 shall include a toll-free telephone number, an e-mail
2 address, Web site, or postal address.

3 ~~(g) DELAY OF NOTIFICATION AUTHORIZED FOR LAW~~
4 ~~ENFORCEMENT PURPOSES.—~~If a law enforcement official
5 determines that a notification, notice, or posting required
6 under this section would impede a criminal investigation
7 or cause damage to national security, such notification,
8 notice, or posting shall be delayed in the same manner
9 as provided under section 164.528(a)(2) of title 45, Code
10 of Federal Regulations, in the case of a disclosure covered
11 under such section.

12 ~~(h) UNSECURED PROTECTED HEALTH INFORMA-~~
13 ~~TION.—~~

14 ~~(1) DEFINITION.—~~

15 ~~(A) IN GENERAL.—~~Subject to subpara-
16 graph (B), for purposes of this section, the
17 term “unsecured protected health information”
18 means protected health information that is not
19 secured through the use of a technology or
20 methodology specified by the Secretary in the
21 guidance issued under paragraph (2).

22 ~~(B) EXCEPTION IN CASE TIMELY GUID-~~
23 ~~ANCE NOT ISSUED.—~~In the case that the Sec-
24 retary does not issue guidance under paragraph
25 (2) by the date specified in such paragraph, for

1 purposes of this section, the term “unsecured
2 protected health information” shall mean pro-
3 tected health information that is not secured by
4 a technology standard that renders protected
5 health information unusable, unreadable, or in-
6 decipherable to unauthorized individuals and is
7 developed or endorsed by a standards devel-
8 oping organization that is accredited by the
9 American National Standards Institute.

10 (2) GUIDANCE.—For purposes of paragraph (1)
11 and section 407(f)(3), not later than the date that
12 is 60 days after the date of the enactment of this
13 Act, the Secretary shall, after consultation with
14 stakeholders, issue (and annually update) guidance
15 specifying the technologies and methodologies that
16 render protected health information unusable,
17 unreadable, or indecipherable to unauthorized indi-
18 viduals, including use of standards developed under
19 section 3002(b)(2)(B)(vi) of the Public Health Serv-
20 ice Act, as added by section 4101.

21 (i) REPORT TO CONGRESS ON BREACHES.—

22 (1) IN GENERAL.—Not later than 12 months
23 after the date of the enactment of this Act and an-
24 nually thereafter, the Secretary shall prepare and
25 submit to the Committee on Finance and the Com-

1 mittee on Health, Education, Labor, and Pensions
2 of the Senate and the Committee on Ways and
3 Means and the Committee on Energy and Commerce
4 of the House of Representatives a report containing
5 the information described in paragraph (2) regard-
6 ing breaches for which notice was provided to the
7 Secretary under subsection (e)(3).

8 (2) INFORMATION.—The information described
9 in this paragraph regarding breaches specified in
10 paragraph (1) shall include—

11 (A) the number and nature of such
12 breaches; and

13 (B) actions taken in response to such
14 breaches.

15 (j) REGULATIONS; EFFECTIVE DATE.—To carry out
16 this section, the Secretary of Health and Human Services
17 shall promulgate interim final regulations by not later
18 than the date that is 180 days after the date of the enact-
19 ment of this title. The provisions of this section shall apply
20 to breaches that are discovered on or after the date that
21 is 30 days after the date of publication of such interim
22 final regulations.

1 **SEC. 4403. EDUCATION ON HEALTH INFORMATION PRI-**
2 **VACY.**

3 (a) **REGIONAL OFFICE PRIVACY ADVISORS.**—Not
4 later than 6 months after the date of the enactment of
5 this Act, the Secretary shall designate an individual in
6 each regional office of the Department of Health and
7 Human Services to offer guidance and education to cov-
8 ered entities, business associates, and individuals on their
9 rights and responsibilities related to Federal privacy and
10 security requirements for protected health information.

11 (b) **EDUCATION INITIATIVE ON USES OF HEALTH IN-**
12 **FORMATION.**—Not later than 12 months after the date of
13 the enactment of this Act, the Office for Civil Rights with-
14 in the Department of Health and Human Services shall
15 develop and maintain a multi-faceted national education
16 initiative to enhance public transparency regarding the
17 uses of protected health information, including programs
18 to educate individuals about the potential uses of their
19 protected health information, the effects of such uses, and
20 the rights of individuals with respect to such uses. Such
21 programs shall be conducted in a variety of languages and
22 present information in a clear and understandable man-
23 ner.

1 **SEC. 4404. APPLICATION OF PRIVACY PROVISIONS AND**
2 **PENALTIES TO BUSINESS ASSOCIATES OF**
3 **COVERED ENTITIES.**

4 (a) **APPLICATION OF CONTRACT REQUIREMENTS.—**
5 In the case of a business associate of a covered entity that
6 obtains or creates protected health information pursuant
7 to a written contract (or other written arrangement) de-
8 scribed in section 164.502(e)(2) of title 45, Code of Fed-
9 eral Regulations, with such covered entity, the business
10 associate may use and disclose such protected health infor-
11 mation only if such use or disclosure, respectively, is in
12 compliance with each applicable requirement of section
13 164.504(e) of such title. The additional requirements of
14 this subtitle that relate to privacy and that are made ap-
15 plicable with respect to covered entities shall also be appli-
16 cable to such a business associate and shall be incor-
17 porated into the business associate agreement between the
18 business associate and the covered entity.

19 (b) **APPLICATION OF KNOWLEDGE ELEMENTS ASSO-**
20 **CIATED WITH CONTRACTS.—**Section 164.504(e)(1)(ii) of
21 title 45, Code of Federal Regulations, shall apply to a
22 business associate described in subsection (a), with respect
23 to compliance with such subsection, in the same manner
24 that such section applies to a covered entity, with respect
25 to compliance with the standards in sections 164.502(e)
26 and 164.504(e) of such title, except that in applying such

1 section 164.504(c)(1)(ii) each reference to the business as-
2 sociate, with respect to a contract, shall be treated as a
3 reference to the covered entity involved in such contract.

4 (c) APPLICATION OF CIVIL AND CRIMINAL PEN-
5 ALTIES.—In the case of a business associate that violates
6 any provision of subsection (a) or (b), the provisions of
7 sections 1176 and 1177 of the Social Security Act (42
8 U.S.C. 1320d-5, 1320d-6) shall apply to the business as-
9 sociate with respect to such violation in the same manner
10 as such provisions apply to a person who violates a provi-
11 sion of part C of title XI of such Act.

12 **SEC. 4405. RESTRICTIONS ON CERTAIN DISCLOSURES AND**
13 **SALES OF HEALTH INFORMATION; ACCOUNT-**
14 **ING OF CERTAIN PROTECTED HEALTH IN-**
15 **FORMATION DISCLOSURES; ACCESS TO CER-**
16 **TAIN INFORMATION IN ELECTRONIC FOR-**
17 **MAT.**

18 (a) REQUESTED RESTRICTIONS ON CERTAIN DIS-
19 CLOSURES OF HEALTH INFORMATION.—In the case that
20 an individual requests under paragraph (a)(1)(i)(A) of
21 section 164.522 of title 45, Code of Federal Regulations,
22 that a covered entity restrict the disclosure of the pro-
23 tected health information of the individual, notwith-
24 standing paragraph (a)(1)(ii) of such section, the covered
25 entity must comply with the requested restriction if—

1 (1) except as otherwise required by law, the dis-
2 closure is to a health plan for purposes of carrying
3 out payment or health care operations (and is not
4 for purposes of carrying out treatment); and

5 (2) the protected health information pertains
6 solely to a health care item or service for which the
7 health care provider involved has been paid out of
8 pocket in full.

9 (b) DISCLOSURES REQUIRED TO BE LIMITED TO
10 THE LIMITED DATA SET OR THE MINIMUM NEC-
11 CESSARY.—

12 (1) IN GENERAL.—

13 (A) IN GENERAL.—Subject to subpara-
14 graph (B), a covered entity shall be treated as
15 being in compliance with section 164.502(b)(1)
16 of title 45, Code of Federal Regulations, with
17 respect to the use, disclosure, or request of pro-
18 tected health information described in such sec-
19 tion, only if the covered entity limits such pro-
20 tected health information, to the extent prac-
21 ticable, to the limited data set (as defined in
22 section 164.514(e)(2) of such title) or, if needed
23 by such entity, to the minimum necessary to ac-
24 complish the intended purpose of such use, dis-
25 closure, or request, respectively.

1 (B) GUIDANCE.—Not later than 18
2 months after the date of the enactment of this
3 section, the Secretary shall issue guidance on
4 what constitutes “minimum necessary” for pur-
5 poses of subpart E of part 164 of title 45, Code
6 of Federal Regulation. In issuing such guidance
7 the Secretary shall take into consideration the
8 guidance under section 4424(e).

9 (C) SUNSET.—Subparagraph (A) shall not
10 apply on and after the effective date on which
11 the Secretary issues the guidance under sub-
12 paragraph (B).

13 (2) DETERMINATION OF MINIMUM NEC-
14 ESSARY.—For purposes of paragraph (1), in the
15 ease of the disclosure of protected health informa-
16 tion, the covered entity or business associate dis-
17 closing such information shall determine what con-
18 stitutes the minimum necessary to accomplish the
19 intended purpose of such disclosure.

20 (3) APPLICATION OF EXCEPTIONS.—The excep-
21 tions described in section 164.502(b)(2) of title 45,
22 Code of Federal Regulations, shall apply to the re-
23 quirement under paragraph (1) as of the effective
24 date described in section 4423 in the same manner

1 that such exceptions apply to section 164.502(b)(1)
2 of such title before such date.

3 (4) RULE OF CONSTRUCTION.—Nothing in this
4 subsection shall be construed as affecting the use,
5 disclosure, or request of protected health information
6 that has been de-identified.

7 (c) ACCOUNTING OF CERTAIN PROTECTED HEALTH
8 INFORMATION DISCLOSURES REQUIRED IF COVERED EN-
9 TITY USES ELECTRONIC HEALTH RECORD.—

10 (1) IN GENERAL.—In applying section 164.528
11 of title 45, Code of Federal Regulations, in the case
12 that a covered entity uses or maintains an electronic
13 health record with respect to protected health infor-
14 mation—

15 (A) the exception under paragraph
16 (a)(1)(i) of such section shall not apply to dis-
17 closures through an electronic health record
18 made by such entity of such information; and

19 (B) an individual shall have a right to re-
20 ceive an accounting of disclosures described in
21 such paragraph of such information made by
22 such covered entity during only the three years
23 prior to the date on which the accounting is re-
24 quested.

1 (2) REGULATIONS.—The Secretary shall pro-
2 mulgate regulations on what information shall be
3 collected about each disclosure referred to in para-
4 graph (1)(A) not later than 18 months after the
5 date on which the Secretary adopts standards on ac-
6 counting for disclosure described in the section
7 3002(b)(2)(B)(iv) of the Public Health Service Act,
8 as added by section 4101. Such regulations shall
9 only require such information to be collected through
10 an electronic health record in a manner that takes
11 into account the interests of individuals in learning
12 the circumstances under which their protected health
13 information is being disclosed and takes into account
14 the administrative burden of accounting for such
15 disclosures.

16 (3) CONSTRUCTION.—Nothing in this sub-
17 section shall be construed as requiring a covered en-
18 tity to account for disclosures of protected health in-
19 formation that are not made by such covered entity
20 or by a business associate acting on behalf of the
21 covered entity.

22 (4) EFFECTIVE DATE.—

23 (A) CURRENT USERS OF ELECTRONIC
24 RECORDS.—In the case of a covered entity inso-
25 far as it acquired an electronic health record as

1 of January 1, 2009, paragraph (1) shall apply
2 to disclosures, with respect to protected health
3 information, made by the covered entity from
4 such a record on and after January 1, 2014.

5 (B) OTHERS.—In the case of a covered en-
6 tity insofar as it acquires an electronic health
7 record after January 1, 2009, paragraph (1)
8 shall apply to disclosures, with respect to pro-
9 tected health information, made by the covered
10 entity from such record on and after the later
11 of the following:

12 (i) January 1, 2011; or

13 (ii) the date that it acquires an elec-
14 tronic health record.

15 (d) REVIEW OF HEALTH CARE OPERATIONS.—Not
16 later than 18 months after the date of the enactment of
17 this title, the Secretary shall promulgate regulations to
18 eliminate from the definition of health care operations
19 under section 164.501 of title 45, Code of Federal Regula-
20 tions, those activities that can reasonably and efficiently
21 be conducted through the use of information that is de-
22 identified (in accordance with the requirements of section
23 164.514(b) of such title) or that should require a valid
24 authorization for use or disclosure. In promulgating such
25 regulations, the Secretary may choose to narrow or clarify

1 activities that the Secretary chooses to retain in the defini-
2 tion of health care operations and the Secretary shall take
3 into account the report under section 424(d). In such reg-
4 ulations the Secretary shall specify the date on which such
5 regulations shall apply to disclosures made by a covered
6 entity, but in no case would such date be sooner than the
7 date that is 24 months after the date of the enactment
8 of this section.

9 (c) PROHIBITION ON SALE OF ELECTRONIC HEALTH
10 RECORDS OR PROTECTED HEALTH INFORMATION.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), a covered entity or business associate
13 shall not directly or indirectly receive remuneration
14 in exchange for any protected health information of
15 an individual unless the covered entity obtained from
16 the individual, in accordance with section 164.508 of
17 title 45, Code of Federal Regulations, a valid au-
18 thorization that includes, in accordance with such
19 section, a specification of whether the protected
20 health information can be further exchanged for re-
21 munerated by the entity receiving protected health
22 information of that individual.

23 (2) EXCEPTIONS.—Paragraph (1) shall not
24 apply in the following cases:

1 (A) The purpose of the exchange is for re-
2 search or public health activities (as described
3 in sections 164.501, 164.512(i), and 164.512(b)
4 of title 45, Code of Federal Regulations) and
5 the price charged reflects the costs of prepara-
6 tion and transmittal of the data for such pur-
7 pose.

8 (B) The purpose of the exchange is for the
9 treatment of the individual and the price
10 charges reflects not more than the costs of
11 preparation and transmittal of the data for
12 such purpose.

13 (C) The purpose of the exchange is the
14 health care operation specifically described in
15 subparagraph (iv) of paragraph (6) of the defi-
16 nition of health care operations in section
17 164.501 of title 45, Code of Federal Regula-
18 tions.

19 (D) The purpose of the exchange is for re-
20 munerated that is provided by a covered entity
21 to a business associate for activities involving
22 the exchange of protected health information
23 that the business associate undertakes on behalf
24 of and at the specific request of the covered en-
25 tity pursuant to a business associate agreement.

1 (E) The purpose of the exchange is to pro-
2 vide an individual with a copy of the individ-
3 ual's protected health information pursuant to
4 section 164.524 of title 45, Code of Federal
5 Regulations.

6 (F) The purpose of the exchange is other-
7 wise determined by the Secretary in regulations
8 to be similarly necessary and appropriate as the
9 exceptions provided in subparagraphs (A)
10 through (E).

11 (3) REGULATIONS.—The Secretary shall pro-
12 mulgate regulations to carry out paragraph (this
13 subsection, including exceptions described in para-
14 graph (2), not later than 18 months after the date
15 of the enactment of this title.

16 (4) EFFECTIVE DATE.—Paragraph (1) shall
17 apply to exchanges occurring on or after the date
18 that is 6 months after the date of the promulgation
19 of final regulations implementing this subsection.

20 (f) ACCESS TO CERTAIN INFORMATION IN ELEC-
21 TRONIC FORMAT.—In applying section 164.524 of title
22 45, Code of Federal Regulations, in the case that a cov-
23 ered entity uses or maintains an electronic health record
24 with respect to protected health information of an indi-
25 vidual—

1 nication is made as described in subparagraph (i),
2 (ii), or (iii) of paragraph (1) of the definition of
3 marketing in section 164.501 of such title.

4 (2) PAYMENT FOR CERTAIN COMMUNICA-
5 TIONS.—A covered entity or business associate may
6 not receive direct or indirect payment in exchange
7 for making any communication described in sub-
8 paragraph (i), (ii), or (iii) of paragraph (1) of the
9 definition of marketing in section 164.501 of title
10 45, Code of Federal Regulations, except—

11 (A) a business associate of a covered entity
12 may receive payment from the covered entity
13 for making any such communication on behalf
14 of the covered entity that is consistent with the
15 written contract (or other written arrangement)
16 described in section 164.502(c)(2) of such title
17 between such business associate and covered en-
18 tity; or

19 (B) a covered entity may receive payment
20 in exchange for making any such communica-
21 tion if the entity obtains from the recipient of
22 the communication, in accordance with section
23 164.508 of title 45, Code of Federal Regula-
24 tions, a valid authorization (as described in

1 paragraph (b) of such section) with respect to
 2 such communication.

3 (b) FUNDRAISING.—Fundraising for the benefit of a
 4 covered entity shall not be considered a health care oper-
 5 ation for purposes of section 164.501 of title 45, Code of
 6 Federal Regulations.

7 (c) EFFECTIVE DATE.—This section shall apply to
 8 contracting occurring on or after the effective date speci-
 9 fied under section 4423.

10 **SEC. 4407. TEMPORARY BREACH NOTIFICATION REQUIRE-**
 11 **MENT FOR VENDORS OF PERSONAL HEALTH**
 12 **RECORDS AND OTHER NON-HIPAA COVERED**
 13 **ENTITIES.**

14 (a) IN GENERAL.—In accordance with subsection (c),
 15 each vendor of personal health records, following the dis-
 16 covery of a breach of security of unsecured PHR identifi-
 17 able health information that is in a personal health record
 18 maintained or offered by such vendor, and each entity de-
 19 scribed in clause (ii) or (iii) of section 4424(b)(1)(A), fol-
 20 lowing the discovery of a breach of security of such infor-
 21 mation that is obtained through a product or service pro-
 22 vided by such entity, shall—

23 (1) notify each individual who is a citizen or
 24 resident of the United States whose unsecured PHR
 25 identifiable health information was acquired by an

1 unauthorized person as a result of such a breach of
2 security; and

3 ~~(2) notify the Federal Trade Commission.~~

4 ~~(b) NOTIFICATION BY THIRD PARTY SERVICE PRO-~~
5 ~~VIDERS.—A third party service provider that provides~~
6 ~~services to a vendor of personal health records or to an~~
7 ~~entity described in clause (ii) or (iii) of section~~
8 ~~4424(b)(1)(A) in connection with the offering or mainte-~~
9 ~~nance of a personal health record or a related product or~~
10 ~~service and that accesses, maintains, retains, modifies,~~
11 ~~records, stores, destroys, or otherwise holds, uses, or dis-~~
12 ~~closes unsecured PHR identifiable health information in~~
13 ~~such a record as a result of such services shall, following~~
14 ~~the discovery of a breach of security of such information,~~
15 ~~notify such vendor or entity, respectively, of such breach.~~
16 ~~Such notice shall include the identification of each indi-~~
17 ~~vidual whose unsecured PHR identifiable health informa-~~
18 ~~tion has been, or is reasonably believed to have been,~~
19 ~~accessed, acquired, or disclosed during such breach.~~

20 ~~(c) APPLICATION OF REQUIREMENTS FOR TIMELI-~~
21 ~~NESS, METHOD, AND CONTENT OF NOTIFICATIONS.—~~
22 ~~Subsections (c), (d), (e), and (f) of section 402 shall apply~~
23 ~~to a notification required under subsection (a) and a ven-~~
24 ~~dor of personal health records, an entity described in sub-~~
25 ~~section (a) and a third party service provider described~~

1 in subsection (b), with respect to a breach of security
2 under subsection (a) of unsecured PHR identifiable health
3 information in such records maintained or offered by such
4 vendor, in a manner specified by the Federal Trade Com-
5 mission.

6 (d) NOTIFICATION OF THE SECRETARY.—Upon re-
7 ceipt of a notification of a breach of security under sub-
8 section (a)(2), the Federal Trade Commission shall notify
9 the Secretary of such breach.

10 (e) ENFORCEMENT.—A violation of subsection (a) or
11 (b) shall be treated as an unfair and deceptive act or prac-
12 tice in violation of a regulation under section 18(a)(1)(B)
13 of the Federal Trade Commission Act (15 U.S.C.
14 57a(a)(1)(B)) regarding unfair or deceptive acts or prac-
15 tices.

16 (f) DEFINITIONS.—For purposes of this section:

17 (1) BREACH OF SECURITY.—The term “breach
18 of security” means, with respect to unsecured PHR
19 identifiable health information of an individual in a
20 personal health record, acquisition of such informa-
21 tion without the authorization of the individual.

22 (2) PHR IDENTIFIABLE HEALTH INFORMA-
23 TION.—The term “PHR identifiable health informa-
24 tion” means individually identifiable health informa-
25 tion, as defined in section 1171(6) of the Social Se-

1 ecurity Act (42 U.S.C. 1320d(6)), and includes, with
2 respect to an individual, information—

3 (A) that is provided by or on behalf of the
4 individual; and

5 (B) that identifies the individual or with
6 respect to which there is a reasonable basis to
7 believe that the information can be used to
8 identify the individual.

9 (3) UNSECURED PHR IDENTIFIABLE HEALTH
10 INFORMATION.—

11 (A) IN GENERAL.—Subject to subpara-
12 graph (B), the term “unsecured PHR identifi-
13 able health information” means PHR identifi-
14 able health information that is not protected
15 through the use of a technology or methodology
16 specified by the Secretary in the guidance
17 issued under section 4402(h)(2).

18 (B) EXCEPTION IN CASE TIMELY GUID-
19 ANCE NOT ISSUED.—In the case that the Sec-
20 retary does not issue guidance under section
21 4402(h)(2) by the date specified in such sec-
22 tion, for purposes of this section, the term “un-
23 secured PHR identifiable health information”
24 shall mean PHR identifiable health information
25 that is not secured by a technology standard

1 that renders protected health information unus-
2 able, unreadable, or indecipherable to unauthor-
3 ized individuals and that is developed or en-
4 dored by a standards developing organization
5 that is accredited by the American National
6 Standards Institute.

7 ~~(g) REGULATIONS; EFFECTIVE DATE; SUNSET.—~~

8 ~~(1) REGULATIONS; EFFECTIVE DATE.—To~~
9 ~~carry out this section, the Secretary of Health and~~
10 ~~Human Services shall promulgate interim final regu-~~
11 ~~lations by not later than the date that is 180 days~~
12 ~~after the date of the enactment of this section. The~~
13 ~~provisions of this section shall apply to breaches of~~
14 ~~security that are discovered on or after the date that~~
15 ~~is 30 days after the date of publication of such in-~~
16 ~~terim final regulations.~~

17 ~~(2) SUNSET.—The provisions of this section~~
18 ~~shall not apply to breaches of security occurring on~~
19 ~~or after the earlier of the following the dates:~~

20 ~~(A) The date on which a standard relating~~
21 ~~to requirements for entities that are not covered~~
22 ~~entities that includes requirements relating to~~
23 ~~breach notification has been promulgated by the~~
24 ~~Secretary.~~

1 (B) The date on which a standard relating
2 to requirements for entities that are not covered
3 entities that includes requirements relating to
4 breach notification has been promulgated by the
5 Federal Trade Commission and has taken ef-
6 fect.

7 **SEC. 4408. BUSINESS ASSOCIATE CONTRACTS REQUIRED**
8 **FOR CERTAIN ENTITIES.**

9 Each organization, with respect to a covered entity,
10 that provides data transmission of protected health infor-
11 mation to such entity (or its business associate) and that
12 requires access on a routine basis to such protected health
13 information, such as a Health Information Exchange Or-
14 ganization, Regional Health Information Organization, E-
15 prescribing Gateway, or each vendor that contracts with
16 a covered entity to allow that covered entity to offer a per-
17 sonal health record to patients as part of its electronic
18 health record, is required to enter into a written contract
19 (or other written arrangement) described in section
20 164.502(e)(2) of title 45, Code of Federal Regulations and
21 a written contract (or other arrangement) described in
22 section 164.308(b) of such title, with such entity and shall
23 be treated as a business associate of the covered entity
24 for purposes of the provisions of this subtitle and subparts
25 C and E of part 164 of title 45, Code of Federal Regula-

1 tions, as such provisions are in effect as of the date of
2 enactment of this title.

3 **SEC. 4409. CLARIFICATION OF APPLICATION OF WRONGFUL**
4 **DISCLOSURES CRIMINAL PENALTIES.**

5 Section 1177(a) of the Social Security Act (42 U.S.C.
6 ~~1320d-6(a)~~) is amended by adding at the end the fol-
7 lowing new sentence: “For purposes of the previous sen-
8 tence, a person (including an employee or other individual)
9 shall be considered to have obtained or disclosed individ-
10 ually identifiable health information in violation of this
11 part if the information is maintained by a covered entity
12 (as defined in the HIPAA privacy regulation described in
13 section 1180(b)(3)) and the individual obtained or dis-
14 closed such information without authorization.”.

15 **SEC. 4410. IMPROVED ENFORCEMENT.**

16 (a) IN GENERAL.—Section 1176 of the Social Secu-
17 rity Act (42 U.S.C. ~~1320d-5~~) is amended—

18 (1) in subsection (b)(1), by striking “the act
19 constitutes an offense punishable under section
20 1177” and inserting “a penalty has been imposed
21 under section 1177 with respect to such act”; and

22 (2) by adding at the end the following new sub-
23 section:

24 “(e) NONCOMPLIANCE DUE TO WILLFUL NE-
25 GLECT.—

1 “(1) IN GENERAL.—A violation of a provision
2 of this part due to willful neglect is a violation for
3 which the Secretary is required to impose a penalty
4 under subsection (a)(1).”

5 “(2) REQUIRED INVESTIGATION.—For purposes
6 of paragraph (1), the Secretary shall formally inves-
7 tigate any complaint of a violation of a provision of
8 this part if a preliminary investigation of the facts
9 of the complaint indicate such a possible violation
10 due to willful neglect.”

11 (b) EFFECTIVE DATE; REGULATIONS.—

12 (1) The amendments made by subsection (a)
13 shall apply to penalties imposed on or after the date
14 that is 24 months after the date of the enactment
15 of this title.

16 (2) Not later than 18 months after the date of
17 the enactment of this title, the Secretary of Health
18 and Human Services shall promulgate regulations to
19 implement such amendments.

20 (c) DISTRIBUTION OF CERTAIN CIVIL MONETARY
21 PENALTIES COLLECTED.—

22 (1) IN GENERAL.—Subject to the regulation
23 promulgated pursuant to paragraph (3), any civil
24 monetary penalty or monetary settlement collected
25 with respect to an offense punishable under this sub-

1 title or section 1176 of the Social Security Act (42
2 U.S.C. 1320d-5) insofar as such section relates to
3 privacy or security shall be transferred to the Office
4 of Civil Rights of the Department of Health and
5 Human Services to be used for purposes of enforcing
6 the provisions of this subtitle and subparts C and E
7 of part 164 of title 45, Code of Federal Regulations,
8 as such provisions are in effect as of the date of en-
9 actment of this Act.

10 (2) GAO REPORT.—Not later than 18 months
11 after the date of the enactment of this title, the
12 Comptroller General shall submit to the Secretary a
13 report including recommendations for a methodology
14 under which an individual who is harmed by an act
15 that constitutes an offense referred to in paragraph
16 (1) may receive a percentage of any civil monetary
17 penalty or monetary settlement collected with re-
18 spect to such offense.

19 (3) ESTABLISHMENT OF METHODOLOGY TO
20 DISTRIBUTE PERCENTAGE OF CMPS COLLECTED TO
21 HARMED INDIVIDUALS.—Not later than 3 years
22 after the date of the enactment of this title, the Sec-
23 retary shall establish by regulation and based on the
24 recommendations submitted under paragraph (2), a
25 methodology under which an individual who is

1 harmed by an act that constitutes an offense re-
2 ferred to in paragraph (1) may receive a percentage
3 of any civil monetary penalty or monetary settlement
4 collected with respect to such offense.

5 (4) APPLICATION OF METHODOLOGY.—The
6 methodology under paragraph (3) shall be applied
7 with respect to civil monetary penalties or monetary
8 settlements imposed on or after the effective date of
9 the regulation.

10 (d) TIERED INCREASE IN AMOUNT OF CIVIL MONE-
11 TARY PENALTIES.—

12 (1) IN GENERAL.—Section 1176(a)(1) of the
13 Social Security Act (42 U.S.C. 1320d-5(a)(1)) is
14 amended by striking “who violates a provision of
15 this part a penalty of not more than” and all that
16 follows and inserting the following: “who violates a
17 provision of this part—

18 “(A) in the case of a violation of such pro-
19 vision in which it is established that the person
20 did not know (and by exercising reasonable dili-
21 gence would not have known) that such person
22 violated such provision, a penalty for each such
23 violation of an amount that is at least the
24 amount described in paragraph (3)(A) but not

1 to exceed the amount described in paragraph
2 (3)(D);

3 “(B) in the case of a violation of such pro-
4 vision in which it is established that the viola-
5 tion was due to reasonable cause and not to
6 willful neglect, a penalty for each such violation
7 of an amount that is at least the amount de-
8 scribed in paragraph (3)(B) but not to exceed
9 the amount described in paragraph (3)(D); and

10 “(C) in the case of a violation of such pro-
11 vision in which it is established that the viola-
12 tion was due to willful neglect—

13 “(i) if the violation is corrected as de-
14 scribed in subsection (b)(3)(A), a penalty
15 in an amount that is at least the amount
16 described in paragraph (3)(C) but not to
17 exceed the amount described in paragraph
18 (3)(D); and

19 “(ii) if the violation is not corrected
20 as described in such subsection, a penalty
21 in an amount that is at least the amount
22 described in paragraph (3)(D).

23 In determining the amount of a penalty under
24 this section for a violation, the Secretary shall
25 base such determination on the nature and ex-

1 tent of the violation and the nature and extent
2 of the harm resulting from such violation.”.

3 ~~(2) THERS OF PENALTIES DESCRIBED.~~—Section
4 ~~1176(a)~~ of such Act (~~42 U.S.C. 1320d-5(a)~~) is fur-
5 ther amended by adding at the end the following
6 new paragraph:

7 ~~“(3) THERS OF PENALTIES DESCRIBED.~~—For
8 purposes of paragraph (1), with respect to a viola-
9 tion by a person of a provision of this part—

10 ~~“(A) the amount described in this subpara-~~
11 ~~graph is \$100 for each such violation, except~~
12 ~~that the total amount imposed on the person~~
13 ~~for all such violations of an identical require-~~
14 ~~ment or prohibition during a calendar year may~~
15 ~~not exceed \$25,000;~~

16 ~~“(B) the amount described in this subpara-~~
17 ~~graph is \$1,000 for each such violation, except~~
18 ~~that the total amount imposed on the person~~
19 ~~for all such violations of an identical require-~~
20 ~~ment or prohibition during a calendar year may~~
21 ~~not exceed \$100,000;~~

22 ~~“(C) the amount described in this subpara-~~
23 ~~graph is \$10,000 for each such violation, except~~
24 ~~that the total amount imposed on the person~~
25 ~~for all such violations of an identical require-~~

1 ment or prohibition during a calendar year may
2 not exceed \$250,000; and

3 “(D) the amount described in this sub-
4 paragraph is \$50,000 for each such violation;
5 except that the total amount imposed on the
6 person for all such violations of an identical re-
7 quirement or prohibition during a calendar year
8 may not exceed \$1,500,000.”.

9 ~~(3)~~ CONFORMING AMENDMENTS.—Section
10 ~~1176(b)~~ of such Act (~~42 U.S.C. 1320d-5(b)~~) is
11 amended—

12 (A) by striking paragraph ~~(2)~~ and redesignig-
13 nating paragraphs ~~(3)~~ and ~~(4)~~ as paragraphs
14 ~~(2)~~ and ~~(3)~~, respectively; and

15 (B) in paragraph ~~(2)~~, as so redesignated—

16 (i) in subparagraph (A), by striking
17 “in subparagraph (B), a penalty may not
18 be imposed under subsection (a) if” and all
19 that follows through “the failure to comply
20 is corrected” and inserting “in subpara-
21 graph (B) or subsection (a)(1)(C), a pen-
22 alty may not be imposed under subsection
23 (a) if the failure to comply is corrected”;
24 and

1 (ii) in subparagraph (B), by striking
2 “(A)(ii)” and inserting “(A)” each place it
3 appears.

4 (4) EFFECTIVE DATE.—The amendments made
5 by this subsection shall apply to violations occurring
6 after the date of the enactment of this title.

7 (e) ENFORCEMENT THROUGH STATE ATTORNEYS
8 GENERAL.—

9 (1) IN GENERAL.—Section 1176 of the Social
10 Security Act (42 U.S.C. 1320d-5) is amended by
11 adding at the end the following new subsection:

12 “(e) ENFORCEMENT BY STATE ATTORNEYS GEN-
13 ERAL.—

14 “(1) CIVIL ACTION.—Except as provided in
15 subsection (b), in any case in which the attorney
16 general of a State has reason to believe that an in-
17 terest of one or more of the residents of that State
18 has been or is threatened or adversely affected by
19 any person who violates a provision of this part, the
20 attorney general of the State, as *parens patriae*, may
21 bring a civil action on behalf of such residents of the
22 State in a district court of the United States of ap-
23 propriate jurisdiction—

24 “(A) to enjoin further such violation by the
25 defendant; or

1 “(B) to obtain damages on behalf of such
2 residents of the State, in an amount equal to
3 the amount determined under paragraph (2).”

4 “(2) STATUTORY DAMAGES.—

5 “(A) IN GENERAL.—For purposes of para-
6 graph (1)(B), the amount determined under
7 this paragraph is the amount calculated by mul-
8 tipling the number of violations by up to \$100.
9 For purposes of the preceding sentence, in the
10 case of a continuing violation, the number of
11 violations shall be determined consistent with
12 the HIPAA privacy regulations (as defined in
13 section 1180(b)(3)) for violations of subsection
14 (a).

15 “(B) LIMITATION.—The total amount of
16 damages imposed on the person for all viola-
17 tions of an identical requirement or prohibition
18 during a calendar year may not exceed \$25,000.

19 “(C) REDUCTION OF DAMAGES.—In as-
20 sessing damages under subparagraph (A), the
21 court may consider the factors the Secretary
22 may consider in determining the amount of a
23 civil money penalty under subsection (a) under
24 the HIPAA privacy regulations.

1 “(3) ATTORNEY FEES.—In the case of any sue-
2 cessful action under paragraph (1), the court, in its
3 discretion, may award the costs of the action and
4 reasonable attorney fees to the State.

5 “(4) NOTICE TO SECRETARY.—The State shall
6 serve prior written notice of any action under para-
7 graph (1) upon the Secretary and provide the Sec-
8 retary with a copy of its complaint, except in any
9 case in which such prior notice is not feasible; in
10 which case the State shall serve such notice imme-
11 diately upon instituting such action. The Secretary
12 shall have the right—

13 “(A) to intervene in the action;

14 “(B) upon so intervening, to be heard on
15 all matters arising therein; and

16 “(C) to file petitions for appeal.

17 “(5) CONSTRUCTION.—For purposes of bring-
18 ing any civil action under paragraph (1), nothing in
19 this section shall be construed to prevent an attor-
20 ney general of a State from exercising the powers
21 conferred on the attorney general by the laws of that
22 State.

23 “(6) VENUE; SERVICE OF PROCESS.—

24 “(A) VENUE.—Any action brought under
25 paragraph (1) may be brought in the district

1 court of the United States that meets applicable
2 requirements relating to venue under section
3 1391 of title 28, United States Code.

4 “(B) SERVICE OF PROCESS.—In an action
5 brought under paragraph (1), process may be
6 served in any district in which the defendant—

7 “(i) is an inhabitant; or

8 “(ii) maintains a physical place of
9 business.

10 “(7) LIMITATION ON STATE ACTION WHILE
11 FEDERAL ACTION IS PENDING.—If the Secretary has
12 instituted an action against a person under sub-
13 section (a) with respect to a specific violation of this
14 part, no State attorney general may bring an action
15 under this subsection against the person with re-
16 spect to such violation during the pendency of that
17 action.

18 “(8) APPLICATION OF CMP STATUTE OF LIM-
19 TATION.—A civil action may not be instituted with
20 respect to a violation of this part unless an action
21 to impose a civil money penalty may be instituted
22 under subsection (a) with respect to such violation
23 consistent with the second sentence of section
24 1128A(c)(1).”.

1 (2) CONFORMING AMENDMENTS.—Subsection
2 (b) of such section, as amended by subsection (d)(3),
3 is amended—

4 (A) in paragraph (1), by striking “A pen-
5 alty may not be imposed under subsection (a)”
6 and inserting “No penalty may be imposed
7 under subsection (a) and no damages obtained
8 under subsection (e)”;

9 (B) in paragraph (2)(A)—

10 (i) in the matter before clause (i), by
11 striking “a penalty may not be imposed
12 under subsection (a)” and inserting “no
13 penalty may be imposed under subsection
14 (a) and no damages obtained under sub-
15 section (e)”; and

16 (ii) in clause (ii), by inserting “or
17 damages” after “the penalty”;

18 (C) in paragraph (2)(B)(i), by striking
19 “The period” and inserting “With respect to
20 the imposition of a penalty by the Secretary
21 under subsection (a), the period”; and

22 (D) in paragraph (3), by inserting “and
23 any damages under subsection (e)” after “any
24 penalty under subsection (a)”.

1 (3) ~~EFFECTIVE DATE.~~—The amendments made
2 by this subsection shall apply to violations occurring
3 after the date of the enactment of this Act.

4 (f) ~~ALLOWING CONTINUED USE OF CORRECTIVE AC-~~
5 ~~TION.~~—Such section is further amended by adding at the
6 end the following new subsection:

7 “(d) ~~ALLOWING CONTINUED USE OF CORRECTIVE~~
8 ~~ACTION.~~—Nothing in this section shall be construed as
9 preventing the Office of Civil Rights of the Department
10 of Health and Human Services from continuing, in its dis-
11 cretion, to use corrective action without a penalty in cases
12 where the person did not know (and by exercising reason-
13 able diligence would not have known) of the violation in-
14 volved.”.

15 **SEC. 4411. AUDITS.**

16 The Secretary shall provide for periodic audits to en-
17 sure that covered entities and business associates that are
18 subject to the requirements of this subtitle and subparts
19 C and E of part 164 of title 45, Code of Federal Regula-
20 tions, as such provisions are in effect as of the date of
21 enactment of this Act, comply with such requirements.

1 **SEC. 4412. SPECIAL RULE FOR INFORMATION TO REDUCE**
2 **MEDICATION ERRORS AND IMPROVE PA-**
3 **TIENT SAFETY.**

4 Nothing under this subtitle shall prevent a phar-
5 macist from communicating with patients in order to re-
6 duce medication errors and improve patient safety pro-
7 vided there is no remuneration other than for the treat-
8 ment of the individual and payment for such treatment
9 of the individual as defined in 45 CFR 164.501. The
10 Secretary may by regulation authorize a pharmacy to re-
11 ceive remuneration that does not exceed their reasonable
12 out-of-pocket costs for such communications if the Sec-
13 retary determines that allowing this remuneration im-
14 proves patient care and protects protected health informa-
15 tion.

16 **PART II—RELATIONSHIP TO OTHER LAWS; REGU-**
17 **LATORY REFERENCES; EFFECTIVE DATE; RE-**
18 **PORTS**

19 **SEC. 4421. RELATIONSHIP TO OTHER LAWS.**

20 (a) APPLICATION OF HIPAA STATE PREEMPTION.—
21 Section 1178 of the Social Security Act (42 U.S.C.
22 1320d-7) shall apply to a provision or requirement under
23 this subtitle in the same manner that such section applies
24 to a provision or requirement under part C of title XI of
25 such Act or a standard or implementation specification

1 adopted or established under sections 1172 through 1174
2 of such Act.

3 (b) HEALTH INSURANCE PORTABILITY AND AC-
4 COUNTABILITY ACT.—The standards governing the pri-
5 vacy and security of individually identifiable health infor-
6 mation promulgated by the Secretary under sections
7 262(a) and 264 of the Health Insurance Portability and
8 Accountability Act of 1996 shall remain in effect to the
9 extent that they are consistent with this subtitle. The Sec-
10 retary shall by rule amend such Federal regulations as re-
11 quired to make such regulations consistent with this sub-
12 title.

13 **SEC. 4422. REGULATORY REFERENCES.**

14 Each reference in this subtitle to a provision of the
15 Code of Federal Regulations refers to such provision as
16 in effect on the date of the enactment of this title (or to
17 the most recent update of such provision).

18 **SEC. 4423. EFFECTIVE DATE.**

19 Except as otherwise specifically provided, the provi-
20 sions of part I shall take effect on the date that is 12
21 months after the date of the enactment of this title.

22 **SEC. 4424. STUDIES, REPORTS, GUIDANCE.**

23 (a) REPORT ON COMPLIANCE.—

24 (1) IN GENERAL.—For the first year beginning
25 after the date of the enactment of this Act and an-

1 annually thereafter, the Secretary shall prepare and
2 submit to the Committee on Health, Education,
3 Labor, and Pensions of the Senate and the Com-
4 mittee on Ways and Means and the Committee on
5 Energy and Commerce of the House of Representa-
6 tives a report concerning complaints of alleged viola-
7 tions of law, including the provisions of this subtitle
8 as well as the provisions of subparts C and E of part
9 164 of title 45, Code of Federal Regulations, (as
10 such provisions are in effect as of the date of enact-
11 ment of this Act) relating to privacy and security of
12 health information that are received by the Secretary
13 during the year for which the report is being pre-
14 pared. Each such report shall include, with respect
15 to such complaints received during the year—

16 (A) the number of such complaints;

17 (B) the number of such complaints re-
18 solved informally; a summary of the types of
19 such complaints so resolved; and the number of
20 covered entities that received technical assist-
21 ance from the Secretary during such year in
22 order to achieve compliance with such provi-
23 sions and the types of such technical assistance
24 provided;

1 (C) the number of such complaints that
2 have resulted in the imposition of civil monetary
3 penalties or have been resolved through mone-
4 etary settlements, including the nature of the
5 complaints involved and the amount paid in
6 each penalty or settlement;

7 (D) the number of compliance reviews con-
8 ducted and the outcome of each such review;

9 (E) the number of subpoenas or inquiries
10 issued;

11 (F) the Secretary's plan for improving
12 compliance with and enforcement of such provi-
13 sions for the following year; and

14 (G) the number of audits performed and a
15 summary of audit findings pursuant to section
16 4411.

17 (2) AVAILABILITY TO PUBLIC.—Each report
18 under paragraph (1) shall be made available to the
19 public on the Internet website of the Department of
20 Health and Human Services.

21 (b) STUDY AND REPORT ON APPLICATION OF PRI-
22 VACY AND SECURITY REQUIREMENTS TO NON-HIPAA
23 COVERED ENTITIES.—

24 (1) STUDY.—Not later than one year after the
25 date of the enactment of this title, the Secretary, in

1 consultation with the Federal Trade Commission,
2 shall conduct a study, and submit a report under
3 paragraph (2), on privacy and security requirements
4 for entities that are not covered entities or business
5 associates as of the date of the enactment of this
6 title, including—

7 (A) requirements relating to security, pri-
8 vacy, and notification in the case of a breach of
9 security or privacy (including the applicability
10 of an exemption to notification in the case of
11 individually identifiable health information that
12 has been rendered unusable, unreadable, or in-
13 decipherable through technologies or methodolo-
14 gies recognized by appropriate professional or-
15 ganization or standard setting bodies to provide
16 effective security for the information) that
17 should be applied to—

18 (i) vendors of personal health records;

19 (ii) entities that offer products or
20 services through the website of a vendor of
21 personal health records;

22 (iii) entities that are not covered enti-
23 ties and that offer products or services
24 through the websites of covered entities

1 that offer individuals personal health
2 records;

3 (iv) entities that are not covered enti-
4 ties and that access information in a per-
5 sonal health record or send information to
6 a personal health record; and

7 (v) third party service providers used
8 by a vendor or entity described in clause
9 (i), (ii), (iii), or (iv) to assist in providing
10 personal health record products or services;

11 (B) a determination of which Federal gov-
12 ernment agency is best equipped to enforce
13 such requirements recommended to be applied
14 to such vendors, entities, and service providers
15 under subparagraph (A); and

16 (C) a timeframe for implementing regula-
17 tions based on such findings.

18 (2) REPORT.—The Secretary shall submit to
19 the Committee on Finance, the Committee on
20 Health, Education, Labor, and Pensions, and the
21 Committee on Commerce of the Senate and the
22 Committee on Ways and Means and the Committee
23 on Energy and Commerce of the House of Rep-
24 resentatives a report on the findings of the study
25 under paragraph (1) and shall include in such report

1 recommendations on the privacy and security re-
2 quirements described in such paragraph.

3 (c) GUIDANCE ON IMPLEMENTATION SPECIFICATION
4 TO DE-IDENTIFY PROTECTED HEALTH INFORMATION.—
5 Not later than 12 months after the date of the enactment
6 of this title, the Secretary shall, in consultation with stake-
7 holders, issue guidance on how best to implement the re-
8 quirements for the de-identification of protected health in-
9 formation under section 164.514(b) of title 45, Code of
10 Federal Regulations.

11 (d) GAO REPORT ON TREATMENT DISCLOSURES.—
12 Not later than one year after the date of the enactment
13 of this title, the Comptroller General of the United States
14 shall submit to the Committee on Health, Education,
15 Labor, and Pensions of the Senate and the Committee on
16 Ways and Means and the Committee on Energy and Com-
17 merce of the House of Representatives a report on the
18 best practices related to the disclosure among health care
19 providers of protected health information of an individual
20 for purposes of treatment of such individual. Such report
21 shall include an examination of the best practices imple-
22 mented by States and by other entities, such as health
23 information exchanges and regional health information or-
24 ganizations, an examination of the extent to which such
25 best practices are successful with respect to the quality

1 of the resulting health care provided to the individual and
2 with respect to the ability of the health care provider to
3 manage such best practices; and an examination of the
4 use of electronic informed consent for disclosing protected
5 health information for treatment, payment, and health
6 care operations.

7 **Subtitle E—Miscellaneous**
8 **Medicare Provisions**

9 **SEC. 4501. MORATORIA ON CERTAIN MEDICARE REGULA-**
10 **TIONS.**

11 (a) DELAY IN PHASE OUT OF MEDICARE HOSPICE
12 BUDGET NEUTRALITY ADJUSTMENT FACTOR DURING
13 FISCAL YEAR 2009.—Notwithstanding any other provi-
14 sion of law, including the final rule published on August
15 8, 2008, 73 Federal Register 46464 et seq., relating to
16 Medicare Program; Hospice Wage Index for Fiscal Year
17 2009, the Secretary of Health and Human Services shall
18 not phase out or eliminate the budget neutrality adjust-
19 ment factor in the Medicare hospice wage index before Oc-
20 tober 1, 2009, and the Secretary shall recompute and
21 apply the final Medicare hospice wage index for fiscal year
22 2009 as if there had been no reduction in the budget neu-
23 trality adjustment factor.

1 (b) ~~NON-APPLICATION OF PHASED-OUT INDIRECT~~
2 ~~MEDICAL EDUCATION (IME) ADJUSTMENT FACTOR FOR~~
3 ~~FISCAL YEAR 2009.~~—

4 (1) ~~IN GENERAL.~~—Section 412.322 of title 42,
5 Code of Federal Regulations, shall be applied with-
6 out regard to paragraph (c) of such section, and the
7 Secretary of Health and Human Services shall re-
8 compute payments for discharges occurring on or
9 after October 1, 2008, as if such paragraph had
10 never been in effect.

11 (2) ~~NO EFFECT ON SUBSEQUENT YEARS.~~—
12 Nothing in paragraph (1) shall be construed as hav-
13 ing any effect on the application of paragraph (d) of
14 section 412.322 of title 42, Code of Federal Regula-
15 tions.

16 (c) ~~FUNDING FOR IMPLEMENTATION.~~—In addition to
17 funds otherwise available, for purposes of implementing
18 the provisions of subsections (a) and (b), including costs
19 incurred in reprocessing claims in carrying out such provi-
20 sions, the Secretary of Health and Human Services shall
21 provide for the transfer from the Federal Hospital Insur-
22 ance Trust Fund established under section 1817 of the
23 Social Security Act (42 U.S.C. 1395i) to the Centers for
24 Medicare & Medicaid Services Program Management Ac-
25 count of \$2,000,000 for fiscal year 2009.

1 **SEC. 4502. LONG-TERM CARE HOSPITAL TECHNICAL COR-**
2 **RECTIONS.**

3 (a) **PAYMENT.**—Subsection (c) of section 114 of the
4 Medicare, Medicaid, and SCHIP Extension Act of 2007
5 (Public Law 110–173) is amended—

6 (1) in paragraph (1)—

7 (A) by amending the heading to read as
8 follows: “~~DELAY IN APPLICATION OF 25 PER-~~
9 ~~CENT PATIENT THRESHOLD PAYMENT ADJUST-~~
10 ~~MENT~~”;

11 (B) by striking “the date of the enactment
12 of this Act” and inserting “July 1, 2007,”; and

13 (C) in subparagraph (A), by inserting “or
14 to a long-term care hospital, or satellite facility,
15 that as of December 29, 2007, was co-located
16 with an entity that is a provider-based, off-cam-
17 pus location of a subsection (d) hospital which
18 did not provide services payable under section
19 1886(d) of the Social Security Act at the off-
20 campus location” after “freestanding long-term
21 care hospitals”; and

22 (2) in paragraph (2)—

23 (A) in subparagraph (B)(ii), by inserting
24 “or that is described in section 412.22(h)(3)(i)
25 of such title” before the period; and

1 **SEC. 5001. TEMPORARY INCREASE OF MEDICAID FMAP.**

2 (a) **PERMITTING MAINTENANCE OF FMAP.**—Subject
3 to subsections (c), (f), and (g), if the FMAP determined
4 without regard to this section for a State for—

5 (1) fiscal year 2009 is less than the FMAP as
6 so determined for fiscal year 2008, the FMAP for
7 the State for fiscal year 2008 shall be substituted
8 for the State's FMAP for fiscal year 2009, before
9 the application of this section;

10 (2) fiscal year 2010 is less than the FMAP as
11 so determined for fiscal year 2008 or fiscal year
12 2009 (after the application of paragraph (1)); the
13 greater of such FMAP for the State for fiscal year
14 2008 or fiscal year 2009 shall be substituted for the
15 State's FMAP for fiscal year 2010, before the appli-
16 cation of this section; and

17 (3) fiscal year 2011 is less than the FMAP as
18 so determined for fiscal year 2008, fiscal year 2009
19 (after the application of paragraph (1)), or fiscal
20 year 2010 (after the application of paragraph (2));
21 the greatest of such FMAP for the State for fiscal
22 year 2008, fiscal year 2009, or fiscal year 2010 shall
23 be substituted for the State's FMAP for fiscal year
24 2011, before the application of this section, but only
25 for the first calendar quarter in fiscal year 2011.

26 (b) **GENERAL 4.9 PERCENTAGE POINT INCREASE.**—

1 (1) IN GENERAL.—Subject to subsections (e),
2 (f), and (g) and paragraph (2), for each State for
3 calendar quarters during the recession adjustment
4 period (as defined in subsection (h)(2)), the FMAP
5 (after the application of subsection (a)) shall be in-
6 creased (without regard to any limitation otherwise
7 specified in section 1905(b) of the Social Security
8 Act) by 4.9 percentage points.

9 (2) SPECIAL ELECTION FOR TERRITORIES.—In
10 the case of a State that is not one of the 50 States
11 or the District of Columbia, paragraph (1) shall only
12 apply if the State makes a one-time election, in a
13 form and manner specified by the Secretary and for
14 the entire recession adjustment period, to apply the
15 increase in FMAP under paragraph (1) and a 10
16 percent increase under subsection (d) instead of ap-
17 plying a 20 percent increase under subsection (d).

18 (c) ADDITIONAL ADJUSTMENT TO REFLECT IN-
19 CREASE IN UNEMPLOYMENT.—

20 (1) IN GENERAL.—Subject to subsections (e),
21 (f), and (g), in the case of a State that is a high
22 unemployment State (as defined in paragraph (2))
23 for a calendar quarter during the recession adjust-
24 ment period, the FMAP (taking into account the ap-
25 plication of subsections (a) and (b)) for such quarter

1 shall be further increased by the high unemployment
2 percentage point adjustment specified in paragraph
3 ~~(3)~~ for the State for the quarter.

4 ~~(2)~~ HIGH UNEMPLOYMENT STATE.—

5 (A) IN GENERAL.—In this subsection, sub-
6 ject to subparagraph (B), the term “high unem-
7 ployment State” means, with respect to a cal-
8 endar quarter in the recession adjustment pe-
9 riod, a State that is 1 of the 50 States or the
10 District of Columbia and for which the State
11 unemployment increase percentage (as com-
12 puted under paragraph ~~(5)~~) for the quarter is
13 not less than 1.5 percentage points.

14 (B) MAINTENANCE OF STATUS.—If a
15 State is a high unemployment State for a cal-
16 endar quarter, it shall remain a high unemploy-
17 ment State for each subsequent calendar quar-
18 ter ending before July 1, 2010.

19 ~~(3)~~ HIGH UNEMPLOYMENT PERCENTAGE POINT
20 ADJUSTMENT.—

21 (A) IN GENERAL.—The high unemploy-
22 ment percentage point adjustment specified in
23 this paragraph for a high unemployment State
24 for a quarter is equal to the product of—

1 (i) the SMAP for such State and
2 quarter (determined after the application
3 of subsection (a) and before the application
4 of subsection (b)); and

5 (ii) subject to subparagraph (B), the
6 State unemployment reduction factor spec-
7 ified in paragraph (4) for the State and
8 quarter.

9 (B) MAINTENANCE OF ADJUSTMENT
10 LEVEL FOR CERTAIN QUARTERS.—In no case
11 shall the State unemployment reduction factor
12 applied under subparagraph (A)(ii) for a State
13 for a quarter (beginning on or after January 1,
14 2009, and ending before July 1, 2010) be less
15 than the State unemployment reduction factor
16 applied to the State for the previous quarter
17 (taking into account the application of this sub-
18 paragraph).

19 (4) STATE UNEMPLOYMENT REDUCTION FAC-
20 TOR.—In the case of a high unemployment State for
21 which the State unemployment increase percentage
22 (as computed under paragraph (5)) with respect to
23 a calendar quarter is—

24 (A) not less than 1.5, but is less than 2.5,
25 percentage points, the State unemployment re-

1 duction factor for the State and quarter is 6
2 percent;

3 (B) not less than 2.5, but is less than 3.5,
4 percentage points; the State unemployment re-
5 duction factor for the State and quarter is 12
6 percent; or

7 (C) not less than 3.5 percentage points;
8 the State unemployment reduction factor for
9 the State and quarter is 14 percent.

10 (5) COMPUTATION OF STATE UNEMPLOYMENT
11 INCREASE PERCENTAGE.—

12 (A) IN GENERAL.—In this subsection, the
13 “State unemployment increase percentage” for
14 a State for a calendar quarter is equal to the
15 number of percentage points (if any) by
16 which—

17 (i) the average monthly unemployment
18 rate for the State for months in the most
19 recent previous 3-consecutive-month period
20 for which data are available, subject to
21 subparagraph (C); exceeds

22 (ii) the lowest average monthly unem-
23 ployment rate for the State for any 3-con-
24 secutive-month period preceding the period

1 described in clause (i) and beginning on or
2 after January 1, 2006.

3 (B) AVERAGE MONTHLY UNEMPLOYMENT
4 RATE DEFINED.—In this paragraph, the term
5 “average monthly unemployment rate” means
6 the average of the monthly number unemployed,
7 divided by the average of the monthly civilian
8 labor force, seasonally adjusted, as determined
9 based on the most recent monthly publications
10 of the Bureau of Labor Statistics of the De-
11 partment of Labor.

12 (C) SPECIAL RULE.—With respect to—
13 (i) the first 2 calendar quarters of the
14 recession adjustment period, the most re-
15 cent previous 3-consecutive-month period
16 described in subparagraph (A)(i) shall be
17 the 3-consecutive-month period beginning
18 with October 2008; and

19 (ii) the last 2 calendar quarters of the
20 recession adjustment period, the most re-
21 cent previous 3-consecutive-month period
22 described in such subparagraph shall be
23 the 3-consecutive-month period beginning
24 with December 2009.

1 (d) INCREASE IN CAP ON MEDICAID PAYMENTS TO
 2 TERRITORIES.—Subject to subsections (f) and (g) ; with
 3 respect to entire fiscal years occurring during the recess-
 4 sion adjustment period and with respect to fiscal years
 5 only a portion of which occurs during such period (and
 6 in proportion to the portion of the fiscal year that occurs
 7 during such period), the amounts otherwise determined for
 8 Puerto Rico, the Virgin Islands, Guam, the Northern Mar-
 9 iana Islands, and American Samoa under subsections (f)
 10 and (g) of section 1108 of the Social Security Act (42
 11 U.S.C. 1308) shall each be increased by 20 percent (or,
 12 in the case of an election under subsection (b)(2), 10 per-
 13 cent).

14 (e) SCOPE OF APPLICATION.—The increases in the
 15 FMAP for a State under this section shall apply for pur-
 16 poses of title XIX of the Social Security Act and—

17 (1) the increases applied under subsections (a),
 18 (b), and (c) shall not apply with respect—

19 (A) to payments under parts A, B, and D
 20 of title IV or title XXI of such Act (42 U.S.C.
 21 601 et seq. and 1397aa et seq.);

22 (B) to payments under title XIX of such
 23 Act that are based on the enhanced FMAP de-
 24 scribed in section 2105(b) of such Act (42
 25 U.S.C. 1397cc(b)); and

1 (C) to payments for disproportionate share
2 hospital (DSH) payment adjustments under
3 section 1923 of such Act (42 U.S.C. 1396r-4);
4 and

5 (2) the increase provided under subsection (e)
6 shall not apply with respect to payments under part
7 E of title IV of such Act.

8 (F) STATE INELIGIBILITY AND LIMITATION.—

9 (1) IN GENERAL.—Subject to paragraphs (2)
10 and (3), a State is not eligible for an increase in its
11 FMAP under subsection (a), (b), or (e), or an in-
12 crease in a cap amount under subsection (d), if eligi-
13 bility standards, methodologies, or procedures under
14 its State plan under title XIX of the Social Security
15 Act (including any waiver under such title or under
16 section 1115 of such Act (42 U.S.C. 1315)) are
17 more restrictive than the eligibility standards, meth-
18 odologies, or procedures, respectively, under such
19 plan (or waiver) as in effect on July 1, 2008.

20 (2) STATE REINSTATEMENT OF ELIGIBILITY
21 PERMITTED.—Subject to paragraph (3), a State that
22 has restricted eligibility standards, methodologies, or
23 procedures under its State plan under title XIX of
24 the Social Security Act (including any waiver under
25 such title or under section 1115 of such Act (42

1 U.S.C. 1315)) after July 1, 2008, is no longer ineli-
2 gible under paragraph (1) beginning with the first
3 calendar quarter in which the State has reinstated
4 eligibility standards, methodologies, or procedures
5 that are no more restrictive than the eligibility
6 standards, methodologies, or procedures, respec-
7 tively, under such plan (or waiver) as in effect on
8 July 1, 2008.

9 (3) SPECIAL RULES.—A State shall not be in-
10 eligible under paragraph (1)—

11 (A) for the calendar quarters before July
12 1, 2009, on the basis of a restriction that was
13 applied after July 1, 2008, and before the date
14 of the enactment of this Act, if the State, prior
15 to July 1, 2009, reinstated eligibility standards,
16 methodologies, or procedures that are no more
17 restrictive than the eligibility standards, meth-
18 odologies, or procedures, respectively, under
19 such plan (or waiver) as in effect on July 1,
20 2008; or

21 (B) on the basis of a restriction that was
22 effective under State law as of July 1, 2008,
23 and would have been in effect as of such date,
24 but for a delay (of not longer than 1 calendar
25 quarter) in the approval of a request for a new

1 waiver under section 1115 of such Act with re-
2 spect to such restriction.

3 (4) STATE'S APPLICATION TOWARD RAINY DAY
4 FUND.—A State is not eligible for an increase in its
5 FMAP under subsection (b) or (c), or an increase in
6 a cap amount under subsection (d), if any amounts
7 attributable (directly or indirectly) to such increase
8 are deposited or credited into any reserve or rainy
9 day fund of the State.

10 (5) RULE OF CONSTRUCTION.—Nothing in
11 paragraph (1) or (2) shall be construed as affecting
12 a State's flexibility with respect to benefits offered
13 under the State Medicaid program under title XIX
14 of the Social Security Act (42 U.S.C. 1396 et seq.)
15 (including any waiver under such title or under sec-
16 tion 1115 of such Act (42 U.S.C. 1315)).

17 (6) NO WAIVER AUTHORITY.—The Secretary
18 may not waive the application of this subsection or
19 subsection (g) under section 1115 of the Social Se-
20 curity Act or otherwise.

21 (g) REQUIREMENT FOR CERTAIN STATES.—In the
22 case of a State that requires political subdivisions within
23 the State to contribute toward the non-Federal share of
24 expenditures under the State Medicaid plan required
25 under section 1902(a)(2) of the Social Security Act (42

1 U.S.C. 1396a(a)(2)), the State is not eligible for an in-
2 crease in its FMAP under subsection (a), (b), or (c), or
3 an increase in a cap amount under subsection (d), if it
4 requires that such political subdivisions pay a greater per-
5 centage of the non-Federal share of such expenditures for
6 quarters during the recession adjustment period, than the
7 percentage that would have been required by the State
8 under such plan on September 30, 2008, prior to applica-
9 tion of this section.

10 (h) DEFINITIONS.—In this section, except as other-
11 wise provided:

12 (1) FMAP.—The term “FMAP” means the
13 Federal medical assistance percentage, as defined in
14 section 1905(b) of the Social Security Act (42
15 U.S.C. 1396d(b)), as determined without regard to
16 this section except as otherwise specified.

17 (2) RECESSION ADJUSTMENT PERIOD.—The
18 term “recession adjustment period” means the pe-
19 riod beginning on October 1, 2008, and ending on
20 December 31, 2010.

21 (3) SECRETARY.—The term “Secretary” means
22 the Secretary of Health and Human Services.

23 (4) SMAP.—The term “SMAP” means, for a
24 State, 100 percent minus the Federal medical assist-
25 ance percentage.

1 (5) STATE.—The term “State” has the mean-
2 ing given such term in section 1101(a)(1) of the So-
3 cial Security Act (42 U.S.C. 1301(a)(1)) for pur-
4 poses of title XIX of the Social Security Act (42
5 U.S.C. 1396 et seq.).

6 (i) SUNSET.—This section shall not apply to items
7 and services furnished after the end of the recession ad-
8 justment period.

9 **SEC. 5002. MORATORIA ON CERTAIN REGULATIONS.**

10 (a) EXTENSION OF MORATORIA ON CERTAIN MED-
11 ICAID REGULATIONS.—The following sections are each
12 amended by striking “April 1, 2009” and inserting “July
13 1, 2009”:

14 (1) Section 7002(a)(1) of the U.S. Troop Read-
15 iness, Veterans’ Care, Katrina Recovery, and Iraq
16 Accountability Appropriations Act, 2007 (Public
17 Law 110–28), as amended by section 7001(a)(1) of
18 the Supplemental Appropriations Act, 2008 (Public
19 Law 110–252).

20 (2) Section 206 of the Medicare, Medicaid, and
21 SCHIP Extension Act of 2007 (Public Law 110–
22 173), as amended by section 7001(a)(2) of the Sup-
23 plemental Appropriations Act, 2008 (Public Law
24 110–252).

1 ~~(3) Section 7001(a)(3)(A) of the Supplemental~~
2 ~~Appropriations Act, 2008 (Public Law 110-252).~~

3 ~~(b) ADDITIONAL MEDICAID MORATORIUM.—Not-~~
4 ~~withstanding any other provision of law, with respect to~~
5 ~~expenditures for services furnished during the period be-~~
6 ~~ginning on December 8, 2008 and ending on June 30,~~
7 ~~2009, the Secretary of Health and Human Services shall~~
8 ~~not take any action (through promulgation of regulation,~~
9 ~~issuance of regulatory guidance, use of Federal payment~~
10 ~~audit procedures, or other administrative action, policy, or~~
11 ~~practice, including a Medical Assistance Manual trans-~~
12 ~~mittal or letter to State Medicaid directors) to implement~~
13 ~~the final regulation relating to clarification of the defini-~~
14 ~~tion of outpatient hospital facility services under the Med-~~
15 ~~icaid program published on November 7, 2008 (73 Federal~~
16 ~~Register 66187).~~

17 ~~**SEC. 5003. TRANSITIONAL MEDICAID ASSISTANCE (TMA).**~~

18 ~~(a) 18-MONTH EXTENSION.—~~

19 ~~(1) IN GENERAL.—Sections 1902(c)(1)(B) and~~
20 ~~1925(f) of the Social Security Act (42 U.S.C.~~
21 ~~1396a(c)(1)(B), 1396r-6(f)) are each amended by~~
22 ~~striking “September 30, 2003” and inserting “De-~~
23 ~~cember 31, 2010”.~~

24 ~~(2) EFFECTIVE DATE.—The amendments made~~
25 ~~by this subsection shall take effect on July 1, 2009.~~

1 (b) STATE OPTION OF INITIAL 12-MONTH ELIGI-
2 BILITY.—Section 1925 of the Social Security Act (42
3 U.S.C. 1396r-6) is amended—

4 (1) in subsection (a)(1), by inserting “but sub-
5 ject to paragraph (5)” after “Notwithstanding any
6 other provision of this title”;

7 (2) by adding at the end of subsection (a) the
8 following:

9 “(5) OPTION OF 12-MONTH INITIAL ELIGIBILITY
10 PERIOD.—A State may elect to treat any reference
11 in this subsection to a 6-month period (or 6 months)
12 as a reference to a 12-month period (or 12 months).
13 In the case of such an election, subsection (b) shall
14 not apply.”; and

15 (3) in subsection (b)(1), by inserting “but sub-
16 ject to subsection (a)(5)” after “Notwithstanding
17 any other provision of this title”.

18 (c) REMOVAL OF REQUIREMENT FOR PREVIOUS RE-
19 CEIPT OF MEDICAL ASSISTANCE.—Section 1925(a)(1) of
20 such Act (42 U.S.C. 1396r-6(a)(1)), as amended by sub-
21 section (b)(1), is further amended—

22 (1) by inserting “subparagraph (B) and” before
23 “paragraph (5)”;

24 (2) by redesignating the matter after “RE-
25 QUIREMENT.—” as a subparagraph (A) with the

1 heading “IN GENERAL.—” and with the same inden-
 2 tation as subparagraph (B) (as added by paragraph
 3 (3)); and

4 (3) by adding at the end the following:

5 “(B) STATE OPTION TO WAIVE REQUIRE-
 6 MENT FOR 3 MONTHS BEFORE RECEIPT OF
 7 MEDICAL ASSISTANCE.—A State may, at its op-
 8 tion, elect also to apply subparagraph (A) in
 9 the case of a family that was receiving such aid
 10 for fewer than three months or that had applied
 11 for and was eligible for such aid for fewer than
 12 3 months during the 6 immediately preceding
 13 months described in such subparagraph.”.

14 (d) CMS REPORT ON ENROLLMENT AND PARTICIPA-
 15 TION RATES UNDER TMA.—Section 1925 of such Act (42
 16 U.S.C. 1396r-6), as amended by this section, is further
 17 amended by adding at the end the following new sub-
 18 section:

19 “(g) COLLECTION AND REPORTING OF PARTICIPA-
 20 TION INFORMATION.—

21 “(1) COLLECTION OF INFORMATION FROM
 22 STATES.—Each State shall collect and submit to the
 23 Secretary (and make publicly available), in a format
 24 specified by the Secretary, information on average
 25 monthly enrollment and average monthly participa-

1 tion rates for adults and children under this section
2 and of the number and percentage of children who
3 become ineligible for medical assistance under this
4 section whose medical assistance is continued under
5 another eligibility category or who are enrolled under
6 the State's child health plan under title XXI. Such
7 information shall be submitted at the same time and
8 frequency in which other enrollment information
9 under this title is submitted to the Secretary.

10 “(2) ANNUAL REPORTS TO CONGRESS.—Using
11 the information submitted under paragraph (1), the
12 Secretary shall submit to Congress annual reports
13 concerning enrollment and participation rates de-
14 scribed in such paragraph.”

15 (c) EFFECTIVE DATE.—The amendments made by
16 subsections (b) through (d) shall take effect on July 1,
17 2009.

18 **SEC. 5004. PROTECTIONS FOR INDIANS UNDER MEDICAID**
19 **AND CHIP.**

20 (a) PREMIUMS AND COST SHARING PROTECTION
21 UNDER MEDICAID.—

22 (1) IN GENERAL.—Section 1916 of the Social
23 Security Act (42 U.S.C. 1396o) is amended—

1 (A) in subsection (a), in the matter pre-
2 ceding paragraph (1), by striking “and (i)” and
3 inserting “, (i), and (j)”; and

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

6 “(j) NO PREMIUMS OR COST SHARING FOR INDIANS
7 FURNISHED ITEMS OR SERVICES DIRECTLY BY INDIAN
8 HEALTH PROGRAMS OR THROUGH REFERRAL UNDER
9 CONTRACT HEALTH SERVICES.—

10 “(1) NO COST SHARING FOR ITEMS OR SERV-
11 ICES FURNISHED TO INDIANS THROUGH INDIAN
12 HEALTH PROGRAMS.—

13 “(A) IN GENERAL.—No enrollment fee,
14 premium, or similar charge, and no deduction,
15 copayment, cost sharing, or similar charge shall
16 be imposed against an Indian who is furnished
17 an item or service directly by the Indian Health
18 Service, an Indian Tribe, Tribal Organization,
19 or Urban Indian Organization or through refer-
20 ral under contract health services for which
21 payment may be made under this title.

22 “(B) NO REDUCTION IN AMOUNT OF PAY-
23 MENT TO INDIAN HEALTH PROVIDERS.—Pay-
24 ment due under this title to the Indian Health
25 Service, an Indian Tribe, Tribal Organization,

1 or Urban Indian Organization, or a health care
2 provider through referral under contract health
3 services for the furnishing of an item or service
4 to an Indian who is eligible for assistance under
5 such title, may not be reduced by the amount
6 of any enrollment fee, premium, or similar
7 charge, or any deduction, copayment, cost shar-
8 ing, or similar charge that would be due from
9 the Indian but for the operation of subpara-
10 graph (A).

11 “(2) RULE OF CONSTRUCTION.—Nothing in
12 this subsection shall be construed as restricting the
13 application of any other limitations on the imposi-
14 tion of premiums or cost sharing that may apply to
15 an individual receiving medical assistance under this
16 title who is an Indian.”.

17 (2) CONFORMING AMENDMENT.—Section
18 1916A(b)(3) of such Act (42 U.S.C. 1396o–1(b)(3))
19 is amended—

20 (A) in subparagraph (A), by adding at the
21 end the following new clause:

22 “(vi) An Indian who is furnished an
23 item or service directly by the Indian
24 Health Service, an Indian Tribe, Tribal
25 Organization or Urban Indian Organiza-

1 tion or through referral under contract
2 health services.”; and

3 (B) in subparagraph (B), by adding at the
4 end the following new clause:

5 “(ix) Items and services furnished to
6 an Indian directly by the Indian Health
7 Service, an Indian Tribe, Tribal Organiza-
8 tion or Urban Indian Organization or
9 through referral under contract health
10 services.”.

11 (3) EFFECTIVE DATE.—The amendments made
12 by this subsection shall take effect on October 1,
13 2009.

14 (b) TREATMENT OF CERTAIN PROPERTY FROM RE-
15 SOURCES FOR MEDICAID AND CHIP ELIGIBILITY.—

16 (1) MEDICAID.—Section 1902 of the Social Se-
17 curity Act (42 U.S.C. 1396a), as amended by sec-
18 tion 3003(a) of the Health Insurance Assistance for
19 the Unemployed Act of 2009, is amended by adding
20 at the end the following new subsection:

21 “(ee) Notwithstanding any other requirement of this
22 title or any other provision of Federal or State law, a State
23 shall disregard the following property from resources for
24 purposes of determining the eligibility of an individual who
25 is an Indian for medical assistance under this title:

1 “(1) Property, including real property and im-
2 provements, that is held in trust, subject to Federal
3 restrictions, or otherwise under the supervision of
4 the Secretary of the Interior, located on a reserva-
5 tion, including any federally recognized Indian
6 Tribe’s reservation, pueblo, or colony, including
7 former reservations in Oklahoma, Alaska Native re-
8 gions established by the Alaska Native Claims Set-
9 tlement Act, and Indian allotments on or near a res-
10 ervation as designated and approved by the Bureau
11 of Indian Affairs of the Department of the Interior.

12 “(2) For any federally recognized Tribe not de-
13 scribed in paragraph (1), property located within the
14 most recent boundaries of a prior Federal reserva-
15 tion.

16 “(3) Ownership interests in rents, leases, royalti-
17 es, or usage rights related to natural resources (in-
18 cluding extraction of natural resources or harvesting
19 of timber, other plants and plant products, animals,
20 fish, and shellfish) resulting from the exercise of fed-
21 erally protected rights.

22 “(4) Ownership interests in or usage rights to
23 items not covered by paragraphs (1) through (3)
24 that have unique religious, spiritual, traditional, or
25 cultural significance or rights that support subsist-

1 ence or a traditional lifestyle according to applicable
2 tribal law or custom.”.

3 (2) APPLICATION TO CHIP.—Section 2107(e)(1)
4 of such Act (42 U.S.C. 1397gg(e)(1)) is amended by
5 adding at the end the following new subparagraph:

6 “(E) Section 1902(ff) (relating to dis-
7 regard of certain property for purposes of mak-
8 ing eligibility determinations).”.

9 (c) CONTINUATION OF CURRENT LAW PROTECTIONS
10 OF CERTAIN INDIAN PROPERTY FROM MEDICAID ESTATE
11 RECOVERY.—Section 1917(b)(3) of the Social Security
12 Act (42 U.S.C. 1396p(b)(3)) is amended—

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

14 (2) by adding at the end the following new sub-
15 paragraph:

16 “(B) The standards specified by the Sec-
17 retary under subparagraph (A) shall require
18 that the procedures established by the State
19 agency under subparagraph (A) exempt income,
20 resources, and property that are exempt from
21 the application of this subsection as of April 1,
22 2003, under manual instructions issued to carry
23 out this subsection (as in effect on such date)
24 because of the Federal responsibility for Indian
25 Tribes and Alaska Native Villages. Nothing in

1 (A) in paragraph (70), by striking “and”
2 at the end;

3 (B) in paragraph (71), by striking the pe-
4 riod at the end and inserting “; and”; and

5 (C) by inserting after paragraph (71), the
6 following new paragraph:

7 “(72) in the case of any State in which 1 or
8 more Indian Health Programs or Urban Indian Or-
9 ganizations furnishes health care services, provide
10 for a process under which the State seeks advice on
11 a regular, ongoing basis from designees of such In-
12 dian Health Programs and Urban Indian Organiza-
13 tions on matters relating to the application of this
14 title that are likely to have a direct effect on such
15 Indian Health Programs and Urban Indian Organi-
16 zations and that—

17 “(A) shall include solicitation of advice
18 prior to submission of any plan amendments,
19 waiver requests, and proposals for demonstra-
20 tion projects likely to have a direct effect on In-
21 dians, Indian Health Programs, or Urban In-
22 dian Organizations; and

23 “(B) may include appointment of an advi-
24 sory committee and of a designee of such In-
25 dian Health Programs and Urban Indian Orga-

1 nizations to the medical care advisory com-
2 mittee advising the State on its State plan
3 under this title.”.

4 (2) APPLICATION TO CHIP.—Section 2107(e)(1)
5 of such Act (42 U.S.C. 1397gg(e)(1)), as amended
6 by section 5004(b), is amended by adding at the end
7 the following new subparagraph:

8 “(F) Section 1902(a)(72) (relating to re-
9 quiring certain States to seek advice from des-
10 ignees of Indian Health Programs and Urban
11 Indian Organizations).”.

12 (e) RULE OF CONSTRUCTION.—Nothing in the
13 amendments made by this section shall be construed as
14 superseding existing advisory committees, working groups,
15 guidance, or other advisory procedures established by the
16 Secretary of Health and Human Services or by any State
17 with respect to the provision of health care to Indians.

18 **SEC. 5006. TEMPORARY INCREASE IN DSH ALLOTMENTS**

19 **DURING RECESSION.**

20 Section 1923(f)(3) of the Social Security Act (42
21 U.S.C. 1396r-4(f)(3)) is amended—

22 (1) in subparagraph (A), by striking “para-
23 graph (6)” and inserting “paragraph (6) and sub-
24 paragraph (E)”; and

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

3 “(E) TEMPORARY INCREASE IN ALLOT-
4 MENTS DURING RECESSION.—

5 “(i) IN GENERAL.—Subject to clause
6 (ii), the DSH allotment for any State—

7 “(I) for fiscal year 2009 is equal
8 to 102.5 percent of the DSH allot-
9 ment that would be determined under
10 this paragraph for the State for fiscal
11 year 2009 without application of this
12 subparagraph, notwithstanding sub-
13 paragraph (B);

14 “(II) for fiscal year 2010 is equal
15 to 102.5 percent of the DSH allot-
16 ment for the State for fiscal year
17 2009, as determined under subclause
18 (I); and

19 “(III) for each succeeding fiscal
20 year is equal to the DSH allotment
21 for the State under this paragraph de-
22 termined without applying subclauses
23 (I) and (II).

24 “(ii) APPLICATION.—Clause (i) shall
25 not apply to a State for a year in the case

1 that the DSH allotment for such State for
2 such year under this paragraph determined
3 without applying clause (i) would grow
4 higher than the DSH allotment specified
5 under clause (i) for the State for such
6 year.”.

7 **TITLE VI—BROADBAND** 8 **COMMUNICATIONS**

9 **SEC. 6001. INVENTORY OF BROADBAND SERVICE CAPA-** 10 **BILITY AND AVAILABILITY.**

11 (a) **ESTABLISHMENT.**—To provide a comprehensive
12 nationwide inventory of existing broadband service capa-
13 bility and availability, the National Telecommunications
14 and Information Administration (“NTIA”) shall develop
15 and maintain a broadband inventory map of the United
16 States that identifies and depicts the geographic extent
17 to which broadband service capability is deployed and
18 available from a commercial provider or public provider
19 throughout each State.

20 (b) **PUBLIC AVAILABILITY AND INTERACTIVITY.**—
21 Not later than 2 years after the date of enactment of this
22 Act, the NTIA shall make the broadband inventory map
23 developed and maintained pursuant to this section acces-
24 sible by the public on a World Wide Web site of the NTIA
25 in a form that is interactive and searchable.

1 **SEC. 6002. WIRELESS AND BROADBAND DEPLOYMENT**
2 **GRANT PROGRAMS.**

3 (a) **GRANTS AUTHORIZED.—**

4 (1) **IN GENERAL.—**The National Telecommuni-
5 cations and Information Administration (“NTIA”)
6 is authorized to carry out a program to award
7 grants to eligible entities for the non-recurring costs
8 associated with the deployment of broadband infra-
9 structure in rural, suburban, and urban areas, in ac-
10 cordance with the requirements of this section.

11 (2) **PROGRAM WEBSITE.—**The NTIA shall de-
12 velop and maintain a website to make publicly avail-
13 able information about the program described in
14 paragraph (1), including—

15 (A) each prioritization report submitted by
16 a State under subsection (b);

17 (B) a list of eligible entities that have ap-
18 plied for a grant under this section, and the
19 area or areas the entity proposes to serve; and

20 (C) the status of each such application,
21 whether approved, denied, or pending.

22 (b) **STATE PRIORITIES.—**

23 (1) **PRIORITIES REPORT SUBMISSION.—**Not
24 later than 75 days after the date of enactment of
25 this section, each State intending to participate in
26 the program under this section shall submit to the

1 NTIA a report indicating the geographic areas of
2 the State which—

3 (A) for the purposes of determining the
4 need for Wireless Deployment Grants under
5 subsection (e), the State considers to have the
6 greatest priority for—

7 (i) wireless voice service in unserved
8 areas; and

9 (ii) advanced wireless broadband serv-
10 ice in underserved areas; and

11 (B) for the purposes of determining the
12 need for Broadband Deployment Grants under
13 subsection (d), the State considers to have the
14 greatest priority for—

15 (i) basic broadband service in
16 unserved areas; and

17 (ii) advanced broadband service in un-
18 derserved areas.

19 (2) LIMITATION.—The unserved and under-
20 served areas identified by a State in the report re-
21 quired by this subsection shall not represent, in the
22 aggregate, more than 20 percent of the population
23 of such State.

24 (c) WIRELESS DEPLOYMENT GRANTS.—

1 (1) ~~AUTHORIZED ACTIVITY.~~—The NTLA shall
2 award Wireless Deployment Grants in accordance
3 with this subsection from amounts authorized for
4 Wireless Deployment Grants by this subtitle to eligi-
5 ble entities to deploy necessary infrastructure for the
6 provision of wireless voice service or advanced wire-
7 less broadband service to end users in designated
8 areas.

9 (2) ~~GRANT DISTRIBUTION.~~—The NTLA shall
10 seek to distribute grants, to the extent possible, so
11 that 25 percent of the grants awarded under this
12 subsection shall be awarded to eligible entities for
13 providing wireless voice service to unserved areas
14 and 75 percent of grants awarded under this sub-
15 section shall be awarded to eligible entities for pro-
16 viding advanced wireless broadband service to under-
17 served areas.

18 (d) ~~BROADBAND DEPLOYMENT GRANTS.~~—

19 (1) ~~AUTHORIZED ACTIVITY.~~—The NTLA shall
20 award Broadband Deployment Grants in accordance
21 with this subsection from amounts authorized for
22 Broadband Deployment Grants by this subtitle to el-
23 igible entities to deploy necessary infrastructure for
24 the provision of basic broadband service or advanced
25 broadband service to end users in designated areas.

1 ~~(2) GRANT DISTRIBUTION.—The NTLA shall~~
2 ~~seek to distribute grants, to the extent possible, so~~
3 ~~that 25 percent of the grants awarded under this~~
4 ~~subsection shall be awarded to eligible entities for~~
5 ~~providing basic broadband service to unserved areas~~
6 ~~and 75 percent of grants awarded under this sub-~~
7 ~~section shall be awarded to eligible entities for pro-~~
8 ~~viding advanced broadband service to underserved~~
9 ~~areas.~~

10 ~~(e) GRANT REQUIREMENTS.—The NTLA shall—~~

11 ~~(1) adopt rules to protect against unjust enrich-~~
12 ~~ment; and~~

13 ~~(2) ensure that grant recipients—~~

14 ~~(A) meet buildout requirements;~~

15 ~~(B) maximize use of the supported infra-~~
16 ~~structure by the public;~~

17 ~~(C) operate basic and advanced broadband~~
18 ~~service networks on an open access basis;~~

19 ~~(D) operate advanced wireless broadband~~
20 ~~service on a wireless open access basis; and~~

21 ~~(E) adhere to the principles contained in~~
22 ~~the Federal Communications Commission’s~~
23 ~~broadband policy statement (FCC 05–151,~~
24 ~~adopted August 5, 2005).~~

25 ~~(f) APPLICATIONS.—~~

1 (1) ~~SUBMISSION.~~—To be considered for a grant
2 awarded under subsection (e) or (d), an eligible enti-
3 ty shall submit to the NTLA an application at such
4 time, in such manner, and containing such informa-
5 tion and assurances as the NTLA may require. Such
6 an application shall include—

7 (A) a cost-study estimate for serving the
8 particular geographic area to be served by the
9 entity;

10 (B) a proposed build-out schedule to resi-
11 dential households and small businesses in the
12 area;

13 (C) for applicants for Wireless Deployment
14 Grants under subsection (e), a build-out sched-
15 ule for geographic coverage of such areas; and

16 (D) any other requirements the NTLA
17 deems necessary.

18 (2) ~~SELECTION.~~—

19 (A) ~~NOTIFICATION.~~—The NTLA shall no-
20 tify each eligible entity that has submitted a
21 complete application whether the entity has
22 been approved or denied for a grant under this
23 section in a timely fashion.

1 (B) GRANT DISTRIBUTION CONSIDER-
2 ATIONS.—In awarding grants under this sec-
3 tion, the NTIA shall, to the extent practical—

4 (i) award not less than one grant in
5 each State;

6 (ii) give substantial weight to whether
7 an application is from an eligible entity to
8 deploy infrastructure in an area that is an
9 area—

10 (I) identified by a State in a re-
11 port submitted under subsection (b);
12 or

13 (II) in which the NTIA deter-
14 mines there will be a significant
15 amount of public safety or emergency
16 response use of the infrastructure;

17 (iii) consider whether an application
18 from an eligible entity to deploy infrastruc-
19 ture in an area—

20 (I) will, if approved, increase the
21 affordability of, or subscribership to,
22 service to the greatest population of
23 underserved users in the area;

24 (II) will, if approved, enhance
25 service for health care delivery, edu-

1 eation, or children to the greatest pop-
2 ulation of underserved users in the
3 area;

4 (III) contains concrete plans for
5 enhancing computer ownership or
6 computer literacy in the area;

7 (IV) is from a recipient of more
8 than 20 percent matching grants from
9 State, local, or private entities for
10 service in the area and the extent of
11 such commitment;

12 (V) will, if approved, result in
13 unjust enrichment because the eligible
14 entity has applied for, or intends to
15 apply for, support for the non-recur-
16 ring costs through another Federal
17 program for service in the area; and

18 (VI) will, if approved, signifi-
19 cantly improve interoperable
20 broadband communications systems
21 available for use by public safety and
22 emergency response; and

23 (iv) consider whether the eligible enti-
24 ty is a socially and economically disadvan-
25 taged small business concern, as defined

1 under section 8(a) of the Small Business
2 Act (15 U.S.C. 637).

3 (g) COORDINATION AND CONSULTATION.—The
4 NTIA shall coordinate with the Federal Communications
5 Commission and shall consult with other appropriate Fed-
6 eral agencies in implementing this section.

7 (h) REPORT REQUIRED.—The NTIA shall submit an
8 annual report to the Committee on Energy and Commerce
9 of the House of Representatives and the Committee on
10 Commerce, Science, and Transportation of the Senate for
11 5 years assessing the impact of the grants funded under
12 this section on the basis of the objectives and criteria de-
13 scribed in subsection (f)(2)(B)(iii).

14 (i) RULEMAKING AUTHORITY.—The NTIA shall have
15 the authority to prescribe such rules as necessary to carry
16 out the purposes of this section.

17 (j) DEFINITIONS.—For the purpose of this section—

18 (1) the term “advanced broadband service”
19 means a service delivering data to the end user
20 transmitted at a speed of at least 45 megabits per
21 second downstream and at least 15 megabits per
22 second upstream;

23 (2) the term “advanced wireless broadband
24 service” means a wireless service delivering to the
25 end user data transmitted at a speed of at least 3

1 megabits per second downstream and at least 1
2 megabit per second upstream over an end-to-end
3 internet protocol wireless network;

4 (3) the term “basic broadband service” means
5 a service delivering data to the end user transmitted
6 at a speed of at least 5 megabits per second down-
7 stream and at least 1 megabit per second upstream;

8 (4) the term “eligible entity” means—

9 (A) a provider of wireless voice service, ad-
10 vanced wireless broadband service, basic
11 broadband service, or advanced broadband serv-
12 ice, including a satellite carrier that provides
13 any such service;

14 (B) a State or unit of local government, or
15 agency or instrumentality thereof, that is or in-
16 tends to be a provider of any such service; and

17 (C) any other entity, including construc-
18 tion companies, tower companies, backhaul
19 companies, or other service providers, that the
20 NTIA authorizes by rule to participate in the
21 programs under this section, if such other enti-
22 ty is required to provide access to the supported
23 infrastructure on a neutral, reasonable basis to
24 maximize use;

1 (5) the term “interoperable broadband commu-
2 nications systems” means communications systems
3 which enable public safety agencies to share infor-
4 mation among local, State, Federal, and tribal public
5 safety agencies in the same area using voice or data
6 signals via advanced wireless broadband service;

7 (6) the term “open access” shall be defined by
8 the Federal Communications Commission not later
9 than 45 days after the date of enactment of this sec-
10 tion;

11 (7) the term “State” includes the District of
12 Columbia and the territories and possessions;

13 (8) the term “underserved area” shall be de-
14 fined by the Federal Communications Commission
15 not later than 45 days after the date of enactment
16 of this section;

17 (9) the term “unserved area” shall be defined
18 by the Federal Communications Commission not
19 later than 45 days after the date of enactment of
20 this section;

21 (10) the term “wireless open access” shall be
22 defined by the Federal Communications Commission
23 not later than 45 days after the date of enactment
24 of this section; and

1 (11) the term “wireless voice service” means
2 the provision of two-way, real-time, voice commu-
3 nications using a mobile service.

4 (k) REVIEW OF DEFINITIONS.—Not later than 3
5 months after the date the NTIA makes a broadband in-
6 ventory map of the United States accessible to the public
7 pursuant to section 6001(b), the Federal Communications
8 Commission shall review the definitions of “underserved
9 area” and “unserved area”, as defined by the Commission
10 within 45 days after the date of enactment of this Act
11 (as required by paragraphs (8) and (9) of subsection (j));
12 and shall revise such definitions based on the data used
13 by the NTIA to develop and maintain such map.

14 **SEC. 6003. NATIONAL BROADBAND PLAN.**

15 (a) REPORT REQUIRED.—Not later than 1 year after
16 the date of enactment of this section, the Federal Commu-
17 nications Commission shall submit to the Committee on
18 Energy and Commerce of the House of Representatives
19 and the Committee on Commerce, Science, and Transpor-
20 tation of the Senate, a report containing a national
21 broadband plan.

22 (b) CONTENTS OF PLAN.—The national broadband
23 plan required by this section shall seek to ensure that all
24 people of the United States have access to broadband ea-

1 pability and shall establish benchmarks for meeting that
2 goal. The plan shall also include—

3 (1) an analysis of the most effective and effi-
4 cient mechanisms for ensuring broadband access by
5 all people of the United States;

6 (2) a detailed strategy for achieving afford-
7 ability of such service and maximum utilization of
8 broadband infrastructure and service by the public;
9 and

10 (3) a plan for use of broadband infrastructure
11 and services in advancing consumer welfare, civic
12 participation, public safety and homeland security,
13 community development, health care delivery, energy
14 independence and efficiency, education, worker train-
15 ing, private sector investment, entrepreneurial activ-
16 ity, job creation and economic growth, and other na-
17 tional purposes.

18 **TITLE VII—ENERGY**

19 **SEC. 7001. TECHNICAL CORRECTIONS TO THE ENERGY** 20 **INDEPENDENCE AND SECURITY ACT OF 2007.**

21 (a) Section 543(a) of the Energy Independence and
22 Security Act of 2007 (42 U.S.C. 17153(a)) is amended—

23 (1) by redesignating paragraphs (2) through
24 (4) as paragraphs (3) through (5), respectively; and

1 (2) by striking paragraph (1) and inserting the
2 following:

3 “~~(1)~~ 34 percent to eligible units of local govern-
4 ment—alternative 1, in accordance with subsection
5 (b);

6 “~~(2)~~ 34 percent to eligible units of local govern-
7 ment—alternative 2, in accordance with subsection
8 (b);”.

9 (b) Section 543(b) of the Energy Independence and
10 Security Act of 2007 (42 U.S.C. 17153(b)) is amended
11 by striking “subsection (a)(1)” and inserting “subsection
12 (a)(1) or (2)”.

13 (c) Section 548(a)(1) of the Energy Independence
14 and Security Act of 2007 (42 U.S.C. 17158(a)(1)) is
15 amended by striking “; provided” and all that follows
16 through “541(3)(B)”.

17 **SEC. 7002. AMENDMENTS TO TITLE XIII OF THE ENERGY**
18 **INDEPENDENCE AND SECURITY ACT OF 2007.**

19 Title XIII of the Energy Independence and Security
20 Act of 2007 (42 U.S.C. 17381 and following) is amended
21 as follows:

22 (1) By amending subparagraph (A) of section
23 1304(b)(3) to read as follows:

24 “(A) IN GENERAL.—In carrying out the
25 initiative, the Secretary shall provide financial

1 support to smart grid demonstration projects in
2 urban, suburban, and rural areas, including
3 areas where electric system assets are controlled
4 by tax-exempt entities and areas where electric
5 system assets are controlled by investor-owned
6 utilities.”.

7 (2) By amending subparagraph (C) of section
8 1304(b)(3) to read as follows:

9 “(C) FEDERAL SHARE OF COST OF TECH-
10 NOLOGY INVESTMENTS.—The Secretary shall
11 provide to an electric utility described in sub-
12 paragraph (B) or to other parties financial as-
13 sistance for use in paying an amount equal to
14 not more than 50 percent of the cost of quali-
15 fying advanced grid technology investments
16 made by the electric utility or other party to
17 carry out a demonstration project.”.

18 (3) By inserting after section 1304(b)(3)(D)
19 the following new subparagraphs:

20 “(E) AVAILABILITY OF DATA.—The Sec-
21 retary shall establish and maintain a smart grid
22 information clearinghouse in a timely manner
23 which will make data from smart grid dem-
24 onstration projects and other sources available
25 to the public. As a condition of receiving finan-

1 cial assistance under this subsection; a utility or
2 other participant in a smart grid demonstration
3 project shall provide such information as the
4 Secretary may require to become available
5 through the smart grid information clearing-
6 house in the form and within the timeframes as
7 directed by the Secretary. The Secretary shall
8 assure that business proprietary information
9 and individual customer information is not in-
10 cluded in the information made available
11 through the clearinghouse.

12 “(F) OPEN PROTOCOLS AND STAND-
13 ARDS.—The Secretary shall require as a condi-
14 tion of receiving funding under this subsection
15 that demonstration projects utilize Internet-
16 based or other open protocols and standards if
17 available and appropriate.”.

18 (4) By amending paragraph (2) of section
19 1304(e) to read as follows:

20 “(2) to carry out subsection (b), such sums as
21 may be necessary.”.

22 (5) By amending subsection (a) of section 1306
23 by striking “reimbursement of one-fifth (20 per-
24 cent)” and inserting “grants of up to one-half (50
25 percent)”.

1 (6) By striking the last sentence of subsection
2 (b)(9) of section 1306:

3 (7) By striking “are eligible for” in subsection
4 (e)(1) of section 1306 and inserting “utilize”.

5 (8) By amending subsection (e) of section 1306
6 to read as follows:

7 “(e) PROCEDURES AND RULES.—The Secretary
8 shall—

9 “(1) establish within 60 days after the enact-
10 ment of the American Recovery and Reinvestment
11 Act of 2009 procedures by which applicants can ob-
12 tain grants of not more than one-half of their docu-
13 mented costs;

14 “(2) require as a condition of receiving a grant
15 under this section that grant recipients utilize Inter-
16 net-based or other open protocols and standards if
17 available and appropriate;

18 “(3) establish procedures to ensure that there is
19 no duplication or multiple payment or recovery for
20 the same investment or costs, that the grant goes to
21 the party making the actual expenditures for quali-
22 fying smart grid investments, and that the grants
23 made have significant effect in encouraging and fa-
24 cilitating the development of a smart grid;

1 “(4) maintain public records of grants made,
2 recipients, and qualifying smart grid investments
3 which have received grants;

4 “(5) establish procedures to provide advance
5 payment of moneys up to the full amount of the
6 grant award; and

7 “(6) have and exercise the discretion to deny
8 grants for investments that do not qualify in the
9 reasonable judgment of the Secretary.”.

10 **SEC. 7003. RENEWABLE ENERGY AND ELECTRIC POWER**
11 **TRANSMISSION LOAN GUARANTEE PROGRAM.**

12 (a) **AMENDMENT.**—Title XVII of the Energy Policy
13 Act of 2005 (42 U.S.C. 16511 et seq.) is amended by add-
14 ing the following at the end:

15 **“SEC. 1705. TEMPORARY PROGRAM FOR RAPID DEPLOY-**
16 **MENT OF RENEWABLE ENERGY AND ELEC-**
17 **TRIC POWER TRANSMISSION PROJECTS.**

18 “(a) **IN GENERAL.**—Notwithstanding section 1703,
19 the Secretary may make guarantees under this section
20 only for commercial technology projects under subsection
21 (b) that will commence construction not later than Sep-
22 tember 30, 2011.

23 “(b) **CATEGORIES.**—Projects from only the following
24 categories shall be eligible for support under this section:

1 “(1) Renewable energy systems, including incre-
2 mental hydropower, that generate electricity.

3 “(2) Electric power transmission systems, in-
4 cluding upgrading and reconductoring projects.

5 “(3) Leading edge biofuel projects that will use
6 technologies performing at the pilot or demonstra-
7 tion scale that the Secretary determines are likely to
8 become commercial technologies and will produce
9 transportation fuels that substantially reduce life-
10 cycle greenhouse gas emissions compared to other
11 transportation fuels.

12 “(e) FACTORS RELATING TO ELECTRIC POWER
13 TRANSMISSION SYSTEMS.—In determining to make guar-
14 antees to projects described in subsection (b)(2), the Sec-
15 retary shall consider the following factors:

16 “(1) The viability of the project without guar-
17 antees.

18 “(2) The availability of other Federal and State
19 incentives.

20 “(3) The importance of the project in meeting
21 reliability needs.

22 “(4) The effect of the project in meeting a
23 State or region’s environment (including climate
24 change) and energy goals.

1 “(d) WAGE RATE REQUIREMENTS.—The Secretary
2 shall require that each recipient of support under this sec-
3 tion provide reasonable assurance that all laborers and
4 mechanics employed in the performance of the project for
5 which the assistance is provided, including those employed
6 by contractors or subcontractors, will be paid wages at
7 rates not less than those prevailing on similar work in the
8 locality as determined by the Secretary of Labor in accord-
9 ance with subchapter IV of chapter 31 of part A of subtitle
10 II of title 40, United States Code (commonly referred to
11 as the ‘Davis-Bacon Act’).

12 “(e) LIMITATION.—Funding under this section for
13 projects described in subsection (b)(3) shall not exceed
14 \$500,000,000.

15 “(f) SUNSET.—The authority to enter into guaran-
16 tees under this section shall expire on September 30,
17 2011.”.

18 (b) TABLE OF CONTENTS AMENDMENT.—The table
19 of contents for the Energy Policy Act of 2005 is amended
20 by inserting after the item relating to section 1704 the
21 following new item:

“Sec. 1705. Temporary program for rapid deployment of renewable energy and
electric power transmission projects.”.

1 **SEC. 7004. WEATHERIZATION ASSISTANCE PROGRAM**
2 **AMENDMENTS.**

3 (a) **INCOME LEVEL.**—Section 412(7) of the Energy
4 Conservation and Production Act (42 U.S.C. 6862(7)) is
5 amended by striking “150 percent” both places it appears
6 and inserting “200 percent”.

7 (b) **ASSISTANCE LEVEL PER DWELLING UNIT.**—
8 Section 415(e)(1) of the Energy Conservation and Produc-
9 tion Act (42 U.S.C. 6865(e)(1)) is amended by striking
10 “\$2,500” and inserting “\$5,000”.

11 (c) **EFFECTIVE USE OF FUNDS.**—In providing funds
12 made available by this Act for the Weatherization Assist-
13 ance Program, the Secretary may encourage States to give
14 priority to using such funds for the most cost-effective ef-
15 ficiency activities, which may include insulation of attics,
16 if, in the Secretary’s view, such use of funds would in-
17 crease the effectiveness of the program.

18 **SEC. 7005. RENEWABLE ELECTRICITY TRANSMISSION**
19 **STUDY.**

20 In completing the 2009 National Electric Trans-
21 mission Congestion Study, the Secretary of Energy shall
22 include—

23 (1) an analysis of the significant potential
24 sources of renewable energy that are constrained in
25 accessing appropriate market areas by lack of ade-
26 quate transmission capacity;

1 (2) an analysis of the reasons for failure to de-
2 velop the adequate transmission capacity;

3 (3) recommendations for achieving adequate
4 transmission capacity;

5 (4) an analysis of the extent to which legal
6 challenges filed at the State and Federal level are
7 delaying the construction of transmission necessary
8 to access renewable energy; and

9 (5) an explanation of assumptions and projec-
10 tions made in the Study, including—

11 (A) assumptions and projections relating
12 to energy efficiency improvements in each load
13 center;

14 (B) assumptions and projections regarding
15 the location and type of projected new genera-
16 tion capacity; and

17 (C) assumptions and projections regarding
18 projected deployment of distributed generation
19 infrastructure.

20 **SEC. 7006. ADDITIONAL STATE ENERGY GRANTS.**

21 (a) **IN GENERAL.**—Amounts appropriated in para-
22 graph (6) under the heading “Department of Energy—
23 Energy Programs—Energy Efficiency and Renewable En-
24 ergy” in title V of division A of this Act shall be available
25 to the Secretary of Energy for making additional grants

1 under part D of title III of the Energy Policy and Con-
2 servation Act (42 U.S.C. 6321 et seq.). The Secretary
3 shall make grants under this section in excess of the base
4 allocation established for a State under regulations issued
5 pursuant to the authorization provided in section 365(f)
6 of such Act only if the governor of the recipient State noti-
7 fies the Secretary of Energy that the governor will seek,
8 to the extent of his or her authority, to ensure that each
9 of the following will occur:

10 (1) The applicable State regulatory authority
11 will implement the following regulatory policies for
12 each electric and gas utility with respect to which
13 the State regulatory authority has ratemaking au-
14 thority:

15 (A) Policies that ensure that a utility's re-
16 covery of prudent fixed costs of service is timely
17 and independent of its retail sales, without in
18 the process shifting prudent costs from variable
19 to fixed charges. This cost shifting constraint
20 shall not apply to rate designs adopted prior to
21 the date of enactment of this Act.

22 (B) Cost recovery for prudent investments
23 by utilities in energy efficiency.

1 (C) An earnings opportunity for utilities
2 associated with cost-effective energy efficiency
3 savings.

4 (2) The State, or the applicable units of local
5 government that have authority to adopt building
6 codes, will implement the following:

7 (A) A building energy code (or codes) for
8 residential buildings that meets or exceeds the
9 most recently published International Energy
10 Conservation Code, or achieves equivalent or
11 greater energy savings.

12 (B) A building energy code (or codes) for
13 commercial buildings throughout the State that
14 meets or exceeds the ANSI/ASHRAE/IESNA
15 Standard 90.1–2007, or achieves equivalent or
16 greater energy savings.

17 (C) A plan for the jurisdiction achieving
18 compliance with the building energy code or
19 codes described in subparagraphs (A) and (B)
20 within 8 years of the date of enactment of this
21 Act in at least 90 percent of new and renovated
22 residential and commercial building space. Such
23 plan shall include active training and enforce-
24 ment programs and measurement of the rate of
25 compliance each year.

1 (3) The State will to the extent practicable
2 prioritize the grants toward funding energy effi-
3 ciency and renewable energy programs, including—

4 (A) the expansion of existing energy effi-
5 ciency programs approved by the State or the
6 appropriate regulatory authority, including en-
7 ergy efficiency retrofits of buildings and indus-
8 trial facilities, that are funded—

9 (i) by the State; or

10 (ii) through rates under the oversight
11 of the applicable regulatory authority, to
12 the extent applicable;

13 (B) the expansion of existing programs,
14 approved by the State or the appropriate regu-
15 latory authority, to support renewable energy
16 projects and deployment activities, including
17 programs operated by entities which have the
18 authority and capability to manage and dis-
19 tribute grants, loans, performance incentives,
20 and other forms of financial assistance; and

21 (C) cooperation and joint activities between
22 States to advance more efficient and effective
23 use of this funding to support the priorities de-
24 scribed in this paragraph.

1 (b) **STATE MATCH.**—The State cost share require-
2 ment under the item relating to “DEPARTMENT OF
3 **ENERGY**; energy conservation” in title II of the Depart-
4 ment of the Interior and Related Agencies Appropriations
5 Act, 1985 (42 U.S.C. 6323a; 98 Stat. 1861) shall not
6 apply to assistance provided under this section.

7 (c) **EQUIPMENT AND MATERIALS FOR ENERGY EFFI-**
8 **CIENCY MEASURES.**—No limitation on the percentage of
9 funding that may be used for the purchase and installation
10 of equipment and materials for energy efficiency measures
11 under grants provided under part D of title III of the En-
12 ergy Policy and Conservation Act (42 U.S.C. 6321 et seq.)
13 shall apply to assistance provided under this section.

14 **SEC. 7007. INAPPLICABILITY OF LIMITATION.**

15 The limitations in section 399A(f)(2), (3), and (4)
16 of the Energy Policy and Conservation Act (42 U.S.C.
17 6371h–1(f)(2), (3), and (4)) shall not apply to grants
18 funded with appropriations provided by this Act, except
19 that such grant funds shall be available for not more than
20 an amount equal to 80 percent of the costs of the project
21 for which the grant is provided.

22 **SECTION 1. SHORT TITLE.**

23 *This Act may be cited as the “American Recovery and*
24 *Reinvestment Act of 2009”.*

1 **SEC. 2. TABLE OF CONTENTS.**

2 *The table of contents for this Act is as follows:*

DIVISION A—APPROPRIATIONS PROVISIONS

*TITLE I—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG
ADMINISTRATION, AND RELATED AGENCIES*

TITLE II—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES

TITLE III—DEPARTMENT OF DEFENSE

TITLE IV—ENERGY AND WATER DEVELOPMENT

TITLE V—FINANCIAL SERVICES AND GENERAL GOVERNMENT

TITLE VI—DEPARTMENT OF HOMELAND SECURITY

TITLE VII—INTERIOR, ENVIRONMENT, AND RELATED AGENCIES

*TITLE VIII—DEPARTMENTS OF LABOR, HEALTH AND HUMAN SER-
VICES, AND EDUCATION, AND RELATED AGENCIES*

TITLE IX—LEGISLATIVE BRANCH

*TITLE X—MILITARY CONSTRUCTION AND VETERANS AFFAIRS AND
RELATED AGENCIES*

TITLE XI—STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS

*TITLE XII—TRANSPORTATION, HOUSING AND URBAN DEVELOPMENT,
AND RELATED AGENCIES*

TITLE XIII—HEALTH INFORMATION TECHNOLOGY

TITLE XIV—STATE FISCAL STABILIZATION

*TITLE XV—RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD
AND RECOVERY INDEPENDENT ADVISORY PANEL*

TITLE XVI—GENERAL PROVISIONS—THIS ACT

*DIVISION B—TAX, UNEMPLOYMENT, HEALTH, STATE FISCAL
RELIEF, AND OTHER PROVISIONS*

TITLE I—TAX PROVISIONS

*TITLE II—ASSISTANCE FOR UNEMPLOYED WORKERS AND STRUG-
GLING FAMILIES*

TITLE III—HEALTH INSURANCE ASSISTANCE

TITLE IV—HEALTH INFORMATION TECHNOLOGY

TITLE V—STATE FISCAL RELIEF

3 **SEC. 3. REFERENCES.**

4 *Except as expressly provided otherwise, any reference*

5 *to “this Act” contained in any division of this Act shall*

6 *be treated as referring only to the provisions of that divi-*

7 *sion.*

1 ***DIVISION A—APPROPRIATIONS***
2 ***PROVISIONS***

3 *That the following sums are appropriated, out of any*
4 *money in the Treasury not otherwise appropriated, for the*
5 *fiscal year ending September 30, 2009, and for other pur-*
6 *poses, namely:*

7 ***TITLE I—AGRICULTURE, RURAL DEVELOPMENT,***
8 ***FOOD AND DRUG ADMINISTRATION, AND RE-***
9 ***LATED AGENCIES***

10 ***DEPARTMENT OF AGRICULTURE***

11 ***OFFICE OF THE SECRETARY***

12 ***(INCLUDING TRANSFERS OF FUNDS)***

13 *For an additional amount for the “Office of the Sec-*
14 *retary”, \$200,000,000, to remain available until September*
15 *30, 2010: Provided, That the Secretary may transfer these*
16 *funds to agencies of the Department, other than the Forest*
17 *Service, for necessary replacement, modernization, or up-*
18 *grades of laboratories or other facilities to improve work-*
19 *place safety and mission-area efficiencies as deemed appro-*
20 *priate by the Secretary: Provided further, that the Secretary*
21 *shall provide to the Committees on Appropriations of the*
22 *House and Senate a plan on the allocation of these funds*
23 *no later than 60 days after the date of enactment of this*
24 *Act.*

1 *OFFICE OF INSPECTOR GENERAL*

2 *For an additional amount for “Office of Inspector*
3 *General”, \$5,000,000, to remain available until September*
4 *30, 2011, for oversight and audit of programs, grants, and*
5 *activities funded under this title and an additional*
6 *\$17,500,000 for such purposes, to remain available until*
7 *September 30, 2011.*

8 *COOPERATIVE STATE RESEARCH, EDUCATION AND*
9 *ECONOMIC SERVICE*10 *RESEARCH AND EDUCATION ACTIVITIES*

11 *For an additional amount for competitive grants au-*
12 *thorized at 7 U.S.C. 450(i)(b), \$50,000,000, to remain*
13 *available until September 30, 2010.*

14 *FARM SERVICE AGENCY*15 *AGRICULTURAL CREDIT INSURANCE FUND PROGRAM*16 *ACCOUNT*

17 *For an additional amount for gross obligations for the*
18 *principal amount of direct and guaranteed farm ownership*
19 *(7 U.S.C 1922 et seq.) and operating (7 U.S.C. 1941 et seq.)*
20 *loans, to be available from funds in the Agricultural Credit*
21 *Insurance Fund Program Account, as follows: farm owner-*
22 *ship loans, \$400,000,000 of which \$100,000,000 shall be for*
23 *unsubsidized guaranteed loans and \$300,000,000 shall be*
24 *for direct loans; and operating loans, \$250,000,000 of which*

1 \$50,000,000 shall be for unsubsidized guaranteed loans and
2 \$200,000,000 shall be for direct loans.

3 For an additional amount for the cost of direct and
4 guaranteed loans, including the cost of modifying loans, as
5 defined in section 502 of the Congressional Budget Act of
6 1974, to remain available until September 30, 2010, as fol-
7 lows: farm ownership loans, \$17,530,000 of which \$330,000
8 shall be for unsubsidized guaranteed loans and \$17,200,000
9 shall be for direct loans; and operating loans, \$24,900,000
10 of which \$1,300,000 shall be for unsubsidized guaranteed
11 loans and \$23,600,000 shall be for direct loans.

12 Funds appropriated by this Act to the Agricultural
13 Credit Insurance Fund Program Account for farm owner-
14 ship, operating, and emergency direct loans and unsub-
15 sidized guaranteed loans may be transferred among these
16 programs: Provided, That the Committees on Appropria-
17 tions of both Houses of Congress are notified at least 15
18 days in advance of any transfer.

19 NATURAL RESOURCES CONSERVATION SERVICE

20 WATERSHED AND FLOOD PREVENTION OPERATIONS

21 For an additional amount for “Watershed and Flood
22 Prevention Operations”, \$275,000,000, to remain available
23 until September 30, 2010.

1 *WATERSHED REHABILITATION PROGRAM*

2 *For an additional amount for the “Watershed Reha-*
3 *bilitation Program”, \$65,000,000, to remain available until*
4 *September 30, 2010.*

5 *RURAL DEVELOPMENT SALARIES AND EXPENSES*

6 *For an additional amount for “Rural Development,*
7 *Salaries and Expenses”, \$80,000,000, to remain available*
8 *until September 30, 2010.*

9 *RURAL HOUSING SERVICE*10 *RURAL HOUSING INSURANCE PROGRAM ACCOUNT*

11 *For an additional amount for gross obligations for the*
12 *principal amount of direct and guaranteed loans as author-*
13 *ized by title V of the Housing Act of 1949, to be available*
14 *from funds in the Rural Housing Insurance Fund Program*
15 *Account, as follows: \$1,000,000,000 for section 502 direct*
16 *loans; and \$10,472,000,000 for section 502 unsubsidized*
17 *guaranteed loans.*

18 *For an additional amount for the cost of direct and*
19 *guaranteed loans, including the cost of modifying loans, as*
20 *defined in section 502 of the Congressional Budget Act of*
21 *1974, to remain available until September 30, 2010, as fol-*
22 *lows: \$67,000,000 for section 502 direct loans; and*
23 *\$133,000,000 for section 502 unsubsidized guaranteed*
24 *loans.*

1 *RURAL COMMUNITY FACILITIES PROGRAM ACCOUNT*

2 *For an additional amount for the cost of direct loans,*
3 *loan guarantees, and grants for rural community facilities*
4 *programs as authorized by section 306 and described in sec-*
5 *tion 381E(d)(1) of the Consolidated Farm and Rural Devel-*
6 *opment Act, \$127,000,000, to remain available until Sep-*
7 *tember 30, 2010.*

8 *RURAL BUSINESS—COOPERATIVE SERVICE*

9 *RURAL BUSINESS PROGRAM ACCOUNT*

10 *For an additional amount for the cost of guaranteed*
11 *loans and grants as authorized by sections 310B(a)(2)(A)*
12 *and 310B(c) of the Consolidated Farm and Rural Develop-*
13 *ment Act (7 U.S.C. 1932), \$150,000,000, to remain avail-*
14 *able until September 30, 2010.*

15 *BIOREFINERY ASSISTANCE*

16 *For the cost of loan guarantees and grants, as author-*
17 *ized by section 9003 of the Farm Security and Rural In-*
18 *vestment Act of 2002 (7 U.S.C. 8103), \$200,000,000, to re-*
19 *main available until September 30, 2010.*

20 *RURAL ENERGY FOR AMERICA PROGRAM*

21 *For an additional amount for the cost of loan guaran-*
22 *tees and grants, as authorized by section 9007 of the Farm*
23 *Security and Rural Investment Act of 2002 (7 U.S.C.*
24 *8107), \$50,000,000, to remain available until September*
25 *30, 2010: Provided, That these funds may be used by tribes,*

1 *local units of government, and schools in rural areas, as*
2 *defined in section 343(a) of the Consolidated Farm and*
3 *Rural Development Act (7 U.S.C. 1991(a)).*

4 *RURAL UTILITIES SERVICE*

5 *RURAL WATER AND WASTE DISPOSAL PROGRAM ACCOUNT*

6 *For an additional amount for the cost of direct loans,*
7 *loan guarantees, and grants for the rural water, waste*
8 *water, waste disposal, and solid waste management pro-*
9 *grams authorized by sections 306, 306A, 306C, 306D, and*
10 *310B and described in sections 306C(a)(2), 306D, and*
11 *381E(d)(2) of the Consolidated Farm and Rural Develop-*
12 *ment Act, \$1,375,000,000, to remain available until Sep-*
13 *tember 30, 2010.*

14 *DISTANCE LEARNING, TELEMEDICINE, AND BROADBAND*

15 *PROGRAM ACCOUNT*

16 *For an additional amount for direct loans and grants*
17 *for distance learning and telemedicine services in rural*
18 *areas, as authorized by 7 U.S.C. 950aaa, et seq.,*
19 *\$100,000,000, to remain available until September 30,*
20 *2010.*

21 *FOOD AND NUTRITION SERVICE*

22 *CHILD NUTRITION PROGRAMS*

23 *For additional amount for the Richard B. Russell Na-*
24 *tional School Lunch Act (42 U.S.C. 1751 et. seq.), except*
25 *section 21, and the Child Nutrition Act of 1966 (42 U.S.C.*

1 1771 et. seq.), except sections 17 and 21, \$100,000,000, to
2 remain available until September 30, 2010, to carry out
3 a grant program for National School Lunch Program
4 equipment assistance: Provided, That such funds shall be
5 provided to States administering a school lunch program
6 through a formula based on the ratio that the total number
7 of lunches served in the Program during the second pre-
8 ceding fiscal year bears to the total number of such lunches
9 served in all States in such second preceding fiscal year:
10 Provided further, That of such funds, the Secretary may
11 approve the reserve by States of up to \$20,000,000 for nec-
12 essary enhancements to the State Distributing Agency's
13 commodity ordering and management system to achieve
14 compatibility with the Department's web-based supply
15 chain management system: Provided further, That of the
16 funds remaining, the State shall provide competitive grants
17 to school food authorities based upon the need for equipment
18 assistance in participating schools with priority given to
19 schools in which not less than 50 percent of the students
20 are eligible for free or reduced price meals under the Rich-
21 ard B. Russell National School Lunch Act and priority
22 given to schools purchasing equipment for the purpose of
23 offering more healthful foods and meals, in accordance with
24 standards established by the Secretary.

1 *SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR*
2 *WOMEN, INFANTS, AND CHILDREN (WIC)*

3 *For an additional amount for the special supplemental*
4 *nutrition program as authorized by section 17 of the Child*
5 *Nutrition Act of 1966 (42 U.S.C. 1786), to remain available*
6 *until September 30, 2010, \$500,000,000, of which*
7 *\$380,000,000 shall be placed in reserve to be allocated as*
8 *the Secretary deems necessary, notwithstanding section*
9 *17(i) of such Act, to support participation should cost or*
10 *participation exceed budget estimates, and of which*
11 *\$120,000,000 shall be for the purposes specified in section*
12 *17(h)(10)(B)(ii): Provided, That up to one percent of the*
13 *funding provided for the purposes specified in section*
14 *17(h)(10)(B)(ii) may be reserved by the Secretary for Fed-*
15 *eral administrative activities in support of those purposes.*

16 *COMMODITY ASSISTANCE PROGRAM*

17 *For an additional amount for the “Commodity Assist-*
18 *ance Program”, to remain available until September 30,*
19 *2010, \$150,000,000, which the Secretary shall use to pur-*
20 *chase a variety of commodities as authorized by the Com-*
21 *modity Credit Corporation or under section 32 of the Act*
22 *entitled “An Act to amend the Agricultural Adjustment Act,*
23 *and for other purposes”, approved August 24, 1935 (7*
24 *U.S.C. 612c): Provided, That the Secretary shall distribute*
25 *the commodities to States for distribution in accordance*

1 *with section 214 of the Emergency Food Assistance Act of*
2 *1983 (Public Law 98–8; 7 U.S.C. 612c note): Provided fur-*
3 *ther, That of the funds made available, the Secretary may*
4 *use up to \$50,000,000 for costs associated with the distribu-*
5 *tion of commodities.*

6 **GENERAL PROVISIONS—THIS TITLE**

7 *SEC. 101. Funds appropriated by this Act and made*
8 *available to the United States Department of Agriculture*
9 *for broadband direct loans and loan guarantees, as author-*
10 *ized under title VI of the Rural Electrification Act of 1936*
11 *(7 U.S.C. 950bb) and for grants, shall be available for*
12 *broadband infrastructure in any area of the United States*
13 *notwithstanding title VI of the Rural Electrification Act of*
14 *1936: Provided, That at least 75 percent of the area served*
15 *by the projects receiving funds from such grants, loans, or*
16 *loan guarantees is in a rural area without sufficient access*
17 *to high speed broadband service to facilitate rural economic*
18 *development, as determined by the Secretary: Provided fur-*
19 *ther, That priority for awarding funds made available*
20 *under this paragraph shall be given to projects that provide*
21 *service to the highest proportion of rural residents that do*
22 *not have sufficient access to broadband service: Provided*
23 *further, That priority for awarding such funds shall be*
24 *given to project applications that demonstrate that, if the*
25 *application is approved, all project elements will be fully*

1 *funded: Provided further, That priority for awarding such*
2 *funds shall be given to activities that can commence*
3 *promptly following approval: Provided further, That the*
4 *Department shall submit a report on planned spending and*
5 *actual obligations describing the use of these funds not later*
6 *than 90 days after the date of enactment of this Act, and*
7 *quarterly thereafter until all funds are obligated, to the*
8 *Committees on Appropriations of the House of Representa-*
9 *tives and the Senate.*

10 *SEC. 102. NUTRITION FOR ECONOMIC RECOVERY.*

11 *(a) MAXIMUM BENEFIT INCREASES.—*

12 *(1) ECONOMIC RECOVERY 1-MONTH BEGINNING*
13 *STIMULUS PAYMENT.—For the first month that begins*
14 *not less than 25 days after the date of enactment of*
15 *this Act, the Secretary of Agriculture (referred to in*
16 *this section as the “Secretary”) shall increase the cost*
17 *of the thrifty food plan for purposes of section 8(a)*
18 *of the Food and Nutrition Act of 2008 (7 U.S.C.*
19 *2017(a)) by 85 percent.*

20 *(2) REMAINDER OF FISCAL YEAR 2009.—Begin-*
21 *ning with the second month that begins not less than*
22 *25 days after the date of enactment of this Act, and*
23 *for each subsequent month through the month ending*
24 *September 30, 2009, the Secretary shall increase the*
25 *cost of the thrifty food plan for purposes of section*

1 8(a) of the *Food and Nutrition Act of 2008* (7 U.S.C.
2 2017(a)) by 12 percent.

3 (3) *SUBSEQUENT INCREASE FOR FISCAL YEAR*
4 2010.—Beginning on October 1, 2009, and for each
5 subsequent month through the month ending Sep-
6 tember 30, 2010, the Secretary shall increase the cost
7 of the thrifty food plan for purposes of section 8(a)
8 of the *Food and Nutrition Act of 2008* (7 U.S.C.
9 2017(a)) by an amount equal to 12 percent, less the
10 percentage by which the Secretary determines the
11 thrifty food plan would otherwise be adjusted on Octo-
12 ber 1, 2009, as required under section 3(u) of that Act
13 (7 U.S.C. 2012(u)), if the percentage is less than 12
14 percent.

15 (4) *SUBSEQUENT INCREASE FOR FISCAL YEAR*
16 2011.—Beginning on October 1, 2010, and for each
17 subsequent month through the month ending Sep-
18 tember 30, 2011, the Secretary shall increase the cost
19 of the thrifty food plan for purposes of section 8(a)
20 of the *Food and Nutrition Act of 2008* (7 U.S.C.
21 2017(a)) by an amount equal to 12 percent, less the
22 sum of the percentages by which the Secretary deter-
23 mines the thrifty food plan would otherwise be ad-
24 justed on October 1, 2009 and October 1, 2010, as re-
25 quired under section 3(u) of that Act (7 U.S.C.

1 2012(u)), if the sum of such percentages is less than
2 12 percent.

3 (5) *TERMINATION OF EFFECTIVENESS.*—Effective
4 beginning October 1, 2011, the authority provided by
5 this subsection terminates and has no effect.

6 (b) *ADMINISTRATION.*—In carrying out this section,
7 the Secretary shall—

8 (1) consider the benefit increases described in
9 subsection (a) to be a mass change;

10 (2) require a simple process for States to notify
11 households of the changes in benefits;

12 (3) consider section 16(c)(3)(A) of the Food and
13 Nutrition Act of 2008 (7 U.S.C. 2025(c)(3)(A)) to
14 apply to any errors in the implementation of this sec-
15 tion, without regard to the 120-day limit described in
16 section 16(c)(3)(A) of that Act;

17 (4) disregard the additional amount of benefits
18 that a household receives as a result of this section in
19 determining the amount of overissuances under sec-
20 tion 13 of the Food and Nutrition Act of 2008 (7
21 U.S.C. 2022) and the hours of participation in a pro-
22 gram under section 6(d), 20, or 26 of that Act (7
23 U.S.C. 2015(d), 2029, 2035); and

24 (5) set the tolerance level for excluding small er-
25 rors for the purposes of section 16(c) of the Food and

1 *Nutrition Act of 2008 (7 U.S.C. 2025(c)) at \$50 for*
2 *the period that the benefit increase under subsection*
3 *(a) is in effect.*

4 *(c) ADMINISTRATIVE EXPENSES.—*

5 *(1) IN GENERAL.—For the costs of State admin-*
6 *istrative expenses associated with carrying out this*
7 *section and administering the supplemental nutrition*
8 *assistance program established under the Food and*
9 *Nutrition Act of 2008 (7 U.S.C. 2011 et seq.) (re-*
10 *ferred to in this section as the “supplemental nutri-*
11 *tion assistance program”)* during a period of rising
12 *program caseloads, and for the expenses of the Sec-*
13 *retary under paragraph (6), the Secretary shall make*
14 *available \$150,000,000 for each of fiscal years 2009*
15 *and 2010, to remain available through September 30,*
16 *2010.*

17 *(2) TIMING FOR FISCAL YEAR 2009.—Not later*
18 *than 60 days after the date of enactment of this Act,*
19 *the Secretary shall make available to States amounts*
20 *for fiscal year 2009 under paragraph (1).*

21 *(3) ALLOCATION OF FUNDS.—Except as provided*
22 *in paragraph (6), funds described in paragraph (1)*
23 *shall be made available to States that meet the re-*
24 *quirements of paragraph (5) as grants to State agen-*
25 *cies for each fiscal year as follows:*

1 (A) 75 percent of the amounts available for
2 each fiscal year shall be allocated to States based
3 on the share of each State of households that par-
4 ticipate in the supplemental nutrition assistance
5 program as reported to the Department of Agri-
6 culture for the most recent 12-month period for
7 which data are available, adjusted by the Sec-
8 retary (in the discretion of the Secretary) for
9 participation in disaster programs under section
10 5(h) of the Food and Nutrition Act of 2008 (7
11 U.S.C. 2014(h)); and

12 (B) 25 percent of the amounts available for
13 each fiscal year shall be allocated to States based
14 on the increase in the number of households that
15 participate in the supplemental nutrition assist-
16 ance program as reported to the Department of
17 Agriculture over the most recent 12-month period
18 for which data are available, adjusted by the
19 Secretary (in the discretion of the Secretary) for
20 participation in disaster programs under section
21 5(h) of the Food and Nutrition Act of 2008 (7
22 U.S.C. 2014(h)).

23 (4) *REDISTRIBUTION.*—The Secretary shall de-
24 termine an appropriate procedure for redistribution
25 of amounts allocated to States that would otherwise be

1 *provided allocations under paragraph (3) for a fiscal*
2 *year but that do not meet the requirements of para-*
3 *graph (5).*

4 (5) *MAINTENANCE OF EFFORT.—*

5 (A) *DEFINITION OF SPECIFIED STATE AD-*
6 *MINISTRATIVE COSTS.—In this paragraph:*

7 (i) *IN GENERAL.—The term “specified*
8 *State administrative costs” includes all*
9 *State administrative costs under the supple-*
10 *mental nutrition assistance program.*

11 (ii) *EXCLUSIONS.—The term “specified*
12 *State administrative costs” does not in-*
13 *clude—*

14 (I) *the costs of employment and*
15 *training programs under section 6(d),*
16 *20, or 26 of the Food and Nutrition*
17 *Act of 2008 (7 U.S.C. 2015(d), 2029,*
18 *2035);*

19 (II) *the costs of nutrition edu-*
20 *cation under section 11(f) of that Act*
21 *(7 U.S.C. 2020(f)); and*

22 (III) *any other costs the Secretary*
23 *determines should be excluded.*

24 (B) *REQUIREMENT.—The Secretary shall*
25 *make funds under this subsection available only*

1 to States that, as determined by the Secretary,
2 maintain State expenditures on specified State
3 administrative costs.

4 (6) *MONITORING AND EVALUATION.*—Of the
5 amounts made available under paragraph (1), the
6 Secretary may retain up to \$5,000,000 for the costs
7 incurred by the Secretary in monitoring the integrity
8 and evaluating the effects of the payments made
9 under this section.

10 (d) *FOOD DISTRIBUTION PROGRAM ON INDIAN RES-*
11 *ERVATIONS.*—For the costs of administrative expenses asso-
12 *ciated with the food distribution program on Indian res-*
13 *ervations established under section 4(b) of the Food and Nu-*
14 *trition Act of 2008 (7 U.S.C. 2013(b)), the Secretary shall*
15 *make available \$5,000,000, to remain available until Sep-*
16 *tember 30, 2010.*

17 (e) *CONSOLIDATED BLOCK GRANTS FOR PUERTO RICO*
18 *AND AMERICAN SAMOA.*—

19 (1) *FISCAL YEAR 2009.*—

20 (A) *IN GENERAL.*—For fiscal year 2009, the
21 Secretary shall increase by 12 percent the
22 amount available for nutrition assistance for eli-
23 gible households under the consolidated block
24 grants for the Commonwealth of Puerto Rico and

1 *American Samoa under section 19 of the Food*
2 *and Nutrition Act of 2008 (7 U.S.C. 2028).*

3 *(B) AVAILABILITY OF FUNDS.—Funds made*
4 *available under subparagraph (A) shall remain*
5 *available through September 30, 2010.*

6 *(2) FISCAL YEAR 2010.—For fiscal year 2010, the*
7 *Secretary shall increase the amount available for nu-*
8 *trition assistance for eligible households under the*
9 *consolidated block grants for the Commonwealth of*
10 *Puerto Rico and American Samoa under section 19*
11 *of the Food and Nutrition Act of 2008 (7 U.S.C.*
12 *2028) by 12 percent, less the percentage by which the*
13 *Secretary determines the consolidated block grants*
14 *would otherwise be adjusted on October 1, 2009, as re-*
15 *quired by section 19(a)(2)(A)(i) of that Act (7 U.S.C.*
16 *2028(a)(2)(A)(i)), if the percentage is less than 12*
17 *percent.*

18 *(3) FISCAL YEAR 2011.—For fiscal year 2011, the*
19 *Secretary shall increase the amount available for nu-*
20 *trition assistance for eligible households under the*
21 *consolidated block grants for the Commonwealth of*
22 *Puerto Rico and American Samoa under section 19*
23 *of the Food and Nutrition Act of 2008 (7 U.S.C.*
24 *2028) by 12 percent, less the sum of the percentages*
25 *by which the Secretary determines the consolidated*

1 *block grants would otherwise be adjusted on October*
2 *1, 2009, and October 1, 2010, as required by section*
3 *19(a)(2)(A)(ii) of that Act (7 U.S.C.*
4 *2028(a)(2)(A)(ii)), if the sum of the percentages is*
5 *less than 12 percent.*

6 *(f) TREATMENT OF JOBLESS WORKERS.—*

7 *(1) REMAINDER OF FISCAL YEAR 2009 THROUGH*
8 *FISCAL YEAR 2011.—Beginning with the first month*
9 *that begins not less than 25 days after the date of en-*
10 *actment of this Act and for each subsequent month*
11 *through September 30, 2011, eligibility for supple-*
12 *mental nutrition assistance program benefits shall not*
13 *be limited under section 6(o)(2) of the Food and Nu-*
14 *trition Act of 2008 unless an individual does not*
15 *comply with the requirements of a program offered by*
16 *the State agency that meets the standards of subpara-*
17 *graphs (B) or (C) of that paragraph.*

18 *(2) FISCAL YEAR 2012 AND THEREAFTER.—Be-*
19 *ginning on October 1, 2011, for the purposes of sec-*
20 *tion 6(o) of the Food and Nutrition Act of 2008 (7*
21 *U.S.C. 2015(o)), a State agency shall disregard any*
22 *period during which an individual received benefits*
23 *under the supplemental nutrition assistance program*
24 *prior to October 1, 2011.*

1 (g) *FUNDING.*—*There are appropriated to the Sec-*
2 *retary out of funds of the Treasury not otherwise appro-*
3 *riated such sums as are necessary to carry out this section.*

4 *SEC. 103. AGRICULTURAL DISASTER ASSISTANCE*
5 *TRANSITION. (a) FEDERAL CROP INSURANCE ACT.*—*Sec-*
6 *tion 531(g) of the Federal Crop Insurance Act (7 U.S.C.*
7 *1531(g)) is amended by adding at the end the following:*

8 “(7) 2008 TRANSITION ASSISTANCE.—

9 “(A) *IN GENERAL.*—*Eligible producers on a*
10 *farm described in subparagraph (A) of para-*
11 *graph (4) that failed to timely pay the appro-*
12 *priate fee described in that subparagraph shall*
13 *be eligible for assistance under this section in ac-*
14 *cordance with subparagraph (B) if the eligible*
15 *producers on the farm—*

16 “(i) *pay the appropriate fee described*
17 *in paragraph (4)(A) not later than 90 days*
18 *after the date of enactment of this para-*
19 *graph; and*

20 “(ii)(I) *in the case of each insurable*
21 *commodity of the eligible producers on the*
22 *farm, excluding grazing land, agree to ob-*
23 *tain a policy or plan of insurance under*
24 *subtitle A (excluding a crop insurance pilot*
25 *program under that subtitle) for the next*

1 *insurance year for which crop insurance is*
2 *available to the eligible producers on the*
3 *farm at a level of coverage equal to 70 per-*
4 *cent or more of the recorded or appraised*
5 *average yield indemnified at 100 percent of*
6 *the expected market price, or an equivalent*
7 *coverage; and*

8 *“(II) in the case of each noninsurable*
9 *commodity of the eligible producers on the*
10 *farm, agree to file the required paperwork,*
11 *and pay the administrative fee by the ap-*
12 *plicable State filing deadline, for the non-*
13 *insured crop assistance program for the*
14 *2009 crop year.*

15 *“(B) AMOUNT OF ASSISTANCE.—Eligible*
16 *producers on a farm that meet the requirements*
17 *of subparagraph (A) shall be eligible to receive*
18 *assistance under this section as if the eligible*
19 *producers on the farm—*

20 *“(i) in the case of each insurable com-*
21 *modity of the eligible producers on the farm,*
22 *had obtained a policy or plan of insurance*
23 *for the 2008 crop year at a level of coverage*
24 *not to exceed 70 percent or more of the re-*
25 *corded or appraised average yield indem-*

1 *nified at 100 percent of the expected market*
2 *price, or an equivalent coverage; and*

3 *“(ii) in the case of each noninsurable*
4 *commodity of the eligible producers on the*
5 *farm, had filed the required paperwork, and*
6 *paid the administrative fee by the applica-*
7 *ble State filing deadline, for the noninsured*
8 *crop assistance program for the 2008 crop*
9 *year, except that in determining yield*
10 *under that program, the Secretary shall use*
11 *a percentage that is 70 percent.*

12 *“(C) EQUITABLE RELIEF.—Except as pro-*
13 *vided in subparagraph (D), eligible producers on*
14 *a farm that met the requirements of paragraph*
15 *(1) before the deadline described in paragraph*
16 *(4)(A) and received, or are eligible to receive, a*
17 *disaster assistance payment under this section*
18 *for a production loss during the 2008 crop year*
19 *shall be eligible to receive an additional amount*
20 *equal to the greater of—*

21 *“(i) the amount that would have been*
22 *calculated under subparagraph (B) if the el-*
23 *igible producers on the farm had paid the*
24 *appropriate fee under that subparagraph;*
25 *or*

1 “(ii) the amount that would have been
2 calculated under subparagraph (A) of sub-
3 section (b)(3) if—

4 “(I) in clause (i) of that subpara-
5 graph, ‘120 percent’ is substituted for
6 ‘115 percent’; and

7 “(II) in clause (ii) of that sub-
8 paragraph, ‘125’ is substituted for ‘120
9 percent’.

10 “(D) *LIMITATION.*—For amounts made
11 available under this paragraph, the Secretary
12 may make such adjustments as are necessary to
13 ensure that no producer receives a payment
14 under this paragraph for an amount in excess of
15 the assistance received by a similarly situated
16 producer that had purchased the same or higher
17 level of crop insurance prior to the date of enact-
18 ment of this paragraph.

19 “(E) *AUTHORITY OF THE SECRETARY.*—The
20 Secretary may provide such additional assist-
21 ance as the Secretary considers appropriate to
22 provide equitable treatment for eligible producers
23 on a farm that suffered production losses in the
24 2008 crop year that result in multiyear produc-
25 tion losses, as determined by the Secretary.

1 “(F) *LACK OF ACCESS.*—*Notwithstanding*
2 *any other provision of this section, the Secretary*
3 *may provide assistance under this section to eli-*
4 *gible producers on a farm that—*

5 “(i) *suffered a production loss due to a*
6 *natural cause during the 2008 crop year;*
7 *and*

8 “(ii) *as determined by the Secretary—*

9 “(I)(aa) *except as provided in*
10 *item (bb), lack access to a policy or*
11 *plan of insurance under subtitle A; or*

12 “(bb) *do not qualify for a written*
13 *agreement because 1 or more farming*
14 *practices, which the Secretary has de-*
15 *termined are good farming practices, of*
16 *the eligible producers on the farm dif-*
17 *fer significantly from the farming*
18 *practices used by producers of the same*
19 *crop in other regions of the United*
20 *States; and*

21 “(II) *are not eligible for the non-*
22 *insured crop disaster assistance pro-*
23 *gram established by section 196 of the*
24 *Federal Agriculture Improvement and*
25 *Reform Act of 1996 (7 U.S.C. 7333).”.*

1 (b) *TRADE ACT OF 1974.—Section 901(g) of the Trade*
2 *Act of 1974 (19 U.S.C. 2497(g)) is amended by adding at*
3 *the end the following:*

4 “(7) *2008 TRANSITION ASSISTANCE.—*

5 “(A) *IN GENERAL.—Eligible producers on a*
6 *farm described in subparagraph (A) of para-*
7 *graph (4) that failed to timely pay the appro-*
8 *priate fee described in that subparagraph shall*
9 *be eligible for assistance under this section in ac-*
10 *cordance with subparagraph (B) if the eligible*
11 *producers on the farm—*

12 “(i) *pay the appropriate fee described*
13 *in paragraph (4)(A) not later than 90 days*
14 *after the date of enactment of this para-*
15 *graph; and*

16 “(ii)(I) *in the case of each insurable*
17 *commodity of the eligible producers on the*
18 *farm, excluding grazing land, agree to ob-*
19 *tain a policy or plan of insurance under the*
20 *Federal Crop Insurance Act (7 U.S.C. 1501*
21 *et seq.) (excluding a crop insurance pilot*
22 *program under that Act) for the next insur-*
23 *ance year for which crop insurance is avail-*
24 *able to the eligible producers on the farm at*
25 *a level of coverage equal to 70 percent or*

1 *more of the recorded or appraised average*
2 *yield indemnified at 100 percent of the ex-*
3 *pected market price, or an equivalent cov-*
4 *erage; and*

5 *“(II) in the case of each noninsurable*
6 *commodity of the eligible producers on the*
7 *farm, agree to file the required paperwork,*
8 *and pay the administrative fee by the ap-*
9 *licable State filing deadline, for the non-*
10 *insured crop assistance program for the*
11 *2009 crop year.*

12 *“(B) AMOUNT OF ASSISTANCE.—Eligible*
13 *producers on a farm that meet the requirements*
14 *of subparagraph (A) shall be eligible to receive*
15 *assistance under this section as if the eligible*
16 *producers on the farm—*

17 *“(i) in the case of each insurable com-*
18 *modity of the eligible producers on the farm,*
19 *had obtained a policy or plan of insurance*
20 *for the 2008 crop year at a level of coverage*
21 *not to exceed 70 percent or more of the re-*
22 *corded or appraised average yield indem-*
23 *nified at 100 percent of the expected market*
24 *price, or an equivalent coverage; and*

1 “(ii) in the case of each noninsurable
2 commodity of the eligible producers on the
3 farm, had filed the required paperwork, and
4 paid the administrative fee by the applica-
5 ble State filing deadline, for the noninsured
6 crop assistance program for the 2008 crop
7 year, except that in determining yield
8 under that program, the Secretary shall use
9 a percentage that is 70 percent.

10 “(C) *EQUITABLE RELIEF.*—Except as pro-
11 vided in subparagraph (D), eligible producers on
12 a farm that met the requirements of paragraph
13 (1) before the deadline described in paragraph
14 (4)(A) and received, or are eligible to receive, a
15 disaster assistance payment under this section
16 for a production loss during the 2008 crop year
17 shall be eligible to receive an additional amount
18 equal to the greater of—

19 “(i) the amount that would have been
20 calculated under subparagraph (B) if the el-
21 igible producers on the farm had paid the
22 appropriate fee under that subparagraph;
23 or

1 “(ii) the amount that would have been
2 calculated under subparagraph (A) of sub-
3 section (b)(3) if—

4 “(I) in clause (i) of that subpara-
5 graph, ‘120 percent’ is substituted for
6 ‘115 percent’; and

7 “(II) in clause (ii) of that sub-
8 paragraph, ‘125’ is substituted for ‘120
9 percent’.

10 “(D) *LIMITATION.*—For amounts made
11 available under this paragraph, the Secretary
12 may make such adjustments as are necessary to
13 ensure that no producer receives a payment
14 under this paragraph for an amount in excess of
15 the assistance received by a similarly situated
16 producer that had purchased the same or higher
17 level of crop insurance prior to the date of enact-
18 ment of this paragraph.

19 “(E) *AUTHORITY OF THE SECRETARY.*—The
20 Secretary may provide such additional assist-
21 ance as the Secretary considers appropriate to
22 provide equitable treatment for eligible producers
23 on a farm that suffered production losses in the
24 2008 crop year that result in multiyear produc-
25 tion losses, as determined by the Secretary.

1 “(F) *LACK OF ACCESS.*—*Notwithstanding*
2 *any other provision of this section, the Secretary*
3 *may provide assistance under this section to eli-*
4 *gible producers on a farm that—*

5 “(i) *suffered a production loss due to a*
6 *natural cause during the 2008 crop year;*
7 *and*

8 “(ii) *as determined by the Secretary—*

9 “(I)(aa) *except as provided in*
10 *item (bb), lack access to a policy or*
11 *plan of insurance under subtitle A; or*

12 “(bb) *do not qualify for a written*
13 *agreement because 1 or more farming*
14 *practices, which the Secretary has de-*
15 *termined are good farming practices, of*
16 *the eligible producers on the farm dif-*
17 *fer significantly from the farming*
18 *practices used by producers of the same*
19 *crop in other regions of the United*
20 *States; and*

21 “(II) *are not eligible for the non-*
22 *insured crop disaster assistance pro-*
23 *gram established by section 196 of the*
24 *Federal Agriculture Improvement and*
25 *Reform Act of 1996 (7 U.S.C. 7333).”.*

1 (c) *EMERGENCY LOANS.*—

2 (1) *IN GENERAL.*—*For the principal amount of*
3 *direct emergency loans under section 321 of the Con-*
4 *solidated Farm and Rural Development Act (7 U.S.C.*
5 *1961), \$200,000,000.*

6 (2) *DIRECT EMERGENCY LOANS.*—*For the cost of*
7 *direct emergency loans, including the cost of modi-*
8 *fying loans, as defined in section 502 of the Congres-*
9 *sional Budget Act of 1974 (2 U.S.C. 661a),*
10 *\$28,440,000, to remain available until September 30,*
11 *2010.*

12 (d) *2008 AQUACULTURE ASSISTANCE.*—

13 (1) *DEFINITIONS.*—*In this subsection:*

14 (A) *ELIGIBLE AQUACULTURE PRODUCER.*—

15 *The term “eligible aquaculture producer” means*
16 *an aquaculture producer that during the 2008*
17 *calendar year, as determined by the Secretary—*

18 (i) *produced an aquaculture species for*
19 *which feed costs represented a substantial*
20 *percentage of the input costs of the aqua-*
21 *culture operation; and*

22 (ii) *experienced a substantial price in-*
23 *crease of feed costs above the previous 5-year*
24 *average.*

1 (B) *SECRETARY.*—*The term “Secretary”*
2 *means the Secretary of Agriculture.*

3 (2) *GRANT PROGRAM.*—

4 (A) *IN GENERAL.*—*Of the funds of the Com-*
5 *modity Credit Corporation, the Secretary shall*
6 *use not more than \$50,000,000, to remain avail-*
7 *able until September 30, 2010, to carry out a*
8 *program of grants to States to assist eligible*
9 *aquaculture producers for losses associated with*
10 *high feed input costs during the 2008 calendar*
11 *year.*

12 (B) *NOTIFICATION.*—*Not later than 60 days*
13 *after the date of enactment of this Act, the Sec-*
14 *retary shall notify the State department of agri-*
15 *culture (or similar entity) in each State of the*
16 *availability of funds to assist eligible aqua-*
17 *culture producers, including such terms as deter-*
18 *mined by the Secretary to be necessary for the*
19 *equitable treatment of eligible aquaculture pro-*
20 *ducers.*

21 (C) *PROVISION OF GRANTS.*—

22 (i) *IN GENERAL.*—*The Secretary shall*
23 *make grants to States under this subsection*
24 *on a pro rata basis based on the amount of*
25 *aquaculture feed used in each State during*

1 *the 2007 calendar year, as determined by*
2 *the Secretary.*

3 *(ii) TIMING.—Not later than 120 days*
4 *after the date of enactment of this Act, the*
5 *Secretary shall make grants to States to*
6 *provide assistance under this subsection.*

7 *(D) REQUIREMENTS.—The Secretary shall*
8 *make grants under this subsection only to States*
9 *that demonstrate to the satisfaction of the Sec-*
10 *retary that the State will—*

11 *(i) use grant funds to assist eligible*
12 *aquaculture producers;*

13 *(ii) provide assistance to eligible aqua-*
14 *culture producers not later than 60 days*
15 *after the date on which the State receives*
16 *grant funds; and*

17 *(iii) not later than 30 days after the*
18 *date on which the State provides assistance*
19 *to eligible aquaculture producers, submit to*
20 *the Secretary a report that describes—*

21 *(I) the manner in which the State*
22 *provided assistance;*

23 *(II) the amounts of assistance*
24 *provided per species of aquaculture;*
25 *and*

1 (III) the process by which the
2 State determined the levels of assist-
3 ance to eligible aquaculture producers.

4 (3) *REDUCTION IN PAYMENTS.*—An eligible
5 aquaculture producer that receives assistance under
6 this subsection shall not be eligible to receive any
7 other assistance under the supplemental agricultural
8 disaster assistance program established under section
9 531 of the Federal Crop Insurance Act (7 U.S.C.
10 1531) and section 901 of the Trade Act of 1974 (19
11 U.S.C. 2497) for any losses in 2008 relating to the
12 same species of aquaculture.

13 (4) *REPORT TO CONGRESS.*—Not later than 180
14 days after the date of enactment of this Act, the Sec-
15 retary shall submit to the appropriate committees of
16 Congress a report that—

17 (A) describes in detail the manner in which
18 this subsection has been carried out; and

19 (B) includes the information reported to the
20 Secretary under paragraph (2)(D)(iii).

21 (e) *ADMINISTRATION.*—There is hereby appropriated
22 \$54,000,000 to carry out this section.

23 *SEC. 104. (a) Hereafter, in this section, the term “non-*
24 *ambulatory disabled cattle” means cattle, other than cattle*
25 *that are less than 5 months old or weigh less than 500*

1 pounds, subject to inspection under section 3(b) of the Fed-
2 eral Meat Inspection Act (21 U.S.C. 603(b)) that cannot
3 rise from a recumbent position or walk, including cattle
4 with a broken appendage, severed tendon or ligament, nerve
5 paralysis, fractured vertebral column, or a metabolic condi-
6 tion.

7 (b) Hereafter, none of the funds made available under
8 this or any other Act may be used to pay the salaries or
9 expenses of any personnel of the Food Safety and Inspection
10 Service to pass through inspection any nonambulatory dis-
11 abled cattle for use as human food, regardless of the reason
12 for the nonambulatory status of the cattle or the time at
13 which the cattle became nonambulatory.

14 SEC. 105. STATE AND LOCAL GOVERNMENTS. Section
15 1001(f)(6)(A) of the Food Security Act of 1985 (7 U.S.C.
16 1308(f)(6)(A)) is amended by inserting “(other than the
17 conservation reserve program established under subchapter
18 B of chapter 1 of subtitle D of title XII of this Act)” before
19 the period at the end.

20 SEC. 106. Except for title I of the Food, Conservation,
21 and Energy Act of 2008 (Public Law 110–246), Commodity
22 Credit Corporation funds provided in that Act shall be
23 available for administrative expenses, including technical
24 assistance, without regard to the limitation in 15 U.S.C.
25 714i.

1 *TITLE II—COMMERCE, JUSTICE, SCIENCE, AND*
2 *RELATED AGENCIES*

3 *DEPARTMENT OF COMMERCE*

4 *BUREAU OF INDUSTRY AND SECURITY*

5 *OPERATIONS AND ADMINISTRATION*

6 *For an additional amount for “Operations and Ad-*
7 *ministration”, \$20,000,000, to remain available until Sep-*
8 *tember 30, 2010.*

9 *ECONOMIC DEVELOPMENT ADMINISTRATION*

10 *ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS*

11 *For an additional amount for “Economic Development*
12 *Assistance Programs”, \$150,000,000, to remain available*
13 *until September 30, 2010: Provided, That \$50,000,000 shall*
14 *be for economic adjustment assistance as authorized by sec-*
15 *tion 209 of the Public Works and Economic Development*
16 *Act of 1965, as amended (42 U.S.C. 3149): Provided fur-*
17 *ther, That in allocating the funds provided in the previous*
18 *proviso, the Secretary of Commerce shall give priority con-*
19 *sideration to areas of the Nation that have experienced sud-*
20 *den and severe economic dislocation and job loss due to cor-*
21 *porate restructuring.*

1 *BUREAU OF THE CENSUS*2 *PERIODIC CENSUSES AND PROGRAMS*

3 *For an additional amount for “Periodic Censuses and*
4 *Programs”, \$1,000,000,000, to remain available until Sep-*
5 *tember 30, 2010.*

6 *NATIONAL TELECOMMUNICATIONS AND INFORMATION*7 *ADMINISTRATION*8 *BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM*

9 *For an amount for “Broadband Technology Opportu-*
10 *nities Program”, \$7,000,000,000, to remain available until*
11 *September 30, 2010: Provided, That of the funds provided*
12 *under this heading, \$6,650,000,000 shall be expended pur-*
13 *suant to section 201 of this Act, of which: not less than*
14 *\$200,000,000 shall be available for competitive grants for*
15 *expanding public computer center capacity, including at*
16 *community colleges and public libraries; not less than*
17 *\$250,000,000 shall be available for competitive grants for*
18 *innovative programs to encourage sustainable adoption of*
19 *broadband service; and \$10,000,000 shall be transferred to*
20 *“Department of Commerce, Office of Inspector General” for*
21 *the purposes of audits and oversight of funds provided*
22 *under this heading and such funds shall remain available*
23 *until expended: Provided further, That 50 percent of the*
24 *funds provided in the previous proviso shall be used to sup-*
25 *port projects in rural communities, which in part may be*

1 transferred to the Department of Agriculture for adminis-
2 tration through the Rural Utilities Service if deemed nec-
3 essary and appropriate by the Secretary of Commerce, in
4 consultation with the Secretary of Agriculture, and only if
5 the Committees on Appropriations of the House and the
6 Senate are notified not less than 15 days in advance of the
7 transfer of such funds: Provided further, That of the funds
8 provided under this heading, up to \$350,000,000 may be
9 expended pursuant to Public Law 110–385 (47 U.S.C. 1301
10 note) and for the purposes of developing and maintaining
11 a broadband inventory map pursuant to section 201 of this
12 Act: Provided further, That of the funds provided under this
13 heading, amounts deemed necessary and appropriate by the
14 Secretary of Commerce, in consultation with the Federal
15 Communications Commission (FCC), may be transferred to
16 the FCC for the purposes of developing a national
17 broadband plan or for carrying out any other FCC respon-
18 sibilities pursuant to section 201 of this Act, and only if
19 the Committees on Appropriations of the House and the
20 Senate are notified not less than 15 days in advance of the
21 transfer of such funds: Provided further, That not more
22 than 3 percent of funds provided under this heading may
23 be used for administrative costs, and this limitation shall
24 apply to funds which may be transferred to the Department
25 of Agriculture and the FCC.

1 *DIGITAL-TO-ANALOG CONVERTER BOX PROGRAM*

2 *For an amount for “Digital-to-Analog Converter Box*
3 *Program”, \$650,000,000, for additional coupons and re-*
4 *lated activities under the program implemented under sec-*
5 *tion 3005 of the Digital Television Transition and Public*
6 *Safety Act of 2005, to remain available until September*
7 *30, 2010: Provided, That of the amounts provided under*
8 *this heading, \$90,000,000 may be for education and out-*
9 *reach, including grants to organizations for programs to*
10 *educate vulnerable populations, including senior citizens,*
11 *minority communities, people with disabilities, low-income*
12 *individuals, and people living in rural areas, about the*
13 *transition and to provide one-on-one assistance to vulner-*
14 *able populations, including help with converter box instal-*
15 *lation: Provided further, That the amounts provided in the*
16 *previous proviso may be transferred to the Federal Commu-*
17 *nications Commission (Commission) if deemed necessary*
18 *and appropriate by the Secretary of Commerce in consulta-*
19 *tion with the Commission, and only if the Committees on*
20 *Appropriations of the House and the Senate are notified*
21 *not less than 5 days in advance of transfer of such funds:*
22 *Provided further, That \$2,000,000 of funds provided under*
23 *this heading shall be transferred to “Department of Com-*
24 *merce, Office of Inspector General” for audits and oversight*
25 *of funds provided under this heading.*

1 *NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY*
2 *SCIENTIFIC AND TECHNICAL RESEARCH AND SERVICES*

3 *For an additional amount for “Scientific and Tech-*
4 *nical Research and Services”, \$168,000,000, to remain*
5 *available until September 30, 2010.*

6 *CONSTRUCTION OF RESEARCH FACILITIES*

7 *For an additional amount for “Construction of Re-*
8 *search Facilities”, \$307,000,000, to remain available until*
9 *September 30, 2010.*

10 *NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION*
11 *OPERATIONS, RESEARCH, AND FACILITIES*

12 *For an additional amount for “Operations, Research,*
13 *and Facilities”, \$377,000,000, to remain available until*
14 *September 30, 2010.*

15 *PROCUREMENT, ACQUISITION AND CONSTRUCTION*

16 *For an additional amount for “Procurement, Acquisi-*
17 *tion and Construction”, \$645,000,000, to remain available*
18 *until September 30, 2010.*

19 *OFFICE OF INSPECTOR GENERAL*

20 *For an additional amount for “Office of Inspector*
21 *General”, \$6,000,000, to remain available until September*
22 *30, 2012.*

1 *DEPARTMENT OF JUSTICE*2 *GENERAL ADMINISTRATION*3 *TACTICAL LAW ENFORCEMENT WIRELESS COMMUNICATIONS*

4 *For an additional amount for “Tactical Law Enforce-*
5 *ment Wireless Communications”, \$100,000,000 for the costs*
6 *of developing and implementing a nationwide Integrated*
7 *Wireless network supporting Federal law enforcement, to re-*
8 *main available until September 30, 2010.*

9 *DETENTION TRUSTEE*

10 *For an additional amount for “Detention Trustee”,*
11 *\$100,000,000, to remain available until September 30,*
12 *2010.*

13 *OFFICE OF INSPECTOR GENERAL*

14 *For an additional amount for “Office of Inspector*
15 *General”, \$2,000,000, to remain available until September*
16 *30, 2011.*

17 *UNITED STATES MARSHALS SERVICE*18 *SALARIES AND EXPENSES*

19 *For an additional amount for “Salaries and Ex-*
20 *penses”, \$50,000,000, to remain available until September*
21 *30, 2010.*

22 *CONSTRUCTION*

23 *For an additional amount for “Construction”,*
24 *\$100,000,000, to remain available until September 30,*
25 *2010.*

1 *FEDERAL BUREAU OF INVESTIGATION*2 *SALARIES AND EXPENSES*

3 *For an additional amount for “Salaries and Ex-*
4 *penses”, \$75,000,000, to remain available until September*
5 *30, 2010.*

6 *CONSTRUCTION*

7 *For an additional amount for “Construction”,*
8 *\$300,000,000, to remain available until September 30,*
9 *2010.*

10 *FEDERAL PRISON SYSTEM*11 *BUILDINGS AND FACILITIES*

12 *For an additional amount for “Federal Prison Sys-*
13 *tem, Buildings and Facilities”, \$800,000,000, to remain*
14 *available until September 30, 2010.*

15 *STATE AND LOCAL LAW ENFORCEMENT ACTIVITIES*16 *OFFICE ON VIOLENCE AGAINST WOMEN*17 *VIOLENCE AGAINST WOMEN PREVENTION AND*18 *PROSECUTION PROGRAMS*

19 *For an additional amount for “Violence Against*
20 *Women Prevention and Prosecution Programs”,*
21 *\$300,000,000 for grants to combat violence against women,*
22 *as authorized by part T of the Omnibus Crime Control and*
23 *Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.): Provided,*
24 *That, \$50,000,000 shall be transitional housing assistance*
25 *grants for victims of domestic violence, stalking or sexual*

1 *assault as authorized by section 40299 of the Violent Crime*
2 *Control and Law Enforcement Act of 1994 (Public Law*
3 *103-322).*

4 *OFFICE OF JUSTICE PROGRAMS*

5 *STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE*

6 *For an additional amount for “State and Local Law*
7 *Enforcement Assistance”, \$1,200,000,000 for the Edward*
8 *Byrne Memorial Justice Assistance Grant program as au-*
9 *thorized by subpart 1 of part E of title I of the Omnibus*
10 *Crime Control and Safe Street Act of 1968 (“1968 Act”),*
11 *(except that section 1001(c), and the special rules for Puerto*
12 *Rico under section 505(g), of the 1968 Act, shall not apply*
13 *for purposes of this Act), to remain available until Sep-*
14 *tember 30, 2010.*

15 *For an additional amount for “State and Local Law*
16 *Enforcement Assistance”, \$300,000,000 for competitive*
17 *grants to improve the functioning of the criminal justice*
18 *system, to assist victims of crime (other than compensa-*
19 *tion), and youth mentoring grants, to remain available*
20 *until September 30, 2010.*

21 *For an additional amount for “State and Local Law*
22 *Enforcement Assistance”, \$90,000,000, to remain available*
23 *until September 30, 2010, for competitive grants to provide*
24 *assistance and equipment to local law enforcement along*
25 *the Southern border and in High-Intensity Drug Traf-*

1 *ficking Areas to combat criminal narcotics activity stem-*
2 *ming from the Southern border, of which \$10,000,000 shall*
3 *be transferred to “Bureau of Alcohol, Tobacco, Firearms*
4 *and Explosives, Salaries and Expenses” for the ATF Project*
5 *Gunrunner.*

6 *For an additional amount for “State and Local Law*
7 *Enforcement Assistance”, \$300,000,000, to remain avail-*
8 *able until September 30, 2010, for assistance to Indian*
9 *tribes, notwithstanding Public Law 108–199, division B,*
10 *title I, section 112(a)(1) (118 Stat. 62), of which—*

11 *(1) \$250,000,000 shall be available for grants*
12 *under section 20109 of subtitle A of title II of the Vio-*
13 *lent Crime Control and Law Enforcement Act of 1994*
14 *(Public Law 103–322);*

15 *(2) \$25,000,000 shall be available for the Tribal*
16 *Courts Initiative; and*

17 *(3) \$25,000,000 shall be available for tribal alco-*
18 *hol and substance abuse drug reduction assistance*
19 *grants.*

20 *For an additional amount for “State and Local Law En-*
21 *forcement Assistance”, \$100,000,000, to remain available*
22 *until September 30, 2010, to be distributed by the Office*
23 *for Victims of Crime in accordance with section 1402(d)(4)*
24 *of the Victims of Crime Act of 1984 (Public Law 98–473).*

1 *For an additional amount for “State and Local Law*
2 *Enforcement Assistance”, \$150,000,000, to remain avail-*
3 *able until September 30, 2010, for assistance to law enforce-*
4 *ment in rural areas, to prevent and combat crime, espe-*
5 *cially drug-related crime.*

6 *For an additional amount for “State and Local Law*
7 *Enforcement Assistance”, \$50,000,000, to remain available*
8 *until September 30, 2010, for Internet Crimes Against Chil-*
9 *dren (ICAC) initiatives.*

10 *COMMUNITY ORIENTED POLICING SERVICES*

11 *For an additional amount for “Community Oriented*
12 *Policing Services”, for grants under section 1701 of title*
13 *I of the 1968 Omnibus Crime Control and Safe Streets Act*
14 *(42 U.S.C. 3796dd) for hiring and rehiring of additional*
15 *career law enforcement officers under part Q of such title,*
16 *and civilian public safety personnel, notwithstanding sub-*
17 *section (i) of such section and notwithstanding 42 U.S.C.*
18 *3796dd–3(c), \$1,000,000,000, to remain available until*
19 *September 30, 2010.*

20 *SALARIES AND EXPENSES*

21 *For an additional amount, not elsewhere specified in*
22 *this title, for management and administration and over-*
23 *sight of programs within the Office on Violence Against*
24 *Women, the Office of Justice Programs, and the Community*

1 *Oriented Policing Services Office, \$10,000,000, to remain*
2 *available until September 30, 2010.*

3 *SCIENCE*

4 *NATIONAL AERONAUTICS AND SPACE ADMINISTRATION*

5 *SCIENCE*

6 *For an additional amount for “Science”,*
7 *\$450,000,000, to remain available until September 30,*
8 *2010.*

9 *AERONAUTICS*

10 *For an additional amount for “Aeronautics”,*
11 *\$200,000,000, to remain available until September 30,*
12 *2010.*

13 *EXPLORATION*

14 *For an additional amount for “Exploration”,*
15 *\$450,000,000, to remain available until September 30,*
16 *2010.*

17 *CROSS AGENCY SUPPORT*

18 *For an additional amount for “Cross Agency Sup-*
19 *port”, \$200,000,000, to remain available until September*
20 *30, 2010.*

21 *OFFICE OF INSPECTOR GENERAL*

22 *For an additional amount for “Office of Inspector*
23 *General”, \$2,000,000, to remain available until September*
24 *30, 2011.*

1 *NATIONAL SCIENCE FOUNDATION*2 *RESEARCH AND RELATED ACTIVITIES*

3 *For an additional amount for “Research and Related*
4 *Activities”, \$1,000,000,000, to remain available until Sep-*
5 *tember 30, 2010.*

6 *MAJOR RESEARCH EQUIPMENT AND FACILITIES*7 *CONSTRUCTION*

8 *For an additional amount for “Major Research Equip-*
9 *ment and Facilities Construction”, \$150,000,000, to remain*
10 *available until September 30, 2010.*

11 *EDUCATION AND HUMAN RESOURCES*

12 *For an additional amount for “Education and*
13 *Human Resources”, \$50,000,000, to remain available until*
14 *September 30, 2010.*

15 *OFFICE OF INSPECTOR GENERAL*

16 *For an additional amount for “Office of Inspector*
17 *General”, \$2,000,000, to remain available until September*
18 *30, 2011.*

19 *GENERAL PROVISIONS—THIS TITLE*

20 *SEC. 201. The Assistant Secretary of Commerce for*
21 *Communications and Information (Assistant Secretary), in*
22 *consultation with the Federal Communications Commission*
23 *(Commission) (and, with respect to rural areas, the Sec-*
24 *retary of Agriculture), shall establish a national broadband*
25 *service development and expansion program in conjunction*

1 *with the technology opportunities program, which shall be*
2 *referred to the Broadband Technology Opportunities Pro-*
3 *gram. The Assistant Secretary shall ensure that the pro-*
4 *gram complements and enhances and does not conflict with*
5 *other Federal broadband initiatives and programs.*

6 (1) *The purposes of the program are to—*

7 (A) *provide access to broadband service to*
8 *citizens residing in unserved areas of the United*
9 *States;*

10 (B) *provide improved access to broadband*
11 *service to citizens residing in underserved areas*
12 *of the United States;*

13 (C) *provide broadband education, aware-*
14 *ness, training, access, equipment, and support*
15 *to—*

16 (i) *schools, libraries, medical and*
17 *healthcare providers, community colleges*
18 *and other institutions of higher education,*
19 *and other community support organizations*
20 *and entities to facilitate greater use of*
21 *broadband service by or through these orga-*
22 *nizations;*

23 (ii) *organizations and agencies that*
24 *provide outreach, access, equipment, and*
25 *support services to facilitate greater use of*

1 *broadband service by low-income, unem-*
2 *ployed, aged, and otherwise vulnerable pop-*
3 *ulations; and*

4 *(iii) job-creating strategic facilities lo-*
5 *cated within a State-designated economic*
6 *zone, Economic Development District des-*
7 *ignated by the Department of Commerce,*
8 *Renewal Community or Empowerment*
9 *Zone designated by the Department of*
10 *Housing and Urban Development, or Enter-*
11 *prise Community designated by the Depart-*
12 *ment of Agriculture.*

13 *(D) improve access to, and use of,*
14 *broadband service by public safety agencies; and*

15 *(E) stimulate the demand for broadband,*
16 *economic growth, and job creation.*

17 *(2) The Assistant Secretary may consult with the*
18 *chief executive officer of any State with respect to—*

19 *(A) the identification of areas described in*
20 *subsection (1)(A) or (B) located in that State;*
21 *and*

22 *(B) the allocation of grant funds within*
23 *that State for projects in or affecting the State.*

24 *(3) The Assistant Secretary shall—*

1 (A) establish and implement the grant pro-
2 gram as expeditiously as practicable;

3 (B) ensure that all awards are made before
4 the end of fiscal year 2010;

5 (C) seek such assurances as may be nec-
6 essary or appropriate from grantees under the
7 program that they will substantially complete
8 projects supported by the program in accordance
9 with project timelines, not to exceed 2 years fol-
10 lowing an award; and

11 (D) report on the status of the program to
12 the Committees on Appropriations of the House
13 and the Senate, the Committee on Energy and
14 Commerce of the House, and the Committee on
15 Commerce, Science, and Transportation of the
16 Senate, every 90 days.

17 (4) To be eligible for a grant under the program
18 an applicant shall—

19 (A) be a State or political subdivision there-
20 of, a nonprofit foundation, corporation, institu-
21 tion or association, Indian tribe, Native Hawai-
22 ian organization, or other non-governmental en-
23 tity in partnership with a State or political sub-
24 division thereof, Indian tribe, or Native Hawai-
25 ian organization if the Assistant Secretary deter-

1 *mines the partnership consistent with the pur-*
2 *poses this section;*

3 *(B) submit an application, at such time, in*
4 *such form, and containing such information as*
5 *the Assistant Secretary may require;*

6 *(C) provide a detailed explanation of how*
7 *any amount received under the program will be*
8 *used to carry out the purposes of this section in*
9 *an efficient and expeditious manner, including a*
10 *demonstration that the project would not have*
11 *been implemented during the grant period with-*
12 *out Federal grant assistance;*

13 *(D) demonstrate, to the satisfaction of the*
14 *Assistant Secretary, that it is capable of car-*
15 *rying out the project or function to which the ap-*
16 *plication relates in a competent manner in com-*
17 *pliance with all applicable Federal, State, and*
18 *local laws;*

19 *(E) demonstrate, to the satisfaction of the*
20 *Assistant Secretary, that it will appropriate (if*
21 *the applicant is a State or local government*
22 *agency) or otherwise unconditionally obligate,*
23 *from non-Federal sources, funds required to meet*
24 *the requirements of paragraph (5);*

1 (F) disclose to the Assistant Secretary the
2 source and amount of other Federal or State
3 funding sources from which the applicant re-
4 ceives, or has applied for, funding for activities
5 or projects to which the application relates; and

6 (G) provide such assurances and procedures
7 as the Assistant Secretary may require to ensure
8 that grant funds are used and accounted for in
9 an appropriate manner.

10 (5) The Federal share of any project may not ex-
11 ceed 80 percent, except that the Assistant Secretary
12 may increase the Federal share of a project above 80
13 percent if—

14 (A) the applicant petitions the Assistant
15 Secretary for a waiver; and

16 (B) the Assistant Secretary determines that
17 the petition demonstrates financial need.

18 (6) The Assistant Secretary may make competi-
19 tive grants under the program to—

20 (A) acquire equipment, instrumentation,
21 networking capability, hardware and software,
22 digital network technology, and infrastructure
23 for broadband services;

24 (B) construct and deploy broadband service
25 related infrastructure;

1 (C) ensure access to broadband service by
2 community anchor institutions;

3 (D) facilitate access to broadband service by
4 low-income, unemployed, aged, and otherwise
5 vulnerable populations in order to provide edu-
6 cational and employment opportunities to mem-
7 bers of such populations;

8 (E) construct and deploy broadband facili-
9 ties that improve public safety broadband com-
10 munications services; and

11 (F) undertake such other projects and ac-
12 tivities as the Assistant Secretary finds to be
13 consistent with the purposes for which the pro-
14 gram is established.

15 (7) *The Assistant Secretary—*

16 (A) shall require any entity receiving a
17 grant pursuant to this section to report quar-
18 terly, in a format specified by the Assistant Sec-
19 retary, on such entity's use of the assistance and
20 progress fulfilling the objectives for which such
21 funds were granted, and the Assistant Secretary
22 shall make these reports available to the public;

23 (B) may establish additional reporting and
24 information requirements for any recipient of

1 *any assistance made available pursuant to this*
2 *section;*

3 *(C) shall establish appropriate mechanisms*
4 *to ensure appropriate use and compliance with*
5 *all terms of any use of funds made available*
6 *pursuant to this section;*

7 *(D) may, in addition to other authority*
8 *under applicable law, deobligate awards to*
9 *grantees that demonstrate an insufficient level of*
10 *performance, or wasteful or fraudulent spending,*
11 *as defined in advance by the Assistant Secretary,*
12 *and award these funds competitively to new or*
13 *existing applicants consistent with this section;*
14 *and*

15 *(E) shall create and maintain a fully*
16 *searchable database, accessible on the Internet at*
17 *no cost to the public, that contains at least the*
18 *name of each entity receiving funds made avail-*
19 *able pursuant to this section, the purpose for*
20 *which such entity is receiving such funds, each*
21 *quarterly report submitted by the entity pursu-*
22 *ant to this section, and such other information*
23 *sufficient to allow the public to understand and*
24 *monitor grants awarded under the program.*

1 (8) *Concurrent with the issuance of the Request*
2 *for Proposal for grant applications pursuant to this*
3 *section, the Assistant Secretary shall, in coordination*
4 *with the Federal Communications Commission, pub-*
5 *lish the non-discrimination and network interconnec-*
6 *tion obligations that shall be contractual conditions of*
7 *grants awarded under this section.*

8 (9) *Within 1 year after the date of enactment of*
9 *this Act, the Commission shall complete a rulemaking*
10 *to develop a national broadband plan. In developing*
11 *the plan, the Commission shall—*

12 (A) *consider the most effective and efficient*
13 *national strategy for ensuring that all Ameri-*
14 *cans have access to, and take advantage of, ad-*
15 *vanced broadband services;*

16 (B) *have access to data provided to other*
17 *Government agencies under the Broadband Data*
18 *Improvement Act (47 U.S.C. 1301 note);*

19 (C) *evaluate the status of deployments of*
20 *broadband service, including the progress of*
21 *projects supported by the grants made pursuant*
22 *to this section; and*

23 (D) *develop recommendations for achieving*
24 *the goal of nationally available broadband serv-*

1 *ice for the United States and for promoting*
2 *broadband adoption nationwide.*

3 *(10) The Assistant Secretary shall develop and*
4 *maintain a comprehensive nationwide inventory map*
5 *of existing broadband service capability and avail-*
6 *ability in the United States that entities and depicts*
7 *the geographic extent to which broadband service ca-*
8 *pability is deployed and available from a commercial*
9 *provider or public provider throughout each State:*
10 *Provided, That not later than 2 years after the date*
11 *of the enactment of the Act, the Assistant Secretary*
12 *shall make the broadband inventory map developed*
13 *and maintained pursuant to this section accessible to*
14 *the public.*

15 *SEC. 202. The Assistant Secretary of Commerce for*
16 *Communications and Information may reissue any coupon*
17 *issued under section 3005(a) of the Digital Television Tran-*
18 *sition and Public Safety Act of 2005 that has expired before*
19 *use, and shall cancel any unredeemed coupon reported as*
20 *lost and may issue a replacement coupon for the lost cou-*
21 *pon.*

1 *TITLE III—DEPARTMENT OF DEFENSE*2 *OPERATION AND MAINTENANCE*3 *OPERATION AND MAINTENANCE, ARMY*

4 *For an additional amount for “Operation and Maintenance, Army”, \$1,169,291,000, to remain available for obligation until September 30, 2010.*

7 *OPERATION AND MAINTENANCE, NAVY*

8 *For an additional amount for “Operation and Maintenance, Navy”, \$571,843,000, to remain available for obligation until September 30, 2010.*

11 *OPERATION AND MAINTENANCE, MARINE CORPS*

12 *For an additional amount for “Operation and Maintenance, Marine Corps”, \$112,167,000, to remain available for obligation until September 30, 2010.*

15 *OPERATION AND MAINTENANCE, AIR FORCE*

16 *For an additional amount for “Operation and Maintenance, Air Force”, \$927,113,000, to remain available for obligation until September 30, 2010.*

19 *OPERATION AND MAINTENANCE, ARMY RESERVE*

20 *For an additional amount for “Operation and Maintenance, Army Reserve”, \$79,543,000, to remain available for obligation until September 30, 2010.*

1 *TITLE IV—ENERGY AND WATER DEVELOPMENT*2 *DEPARTMENT OF DEFENSE—CIVIL*3 *DEPARTMENT OF THE ARMY*4 *CORPS OF ENGINEERS—CIVIL*5 *INVESTIGATIONS*

6 *For an additional amount for “Investigations” for ex-*
7 *penses necessary where authorized by law for the collection*
8 *and study of basic information pertaining to river and har-*
9 *bor, flood and storm damage reduction, shore protection,*
10 *aquatic ecosystem restoration, and related needs; for surveys*
11 *and detailed studies, and plans and specifications of pro-*
12 *posed river and harbor, flood and storm damage reduction,*
13 *shore protection, and aquatic ecosystem restoration projects*
14 *and related efforts prior to construction; for restudy of au-*
15 *thorized projects; and for miscellaneous investigations and,*
16 *when authorized by law, surveys and detailed studies, and*
17 *plans and specifications of projects prior to construction,*
18 *\$25,000,000: Provided, That funds provided under this*
19 *heading in this title shall only be used for programs,*
20 *projects or activities that heretofore or hereafter receive*
21 *funds provided in Acts making appropriations available for*
22 *Energy and Water Development: Provided further, That*
23 *funds provided under this heading in this title shall be used*
24 *for programs, projects or activities or elements of programs,*
25 *projects or activities that can be completed within the funds*

1 *made available in that account and that will not require*
2 *new budget authority to complete: Provided further, That*
3 *for projects that are being completed with funds appro-*
4 *riated in this Act that would otherwise be expired for obli-*
5 *gation, expired funds appropriated in this Act may be used*
6 *to pay the cost of associated supervision, inspection, over*
7 *engineering and design on those projects and on subsequent*
8 *claims, if any: Provided further, That the Secretary shall*
9 *have unlimited reprogramming authority for these funds*
10 *provided under this heading.*

11

CONSTRUCTION

12 *For an additional amount for “Construction” for ex-*
13 *penses necessary for the construction of river and harbor,*
14 *flood and storm damage reduction, shore protection, aquatic*
15 *ecosystem restoration, and related projects authorized by*
16 *law, \$2,000,000,000, of which such sums as are necessary*
17 *to cover the Federal share of construction costs for facilities*
18 *under the Dredged Material Disposal Facilities program*
19 *shall be derived from the Harbor Maintenance Trust Fund*
20 *as authorized by Public Law 104–303: Provided, That not*
21 *less than \$200,000,000 of the funds provided shall be for*
22 *water-related environmental infrastructure assistance: Pro-*
23 *vided further, That section 102 of Public Law 109–103 (33*
24 *U.S.C. 2221) shall not apply to funds provided in this title:*
25 *Provided further, That notwithstanding any other provision*

1 of law, no funds shall be drawn from the Inland Waterways
2 Trust Fund, as authorized in Public Law 99–662: Provided
3 further, That funds provided under this heading in this title
4 shall only be used for programs, projects or activities that
5 heretofore or hereafter receive funds provided in Acts mak-
6 ing appropriations available for Energy and Water Devel-
7 opment: Provided further, That funds provided under this
8 heading in this title shall be used for programs, projects
9 or activities or elements of programs, projects or activities
10 that can be completed within the funds made available in
11 that account and that will not require new budget authority
12 to complete: Provided further, That the limitation con-
13 cerning total project costs in section 902 of the Water Re-
14 sources Development Act of 1986, as amended (33 U.S.C.
15 2280), shall not apply during fiscal year 2009 to any
16 project that received funds provided in this title: Provided
17 further, That funds appropriated under this heading may
18 be used by the Secretary of the Army, acting through the
19 Chief of Engineers, to undertake work authorized to be car-
20 ried out in accordance with section 14 of the Flood Control
21 Act of 1946 (33 U.S.C. 701r); section 205 of the Flood Con-
22 trol Act of 1948 (33 U.S.C. 701s); section 206 of the Water
23 Resources Development Act of 1996 (33 U.S.C. 2330); or
24 section 1135 of the Water Resources Development Act of
25 1986 (33 U.S.C. 2309a), notwithstanding the program cost

1 *limitations set forth in those sections: Provided further,*
2 *That for projects that are being completed with funds ap-*
3 *propriated in this Act that would otherwise be expired for*
4 *obligation, expired funds appropriated in this Act may be*
5 *used to pay the cost of associated supervision, inspection,*
6 *over engineering and design on those projects and on subse-*
7 *quent claims, if any: Provided further, That the Secretary*
8 *shall have unlimited reprogramming authority for these*
9 *funds provided under this heading.*

10 *MISSISSIPPI RIVER AND TRIBUTARIES*

11 *For an additional amount for “Mississippi River and*
12 *Tributaries” for expenses necessary for flood damage reduc-*
13 *tion projects and related efforts as authorized by law,*
14 *\$500,000,000, of which such sums as are necessary to cover*
15 *the Federal share of operation and maintenance costs for*
16 *inland harbors shall be derived from the Harbor Mainte-*
17 *nance Trust Fund, pursuant to Public Law 99–662: Pro-*
18 *vided, That funds provided under this heading in this title*
19 *shall only be used for programs, projects or activities that*
20 *heretofore or hereafter receive funds provided in Acts mak-*
21 *ing appropriations available for Energy and Water Devel-*
22 *opment: Provided further, That funds provided under this*
23 *heading in this title shall be used for programs, projects*
24 *or activities or elements of programs, projects or activities*
25 *that can be completed within the funds made available in*

1 *that account and that will not require new budget authority*
2 *to complete: Provided further, That the limitation con-*
3 *cerning total project costs in section 902 of the Water Re-*
4 *sources Development Act of 1986, as amended (33 U.S.C.*
5 *2280), shall not apply during fiscal year 2009 to any*
6 *project that received funds provided in this title: Provided*
7 *further, That for projects that are being completed with*
8 *funds appropriated in this Act that would otherwise be ex-*
9 *pired for obligation, expired funds appropriated in this Act*
10 *may be used to pay the cost of associated supervision, in-*
11 *spection, over engineering and design on those projects and*
12 *on subsequent claims, if any: Provided further, That the*
13 *Secretary shall have unlimited reprogramming authority*
14 *for these funds provided under this heading.*

15 *OPERATION AND MAINTENANCE*

16 *For an additional amount for “Operation and Mainte-*
17 *nance” for expenses necessary for the operation, mainte-*
18 *nance, and care of existing river and harbor, flood and*
19 *storm damage reduction, aquatic ecosystem restoration, and*
20 *related projects authorized by law, and for surveys and*
21 *charting of northern and northwestern lakes and connecting*
22 *waters, clearing and straightening channels, and removal*
23 *of obstructions to navigation, \$1,900,000,000, of which such*
24 *sums as are necessary to cover the Federal share of oper-*
25 *ation and maintenance costs for coastal harbors and chan-*

1 nels, and inland harbors shall be derived from the Harbor
2 Maintenance Trust Fund, pursuant to Public Law 99-662;
3 and of which such sums as become available under section
4 217 of the Water Resources Development Act of 1996, Public
5 Law 104-303, shall be used to cover the cost of operation
6 and maintenance of the dredged material disposal facilities
7 for which fees have been collected: Provided, That funds pro-
8 vided under this heading in this title shall only be used
9 for programs, projects or activities that heretofore or here-
10 after receive funds provided in Acts making appropriations
11 available for Energy and Water Development: Provided fur-
12 ther, That funds provided under this heading in this title
13 shall be used for programs, projects or activities or elements
14 of programs, projects or activities that can be completed
15 within the funds made available in that account and that
16 will not require new budget authority to complete: Provided
17 further, That \$90,000,000 of the funds provided under this
18 heading shall be used for activities described in section 9004
19 of Public Law 110-114: Provided further, That section 9006
20 of Public Law 110-114 shall not apply to funds provided
21 in this title: Provided further, That for projects that are
22 being completed with funds appropriated in this Act that
23 would otherwise be expired for obligation, expired funds ap-
24 propriated in this Act may be used to pay the cost of associ-
25 ated supervision, inspection, over engineering and design

1 *on those projects and on subsequent claims, if any: Provided*
2 *further, That the Secretary shall have unlimited reprogram-*
3 *ming authority for these funds provided under this heading.*

4 *REGULATORY PROGRAM*

5 *For an additional amount for “Regulatory Program”*
6 *for expenses necessary for administration of laws per-*
7 *taining to regulation of navigable waters and wetlands,*
8 *\$25,000,000 is provided.*

9 *FORMERLY UTILIZED SITES REMEDIAL ACTION PROGRAM*

10 *For an additional amount for “Formerly Utilized*
11 *Sites Remedial Action Program” for expenses necessary to*
12 *clean up contamination from sites in the United States re-*
13 *sulting from work performed as part of the Nation’s early*
14 *atomic energy program, \$100,000,000: Provided further,*
15 *That funds provided under this heading in this title shall*
16 *be used for programs, projects or activities or elements of*
17 *programs, projects or activities that can be completed with-*
18 *in the funds made available in that account and that will*
19 *not require new budget authority to complete: Provided fur-*
20 *ther, That for projects that are being completed with funds*
21 *appropriated in this Act that would otherwise be expired*
22 *for obligation, expired funds appropriated in this Act may*
23 *be used to pay the cost of associated supervision, inspection,*
24 *over engineering and design on those projects and on subse-*
25 *quent claims, if any: Provided further, That the Secretary*

1 *shall have unlimited reprogramming authority for these*
2 *funds provided under this heading.*

3 *FLOOD CONTROL AND COASTAL EMERGENCIES*

4 *For an additional amount for “Flood Control and*
5 *Coastal Emergencies” for expenses necessary for pre-place-*
6 *ment of materials and equipment, advance measures and*
7 *other activities authorized by law, \$50,000,000 is provided.*

8 *DEPARTMENT OF THE INTERIOR*

9 *BUREAU OF RECLAMATION*

10 *WATER AND RELATED RESOURCES*

11 *For an additional amount for management, develop-*
12 *ment, and restoration of water and related natural re-*
13 *sources and for related activities, including the operation,*
14 *maintenance, and rehabilitation of reclamation and other*
15 *facilities, participation in fulfilling related Federal respon-*
16 *sibilities to Native Americans, and related grants to, and*
17 *cooperative and other agreements with, State and local gov-*
18 *ernments, federally recognized Indian tribes, and others,*
19 *\$1,400,000,000; of which such amounts as may be necessary*
20 *may be advanced to the Colorado River Dam Fund: Pro-*
21 *vided, That of the total appropriated, the amount for pro-*
22 *gram activities that can be financed by the Reclamation*
23 *Fund or the Bureau of Reclamation special fee account es-*
24 *tablished by 16 U.S.C. 460l–6a(i) shall be derived from that*
25 *Fund or account: Provided further, That funds contributed*

1 *under 43 U.S.C. 395 are available until expended for the*
2 *purposes for which contributed: Provided further, That*
3 *funds advanced under 43 U.S.C. 397a shall be credited to*
4 *this account and are available until expended for the same*
5 *purposes as the sums appropriated under this heading: Pro-*
6 *vided further, That funds provided under this heading in*
7 *this title shall only be used for programs, projects or activi-*
8 *ties that heretofore or hereafter receive funds provided in*
9 *Acts making appropriations available for Energy and*
10 *Water Development: Provided further, That funds provided*
11 *in this Act shall be used for elements of projects, programs*
12 *or activities that can be completed within these funding*
13 *amounts and not create budgetary obligations in future fis-*
14 *cal years: Provided further, That \$50,000,000 of the funds*
15 *provided under this heading may be transferred to the De-*
16 *partment of the Interior for programs, projects and activi-*
17 *ties authorized by the Central Utah Project Completion Act*
18 *(titles II–V of Public Law 102–575): Provided further, That*
19 *\$50,000,000 of the funds provided under this heading may*
20 *be used for programs, projects, and activities authorized by*
21 *the California Bay-Delta Restoration Act (Public Law 108–*
22 *361): Provided further, That not less than \$60,000,000 of*
23 *the funds provided under this heading shall be used for*
24 *rural water projects and shall be expended primarily on*
25 *water intake and treatment facilities of such projects: Pro-*

1 *vided further, That not less than \$10,000,000 of the funds*
2 *provided under this heading shall be used for a bureau-wide*
3 *inspection of canals program in urbanized areas: Provided*
4 *further, That not less than \$110,000,000 of the funds pro-*
5 *vided under this heading shall be used for water reclama-*
6 *tion and reuse projects (title 16 of Public Law 102-575):*
7 *Provided further, That the costs of reimbursable activities,*
8 *other than for maintenance and rehabilitation, carried out*
9 *with funds provided in this Act shall be repaid pursuant*
10 *to existing authorities and agreements: Provided further,*
11 *That the costs of maintenance and rehabilitation activities*
12 *carried out with funds provided in this Act shall be repaid*
13 *pursuant to existing authority, except the length of repay-*
14 *ment period shall be determined on needs-based criteria to*
15 *be established and adopted by the Commissioner, but in no*
16 *case shall the repayment period exceed 25 years: Provided*
17 *further, That for projects that are being completed with*
18 *funds appropriated in this Act that would otherwise be ex-*
19 *pired for obligation, expired funds appropriated in this Act*
20 *may be used to pay the cost of associated supervision, in-*
21 *spection, over engineering and design on those projects and*
22 *on subsequent claims, if any: Provided further, That the*
23 *Secretary shall have unlimited reprogramming authority*
24 *for these funds provided under this heading.*

1 *DEPARTMENT OF ENERGY*2 *ENERGY PROGRAMS*3 *ENERGY EFFICIENCY AND RENEWABLE ENERGY*

4 *For an additional amount for “Energy Efficiency and*
5 *Renewable Energy”, \$14,398,000,000, for necessary ex-*
6 *penses, to remain available until September 30, 2010: Pro-*
7 *vided, That \$4,200,000,000 shall be available for Energy*
8 *Efficiency and Conservation Block Grants for implementa-*
9 *tion of programs authorized under subtitle E of title V of*
10 *the Energy Independence and Security Act of 2007 (42*
11 *U.S.C. 17151 et seq.), of which \$2,100,000,000 is available*
12 *through the formula in subtitle E: Provided further, That*
13 *the remaining \$2,100,000,000 shall be awarded on a com-*
14 *petitive basis only to competitive grant applicants from*
15 *States in which the Governor certifies to the Secretary of*
16 *Energy that the applicable State regulatory authority will*
17 *implement the integrated resource planning and rate design*
18 *modifications standards required to be considered under*
19 *paragraphs (16) and (17) of section 111(d) of the Public*
20 *Utility Regulatory Policies Act of 1978 (16 U.S.C.*
21 *2621(d)(16) and (17)); and the Governor will take all ac-*
22 *tions within his or her authority to ensure that the State,*
23 *or the applicable units of local government that have au-*
24 *thority to adopt building codes, will implement—*

1 (A) building energy codes for residential build-
2 ings that the Secretary determines are likely to meet
3 or exceed the 2009 International Energy Conservation
4 Code;

5 (B) building energy codes for commercial build-
6 ings that the Secretary determines are likely to meet
7 or exceed the ANSI/ASHRAE/IESNA Standard 90.1–
8 2007; and

9 (C) a plan for implementing and enforcing the
10 building energy codes described in subparagraphs (A)
11 and (B) that is likely to ensure that at least 90 per-
12 cent of the new and renovated residential and com-
13 mercial building space will meet the standards within
14 8 years after the date of enactment of this Act:

15 Provided further, That \$2,000,000,000 shall be available for
16 grants for the manufacturing of advanced batteries and
17 components and the Secretary shall provide facility funding
18 awards under this section to manufacturers of advanced
19 battery systems and vehicle batteries that are produced in
20 the United States, including advanced lithium ion batteries,
21 hybrid electrical systems, component manufacturers, and
22 software designers: Provided further, That notwithstanding
23 section 3304 of title 5, United States Code, and without
24 regard to the provisions of sections 3309 through 3318 of
25 such title 5, the Secretary of Energy, upon a determination

1 *that there is a severe shortage of candidates or a critical*
2 *hiring need for particular positions, may from within the*
3 *funds provided, recruit and directly appoint highly quali-*
4 *fied individuals into the competitive service: Provided fur-*
5 *ther, That such authority shall not apply to positions in*
6 *the Excepted Service or the Senior Executive Service: Pro-*
7 *vided further, That any action authorized herein shall be*
8 *consistent with the merit principles of section 2301 of such*
9 *title 5, and the Department shall comply with the public*
10 *notice requirements of section 3327 of such title 5.*

11 *ELECTRICITY DELIVERY AND ENERGY RELIABILITY*

12 *For an additional amount for “Electricity Delivery*
13 *and Energy Reliability”, \$4,500,000,000, for necessary ex-*
14 *penses, to remain available until September 30, 2010: Pro-*
15 *vided, That \$100,000,000 shall be available for worker*
16 *training activities: Provided further, That notwithstanding*
17 *section 3304 of title 5, United States Code, and without*
18 *regard to the provisions of sections 3309 through 3318 of*
19 *such title 5, the Secretary of Energy, upon a determination*
20 *that there is a severe shortage of candidates or a critical*
21 *hiring need for particular positions, may from within the*
22 *funds provided, recruit and directly appoint highly quali-*
23 *fied individuals into the competitive service: Provided fur-*
24 *ther, That such authority shall not apply to positions in*
25 *the Excepted Service or the Senior Executive Service: Pro-*

1 *vided further, That any action authorized herein shall be*
2 *consistent with the merit principles of section 2301 of such*
3 *title 5, and the Department shall comply with the public*
4 *notice requirements of section 3327 of such title 5: Provided,*
5 *That for the purpose of facilitating the development of re-*
6 *gional transmission plans, the Office of Electricity Delivery*
7 *and Energy Reliability within the Department of Energy*
8 *is provided \$80,000,000 within the available funds to con-*
9 *duct a resource assessment and an analysis of future de-*
10 *mand and transmission requirements: Provided further,*
11 *That the Office of Electricity Delivery and Energy Reli-*
12 *ability will provide technical assistance to the North Amer-*
13 *ican Electric Reliability Corporation, the regional reli-*
14 *ability entities, the States, and other transmission owners*
15 *and operators for the formation of interconnection-based*
16 *transmission plans for the Eastern and Western Inter-*
17 *connections and ERCOT: Provided further, That such as-*
18 *sistance may include modeling, support to regions and*
19 *States for the development of coordinated State electricity*
20 *policies, programs, laws, and regulations: Provided further,*
21 *That \$10,000,000 is provided to implement section 1305 of*
22 *Public Law 110–140.*

23 *FOSSIL ENERGY RESEARCH AND DEVELOPMENT*

24 *For an additional amount for “Fossil Energy Research*
25 *and Development”, \$4,600,000,000, to remain available*

1 *until September 30, 2010: Provided, That \$2,000,000,000*
2 *is available for one or more near zero emissions power-*
3 *plant(s): Provided further, \$1,000,000,000 is available for*
4 *selections under the Department’s Clean Coal Power Initia-*
5 *tive Round III Funding Opportunity Announcement; not-*
6 *withstanding the mandatory eligibility requirements of the*
7 *Funding Opportunity Announcement, the Department shall*
8 *consider applications that utilize petroleum coke for some*
9 *or all of the project’s fuel input: Provided further,*
10 *\$1,520,000,000 is available for a competitive solicitation*
11 *pursuant to section 703 of Public Law 110–140 for projects*
12 *that demonstrate carbon capture from industrial sources:*
13 *Provided further, That awards for such projects may in-*
14 *clude plant efficiency improvements for integration with*
15 *carbon capture technology.*

16 *NON-DEFENSE ENVIRONMENTAL CLEANUP*

17 *For an additional amount for “Non-Defense Environ-*
18 *mental Cleanup”, \$483,000,000, to remain available until*
19 *September 30, 2010.*

20 *URANIUM ENRICHMENT DECONTAMINATION AND*

21 *DECOMMISSIONING FUND*

22 *For an additional amount for “Uranium Enrichment*
23 *Decontamination and Decommissioning Fund”,*
24 *\$390,000,000, to remain available until September 30,*

1 2010, of which \$70,000,000 shall be available in accordance
2 with title X, subtitle A of the Energy Policy Act of 1992.

3
4 *SCIENCE*

5 *For an additional amount for “Science”,*
6 *\$330,000,000, to remain available until September 30,*
7 *2010.*

8 *TITLE 17—INNOVATIVE TECHNOLOGY LOAN GUARANTEE*

9 *PROGRAM*

10 *Subject to section 502 of the Congressional Budget Act*
11 *of 1974, commitments to guarantee loans under section*
12 *1702(b)(2) of the Energy Policy Act of 2005, shall not ex-*
13 *ceed a total principal amount of \$50,000,000,000 for eligi-*
14 *ble projects, to remain available until committed: Provided,*
15 *That these amounts are in addition to any authority pro-*
16 *vided elsewhere in this Act and this and previous fiscal*
17 *years: Provided further, That such sums as are derived from*
18 *amounts received from borrowers pursuant to section*
19 *1702(b)(2) of the Energy Policy Act of 2005 under this*
20 *heading in this and prior Acts, shall be collected in accord-*
21 *ance with section 502(7) of the Congressional Budget Act*
22 *of 1974: Provided further, That the source of such payment*
23 *received from borrowers is not a loan or other debt obliga-*
24 *tion that is guaranteed by the Federal Government: Pro-*
25 *vided further, That pursuant to section 1702(b)(2) of the*
Energy Policy Act of 2005, no appropriations are available

1 *to pay the subsidy cost of such guarantees: Provided further,*
2 *That none of the loan guarantee authority made available*
3 *in this Act shall be available for commitments to guarantee*
4 *loans under section 1702(b)(2) of the Energy Policy Act of*
5 *2005 for any projects where funds, personnel, or property*
6 *(tangible or intangible) of any Federal agency, instrumen-*
7 *tality, personnel or affiliated entity are expected to be used*
8 *(directly or indirectly) through acquisitions, contracts,*
9 *demonstrations, exchanges, grants, incentives, leases, pro-*
10 *curements, sales, other transaction authority, or other ar-*
11 *rangements, to support the project or to obtain goods or*
12 *services from the project: Provided further, That none of the*
13 *loan guarantee authority made available in this Act shall*
14 *be available under section 1702(b)(2) of the Energy Policy*
15 *Act of 2005 for any project unless the Director of the Office*
16 *of Management and Budget has certified in advance in*
17 *writing that the loan guarantee and the project comply with*
18 *the provisions under this title: Provided further, That for*
19 *an additional amount for the cost of guaranteed loans au-*
20 *thorized by section 1702(b)(1) and section 1705 of the En-*
21 *ergy Policy Act of 2005, \$8,500,000,000, available until ex-*
22 *pended, to pay the costs of guarantees made under this sec-*
23 *tion: Provided further, That of the amount provided for*
24 *Title XVII, \$15,000,000 shall be used for administrative ex-*
25 *penses in carrying out the guaranteed loan program.*

1 *OFFICE OF THE INSPECTOR GENERAL*

2 *For necessary expenses of the Office of the Inspector*
3 *General in carrying out the provisions of the Inspector Gen-*
4 *eral Act of 1978, as amended, \$5,000,000, to remain avail-*
5 *able until September 30, 2012, and an additional*
6 *\$10,000,000 for such purposes, to remain available until*
7 *September 30, 2012.*

8 *ATOMIC ENERGY DEFENSE ACTIVITIES*9 *NATIONAL NUCLEAR SECURITY ADMINISTRATION*10 *WEAPONS ACTIVITIES*

11 *For an additional amount for weapons activities,*
12 *\$1,000,000,000, to remain available until September 30,*
13 *2010.*

14 *ENVIRONMENTAL AND OTHER DEFENSE ACTIVITIES*15 *DEFENSE ENVIRONMENTAL CLEANUP*

16 *For an additional amount for “Defense Environ-*
17 *mental Cleanup”, \$5,527,000,000, to remain available until*
18 *September 30, 2010.*

19 *CONSTRUCTION, REHABILITATION, OPERATION, AND*20 *MAINTENANCE, WESTERN AREA POWER ADMINISTRATION*

21 *For carrying out the functions authorized by title III,*
22 *section 302(a)(1)(E) of the Act of August 4, 1977 (42 U.S.C.*
23 *7152), and other related activities including conservation*
24 *and renewable resources programs as authorized,*
25 *\$10,000,000, to remain available until expended: Provided,*

1 *That the Administrator shall establish such personnel staff-*
2 *ing levels as he deems necessary to economically and effi-*
3 *ciently complete the activities pursued under the authority*
4 *granted by section 402 of this Act: Provided further, That*
5 *this appropriation is non-reimbursable.*

6 **GENERAL PROVISIONS—THIS TITLE**

7 **SEC. 401. BONNEVILLE POWER ADMINISTRATION BOR-**
8 **ROWING AUTHORITY.** *For the purposes of providing funds*
9 *to assist in financing the construction, acquisition, and re-*
10 *placement of the transmission system of the Bonneville*
11 *Power Administration and to implement the authority of*
12 *the Administrator of the Bonneville Power Administration*
13 *under the Pacific Northwest Electric Power Planning and*
14 *Conservation Act (16 U.S.C. 839 et seq.), an additional*
15 *\$3,250,000,000 in borrowing authority is made available*
16 *under the Federal Columbia River Transmission System*
17 *Act (16 U.S.C. 838 et seq.), to remain outstanding at any*
18 *time.*

19 **SEC. 402. WESTERN AREA POWER ADMINISTRATION**
20 **BORROWING AUTHORITY.** *The Hoover Power Plant Act of*
21 *1984 (Public Law 98–381) is amended by adding at the*
22 *end the following:*

1 **“TITLE III—BORROWING**
2 **AUTHORITY**

3 **“SEC. 301. WESTERN AREA POWER ADMINISTRATION BOR-**
4 **ROWING AUTHORITY.**

5 “(a) *DEFINITIONS.*—*In this section:*

6 “(1) *ADMINISTRATOR.*—*The term ‘Adminis-*
7 *trator’ means the Administrator of the Western Area*
8 *Power Administration.*

9 “(2) *SECRETARY.*—*The term ‘Secretary’ means*
10 *the Secretary of the Treasury.*

11 “(b) *AUTHORITY.*—

12 “(1) *IN GENERAL.*—*Notwithstanding any other*
13 *provision of law, subject to paragraphs (2) through*
14 *(5)—*

15 “(A) *the Western Area Power Administra-*
16 *tion may borrow funds from the Treasury; and*

17 “(B) *the Secretary shall, without further*
18 *appropriation and without fiscal year limita-*
19 *tion, loan to the Western Area Power Adminis-*
20 *tration, on such terms as may be fixed by the*
21 *Administrator and the Secretary, such sums (not*
22 *to exceed, in the aggregate (including deferred*
23 *interest), \$3,250,000,000 in outstanding repay-*
24 *able balances at any one time) as, in the judg-*

1 *ment of the Administrator, are from time to time*
2 *required for the purpose of—*

3 “(i) *constructing, financing, facili-*
4 *tating, planning, operating, maintaining,*
5 *or studying construction of new or up-*
6 *graded electric power transmission lines*
7 *and related facilities with at least one ter-*
8 *minus within the area served by the West-*
9 *ern Area Power Administration; and*

10 “(ii) *delivering or facilitating the de-*
11 *livery of power generated by renewable en-*
12 *ergy resources constructed or reasonably ex-*
13 *pected to be constructed after the date of en-*
14 *actment of this section.*

15 “(2) *INTEREST.—The rate of interest to be*
16 *charged in connection with any loan made pursuant*
17 *to this subsection shall be fixed by the Secretary, tak-*
18 *ing into consideration market yields on outstanding*
19 *marketable obligations of the United States of com-*
20 *parable maturities as of the date of the loan.*

21 “(3) *REFINANCING.—The Western Area Power*
22 *Administration may refinance loans taken pursuant*
23 *to this section within the Treasury.*

24 “(4) *PARTICIPATION.—The Administrator may*
25 *permit other entities to participate in the financing,*

1 *construction and ownership projects financed under*
2 *this section.*

3 “(5) *CONGRESSIONAL REVIEW OF DISBURSE-*
4 *MENT.—Effective upon the date of enactment of this*
5 *section, the Administrator shall have the authority to*
6 *have utilized \$1,750,000,000 at any one time. If the*
7 *Administrator seeks to borrow funds above*
8 *\$1,750,000,000, the funds will be disbursed unless*
9 *there is enacted, within 90 calendar days of the first*
10 *such request, a joint resolution that rescinds the re-*
11 *mainder of the balance of the borrowing authority*
12 *provided in this section.*

13 “(c) *TRANSMISSION LINE AND RELATED FACILITY*
14 *PROJECTS.—*

15 “(1) *IN GENERAL.—For repayment purposes,*
16 *each transmission line and related facility project in*
17 *which the Western Area Power Administration par-*
18 *ticipates pursuant to this section shall be treated as*
19 *separate and distinct from—*

20 “(A) *each other such project; and*

21 “(B) *all other Western Area Power Admin-*
22 *istration power and transmission facilities.*

23 “(2) *PROCEEDS.—The Western Area Power Ad-*
24 *ministration shall apply the proceeds from the use of*
25 *the transmission capacity from an individual project*

1 *under this section to the repayment of the principal*
2 *and interest of the loan from the Treasury attrib-*
3 *utable to that project, after reserving such funds as*
4 *the Western Area Power Administration determines*
5 *are necessary—*

6 *“(A) to pay for any ancillary services that*
7 *are provided; and*

8 *“(B) to meet the costs of operating and*
9 *maintaining the new project from which the rev-*
10 *enues are derived.*

11 *“(3) SOURCE OF REVENUE.—Revenue from the*
12 *use of projects under this section shall be the only*
13 *source of revenue for—*

14 *“(A) repayment of the associated loan for*
15 *the project; and*

16 *“(B) payment of expenses for ancillary serv-*
17 *ices and operation and maintenance.*

18 *“(4) LIMITATION ON AUTHORITY.—Nothing in*
19 *this section confers on the Administrator any addi-*
20 *tional authority or obligation to provide ancillary*
21 *services to users of transmission facilities developed*
22 *under this section.*

23 *“(5) TREATMENT OF CERTAIN REVENUES.—Rev-*
24 *enue from ancillary services provided by existing Fed-*
25 *eral power systems to users of transmission projects*

1 *funded pursuant to this section shall be treated as*
2 *revenue to the existing power system that provided the*
3 *ancillary services.*

4 *“(d) CERTIFICATION.—*

5 *“(1) IN GENERAL.—For each project in which*
6 *the Western Area Power Administration participates*
7 *pursuant to this section, the Administrator shall cer-*
8 *tify, prior to committing funds for any such project,*
9 *that—*

10 *“(A) the project is in the public interest;*

11 *“(B) the project will not adversely impact*
12 *system reliability or operations, or other statu-*
13 *tory obligations; and*

14 *“(C) it is reasonable to expect that the pro-*
15 *ceeds from the project shall be adequate to make*
16 *repayment of the loan.*

17 *“(2) FORGIVENESS OF BALANCES.—*

18 *“(A) IN GENERAL.—If, at the end of the*
19 *useful life of a project, there is a remaining bal-*
20 *ance owed to the Treasury under this section, the*
21 *balance shall be forgiven.*

22 *“(B) UNCONSTRUCTED PROJECTS.—Funds*
23 *expended to study projects that are considered*
24 *pursuant to this section but that are not con-*
25 *structed shall be forgiven.*

1 “(C) NOTIFICATION.—The Administrator
2 shall notify the Secretary of such amounts as are
3 to be forgiven under this paragraph.

4 “(e) PUBLIC PROCESSES.—

5 “(1) POLICIES AND PRACTICES.—Prior to re-
6 questing any loans under this section, the Adminis-
7 trator shall use a public process to develop practices
8 and policies that implement the authority granted by
9 this section.

10 “(2) REQUESTS FOR INTEREST.—In the course of
11 selecting potential projects to be funded under this
12 section, the Administrator shall seek Requests For In-
13 terest from entities interested in identifying potential
14 projects through one or more notices published in the
15 Federal Register.”

16 SEC. 403. TECHNICAL CORRECTIONS TO THE ENERGY
17 INDEPENDENCE AND SECURITY ACT OF 2007. Title XIII of
18 the Energy Independence and Security Act of 2007 (15
19 U.S.C. 17381 and following) is amended as follows:

20 (1) By amending subparagraph (A) of section
21 1304(b)(3) to read as follows:

22 “(A) IN GENERAL.—In carrying out the ini-
23 tiative, the Secretary shall provide financial sup-
24 port to smart grid demonstration projects in-
25 cluding those in rural areas and/or areas where

1 *the majority of generation and transmission as-*
2 *sets are controlled by a tax-exempt entity.”.*

3 *(2) By amending subparagraph (C) of section*
4 *1304(b)(3) to read as follows:*

5 *“(C) FEDERAL SHARE OF COST OF TECH-*
6 *NOLOGY INVESTMENTS.—The Secretary shall pro-*
7 *vide to an electric utility described in subpara-*
8 *graph (B) or to other parties financial assistance*
9 *for use in paying an amount equal to not more*
10 *than 50 percent of the cost of qualifying ad-*
11 *vanced grid technology investments made by the*
12 *electric utility or other party to carry out a*
13 *demonstration project.”.*

14 *(3) By inserting a new subparagraph (E) after*
15 *1304(b)(3)(D) as follows:*

16 *“(E) AVAILABILITY OF DATA.—The*
17 *Secretary shall establish and maintain a*
18 *smart grid information clearinghouse in a*
19 *timely manner which will make data from*
20 *smart grid demonstration projects and other*
21 *sources available to the public. As a condi-*
22 *tion of receiving financial assistance under*
23 *this subsection, a utility or other partici-*
24 *part in a smart grid demonstration project*
25 *shall provide such information as the Sec-*

1 retary may require to become available
2 through the smart grid information clear-
3 inghouse in the form and within the time-
4 frames as directed by the Secretary. The
5 Secretary shall assure that business propri-
6 etary information and individual customer
7 information is not included in the informa-
8 tion made available through the clearing-
9 house.”.

10 (4) By amending paragraph (2) of section
11 1304(c) to read as follows:

12 “(2) to carry out subsection (b), such sums as
13 may be necessary.”.

14 (5) By amending subsection (a) of section 1306
15 by striking “reimbursement of one-fifth (20 percent)”
16 and inserting “grants of up to one-half (50 percent)”.

17 (6) By striking the last sentence of subsection
18 (b)(9) of section 1306.

19 (7) By striking “are eligible for” in subsection
20 (c)(1) of section 1306 and inserting “utilize”.

21 (8) By amending subsection (e) of section 1306
22 to read as follows:

23 “(e) The Secretary shall—

24 “(1) establish within 60 days after the enactment
25 of the American Recovery and Reinvestment Act of

1 *2009 procedures by which applicants can obtain*
2 *grants of not more than one-half of their documented*
3 *costs;*

4 *“(2) establish procedures to ensure that there is*
5 *no duplication or multiple payment for the same in-*
6 *vestment or costs, that the grant goes to the party*
7 *making the actual expenditures for Qualifying Smart*
8 *Grid Investments, and that the grants made have sig-*
9 *nificant effect in encouraging and facilitating the de-*
10 *velopment of a smart grid;*

11 *“(3) maintain public records of grants made, re-*
12 *ipients, and qualifying Smart Grid investments*
13 *which have received grants;*

14 *“(4) establish procedures to provide advance*
15 *payment of moneys up to the full amount of the grant*
16 *award; and*

17 *“(5) have and exercise the discretion to deny*
18 *grants for investments that do not qualify in the rea-*
19 *sonable judgment of the Secretary.”.*

20 *SEC. 404. TEMPORARY STIMULUS LOAN GUARANTEE*
21 *PROGRAM. (a) AMENDMENT.—Title XVII of the Energy Pol-*
22 *icy Act of 2005 (42 U.S.C. 16511 et seq.) is amended by*
23 *adding the following at the end:*

1 **“SEC. 1705. TEMPORARY PROGRAM FOR RAPID DEPLOY-**
 2 **MENT OF RENEWABLE ENERGY AND ELEC-**
 3 **TRIC POWER TRANSMISSION PROJECTS.**

4 “(a) *IN GENERAL.*—Notwithstanding section 1703, the
 5 Secretary may make guarantees under this section only for
 6 commercial technology projects under subsection (b) that
 7 will reach financial close not later than September 30,
 8 2012.

9 “(b) *CATEGORIES.*—Projects from only the following
 10 categories shall be eligible for support under this section:

11 “(1) *Renewable energy systems.*

12 “(2) *Electric power transmission systems.*

13 “(c) *AUTHORIZATION LIMIT.*—There are authorized to
 14 be appropriated \$10,000,000,000 to the Secretary for fiscal
 15 years 2009 through 2012 to provide the cost of guarantees
 16 made under section.

17 “(d) *SUNSET.*—The authority to enter into guarantees
 18 under this section shall expire on September 30, 2012.”.

19 (b) *TABLE OF CONTENTS AMENDMENT.*—The table of
 20 contents for the Energy Policy Act of 2005 is amended by
 21 inserting after the item relating to section 1704 the fol-
 22 lowing new item:

“Sec. 1705. Temporary program for rapid deployment of renewable energy and
 electric power transmission projects.”.

23 **SEC. 405. WEATHERIZATION PROGRAM AMENDMENTS.**

24 (a) *INCOME LEVEL.*—Section 412(7) of the Energy Con-

1 *ervation and Production Act (42 U.S.C. 6862(7)) is*
2 *amended by striking “150 percent” both places it appears*
3 *and inserting “200 percent”.*

4 (b) *ASSISTANCE LEVEL PER DWELLING UNIT.—Section*
5 *tion 415(c)(1) of the Energy Conservation and Production*
6 *Act (42 U.S.C. 6865(c)(1)) is amended by striking “\$2,500”*
7 *and inserting “\$5,000”.*

8 (c) *TRAINING AND TECHNICAL ASSISTANCE.—Section*
9 *416 of the Energy Conservation and Production Act (42*
10 *U.S.C. 6866) is amended by striking “10 percent” and in-*
11 *serting “up to 20 percent”.*

12 *SEC. 406. TECHNICAL CORRECTIONS TO PUBLIC UTIL-*
13 *ITY REGULATORY POLICIES ACT OF 1978. (a) Section*
14 *111(d) of the Public Utility Regulatory Policies Act of 1978*
15 *(16 U.S.C. 2621(d)) is amended by redesignating para-*
16 *graph (16) relating to consideration of smart grid invest-*
17 *ments (added by section 1307(a) of Public Law 110–140)*
18 *as paragraph (18) and by redesignating paragraph (17) re-*
19 *lating to smart grid information (added by section 1308(a)*
20 *of Public Law 110–140) as paragraph (19).*

21 (b) *Subsections (b) and (d) of section 112 of the Public*
22 *Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622)*
23 *are each amended by striking “(17) through (18)” in each*
24 *place it appears and inserting “(16) through (19)”.*

1 *TITLE V—FINANCIAL SERVICES AND GENERAL*
2 *GOVERNMENT*
3 *DEPARTMENT OF THE TREASURY*
4 *COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS*
5 *FUND PROGRAM ACCOUNT*

6 *For an additional amount for “Community Develop-*
7 *ment Financial Institutions Fund Program Account”,*
8 *\$250,000,000, to remain available until September 30,*
9 *2010, for qualified applicants under the fiscal year 2008*
10 *and 2009 funding rounds of the Community Development*
11 *Financial Institutions Program, of which up to*
12 *\$20,000,000 may be for financial assistance, technical as-*
13 *sistance, training and outreach programs, including up to*
14 *\$5,000 for subsistence expenses, designed to benefit Native*
15 *American, Native Hawaiian, and Alaskan Native commu-*
16 *nities and provided primarily through qualified commu-*
17 *nity development lender organizations with experience and*
18 *expertise in community development banking and lending*
19 *in Indian country, Native American organizations, tribes*
20 *and tribal organizations and other suitable providers and*
21 *up to \$5,000,000 may be used for administrative expenses:*
22 *Provided, That for purposes of the fiscal year 2008 and*
23 *2009 funding rounds, the following statutory provisions are*
24 *hereby waived: 12 U.S.C. 4707(e) and 12 U.S.C. 4707(d):*
25 *Provided further, That no awardee, together with its sub-*

1 *subsidiaries and affiliates, may be awarded more than 15 per-*
2 *cent of the aggregate funds available during each of fiscal*
3 *years 2008 and 2009 from the Community Development Fi-*
4 *nancial Institutions Program: Provided further, That no*
5 *later than 60 days after the date of enactment of this Act,*
6 *the Department of the Treasury shall submit to the Commit-*
7 *tees on Appropriations of the House of Representatives and*
8 *the Senate a detailed expenditure plan for funds provided*
9 *under this heading.*

10 *DISTRICT OF COLUMBIA*

11 *FEDERAL PAYMENTS*

12 *FEDERAL PAYMENT TO THE DISTRICT OF COLUMBIA WATER*

13 *AND SEWER AUTHORITY*

14 *For a Federal payment to the District of Columbia*
15 *Water and Sewer Authority, \$125,000,000, to remain avail-*
16 *able until September 30, 2010, to continue implementation*
17 *of the Combined Sewer Overflow Long-Term Control Plan:*
18 *Provided, That the District of Columbia Water and Sewer*
19 *Authority provide a 100 percent match for this payment:*
20 *Provided further, That no later than 60 days after the date*
21 *of enactment of this Act, the District of Columbia Water*
22 *and Sewer Authority shall submit to the Committees on Ap-*
23 *propriations of the House of Representatives and the Senate*
24 *a detailed expenditure plan for funds provided under this*
25 *heading: Provided further, That such expenditure plan shall*

1 *include a description of each specific project, how specific*
2 *projects will further the objectives of the Long-Term Control*
3 *Plan, and all funding sources for each project.*

4 **GENERAL SERVICES ADMINISTRATION**

5 **REAL PROPERTY ACTIVITIES**

6 **FEDERAL BUILDINGS FUND**

7 **LIMITATIONS ON AVAILABILITY OF REVENUE**

8 **(INCLUDING TRANSFER OF FUNDS)**

9 *For an additional amount to be deposited in the Fed-*
10 *eral Buildings Fund, \$5,548,000,000, to carry out the pur-*
11 *poses of the Fund, of which not less than \$1,400,000,000*
12 *shall be available for Federal buildings and United States*
13 *courthouses, not less than \$1,200,000,000 shall be available*
14 *for border stations, and not less than \$2,500,000,000 shall*
15 *be available for measures necessary to convert GSA facili-*
16 *ties to High-Performance Green Buildings, as defined in*
17 *section 401 of Public Law 110–140: Provided, That not to*
18 *exceed \$108,000,000 of the amounts provided under this*
19 *heading may be expended for rental of space, related to leas-*
20 *ing of temporary space in connection with projects funded*
21 *under this heading: Provided further, That not to exceed*
22 *\$127,000,000 of the amounts provided under this heading*
23 *may be expended for building operations, for the adminis-*
24 *trative costs of completing projects funded under this head-*
25 *ing: Provided further, That not less than \$5,000,000,000 of*

1 *the funds provided under this heading shall be obligated by*
2 *September 30, 2010: Provided further, That the Adminis-*
3 *trator of General Services is authorized to initiate design,*
4 *construction, repair, alteration, and other projects through*
5 *existing authorities of the Administrator: Provided further,*
6 *That the General Services Administration shall submit a*
7 *detailed plan, by project, regarding the use of funds made*
8 *available in this Act to the Committees on Appropriations*
9 *of the House of Representatives and the Senate within 60*
10 *days of enactment of this Act: Provided further, That of*
11 *the amounts provided for converting GSA facilities to High-*
12 *Performance Green Buildings, \$4,000,000 shall be trans-*
13 *ferred to and merged with “Government-Wide Policy”, for*
14 *carrying out the provisions of section 436 of the Energy*
15 *Independence and Security Act of 2007 (Public Law 110–*
16 *140), establishing an Office of Federal High-Performance*
17 *Green Buildings, to remain available until September 30,*
18 *2010: Provided further, That within the overall amount to*
19 *be deposited into the Fund, \$448,000,000 shall remain*
20 *available until September 30, 2011, for the development and*
21 *construction of the headquarters for the Department of*
22 *Homeland Security, except that none of the preceding pro-*
23 *visos shall apply to amounts made available under this pro-*
24 *viso.*

1 *ENERGY-EFFICIENT FEDERAL MOTOR VEHICLE FLEET*
2 *PROCUREMENT*

3 *For capital expenditures and necessary expenses of ac-*
4 *quiring motor vehicles with higher fuel economy, including:*
5 *hybrid vehicles; neighborhood electric vehicles; electric vehi-*
6 *cles; and commercially-available, plug-in hybrid vehicles,*
7 *\$300,000,000, to remain available until September 30,*
8 *2011.*

9 *OFFICE OF INSPECTOR GENERAL*

10 *For an additional amount for the Office of the Inspec-*
11 *tor General, to remain available until September 30, 2011,*
12 *\$2,000,000 and an additional \$5,000,000 for such purposes,*
13 *to remain available until September 30, 2012.*

14 *RECOVERY ACT ACCOUNTABILITY AND*
15 *TRANSPARENCY BOARD*

16 *For necessary expenses of the Recovery Act Account-*
17 *ability and Transparency Board to carry out the provisions*
18 *of title XV of this Act, \$7,000,000, to remain available until*
19 *September 30, 2010.*

20 *SMALL BUSINESS ADMINISTRATION*

21 *SALARIES AND EXPENSES*

22 *For an additional amount, to remain available until*
23 *September 30, 2010, \$84,000,000, of which \$24,000,000 is*
24 *for marketing, management, and technical assistance under*
25 *section 7(m) of the Small Business Act (15 U.S.C.*

1 636(m)(4)) by intermediaries that make microloans under
2 the microloan program, of which \$15,000,000 is for lender
3 oversight activities as authorized in section 501(c) of this
4 title, and of which \$20,000,000 is for improving, stream-
5 lining, and automating information technology systems re-
6 lated to lender processes and lender oversight: Provided,
7 That no later than 60 days after the date of enactment of
8 this Act, the Small Business Administration shall submit
9 to the Committees on Appropriations of the House of Rep-
10 resentatives and the Senate a detailed expenditure plan for
11 funds provided under the heading “Small Business Admin-
12 istration” in this Act.

13 *OFFICE OF INSPECTOR GENERAL*

14 *For an additional amount for the Office of Inspector*
15 *General in carrying out the provisions of the Inspector Gen-*
16 *eral Act of 1978, \$10,000,000, to remain available until*
17 *September 30, 2011.*

18 *SURETY BOND GUARANTEES REVOLVING FUND*

19 *For additional capital for the Surety Bond Guarantees*
20 *Revolving Fund, authorized by the Small Business Invest-*
21 *ment Act of 1958, \$15,000,000, to remain available until*
22 *expended.*

23 *BUSINESS LOANS PROGRAM ACCOUNT*

24 *For an additional amount for the cost of direct loans,*
25 *\$6,000,000, to remain available until September 30, 2010,*

1 *and for an additional amount for the cost of guaranteed*
2 *loans, \$615,000,000, to remain available until September*
3 *30, 2010: Provided, That of the amount for the cost of guar-*
4 *anteed loans, \$515,000,000 shall be for loan subsidies and*
5 *loan modifications for loans to small business concerns au-*
6 *thorized in section 501(a) of this title; and \$100,000,000*
7 *shall be for loan subsidies and loan modifications for loans*
8 *to small business concerns authorized in section 501(b) of*
9 *this title: Provided further, That such costs, including the*
10 *cost of modifying such loans, shall be as defined in section*
11 *502 of the Congressional Budget Act of 1974.*

12 *ADMINISTRATIVE PROVISIONS—SMALL BUSINESS*

13 *ADMINISTRATION*

14 *SEC. 501. ECONOMIC STIMULUS FOR SMALL BUSINESS*

15 *CONCERNS. (a) TEMPORARY FEE ELIMINATION FOR THE*

16 *7(a) LOAN PROGRAM.—Until September 30, 2010, and to*

17 *the extent that the cost of such elimination of fees is offset*

18 *by appropriations, with respect to each loan guaranteed*

19 *under section 7(a) of the Small Business Act (15 U.S.C.*

20 *636(a)) for which the application is approved on or after*

21 *the date of enactment of this Act, the Administrator shall—*

22 *(1) in lieu of the fee otherwise applicable under*

23 *section 7(a)(23)(A) of the Small Business Act (15*

24 *U.S.C. 636(a)(23)(A)), collect no fee; and*

1 (2) *in lieu of the fee otherwise applicable under*
2 *section 7(a)(18)(A) of the Small Business Act (15*
3 *U.S.C. 636(a)(18)(A)), collect no fee.*

4 ***(b) TEMPORARY FEE ELIMINATION FOR THE 504 LOAN***
5 ***PROGRAM.—***

6 (1) ***IN GENERAL.—****Until September 30, 2010,*
7 *and to the extent the cost of such elimination in fees*
8 *is offset by appropriations, with respect to each*
9 *project or loan guaranteed by the Administrator*
10 *under title V of the Small Business Investment Act of*
11 *1958 (15 U.S.C. 695 et seq.) for which an application*
12 *is approved or pending approval on or after the date*
13 *of enactment of this Act—*

14 ***(A) the Administrator shall, in lieu of the***
15 ***fee otherwise applicable under section 503(d)(2)***
16 ***of the Small Business Investment Act of 1958***
17 ***(15 U.S.C. 697(d)(2)), collect no fee;***

18 ***(B) a development company shall, in lieu of***
19 ***the processing fee under section 120.971(a)(1) of***
20 ***title 13, Code of Federal Regulations (relating to***
21 ***fees paid by borrowers), or any successor thereto,***
22 ***collect no fee.***

23 (2) ***REIMBURSEMENT FOR WAIVED FEES.—***

24 ***(A) IN GENERAL.—****To the extent that the*
25 *cost of such payments is offset by appropria-*

1 *tions, the Administrator shall reimburse each de-*
2 *velopment company that does not collect a proc-*
3 *essing fee pursuant to paragraph (1)(B).*

4 *(B) AMOUNT.—The payment to a develop-*
5 *ment company under subparagraph (A) shall be*
6 *in an amount equal to 1.5 percent of the net de-*
7 *benture proceeds for which the development com-*
8 *pany does not collect a processing fee pursuant*
9 *to paragraph (1)(B).*

10 *(c) TEMPORARY FEE ELIMINATION OF LENDER OVER-*
11 *SIGHT FEES.—Until September 30, 2010, and to the extent*
12 *the cost of such elimination in fees is offset by appropri-*
13 *ations, the Administrator shall, in lieu of the fee otherwise*
14 *applicable under section 5(b)(14) of the Small Business Act*
15 *(15 U.S.C. 634(b)(14)), collect no fee.*

16 *(d) APPLICATION OF FEE ELIMINATIONS.—The Ad-*
17 *ministrator shall eliminate fees under subsections (a), (b),*
18 *and (c) until the amount provided for such purposes, as*
19 *applicable, under the headings “Salaries and Expenses”*
20 *and “Business Loans Program Account” under the heading*
21 *“Small Business Administration” under this Act are ex-*
22 *pendent.*

23 *SEC. 502. FINANCIAL ASSISTANCE PROGRAM IM-*
24 *PROVEMENTS. (a) 7(a) LOAN MAXIMUM AMOUNT.—Section*
25 *7(a)(3)(A) of the Small Business Act (15 U.S.C.*

1 636(a)(3)(A)) is amended by striking “\$1,500,000 (or if the
2 gross loan amount would exceed \$2,000,000)” and inserting
3 “\$2,250,000 (or if the gross loan amount would exceed
4 \$3,000,000)”.

5 (b) *SMALL BUSINESS INVESTMENT COMPANIES.*—

6 (1) *MAXIMUM LEVERAGE.*—Section 303(b) of the
7 *Small Business Investment Act of 1958 (15 U.S.C.*
8 *683(b))* is amended—

9 (A) in paragraph (2), by striking subpara-
10 graphs (A), (B), and (C) and inserting the fol-
11 lowing:

12 “(A) *IN GENERAL.*—The maximum amount
13 of outstanding leverage made available to any 1
14 company licensed under section 301(c) may not
15 exceed the lesser of—

16 “(i) 300 percent of the private capital
17 of the company; or

18 “(ii) \$150,000,000.

19 (B) *MULTIPLE LICENSES UNDER COMMON*
20 *CONTROL.*—The maximum amount of out-
21 standing leverage made available to 2 or more
22 companies licensed under section 301(c) that are
23 commonly controlled (as determined by the Ad-
24 ministratoꝛ) may not exceed \$225,000,000.

1 “(C) *INVESTMENTS IN LOW-INCOME GEO-*
2 *GRAPHIC AREAS.—*

3 “(i) *IN GENERAL.—The maximum*
4 *amount of outstanding leverage made avail-*
5 *able to—*

6 “(I) *any 1 company described in*
7 *clause (ii) may not exceed the lesser*
8 *of—*

9 “(aa) *300 percent of private*
10 *capital of the company; or*

11 “(bb) *\$175,000,000; and*

12 “(II) *2 or more companies de-*
13 *scribed in clause (ii) that are com-*
14 *monly controlled (as determined by the*
15 *Administrator) may not exceed*
16 *\$250,000,000.*

17 “(ii) *APPLICABILITY.—A company de-*
18 *scribed in this clause is a company licensed*
19 *under section 301(c) that certifies in writ-*
20 *ing that not less than 50 percent of the dol-*
21 *lar amount of investments of that company*
22 *shall be made in companies that are located*
23 *in a low-income geographic area (as that*
24 *term is defined in section 351).”; and*
25 *(B) by striking paragraph (4).*

1 (2) *INVESTMENTS IN SMALLER ENTERPRISES.*—
2 *Section 303(d) of the Small Business Investment Act*
3 *of 1958 (15 U.S.C. 683(d)) is amended to read as fol-*
4 *lows:*

5 “(d) *INVESTMENTS IN SMALLER ENTERPRISES.*—*The*
6 *Administrator shall require each licensee, as a condition of*
7 *approval of an application for leverage, to certify in writ-*
8 *ing that not less than 25 percent of the aggregate dollar*
9 *amount of financings of that licensee shall be provided to*
10 *smaller enterprises.”.*

11 (3) *MAXIMUM INVESTMENT IN A COMPANY.*—*Sec-*
12 *tion 306(a) of the Small Business Investment Act of*
13 *1958 (15 U.S.C. 686(a)) is amended by striking “20*
14 *per centum” and inserting “30 percent”.*

15 (c) *MAXIMUM 504 LOAN SIZE.*—*Section 502(2)(A) of*
16 *the Small Business Investment Act of 1958 (15 U.S.C.*
17 *696(2)(A)) is amended—*

18 (1) *in clause (i), by striking “\$1,500,000” and*
19 *inserting “\$3,000,000”;*

20 (2) *in clause (ii), by striking “\$2,000,000” and*
21 *inserting “\$3,500,000”; and*

22 (3) *in clause (iii), by striking “\$4,000,000” and*
23 *inserting “\$5,500,000”.*

1 *SEC. 503. LOW-INTEREST REFINANCING. Section 502*
2 *of the Small Business Investment Act of 1958 (15 U.S.C.*
3 *696) is amended by adding at the end the following:*

4 *“(7) PERMISSIBLE DEBT FINANCING.—A financ-*
5 *ing under this title may include refinancing of exist-*
6 *ing indebtedness, in an amount not to exceed 50 per-*
7 *cent of the projected cost of the project financed under*
8 *this title, if—*

9 *“(A) the project financed under this title in-*
10 *volves the expansion of a small business concern;*

11 *“(B) the existing indebtedness is*
12 *collateralized by fixed assets;*

13 *“(C) the existing indebtedness was incurred*
14 *for the benefit of the small business concern;*

15 *“(D) the proceeds of the existing indebted-*
16 *ness were used to acquire land (including a*
17 *building situated thereon), to construct or ex-*
18 *pand a building thereon, or to purchase equip-*
19 *ment;*

20 *“(E) the borrower has been current on all*
21 *payments due on the existing indebtedness for*
22 *not less than 1 year preceding the proposed date*
23 *of refinancing;*

24 *“(F) the financing under this title will pro-*
25 *vide better terms or a better rate of interest than*

1 *exists on the existing indebtedness on the pro-*
2 *posed date of refinancing;*

3 *“(G) the financing under this title is not*
4 *being used to refinance any debt guaranteed by*
5 *the Government; and*

6 *“(H) the financing under this title will be*
7 *used only for—*

8 *“(i) refinancing existing indebtedness;*

9 *or*

10 *“(ii) costs relating to the project fi-*
11 *nanced under this title.”.*

12 *SEC. 504. DEFINITIONS. Under the heading “Small*
13 *Business Administration” in this title—*

14 *(1) the terms “Administration” and “Adminis-*
15 *trator” mean the Small Business Administration and*
16 *the Administrator thereof, respectively;*

17 *(2) the term “development company” has the*
18 *meaning given the term “development companies” in*
19 *section 103 of the Small Business Investment Act of*
20 *1958 (15 U.S.C. 662); and*

21 *(3) the term “small business concern” has the*
22 *same meaning as in section 3 of the Small Business*
23 *Act (15 U.S.C. 632).*

1 **SEC. 505. SURETY BONDS.**

2 (a) *MAXIMUM BOND AMOUNT.*—Section 411(a)(1) of
3 the *Small Business Investment Act of 1958* (15 U.S.C.
4 694b(a)(1)) is amended—

5 (1) by inserting “(A)” after “(1)”;

6 (2) by striking “\$2,000,000” and inserting
7 “\$5,000,000”; and

8 (3) by adding at the end the following:

9 “(B) *The Administrator may guarantee a surety under*
10 *subparagraph (A) for a total work order or contract amount*
11 *that does not exceed \$10,000,000, if a contracting officer*
12 *of a Federal agency certifies that such a guarantee is nec-*
13 *essary.*”.

14 (b) *SIZE STANDARDS.*—Section 410 of the *Small Busi-*
15 *ness Investment Act of 1958* (15 U.S.C. 694a) is amended
16 by adding at the end the following:

17 “(9) *Notwithstanding any other provision of law*
18 *or any rule, regulation, or order of the Administra-*
19 *tion, for purposes of sections 410, 411, and 412 the*
20 *term ‘small business concern’ means a business con-*
21 *cern that meets the size standard for the primary in-*
22 *dustry in which such business concern, and the affili-*
23 *ates of such business concern, is engaged, as deter-*
24 *mined by the Administrator in accordance with the*
25 *North American Industry Classification System.*”.

1 *OFFICE OF INSPECTOR GENERAL*

2 *For an additional amount for the “Office of Inspector*
3 *General”, \$5,000,000, to remain available until September*
4 *30, 2012, for oversight and audit of programs, grants, and*
5 *projects funded under this title.*

6 *U.S. CUSTOMS AND BORDER PROTECTION*7 *SALARIES AND EXPENSES*

8 *For an additional amount for “Salaries and Ex-*
9 *penses”, \$198,000,000, to remain available until September*
10 *30, 2010, of which \$100,800,000 shall be for the procure-*
11 *ment and deployment of non-intrusive inspection systems*
12 *to improve port security; and of which \$97,200,000 shall*
13 *be for procurement and deployment of tactical communica-*
14 *tions equipment and radios: Provided, That no later than*
15 *45 days after the date of enactment of this Act, the Sec-*
16 *retary of Homeland Security shall submit to the Commit-*
17 *tees on Appropriations of the Senate and the House of Rep-*
18 *resentatives a plan for expenditure of these funds.*

19 *BORDER SECURITY FENCING, INFRASTRUCTURE, AND*20 *TECHNOLOGY*

21 *For an additional amount for “Border Security Fenc-*
22 *ing, Infrastructure, and Technology”, \$200,000,000, to re-*
23 *main available until September 30, 2010, for expedited de-*
24 *velopment and deployment of border security technology on*
25 *the Southwest border: Provided, That no later than 45 days*

1 *after the date of enactment of this Act, the Secretary of*
2 *Homeland Security shall submit to the Committees on Ap-*
3 *propriations of the Senate and the House of Representatives*
4 *a plan for expenditure of these funds.*

5 *CONSTRUCTION*

6 *For an additional amount for “Construction”,*
7 *\$800,000,000, to remain available until expended, solely for*
8 *planning, management, design, alteration, and construc-*
9 *tion of U.S. Customs and Border Protection owned land*
10 *border ports of entry: Provided, That no later than 45 days*
11 *after the date of enactment of this Act, the Secretary of*
12 *Homeland Security shall submit to the Committees on Ap-*
13 *propriations of the Senate and the House of Representatives*
14 *a plan for expenditure of these funds.*

15 *U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT*

16 *AUTOMATION MODERNIZATION*

17 *For an additional amount for “Automation Mod-*
18 *ernization”, \$27,800,000, to remain available until Sep-*
19 *tember 30, 2010, for the procurement and deployment of*
20 *tactical communications equipment and radios: Provided,*
21 *That no later than 45 days after the date of enactment of*
22 *this Act, the Secretary of Homeland Security shall submit*
23 *to the Committees on Appropriations of the Senate and the*
24 *House of Representatives a plan for expenditure of these*
25 *funds.*

1 *TRANSPORTATION SECURITY ADMINISTRATION*2 *AVIATION SECURITY*

3 *For an additional amount for “Aviation Security”,*
4 *\$1,000,000,000, to remain available until September 30,*
5 *2010, for procurement and installation of checked baggage*
6 *explosives detection systems and checkpoint explosives detec-*
7 *tion equipment: Provided, That no later than 45 days after*
8 *the date of enactment of this Act, the Secretary of Homeland*
9 *Security shall submit to the Committees on Appropriations*
10 *of the Senate and the House of Representatives a plan for*
11 *the expenditure of these funds.*

12 *COAST GUARD*13 *ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS*

14 *For an additional amount for “Acquisition, Construc-*
15 *tion, and Improvements”, \$450,000,000, to remain avail-*
16 *able until September 30, 2010, of which \$195,000,000 shall*
17 *be for shore facilities and aids to navigation facilities; and*
18 *of which \$255,000,000 shall be for priority procurements*
19 *due to materials and labor cost increases, and to repair,*
20 *renovate, assess, or improve vessels: Provided, That amounts*
21 *made available for the activities under this heading shall*
22 *be available for all necessary expenses related to the over-*
23 *sight and management of such activities: Provided further,*
24 *That no later than 45 days after the date of enactment of*
25 *this Act, the Secretary of Homeland Security shall submit*

1 *to the Committees on Appropriations of the Senate and the*
2 *House of Representatives a plan for the expenditure of these*
3 *funds.*

4 *ALTERATION OF BRIDGES*

5 *For an additional amount for “Alteration of Bridges”,*
6 *\$240,400,000, to remain available until September 30,*
7 *2010, for alteration or removal of obstructive bridges, as*
8 *authorized by section 6 of the Truman-Hobbs Act (33*
9 *U.S.C. 516): Provided, That no later than 45 days after*
10 *the date of enactment of this Act, the Secretary of Homeland*
11 *Security shall submit to the Committees on Appropriations*
12 *of the Senate and the House of Representatives a plan for*
13 *the expenditure of these funds.*

14 *FEDERAL EMERGENCY MANAGEMENT AGENCY*

15 *MANAGEMENT AND ADMINISTRATION*

16 *For an additional amount for “Management and Ad-*
17 *ministration”, \$6,000,000 for the acquisition of commu-*
18 *nications response vehicles to be deployed in response to a*
19 *disaster or a national security event.*

20 *STATE AND LOCAL PROGRAMS*

21 *For an additional amount for grants, \$950,000,000,*
22 *to be allocated as follows:*

23 *(1) \$100,000,000, to remain available until Sep-*
24 *tember 30, 2010, for Public Transportation Security*
25 *Assistance, Railroad Security Assistance, and Sys-*

1 *temwide Amtrak Security Upgrades under sections*
2 *1406, 1513, and 1514 of the Implementing Rec-*
3 *ommendations of the 9/11 Commission Act of 2007*
4 *(Public Law 110–53; 6 U.S.C. 1135, 1163, and 1164).*

5 (2) *\$100,000,000, to remain available until Sep-*
6 *tember 30, 2010, for Port Security Grants in accord-*
7 *ance with 46 U.S.C. 70107, notwithstanding 46*
8 *U.S.C. 70107(c).*

9 (3) *\$250,000,000, to remain available until Sep-*
10 *tember 30, 2010, for upgrading, modifying, or con-*
11 *structing emergency operations centers under section*
12 *614 of the Robert T. Stafford Disaster Relief and*
13 *Emergency Assistance Act, notwithstanding section*
14 *614(c) of that Act or for upgrading, modifying, or*
15 *constructing State and local fusion centers as defined*
16 *by section 210A(j)(1) of the Homeland Security Act*
17 *of 2002 (6 U.S.C. 124h(j)(1)).*

18 (4) *\$500,000,000 for construction to upgrade or*
19 *modify critical infrastructure, as defined in section*
20 *1016(e) of the USA PATRIOT Act of 2001 (42 U.S.C.*
21 *5195c(e)), to mitigate consequences related to poten-*
22 *tial damage from all-hazards: Provided, That funds*
23 *in this paragraph shall remain available until Sep-*
24 *tember 30, 2011: Provided further, That 5 percent*
25 *shall be for program administration: Provided fur-*

1 *EMERGENCY FOOD AND SHELTER*

2 *For an additional amount to carry out the emergency*
3 *food and shelter program pursuant to title III of the McKin-*
4 *ney-Vento Homeless Assistance Act (42 U.S.C. 11331 et*
5 *seq.), \$100,000,000: Provided, That total administrative*
6 *costs shall not exceed 3.5 percent of the total amount made*
7 *available under this heading.*

8 *FEDERAL LAW ENFORCEMENT TRAINING CENTER*
9 *ACQUISITION, CONSTRUCTION, IMPROVEMENTS, AND*
10 *RELATED EXPENSES*

11 *For an additional amount for “Acquisition, Construc-*
12 *tion, Improvements, and Related Expenses”, \$15,000,000,*
13 *to remain available until September 30, 2010, for security*
14 *systems and law enforcement upgrades for all Federal Law*
15 *Enforcement Training Center facilities: Provided, That no*
16 *later than 45 days after the date of enactment of this Act,*
17 *the Secretary of Homeland Security shall submit to the*
18 *Committees on Appropriations of the Senate and the House*
19 *of Representatives a plan for the expenditure of these funds.*

20 *GENERAL PROVISIONS—THIS TITLE*

21 *SEC. 601. Notwithstanding any other provision of law,*
22 *the President shall establish an arbitration panel under the*
23 *Federal Emergency Management Agency public assistance*
24 *program to expedite the recovery efforts from Hurricanes*
25 *Katrina, Rita, Gustav, and Ike within the Gulf Coast Re-*

1 gion. The arbitration panel shall have sufficient authority
2 regarding the award or denial of disputed public assistance
3 applications for covered hurricane damage under section
4 403, 406, or 407 of the Robert T. Stafford Disaster Relief
5 and Emergency Assistance Act (42 U.S.C. 5170b, 5172, or
6 5173) for a project the total amount of which is more than
7 \$500,000.

8 *SEC. 602. The Administrator of the Federal Emer-*
9 *gency Management Agency may not prohibit or restrict the*
10 *use of funds designated under the hazard mitigation grant*
11 *program for damage caused by Hurricanes Katrina and*
12 *Rita if the homeowner who is an applicant for assistance*
13 *under such program commenced work otherwise eligible for*
14 *hazard mitigation grant program assistance under section*
15 *404 of the Robert T. Stafford Disaster Relief and Emer-*
16 *gency Assistance Act (42 U.S.C. 5170c) without approval*
17 *in writing from the Administrator.*

18 *TITLE VII—INTERIOR, ENVIRONMENT, AND*

19 *RELATED AGENCIES*

20 *DEPARTMENT OF THE INTERIOR*

21 *BUREAU OF LAND MANAGEMENT*

22 *MANAGEMENT OF LANDS AND RESOURCES*

23 *For an additional amount for “Management of Lands*
24 *and Resources”, \$135,000,000, to remain available until*
25 *September 30, 2010.*

1 *DEPARTMENTAL OFFICES*2 *INSULAR AFFAIRS*3 *ASSISTANCE TO TERRITORIES*

4 *For an additional amount for “Assistance to Terri-*
5 *ories”, \$62,000,000, to remain available until September*
6 *30, 2010.*

7 *OFFICE OF INSPECTOR GENERAL*8 *SALARIES AND EXPENSES*

9 *For an additional amount for “Office of Inspector*
10 *General”, \$7,600,000, to remain available until September*
11 *30, 2011, and an additional \$7,400,000 for such purposes,*
12 *to remain available until September 30, 2011.*

13 *DEPARTMENT-WIDE PROGRAMS*14 *CENTRAL HAZARDOUS MATERIALS FUND*

15 *For an additional amount for “Central Hazardous*
16 *Materials Fund”, \$20,000,000, to remain available until*
17 *September 30, 2010.*

18 *ENVIRONMENTAL PROTECTION AGENCY*19 *HAZARDOUS SUBSTANCE SUPERFUND*20 *(INCLUDING TRANSFERS OF FUNDS)*

21 *For an additional amount for “Hazardous Substance*
22 *Superfund”, \$600,000,000, to remain available until Sep-*
23 *tember 30, 2010, as a payment from general revenues to*
24 *the Hazardous Substance Superfund, to carry out remedial*
25 *actions: Provided, That the Administrator may retain up*

1 *to 2 percent of the funds appropriated herein for Superfund*
2 *remedial actions for program oversight and support pur-*
3 *poses, and may transfer those funds to other accounts as*
4 *needed.*

5 *LEAKING UNDERGROUND STORAGE TANK TRUST FUND*
6 *PROGRAM*

7 *For an additional amount for “Leaking Underground*
8 *Storage Tank Trust Fund Program”, \$200,000,000, to re-*
9 *main available until September 30, 2010, for cleanup ac-*
10 *tivities: Provided, That none of these funds shall be subject*
11 *to cost share requirements.*

12 *STATE AND TRIBAL ASSISTANCE GRANTS*
13 *(INCLUDING TRANSFERS OF FUNDS)*

14 *For an additional amount for “State and Tribal As-*
15 *sistance Grants”, \$6,400,000,000, to remain available until*
16 *September 30, 2010, of which \$4,000,000,000 shall be for*
17 *making capitalization grants for the Clean Water State Re-*
18 *volving Funds under title VI of the Federal Water Pollution*
19 *Control Act, as amended; of which \$2,000,000,000 shall be*
20 *for making capitalization grants for the Drinking Water*
21 *State Revolving Fund under section 1452 of the Safe Drink-*
22 *ing Water Act, as amended; of which \$100,000,000 shall*
23 *be available for Brownfields remediation grants pursuant*
24 *to section 104(k)(3) of the Comprehensive Environmental*
25 *Response, Compensation and Liability Act of 1980, as*

1 amended; and of which \$300,000,000 shall be for Diesel
2 Emission Reduction Act grants pursuant to title VII, sub-
3 title G of the Energy Policy Act of 2005, as amended: Pro-
4 vided, That notwithstanding the priority ranking they
5 would otherwise receive under each program, priority for
6 funds appropriated herein for the Clean Water State Re-
7 volving Funds and Drinking Water State Revolving Funds
8 (Revolving Funds) shall be allocated to projects that are
9 ready to proceed to construction within 180 days of enact-
10 ment of this Act: Provided further, That the Administrator
11 of the Environmental Protection Agency (Administrator)
12 may reallocate funds appropriated herein for the Revolving
13 Funds that are not under binding commitments to proceed
14 to construction within 180 days of enactment of this Act:
15 Provided further, That notwithstanding any other provision
16 of law, financial assistance provided from funds appro-
17 priated herein for the Revolving Funds may include addi-
18 tional subsidization, including forgiveness of principal and
19 negative interest loans: Provided further, That not less than
20 15 percent of the funds appropriated herein for the Revolv-
21 ing Funds shall be designated for green infrastructure,
22 water efficiency improvements or other environmentally in-
23 novative projects: Provided further, That notwithstanding
24 the limitation on amounts specified in section 518(c) of the
25 Federal Water Pollution Control Act, up to a total of 1.5

1 *percent of the funds appropriated herein for the Clean*
2 *Water State Revolving Funds may be reserved by the Ad-*
3 *ministrator for tribal grants under section 518(c) of such*
4 *Act: Provided further, That section 1452(k) of the Safe*
5 *Drinking Water Act shall not apply to amounts appro-*
6 *priated herein for the Drinking Water State Revolving*
7 *Funds: Provided further, That the Administrator may ex-*
8 *ceed the 30 percent limitation on State grants for funds*
9 *appropriated herein for Diesel Emission Reduction Act*
10 *grants if the Administrator determines such action will ex-*
11 *pedite allocation of funds: Provided further, That none of*
12 *the funds appropriated herein shall be subject to cost share*
13 *requirements: Provided further, That the Administrator*
14 *may retain up to 0.25 percent of the funds appropriated*
15 *herein for the Clean Water State Revolving Funds and*
16 *Drinking Water State Revolving Funds and up to 1.5 per-*
17 *cent of the funds appropriated herein for the Diesel Emis-*
18 *sion Reduction Act grants program for program oversight*
19 *and support purposes and may transfer those funds to other*
20 *accounts as needed.*

21 *DEPARTMENT OF AGRICULTURE*

22 *FOREST SERVICE*

23 *CAPITAL IMPROVEMENT AND MAINTENANCE*

24 *For an additional amount for “Capital Improvement*
25 *and Maintenance”, \$650,000,000, to remain available until*

1 *September 30, 2010, which shall include remediation of*
2 *abandoned mine sites and support costs necessary to carry*
3 *out this work.*

4 *WILDLAND FIRE MANAGEMENT*

5 *For an additional amount for “Wildland Fire Man-*
6 *agement”, \$485,000,000, to remain available until Sep-*
7 *tember 30, 2010, for hazardous fuels reduction and hazard*
8 *mitigation activities in areas at high risk of catastrophic*
9 *wildfire, of which \$260,000,000 is available for work on*
10 *State and private lands using all the authorities available*
11 *to the Forest Service: Provided, That of the funds provided*
12 *for State and private land fuels reduction activities, up to*
13 *\$50,000,000 may be used to make grants for the purpose*
14 *of creating incentives for increased use of biomass from na-*
15 *tional forest lands.*

16 *DEPARTMENT OF HEALTH AND HUMAN*
17 *SERVICES*

18 *INDIAN HEALTH SERVICE*

19 *INDIAN HEALTH SERVICES*

20 *For an additional amount for “Indian Health Serv-*
21 *ices”, \$135,000,000, to remain available until September*
22 *30, 2010, of which \$50,000,000 is for contract health serv-*
23 *ices; and of which \$85,000,000 is for health information*
24 *technology: Provided, That the amount made available for*
25 *health information technology activities may be used for*

1 *both telehealth services development and related infrastruc-*
2 *ture requirements that are typically funded through the*
3 *“Indian Health Facilities” account: Provided further, That*
4 *notwithstanding any other provision of law, health infor-*
5 *mation technology funds provided within this title shall be*
6 *allocated at the discretion of the Director of the Indian*
7 *Health Service.*

8 *INDIAN HEALTH FACILITIES*

9 *For an additional amount for “Indian Health Facili-*
10 *ties”, \$410,000,000, to remain available until September*
11 *30, 2010: Provided, That for the purposes of this Act, spend-*
12 *ing caps included within the annual appropriation for “In-*
13 *dian Health Facilities” for the purchase of medical equip-*
14 *ment shall not apply.*

15 *SMITHSONIAN INSTITUTION*

16 *FACILITIES CAPITAL*

17 *For an additional amount for “Facilities Capital”,*
18 *\$75,000,000, to remain available until September 30, 2010.*

19 *GENERAL PROVISIONS—THIS TITLE*

20 *SEC. 701. (a) Within 30 days of enactment of this Act,*
21 *each agency receiving funds under this title shall submit*
22 *a general plan for the expenditure of such funds to the*
23 *House and Senate Committees on Appropriations.*

24 *(b) Within 90 days of enactment of this Act, each agen-*
25 *cy receiving funds under this title shall submit to the Com-*

1 *mittees a report containing detailed project level informa-*
2 *tion associated with the general plan submitted pursuant*
3 *to subsection (a).*

4 *SEC. 702. In carrying out the work for which funds*
5 *in this title are being made available, the Secretary of the*
6 *Interior and the Secretary of Agriculture may utilize the*
7 *Public Lands Corps, Youth Conservation Corps, Job Corps*
8 *and other related partnerships with Federal, State, local,*
9 *tribal or non-profit groups that serve young adults.*

10 *TITLE VIII—DEPARTMENTS OF LABOR, HEALTH*
11 *AND HUMAN SERVICES, AND EDUCATION,*
12 *AND RELATED AGENCIES*

13 *DEPARTMENT OF LABOR*

14 *EMPLOYMENT AND TRAINING ADMINISTRATION*

15 *TRAINING AND EMPLOYMENT SERVICES*

16 *For an additional amount for “Training and Employ-*
17 *ment Services” for activities authorized by the Workforce*
18 *Investment Act of 1998 (“WIA”), \$3,250,000,000, which*
19 *shall be available on the date of enactment of this Act, as*
20 *follows:*

21 *(1) \$500,000,000 for adult employment and*
22 *training activities, including supportive services and*
23 *needs-related payments described in section 134(e)(2)*
24 *and (3) of the WIA: Provided, That a priority use of*

1 *these funds shall be services to individuals described*
2 *in 134(d)(4)(E) of the WIA;*

3 *(2) \$1,200,000,000 for grants to the States for*
4 *youth activities, including summer employment for*
5 *youth: Provided, That no portion of such funds shall*
6 *be reserved to carry out section 127(b)(1)(A) of the*
7 *WIA: Provided further, That for purposes of section*
8 *127(b)(1)(C)(iv) of the WIA, funds available for youth*
9 *activities shall be allotted as if the total amount*
10 *available for youth activities in the fiscal year does*
11 *not exceed \$1,000,000,000: Provided further, That,*
12 *with respect to the youth activities provided with such*
13 *funds, section 101(13)(A) of the WIA shall be applied*
14 *by substituting “age 24” for “age 21”: Provided fur-*
15 *ther, That the work readiness performance indicator*
16 *described in section 136(b)(2)(A)(ii)(I) of the WIA*
17 *shall be the only measure of performance used to as-*
18 *sess the effectiveness of youth activities provided with*
19 *such funds;*

20 *(3) \$1,000,000,000 for grants to the States for*
21 *dislocated worker employment and training activities;*

22 *(4) \$200,000,000 for national emergency grants;*

23 *(5) \$250,000,000 under the dislocated worker na-*
24 *tional reserve for a program of competitive grants for*
25 *worker training in high growth and emerging indus-*

1 *try sectors and assistance under 132(b)(2)(A) of the*
2 *WIA: Provided, That the Secretary of Labor shall give*
3 *priority when awarding such grants to projects that*
4 *prepare workers for careers in energy efficiency and*
5 *renewable energy as described in section 171(e)(1)(B)*
6 *of the WIA and for careers in the health care sector;*
7 *and*

8 *(6) \$100,000,000 for YouthBuild activities as de-*
9 *scribed in section 173A of the WIA: Provided, That*
10 *for program years 2008 and 2009, the YouthBuild*
11 *program may serve an individual who has dropped*
12 *out of high school and re-enrolled in an alternative*
13 *school, if that re-enrollment is part of a sequential*
14 *service strategy:*

15 *Provided, That funds made available in this*
16 *paragraph shall remain available through June 30,*
17 *2010: Provided further, That a local board may*
18 *award a contract to an institution of higher edu-*
19 *cation if the local board determines that it would fa-*
20 *facilitate the training of multiple individuals in high-*
21 *demand occupations, if such contract does not limit*
22 *customer choice.*

23 *COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS*

24 *For an additional amount for “Community Service*
25 *Employment for Older Americans” for carrying out title*

1 *V of the Older Americans Act of 1965, \$120,000,000, which*
2 *shall be available on the date of enactment of this Act and*
3 *shall remain available through June 30, 2010: Provided,*
4 *That funds shall be allotted within 30 days of such enact-*
5 *ment to current grantees in proportion to their allotment*
6 *in program year 2008: Provided further, That funds made*
7 *available under this heading in this Act may, in accordance*
8 *with section 517(c) of the Older Americans Act of 1965, be*
9 *recaptured and reobligated.*

10 *STATE UNEMPLOYMENT INSURANCE AND EMPLOYMENT*

11 *SERVICE OPERATIONS*

12 *For an additional amount for “State Unemployment*
13 *Insurance and Employment Service Operations” for grants*
14 *to States in accordance with section 6 of the Wagner-Peyser*
15 *Act, \$400,000,000, which may be expended from the Em-*
16 *ployment Security Administration account in the Unem-*
17 *ployment Trust Fund: Provided, That such funds shall be*
18 *available on the date of enactment of this Act and remain*
19 *available to the States through September 30, 2010: Pro-*
20 *vided further, That \$250,000,000 of such funds shall be used*
21 *by States for reemployment services for unemployment in-*
22 *surance claimants (including the integrated Employment*
23 *Service and Unemployment Insurance information tech-*
24 *nology required to identify and serve the needs of such*
25 *claimants): Provided further, That the Secretary of Labor*

1 *shall establish planning and reporting procedures necessary*
2 *to provide oversight of funds used for reemployment serv-*
3 *ices.*

4 *DEPARTMENTAL MANAGEMENT*

5 *OFFICE OF JOB CORPS*

6 *For an additional amount for “Office of Job Corps”*
7 *for construction, alteration and repairs of buildings and*
8 *other facilities, \$160,000,000, which shall remain available*
9 *through June 30, 2010: Provided, That the Secretary of*
10 *Labor may transfer up to 15 percent of such funds to meet*
11 *the operational needs of Job Corps Centers, which may in-*
12 *clude training for careers in the energy efficiency, renewable*
13 *energy, and environmental protection industries: Provided*
14 *further, That not later than 90 days after the date of enact-*
15 *ment of this Act, the Secretary shall provide to the Com-*
16 *mittee on Appropriations of the House of Representatives*
17 *and the Senate an operating plan describing the planned*
18 *uses of funds available in this paragraph.*

19 *OFFICE OF INSPECTOR GENERAL*

20 *For an additional amount for the “Office of Inspector*
21 *General”, \$3,000,000, which shall remain available through*
22 *September 30, 2011, for salaries and expenses necessary for*
23 *oversight and audit of programs, grants, and projects fund-*
24 *ed in this Act and administered by the Department of*
25 *Labor.*

1 *Control and Prevention may award a single contract or re-*
2 *lated contracts for development and construction of facili-*
3 *ties that collectively include the full scope of the project:*
4 *Provided further, That the solicitation and contract shall*
5 *contain the clause “availability of funds” found at 48 CFR*
6 *52.232–18.*

7 *NATIONAL INSTITUTES OF HEALTH*

8 *NATIONAL CENTER FOR RESEARCH RESOURCES*

9 *For an additional amount for “National Center for*
10 *Research Resources”, \$300,000,000, which shall be available*
11 *through September 30, 2010, for shared instrumentation*
12 *and other capital research equipment.*

13 *OFFICE OF THE DIRECTOR*

14 *(INCLUDING TRANSFER OF FUNDS)*

15 *For an additional amount for “Office of the Director”,*
16 *\$2,700,000,000, which shall be available through September*
17 *30, 2010: Provided, That \$1,350,000,000 shall be trans-*
18 *ferred to the Institutes and Centers of the National Insti-*
19 *tutes of Health and to the Common Fund established under*
20 *section 402A(c)(1) of the Public Health Service Act in pro-*
21 *portion to the appropriations otherwise made to such Insti-*
22 *tutes, Centers, and Common Fund for fiscal year 2009: Pro-*
23 *vided further, That these funds shall be used to support ad-*
24 *ditional scientific research and shall be merged with and*
25 *be available for the same purposes as the appropriation or*

1 *fund to which transferred: Provided further, That this*
2 *transfer authority is in addition to any other transfer au-*
3 *thority available to the National Institutes of Health: Pro-*
4 *vided further, That none of these funds may be transferred*
5 *to “National Institutes of Health—Buildings and Facili-*
6 *ties”, the Center for Scientific Review, the Center for Infor-*
7 *mation Technology, the Clinical Center, the Global Fund*
8 *for HIV/AIDS, Tuberculosis and Malaria, or the Office of*
9 *the Director (except for the transfer to the Common Fund).*

10 *The additional amount available for ‘Office of the Di-*
11 *rector’ in the previous sentence shall be increased by*
12 *\$6,500,000,000: Provided, That a total of \$7,850,000,000*
13 *shall be transferred pursuant to such sentence: Provided fur-*
14 *ther, That any amounts in this sentence shall be designated*
15 *as an emergency requirement and necessary to meet emer-*
16 *gency needs pursuant to section 204(a) of S. Con. Res. 21*
17 *(110th Congress) and section 301(b)(2) of S. Con. Res. 70*
18 *(110th Congress), the concurrent resolutions on the budget*
19 *for fiscal years 2008 and 2009.*

20 *BUILDINGS AND FACILITIES*

21 *For an additional amount for “Buildings and Facili-*
22 *ties”, \$500,000,000, which shall be available through Sep-*
23 *tember 30, 2010, to fund high-priority repair, construction*
24 *and improvement projects for National Institutes of Health*

1 *facilities on the Bethesda, Maryland campus and other*
2 *agency locations.*

3 *AGENCY FOR HEALTHCARE RESEARCH AND QUALITY*

4 *HEALTHCARE RESEARCH AND QUALITY*

5 *(INCLUDING TRANSFER OF FUNDS)*

6 *For an additional amount for “Healthcare Research*
7 *and Quality” to carry out titles III and IX of the Public*
8 *Health Service Act, part A of title XI of the Social Security*
9 *Act, and section 1013 of the Medicare Prescription Drug,*
10 *Improvement, and Modernization Act of 2003,*
11 *\$700,000,000 for comparative clinical effectiveness research,*
12 *which shall remain available through September 30, 2010:*
13 *Provided, That of the amount appropriated in this para-*
14 *graph, \$400,000,000 shall be transferred to the Office of the*
15 *Director of the National Institutes of Health (“Office of the*
16 *Director”)* *to conduct or support comparative clinical effec-*
17 *tiveness research under section 301 and title IV of the Pub-*
18 *lic Health Service Act: Provided further, That funds trans-*
19 *ferred to the Office of the Director may be transferred to*
20 *the Institutes and Centers of the National Institutes of*
21 *Health and to the Common Fund established under section*
22 *402A(c)(1) of the Public Health Service Act: Provided fur-*
23 *ther, That this transfer authority is in addition to any*
24 *other transfer authority available to the National Institutes*
25 *of Health: Provided further, That within the amount avail-*

1 able in this paragraph for the Agency for Healthcare Re-
2 search and Quality, not more than 1 percent shall be made
3 available for additional full-time equivalents.

4 In addition, \$400,000,000 shall be available for com-
5 parative clinical effectiveness research to be allocated at the
6 discretion of the Secretary of Health and Human Services
7 (“Secretary”) and shall remain available through Sep-
8 tember 30, 2010: Provided, That the funding appropriated
9 in this paragraph shall be used to accelerate the develop-
10 ment and dissemination of research assessing the compara-
11 tive clinical effectiveness of health care treatments and
12 strategies, including through efforts that: (1) conduct, sup-
13 port, or synthesize research that compares the clinical out-
14 comes, effectiveness, and appropriateness of items, services,
15 and procedures that are used to prevent, diagnose, or treat
16 diseases, disorders, and other health conditions and (2) en-
17 courage the development and use of clinical registries, clin-
18 ical data networks, and other forms of electronic health data
19 that can be used to generate or obtain outcomes data: Pro-
20 vided further, That the Secretary shall enter into a contract
21 with the Institute of Medicine, for which no more than
22 \$1,500,000 shall be made available from funds provided in
23 this paragraph, to produce and submit a report to the Con-
24 gress and the Secretary by not later than June 30, 2009
25 that includes recommendations on the national priorities

1 *for comparative clinical effectiveness research to be con-*
2 *ducted or supported with the funds provided in this para-*
3 *graph and that considers input from stakeholders: Provided*
4 *further, That the Secretary shall consider any recommenda-*
5 *tions of the Federal Coordinating Council for Comparative*
6 *Clinical Effectiveness Research established by section 802*
7 *of this Act and any recommendations included in the Insti-*
8 *tute of Medicine report pursuant to the preceding proviso*
9 *in designating activities to receive funds provided in this*
10 *paragraph and may make grants and contracts with appro-*
11 *priate entities, which may include agencies within the De-*
12 *partment of Health and Human Services and other govern-*
13 *mental agencies, as well as private sector entities, that have*
14 *demonstrated experience and capacity to achieve the goals*
15 *of comparative clinical effectiveness research: Provided fur-*
16 *ther, That the Secretary shall publish information on grants*
17 *and contracts awarded with the funds provided under this*
18 *heading within a reasonable time of the obligation of funds*
19 *for such grants and contracts and shall disseminate re-*
20 *search findings from such grants and contracts to clini-*
21 *cians, patients, and the general public, as appropriate: Pro-*
22 *vided further, That, to the extent feasible, the Secretary*
23 *shall ensure that the recipients of the funds provided by this*
24 *paragraph offer an opportunity for public comment on the*
25 *research: Provided further, That the Secretary shall provide*

1 *the Committees on Appropriations of the House of Rep-*
2 *resentatives and the Senate, the Committee on Energy and*
3 *Commerce and the Committee on Ways and Means of the*
4 *House of Representatives, and the Committee on Health,*
5 *Education, Labor, and Pensions and the Committee on Fi-*
6 *nance of the Senate with an annual report on the research*
7 *conducted or supported through the funds provided under*
8 *this heading.*

9 *ADMINISTRATION FOR CHILDREN AND FAMILIES*

10 *PAYMENTS TO STATES FOR THE CHILD CARE AND*

11 *DEVELOPMENT BLOCK GRANT*

12 *For an additional amount for “Payments to States for*
13 *the Child Care and Development Block Grant” for carrying*
14 *out the Child Care and Development Block Grant Act of*
15 *1990, \$2,000,000,000, which shall remain available through*
16 *September 30, 2010: Provided, That funds provided under*
17 *this heading shall be used to supplement, not supplant State*
18 *general revenue funds for child care assistance for low-in-*
19 *come families: Provided further, That, in addition to the*
20 *amounts required to be reserved by the States under section*
21 *658G of such Act, \$255,186,000 shall be reserved by the*
22 *States for activities authorized under section 658G, of which*
23 *\$93,587,000 shall be for activities that improve the quality*
24 *of infant and toddler care.*

1 *Grant Act, \$200,000,000, which shall remain available*
2 *through September 30, 2010: Provided, That of the funds*
3 *provided under this paragraph, no part shall be subject to*
4 *paragraph (3) of section 674(b) of such Act: Provided fur-*
5 *ther, That not less than 5 percent of the funds allotted to*
6 *a State from the appropriation under this paragraph shall*
7 *be used under section 675C(b)(1) for benefits enrollment co-*
8 *ordination activities relating to the identification and en-*
9 *rollment of eligible individuals and families in Federal,*
10 *State and local benefit programs.*

11 *ADMINISTRATION ON AGING*

12 *AGING SERVICES PROGRAMS*

13 *For an additional amount for “Aging Services Pro-*
14 *grams,” \$100,000,000, of which \$67,000,000 shall be for*
15 *Congregate Nutrition Services and \$33,000,000 shall be for*
16 *Home-Delivered Nutrition Services: Provided, That these*
17 *funds shall remain available through September 30, 2010.*

18 *OFFICE OF THE SECRETARY*

19 *OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH*

20 *INFORMATION TECHNOLOGY*

21 *(INCLUDING TRANSFER OF FUNDS)*

22 *For an additional amount for “Office of the National*
23 *Coordinator for Health Information Technology”,*
24 *\$3,000,000,000, to carry out title XIII of this Act which*
25 *shall be available until expended: Provided, That of this*

1 amount, the Secretary of Health and Human Services shall
2 transfer \$20,000,000 to the Director of the National Insti-
3 tute of Standards and Technology in the Department of
4 Commerce for continued work on advancing health care in-
5 formation enterprise integration through activities such as
6 technical standards analysis and establishment of conform-
7 ance testing infrastructure so long as such activities are co-
8 ordinated with the Office of the National Coordinator for
9 Health Information Technology: Provided further, That
10 funds available under this heading shall become available
11 for obligation only upon submission of an annual operating
12 plan by the Secretary to the Committees on Appropriations
13 of the House of Representatives and the Senate: Provided
14 further, That the Secretary shall provide to the Committees
15 on Appropriations of the House of Representatives and the
16 Senate a report on the actual obligations, expenditures, and
17 unobligated balances for each major set of activities not
18 later than November 1, 2009 and every 6 months thereafter
19 as long as funding under this heading is available for obli-
20 gation or expenditure.

21 *OFFICE OF THE INSPECTOR GENERAL*

22 *For an additional amount for the Office of the Inspec-*
23 *tor General, \$4,000,000 which shall remain available until*
24 *September 30, 2012, and an additional \$15,000,000 for*

1 *such purposes, to remain available until September 30,*
2 *2012.*

3 *DEPARTMENT OF EDUCATION*

4 *EDUCATION FOR THE DISADVANTAGED*

5 *For an additional amount for carrying out title I of*
6 *the Elementary and Secondary Education Act of 1965,*
7 *\$12,400,000,000, which shall be available through Sep-*
8 *tember 30, 2010: Provided, That \$5,500,000,000 shall be for*
9 *targeted grants under section 1125, \$5,500,000,000 shall be*
10 *for education finance incentive grants under section 1125A,*
11 *and \$1,400,000,000 shall be for school improvement grants*
12 *under section 1003(g): Provided further, That each local*
13 *educational agency receiving funds available under this*
14 *paragraph for sections 1125 and 1125A shall use not less*
15 *than 15 percent of such funds for activities serving children*
16 *who are eligible pursuant to section 1115(b)(1)(A)(ii) and*
17 *programs in section 1112(b)(1)(K): Provided further, That*
18 *each local educational agency receiving funds available*
19 *under this paragraph shall be required to file with the State*
20 *educational agency, no later than December 1, 2009, a*
21 *school-by-school listing of per-pupil educational expendi-*
22 *tures from State and local sources during the 2008–2009*
23 *academic year.*

1 *SCHOOL IMPROVEMENT PROGRAMS*

2 *For an additional amount for “School Improvement*
3 *Programs,” \$1,070,000,000, which shall be available*
4 *through September 30, 2010, for carrying out activities au-*
5 *thorized by part D of title II of the Elementary and Sec-*
6 *ondary Education Act of 1965, and subtitle B of title VII*
7 *of the McKinney-Vento Homeless Assistance Act (“McKin-*
8 *ney-Vento”): Provided, That the Secretary shall allot*
9 *\$70,000,000 for grants under McKinney-Vento to each State*
10 *in proportion to the number of homeless students identified*
11 *by the State during the 2007–2008 school year relative to*
12 *the number of such children identified nationally during*
13 *that school year: Provided further, That State educational*
14 *agencies shall subgrant the McKinney-Vento funds to local*
15 *educational agencies on a competitive basis or according*
16 *to a formula based on the number of homeless students iden-*
17 *tified by the local educational agencies in the State: Pro-*
18 *vided further, That the Secretary shall distribute the*
19 *McKinney-Vento funds to the States not later than 60 days*
20 *after the date of the enactment of this Act: Provided further,*
21 *That each State shall subgrant the McKinney-Vento funds*
22 *to local educational agencies not later than 120 days after*
23 *receiving its grant from the Secretary.*

SPECIAL EDUCATION

1
2 *For an additional amount for “Special Education” for*
3 *carrying out parts B and C of the Individuals with Disabil-*
4 *ities Education Act (“IDEA”), \$13,500,000,000, which*
5 *shall remain available through September 30, 2010: Pro-*
6 *vided, That if every State, as defined by section 602(31)*
7 *of the IDEA, reaches its maximum allocation under section*
8 *611(d)(3)(B)(iii) of the IDEA, and there are remaining*
9 *funds, such funds shall be proportionally allocated to each*
10 *State subject to the maximum amounts contained in section*
11 *611(a)(2) of the IDEA: Provided further, That by July 1,*
12 *2009, the Secretary of Education shall reserve the amount*
13 *needed for grants under section 643(e) of the IDEA, with*
14 *any remaining funds to be allocated in accordance with sec-*
15 *tion 643(c) of the IDEA: Provided further, That the amount*
16 *for section 611(b)(2) of the IDEA shall be equal to the lesser*
17 *of the amount available for that activity during fiscal year*
18 *2008, increased by the amount of inflation as specified in*
19 *section 619(d)(2)(B), or the percentage increase in the funds*
20 *appropriated under section 611(i): Provided further, That*
21 *each local educational agency receiving funds available*
22 *under this paragraph for part B shall use not less than*
23 *15 percent for special education and related services to chil-*
24 *dren described in section 619(a) of the IDEA.*

1 *REHABILITATION SERVICES AND DISABILITY RESEARCH*

2 *For an additional amount for “Rehabilitation Services*
3 *and Disability Research” for providing grants to States to*
4 *carry out the Vocational Rehabilitation Services program*
5 *under part B of title I and parts B and C of chapter 1*
6 *and chapter 2 of title VII of the Rehabilitation Act of 1973,*
7 *\$610,000,000, which shall remain available through Sep-*
8 *tember 30, 2010: Provided, That \$500,000,000 shall be*
9 *available for part B of title I of the Rehabilitation Act: Pro-*
10 *vided further, That funds provided herein shall not be con-*
11 *sidered in determining the amount required to be appro-*
12 *priated under section 100(b)(1) of the Rehabilitation Act*
13 *of 1973 in any fiscal year: Provided further, That, notwith-*
14 *standing section 7(14)(A), the Federal share of the costs of*
15 *vocational rehabilitation services provided with the funds*
16 *provided herein shall be 100 percent.*

17 *STUDENT FINANCIAL ASSISTANCE*

18 *For an additional amount for “Student Financial As-*
19 *sistance” to carry out subpart 1 of part A of title IV of*
20 *the Higher Education Act of 1965, \$13,869,000,000: Pro-*
21 *vided, That such funds shall be used to increase the max-*
22 *imum Pell Grant by \$281 for award year 2009–2010, to*
23 *increase the maximum Pell Grant by \$400 for the award*
24 *year 2010–2011, and to reduce or eliminate the Pell Grant*

1 *shortfall: Provided further, That these funds shall remain*
2 *available through September 30, 2011.*

3 *For an additional amount for “Student Financial As-*
4 *sistance” to carry out part E of title IV of the Higher Edu-*
5 *cation Act of 1965, \$61,000,000: Provided, That these funds*
6 *shall remain available through September 30, 2010.*

7 *HIGHER EDUCATION*

8 *For an additional amount for “Higher Education” for*
9 *carrying out activities under part A of title II of the Higher*
10 *Education Act of 1965, \$50,000,000: Provided, That these*
11 *funds shall remain available through September 30, 2010.*

12 *DEPARTMENTAL MANAGEMENT*

13 *OFFICE OF THE INSPECTOR GENERAL*

14 *For an additional amount for the “Office of the Inspec-*
15 *tor General”, \$4,000,000, which shall remain available*
16 *through September 30, 2012, for salaries and expenses nec-*
17 *essary for oversight and audit of programs, grants, and*
18 *projects funded in this Act and administered by the Depart-*
19 *ment of Education and an additional \$10,000,000 for such*
20 *purposes, to remain available until September 30, 2012.*

1 *RELATED AGENCIES*
2 *CORPORATION FOR NATIONAL AND COMMUNITY*
3 *SERVICE*
4 *OPERATING EXPENSES*
5 *(INCLUDING TRANSFER OF FUNDS)*

6 *For an additional amount for “Operating Expenses”*
7 *to carry out the Domestic Volunteer Service Act of 1973*
8 *(“1973 Act”) and the National and Community Service Act*
9 *of 1990 (“1990 Act”), \$160,000,000, to remain available*
10 *through September 30, 2010: Provided, That funds made*
11 *available in this paragraph may be used to provide adjust-*
12 *ments to awards under subtitle C of title I of the 1990 Act*
13 *made prior to September 30, 2010 for which the Chief Exec-*
14 *utive Officer of the Corporation for National and Commu-*
15 *nity Service (“CEO”) determines that a waiver of the Fed-*
16 *eral share limitation is warranted under section 2521.70*
17 *of title 45 of the Code of Federal Regulations: Provided fur-*
18 *ther, That of the amount made available in this paragraph,*
19 *not less than \$6,000,000 shall be transferred to “Salaries*
20 *and Expenses” for necessary expenses relating to informa-*
21 *tion technology upgrades: Provided further, That of the*
22 *amount provided in this paragraph, \$10,000,000 shall be*
23 *available for additional members in the Civilian Commu-*
24 *nity Corps authorized under subtitle E of title I of the 1990*
25 *Act: Provided further, That of the amount provided in this*

1 paragraph, \$1,000,000 shall be made available for a one-
2 time supplement grant to State commissions on national
3 and community service under section 126(a) of the 1990
4 Act without regard to the limitation on Federal share under
5 section 126(a)(2) of the 1990 Act: Provided further, That
6 of the amount made available in this paragraph, not less
7 than \$13,000,000 shall be for research activities authorized
8 under subtitle H of title I of the 1990 Act: Provided further,
9 That of the amount made available in this paragraph, not
10 less than \$65,000,000 shall be for programs under title I,
11 part A of the 1973 Act: Provided further, That funds pro-
12 vided in the previous proviso shall not be made available
13 in connection with cost-share agreements authorized under
14 section 192A(g)(10) of the 1990 Act: Provided further, That
15 of the funds available under this heading, up to 20 percent
16 of funds allocated to grants authorized under section 124(b)
17 of title I, subtitle C of the 1990 Act may be used to admin-
18 ister, reimburse, or support any national service program
19 under section 129(d)(2) of the 1990 Act: Provided further,
20 That, except as provided herein and in addition to require-
21 ments identified herein, funds provided in this paragraph
22 shall be subject to the terms and conditions under which
23 funds were appropriated in fiscal year 2008: Provided fur-
24 ther, That the CEO shall provide the Committees on Appro-
25 priations of the House of Representatives and the Senate

1 *a fiscal year 2009 operating plan for the funds appro-*
2 *priated in this paragraph prior to making any Federal ob-*
3 *ligations of such funds in fiscal year 2009, but not later*
4 *than 90 days after the date of enactment of this Act, and*
5 *a fiscal year 2010 operating plan for such funds prior to*
6 *making any Federal obligations of such funds in fiscal year*
7 *2010, but not later than November 1, 2009, that detail the*
8 *allocation of resources and the increased number of members*
9 *supported by the AmeriCorps programs: Provided further,*
10 *That the CEO shall provide to the Committees on Appro-*
11 *priations of the House of Representatives and the Senate*
12 *a report on the actual obligations, expenditures, and unobli-*
13 *gated balances for each activity funded under this heading*
14 *not later than November 1, 2009, and every 6 months there-*
15 *after as long as funding provided under this heading is*
16 *available for obligation or expenditure.*

17 *OFFICE OF THE INSPECTOR GENERAL*

18 *For an additional amount for the Office of the Inspec-*
19 *tor General, \$1,000,000, which shall remain available until*
20 *September 30, 2011.*

21 *NATIONAL SERVICE TRUST*

22 *(INCLUDING TRANSFER OF FUNDS)*

23 *For an additional amount for “National Service*
24 *Trust” established under subtitle D of title I of the National*
25 *and Community Service Act of 1990 (“1990 Act”),*

1 \$40,000,000, which shall remain available until expended:
2 Provided, That the Corporation for National and Commu-
3 nity Service may transfer additional funds from the
4 amount provided within "Operating Expenses" for grants
5 made under subtitle C of title I of the 1990 Act to this ap-
6 propriation upon determination that such transfer is nec-
7 essary to support the activities of national service partici-
8 pants and after notice is transmitted to the Committees on
9 Appropriations of the House of Representatives and the
10 Senate: Provided further, the amount appropriated for or
11 transferred to the National Service Trust may be invested
12 under section 145(b) of the 1990 Act without regard to the
13 requirement to apportion funds under 31 U.S.C. 1513(b).

14 **SOCIAL SECURITY ADMINISTRATION**

15 **LIMITATION ON ADMINISTRATIVE EXPENSES**

16 **(INCLUDING TRANSFER OF FUNDS)**

17 *For an additional amount for "Limitation on Admin-*
18 *istrative Expenses", \$890,000,000 shall be available as fol-*
19 *lows:*

20 (1) \$750,000,000 shall remain available until ex-
21 pended for necessary expenses of the replacement of
22 the National Computer Center and the information
23 technology costs associated with such Center: Pro-
24 vided, That the Commissioner of Social Security shall
25 notify the Committees on Appropriations of the House

1 *of Representatives and the Senate not later than 10*
2 *days prior to each public notice soliciting bids related*
3 *to site selection and construction: Provided further,*
4 *That unobligated balances of funds not needed for this*
5 *purpose may be used as described in subparagraph*
6 *(2); and*

7 *(2) \$140,000,000 shall be available through Sep-*
8 *tember 30, 2010 for information technology acquisi-*
9 *tions and research, which may include research and*
10 *activities to facilitate the adoption of electronic med-*
11 *ical records in disability claims and the transfer of*
12 *funds to “Supplemental Security Income” to carry*
13 *out activities under section 1110 of the Social Secu-*
14 *rity Act: Provided further, That not later than 10*
15 *days prior to the obligation of such funds, the Com-*
16 *missioner shall provide to the Committees on Appro-*
17 *priations of the House of Representatives and the*
18 *Senate an operating plan describing the planned uses*
19 *of such funds.*

20 *OFFICE OF INSPECTOR GENERAL*

21 *For an additional amount for the “Office of Inspector*
22 *General”, \$3,000,000, which shall remain available through*
23 *September 30, 2012, for salaries and expenses necessary for*
24 *oversight and audit of programs, projects, and activities*

1 *funded in this Act and administered by the Social Security*
2 *Administration.*

3 **GENERAL PROVISIONS—THIS TITLE**

4 **SEC. 801. REPORT ON THE IMPACT OF PAST AND FUTURE**
5 **MINIMUM WAGE INCREASES. (a) IN GENERAL.**—*Sec-*
6 *tion 8104 of the U.S. Troop Readiness, Veterans' Care,*
7 *Katrina Recovery, and Iraq Accountability Appropriations*
8 *Act, 2007 (Public Law 110–28; 121 Stat. 189) is amended*
9 *to read as follows:*

10 **“SEC. 8104. REPORT ON THE IMPACT OF PAST AND FUTURE**
11 **MINIMUM WAGE INCREASES.**

12 *“(a) STUDY.—Beginning on the date that is 60 days*
13 *after the date of enactment of this Act, and every year there-*
14 *after until the minimum wage in the respective territory*
15 *is \$7.25 per hour, the Government Accountability Office*
16 *shall conduct a study to—*

17 *“(1) assess the impact of the minimum wage in-*
18 *creases that occurred in American Samoa and the*
19 *Commonwealth of the Northern Mariana Islands in*
20 *2007 and 2008, as required under Public Law 110–*
21 *28, on the rates of employment and the living stand-*
22 *ards of workers, with full consideration of the other*
23 *factors that impact rates of employment and the liv-*
24 *ing standards of workers such as inflation in the cost*
25 *of food, energy, and other commodities; and*

1 “(2) estimate the impact of any further wage in-
2 creases on rates of employment and the living stand-
3 ards of workers in American Samoa and the Com-
4 monwealth of the Northern Mariana Islands, with full
5 consideration of the other factors that may impact the
6 rates of employment and the living standards of
7 workers, including assessing how the profitability of
8 major private sector firms may be impacted by wage
9 increases in comparison to other factors such as en-
10 ergy costs and the value of tax benefits.

11 “(b) *REPORT*.—No earlier than March 15, 2009, and
12 not later than April 15, 2009, the Government Account-
13 ability Office shall transmit its first report to Congress con-
14 cerning the findings of the study required under subsection
15 (a). The Government Accountability Office shall transmit
16 any subsequent reports to Congress concerning the findings
17 of a study required by subsection (a) between March 15 and
18 April 15 of each year.

19 “(c) *ECONOMIC INFORMATION*.—To provide sufficient
20 economic data for the conduct of the study under subsection
21 (a)—

22 “(1) the Department of Labor shall include and
23 separately report on American Samoa and the Com-
24 monwealth of the Northern Mariana Islands in its
25 household surveys and establishment surveys;

1 “(2) the Bureau of Economic Analysis of the De-
2 partment of Commerce shall include and separately
3 report on American Samoa and the Commonwealth of
4 the Northern Mariana Islands in its gross domestic
5 product data; and

6 “(3) the Bureau of the Census of the Department
7 of Commerce shall include and separately report on
8 American Samoa and the Commonwealth of the
9 Northern Mariana Islands in its population estimates
10 and demographic profiles from the American Commu-
11 nity Survey,

12 with the same regularity and to the same extent as the De-
13 partment or each Bureau collects and reports such data for
14 the 50 States. In the event that the inclusion of American
15 Samoa and the Commonwealth of the Northern Mariana
16 Islands in such surveys and data compilations requires
17 time to structure and implement, the Department of Labor,
18 the Bureau of Economic Analysis, and the Bureau of the
19 Census (as the case may be) shall in the interim annually
20 report the best available data that can feasibly be secured
21 with respect to such territories. Such interim reports shall
22 describe the steps the Department or the respective Bureau
23 will take to improve future data collection in the territories
24 to achieve comparability with the data collected in the
25 United States. The Department of Labor, the Bureau of

1 *Economic Analysis, and the Bureau of the Census, together*
2 *with the Department of the Interior, shall coordinate their*
3 *efforts to achieve such improvements.”.*

4 (b) *EFFECTIVE DATE.*—*The amendment made by this*
5 *section shall take effect on the date of enactment of this Act.*

6 *SEC. 802. FEDERAL COORDINATING COUNCIL FOR*
7 *COMPARATIVE CLINICAL EFFECTIVENESS RESEARCH. (a)*
8 *ESTABLISHMENT.*—*There is hereby established a Federal*
9 *Coordinating Council for Comparative Clinical Effective-*
10 *ness Research (in this section referred to as the “Council”).*

11 (b) *PURPOSE; DUTIES.*—*The Council shall—*

12 (1) *assist the offices and agencies of the Federal*
13 *Government, including the Departments of Health*
14 *and Human Services, Veterans Affairs, and Defense,*
15 *and other Federal departments or agencies, to coordi-*
16 *nate the conduct or support of comparative clinical*
17 *effectiveness and related health services research; and*

18 (2) *advise the President and Congress on—*

19 (A) *strategies with respect to the infrastruc-*
20 *ture needs of comparative clinical effectiveness*
21 *research within the Federal Government;*

22 (B) *appropriate organizational expendi-*
23 *tures for comparative clinical effectiveness re-*
24 *search by relevant Federal departments and*
25 *agencies; and*

1 (C) opportunities to assure optimum coordi-
2 nation of comparative clinical effectiveness and
3 related health services research conducted or sup-
4 ported by relevant Federal departments and
5 agencies, with the goal of reducing duplicative ef-
6 forts and encouraging coordinated and com-
7 plementary use of resources.

8 (c) MEMBERSHIP.—

9 (1) NUMBER AND APPOINTMENT.—The Council
10 shall be composed of not more than 15 members, all
11 of whom are senior Federal officers or employees with
12 responsibility for health-related programs, appointed
13 by the President, acting through the Secretary of
14 Health and Human Services (in this section referred
15 to as the “Secretary”). Members shall first be ap-
16 pointed to the Council not later than 30 days after
17 the date of the enactment of this Act.

18 (2) MEMBERS.—

19 (A) IN GENERAL.—The members of the
20 Council shall include one senior officer or em-
21 ployee from each of the following agencies:

22 (i) The Agency for Healthcare Research
23 and Quality.

24 (ii) The Centers for Medicare and Med-
25 icaid Services.

1 (iii) *The National Institutes of Health.*

2 (iv) *The Office of the National Coordi-*
3 *nator for Health Information Technology.*

4 (v) *The Food and Drug Administra-*
5 *tion.*

6 (vi) *The Veterans Health Administra-*
7 *tion within the Department of Veterans Af-*
8 *airs.*

9 (vii) *The office within the Department*
10 *of Defense responsible for management of*
11 *the Department of Defense Military Health*
12 *Care System.*

13 (B) *QUALIFICATIONS.—At least half of the*
14 *members of the Council shall be physicians or*
15 *other experts with clinical expertise.*

16 (3) *CHAIRMAN; VICE CHAIRMAN.—The Secretary*
17 *shall serve as Chairman of the Council and shall des-*
18 *ignate a member to serve as Vice Chairman.*

19 (d) *REPORTS.—*

20 (1) *INITIAL REPORT.—Not later than June 30,*
21 *2009, the Council shall submit to the President and*
22 *the Congress a report containing information describ-*
23 *ing Federal activities on comparative clinical effec-*
24 *tiveness research and recommendations for additional*
25 *investments in such research conducted or supported*

1 *partment of Labor in this title; oversee and evaluate the*
2 *use of such funds; and enforce applicable laws and regula-*
3 *tions governing worker rights and protections associated*
4 *with the funds made available in this Act.*

5 *(b) Not later than 10 days prior to obligating any*
6 *funds proposed to be transferred under subsection (a), the*
7 *Secretary shall provide to the Committees on Appropria-*
8 *tions of the House of Representatives and the Senate an*
9 *operating plan describing the planned uses of each amount*
10 *proposed to be transferred.*

11 *(c) Funds transferred under this section may be avail-*
12 *able for obligation through September 30, 2010.*

13 *SEC. 804. ELIGIBLE EMPLOYEES IN THE REC-*
14 *REATIONAL MARINE INDUSTRY. Section 2(3)(F) of the*
15 *Longshore and Harbor Workers' Compensation Act (33*
16 *U.S.C. 902(3)(F)) is amended—*

17 *(1) by striking “, repair or dismantle”; and*

18 *(2) by striking the semicolon and inserting “, or*
19 *individuals employed to repair any recreational ves-*
20 *sel, or to dismantle any part of a recreational vessel*
21 *in connection with the repair of such vessel;”.*

1 *TITLE IX—LEGISLATIVE BRANCH*
2 *GOVERNMENT ACCOUNTABILITY OFFICE*
3 *SALARIES AND EXPENSES*

4 *For an additional amount for “Salaries and Ex-*
5 *penses” of the Government Accountability Office,*
6 *\$20,000,000, to remain available until September 30, 2010.*

7 *GENERAL PROVISIONS—THIS TITLE*

8 *SEC. 901. GOVERNMENT ACCOUNTABILITY OFFICE RE-*
9 *VIEWS AND REPORTS. (a) REVIEWS AND REPORTS.—*

10 *(1) IN GENERAL.—The Comptroller General*
11 *shall conduct bimonthly reviews and prepare reports*
12 *on such reviews on the use by selected State and local-*
13 *ities of funds made available in this Act. Such re-*
14 *ports, along with any audits conducted by the Comp-*
15 *troller General of such funds, shall be posted on the*
16 *Internet and linked to the website established under*
17 *this Act by the Recovery Accountability and Trans-*
18 *parency Board.*

19 *(2) REDACTIONS.—Any portion of a report or*
20 *audit under this subsection may be redacted when*
21 *made publicly available, if that portion would dis-*
22 *close information that is not subject to disclosure*
23 *under section 552 of title 5, United States Code (com-*
24 *monly known as the Freedom of Information Act).*

1 (b) *EXAMINATION OF RECORDS.*—*The Comptroller*
2 *General may examine any records related to obligations of*
3 *funds made available in this Act.*

4 *SEC. 902. ACCESS OF GOVERNMENT ACCOUNTABILITY*
5 *OFFICE. Each contract awarded using funds made available*
6 *in this Act shall provide that the Comptroller General and*
7 *his representatives are authorized—*

8 (1) *to examine any records of the contractor or*
9 *any of its subcontractors, or any State or local agency*
10 *administering such contract, that directly pertain to,*
11 *and involve transactions relating to, the contract or*
12 *subcontract; and*

13 (2) *to interview any current employee regarding*
14 *such transactions.*

15 *TITLE X—MILITARY CONSTRUCTION AND*
16 *VETERANS AFFAIRS, AND RELATED AGENCIES*
17 *DEPARTMENT OF DEFENSE*
18 *MILITARY CONSTRUCTION, ARMY*

19 *For an additional amount for “Military Construction,*
20 *Army”, \$637,875,000, to remain available until September*
21 *30, 2013, of which \$84,100,000 shall be for child develop-*
22 *ment centers; \$481,000,000 shall be for warrior transition*
23 *complexes; and \$42,400,000 shall be for health and dental*
24 *clinics (including acquisition, construction, installation,*
25 *and equipment): Provided, That notwithstanding any other*

1 *provision of law, such funds may be obligated and expended*
2 *to carry out planning and design and military construction*
3 *projects in the United States not otherwise authorized by*
4 *law: Provided further, That of the funds provided under this*
5 *heading, not to exceed \$30,375,000 shall be available for*
6 *study, planning, design, and architect and engineer serv-*
7 *ices: Provided further, That within 30 days of enactment*
8 *of this Act the Secretary of the Army shall submit to the*
9 *Committees on Appropriations of both Houses of Congress*
10 *an expenditure plan for funds provided under this heading*
11 *prior to obligation.*

12 *MILITARY CONSTRUCTION, NAVY AND MARINE CORPS*

13 *For an additional amount for “Military Construction,*
14 *Navy and Marine Corps”, \$990,092,000, to remain avail-*
15 *able until September 30, 2013, of which \$172,820,000 shall*
16 *be for child development centers; \$174,304,000 shall be for*
17 *barracks; \$125,000,000 shall be for health clinic replace-*
18 *ment, and \$494,362,000 shall be for energy conservation*
19 *and alternative energy projects (including acquisition, con-*
20 *struction, installation, and equipment): Provided, That not-*
21 *withstanding any other provision of law, such funds may*
22 *be obligated and expended to carry out planning and design*
23 *and military construction projects in the United States not*
24 *otherwise authorized by law: Provided further, That of the*
25 *funds provided under this heading, not to exceed*

1 \$23,606,000 shall be available for study, planning, design,
2 and architect and engineer services: Provided further, That
3 within 30 days of enactment of this Act the Secretary of
4 the Navy shall submit to the Committees on Appropriations
5 of both Houses of Congress an expenditure plan for funds
6 provided under this heading prior to obligation.

7 *MILITARY CONSTRUCTION, AIR FORCE*

8 *For an additional amount for “Military Construction,*
9 *Air Force”, \$871,332,000, to remain available until Sep-*
10 *tember 30, 2013, of which \$80,100,000 shall be for child*
11 *development centers; \$612,246,000 shall be for dormitories;*
12 *and \$138,100,000 shall be for health clinics (including ac-*
13 *quisition, construction, installation, and equipment): Pro-*
14 *vided, That notwithstanding any other provision of law,*
15 *such funds may be obligated and expended to carry out*
16 *planning and design and military construction projects in*
17 *the United States not otherwise authorized by law: Provided*
18 *further, That of the funds provided under this heading, not*
19 *to exceed \$40,886,000 shall be available for study, planning,*
20 *design, and architect and engineer services: Provided fur-*
21 *ther, That within 30 days of enactment of this Act the Sec-*
22 *retary of the Air Force shall submit to the Committees on*
23 *Appropriations of both Houses of Congress an expenditure*
24 *plan for funds provided under this heading prior to obliga-*
25 *tion.*

1 *MILITARY CONSTRUCTION, DEFENSE-WIDE*

2 *For an additional amount for “Military Construction,*
3 *Defense-Wide”, \$118,560,000 for the Energy Conservation*
4 *Investment Program, to remain available until September*
5 *30, 2010: Provided, That notwithstanding any other provi-*
6 *sion of law, such funds may be obligated and expended to*
7 *carry out planning and design and military construction*
8 *projects in the United States not otherwise authorized by*
9 *law: Provided further, That within 30 days of enactment*
10 *of this Act the Secretary of Defense shall submit to the Com-*
11 *mittees on Appropriations of both Houses of Congress an*
12 *expenditure plan for funds provided under this heading*
13 *prior to obligation.*

14 *MILITARY CONSTRUCTION, ARMY NATIONAL GUARD*

15 *For an additional amount for “Military Construction,*
16 *Army National Guard”, \$150,000,000 for readiness centers*
17 *(including construction, acquisition, expansion, rehabilita-*
18 *tion, and conversion), to remain available until September*
19 *30, 2013: Provided, That notwithstanding any other provi-*
20 *sion of law, such funds may be obligated and expended to*
21 *carry out planning and design and military construction*
22 *projects in the United States not otherwise authorized by*
23 *law: Provided further, That within 30 days of enactment*
24 *of this Act the Director of the Army National Guard shall*
25 *submit to the Committees on Appropriations of both Houses*

1 *of Congress an expenditure plan for funds provided under*
2 *this heading prior to obligation.*

3 *MILITARY CONSTRUCTION, AIR NATIONAL GUARD*

4 *For an additional amount for “Military Construction,*
5 *Air National Guard”, \$110,000,000, to remain available*
6 *until September 30, 2013: Provided, That notwithstanding*
7 *any other provision of law, such funds may be obligated*
8 *and expended to carry out planning and design and mili-*
9 *tary construction projects in the United States not other-*
10 *wise authorized by law: Provided further, That within 30*
11 *days of enactment of this Act the Director of the Air Na-*
12 *tional Guard shall submit to the Committees on Appropria-*
13 *tions of both Houses of Congress an expenditure plan for*
14 *funds provided under this heading prior to obligation.*

15 *FAMILY HOUSING CONSTRUCTION, ARMY*

16 *For an additional amount for “Family Housing Con-*
17 *struction, Army”, \$34,570,000, to remain available until*
18 *September 30, 2013: Provided, That notwithstanding any*
19 *other provision of law, such funds may be obligated and*
20 *expended to carry out planning and design and military*
21 *construction projects in the United States not otherwise au-*
22 *thorized by law: Provided further, That within 30 days of*
23 *enactment of this Act the Secretary of the Army shall sub-*
24 *mit to the Committees on Appropriations of both Houses*

1 *of Congress an expenditure plan for funds provided under*
2 *this heading prior to obligation.*

3 *FAMILY HOUSING OPERATION AND MAINTENANCE, ARMY*

4 *For an additional amount for “Family Housing Oper-*
5 *ation and Maintenance, Army”, \$3,932,000: Provided, That*
6 *notwithstanding any other provision of law, such funds*
7 *may be obligated and expended for operation and mainte-*
8 *nance and minor construction projects in the United States*
9 *not otherwise authorized by law.*

10 *FAMILY HOUSING CONSTRUCTION, AIR FORCE*

11 *For an additional amount for “Family Housing Con-*
12 *struction, Air Force”, \$80,100,000, to remain available*
13 *until September 30, 2013: Provided, That notwithstanding*
14 *any other provision of law, such funds may be obligated*
15 *and expended to carry out planning and design and mili-*
16 *tary construction projects in the United States not other-*
17 *wise authorized by law: Provided further, That within 30*
18 *days of enactment of this Act the Secretary of the Air Force*
19 *shall submit to the Committees on Appropriations of both*
20 *Houses of Congress an expenditure plan for funds provided*
21 *under this heading prior to obligation.*

22 *FAMILY HOUSING OPERATION AND MAINTENANCE, AIR*
23 *FORCE*

24 *For an additional amount for “Family Housing Oper-*
25 *ation and Maintenance, Air Force”, \$16,461,000: Provided,*

1 *That notwithstanding any other provision of law, such*
 2 *funds may be obligated and expended for operation and*
 3 *maintenance and minor construction projects in the United*
 4 *States not otherwise authorized by law.*

5 *HOMEOWNERS ASSISTANCE FUND*

6 *For an additional amount for “Homeowners Assist-*
 7 *ance Fund”, established by section 1013 of the Demonstra-*
 8 *tion Cities and Metropolitan Development Act of 1966, as*
 9 *amended (42 U.S.C. 3374), \$410,973,000, to remain avail-*
 10 *able until expended.*

11 *ADMINISTRATIVE PROVISION*

12 *SEC. 1001. (a) TEMPORARY EXPANSION OF HOME-*
 13 *OWNERS ASSISTANCE PLAN TO RESPOND TO MORTGAGE*
 14 *FORECLOSURE AND CREDIT CRISIS. Section 1013 of the*
 15 *Demonstration Cities and Metropolitan Development Act of*
 16 *1966 (42 U.S.C. 3374) is amended—*

17 *(1) in subsection (a)—*

18 *(A) by redesignating paragraphs (1), (2),*
 19 *and (3) as clauses (i), (ii), and (iii), respec-*
 20 *tively, and indenting such subparagraphs, as so*
 21 *redesignated, 6 ems from the left margin;*

22 *(B) by striking “Notwithstanding any other*
 23 *provision of law” and inserting the following:*

24 *“(1) ACQUISITION OF PROPERTY AT OR NEAR*
 25 *MILITARY INSTALLATIONS THAT HAVE BEEN ORDERED*

1 *TO BE CLOSED.—Notwithstanding any other provi-*
2 *sion of law”;*

3 *(C) by striking “if he determines” and in-*
4 *serting “if—*

5 *“(A) the Secretary determines—”;*

6 *(D) in clause (iii), as redesignated by sub-*
7 *paragraph (A), by striking the period at the end*
8 *and inserting “; or”; and*

9 *(E) by adding at the end the following:*

10 *“(B) the Secretary determines—*

11 *“(i) that the conditions in clauses (i)*
12 *and (ii) of subparagraph (A) have been met;*

13 *“(ii) that the closing or realignment of*
14 *the base or installation resulted from a re-*
15 *alignment or closure carried out under the*
16 *2005 round of defense base closure and re-*
17 *alignment under the Defense Base Closure*
18 *and Realignment Act of 1990 (part XXIX*
19 *of Public Law 101–510; 10 U.S.C. 2687*
20 *note);*

21 *“(iii) that the property was purchased*
22 *by the owner before July 1, 2006;*

23 *“(iv) that the property was sold by the*
24 *owner between July 1, 2006, and September*

1 30, 2012, or an earlier end date designated
2 by the Secretary;

3 “(v) that the property is the primary
4 residence of the owner; and

5 “(vi) that the owner has not previously
6 received benefit payments authorized under
7 this subsection.

8 “(2) *HOMEOWNER ASSISTANCE FOR WOUNDED*
9 *MEMBERS OF THE ARMED FORCES, DEPARTMENT OF*
10 *DEFENSE AND UNITED STATES COAST GUARD CIVILIAN*
11 *EMPLOYEES, AND THEIR SPOUSES.—Notwithstanding*
12 *any other provision of law, the Secretary of Defense*
13 *is authorized to acquire title to, hold, manage, and*
14 *dispose of, or, in lieu thereof, to reimburse for certain*
15 *losses upon private sale of, or foreclosure against, any*
16 *property improved with a one- or two-family dwelling*
17 *which was at the time of the relevant wound, injury,*
18 *or illness, the primary residence of—*

19 “(A) *any member of the Armed Forces in*
20 *medical transition who—*

21 “(i) *incurred a wound, injury, or ill-*
22 *ness in the line of duty during a deploy-*
23 *ment in support of the Armed Forces;*

24 “(ii) *is disabled to a degree of 30 per-*
25 *cent or more as a result of such wound, in-*

1 *jury, or illness, as determined by the Sec-*
2 *retary of Defense or the Secretary of Vet-*
3 *erans Affairs; and*

4 *“(iii) is reassigned in furtherance of*
5 *medical treatment or rehabilitation, or due*
6 *to medical retirement in connection with*
7 *such disability;*

8 *“(B) any civilian employee of the Depart-*
9 *ment of Defense or the United States Coast*
10 *Guard who—*

11 *“(i) was wounded, injured, or became*
12 *ill in the line of duty during a forward de-*
13 *ployment in support of the Armed Forces;*
14 *and*

15 *“(ii) is reassigned in furtherance of*
16 *medical treatment, rehabilitation, or due to*
17 *medical retirement resulting from the sus-*
18 *tained disability; or*

19 *“(C) the spouse of a member of the Armed*
20 *Forces or a civilian employee of the Department*
21 *of Defense or the United States Coast Guard if—*

22 *“(i) the member or employee was killed*
23 *in the line of duty during a deployment in*
24 *support of the Armed Forces or died from a*

1 wound, injury, or illness incurred in the
2 line of duty during such a deployment; and

3 “(ii) the spouse relocates from such res-
4 idence within 2 years after the death of such
5 member or employee.

6 “(3) *TEMPORARY HOMEOWNER ASSISTANCE FOR*
7 *MEMBERS OF THE ARMED FORCES PERMANENTLY RE-*
8 *ASSIGNED DURING SPECIFIED MORTGAGE CRISIS.—*

9 *Notwithstanding any other provision of law, the Sec-*
10 *retary of Defense is authorized to acquire title to,*
11 *hold, manage, and dispose of, or, in lieu thereof, to*
12 *reimburse for certain losses upon private sale of, or*
13 *foreclosure against, any property improved with a*
14 *one- or two-family dwelling situated at or near a*
15 *military base or installation, if the Secretary deter-*
16 *mines—*

17 “(A) *that the owner is a member of the*
18 *Armed Forces serving on permanent assignment;*

19 “(B) *that the owner is permanently reas-*
20 *signed by order of the United States Government*
21 *to a duty station or home port outside a 50-mile*
22 *radius of the base or installation;*

23 “(C) *that the reassignment was ordered be-*
24 *tween February 1, 2006, and September 30,*

1 2012, or an earlier end date designated by the
2 Secretary;

3 “(D) that the property was purchased by
4 the owner before July 1, 2006;

5 “(E) that the property was sold by the
6 owner between July 1, 2006, and September 30,
7 2012, or an earlier end date designated by the
8 Secretary;

9 “(F) that the property is the primary resi-
10 dence of the owner; and

11 “(G) that the owner has not previously re-
12 ceived benefit payments authorized under this
13 subsection.”;

14 (2) in subsection (b), by striking “this section”
15 each place it appears and inserting “subsection
16 (a)(1)”;

17 (3) in subsection (c)—

18 (A) by striking “Such persons” and insert-
19 ing the following:

20 “(1) HOMEOWNER ASSISTANCE RELATED TO
21 CLOSED MILITARY INSTALLATIONS.—

22 “(A) IN GENERAL.—Such persons”;

23 (B) by striking “set forth above shall elect
24 either (1) to receive” and inserting the following:

25 “set forth in subsection (a)(1) shall elect either—

1 “(i) to receive”;

2 (C) by striking “difference between (A) 95
3 per centum” and all that follows through “(B)
4 the fair market value” and inserting the fol-
5 lowing: “difference between—

6 “(I) 95 per centum of the fair
7 market value of their property (as such
8 value is determined by the Secretary of
9 Defense) prior to public announcement
10 of intention to close all or part of the
11 military base or installation; and

12 “(II) the fair market value”;

13 (D) by striking “time of the sale, or (2) to
14 receive” and inserting the following: “time of the
15 sale; or

16 “(ii) to receive”;

17 (E) by striking “outstanding mortgages.
18 The Secretary may also pay a person who elects
19 to receive a cash payment under clause (1) of the
20 preceding sentence an amount” and inserting
21 “outstanding mortgages.

22 “(B) REIMBURSEMENT OF EXPENSES.—The
23 Secretary may also pay a person who elects to
24 receive a cash payment under subparagraph (A)
25 an amount”; and

1 (F) by striking “best interest of the Federal
2 Government. Cash payment” and inserting the
3 following: “best interest of the United States.

4 “(2) *HOMEOWNER ASSISTANCE FOR WOUNDED*
5 *INDIVIDUALS AND THEIR SPOUSES.—*

6 “(A) *IN GENERAL.—Persons eligible under*
7 *the criteria set forth in subsection (a)(2) may*
8 *elect either—*

9 “(i) *to receive a cash payment as com-*
10 *pen- sation for losses which may be or have*
11 *been sustained in a private sale, in an*
12 *amount not to exceed the difference be-*
13 *tween—*

14 “(I) *95 per centum of prior fair*
15 *market value of their property (as such*
16 *value is determined by the Secretary of*
17 *Defense); and*

18 “(II) *the fair market value of such*
19 *property (as such value is so deter-*
20 *mined) at the time of the wound, in-*
21 *jury, or illness qualifying the indi-*
22 *vidual for benefits under subsection*
23 *(a)(2); or*

24 “(ii) *to receive, as purchase price for*
25 *their property an amount not to exceed 90*

1 *per centum of prior fair market value as*
2 *such value is determined by the Secretary of*
3 *Defense, or the amount of the outstanding*
4 *mortgages.*

5 “(B) *DETERMINATION OF BENEFITS.*—*The*
6 *Secretary may also pay a person who elects to*
7 *receive a cash payment under subparagraph (A)*
8 *an amount that the Secretary determines appro-*
9 *priate to reimburse the person for the costs in-*
10 *curring by the person in the sale of the property*
11 *if the Secretary determines that such payment*
12 *will benefit the person and is in the best interest*
13 *of the United States.*

14 “(3) *HOMEOWNER ASSISTANCE FOR PERMA-*
15 *NENTLY REASSIGNED INDIVIDUALS.*—

16 “(A) *IN GENERAL.*—*Persons eligible under*
17 *the criteria set forth in subsection (a)(3) may*
18 *elect either—*

19 “(i) *to receive a cash payment as com-*
20 *ensation for losses which may be or have*
21 *been sustained in a private sale, in an*
22 *amount not to exceed the difference be-*
23 *tween—*

24 “(I) *95 per centum of prior fair*
25 *market value of their property (as such*

1 *value is determined by the Secretary of*
2 *Defense); and*

3 “(II) *the fair market value of such*
4 *property (as such value is so deter-*
5 *mined) at the time the person received*
6 *change of permanent station orders; or*

7 “(ii) *to receive, as purchase price for*
8 *their property an amount not to exceed 90*
9 *per centum of prior fair market value as*
10 *such value is determined by the Secretary of*
11 *Defense, or the amount of the outstanding*
12 *mortgages.*

13 “(B) *DETERMINATION OF BENEFITS.—The*
14 *Secretary may also pay a person who elects to*
15 *receive a cash payment under subparagraph (A)*
16 *an amount that the Secretary determines appro-*
17 *priate to reimburse the person for the costs in-*
18 *curring by the person in the sale of the property*
19 *if the Secretary determines that such payment*
20 *will benefit the person and is in the best interest*
21 *of the United States.*

22 “(4) *COMPENSATION AND LIMITATIONS RELATED*
23 *TO FORECLOSURES AND ENCUMBRANCES.—Cash pay-*
24 *ment”;*

25 (4) *by striking subsection (g);*

1 (5) in subsection (l), by striking “(a)(2)” and in-
2 serting “(a)(1)(A)(ii)”;

3 (6) in subsection (m), by striking “this section”
4 and inserting “subsection (a)(1)”;

5 (7) in subsection (n)—

6 (A) in paragraph (1), by striking “this sec-
7 tion” and inserting “subsection (a)(1)”; and

8 (B) in paragraph (2), by striking “this sec-
9 tion” and inserting “subsection (a)(1)”;

10 (8) in subsection (o)—

11 (A) in paragraph (1), by striking “this sec-
12 tion” and inserting “subsection (a)(1)”;

13 (B) in paragraph (2), by striking “this sec-
14 tion” and inserting “subsection (a)(1)”; and

15 (C) by striking paragraph (4); and

16 (9) by adding at the end the following new sub-
17 section:

18 “(p) *DEFINITIONS.*—*In this section:*

19 “(1) the term ‘Armed Forces’ has the meaning
20 given the term ‘armed forces’ in section 101(a) of title
21 10, United States Code;

22 “(2) the term ‘civilian employee’ has the mean-
23 ing given the term ‘employee’ in section 2105(a) of
24 title 5, United States Code;

1 “(3) the term ‘medical transition’, in the case of
2 a member of the Armed Forces, means a member
3 who—

4 “(A) is in Medical Holdover status;

5 “(B) is in Active Duty Medical Extension
6 status;

7 “(C) is in Medical Hold status;

8 “(D) is in a status pending an evaluation
9 by a medical evaluation board;

10 “(E) has a complex medical need requiring
11 six or more months of medical treatment; or

12 “(F) is assigned or attached to an Army
13 Warrior Transition Unit, an Air Force Patient
14 Squadron, a Navy Patient Multidisciplinary
15 Care Team, or a Marine Patient Affairs Team/
16 Wounded Warrior Regiment; and

17 “(4) the term ‘nonappropriated fund instrumen-
18 tality employee’ means a civilian employee who—

19 “(A) is a citizen of the United States; and

20 “(B) is paid from nonappropriated funds of
21 Army and Air Force Exchange Service, Navy
22 Resale and Services Support Office, Marine
23 Corps exchanges, or any other instrumentality of
24 the United States under the jurisdiction of the
25 Armed Forces which is conducted for the comfort,

1 *pleasure, contentment, or physical or mental im-*
2 *provement of members of the Armed Forces.”.*

3 **(b) CLERICAL AMENDMENT.**—*Such section is further*
4 *amended in the section heading by inserting “and certain*
5 *property owned by members of the armed forces, department*
6 *of defense and united states coast guard civilian employees,*
7 *and surviving spouses” after “ordered to be closed”.*

8 **(c) AUTHORITY TO USE APPROPRIATED FUNDS.**—*Not-*
9 *withstanding subsection (i) of such section, amounts appro-*
10 *priated or otherwise made available by this title under the*
11 *heading “Homeowners Assistance Fund” may be used for*
12 *the Homeowners Assistance Fund established under such*
13 *section.*

14 **DEPARTMENT OF VETERANS AFFAIRS**

15 **VETERANS HEALTH ADMINISTRATION**

16 **MEDICAL SUPPORT AND COMPLIANCE**

17 *For an additional amount for “Medical Support and*
18 *Compliance”, \$5,000,000, to remain available until Sep-*
19 *tember 30, 2010, to support contract administration and*
20 *energy initiative execution at the Veterans Health Adminis-*
21 *tration.*

22 **MEDICAL FACILITIES**

23 *For an additional amount for “Medical Facilities”,*
24 *\$1,370,459,000, to remain available until September 30,*
25 *2010, of which \$1,047,313,000 shall be for facility condition*

1 *assessment deficiencies and non-recurring maintenance at*
2 *existing medical facilities; and \$323,146,000 shall be for en-*
3 *ergy efficiency initiatives.*

4 *NATIONAL CEMETERY ADMINISTRATION*

5 *For an additional amount for “National Cemetery Ad-*
6 *ministration”, \$64,961,000, to remain available until Sep-*
7 *tember 30, 2010, of which \$59,476,000 shall be for capital*
8 *infrastructure and memorial and monument repairs; and*
9 *\$5,485,000 shall be for energy efficiency initiatives.*

10 *DEPARTMENTAL ADMINISTRATION*

11 *GENERAL OPERATING EXPENSES*

12 *For an additional amount for “General Operating Ex-*
13 *penses”, \$1,125,000, to remain available until September*
14 *30, 2010, for additional Full Time Equivalent salary and*
15 *expenses for major construction project administration and*
16 *execution and energy initiative execution.*

17 *INFORMATION TECHNOLOGY SYSTEMS*

18 *For an additional amount for “Information Tech-*
19 *nology Systems”, \$195,000,000, to remain available until*
20 *September 30, 2010, of which \$145,000,000 shall be for the*
21 *Veterans Benefits Administration’s development of*
22 *paperless claims processing; and \$50,000,000 shall be for*
23 *the development of systems required to implement chapter*
24 *33 of title 38, United States Code.*

1 *OFFICE OF INSPECTOR GENERAL*

2 *For an additional amount for “Office of Inspector*
3 *General”, \$4,400,000, to remain available until September*
4 *30, 2011, for oversight and audit of programs, grants and*
5 *projects funded under this title.*

6 *CONSTRUCTION, MAJOR PROJECTS*

7 *For an additional amount for “Construction, Major*
8 *Projects”, \$1,105,333,000, to remain available until Sep-*
9 *tember 30, 2013, which shall be for acceleration and con-*
10 *struction of ongoing and planned construction, including*
11 *physical security construction, of major medical facilities*
12 *and National Cemeteries consistent with the Department of*
13 *Veterans Affairs’ Five Year Capital Plan: Provided, That*
14 *notwithstanding any other provision of law, such funds*
15 *may be obligated and expended to carry out planning and*
16 *design and major medical facility construction not other-*
17 *wise authorized by law: Provided further, That within 30*
18 *days of enactment of this Act the Secretary of Veterans Af-*
19 *fairs shall submit to the Committees on Appropriations of*
20 *both Houses of Congress an expenditure plan for funds pro-*
21 *vided under this heading prior to obligation.*

22 *CONSTRUCTION, MINOR PROJECTS*

23 *For an additional amount for “Construction, Minor*
24 *Projects”, \$939,836,000, to remain available until Sep-*
25 *tember 30, 2010, of which \$860,742,000 shall be for Vet-*

1 *erans Health Administration minor construction;*
2 *\$20,300,000 shall be for Veterans Benefits Administration*
3 *minor construction, including \$300,000 for energy effi-*
4 *ciency initiatives; and \$29,012,000 shall be for National*
5 *Cemetery Administration minor construction.*

6 *GRANTS FOR CONSTRUCTION OF STATE EXTENDED CARE*
7 *FACILITIES*

8 *For an additional amount for “Grants for Construc-*
9 *tion of State Extended Care Facilities”, \$257,986,000, to*
10 *remain available until September 30, 2010, for grants to*
11 *assist States to acquire or construct State nursing home and*
12 *domiciliary facilities and to remodel, modify, or alter exist-*
13 *ing hospital, nursing home, and domiciliary facilities in*
14 *State homes, for furnishing care to veterans as authorized*
15 *by sections 8131 through 8137 of title 38, United States*
16 *Code.*

17 *ADMINISTRATIVE PROVISION*

18 *SEC. 1002. PAYMENTS TO ELIGIBLE PERSONS WHO*
19 *SERVED IN THE UNITED STATES ARMED FORCES IN THE*
20 *FAR EAST DURING WORLD WAR II. (a) FINDINGS.—Con-*
21 *gress makes the following findings:*

22 *(1) The Philippine islands became a United*
23 *States possession in 1898 when they were ceded from*
24 *Spain following the Spanish-American War.*

1 (2) *During World War II, Filipinos served in a*
2 *variety of units, some of which came under the direct*
3 *control of the United States Armed Forces.*

4 (3) *The regular Philippine Scouts, the new Phil-*
5 *ippine Scouts, the Guerrilla Services, and more than*
6 *100,000 members of the Philippine Commonwealth*
7 *Army were called into the service of the United States*
8 *Armed Forces of the Far East on July 26, 1941, by*
9 *an executive order of President Franklin D. Roosevelt.*

10 (4) *Even after hostilities had ceased, wartime*
11 *service of the new Philippine Scouts continued as a*
12 *matter of law until the end of 1946, and the force*
13 *gradually disbanded and was disestablished in 1950.*

14 (5) *Filipino veterans who were granted benefits*
15 *prior to the enactment of the so-called Rescissions*
16 *Acts of 1946 (Public Laws 79–301 and 79–391) cur-*
17 *rently receive full benefits under laws administered by*
18 *the Secretary of Veterans Affairs, but under section*
19 *107 of title 38, United States Code, the service of cer-*
20 *tain other Filipino veterans is deemed not to be active*
21 *service for purposes of such laws.*

22 (6) *These other Filipino veterans only receive*
23 *certain benefits under title 38, United States Code,*
24 *and, depending on where they legally reside, are paid*
25 *such benefit amounts at reduced rates.*

1 (7) *The benefits such veterans receive include*
2 *service-connected compensation benefits paid under*
3 *chapter 11 of title 38, United States Code, dependency*
4 *indemnity compensation survivor benefits paid under*
5 *chapter 13 of title 38, United States Code, and burial*
6 *benefits under chapters 23 and 24 of title 38, United*
7 *States Code, and such benefits are paid to bene-*
8 *ficiaries at the rate of \$0.50 per dollar authorized,*
9 *unless they lawfully reside in the United States.*

10 (8) *Dependents' educational assistance under*
11 *chapter 35 of title 38, United States Code, is also*
12 *payable for the dependents of such veterans at the rate*
13 *of \$0.50 per dollar authorized, regardless of the vet-*
14 *erans' residency.*

15 **(b) COMPENSATION FUND.—**

16 (1) *IN GENERAL.—There is in the general fund*
17 *of the Treasury a fund to be known as the “Filipino*
18 *Veterans Equity Compensation Fund” (in this section*
19 *referred to as the “compensation fund”).*

20 (2) *AVAILABILITY OF FUNDS.—Subject to the*
21 *availability of appropriations for such purpose,*
22 *amounts in the fund shall be available to the Sec-*
23 *retary of Veterans Affairs without fiscal year limita-*
24 *tion to make payments to eligible persons in accord-*
25 *ance with this section.*

1 (c) *PAYMENTS.*—

2 (1) *IN GENERAL.*—*The Secretary may make a*
3 *payment from the compensation fund to an eligible*
4 *person who, during the one-year period beginning on*
5 *the date of the enactment of this Act, submits to the*
6 *Secretary a claim for benefits under this section. The*
7 *application for the claim shall contain such informa-*
8 *tion and evidence as the Secretary may require.*

9 (2) *PAYMENT TO SURVIVING SPOUSE.*—*If an eli-*
10 *gible person who has filed a claim for benefits under*
11 *this section dies before payment is made under this*
12 *section, the payment under this section shall be made*
13 *instead to the surviving spouse, if any, of the eligible*
14 *person.*

15 (d) *ELIGIBLE PERSONS.*—*An eligible person is any*
16 *person who—*

17 (1) *served—*

18 (A) *before July 1, 1946, in the organized*
19 *military forces of the Government of the Com-*
20 *monwealth of the Philippines, while such forces*
21 *were in the service of the Armed Forces of the*
22 *United States pursuant to the military order of*
23 *the President dated July 26, 1941, including*
24 *among such military forces organized guerrilla*
25 *forces under commanders appointed, designated,*

1 *or subsequently recognized by the Commander in*
2 *Chief, Southwest Pacific Area, or other com-*
3 *petent authority in the Army of the United*
4 *States; or*

5 *(B) in the Philippine Scouts under section*
6 *14 of the Armed Forces Voluntary Recruitment*
7 *Act of 1945 (59 Stat. 538); and*

8 *(2) was discharged or released from service de-*
9 *scribed in paragraph (1) under conditions other than*
10 *dishonorable.*

11 *(e) PAYMENT AMOUNTS.—Each payment under this*
12 *section shall be—*

13 *(1) in the case of an eligible person who is not*
14 *a citizen of the United States, in the amount of*
15 *\$9,000; and*

16 *(2) in the case of an eligible person who is a cit-*
17 *izen of the United States, in the amount of \$15,000.*

18 *(f) LIMITATION.—The Secretary may not make more*
19 *than one payment under this section for each eligible person*
20 *described in subsection (d).*

21 *(g) CLARIFICATION OF TREATMENT OF PAYMENTS*
22 *UNDER CERTAIN LAWS.—Amounts paid to a person under*
23 *this section—*

1 (1) *shall be treated for purposes of the internal*
2 *revenue laws of the United States as damages for*
3 *human suffering; and*

4 (2) *shall not be included in income or resources*
5 *for purposes of determining—*

6 (A) *eligibility of an individual to receive*
7 *benefits described in section 3803(c)(2)(C) of title*
8 *31, United States Code, or the amount of such*
9 *benefits;*

10 (B) *eligibility of an individual to receive*
11 *benefits under title VIII of the Social Security*
12 *Act, or the amount of such benefits; or*

13 (C) *eligibility of an individual for, or the*
14 *amount of benefits under, any other Federal or*
15 *federally assisted program.*

16 (h) *RELEASE.—*

17 (1) *IN GENERAL.—Except as provided in para-*
18 *graph (2), the acceptance by an eligible person or sur-*
19 *viving spouse, as applicable, of a payment under this*
20 *section shall be final, and shall constitute a complete*
21 *release of any claim against the United States by rea-*
22 *son of any service described in subsection (d).*

23 (2) *PAYMENT OF PRIOR ELIGIBILITY STATUS.—*
24 *Nothing in this section shall prohibit a person from*
25 *receiving any benefit (including health care, survivor,*

1 *or burial benefits) which the person would have been*
2 *eligible to receive based on laws in effect as of the day*
3 *before the date of the enactment of this Act.*

4 *(i) RECOGNITION OF SERVICE.—The service of a per-*
5 *son as described in subsection (d) is hereby recognized as*
6 *active military service in the Armed Forces for purposes*
7 *of, and to the extent provided in, this section.*

8 *(j) ADMINISTRATION.—*

9 *(1) The Secretary shall promptly issue applica-*
10 *tion forms and instructions to ensure the prompt and*
11 *efficient administration of the provisions of this sec-*
12 *tion.*

13 *(2) The Secretary shall administer the provisions*
14 *of this section in a manner consistent with applicable*
15 *provisions of title 38, United States Code, and other*
16 *provisions of law, and shall apply the definitions in*
17 *section 101 of such title in the administration of such*
18 *provisions, except to the extent otherwise provided in*
19 *this section.*

20 *(k) REPORTS.—The Secretary shall include, in docu-*
21 *ments submitted to Congress by the Secretary in support*
22 *of the President's budget for each fiscal year, detailed infor-*
23 *mation on the operation of the compensation fund, includ-*
24 *ing the number of applicants, the number of eligible persons*
25 *receiving benefits, the amounts paid out of the compensa-*

1 *tion fund, and the administration of the compensation fund*
2 *for the most recent fiscal year for which such data is avail-*
3 *able.*

4 *(l) AUTHORIZATION OF APPROPRIATION.—There is au-*
5 *thorized to be appropriated to the compensation fund*
6 *\$198,000,000, to remain available until expended, to make*
7 *payments under this section.*

8 *RELATED AGENCY*

9 *DEPARTMENT OF DEFENSE—CIVIL*

10 *CEMETERIAL EXPENSES, ARMY*

11 *SALARY AND EXPENSES*

12 *For an additional amount for “Cemeterial Expenses,*
13 *Army”, \$60,300,000, to remain available until September*
14 *30, 2010, for land development, columbarium construction,*
15 *and relocation of utilities at Arlington National Cemetery.*

16 *TITLE XI—STATE, FOREIGN OPERATIONS, AND*

17 *RELATED PROGRAMS*

18 *DEPARTMENT OF STATE*

19 *ADMINISTRATION OF FOREIGN AFFAIRS*

20 *DIPLOMATIC AND CONSULAR PROGRAMS*

21 *For an additional amount for “Diplomatic and Con-*
22 *sular Programs” for urgent domestic facilities require-*
23 *ments, \$90,000,000, to remain available until September*
24 *30, 2010, of which up to \$20,000,000 shall be available for*
25 *passport facilities and systems, and up to \$65,000,000 shall*

1 *be available for a consolidated security training facility in*
2 *the United States and should be obligated in accordance*
3 *with United States General Services Administration site se-*
4 *lection procedures: Provided, That the Secretary of State*
5 *shall submit to the Committees on Appropriations within*
6 *90 days of enactment of this Act a detailed spending plan*
7 *for funds appropriated under this heading: Provided fur-*
8 *ther, That with respect to the funds made available for pass-*
9 *port facilities and systems, such plan shall be developed in*
10 *consultation with the Department of Homeland Security*
11 *and the General Services Administration and shall coordi-*
12 *nate and co-locate, to the extent feasible, the construction*
13 *of passport agencies with other Federal facilities.*

14 *CAPITAL INVESTMENT FUND*

15 *For an additional amount for “Capital Investment*
16 *Fund”, \$228,000,000, to remain available until September*
17 *30, 2010, which shall be available for information tech-*
18 *nology security and upgrades to support mission-critical*
19 *operations: Provided, That the Secretary of State and the*
20 *Administrator of the United States Agency for Inter-*
21 *national Development shall coordinate information tech-*
22 *nology systems, where appropriate, to increase efficiencies*
23 *and eliminate redundancies, to include co-location of*
24 *backup information management facilities: Provided fur-*
25 *ther, That the Secretary of State shall submit to the Com-*

1 *mittees on Appropriations within 90 days of enactment of*
2 *this Act a detailed spending plan for funds appropriated*
3 *under this heading.*

4 *OFFICE OF INSPECTOR GENERAL*

5 *For an additional amount for “Office of Inspector*
6 *General” for oversight requirements, \$1,500,000, to remain*
7 *available until September 30, 2011.*

8 *INTERNATIONAL COMMISSIONS*

9 *INTERNATIONAL BOUNDARY AND WATER COMMISSION,*

10 *UNITED STATES AND MEXICO*

11 *CONSTRUCTION*

12 *(INCLUDING TRANSFER OF FUNDS)*

13 *For an additional amount for “Construction” for the*
14 *water quantity program to meet immediate repair and re-*
15 *habilitation requirements, \$224,000,000, to remain avail-*
16 *able until September 30, 2010: Provided, That up to*
17 *\$2,000,000 may be transferred to, and merged with, funds*
18 *available under the heading “International Boundary and*
19 *Water Commission, United States and Mexico—Salaries*
20 *and Expenses”:* *Provided, That the Secretary of State shall*
21 *submit to the Committees on Appropriations within 90*
22 *days of enactment of this Act a detailed spending plan for*
23 *funds appropriated under this heading.*

1 *UNITED STATES AGENCY FOR INTERNATIONAL*
2 *DEVELOPMENT*

3 *FUNDS APPROPRIATED TO THE PRESIDENT*

4 *CAPITAL INVESTMENT FUND*

5 *For an additional amount for “Capital Investment*
6 *Fund”, \$58,000,000, to remain available until September*
7 *30, 2010, which shall be available for information tech-*
8 *nology modernization programs and implementation of the*
9 *Global Acquisition System: Provided, That the Adminis-*
10 *trator of the United States Agency for International Devel-*
11 *opment shall submit to the Committees on Appropriations*
12 *within 90 days of enactment of this Act a detailed spending*
13 *plan for funds appropriated under this heading.*

14 *OPERATING EXPENSES OF THE UNITED STATES AGENCY*
15 *FOR INTERNATIONAL DEVELOPMENT OFFICE OF IN-*
16 *SPECTOR GENERAL*

17 *For an additional amount for “Operating Expenses of*
18 *the United States Agency for International Development*
19 *Office of Inspector General” for oversight requirements,*
20 *\$500,000, to remain available until September 30, 2011.*

1 *TITLE XII—TRANSPORTATION AND HOUSING AND*
2 *URBAN DEVELOPMENT, AND RELATED AGENCIES*
3 *DEPARTMENT OF TRANSPORTATION*

4 *OFFICE OF THE SECRETARY*

5 *SUPPLEMENTAL DISCRETIONARY GRANTS FOR A NATIONAL*
6 *SURFACE TRANSPORTATION SYSTEM*

7 *For an additional amount for capital investments in*
8 *surface transportation infrastructure, \$5,500,000,000, to re-*
9 *main available until September 30, 2011: Provided, That*
10 *the Secretary of Transportation shall distribute funds pro-*
11 *vided under this heading as discretionary grants to be*
12 *awarded to State and local governments on a competitive*
13 *basis for projects that will have a significant impact on*
14 *the Nation, a metropolitan area, or a region: Provided fur-*
15 *ther, That projects eligible for funding provided under this*
16 *heading shall include, but not be limited to, highway or*
17 *bridge projects eligible under title 23, United States Code,*
18 *including interstate rehabilitation, improvements to the*
19 *rural collector road system, the reconstruction of overpasses*
20 *and interchanges, bridge replacements, seismic retrofit*
21 *projects for bridges, and road realignments; public trans-*
22 *portation projects eligible under chapter 53 of title 49,*
23 *United States Code, including investments in projects par-*
24 *ticipating in the New Starts or Small Starts programs that*
25 *will expedite the completion of those projects and their entry*

1 *into revenue service; passenger and freight rail transpor-*
2 *tation projects; and port infrastructure investments, includ-*
3 *ing projects that connect ports to other modes of transpor-*
4 *tation and improve the efficiency of freight movement: Pro-*
5 *vided further, That of the amount made available under this*
6 *paragraph, the Secretary may use an amount not to exceed*
7 *\$200,000,000 for the purpose of paying the subsidy costs*
8 *of projects eligible for federal credit assistance under chap-*
9 *ter 6 of title 23, United States Code, if the Secretary finds*
10 *that such use of the funds would advance the purposes of*
11 *this paragraph: Provided further, That in distributing*
12 *funds provided under this heading, the Secretary shall take*
13 *such measures so as to ensure an equitable geographic dis-*
14 *tribution of funds and an appropriate balance in address-*
15 *ing the needs of urban and rural communities: Provided*
16 *further, That a grant funded under this heading shall be*
17 *not less than \$20,000,000 and not greater than*
18 *\$500,000,000: Provided further, That the Federal share of*
19 *the costs for which an expenditure is made under this head-*
20 *ing may be up to 100 percent: Provided further, That the*
21 *Secretary shall give priority to projects that require an ad-*
22 *ditional share of Federal funds in order to complete an over-*
23 *all financing package, and to projects that are expected to*
24 *be completed within 3 years of enactment of this Act: Pro-*
25 *vided further, That the Secretary shall publish criteria on*

1 *which to base the competition for any grants awarded under*
2 *this heading not later than 75 days after enactment of this*
3 *Act: Provided further, That the Secretary shall require ap-*
4 *plications for funding provided under this heading to be*
5 *submitted not later than 180 days after enactment of this*
6 *Act, and announce all projects selected to be funded from*
7 *such funds not later than 1 year after enactment of this*
8 *Act: Provided further, That the Secretary shall require all*
9 *additional applications to be submitted not later than 1*
10 *year after enactment of this Act, and announce not later*
11 *than 180 days following such 1-year period all additional*
12 *projects selected to be funded with funds withdrawn from*
13 *States and grantees and transferred from “Supplemental*
14 *Grants for Highway Investments” and “Supplemental*
15 *Grants for Public Transit Investment”:* *Provided further,*
16 *That projects conducted using funds provided under this*
17 *heading must comply with the requirements of subchapter*
18 *IV of chapter 31 of title 40, United States Code: Provided*
19 *further, That the Secretary may retain up to \$5,000,000*
20 *of the funds provided under this heading, and may transfer*
21 *portions of those funds to the Administrators of the Federal*
22 *Highway Administration, the Federal Transit Administra-*
23 *tion, the Federal Railroad Administration and the Mari-*
24 *time Administration, to fund the award and oversight of*
25 *grants made under this heading.*

1 *FEDERAL AVIATION ADMINISTRATION*2 *SUPPLEMENTAL FUNDING FOR FACILITIES AND EQUIPMENT*

3 *For an additional amount for necessary investments*
4 *in Federal Aviation Administration infrastructure,*
5 *\$200,000,000: Provided, That funding provided under this*
6 *heading shall be used to make improvements to power sys-*
7 *tems, air route traffic control centers, air traffic control*
8 *towers, terminal radar approach control facilities, and*
9 *navigation and landing equipment: Provided further, That*
10 *priority be given to such projects or activities that will be*
11 *completed within 2 years of enactment of this Act: Provided*
12 *further, That amounts made available under this heading*
13 *may be provided through grants in addition to the other*
14 *instruments authorized under section 106(l)(6) of title 49,*
15 *United States Code: Provided further, That the Federal*
16 *share of the costs for which an expenditure is made under*
17 *this heading shall be 100 percent: Provided further, That*
18 *amounts provided under this heading may be used for ex-*
19 *penses the agency incurs in administering this program:*
20 *Provided further, That not more than 60 days after enact-*
21 *ment of this Act, the Administrator shall establish a process*
22 *for applying, reviewing and awarding grants and coopera-*
23 *tive and other transaction agreements, including the form*
24 *and content of an application, and requirements for the*
25 *maintenance of records that are necessary to facilitate an*

1 *effective audit of the use of the funding provided: Provided*
2 *further, That section 50101 of title 49, United States Code,*
3 *shall apply to funds provided under this heading.*

4 *SUPPLEMENTAL DISCRETIONARY GRANTS FOR AIRPORT*
5 *INVESTMENT*

6 *For an additional amount for capital expenditures au-*
7 *thorized under sections 47102(3) and 47504(c) of title 49,*
8 *United States Code, and for the procurement, installation*
9 *and commissioning of runway incursion prevention devices*
10 *and systems at airports of such title, \$1,100,000,000: Pro-*
11 *vided, That the Secretary of Transportation shall distribute*
12 *funds provided under this heading as discretionary grants*
13 *to airports, with priority given to those projects that dem-*
14 *onstrate to his or her satisfaction their ability to be com-*
15 *pleted within 2 years of enactment of this Act, and serve*
16 *to supplement and not supplant planned expenditures from*
17 *airport-generated revenues or from other State and local*
18 *sources on such activities: Provided further, That the Fed-*
19 *eral share payable of the costs for which a grant is made*
20 *under this heading shall be 100 percent: Provided further,*
21 *That the amount made available under this heading shall*
22 *not be subject to any limitation on obligations for the*
23 *Grants-in-Aid for Airports program set forth in any Act:*
24 *Provided further, That section 50101 of title 49, United*
25 *States Code, shall apply to funds provided under this head-*

1 *ing: Provided further, That projects conducted using funds*
2 *provided under this heading must comply with the require-*
3 *ments of subchapter IV of chapter 31 of title 40, United*
4 *States Code: Provided further, That the Administrator of*
5 *the Federal Aviation Administration may retain and trans-*
6 *fer to “Federal Aviation Administration, Operations” up*
7 *to one-quarter of 1 percent of the funds provided under this*
8 *heading to fund the award and oversight by the Adminis-*
9 *trator of grants made under this heading.*

10 *FEDERAL HIGHWAY ADMINISTRATION*

11 *SUPPLEMENTAL GRANTS FOR HIGHWAY INVESTMENT*

12 *For an additional amount for restoration, repair, con-*
13 *struction and other activities eligible under paragraph (b)*
14 *of section 133 of title 23, United States Code,*
15 *\$27,060,000,000: Provided, That funds provided under this*
16 *heading shall be apportioned to States using the formula*
17 *set forth in section 104(b)(3) of such title: Provided further,*
18 *That 180 days following the date of such apportionment,*
19 *the Secretary of Transportation shall withdraw from each*
20 *State an amount equal to 50 percent of the funds awarded*
21 *to that grantee less the amount of funding obligated, and*
22 *the Secretary shall redistribute such amounts to other States*
23 *that have had no funds withdrawn under this proviso in*
24 *the manner described in section 120(c) of division K of Pub-*
25 *lic Law 110–161: Provided further, That 1 year following*

1 *the date of such apportionment, the Secretary shall with-*
2 *draw from each recipient of funds apportioned under this*
3 *heading any unobligated funds and transfer such funds to*
4 *“Supplemental Discretionary Grants for a National Sur-*
5 *face Transportation System”*: *Provided further, That at the*
6 *request of a State, the Secretary of Transportation may*
7 *provide an extension of such 1-year period only to the extent*
8 *that he or she feels satisfied that the State has encountered*
9 *extreme conditions that create an unworkable bidding envi-*
10 *ronment or other extenuating circumstances: Provided fur-*
11 *ther, That before granting a such an extension, the Sec-*
12 *retary shall send a letter to the House and Senate Commit-*
13 *tees on Appropriations that provides a thorough justifica-*
14 *tion for the extension: Provided further, That the provisions*
15 *of subsections 133(d)(3) and 133(d)(4) of title 23, United*
16 *States Code, shall apply to funds apportioned under this*
17 *heading, except that the percentage of funds to be allocated*
18 *to local jurisdictions shall be 40 percent and such alloca-*
19 *tion, notwithstanding any other provision of law, shall be*
20 *conducted in all states within the United States: Provided*
21 *further, That funds allocated to such urbanized areas and*
22 *other areas shall not be subject to the redistribution of*
23 *amounts required 180 days following the date of apportion-*
24 *ment of funds provided under this heading: Provided fur-*
25 *ther, That funds apportioned under this heading may be*

1 used for, but not be limited to, projects that address
2 stormwater runoff, investments in passenger and freight
3 rail transportation, and investments in port infrastructure:
4 Provided further, that each State shall use not less than
5 5 percent of funds apportioned to it for activities eligible
6 under subsections 149(b) and (c) of title 23, United States
7 Code: Provided further, That of the funds provided under
8 this heading, \$60,000,000 shall be for capital expenditures
9 eligible under section 147 of title 23, United States Code:
10 Provided further, That the Secretary of Transportation
11 shall distribute such \$60,000,000 as competitive discre-
12 tionary grants to States, with priority given to those
13 projects that demonstrate to his or her satisfaction their
14 ability to be completed within 2 years of enactment of this
15 Act: Provided further, That of the funds provided under this
16 heading, \$500,000,000 shall be for investments in transpor-
17 tation at Indian reservations and Federal lands, and ad-
18 ministered in accordance with chapter 2 of title 23, United
19 States Code: Provided further, That of the funds identified
20 in the preceding proviso, \$320,000,000 shall be for the In-
21 dian Reservation Roads program, \$100,000,000 shall be for
22 the Park Roads and Parkways program, \$70,000,000 shall
23 be for the Forest Highway Program, and \$10,000,000 shall
24 be for the Refuge Roads program: Provided further, That
25 for investments at Indian reservations and Federal lands,

1 *priority shall be given to capital investments, and to*
2 *projects and activities that can be completed within 2 years*
3 *of enactment of this Act: Provided further, That 1 year fol-*
4 *lowing the enactment of this Act, to ensure the prompt use*
5 *of the \$500,000,000 provided for investments at Indian res-*
6 *ervations and Federal lands, the Secretary shall have the*
7 *authority to redistribute unobligated funds within the re-*
8 *spective program for which the funds were appropriated:*
9 *Provided further, That up to 4 percent of the funding pro-*
10 *vided for Indian Reservation Roads may be used by the*
11 *Secretary of the Interior for program management and*
12 *oversight and project-related administrative expenses: Pro-*
13 *vided further, That section 134(f)(3)(C)(ii)(II) of title 23,*
14 *United States Code, shall not apply to funds provided under*
15 *this heading: Provided further, That the Federal share pay-*
16 *able on account of any project or activity carried out with*
17 *funds made available under this heading shall be at the op-*
18 *tion of the recipient, and may be up to 100 percent of the*
19 *total cost thereof: Provided further, That funding provided*
20 *under this heading shall be in addition to any and all funds*
21 *provided for fiscal years 2008 and 2009 in any other Act*
22 *for “Federal-aid Highways” and shall not affect the dis-*
23 *tribution of funds provided for “Federal-aid Highways” in*
24 *any other Act: Provided further, That the amount made*
25 *available under this heading shall not be subject to any lim-*

1 *itation on obligations for Federal-aid highways or highway*
2 *safety construction programs set forth in any Act: Provided*
3 *further, That projects conducted using funds provided under*
4 *this heading must comply with the requirements of sub-*
5 *chapter IV of chapter 31 of title 40, United States Code:*
6 *Provided further, That section 313 of title 23, United States*
7 *Code, shall apply to funds provided under this heading:*
8 *Provided further, That section 1101(b) of Public Law 109–*
9 *59 shall apply to funds apportioned under this heading:*
10 *Provided further, That for the purposes of the definition of*
11 *States for this paragraph, sections 101(a)(32) of title 23,*
12 *United States Code, shall apply: Provided further, That the*
13 *Administrator of the Federal Highway Administration*
14 *may retain up to \$12,000,000 of the funds provided under*
15 *this heading to carry out the function of the “Federal High-*
16 *way Administration, Limitation on Administrative Ex-*
17 *penses” and to fund the oversight by the Administrator of*
18 *projects and activities carried out with funds made avail-*
19 *able to the Federal Highway Administration in this Act.*

20 *FEDERAL RAILROAD ADMINISTRATION*

21 *SUPPLEMENTAL GRANTS TO STATES FOR INTERCITY*

22 *PASSENGER RAIL SERVICE*

23 *For an additional amount for discretionary grants to*
24 *States to pay for the cost of projects described in paragraphs*
25 *(2)(A) and (2)(B) of section 24401 of title 49, United States*

1 Code, and subsection (b) of section 24105 of such title,
2 \$250,000,000: Provided, That to be eligible for assistance
3 under this paragraph, the specific project must be on a
4 Statewide Transportation Improvement Plan at the time
5 of the application to qualify: Provided further, That the
6 Secretary of Transportation shall give priority to projects
7 that demonstrate an ability to be completed within 2 years
8 of enactment of this Act, and to projects that improve the
9 safety and reliability of intercity passenger trains: Pro-
10 vided further, That the Federal share payable of the costs
11 for which a grant is made under this heading shall be 100
12 percent: Provided further, That projects conducted using
13 funds provided under this heading must comply with the
14 requirements of subchapter IV of chapter 31 of title 40,
15 United States Code: Provided further, That section
16 24405(a) of title 49, United States Code, shall apply to
17 funds provided under this heading: Provided further, That
18 the Administrator of the Federal Railroad Administration
19 may retain and transfer to “Federal Railroad Administra-
20 tion, Safety and Operations” up to one-quarter of 1 percent
21 of the funds provided under this heading to fund the award
22 and oversight by the Administrator of grants made under
23 this heading.

1 *SUPPLEMENTAL CAPITAL GRANTS TO THE NATIONAL*
2 *RAILROAD PASSENGER CORPORATION*

3 *For an additional amount for the immediate invest-*
4 *ment in capital projects necessary to maintain and improve*
5 *national intercity passenger rail service, including the re-*
6 *habilitation of rolling stock, \$850,000,000: Provided, That*
7 *funds made available under this heading shall be allocated*
8 *directly to the National Railroad Passenger Corporation:*
9 *Provided further, That the Board of Directors of the cor-*
10 *poration shall take measures to ensure that priority is given*
11 *to capital projects that expand passenger rail capacity: Pro-*
12 *vided further, That the Board of Directors shall take meas-*
13 *ures to ensure that projects funded under this heading shall*
14 *be completed within 2 years of enactment of this Act, and*
15 *shall serve to supplement and not supplant planned expend-*
16 *itures for such activities from other Federal, State, local*
17 *and corporate sources: Provided further, That said Board*
18 *of Directors shall certify to the House and Senate Commit-*
19 *tees on Appropriations in writing their compliance with*
20 *the preceding proviso: Provided further, That section*
21 *24305(f) of title 49, United States Code, shall apply to*
22 *funds provided under this heading: Provided further, That*
23 *not more than 50 percent of the funds provided under this*
24 *heading may be used for capital projects along the North-*
25 *east Corridor.*

1 *HIGH-SPEED RAIL CORRIDOR PROGRAM*

2 *To make grants for high-speed rail projects under the*
3 *provisions of section 26106 of title 49, United States Code,*
4 *\$2,000,000,000, to remain available until September 30,*
5 *2011: Provided, That the Federal share payable of the costs*
6 *for which a grant is made under this heading shall be 100*
7 *percent: Provided further, That the Administrator of the*
8 *Federal Railroad Administration may retain and transfer*
9 *to “Federal Railroad Administration, Safety and Oper-*
10 *ations” up to one-quarter of 1 percent of the funds provided*
11 *under this heading to fund the award and oversight by the*
12 *Administrator of grants made under this paragraph.*

13 *FEDERAL TRANSIT ADMINISTRATION*14 *SUPPLEMENTAL GRANTS FOR PUBLIC TRANSIT INVESTMENT*

15 *For an additional amount for capital expenditures au-*
16 *thorized under section 5302(a)(1) of title 49, United States*
17 *Code, \$8,400,000,000: Provided, That the Secretary of*
18 *Transportation shall apportion 71 percent of the funds ap-*
19 *portioned under this heading using the formula set forth*
20 *in subsections (a) through (c) of section 5336 of title 49,*
21 *United States Code, 19 percent of the funds apportioned*
22 *under this heading using the formula set forth in section*
23 *5340 of such title, and 10 percent of the funding appor-*
24 *tioned under this heading using the formula set forth in*
25 *subsection 5311(c) of such title: Provided further, That 180*

1 *days following the date of such apportionment, the Sec-*
2 *retary shall withdraw from each grantee an amount equal*
3 *to 50 percent of the funds awarded to that grantee less the*
4 *amount of funding obligated, and the Secretary shall redis-*
5 *tribute such amounts to other grantees that have had no*
6 *funds withdrawn under this proviso utilizing whatever*
7 *method he or she deems appropriate to ensure that all funds*
8 *provided under this paragraph shall be utilized promptly:*
9 *Provided further, That 1 year following the date of such*
10 *apportionment, the Secretary shall withdraw from each*
11 *grantee any unobligated funds and transfer such funds to*
12 *“Supplemental Discretionary Grants for a National Sur-*
13 *face Transportation System”: Provided further, That at the*
14 *request of a grantee, the Secretary of Transportation may*
15 *provide an extension of such 1-year periods if he or she feels*
16 *satisfied that the grantee has encountered an unworkable*
17 *bidding environment or other extenuating circumstances:*
18 *Provided further, That before granting such an extension,*
19 *the Secretary shall send a letter to the House and Senate*
20 *Committees on Appropriations that provides a thorough*
21 *justification for the extension: Provided further, That of the*
22 *funds apportioned using the formula set forth in subsection*
23 *5311(c) of title 49, United States Code, 2 percent shall be*
24 *made available for section 5311(c)(1): Provided further,*
25 *That of the funding provided under this heading,*

1 \$200,000,000 shall be distributed as discretionary grants to
2 public transit agencies for capital investments that will as-
3 sist in reducing the energy consumption or greenhouse gas
4 emissions of their public transportation systems: Provided
5 further, That for such grants on energy-related investments,
6 priority shall be given to projects based on the total energy
7 savings that are projected to result from the investment, and
8 projected energy savings as a percentage of the total energy
9 usage of the public transit agency: Provided further, That
10 the Federal share of the costs for which any grant is made
11 under this heading shall be at the option of the recipient,
12 and may be up to 100 percent: Provided further, That the
13 amount made available under this heading shall not be sub-
14 ject to any limitation on obligations for transit programs
15 set forth in any Act: Provided further, That section 1101(b)
16 of Public Law 109–59 shall apply to funds apportioned
17 under this heading: Provided further, That the funds appro-
18 priated under this heading shall be subject to subsection
19 5323(j) and section 5333 of title 49, United States Code
20 as well as sections 5304 and 5305 of said title, as appro-
21 priate, but shall not be comingled with funds available
22 under the Formula and Bus Grants account: Provided fur-
23 ther, That the Administrator of the Federal Transit Admin-
24 istration may retain up to \$3,000,000 of the funds provided
25 under this heading to carry out the function of “Federal

1 *Transit Administration, Administrative Expenses” and to*
2 *fund the oversight of grants made under this heading by*
3 *the Administrator.*

4 *MARITIME ADMINISTRATION*

5 *SUPPLEMENTAL GRANTS FOR ASSISTANCE TO SMALL*

6 *SHIPYARDS*

7 *To make grants to qualified shipyards as authorized*
8 *under section 3506 of Public Law 109–163 or section 54101*
9 *of title 46, United States Code, \$100,000,000: Provided,*
10 *That the Secretary of Transportation shall institute meas-*
11 *ures to ensure that funds provided under this heading shall*
12 *be obligated within 180 days of the date of their distribu-*
13 *tion: Provided further, That the Maritime Administrator*
14 *may retain and transfer to “Maritime Administration, Op-*
15 *erations and Training” up to 2 percent of the funds pro-*
16 *vided under this heading to fund the award and oversight*
17 *by the Administrator of grants made under this heading.*

18 *OFFICE OF INSPECTOR GENERAL*

19 *SALARIES AND EXPENSES*

20 *For an additional amount for necessary expenses of*
21 *the Office of Inspector General to carry out the provisions*
22 *of the Inspector General Act of 1978, as amended,*
23 *\$7,750,000, to remain available until September 30, 2011,*
24 *and an additional \$12,250,000 for such purposes, to remain*
25 *available until September 30, 2012: Provided, That the*

1 *funding made available under this heading shall be used*
2 *for conducting audits and investigations of projects and ac-*
3 *tivities carried out with funds made available in this Act*
4 *to the Department of Transportation and to the National*
5 *Railroad Passenger Corporation: Provided further, That the*
6 *Inspector General shall have all necessary authority, in car-*
7 *rying out the duties specified in the Inspector General Act,*
8 *as amended (5 U.S.C. App. 3), to investigate allegations*
9 *of fraud, including false statements to the Government (18*
10 *U.S.C. 1001), by any person or entity that is subject to*
11 *regulation by the Department.*

12 *GENERAL PROVISION—DEPARTMENT OF*
13 *TRANSPORTATION*

14 *SEC. 1201. Section 5309(g)(4)(A) of title 49, United*
15 *States Code, is amended by striking “or an amount equiva-*
16 *lent to the last 3 fiscal years of funding allocated under*
17 *subsections (m)(1)(A) and (m)(2)(A)(ii)” and inserting “or*
18 *the sum of the funds available for the next 3 fiscal years*
19 *beyond the current fiscal year, assuming an annual growth*
20 *of the program of 10 percent”.*

21 *DEPARTMENT OF HOUSING AND URBAN*
22 *DEVELOPMENT*

23 *NATIVE AMERICAN HOUSING BLOCK GRANTS*

24 *For an additional amount for “Native American*
25 *Housing Block Grants”, as authorized under title I of the*

1 *Native American Housing Assistance and Self-Determina-*
2 *tion Act of 1996 (“NAHASDA”) (25 U.S.C. 4111 et seq.),*
3 *\$510,000,000, to remain available until September 30,*
4 *2011: Provided, That \$255,000,000 of the amount provided*
5 *under this heading shall be distributed according to the*
6 *same funding formula used in fiscal year 2008: Provided*
7 *further, That in selecting projects to be funded, recipients*
8 *shall give priority to projects that can award contracts*
9 *based on bids within 180 days from the date that funds*
10 *are available to recipients: Provided further, That the Sec-*
11 *retary shall obligate \$255,000,000 of the amount provided*
12 *under this heading for competitive grants to eligible entities*
13 *that apply for funds authorized under NAHASDA: Pro-*
14 *vided further, That in awarding competitive funds, the Sec-*
15 *retary shall give priority to projects that will spur construc-*
16 *tion and rehabilitation and will create employment oppor-*
17 *tunities for low-income and unemployed persons: Provided*
18 *further, That recipients of funds under this heading shall*
19 *obligate 100 percent of such funds within 1 year of the date*
20 *of enactment of this Act, expend at least 50 percent of such*
21 *funds within 2 years of the date on which funds become*
22 *available to such jurisdictions for obligation, and expend*
23 *100 percent of such funds within 3 years of such date: Pro-*
24 *vided further, That if a recipient fails to comply with either*
25 *the 1-year obligation requirement or the 2-year expenditure*

1 requirement, the Secretary shall recapture all remaining
2 funds awarded to the recipient and reallocate such funds
3 to recipients that are in compliance with those require-
4 ments: Provided further, That if a recipient fails to comply
5 with the 3-year expenditure requirement, the Secretary
6 shall recapture the balance of the funds awarded to the re-
7 cipient: Provided further, That, notwithstanding any other
8 provision of this paragraph, the Secretary may institute
9 measures to ensure participation in the formula and com-
10 petitive allocation of funds provided under this paragraph
11 by any housing entity eligible to receive funding under title
12 VIII of NAHASDA (25 U.S.C. 4221 et seq.): Provided fur-
13 ther, That in administering funds provided in this heading,
14 the Secretary may waive any provision of any statute or
15 regulation that the Secretary administers in connection
16 with the obligation by the Secretary or the use by the recipi-
17 ent of these funds except for requirements imposed by this
18 heading and requirements related to fair housing, non-
19 discrimination, labor standards, and the environment,
20 upon a finding that such waiver is required to facilitate
21 the timely use of such funds and would not be inconsistent
22 with the overall purpose of the statute or regulation: Pro-
23 vided further, That, of the funds made available under this
24 heading, up to 1 percent shall be available for staffing,
25 training, technical assistance, technology, monitoring, re-

1 *search and evaluation activities: Provided further, That*
2 *any funds made available under this heading used by the*
3 *Secretary for personnel expenses shall be transferred to and*
4 *merged with funding provided to “Personnel Compensation*
5 *and Benefits, Office of Public and Indian Housing”:* Pro-
6 *vided further, That any funds made available under this*
7 *heading used by the Secretary for training or other admin-*
8 *istrative expenses shall be transferred to and merged with*
9 *funding provided to “Administration, Operations, and*
10 *Management”, for non-personnel expenses of the Depart-*
11 *ment of Housing and Urban Development: Provided fur-*
12 *ther, That any funds made available under this heading*
13 *used by the Secretary for technology shall be transferred to*
14 *and merged with the funding provided to “Working Capital*
15 *Fund”.*

16 *PUBLIC HOUSING CAPITAL FUND*

17 *For an additional amount for the “Public Housing*
18 *Capital Fund” to carry out capital and management ac-*
19 *tivities for public housing agencies, as authorized under sec-*
20 *tion 9 of the United States Housing Act of 1937 (42 U.S.C.*
21 *1437g) (the “Act”), \$5,000,000,000, to remain available*
22 *until September 30, 2011: Provided, That the Secretary of*
23 *Housing and Urban Development shall allocate*
24 *\$3,000,000,000 of this amount by the formula authorized*
25 *under section 9(d)(2) of the Act, except that the Secretary*

1 *may determine not to allocate funding to public housing*
2 *agencies currently designated as troubled or to public hous-*
3 *ing agencies that elect not to accept such funding: Provided*
4 *further, That the Secretary shall make available*
5 *\$2,000,000,000 by competition for priority investments, in-*
6 *cluding investments that leverage private sector funding or*
7 *financing for renovations and energy conservation retrofit*
8 *investments: Provided further, That public housing agencies*
9 *shall prioritize capital projects that are already underway*
10 *or included in the 5-year capital fund plans required by*
11 *the Act (42 U.S.C. 1437c–1(a)): Provided further, That in*
12 *allocating competitive grants under this heading, the Sec-*
13 *retary shall give priority consideration to the rehabilitation*
14 *of vacant rental units: Provided further, That notwith-*
15 *standing any other provision of law, (1) funding provided*
16 *herein may not be used for operating or rental assistance*
17 *activities, and (2) any restriction of funding to replacement*
18 *housing uses shall be inapplicable: Provided further, That*
19 *notwithstanding any other provision of law, the Secretary*
20 *shall institute measures to ensure that funds provided under*
21 *this heading shall serve to supplement and not supplant*
22 *expenditures from other Federal, State, or local sources or*
23 *funds independently generated by the grantee: Provided fur-*
24 *ther, That notwithstanding section 9(j), public housing*
25 *agencies shall obligate 100 percent of the funds within 1*

1 year of the date of enactment of this Act, shall expend at
2 least 60 percent of funds within 2 years of the date on which
3 funds become available to the agency for obligation, and
4 shall expend 100 percent of the funds within 3 years of such
5 date: Provided further, That if a public housing agency fails
6 to comply with either the 1-year obligation requirement or
7 the 2-year expenditure requirement, the Secretary shall re-
8 capture all remaining funds awarded to the public housing
9 agency and reallocate such funds to agencies that are in
10 compliance with those requirements: Provided further, That
11 if a public housing agency fails to comply with the 3-year
12 expenditure requirement, the Secretary shall recapture the
13 balance of the funds awarded to the public housing agency:
14 Provided further, That in administering funds provided in
15 this heading, the Secretary may waive any provision of any
16 statute or regulation that the Secretary administers in con-
17 nection with the obligation by the Secretary or the use by
18 the recipient of these funds except for requirements imposed
19 by this heading and requirements related to conditions on
20 use of funds for development and modernization, fair hous-
21 ing, non-discrimination, labor standards, and the environ-
22 ment, upon a finding that such waiver is required to facili-
23 tate the timely use of such funds and would not be incon-
24 sistent with the overall purpose of the statute or regulation:
25 Provided further, That of the funds made available under

1 *this heading, up to 1 percent shall be available for staffing,*
2 *training, technical assistance, technology, monitoring, re-*
3 *search and evaluation activities: Provided further, That*
4 *any funds made available under this heading used by the*
5 *Secretary for personnel expenses shall be transferred to and*
6 *merged with funding provided to “Personnel Compensation*
7 *and Benefits, Office of Public and Indian Housing”: Pro-*
8 *vided further, That any funds made available under this*
9 *heading used by the Secretary for training or other admin-*
10 *istrative expenses shall be transferred to and merged with*
11 *funding provided to “Administration, Operations, and*
12 *Management”, for non-personnel expenses of the Depart-*
13 *ment of Housing and Urban Development: Provided fur-*
14 *ther, That any funds made available under this heading*
15 *used by the Secretary for technology shall be transferred to*
16 *and merged with the funding provided to “Working Capital*
17 *Fund”.*

18 *HOME INVESTMENT PARTNERSHIPS PROGRAM*

19 *For an additional amount for the “HOME Investment*
20 *Partnerships Program” as authorized under title II of the*
21 *Cranston-Gonzalez National Affordable Housing Act (the*
22 *“Act”), \$250,000,000, to remain available until September*
23 *30, 2011: Provided, That except as specifically provided*
24 *herein, funds provided under this heading shall be distrib-*
25 *uted pursuant to the formula authorized by section 217 of*

1 *the Act: Provided further, That the Secretary may establish*
2 *a minimum grant size: Provided further, That partici-*
3 *parting jurisdictions shall obligate 100 percent of the funds*
4 *within 1 year of the date of enactment of this Act, shall*
5 *expend at least 60 percent of funds within 2 years of the*
6 *date on which funds become available to the participating*
7 *jurisdiction for obligation and shall expend 100 percent of*
8 *the funds within 3 years of such date: Provided further,*
9 *That if a participating jurisdiction fails to comply with*
10 *either the 1-year obligation requirement or the 2-year ex-*
11 *penditure requirement, the Secretary shall recapture all re-*
12 *maining funds awarded to the participating jurisdiction*
13 *and reallocate such funds to participating jurisdictions that*
14 *are in compliance with those requirements: Provided fur-*
15 *ther, That if a participating jurisdiction fails to comply*
16 *with the 3-year expenditure requirement, the Secretary*
17 *shall recapture the balance of the funds awarded to the par-*
18 *ticipating jurisdiction: Provided further, That in admin-*
19 *istering funds under this heading, the Secretary may waive*
20 *any provision of any statute or regulation that the Sec-*
21 *retary administers in connection with the obligation by the*
22 *Secretary or the use by the recipient of these funds except*
23 *for requirements imposed by this heading and requirements*
24 *related to fair housing, non-discrimination, labor standards*
25 *and the environment, upon a finding that such waiver is*

1 *required to facilitate the timely use of such funds and would*
2 *not be inconsistent with the overall purpose of the statute*
3 *or regulation: Provided further, That the Secretary may use*
4 *funds provided under this heading to provide incentives to*
5 *grantees to use funding for investments in energy efficiency*
6 *and green building technology: Provided further, That such*
7 *incentives may include allocation of up to 20 percent of*
8 *funds made available under this heading other than pursu-*
9 *ant to the formula authorized by section 217 of the Act:*
10 *Provided further, That, of the funds made available under*
11 *this heading, up to 1 percent shall be available for staffing,*
12 *training, technical assistance, technology, monitoring, re-*
13 *search and evaluation activities: Provided further, That*
14 *any funds made available under this heading used by the*
15 *Secretary for personnel expenses shall be transferred to and*
16 *merged with funding provided to “Personnel Compensation*
17 *and Benefits, Office of Community Planning and Develop-*
18 *ment”:* *Provided further, That any funds made available*
19 *under this heading used by the Secretary for training or*
20 *other administrative expenses shall be transferred to and*
21 *merged with funding provided to “Administration, Oper-*
22 *ations, and Management”, for non-personnel expenses of the*
23 *Department of Housing and Urban Development: Provided*
24 *further, That any funds made available under this heading*
25 *used by the Secretary for technology shall be transferred to*

1 *and merged with the funding provided to “Working Capital*
2 *Fund”.*

3 *For an additional amount for capital investments in*
4 *low-income housing tax credit projects, \$2,000,000,000, to*
5 *remain available until September 30, 2011: Provided, That*
6 *the funds shall be allocated to States under the HOME pro-*
7 *gram under this Heading shall be made available to State*
8 *housing finance agencies in an amount totaling*
9 *\$2,000,000,000, subject to any changes made to a State allo-*
10 *cation for the benefit of a State by the Secretary of Housing*
11 *and Urban Development for areas that have suffered from*
12 *disproportionate job loss and foreclosure: Provided further,*
13 *That the Secretary, in consultation with the States, shall*
14 *determine the amount of funds each State shall have avail-*
15 *able under HOME: Provided further, That the State hous-*
16 *ing finance agencies (including for purposes throughout this*
17 *heading any entity that is responsible for distributing low-*
18 *income housing tax credits) or as appropriate as an entity*
19 *as a gap financier, shall distribute these funds competitively*
20 *under this heading to housing developers for projects eligible*
21 *for funding (such terms including those who may have re-*
22 *ceived funding) under the low-income housing tax credit*
23 *program as provided under section 42 of the I.R.C. of 1986,*
24 *with a review of both the decisionmaking and process for*
25 *the award by the Secretary of Housing and Urban Develop-*

1 *ment: Provided further, That funds under this heading must*
2 *be awarded by State housing finance agencies within 120*
3 *days of enactment of the Act and obligated by the developer*
4 *of the low-income housing tax credit project within one year*
5 *of the date of enactment of this Act, shall expend 75 percent*
6 *of the funds within two years of the date on which the funds*
7 *become available, and shall expend 100 percent of the funds*
8 *within 3 years of such date: Provided further, That failure*
9 *by a developer to expend funds within the parameters re-*
10 *quired within the previous proviso shall result in a redis-*
11 *tribution of these funds by a State housing finance agency*
12 *or by the Secretary if there is a more deserving project in*
13 *another jurisdiction: Provided further, That projects award-*
14 *ed tax credits within 3 years prior to the date of enactment*
15 *of this Act shall be eligible for funding under this heading:*
16 *Provided further, That as part of the review, the Secretary*
17 *shall ensure equitable distribution of funds and an appro-*
18 *priate balance in addressing the needs of urban and rural*
19 *communities with a special priority on areas that have suf-*
20 *fered from excessive job loss and foreclosures: Provided fur-*
21 *ther, That State housing finance agencies shall give priority*
22 *to projects that require an additional share of Federal funds*
23 *in order to complete an overall funding package, and to*
24 *projects that are expected to be completed within 3 years*
25 *of enactment: Provided further, That any assistance pro-*

1 *vided to an eligible low-income housing tax credit project*
2 *under this heading shall be made in the same manner and*
3 *be subject to the same limitations (including rent, income,*
4 *and use restrictions) as an allocation of the housing credit*
5 *amount allocated by the State housing finance agency*
6 *under section 42 of the I.R.C. of 1986, except that such as-*
7 *sistance shall not be limited by, or otherwise affect (except*
8 *as provided in subsection (h)(3)(J) of such section), the*
9 *State housing finance agency applicable to such agency:*
10 *Provided further, That the State housing finance agency*
11 *shall perform asset management functions to ensure compli-*
12 *ance with section 42 of the I.R.C. of 1986, and the long*
13 *term viability of buildings funded by assistance under this*
14 *heading: Provided further, That the term basis (as such*
15 *term is defined in such section 42) of a qualified low-income*
16 *housing tax credit building receiving assistance under this*
17 *heading shall not be reduced by the amount of any grant*
18 *described under this heading: Provided further, That the*
19 *Secretary shall collect all information related to the award*
20 *of Federal funds from state housing finance agencies and*
21 *establish an internet site that shall identify all projects se-*
22 *lected for an award, including the amount of the award*
23 *as well as the process and all information that was used*
24 *to make the award decision.*

1 *HOMELESSNESS PREVENTION FUND*

2 *For homelessness prevention activities, \$1,500,000,000,*
3 *to remain available until September 30, 2011: Provided,*
4 *That funds provided under this heading shall be used for*
5 *the provision of short-term or medium-term rental assist-*
6 *ance; housing relocation and stabilization services includ-*
7 *ing housing search, mediation or outreach to property own-*
8 *ers, credit repair, security or utility deposits, utility pay-*
9 *ments, rental assistance for a final month at a location,*
10 *and moving cost assistance; or other appropriate homeless-*
11 *ness prevention activities: Provided further, That grantees*
12 *receiving such assistance shall collect data on the use of the*
13 *funds awarded and persons served with this assistance in*
14 *the Homeless Management Information System (HMIS) or*
15 *other comparable database: Provided further, That grantees*
16 *may use up to 5 percent of any grant for administrative*
17 *costs: Provided further, That funding made available under*
18 *this heading shall be allocated to eligible grantees (as de-*
19 *fin ed and designated in sections 411 and 412 of subtitle*
20 *B of title IV of the McKinney-Vento Homeless Assistance*
21 *Act, (the “Act”)) pursuant to the formula authorized by sec-*
22 *tion 413 of the Act: Provided further, That the Secretary*
23 *may establish a minimum grant size: Provided further,*
24 *That grantees shall expend at least 75 percent of funds with-*
25 *in 2 years of the date that funds became available to them*

1 *for obligation, and 100 percent of funds within 3 years of*
2 *such date, and the Secretary may recapture unexpended*
3 *funds in violation of the 2-year expenditure requirement*
4 *and reallocate such funds to grantees in compliance with*
5 *that requirement: Provided further, That the Secretary may*
6 *waive statutory or regulatory provisions (except provisions*
7 *for fair housing, nondiscrimination, labor standards, and*
8 *the environment) necessary to facilitate the timely expendi-*
9 *ture of funds: Provided further, That the Secretary shall*
10 *publish a notice to establish such requirements as may be*
11 *necessary to carry out the provisions of this section within*
12 *30 days of enactment of the Act and that this notice shall*
13 *take effect upon issuance: Provided further, That of the*
14 *funds provided under this heading, up to 1.5 percent shall*
15 *be available for staffing, training, technical assistance, tech-*
16 *nology, monitoring, research and evaluation activities: Pro-*
17 *vided further, That any funds made available under this*
18 *heading used by the Secretary for personnel expense shall*
19 *be transferred to and merged with funding provided to*
20 *“Community Planning and Development Personnel Com-*
21 *pensation and Benefits”:* *Provided further, That any funds*
22 *made available under this heading used by the Secretary*
23 *for training or other administrative expenses shall be trans-*
24 *ferred to and merged with funding provided to “Adminis-*
25 *tration, Operations, and Management” for non-personnel*

1 *expenses of the Department of Housing and Urban Develop-*
2 *ment: Provided further, That any funding made available*
3 *under this heading used by the Secretary for technology*
4 *shall be transferred to and merged with the funding pro-*
5 *vided to “Working Capital Fund.”*

6 *ASSISTED HOUSING STABILITY AND ENERGY AND GREEN*
7 *RETROFIT INVESTMENTS*

8 *For assistance to owners of properties receiving*
9 *project-based assistance pursuant to section 202 of the*
10 *Housing Act of 1959 (12 U.S.C. 17012), section 811 of the*
11 *Cranston-Gonzalez National Affordable Housing Act (42*
12 *U.S.C. 8013), or section 8 of the United States Housing*
13 *Act of 1937 as amended (42 U.S.C. 1437f), \$2,250,000,000,*
14 *of which \$2,132,000,000 shall be for an additional amount*
15 *for paragraph (1) under the heading “Project-Based Rental*
16 *Assistance” in Public Law 110–161 for payments to owners*
17 *for 12-month periods, and of which \$118,000,000 shall be*
18 *for grants or loans for energy retrofit and green investments*
19 *in such assisted housing: Provided, That projects funded*
20 *with grants or loans provided under this heading must com-*
21 *ply with the requirements of subchapter IV of chapter 31*
22 *of title 40, United States Code: Provided further, That such*
23 *grants or loans shall be provided through the existing poli-*
24 *cies, procedures, contracts, and transactional infrastructure*
25 *of the authorized programs administered by the Office of*

1 *Affordable Housing Preservation of the Department of*
2 *Housing and Urban Development, on such terms and condi-*
3 *tions as the Secretary of Housing and Urban Development*
4 *deems appropriate to ensure the maintenance and preserva-*
5 *tion of the property, the continued operation and mainte-*
6 *nance of energy efficiency technologies, and the timely ex-*
7 *penditure of funds: Provided further, That the Secretary*
8 *may provide incentives to owners to undertake energy or*
9 *green retrofits as a part of such grant or loan terms, includ-*
10 *ing, but not limited to, investment fees to cover oversight*
11 *and implementation costs incurred by said owner, or to en-*
12 *courage job creation for low-income or very low-income in-*
13 *dividuals: Provided further, That the grants or loans shall*
14 *include a financial assessment and physical inspection of*
15 *such property: Provided further, That eligible owners must*
16 *have at least a satisfactory management review rating, be*
17 *in substantial compliance with applicable performance*
18 *standards and legal requirements, and commit to an addi-*
19 *tional period of affordability determined by the Secretary,*
20 *but of not fewer than 15 years: Provided further, That the*
21 *Secretary shall undertake appropriate underwriting and*
22 *oversight with respect to grant and loan transactions and*
23 *may set aside up to 5 percent of the funds made available*
24 *under this heading for grants or loans for such purpose:*
25 *Provided further, That the Secretary shall take steps nec-*

1 *essary to ensure that owners receiving funding for energy*
2 *and green retrofit investments under this heading shall ex-*
3 *pend such funding within 2 years of the date they received*
4 *the funding: Provided further, That the Secretary may*
5 *waive or modify statutory or regulatory requirements with*
6 *respect to any existing grant, loan, or insurance mechanism*
7 *authorized to be used by the Secretary to enable or facilitate*
8 *the accomplishment of investments supported with funds*
9 *made available under this heading for grants or loans: Pro-*
10 *vided further, That of the funds provided under this head-*
11 *ing, up to 1.5 percent shall be available for staffing, train-*
12 *ing, technical assistance, technology, monitoring, research*
13 *and evaluation activities: Provided further, That funding*
14 *made available under this heading and used by the Sec-*
15 *retary for personnel expenses shall be transferred to and*
16 *merged with funding provided to “Housing Compensation*
17 *and Benefits”:* *Provided further, That any funding made*
18 *available under this heading used by the Secretary for*
19 *training and other administrative expenses shall be trans-*
20 *ferred to and merged with funding provided to “Adminis-*
21 *tration, Operations and Management” for non-personnel*
22 *expenses of the Department of Housing and Urban Develop-*
23 *ment: Provided further, That any funding made available*
24 *under this heading used by the Secretary for technology*

1 *shall be transferred to and merged with funding provided*
2 *to “Working Capital Fund.”*

3 *OFFICE OF HEALTHY HOMES AND LEAD HAZARD*

4 *CONTROL*

5 *For an additional amount for the “Lead Hazard Re-*
6 *duction”, as authorized by section 1011 of the Residential*
7 *Lead-Based Paint Hazard Reduction Act of 1992,*
8 *\$100,000,000, to remain available until September 30,*
9 *2011: Provided, That funds shall be awarded first to appli-*
10 *cant jurisdictions which had applied under the Lead-Based*
11 *Paint Hazard Control Grant Program Notice of Funding*
12 *Availability for fiscal year 2008, and were found in the*
13 *application review to be qualified for award, but were not*
14 *awarded because of funding limitations, and that any funds*
15 *which remain after reservation of funds for such grants*
16 *shall be added to the amount of funds to be awarded under*
17 *the Lead-Based Paint Hazard Control Grant Program No-*
18 *tice of Funding Availability for fiscal year 2009: Provided*
19 *further, That each applicant jurisdiction for the Lead-*
20 *Based Paint Hazard control Grant Program Notice of*
21 *Funding Availability for fiscal year 2009 shall submit a*
22 *detailed plan and strategy that demonstrates adequate ca-*
23 *capacity that is acceptable to the Secretary to carry out the*
24 *proposed use of funds: Provided further, That recipients of*
25 *funds under this heading shall obligate 100 percent of such*

1 *funds within 1 year of the date of enactment of this Act,*
2 *expend at least 75 percent of such funds within 2 years*
3 *of the date on which funds become available to such jurisdic-*
4 *tions for obligation, and expend 100 percent of such funds*
5 *within 3 years of such date: Provided further, That if a*
6 *recipient fails to comply with either the 1-year obligation*
7 *requirement or the 2-year expenditure requirement, the Sec-*
8 *retary shall recapture all remaining funds awarded to the*
9 *recipient and reallocate such funds to recipients that are*
10 *in compliance with those requirements: Provided further,*
11 *That if a recipient fails to comply with the 3-year expendi-*
12 *ture requirement, the Secretary shall recapture the balance*
13 *of the funds awarded to the recipient: Provided further,*
14 *That in administering funds provided in this heading, the*
15 *Secretary may waive any provision of any statute or regu-*
16 *lation that the Secretary administers in connection with*
17 *the obligation by the Secretary or the use by the recipient*
18 *of these funds except for requirements imposed by this head-*
19 *ing and requirements related to fair housing, non-*
20 *discrimination, labor standards, and the environment,*
21 *upon a finding that such waiver is required to facilitate*
22 *the timely use of such funds and would not be inconsistent*
23 *with the overall purpose of the statute or regulation: Pro-*
24 *vided further, That, of the funds made available under this*
25 *heading, up to 1 percent shall be available for staffing,*

1 *training, technical assistance, technology, monitoring, re-*
2 *search and evaluation activities: Provided further, That*
3 *any funds made available under this heading used by the*
4 *Secretary for personnel expenses shall be transferred to and*
5 *merged with funding provided to “Personnel Compensation*
6 *and Benefits, Office of Healthy Homes and Lead Hazard*
7 *Control”:* *Provided further, That any funds made available*
8 *under this heading used by the Secretary for training or*
9 *other administrative expenses shall be transferred to and*
10 *merged with funding provided to “Administration, Oper-*
11 *ations, and Management”, for non-personnel expenses of the*
12 *Department of Housing and Urban Development: Provided*
13 *further, That any funds made available under this heading*
14 *used by the Secretary for technology shall be transferred to*
15 *and merged with the funding provided to “Working Capital*
16 *Fund”.*

17 *OFFICE OF INSPECTOR GENERAL*

18 *For an additional amount for the necessary salaries*
19 *and expenses of the Office of Inspector General in carrying*
20 *out the Inspector General Act of 1978, as amended,*
21 *\$2,750,000, to remain available until September 30, 2011,*
22 *and an additional \$12,250,000 for such purposes, to remain*
23 *available until September 30, 2012: Provided, That the In-*
24 *spector General shall have independent authority over all*
25 *personnel issues within this office.*

1 **TITLE XIII—HEALTH**
 2 **INFORMATION TECHNOLOGY**

3 **SEC. 1301. SHORT TITLE.**

4 *This title may be cited as the “Health Information*
 5 *Technology for Economic and Clinical Health Act” or the*
 6 *“HITECH Act”.*

7 **Subtitle A—Promotion of Health**
 8 **Information Technology**

9 **PART I—IMPROVING HEALTH CARE QUALITY,**
 10 **SAFETY, AND EFFICIENCY**

11 **SEC. 13101. ONCHIT; STANDARDS DEVELOPMENT AND**
 12 **ADOPTION.**

13 *The Public Health Service Act (42 U.S.C. 201 et seq.)*
 14 *is amended by adding at the end the following:*

15 **“TITLE XXX—HEALTH INFORMA-**
 16 **TION TECHNOLOGY AND**
 17 **QUALITY**

18 **“SEC. 3000. DEFINITIONS.**

19 *“In this title:*

20 *“(1) CERTIFIED EHR TECHNOLOGY.—The term*
 21 *‘certified EHR technology’ means a qualified elec-*
 22 *tronic health record and that is certified pursuant to*
 23 *section 3001(c)(5) as meeting standards adopted*
 24 *under section 3004 that are applicable to the type of*
 25 *record involved (as determined by the Secretary, such*

1 *as an ambulatory electronic health record for office-*
2 *based physicians or an inpatient hospital electronic*
3 *health record for hospitals).*

4 “(2) *ENTERPRISE INTEGRATION.*—*The term ‘en-*
5 *terprise integration’ means the electronic linkage of*
6 *health care providers, health plans, the government,*
7 *and other interested parties, to enable the electronic*
8 *exchange and use of health information among all the*
9 *components in the health care infrastructure in ac-*
10 *cordance with applicable law, and such term includes*
11 *related application protocols and other related stand-*
12 *ards.*

13 “(3) *HEALTH CARE PROVIDER.*—*The term*
14 *‘health care provider’ means a hospital, skilled nurs-*
15 *ing facility, nursing facility, home health entity, or*
16 *other long-term care facility, health care clinic, com-*
17 *munity mental health center (as defined in section*
18 *1913(b)), renal dialysis facility, blood center, ambula-*
19 *tory surgical center described in section 1833(i) of the*
20 *Social Security Act, emergency medical services pro-*
21 *vider, Federally qualified health center, group prac-*
22 *tice (as defined in section 1877(h)(4) of the Social Se-*
23 *curity Act), a pharmacist, a pharmacy, a laboratory,*
24 *a physician (as defined in section 1861(r) of the So-*
25 *cial Security Act), a practitioner (as described in sec-*

1 *tion 1842(b)(18)(C) of the Social Security Act), a*
2 *provider operated by, or under contract with, the In-*
3 *dian Health Service or by an Indian tribe (as defined*
4 *in the Indian Self-Determination and Education As-*
5 *sistance Act), tribal organization, or urban Indian*
6 *organization (as defined in section 4 of the Indian*
7 *Health Care Improvement Act), a rural health clinic,*
8 *a covered entity under section 340B, and any other*
9 *category of facility or clinician determined appro-*
10 *priate by the Secretary.*

11 *“(4) HEALTH INFORMATION.—The term ‘health*
12 *information’ has the meaning given such term in sec-*
13 *tion 1171(4) of the Social Security Act.*

14 *“(5) HEALTH INFORMATION TECHNOLOGY.—The*
15 *term ‘health information technology’ includes hard-*
16 *ware, software, integrated technologies and related li-*
17 *censes, intellectual property, upgrades, and packaged*
18 *solutions sold as services for use by health care enti-*
19 *ties for the electronic creation, maintenance, access or*
20 *exchange of health information.*

21 *“(6) HEALTH PLAN.—The term ‘health plan’ has*
22 *the meaning given such term in section 1171(5) of the*
23 *Social Security Act.*

1 “(7) *HIT POLICY COMMITTEE*.—The term ‘*HIT*
2 *Policy Committee*’ means such Committee established
3 under section 3002(a).

4 “(8) *HIT STANDARDS COMMITTEE*.—The term
5 ‘*HIT Standards Committee*’ means such Committee
6 established under section 3003(a).

7 “(9) *INDIVIDUALLY IDENTIFIABLE HEALTH IN-*
8 *FORMATION*.—The term ‘*individually identifiable*
9 *health information*’ has the meaning given such term
10 in section 1171(6) of the Social Security Act.

11 “(10) *LABORATORY*.—The term ‘*laboratory*’ has
12 the meaning given such term in section 353(a).

13 “(11) *NATIONAL COORDINATOR*.—The term ‘*Na-*
14 *tional Coordinator*’ means the head of the Office of the
15 *National Coordinator for Health Information Tech-*
16 *nology* established under section 3001(a).

17 “(12) *PHARMACIST*.—The term ‘*pharmacist*’ has
18 the meaning given such term in section 804(2) of the
19 *Federal Food, Drug, and Cosmetic Act*.

20 “(13) *QUALIFIED ELECTRONIC HEALTH*
21 *RECORD*.—The term ‘*qualified electronic health*
22 *record*’ means an electronic record of health-related
23 information on an individual that—

1 “(A) includes patient demographic and
2 clinical health information, such as medical his-
3 tory and problem lists; and

4 “(B) has the capacity—

5 “(i) to provide clinical decision sup-
6 port;

7 “(ii) to support physician order entry;

8 “(iii) to capture and query informa-
9 tion relevant to health care quality; and

10 “(iv) to exchange electronic health in-
11 formation with, and integrate such infor-
12 mation from other sources.

13 “(14) STATE.—The term ‘State’ means each of
14 the several States, the District of Columbia, Puerto
15 Rico, the Virgin Islands, Guam, American Samoa,
16 and the Northern Mariana Islands.

17 **“Subtitle A—Promotion of Health**
18 **Information Technology**

19 **“SEC. 3001. OFFICE OF THE NATIONAL COORDINATOR FOR**
20 **HEALTH INFORMATION TECHNOLOGY.**

21 “(a) ESTABLISHMENT.—There is established within
22 the Department of Health and Human Services an Office
23 of the National Coordinator for Health Information Tech-
24 nology (referred to in this section as the ‘Office’). The Office
25 shall be headed by a National Coordinator who shall be ap-

1 *pointed by the Secretary and shall report directly to the*
2 *Secretary.*

3 “(b) *PURPOSE.*—*The National Coordinator shall per-*
4 *form the duties under subsection (c) in a manner consistent*
5 *with the development of a nationwide health information*
6 *technology infrastructure that allows for the electronic use*
7 *and exchange of information and that—*

8 “(1) *ensures that each patient’s health informa-*
9 *tion is secure and protected, in accordance with ap-*
10 *plicable law;*

11 “(2) *improves health care quality, reduces med-*
12 *ical errors, and advances the delivery of patient-cen-*
13 *tered medical care;*

14 “(3) *reduces health care costs resulting from inef-*
15 *iciency, medical errors, inappropriate care, duplica-*
16 *tive care, and incomplete information;*

17 “(4) *provides appropriate information to help*
18 *guide medical decisions at the time and place of care;*

19 “(5) *ensures the inclusion of meaningful public*
20 *input in such development of such infrastructure;*

21 “(6) *improves the coordination of care and infor-*
22 *mation among hospitals, laboratories, physician of-*
23 *fices, and other entities through an effective infra-*
24 *structure for the secure and authorized exchange of*
25 *health care information;*

1 “(7) improves public health activities and facili-
2 tates the early identification and rapid response to
3 public health threats and emergencies, including bio-
4 terror events and infectious disease outbreaks;

5 “(8) facilitates health and clinical research and
6 health care quality;

7 “(9) promotes early detection, prevention, and
8 management of chronic diseases;

9 “(10) promotes a more effective marketplace,
10 greater competition, greater systems analysis, in-
11 creased consumer choice, and improved outcomes in
12 health care services; and

13 “(11) improves efforts to reduce health dispari-
14 ties.

15 “(c) *DUTIES OF THE NATIONAL COORDINATOR.*—

16 “(1) *STANDARDS.*—*The National Coordinator*
17 *shall—*

18 “(A) review and determine whether to en-
19 dorse each standard, implementation specifica-
20 tion, and certification criterion for the electronic
21 exchange and use of health information that is
22 recommended by the HIT Standards Committee
23 under section 3003 for purposes of adoption
24 under section 3004;

1 “(B) make such determinations under sub-
2 paragraph (A), and report to the Secretary such
3 determinations, not later than 45 days after the
4 date the recommendation is received by the Coor-
5 dinator;

6 “(C) review Federal health information
7 technology investments to ensure that Federal
8 health information technology programs are
9 meeting the objectives of the strategic plan pub-
10 lished under paragraph (3); and

11 “(D) provide comments and advice regard-
12 ing specific Federal health information tech-
13 nology programs, at the request of the Office of
14 Management and Budget.

15 “(2) HIT POLICY COORDINATION.—

16 “(A) IN GENERAL.—The National Coordi-
17 nator shall coordinate health information tech-
18 nology policy and programs of the Department
19 with those of other relevant executive branch
20 agencies with a goal of avoiding duplication of
21 efforts and of helping to ensure that each agency
22 undertakes health information technology activi-
23 ties primarily within the areas of its greatest ex-
24 pertise and technical capability and in a man-
25 ner towards a coordinated national goal.

1 “(B) *HIT POLICY AND STANDARDS COMMIT-*
2 *TEES.—The National Coordinator shall be a*
3 *leading member in the establishment and oper-*
4 *ations of the HIT Policy Committee and the*
5 *HIT Standards Committee and shall serve as a*
6 *liaison among those two Committees and the*
7 *Federal Government.*

8 “(3) *STRATEGIC PLAN.—*

9 “(A) *IN GENERAL.—The National Coordi-*
10 *nator shall, in consultation with other appro-*
11 *priate Federal agencies (including the National*
12 *Institute of Standards and Technology), update*
13 *the Federal Health IT Strategic Plan (developed*
14 *as of June 3, 2008) to include specific objectives,*
15 *milestones, and metrics with respect to the fol-*
16 *lowing:*

17 “(i) *The electronic exchange and use of*
18 *health information and the enterprise inte-*
19 *gration of such information.*

20 “(ii) *The utilization of an electronic*
21 *health record for each person in the United*
22 *States by 2014.*

23 “(iii) *The incorporation of privacy*
24 *and security protections for the electronic*

1 *exchange of an individual's individually*
2 *identifiable health information.*

3 “(iv) *Ensuring security methods to en-*
4 *sure appropriate authorization and elec-*
5 *tronic authentication of health information*
6 *and specifying technologies or methodologies*
7 *for rendering health information unusable,*
8 *unreadable, or indecipherable.*

9 “(v) *Specifying a framework for co-*
10 *ordination and flow of recommendations*
11 *and policies under this subtitle among the*
12 *Secretary, the National Coordinator, the*
13 *HIT Policy Committee, the HIT Standards*
14 *Committee, and other health information*
15 *exchanges and other relevant entities.*

16 “(vi) *Methods to foster the public un-*
17 *derstanding of health information tech-*
18 *nology.*

19 “(vii) *Strategies to enhance the use of*
20 *health information technology in improving*
21 *the quality of health care, reducing medical*
22 *errors, reducing health disparities, improv-*
23 *ing public health, increasing prevention and*
24 *coordination with community resources,*

1 *and improving the continuity of care*
2 *among health care settings.*

3 “(viii) *Specific plans for ensuring that*
4 *populations with unique needs, such as chil-*
5 *dren, are appropriately addressed in the*
6 *technology design, as appropriate, which*
7 *may include technology that automates en-*
8 *rollment and retention for eligible individ-*
9 *uals.*

10 “(B) *COLLABORATION.*—*The strategic plan*
11 *shall be updated through collaboration of public*
12 *and private entities.*

13 “(C) *MEASURABLE OUTCOME GOALS.*—*The*
14 *strategic plan update shall include measurable*
15 *outcome goals.*

16 “(D) *PUBLICATION.*—*The National Coordi-*
17 *nator shall republish the strategic plan, includ-*
18 *ing all updates.*

19 “(4) *WEBSITE.*—*The National Coordinator shall*
20 *maintain and frequently update an Internet website*
21 *on which there is posted information on the work,*
22 *schedules, reports, recommendations, and other infor-*
23 *mation to ensure transparency in promotion of a na-*
24 *tionwide health information technology infrastruc-*
25 *ture.*

1 “(5) *HARMONIZATION.*—*The Secretary may recognize an entity or entities for the purpose of harmonizing or updating standards and implementation specifications in order to achieve uniform and consistent implementation of the standards and implementation specifications.*

7 “(6) *CERTIFICATION.*—

8 “(A) *IN GENERAL.*—*The National Coordinator, in consultation with the Director of the National Institute of Standards and Technology, shall recognize a program or programs for the voluntary certification of health information technology as being in compliance with applicable certification criteria adopted under this subtitle. Such program shall include, as appropriate, testing of the technology in accordance with section 14201(b) of the Health Information Technology for Economic and Clinical Health Act.*

20 “(B) *CERTIFICATION CRITERIA DESCRIBED.*—*In this title, the term ‘certification criteria’ means, with respect to standards and implementation specifications for health information technology, criteria to establish that the*

1 *technology meets such standards and implemen-*
2 *tation specifications.*

3 “(6) *REPORTS AND PUBLICATIONS.*—

4 “(A) *REPORT ON ADDITIONAL FUNDING OR*
5 *AUTHORITY NEEDED.*—*Not later than 12 months*
6 *after the date of the enactment of this title, the*
7 *National Coordinator shall submit to the appro-*
8 *priate committees of jurisdiction of the House of*
9 *Representatives and the Senate a report on any*
10 *additional funding or authority the Coordinator*
11 *or the HIT Policy Committee or HIT Standards*
12 *Committee requires to evaluate and develop*
13 *standards, implementation specifications, and*
14 *certification criteria, or to achieve full participa-*
15 *tion of stakeholders in the adoption of a nation-*
16 *wide health information technology infrastruc-*
17 *ture that allows for the electronic use and ex-*
18 *change of health information.*

19 “(B) *IMPLEMENTATION REPORT.*—*The Na-*
20 *tional Coordinator shall prepare a report that*
21 *identifies lessons learned from major public and*
22 *private health care systems in their implementa-*
23 *tion of health information technology, including*
24 *information on whether the technologies and*
25 *practices developed by such systems may be ap-*

1 *plicable to and usable in whole or in part by*
2 *other health care providers.*

3 “(C) *ASSESSMENT OF IMPACT OF HIT ON*
4 *COMMUNITIES WITH HEALTH DISPARITIES AND*
5 *UNINSURED, UNDERINSURED, AND MEDICALLY*
6 *UNDERSERVED AREAS.—The National Coordi-*
7 *nator shall assess and publish the impact of*
8 *health information technology in communities*
9 *with health disparities and in areas with a high*
10 *proportion of individuals who are uninsured,*
11 *underinsured, and medically underserved indi-*
12 *viduals (including urban and rural areas) and*
13 *identify practices to increase the adoption of*
14 *such technology by health care providers in such*
15 *communities, and the use of health information*
16 *technology to reduce and better manage chronic*
17 *diseases.*

18 “(D) *EVALUATION OF BENEFITS AND COSTS*
19 *OF THE ELECTRONIC USE AND EXCHANGE OF*
20 *HEALTH INFORMATION.—The National Coordi-*
21 *nator shall evaluate and publish evidence on the*
22 *benefits and costs of the electronic use and ex-*
23 *change of health information and assess to whom*
24 *these benefits and costs accrue.*

1 (E) *RESOURCE REQUIREMENTS.*—*The Na-*
2 *tional Coordinator shall estimate and publish re-*
3 *sources required annually to reach the goal of*
4 *utilization of an electronic health record for each*
5 *person in the United States by 2014, includ-*
6 *ing—*

7 (i) *the required level of Federal fund-*
8 *ing;*

9 (ii) *expectations for regional, State,*
10 *and private investment;*

11 (iii) *the expected contributions by vol-*
12 *unteers to activities for the utilization of*
13 *such records; and*

14 (iv) *the resources needed to establish or*
15 *expand education programs in medical and*
16 *health informatics and health information*
17 *management to train health care and infor-*
18 *mation technology students and provide a*
19 *health information technology workforce suf-*
20 *ficient to ensure the rapid and effective de-*
21 *ployment and utilization of health informa-*
22 *tion technologies.*

23 “(7) *ASSISTANCE.*—*The National Coordinator*
24 *may provide financial assistance to consumer advo-*
25 *cacy groups and not-for-profit entities that work in*

1 *the public interest for purposes of defraying the cost*
2 *to such groups and entities to participate under,*
3 *whether in whole or in part, the National Technology*
4 *Transfer Act of 1995 (15 U.S.C. 272 note).*

5 “(8) *GOVERNANCE FOR NATIONWIDE HEALTH IN-*
6 *FORMATION NETWORK.—The National Coordinator*
7 *shall establish a governance mechanism for the na-*
8 *tionwide health information network.*

9 “(d) *DETAIL OF FEDERAL EMPLOYEES.—*

10 “(1) *IN GENERAL.—Upon the request of the Na-*
11 *tional Coordinator, the head of any Federal agency is*
12 *authorized to detail, with or without reimbursement*
13 *from the Office, any of the personnel of such agency*
14 *to the Office to assist it in carrying out its duties*
15 *under this section.*

16 “(2) *EFFECT OF DETAIL.—Any detail of per-*
17 *sonnel under paragraph (1) shall—*

18 “(A) *not interrupt or otherwise affect the*
19 *civil service status or privileges of the Federal*
20 *employee; and*

21 “(B) *be in addition to any other staff of the*
22 *Department employed by the National Coordi-*
23 *nator.*

24 “(3) *ACCEPTANCE OF DETAILEES.—Notwith-*
25 *standing any other provision of law, the Office may*

1 *accept detailed personnel from other Federal agencies*
2 *without regard to whether the agency described under*
3 *paragraph (1) is reimbursed.*

4 *“(e) CHIEF PRIVACY OFFICER OF THE OFFICE OF THE*
5 *NATIONAL COORDINATOR.—Not later than 12 months after*
6 *the date of the enactment of this title, the Secretary shall*
7 *appoint a Chief Privacy Officer of the Office of the National*
8 *Coordinator, whose duty it shall be to advise the National*
9 *Coordinator on privacy, security, and data stewardship of*
10 *electronic health information and to coordinate with other*
11 *Federal agencies (and similar privacy officers in such agen-*
12 *cies), with State and regional efforts, and with foreign*
13 *countries with regard to the privacy, security, and data*
14 *stewardship of electronic individually identifiable health*
15 *information.*

16 **“SEC. 3002. HIT POLICY COMMITTEE.**

17 *“(a) ESTABLISHMENT.—There is established a HIT*
18 *Policy Committee to make policy recommendations to the*
19 *National Coordinator relating to the implementation of a*
20 *nationwide health information technology infrastructure,*
21 *including implementation of the strategic plan described in*
22 *section 3001(c)(3).*

23 *“(b) DUTIES.—*

24 *“(1) RECOMMENDATIONS ON HEALTH INFORMA-*
25 *TION TECHNOLOGY INFRASTRUCTURE.—The HIT Pol-*

1 *icy Committee shall recommend a policy framework*
2 *for the development and adoption of a nationwide*
3 *health information technology infrastructure that per-*
4 *mits the electronic exchange and use of health infor-*
5 *mation as is consistent with the strategic plan under*
6 *section 3001(c)(3) and that includes the recommenda-*
7 *tions under paragraph (2). The Committee shall up-*
8 *date such recommendations and make new rec-*
9 *ommendations as appropriate.*

10 *“(2) SPECIFIC AREAS OF STANDARD DEVELOP-*
11 *MENT.—*

12 *“(A) IN GENERAL.—The HIT Policy Com-*
13 *mittee shall recommend the areas in which*
14 *standards, implementation specifications, and*
15 *certification criteria are needed for the electronic*
16 *exchange and use of health information for pur-*
17 *poses of adoption under section 3004 and shall*
18 *recommend an order of priority for the develop-*
19 *ment, harmonization, and recognition of such*
20 *standards, specifications, and certification cri-*
21 *teria among the areas so recommended. Such*
22 *standards and implementation specifications*
23 *shall include named standards, architectures,*
24 *and software schemes for the authentication and*
25 *security of individually identifiable health infor-*

1 *mation and other information as needed to en-*
2 *sure the reproducible development of common so-*
3 *lutions across disparate entities.*

4 “(B) *AREAS REQUIRED FOR CONSIDER-*
5 *ATION.—For purposes of subparagraph (A), the*
6 *HIT Policy Committee shall make recommenda-*
7 *tions for at least the following areas:*

8 “(i) *Technologies that protect the pri-*
9 *vacancy of health information and promote se-*
10 *curity in a qualified electronic health*
11 *record, including for the segmentation and*
12 *protection from disclosure of specific and*
13 *sensitive individually identifiable health in-*
14 *formation with the goal of minimizing the*
15 *reluctance of patients to seek care (or dis-*
16 *close information about a condition) be-*
17 *cause of privacy concerns, in accordance*
18 *with applicable law, and for the use and*
19 *disclosure of limited data sets of such infor-*
20 *mation.*

21 “(ii) *A nationwide health information*
22 *technology infrastructure that allows for the*
23 *electronic use and accurate exchange of*
24 *health information.*

1 “(iii) *The utilization of a certified elec-*
2 *tronic health record for each person in the*
3 *United States by 2014.*

4 “(iv) *Technologies that as a part of a*
5 *qualified electronic health record allow for*
6 *an accounting of disclosures made by a cov-*
7 *ered entity (as defined for purposes of regu-*
8 *lations promulgated under section 264(c) of*
9 *the Health Insurance Portability and Ac-*
10 *countability Act of 1996) for purposes of*
11 *treatment, payment, and health care oper-*
12 *ations (as such terms are defined for pur-*
13 *poses of such regulations).*

14 “(v) *The use of certified electronic*
15 *health records to improve the quality of*
16 *health care, such as by promoting the co-*
17 *ordination of health care and improving*
18 *continuity of health care among health care*
19 *providers, by reducing medical errors, by*
20 *improving population health, reducing*
21 *chronic disease, and by advancing research*
22 *and education.*

23 “(vi) *The use of electronic systems to*
24 *ensure the comprehensive collection of pa-*
25 *tient demographic data, including, at a*

1 *minimum, race, ethnicity, primary lan-*
2 *guage, and gender information.*

3 “(vii) *Technologies and design features*
4 *that address the needs of children and other*
5 *vulnerable populations.*

6 “(C) *OTHER AREAS FOR CONSIDERATION.—*
7 *In making recommendations under subpara-*
8 *graph (A), the HIT Policy Committee may con-*
9 *sider the following additional areas:*

10 “(i) *The appropriate uses of a nation-*
11 *wide health information infrastructure, in-*
12 *cluding for purposes of—*

13 “(I) *the collection of quality data*
14 *and public reporting;*

15 “(II) *biosurveillance and public*
16 *health;*

17 “(III) *medical and clinical re-*
18 *search; and*

19 “(IV) *drug safety.*

20 “(ii) *Self-service technologies that fa-*
21 *facilitate the use and exchange of patient in-*
22 *formation and reduce wait times.*

23 “(iii) *Telemedicine technologies, in*
24 *order to reduce travel requirements for pa-*
25 *tients in remote areas.*

1 “(iv) Technologies that facilitate home
2 health care and the monitoring of patients
3 recuperating at home.

4 “(v) Technologies that help reduce med-
5 ical errors.

6 “(vi) Technologies that facilitate the
7 continuity of care among health settings.

8 “(vii) Technologies that meet the needs
9 of diverse populations.

10 “(viii) Methods to facilitate secure ac-
11 cess by an individual to such individual’s
12 protected health information.

13 “(ix) Methods, guidelines, and safe-
14 guards to facilitate secure access to patient
15 information by a family member, caregiver,
16 or guardian acting on behalf of a patient
17 due to age-related and other disability, cog-
18 nitive impairment, or dementia that pre-
19 vents a patient from accessing the patient’s
20 individually identifiable health informa-
21 tion.

22 “(x) Any other technology that the HIT
23 Policy Committee finds to be among the
24 technologies with the greatest potential to

1 *improve the quality and efficiency of health*
2 *care.*

3 “(3) *FORUM.*—*The HIT Policy Committee shall*
4 *serve as a forum for broad stakeholder input with spe-*
5 *cific expertise in policies relating to the matters de-*
6 *scribed in paragraphs (1) and (2).*

7 “(4) *CONSISTENCY WITH EVALUATION CON-*
8 *DUCTED UNDER MIPPA.*—

9 “(A) *REQUIREMENT FOR CONSISTENCY.*—
10 *The HIT Policy Committee shall ensure that rec-*
11 *ommendations made under paragraph (2)(B)(vi)*
12 *are consistent with the evaluation conducted*
13 *under section 1809(a) of the Social Security Act.*

14 “(B) *SCOPE.*—*Nothing in subparagraph (A)*
15 *shall be construed to limit the recommendations*
16 *under paragraph (2)(B)(vi) to the elements de-*
17 *scribed in section 1809(a)(3) of the Social Secu-*
18 *rity Act.*

19 “(C) *TIMING.*—*The requirement under sub-*
20 *paragraph (A) shall be applicable to the extent*
21 *that evaluations have been conducted under sec-*
22 *tion 1809(a) of the Social Security Act, regard-*
23 *less of whether the report described in subsection*
24 *(b) of such section has been submitted.*

25 “(c) *MEMBERSHIP AND OPERATIONS.*—

1 “(1) *IN GENERAL.*—*The National Coordinator*
2 *shall provide leadership in the establishment and op-*
3 *erations of the HIT Policy Committee.*

4 “(2) *MEMBERSHIP.*—*The HIT Policy Committee*
5 *shall be composed of members to be appointed as fol-*
6 *lows:*

7 “(A) *One member shall be appointed by the*
8 *Secretary.*

9 “(B) *One member shall be appointed by the*
10 *Secretary of Veterans Affairs who shall represent*
11 *the Department of Veterans Affairs.*

12 “(C) *One member shall be appointed by the*
13 *Secretary of Defense who shall represent the De-*
14 *partment of Defense.*

15 “(D) *One member shall be appointed by the*
16 *Majority Leader of the Senate.*

17 “(E) *One member shall be appointed by the*
18 *Minority Leader of the Senate.*

19 “(F) *One member shall be appointed by the*
20 *Speaker of the House of Representatives.*

21 “(G) *One member shall be appointed by the*
22 *Minority Leader of the House of Representatives.*

23 “(H) *Eleven members shall be appointed by*
24 *the Comptroller General of the United States, of*
25 *whom—*

1 “(i) three members shall represent pa-
2 tients or consumers;

3 “(ii) one member shall represent health
4 care providers;

5 “(iii) one member shall be from a labor
6 organization representing health care work-
7 ers;

8 “(iv) one member shall have expertise
9 in privacy and security;

10 “(v) one member shall have expertise
11 in improving the health of vulnerable popu-
12 lations;

13 “(vi) one member shall represent health
14 plans or other third party payers;

15 “(vii) one member shall represent in-
16 formation technology vendors;

17 “(viii) one member shall represent pur-
18 chasers or employers; and

19 “(ix) one member shall have expertise
20 in health care quality measurement and re-
21 porting.

22 “(3) CHAIRPERSON AND VICE CHAIRPERSON.—
23 The HIT Policy Committee shall designate one mem-
24 ber to serve as the chairperson and one member to
25 serve as the vice chairperson of the Policy Committee.

1 “(4) *NATIONAL COORDINATOR.*—*The National*
2 *Coordinator shall serve as a member of the HIT Pol-*
3 *icy Committee and act as a liaison among the HIT*
4 *Policy Committee, the HIT Standards Committee,*
5 *and the Federal Government.*

6 “(5) *PARTICIPATION.*—*The members of the HIT*
7 *Policy Committee appointed under paragraph (2)*
8 *shall represent a balance among various sectors of the*
9 *health care system so that no single sector unduly in-*
10 *fluences the recommendations of the Policy Com-*
11 *mittee.*

12 “(6) *TERMS.*—

13 “(A) *IN GENERAL.*—*The terms of the mem-*
14 *bers of the HIT Policy Committee shall be for 3*
15 *years, except that the Comptroller General shall*
16 *designate staggered terms for the members first*
17 *appointed.*

18 “(B) *VACANCIES.*—*Any member appointed*
19 *to fill a vacancy in the membership of the HIT*
20 *Policy Committee that occurs prior to the expi-*
21 *ration of the term for which the member’s prede-*
22 *cessor was appointed shall be appointed only for*
23 *the remainder of that term. A member may serve*
24 *after the expiration of that member’s term until*
25 *a successor has been appointed. A vacancy in the*

1 *HIT Policy Committee shall be filled in the*
2 *manner in which the original appointment was*
3 *made.*

4 “(7) *OUTSIDE INVOLVEMENT.*—*The HIT Policy*
5 *Committee shall ensure an adequate opportunity for*
6 *the participation of outside advisors, including indi-*
7 *viduals with expertise in—*

8 “(A) *health information privacy and secu-*
9 *rity;*

10 “(B) *improving the health of vulnerable*
11 *populations;*

12 “(C) *health care quality and patient safety,*
13 *including individuals with expertise in the meas-*
14 *urement and use of health information tech-*
15 *nology to capture data to improve health care*
16 *quality and patient safety;*

17 “(D) *long-term care and aging services;*

18 “(E) *medical and clinical research; and*

19 “(F) *data exchange and developing health*
20 *information technology standards and new*
21 *health information technology.*

22 “(8) *QUORUM.*—*Ten members of the HIT Policy*
23 *Committee shall constitute a quorum for purposes of*
24 *voting, but a lesser number of members may meet and*
25 *hold hearings.*

1 “(9) *FAILURE OF INITIAL APPOINTMENT.*—*If, on*
2 *the date that is 45 days after the date of enactment*
3 *of this title, an official authorized under paragraph*
4 *(2) to appoint one or more members of the HIT Pol-*
5 *icy Committee has not appointed the full number of*
6 *members that such paragraph authorizes such official*
7 *to appoint—*

8 “(A) *the number of members that such offi-*
9 *cial is authorized to appoint shall be reduced to*
10 *the number that such official has appointed as of*
11 *that date; and*

12 “(B) *the number prescribed in paragraph*
13 *(8) as the quorum shall be reduced to the small-*
14 *est whole number that is greater than one-half of*
15 *the total number of members who have been ap-*
16 *pointed as of that date.*

17 “(10) *CONSIDERATION.*—*The National Coordi-*
18 *nator shall ensure that the relevant recommendations*
19 *and comments from the National Committee on Vital*
20 *and Health Statistics are considered in the develop-*
21 *ment of policies.*

22 “(d) *APPLICATION OF FACA.*—*The Federal Advisory*
23 *Committee Act (5 U.S.C. App.), other than section 14 of*
24 *such Act, shall apply to the HIT Policy Committee.*

1 “(e) *PUBLICATION.*—*The Secretary shall provide for*
2 *publication in the Federal Register and the posting on the*
3 *Internet website of the Office of the National Coordinator*
4 *for Health Information Technology of all policy rec-*
5 *ommendations made by the HIT Policy Committee under*
6 *this section.*

7 “**SEC. 3003. HIT STANDARDS COMMITTEE.**

8 “(a) *ESTABLISHMENT.*—*There is established a com-*
9 *mittee to be known as the HIT Standards Committee to*
10 *recommend to the National Coordinator standards, imple-*
11 *mentation specifications, and certification criteria for the*
12 *electronic exchange and use of health information for pur-*
13 *poses of adoption under section 3004, consistent with the*
14 *implementation of the strategic plan described in section*
15 *3001(c)(3) and beginning with the areas listed in section*
16 *3002(b)(2)(B) in accordance with policies developed by the*
17 *HIT Policy Committee.*

18 “(b) *DUTIES.*—

19 “(1) *STANDARD DEVELOPMENT.*—

20 “(A) *IN GENERAL.*—*The HIT Standards*
21 *Committee shall recommend to the National Co-*
22 *ordinator standards, implementation specifica-*
23 *tions, and certification criteria described in sub-*
24 *section (a) that have been developed, harmonized,*
25 *or recognized by the HIT Standards Committee.*

1 *The HIT Standards Committee shall update*
2 *such recommendations and make new rec-*
3 *ommendations as appropriate, including in re-*
4 *sponse to a notification sent under section*
5 *3004(b)(2). Such recommendations shall be con-*
6 *sistent with the latest recommendations made by*
7 *the HIT Policy Committee.*

8 “(B) *PILOT TESTING OF STANDARDS AND*
9 *IMPLEMENTATION SPECIFICATIONS.—In the de-*
10 *velopment, harmonization, or recognition of*
11 *standards and implementation specifications, the*
12 *HIT Standards Committee shall, as appropriate,*
13 *provide for the testing of such standards and*
14 *specifications by the National Institute for*
15 *Standards and Technology under section 14201*
16 *of the Health Information Technology for Eco-*
17 *nomics and Clinical Health Act.*

18 “(C) *CONSISTENCY.—The standards, imple-*
19 *mentation specifications, and certification cri-*
20 *teria recommended under this subsection shall be*
21 *consistent with the standards for information*
22 *transactions and data elements adopted pursu-*
23 *ant to section 1173 of the Social Security Act.*

24 “(2) *FORUM.—The HIT Standards Committee*
25 *shall serve as a forum for the participation of a broad*

1 *range of stakeholders to provide input on the develop-*
2 *ment, harmonization, and recognition of standards,*
3 *implementation specifications, and certification cri-*
4 *teria necessary for the development and adoption of*
5 *a nationwide health information technology infra-*
6 *structure that allows for the electronic use and ex-*
7 *change of health information.*

8 “(3) *SCHEDULE.*—*Not later than 90 days after*
9 *the date of the enactment of this title, the HIT Stand-*
10 *ards Committee shall develop a schedule for the assess-*
11 *ment of policy recommendations developed by the*
12 *HIT Policy Committee under section 3002. The HIT*
13 *Standards Committee shall update such schedule an-*
14 *nually. The Secretary shall publish such schedule in*
15 *the Federal Register.*

16 “(4) *PUBLIC INPUT.*—*The HIT Standards Com-*
17 *mittee shall conduct open public meetings and develop*
18 *a process to allow for public comment on the schedule*
19 *described in paragraph (3) and recommendations de-*
20 *scribed in this subsection. Under such process com-*
21 *ments shall be submitted in a timely manner after the*
22 *date of publication of a recommendation under this*
23 *subsection.*

24 “(5) *CONSIDERATION.*—*The National Coordi-*
25 *nator shall ensure that the relevant recommendations*

1 *and comments from the National Committee on Vital*
2 *and Health Statistics are considered in the develop-*
3 *ment of standards.*

4 “(c) *MEMBERSHIP AND OPERATIONS.*—

5 “(1) *IN GENERAL.*—*The National Coordinator*
6 *shall provide leadership in the establishment and op-*
7 *erations of the HIT Standards Committee.*

8 “(2) *MEMBERSHIP.*—*The membership of the HIT*
9 *Standards Committee shall at least reflect providers,*
10 *ancillary healthcare workers, consumers, purchasers,*
11 *health plans, technology vendors, researchers, relevant*
12 *Federal agencies, and individuals with technical ex-*
13 *pertise on health care quality, privacy and security,*
14 *and on the electronic exchange and use of health in-*
15 *formation.*

16 “(3) *BROAD PARTICIPATION.*—*There is broad*
17 *participation in the HIT Standards Committee by a*
18 *variety of public and private stakeholders, either*
19 *through membership in the Committee or through an-*
20 *other means.*

21 “(4) *CHAIRPERSON; VICE CHAIRPERSON.*—*The*
22 *HIT Standards Committee may designate one mem-*
23 *ber to serve as the chairperson and one member to*
24 *serve as the vice chairperson.*

1 “(5) *DEPARTMENT MEMBERSHIP.*—*The Sec-*
2 *retary shall be a member of the HIT Standards Com-*
3 *mittee. The National Coordinator shall act as a liai-*
4 *son among the HIT Standards Committee, the HIT*
5 *Policy Committee, and the Federal Government.*

6 “(6) *BALANCE AMONG SECTORS.*—*In developing*
7 *the procedures for conducting the activities of the HIT*
8 *Standards Committee, the HIT Standards Committee*
9 *shall act to ensure a balance among various sectors of*
10 *the health care system so that no single sector unduly*
11 *influences the actions of the HIT Standards Com-*
12 *mittee.*

13 “(7) *ASSISTANCE.*—*For the purposes of carrying*
14 *out this section, the Secretary may provide or ensure*
15 *that financial assistance is provided by the HIT*
16 *Standards Committee to defray in whole or in part*
17 *any membership fees or dues charged by such Com-*
18 *mittee to those consumer advocacy groups and not for*
19 *profit entities that work in the public interest as a*
20 *part of their mission.*

21 “(d) *OPEN AND PUBLIC PROCESS.*—*In providing for*
22 *the establishment of the HIT Standards Committee pursu-*
23 *ant to subsection (a), the Secretary shall ensure the fol-*
24 *lowing:*

1 “(1) *CONSENSUS APPROACH; OPEN PROCESS.*—
2 *The HIT Standards Committee shall use a consensus*
3 *approach and a fair and open process to support the*
4 *development, harmonization, and recognition of*
5 *standards described in subsection (a)(1).*

6 “(2) *PARTICIPATION OF OUTSIDE ADVISERS.*—
7 *The HIT Standards Committee shall ensure an ade-*
8 *quate opportunity for the participation of outside ad-*
9 *visors, including individuals with expertise in—*

10 “(A) *health information privacy;*

11 “(B) *health information security;*

12 “(C) *health care quality and patient safety,*
13 *including individuals with expertise in utilizing*
14 *health information technology to improve*
15 *healthcare quality and patient safety;*

16 “(D) *long-term care and aging services; and*

17 “(E) *data exchange and developing health*
18 *information technology standards and new*
19 *health information technology.*

20 “(3) *OPEN MEETINGS.*—*Plenary and other regu-*
21 *larly scheduled formal meetings of the HIT Standards*
22 *Committee (or established subgroups thereof) shall be*
23 *open to the public.*

24 “(4) *PUBLICATION OF MEETING NOTICES AND*
25 *MATERIALS PRIOR TO MEETINGS.*—*The HIT Stand-*

1 *ards Committee shall develop and maintain an Inter-*
2 *net website on which it publishes, prior to each meet-*
3 *ing, a meeting notice, a meeting agenda, and meeting*
4 *materials.*

5 *“(5) OPPORTUNITY FOR PUBLIC COMMENT.—The*
6 *HIT Standards Committee shall develop a process*
7 *that allows for public comment during the process by*
8 *which the Entity develops, harmonizes, or recognizes*
9 *standards and implementation specifications.*

10 *“(e) VOLUNTARY CONSENSUS STANDARD BODY.—The*
11 *provisions of section 12(d) of the National Technology*
12 *Transfer and Advancement Act of 1995 (15 U.S.C. 272*
13 *note) and the Office of Management and Budget circular*
14 *119 shall apply to the HIT Standards Committee.*

15 *“(f) PUBLICATION.—The Secretary shall provide for*
16 *publication in the Federal Register and the posting on the*
17 *Internet website of the Office of the National Coordinator*
18 *for Health Information Technology of all recommendations*
19 *made by the HIT Standards Committee under this section.*

20 **“SEC. 3004. PROCESS FOR ADOPTION OF ENDORSED REC-**
21 **COMMENDATIONS; ADOPTION OF INITIAL SET**
22 **OF STANDARDS, IMPLEMENTATION SPECI-**
23 **FICATIONS, AND CERTIFICATION CRITERIA.**

24 *“(a) PROCESS FOR ADOPTION OF ENDORSED REC-*
25 *COMMENDATIONS.—*

1 “(1) *REVIEW OF ENDORSED STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.*—Not later than 90 days after the date of receipt of standards, implementation specifications, or certification criteria endorsed under section 3001(c), the Secretary, in consultation with representatives of other relevant Federal agencies, shall jointly review such standards, implementation specifications, or certification criteria and shall determine whether or not to propose adoption of such standards, implementation specifications, or certification criteria.

12 “(2) *DETERMINATION TO ADOPT STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.*—If the Secretary determines—

15 “(A) to propose adoption of any grouping of such standards, implementation specifications, or certification criteria, the Secretary shall, by regulation, determine whether or not to adopt such grouping of standards, implementation specifications, or certification criteria; or

21 “(B) not to propose adoption of any grouping of standards, implementation specifications, or certification criteria, the Secretary shall notify the National Coordinator and the HIT Standards Committee in writing of such deter-

1 *mination and the reasons for not proposing the*
2 *adoption of such recommendation.*

3 “(3) *PUBLICATION.*—*The Secretary shall provide*
4 *for publication in the Federal Register of all deter-*
5 *minations made by the Secretary under paragraph*
6 *(1).*

7 “(b) *ADOPTION OF STANDARDS, IMPLEMENTATION*
8 *SPECIFICATIONS, AND CERTIFICATION CRITERIA.*—

9 “(1) *IN GENERAL.*—*Not later than December 31,*
10 *2009, the Secretary shall, through the rulemaking*
11 *process described in section 3003, adopt an initial set*
12 *of standards, implementation specifications, and cer-*
13 *tification criteria for the areas required for consider-*
14 *ation under section 3002(b)(2)(B).*

15 “(2) *APPLICATION OF CURRENT STANDARDS, IM-*
16 *PLEMENTATION SPECIFICATIONS, AND CERTIFICATION*
17 *CRITERIA.*—*The standards, implementation specifica-*
18 *tions, and certification criteria adopted before the*
19 *date of the enactment of this title through the process*
20 *existing through the Office of the National Coordi-*
21 *nator for Health Information Technology may be ap-*
22 *plied towards meeting the requirement of paragraph*
23 *(1).*

24 “(3) *SUBSEQUENT STANDARDS ACTIVITY.*—*The*
25 *Secretary shall adopt additional standards, imple-*

1 **“SEC. 3007. FEDERAL HEALTH INFORMATION TECHNOLOGY.**

2 “(a) *IN GENERAL.*—*The National Coordinator shall*
3 *support the development and routine updating of qualified*
4 *electronic health record technology (as defined in section*
5 *3000) consistent with subsections (b) and (c) and make*
6 *available such qualified electronic health record technology*
7 *unless the Secretary and the HIT Policy Committee deter-*
8 *mine through an assessment that the needs and demands*
9 *of providers are being substantially and adequately met*
10 *through the marketplace.*

11 “(b) *CERTIFICATION.*—*In making such EHR tech-*
12 *nology publicly available, the National Coordinator shall*
13 *ensure that the qualified EHR technology described in sub-*
14 *section (a) is certified under the program developed under*
15 *section 3001(c)(3) to be in compliance with applicable*
16 *standards adopted under section 3003(a).*

17 “(c) *AUTHORIZATION TO CHARGE A NOMINAL FEE.*—
18 *The National Coordinator may impose a nominal fee for*
19 *the adoption by a health care provider of the health infor-*
20 *mation technology system developed or approved under sub-*
21 *section (a) and (b). Such fee shall take into account the*
22 *financial circumstances of smaller providers, low income*
23 *providers, and providers located in rural or other medically*
24 *underserved areas.*

25 “(d) *RULE OF CONSTRUCTION.*—*Nothing in this sec-*
26 *tion shall be construed to require that a private or govern-*

1 *ment entity adopt or use the technology provided under this*
2 *section.*

3 **SEC. 3008. TRANSITIONS.**

4 “(a) *ONCHIT.*—*Nothing in section 3001 shall be con-*
5 *strued as requiring the creation of a new entity to the extent*
6 *that the Office of the National Coordinator for Health Infor-*
7 *mation Technology established pursuant to Executive Order*
8 *13335 is consistent with the provisions of section 3001.*

9 “(b) *NATIONAL EHEALTH COLLABORATIVE.*—*Nothing*
10 *in sections 3002 or 3003 or this subsection shall be con-*
11 *strued as prohibiting the National eHealth Collaborative*
12 *from modifying its charter, duties, membership, and any*
13 *other structure or function required to be consistent with*
14 *the requirements of a voluntary consensus standards body*
15 *so as to allow the Secretary to recognize the National*
16 *eHealth Collaborative as the HIT Standards Committee.*

17 “(c) *CONSISTENCY OF RECOMMENDATIONS.*—*In car-*
18 *rying out section 3003(b)(1)(A), until recommendations are*
19 *made by the HIT Policy Committee, recommendations of*
20 *the HIT Standards Committee shall be consistent with the*
21 *most recent recommendations made by such AHIC Suc-*
22 *cessor, Inc.*

1 **“SEC. 3009. RELATION TO HIPAA PRIVACY AND SECURITY**
2 **LAW.**

3 “(a) *IN GENERAL.*—With respect to the relation of this
4 title to HIPAA privacy and security law:

5 “(1) *This title may not be construed as having*
6 *any effect on the authorities of the Secretary under*
7 *HIPAA privacy and security law.*

8 “(2) *The purposes of this title include ensuring*
9 *that the health information technology standards and*
10 *implementation specifications adopted under section*
11 *3004 take into account the requirements of HIPAA*
12 *privacy and security law.*

13 “(b) *DEFINITION.*—For purposes of this section, the
14 term ‘HIPAA privacy and security law’ means—

15 “(1) *the provisions of part C of title XI of the*
16 *Social Security Act, section 264 of the Health Insur-*
17 *ance Portability and Accountability Act of 1996, and*
18 *subtitle D of the Health Information Technology for*
19 *Economic and Clinical Health Act; and*

20 “(2) *regulations under such provisions.”.*

21 **SEC. 13102. TECHNICAL AMENDMENT.**

22 *Section 1171(5) of the Social Security Act (42 U.S.C.*
23 *1320d) is amended by striking “or C” and inserting “C,*
24 *or D”.*

1 **PART II—APPLICATION AND USE OF ADOPTED**
2 **HEALTH INFORMATION TECHNOLOGY**
3 **STANDARDS; REPORTS**

4 **SEC. 13111. COORDINATION OF FEDERAL ACTIVITIES WITH**
5 **ADOPTED STANDARDS AND IMPLEMENTA-**
6 **TION SPECIFICATIONS.**

7 (a) *SPENDING ON HEALTH INFORMATION TECH-*
8 *NOLOGY SYSTEMS.—As each agency (as defined in the Exec-*
9 *utive Order issued on August 22, 2006, relating to pro-*
10 *moting quality and efficient health care in Federal govern-*
11 *ment administered or sponsored health care programs) im-*
12 *plements, acquires, or upgrades health information tech-*
13 *nology systems used for the direct exchange of individually*
14 *identifiable health information between agencies and with*
15 *non-Federal entities, it shall utilize, where available, health*
16 *information technology systems and products that meet*
17 *standards and implementation specifications adopted under*
18 *section 3004(b) of the Public Health Service Act, as added*
19 *by section 13101.*

20 (b) *FEDERAL INFORMATION COLLECTION ACTIVI-*
21 *TIES.—With respect to a standard or implementation speci-*
22 *fication adopted under section 3004(b) of the Public Health*
23 *Service Act, as added by section 13101, the President shall*
24 *take measures to ensure that Federal activities involving*
25 *the broad collection and submission of health information*
26 *are consistent with such standard or implementation speci-*

1 *fication, respectively, within three years after the date of*
2 *such adoption.*

3 (c) *APPLICATION OF DEFINITIONS.*—*The definitions*
4 *contained in section 3000 of the Public Health Service Act,*
5 *as added by section 13101, shall apply for purposes of this*
6 *part.*

7 **SEC. 13112. APPLICATION TO PRIVATE ENTITIES.**

8 *Each agency (as defined in such Executive Order*
9 *issued on August 22, 2006, relating to promoting quality*
10 *and efficient health care in Federal government adminis-*
11 *tered or sponsored health care programs) shall require in*
12 *contracts or agreements with health care providers, health*
13 *plans, or health insurance issuers that as each provider,*
14 *plan, or issuer implements, acquires, or upgrades health in-*
15 *formation technology systems, it shall utilize, where avail-*
16 *able, health information technology systems and products*
17 *that meet standards and implementation specifications*
18 *adopted under section 3004(b) of the Public Health Service*
19 *Act, as added by section 13101.*

20 **SEC. 13113. STUDY AND REPORTS.**

21 (a) *REPORT ON ADOPTION OF NATIONWIDE SYSTEM.*—
22 *Not later than 2 years after the date of the enactment of*
23 *this Act and annually thereafter, the Secretary of Health*
24 *and Human Services shall submit to the appropriate com-*

1 *mittees of jurisdiction of the House of Representatives and*
2 *the Senate a report that—*

3 *(1) describes the specific actions that have been*
4 *taken by the Federal Government and private entities*
5 *to facilitate the adoption of a nationwide system for*
6 *the electronic use and exchange of health information;*

7 *(2) describes barriers to the adoption of such a*
8 *nationwide system; and*

9 *(3) contains recommendations to achieve full im-*
10 *plementation of such a nationwide system.*

11 *(b) REIMBURSEMENT INCENTIVE STUDY AND RE-*
12 *PORT.—*

13 *(1) STUDY.—The Secretary of Health and*
14 *Human Services shall carry out, or contract with a*
15 *private entity to carry out, a study that examines*
16 *methods to create efficient reimbursement incentives*
17 *for improving health care quality in Federally quali-*
18 *fied health centers, rural health clinics, and free clin-*
19 *ics.*

20 *(2) REPORT.—Not later than 2 years after the*
21 *date of the enactment of this Act, the Secretary of*
22 *Health and Human Services shall submit to the ap-*
23 *propriate committees of jurisdiction of the House of*
24 *Representatives and the Senate a report on the study*
25 *carried out under paragraph (1).*

1 (c) *AGING SERVICES TECHNOLOGY STUDY AND RE-*
2 *PORT.*—

3 (1) *IN GENERAL.*—*The Secretary of Health and*
4 *Human Services shall carry out, or contract with a*
5 *private entity to carry out, a study of matters relat-*
6 *ing to the potential use of new aging services tech-*
7 *nology to assist seniors, individuals with disabilities,*
8 *and their caregivers throughout the aging process.*

9 (2) *MATTERS TO BE STUDIED.*—*The study under*
10 *paragraph (1) shall include—*

11 (A) *an evaluation of—*

12 (i) *methods for identifying current,*
13 *emerging, and future health technology that*
14 *can be used to meet the needs of seniors and*
15 *individuals with disabilities and their care-*
16 *givers across all aging services settings, as*
17 *specified by the Secretary;*

18 (ii) *methods for fostering scientific in-*
19 *novation with respect to aging services tech-*
20 *nology within the business and academic*
21 *communities; and*

22 (iii) *developments in aging services*
23 *technology in other countries that may be*
24 *applied in the United States; and*

25 (B) *identification of—*

1 (i) *barriers to innovation in aging*
 2 *services technology and devising strategies*
 3 *for removing such barriers; and*

4 (ii) *barriers to the adoption of aging*
 5 *services technology by health care providers*
 6 *and consumers and devising strategies to re-*
 7 *moving such barriers.*

8 (3) *REPORT.*—*Not later than 24 months after the*
 9 *date of the enactment of this Act, the Secretary shall*
 10 *submit to the appropriate committees of jurisdiction*
 11 *of the House of Representatives and of the Senate a*
 12 *report on the study carried out under paragraph (1).*

13 (4) *DEFINITIONS.*—*For purposes of this sub-*
 14 *section:*

15 (A) *AGING SERVICES TECHNOLOGY.*—*The*
 16 *term “aging services technology” means health*
 17 *technology that meets the health care needs of*
 18 *seniors, individuals with disabilities, and the*
 19 *caregivers of such seniors and individuals.*

20 (B) *SENIOR.*—*The term “senior” has such*
 21 *meaning as specified by the Secretary.*

22 *GENERAL PROVISIONS—HOPE FOR HOMEOWNERS*

23 *AMENDMENTS*

24 *SEC. 1211. Section 257 of the National Housing Act*
 25 *(12 U.S.C. 1715z–23), as amended by the Emergency Eco-*

1 *conomic Stabilization Act of 2008 (Public Law 110–343), is*
2 *amended—*

3 (1) *in subsection (e)(1)(B), by inserting after*
4 *“being reset,” the following: “or has, due to a decrease*
5 *in income,”;*

6 (2) *in subsection (k)(2), by striking “and the*
7 *mortgagor” and all that follows through the end and*
8 *inserting “shall, upon any sale or disposition of the*
9 *property to which the mortgage relates, be entitled to*
10 *25 percent of appreciation, up to the appraised value*
11 *of the home at the time when the mortgage being refi-*
12 *nanced under this section was originally made. The*
13 *Secretary may share any amounts received under this*
14 *paragraph with the holder of the eligible mortgage re-*
15 *financed under this section.”;*

16 (3) *in subsection (i)—*

17 (A) *by inserting “, after weighing maxi-*
18 *mization of participation with consideration for*
19 *the solvency of the program,” after “Secretary*
20 *shall”;*

21 (B) *in paragraph (1), by striking “equal to*
22 *3 percent” and inserting “not more than 2 per-*
23 *cent”;* and

1 (C) in paragraph (2), by striking “equal to
2 1.5 percent” and inserting “not more than 1 per-
3 cent”; and

4 (4) by adding at the end the following:

5 “(x) AUCTIONS.—The Board shall, if feasible, establish
6 a structure and organize procedures for an auction to refi-
7 nance eligible mortgages on a wholesale or bulk basis.

8 “(y) COMPENSATION OF SERVICERS.—To provide in-
9 centive for participation in the program under this section,
10 each servicer of an eligible mortgage insured under this sec-
11 tion shall be paid \$1,000 for performing services associated
12 with refinancing such mortgage, or such other amount as
13 the Board determines is warranted. Funding for such com-
14 pensation shall be provided by funds realized through the
15 HOPE bond under subsection (w).”.

16 **Subtitle B—Testing of Health**
17 **Information Technology**

18 **SEC. 13201. NATIONAL INSTITUTE FOR STANDARDS AND**
19 **TECHNOLOGY TESTING.**

20 (a) PILOT TESTING OF STANDARDS AND IMPLEMENTA-
21 TION SPECIFICATIONS.—In coordination with the HIT
22 Standards Committee established under section 3003 of the
23 Public Health Service Act, as added by section 13101, with
24 respect to the development of standards and implementation
25 specifications under such section, the Director of the Na-

1 *tional Institute for Standards and Technology shall test*
2 *such standards and implementation specifications, as ap-*
3 *propriate, in order to assure the efficient implementation*
4 *and use of such standards and implementation specifica-*
5 *tions.*

6 (b) *VOLUNTARY TESTING PROGRAM.*—*In coordination*
7 *with the HIT Standards Committee established under sec-*
8 *tion 3003 of the Public Health Service Act, as added by*
9 *section 13101, with respect to the development of standards*
10 *and implementation specifications under such section, the*
11 *Director of the National Institute of Standards and Tech-*
12 *nology shall support the establishment of a conformance*
13 *testing infrastructure, including the development of tech-*
14 *nical test beds. The development of this conformance testing*
15 *infrastructure may include a program to accredit inde-*
16 *pendent, non-Federal laboratories to perform testing.*

17 **SEC. 13202. RESEARCH AND DEVELOPMENT PROGRAMS.**

18 (a) *HEALTH CARE INFORMATION ENTERPRISE INTE-*
19 *GRATION RESEARCH CENTERS.*—

20 (1) *IN GENERAL.*—*The Director of the National*
21 *Institute of Standards and Technology, in consulta-*
22 *tion with the Director of the National Science Foun-*
23 *dation and other appropriate Federal agencies, shall*
24 *establish a program of assistance to institutions of*
25 *higher education (or consortia thereof which may in-*

1 *clude nonprofit entities and Federal Government lab-*
2 *oratories) to establish multidisciplinary Centers for*
3 *Health Care Information Enterprise Integration.*

4 (2) *REVIEW; COMPETITION.—Grants shall be*
5 *awarded under this subsection on a merit-reviewed,*
6 *competitive basis.*

7 (3) *PURPOSE.—The purposes of the Centers de-*
8 *scribed in paragraph (1) shall be—*

9 (A) *to generate innovative approaches to*
10 *health care information enterprise integration by*
11 *conducting cutting-edge, multidisciplinary re-*
12 *search on the systems challenges to health care*
13 *delivery; and*

14 (B) *the development and use of health infor-*
15 *mation technologies and other complementary*
16 *fields.*

17 (4) *RESEARCH AREAS.—Research areas may in-*
18 *clude—*

19 (A) *interfaces between human information*
20 *and communications technology systems;*

21 (B) *voice-recognition systems;*

22 (C) *software that improves interoperability*
23 *and connectivity among health information sys-*
24 *tems;*

1 (D) software dependability in systems crit-
2 ical to health care delivery;

3 (E) measurement of the impact of informa-
4 tion technologies on the quality and productivity
5 of health care;

6 (F) health information enterprise manage-
7 ment;

8 (G) health information technology security
9 and integrity; and

10 (H) relevant health information technology
11 to reduce medical errors.

12 (5) *APPLICATIONS.*—An institution of higher
13 education (or a consortium thereof) seeking funding
14 under this subsection shall submit an application to
15 the Director of the National Institute of Standards
16 and Technology at such time, in such manner, and
17 containing such information as the Director may re-
18 quire. The application shall include, at a minimum,
19 a description of—

20 (A) the research projects that will be under-
21 taken by the Center established pursuant to as-
22 sistance under paragraph (1) and the respective
23 contributions of the participating entities;

24 (B) how the Center will promote active col-
25 laboration among scientists and engineers from

1 *different disciplines, such as information tech-*
2 *nology, biologic sciences, management, social*
3 *sciences, and other appropriate disciplines;*

4 (C) *technology transfer activities to dem-*
5 *onstrate and diffuse the research results, tech-*
6 *nologies, and knowledge; and*

7 (D) *how the Center will contribute to the*
8 *education and training of researchers and other*
9 *professionals in fields relevant to health informa-*
10 *tion enterprise integration.*

11 (b) *NATIONAL INFORMATION TECHNOLOGY RESEARCH*
12 *AND DEVELOPMENT PROGRAM.—The National High-Per-*
13 *formance Computing Program established by section 101 of*
14 *the High-Performance Computing Act of 1991 (15 U.S.C.*
15 *5511) may review Federal research and development pro-*
16 *grams related to the development and deployment of health*
17 *information technology, including activities related to—*

18 (1) *computer infrastructure;*

19 (2) *data security;*

20 (3) *development of large-scale, distributed, reli-*
21 *able computing systems;*

22 (4) *wired, wireless, and hybrid high-speed net-*
23 *working;*

24 (5) *development of software and software-inten-*
25 *sive systems;*

1 (6) *human-computer interaction and informa-*
 2 *tion management technologies; and*

3 (7) *the social and economic implications of in-*
 4 *formation technology.*

5 ***Subtitle C—Incentives for the Use of***
 6 ***Health Information Technology***

7 ***PART I—GRANTS AND LOANS FUNDING***

8 ***SEC. 13301. GRANT, LOAN, AND DEMONSTRATION PRO-***
 9 ***GRAMS.***

10 *Title XXX of the Public Health Service Act, as added*
 11 *by section 13101, is amended by adding at the end the fol-*
 12 *lowing new subtitle:*

13 ***“Subtitle B—Incentives for the Use***
 14 ***of Health Information Technology***

15 ***“SEC. 3011. IMMEDIATE FUNDING TO STRENGTHEN THE***
 16 ***HEALTH INFORMATION TECHNOLOGY INFRA-***
 17 ***STRUCTURE.***

18 ***“(a) IN GENERAL.—****The Secretary of Health and*
 19 *Human Services shall, using amounts appropriated under*
 20 *section 3018, invest in the infrastructure necessary to allow*
 21 *for and promote the electronic exchange and use of health*
 22 *information for each individual in the United States con-*
 23 *sistent with the goals outlined in the strategic plan devel-*
 24 *oped by the National Coordinator (and, as available) under*
 25 *section 3001. To the greatest extent practicable, the Sec-*

1 *retary shall ensure that any funds so appropriated shall*
2 *be used for the acquisition of health information technology*
3 *that meets standards and certification criteria adopted be-*
4 *fore the date of the enactment of this title until such date*
5 *as the standards are adopted under section 3004. The Sec-*
6 *retary shall invest funds through the different agencies with*
7 *expertise in such goals, such as the Office of the National*
8 *Coordinator for Health Information Technology, the Health*
9 *Resources and Services Administration, the Agency for*
10 *Healthcare Research and Quality, the Centers of Medicare*
11 *& Medicaid Services, the Centers for Disease Control and*
12 *Prevention, and the Indian Health Service to support the*
13 *following:*

14 *“(1) Health information technology architecture*
15 *that will support the nationwide electronic exchange*
16 *and use of health information in a secure, private,*
17 *and accurate manner, including connecting health in-*
18 *formation exchanges, and which may include updat-*
19 *ing and implementing the infrastructure necessary*
20 *within different agencies of the Department of Health*
21 *and Human Services to support the electronic use*
22 *and exchange of health information.*

23 *“(2) Development and adoption of appropriate*
24 *certified electronic health records for categories of pro-*
25 *viders not eligible for support under title XVIII or*

1 *XIX of the Social Security Act for the adoption of*
2 *such records.*

3 “(3) *Training on and dissemination of informa-*
4 *tion on best practices to integrate health information*
5 *technology, including electronic health records, into a*
6 *provider’s delivery of care, consistent with best prac-*
7 *tices learned from the Health Information Technology*
8 *Research Center developed under section 3012, includ-*
9 *ing community health centers receiving assistance*
10 *under section 330 of the Public Health Service Act,*
11 *covered entities under section 340B of such Act, and*
12 *providers participating in one or more of the pro-*
13 *grams under titles XVIII, XIX, and XXI of the Social*
14 *Security Act (relating to Medicare, Medicaid, and the*
15 *State Children’s Health Insurance Program).*

16 “(4) *Infrastructure and tools for the promotion*
17 *of telemedicine, including coordination among Fed-*
18 *eral agencies in the promotion of telemedicine.*

19 “(5) *Promotion of the interoperability of clinical*
20 *data repositories or registries.*

21 “(6) *Promotion of technologies and best practices*
22 *that enhance the protection of health information by*
23 *all holders of individually identifiable health informa-*
24 *tion.*

1 *experience and expertise in information technology services,*
2 *such as the National Institute of Standards and Tech-*
3 *nology, in developing and implementing this program.*

4 “(b) *HEALTH INFORMATION TECHNOLOGY RESEARCH*
5 *CENTER.—*

6 “(1) *IN GENERAL.—The Secretary shall create a*
7 *Health Information Technology Research Center (in*
8 *this section referred to as the ‘Center’) to provide tech-*
9 *nical assistance and develop or recognize best prac-*
10 *tices to support and accelerate efforts to adopt, imple-*
11 *ment, and effectively utilize health information tech-*
12 *nology that allows for the electronic exchange and use*
13 *of information in compliance with standards, imple-*
14 *mentation specifications, and certification criteria*
15 *adopted under section 3004(b).*

16 “(2) *INPUT.—The Center shall incorporate input*
17 *from—*

18 “(A) *other Federal agencies with dem-*
19 *onstrated experience and expertise in informa-*
20 *tion technology services such as the National In-*
21 *stitute of Standards and Technology;*

22 “(B) *users of health information technology,*
23 *such as providers and their support and clerical*
24 *staff and others involved in the care and care co-*

1 *ordination of patients, from the health care and*
2 *health information technology industry; and*

3 “(C) *others as appropriate.*

4 “(3) *PURPOSES.—The purposes of the Center are*
5 *to—*

6 “(A) *provide a forum for the exchange of*
7 *knowledge and experience;*

8 “(B) *accelerate the transfer of lessons*
9 *learned from existing public and private sector*
10 *initiatives, including those currently receiving*
11 *Federal financial support;*

12 “(C) *assemble, analyze, and widely dissemi-*
13 *nate evidence and experience related to the adop-*
14 *tion, implementation, and effective use of health*
15 *information technology that allows for the elec-*
16 *tronic exchange and use of information includ-*
17 *ing through the regional centers described in sub-*
18 *section (c);*

19 “(D) *provide technical assistance for the es-*
20 *tablishment and evaluation of regional and local*
21 *health information networks to facilitate the elec-*
22 *tronic exchange of information across health care*
23 *settings and improve the quality of health care;*

24 “(E) *provide technical assistance for the de-*
25 *velopment and dissemination of solutions to bar-*

1 *riers to the exchange of electronic health informa-*
2 *tion; and*

3 “(F) *learn about effective strategies to adopt*
4 *and utilize health information technology in*
5 *medically underserved communities.*

6 “(c) *HEALTH INFORMATION TECHNOLOGY REGIONAL*
7 *EXTENSION CENTERS.—*

8 “(1) *IN GENERAL.—The Secretary shall provide*
9 *assistance for the creation and support of regional*
10 *centers (in this subsection referred to as ‘regional cen-*
11 *ters’) to provide technical assistance and disseminate*
12 *best practices and other information learned from the*
13 *Center to support and accelerate efforts to adopt, im-*
14 *plement, and effectively utilize health information*
15 *technology that allows for the electronic exchange and*
16 *use of information in compliance with standards, im-*
17 *plementation specifications, and certification criteria*
18 *adopted under section 3004. Activities conducted*
19 *under this subsection shall be consistent with the stra-*
20 *tegic plan developed by the National Coordinator*
21 *(and, as available) under section 3001.*

22 “(2) *AFFILIATION.—Regional centers shall be af-*
23 *filiated with any United States-based nonprofit insti-*
24 *tution or organization, or group thereof, that applies*
25 *and is awarded financial assistance under this sec-*

1 *tion. Individual awards shall be decided on the basis*
2 *of merit.*

3 “(3) *OBJECTIVE.—The objective of the regional*
4 *centers is to enhance and promote the adoption of*
5 *health information technology through—*

6 “(A) *assistance with the implementation, ef-*
7 *fective use, upgrading, and ongoing maintenance*
8 *of health information technology, including elec-*
9 *tronic health records, to healthcare providers na-*
10 *tionwide;*

11 “(B) *broad participation of individuals*
12 *from industry, universities, and State govern-*
13 *ments;*

14 “(C) *active dissemination of best practices*
15 *and research on the implementation, effective*
16 *use, upgrading, and ongoing maintenance of*
17 *health information technology, including elec-*
18 *tronic health records, to health care providers in*
19 *order to improve the quality of healthcare and*
20 *protect the privacy and security of health infor-*
21 *mation;*

22 “(D) *participation, to the extent prac-*
23 *ticable, in health information exchanges;*

1 “(E) utilization, when appropriate, of the
2 expertise and capability that exists in federal
3 agencies other than the Department; and

4 “(F) integration of health information tech-
5 nology, including electronic health records, into
6 the initial and ongoing training of health profes-
7 sionals and others in the healthcare industry
8 that would be instrumental to improving the
9 quality of healthcare through the smooth and ac-
10 curate electronic use and exchange of health in-
11 formation.

12 “(4) REGIONAL ASSISTANCE.—Each regional
13 center shall aim to provide assistance and education
14 to all providers in a region, but shall prioritize any
15 direct assistance first to the following:

16 “(A) Public or not-for-profit hospitals or
17 critical access hospitals.

18 “(B) Federally qualified health centers (as
19 defined in section 1861(aa)(4) of the Social Se-
20 curity Act).

21 “(C) Entities that are located in rural and
22 other areas that serve uninsured, underinsured,
23 and medically underserved individuals (regard-
24 less of whether such area is urban or rural).

1 “(D) *Individual or small group practices*
2 *(or a consortium thereof) that are primarily fo-*
3 *cused on primary care.*

4 “(5) *FINANCIAL SUPPORT.—The Secretary may*
5 *provide financial support to any regional center cre-*
6 *ated under this subsection for a period not to exceed*
7 *four years. The Secretary may not provide more than*
8 *50 percent of the capital and annual operating and*
9 *maintenance funds required to create and maintain*
10 *such a center, except in an instance of national eco-*
11 *nomical conditions which would render this cost-share*
12 *requirement detrimental to the program and upon no-*
13 *tification to Congress as to the justification to waive*
14 *the cost-share requirement.*

15 “(6) *NOTICE OF PROGRAM DESCRIPTION AND*
16 *AVAILABILITY OF FUNDS.—The Secretary shall pub-*
17 *lish in the Federal Register, not later than 90 days*
18 *after the date of the enactment of this Act, a draft de-*
19 *scription of the program for establishing regional cen-*
20 *ters under this subsection. Such description shall in-*
21 *clude the following:*

22 “(A) *A detailed explanation of the program*
23 *and the program's goals.*

24 “(B) *Procedures to be followed by the appli-*
25 *cants.*

1 “(C) *Criteria for determining qualified ap-*
2 *plicants.*

3 “(D) *Maximum support levels expected to be*
4 *available to centers under the program.*

5 “(7) *APPLICATION REVIEW.—The Secretary shall*
6 *subject each application under this subsection to*
7 *merit review. In making a decision whether to ap-*
8 *prove such application and provide financial support,*
9 *the Secretary shall consider at a minimum the merits*
10 *of the application, including those portions of the ap-*
11 *plication regarding—*

12 “(A) *the ability of the applicant to provide*
13 *assistance under this subsection and utilization*
14 *of health information technology appropriate to*
15 *the needs of particular categories of health care*
16 *providers;*

17 “(B) *the types of service to be provided to*
18 *health care providers;*

19 “(C) *geographical diversity and extent of*
20 *service area; and*

21 “(D) *the percentage of funding and amount*
22 *of in-kind commitment from other sources.*

23 “(8) *BIENNIAL EVALUATION.—Each regional cen-*
24 *ter which receives financial assistance under this sub-*
25 *section shall be evaluated biennially by an evaluation*

1 panel appointed by the Secretary. Each evaluation
2 panel shall be composed of private experts, none of
3 whom shall be connected with the center involved, and
4 of Federal officials. Each evaluation panel shall meas-
5 ure the involved center's performance against the ob-
6 jective specified in paragraph (3). The Secretary shall
7 not continue to provide funding to a regional center
8 unless its evaluation is overall positive.

9 “(9) CONTINUING SUPPORT.—After the second
10 year of assistance under this subsection a regional
11 center may receive additional support under this sub-
12 section if it has received positive evaluations and a
13 finding by the Secretary that continuation of Federal
14 funding to the center was in the best interest of provi-
15 sion of health information technology extension serv-
16 ices.

17 **“SEC. 3013. STATE GRANTS TO PROMOTE HEALTH INFORMA-**
18 **TION TECHNOLOGY.**

19 “(a) IN GENERAL.—The Secretary, acting through the
20 National Coordinator, shall establish a program in accord-
21 ance with this section to facilitate and expand the electronic
22 movement and use of health information among organiza-
23 tions according to nationally recognized standards.

24 “(b) PLANNING GRANTS.—The Secretary may award
25 a grant to a State or qualified State-designated entity (as

1 *described in subsection (d)) that submits an application to*
2 *the Secretary at such time, in such manner, and containing*
3 *such information as the Secretary may specify, for the pur-*
4 *pose of planning activities described in subsection (b).*

5 “(c) *IMPLEMENTATION GRANTS.*—*The Secretary may*
6 *award a grant to a State or qualified State designated enti-*
7 *ty that—*

8 “(1) *has submitted, and the Secretary has ap-*
9 *proved, a plan described in subsection (c) (regardless*
10 *of whether such plan was prepared using amounts*
11 *awarded under paragraph (1)); and*

12 “(2) *submits an application at such time, in*
13 *such manner, and containing such information as the*
14 *Secretary may specify.*

15 “(d) *USE OF FUNDS.*—*Amounts received under a*
16 *grant under subsection (a)(3) shall be used to conduct ac-*
17 *tivities to facilitate and expand the electronic movement*
18 *and use of health information among organizations accord-*
19 *ing to nationally recognized standards through activities*
20 *that include—*

21 “(1) *enhancing broad and varied participation*
22 *in the authorized and secure nationwide electronic use*
23 *and exchange of health information;*

1 “(2) identifying State or local resources available
2 towards a nationwide effort to promote health infor-
3 mation technology;

4 “(3) complementing other Federal grants, pro-
5 grams, and efforts towards the promotion of health
6 information technology;

7 “(4) providing technical assistance for the devel-
8 opment and dissemination of solutions to barriers to
9 the exchange of electronic health information;

10 “(5) promoting effective strategies to adopt and
11 utilize health information technology in medically un-
12 derserved communities;

13 “(6) assisting patients in utilizing health infor-
14 mation technology;

15 “(7) encouraging clinicians to work with Health
16 Information Technology Regional Extension Centers
17 as described in section 3012, to the extent they are
18 available and valuable;

19 “(8) supporting public health agencies’ author-
20 ized use of and access to electronic health information;

21 “(9) promoting the use of electronic health
22 records for quality improvement including through
23 quality measures reporting;

24 “(10) establishing and supporting health record
25 banking models to further consumer-based consent

1 *models that promote lifetime access to qualified health*
2 *records, if such activities are included in the plan de-*
3 *scribed in subsection (e), and may contain smart card*
4 *functionality; and*

5 *“(11) such other activities as the Secretary may*
6 *specify.*

7 *“(e) PLAN.—*

8 *“(1) IN GENERAL.—A plan described in this sub-*
9 *section is a plan that describes the activities to be*
10 *carried out by a State or by the qualified State-des-*
11 *ignated entity within such State to facilitate and ex-*
12 *pend the electronic movement and use of health infor-*
13 *mation among organizations according to nationally*
14 *recognized standards and implementation specifica-*
15 *tions.*

16 *“(2) REQUIRED ELEMENTS.—A plan described*
17 *in paragraph (1) shall—*

18 *“(A) be pursued in the public interest;*

19 *“(B) be consistent with the strategic plan*
20 *developed by the National Coordinator (and, as*
21 *available) under section 3001;*

22 *“(C) include a description of the ways the*
23 *State or qualified State-designated entity will*
24 *carry out the activities described in subsection*
25 *(b); and*

1 “(D) contain such elements as the Secretary
2 may require.

3 “(f) *QUALIFIED STATE-DESIGNATED ENTITY.*—For
4 purposes of this section, to be a qualified State-designated
5 entity, with respect to a State, an entity shall—

6 “(1) be designated by the State as eligible to re-
7 ceive awards under this section;

8 “(2) be a not-for-profit entity with broad stake-
9 holder representation on its governing board;

10 “(3) demonstrate that one of its principal goals
11 is to use information technology to improve health
12 care quality and efficiency through the authorized
13 and secure electronic exchange and use of health in-
14 formation;

15 “(4) adopt nondiscrimination and conflict of in-
16 terest policies that demonstrate a commitment to
17 open, fair, and nondiscriminatory participation by
18 stakeholders; and

19 “(5) conform to such other requirements as the
20 Secretary may establish.

21 “(g) *REQUIRED CONSULTATION.*—In carrying out ac-
22 tivities described in subsections (a)(2) and (a)(3), a State
23 or qualified State-designated entity shall consult with and
24 consider the recommendations of—

1 “(1) health care providers (including providers
2 that provide services to low income and underserved
3 populations);

4 “(2) health plans;

5 “(3) patient or consumer organizations that rep-
6 resent the population to be served;

7 “(4) health information technology vendors;

8 “(5) health care purchasers and employers;

9 “(6) public health agencies;

10 “(7) health professions schools, universities and
11 colleges;

12 “(8) clinical researchers;

13 “(9) other users of health information technology
14 such as the support and clerical staff of providers and
15 others involved in the care and care coordination of
16 patients; and

17 “(10) such other entities, as may be determined
18 appropriate by the Secretary.

19 “(h) *CONTINUOUS IMPROVEMENT.*—The Secretary
20 shall annually evaluate the activities conducted under this
21 section and shall, in awarding grants under this section,
22 implement the lessons learned from such evaluation in a
23 manner so that awards made subsequent to each such eval-
24 uation are made in a manner that, in the determination
25 of the Secretary, will lead towards the greatest improvement

1 *in quality of care, decrease in costs, and the most effective*
2 *authorized and secure electronic exchange of health informa-*
3 *tion.*

4 “(i) *REQUIRED MATCH.—*

5 “(1) *IN GENERAL.—For a fiscal year (beginning*
6 *with fiscal year 2011), the Secretary may not make*
7 *a grant under subsection (a) to a State unless the*
8 *State agrees to make available non-Federal contribu-*
9 *tions (which may include in-kind contributions) to-*
10 *ward the costs of a grant awarded under subsection*
11 *(a)(3) in an amount equal to—*

12 “(A) *for fiscal year 2011, not less than \$1*
13 *for each \$10 of Federal funds provided under the*
14 *grant;*

15 “(B) *for fiscal year 2012, not less than \$1*
16 *for each \$7 of Federal funds provided under the*
17 *grant; and*

18 “(C) *for fiscal year 2013 and each subse-*
19 *quent fiscal year, not less than \$1 for each \$3 of*
20 *Federal funds provided under the grant.*

21 “(2) *AUTHORITY TO REQUIRE STATE MATCH FOR*
22 *FISCAL YEARS BEFORE FISCAL YEAR 2011.—For any*
23 *fiscal year during the grant program under this sec-*
24 *tion before fiscal year 2011, the Secretary may deter-*
25 *mine the extent to which there shall be required a*

1 *non-Federal contribution from a State receiving a*
2 *grant under this section.*

3 **“SEC. 3014. COMPETITIVE GRANTS TO STATES AND INDIAN**
4 **TRIBES FOR THE DEVELOPMENT OF LOAN**
5 **PROGRAMS TO FACILITATE THE WIDESPREAD**
6 **ADOPTION OF CERTIFIED EHR TECHNOLOGY.**

7 *“(a) IN GENERAL.—The National Coordinator may*
8 *award competitive grants to eligible entities for the estab-*
9 *lishment of programs for loans to health care providers to*
10 *conduct the activities described in subsection (e).*

11 *“(b) ELIGIBLE ENTITY DEFINED.—For purposes of*
12 *this subsection, the term ‘eligible entity’ means a State or*
13 *Indian tribe (as defined in the Indian Self-Determination*
14 *and Education Assistance Act) that—*

15 *“(1) submits to the National Coordinator an ap-*
16 *plication at such time, in such manner, and con-*
17 *taining such information as the National Coordinator*
18 *may require;*

19 *“(2) submits to the National Coordinator a stra-*
20 *tegic plan in accordance with subsection (d) and pro-*
21 *vides to the National Coordinator assurances that the*
22 *entity will update such plan annually in accordance*
23 *with such subsection;*

1 “(3) provides assurances to the National Coordi-
2 nator that the entity will establish a Loan Fund in
3 accordance with subsection (c);

4 “(4) provides assurances to the National Coordi-
5 nator that the entity will not provide a loan from the
6 Loan Fund to a health care provider unless the pro-
7 vider agrees to—

8 “(A) submit reports on quality measures
9 adopted by the Federal Government (by not later
10 than 90 days after the date on which such meas-
11 ures are adopted), to—

12 “(i) the Director of the Centers for
13 Medicare & Medicaid Services (or his or her
14 designee), in the case of an entity partici-
15 pating in the Medicare program under title
16 XVIII of the Social Security Act or the
17 Medicaid program under title XIX of such
18 Act; or

19 “(ii) the Secretary in the case of other
20 entities;

21 “(B) demonstrate to the satisfaction of the
22 Secretary (through criteria established by the
23 Secretary) that any certified EHR technology
24 purchased, improved, or otherwise financially
25 supported under a loan under this section is

1 *used to exchange health information in a man-*
2 *ner that, in accordance with law and standards*
3 *(as adopted under section 3005) applicable to the*
4 *exchange of information, improves the quality of*
5 *health care, such as promoting care coordination;*

6 *“(C) comply with such other requirements*
7 *as the entity or the Secretary may require;*

8 *“(D) include a plan on how healthcare pro-*
9 *viders involved intend to maintain and support*
10 *the certified EHR technology over time; and*

11 *“(E) include a plan on how the healthcare*
12 *providers involved intend to maintain and sup-*
13 *port the certified EHR technology that would be*
14 *purchased with such loan, including the type of*
15 *resources expected to be involved and any such*
16 *other information as the State or Indian tribe,*
17 *respectively, may require; and*

18 *“(5) agrees to provide matching funds in accord-*
19 *ance with subsection (i).*

20 *“(c) ESTABLISHMENT OF FUND.—For purposes of sub-*
21 *section (b)(3), an eligible entity shall establish a certified*
22 *EHR technology loan fund (referred to in this subsection*
23 *as a ‘Loan Fund’) and comply with the other requirements*
24 *contained in this section. A grant to an eligible entity under*
25 *this section shall be deposited in the Loan Fund established*

1 *by the eligible entity. No funds authorized by other provi-*
2 *sions of this title to be used for other purposes specified in*
3 *this title shall be deposited in any Loan Fund.*

4 “(d) *STRATEGIC PLAN.*—

5 “(1) *IN GENERAL.*—*For purposes of subsection*
6 *(b)(2), a strategic plan of an eligible entity under this*
7 *subsection shall identify the intended uses of amounts*
8 *available to the Loan Fund of such entity.*

9 “(2) *CONTENTS.*—*A strategic plan under para-*
10 *graph (1), with respect to a Loan Fund of an eligible*
11 *entity, shall include for a year the following:*

12 “(A) *A list of the projects to be assisted*
13 *through the Loan Fund during such year.*

14 “(B) *A description of the criteria and meth-*
15 *ods established for the distribution of funds from*
16 *the Loan Fund during the year.*

17 “(C) *A description of the financial status of*
18 *the Loan Fund as of the date of submission of*
19 *the plan.*

20 “(D) *The short-term and long-term goals of*
21 *the Loan Fund.*

22 “(e) *USE OF FUNDS.*—*Amounts deposited in a Loan*
23 *Fund, including loan repayments and interest earned on*
24 *such amounts, shall be used only for awarding loans or loan*
25 *guarantees, making reimbursements described in subsection*

1 (g)(4)(A), or as a source of reserve and security for lever-
2 aged loans, the proceeds of which are deposited in the Loan
3 Fund established under subsection (a). Loans under this
4 section may be used by a health care provider to—

5 “(1) facilitate the purchase of certified EHR
6 technology;

7 “(2) enhance the utilization of certified EHR
8 technology (which may include costs associated with
9 upgrading health information technology so that it
10 meets criteria necessary to be a certified EHR tech-
11 nology);

12 “(3) train personnel in the use of such tech-
13 nology; or

14 “(4) improve the secure electronic exchange of
15 health information.

16 “(f) TYPES OF ASSISTANCE.—Except as otherwise lim-
17 ited by applicable State law, amounts deposited into a
18 Loan Fund under this subsection may only be used for the
19 following:

20 “(1) To award loans that comply with the fol-
21 lowing:

22 “(A) The interest rate for each loan shall
23 not exceed the market interest rate.

24 “(B) The principal and interest payments
25 on each loan shall commence not later than 1

1 year after the date the loan was awarded, and
2 each loan shall be fully amortized not later than
3 10 years after the date of the loan.

4 “(C) The Loan Fund shall be credited with
5 all payments of principal and interest on each
6 loan awarded from the Loan Fund.

7 “(2) To guarantee, or purchase insurance for, a
8 local obligation (all of the proceeds of which finance
9 a project eligible for assistance under this subsection)
10 if the guarantee or purchase would improve credit
11 market access or reduce the interest rate applicable to
12 the obligation involved.

13 “(3) As a source of revenue or security for the
14 payment of principal and interest on revenue or gen-
15 eral obligation bonds issued by the eligible entity if
16 the proceeds of the sale of the bonds will be deposited
17 into the Loan Fund.

18 “(4) To earn interest on the amounts deposited
19 into the Loan Fund.

20 “(5) To make reimbursements described in sub-
21 section (g)(4)(A).

22 “(g) ADMINISTRATION OF LOAN FUNDS.—

23 “(1) COMBINED FINANCIAL ADMINISTRATION.—
24 An eligible entity may (as a convenience and to avoid
25 unnecessary administrative costs) combine, in accord-

1 *ance with applicable State law, the financial admin-*
2 *istration of a Loan Fund established under this sub-*
3 *section with the financial administration of any other*
4 *revolving fund established by the entity if otherwise*
5 *not prohibited by the law under which the Loan Fund*
6 *was established.*

7 *“(2) COST OF ADMINISTERING FUND.—Each eli-*
8 *gible entity may annually use not to exceed 4 percent*
9 *of the funds provided to the entity under a grant*
10 *under this subsection to pay the reasonable costs of*
11 *the administration of the programs under this section,*
12 *including the recovery of reasonable costs expended to*
13 *establish a Loan Fund which are incurred after the*
14 *date of the enactment of this title.*

15 *“(3) GUIDANCE AND REGULATIONS.—The Na-*
16 *tional Coordinator shall publish guidance and pro-*
17 *mulgate regulations as may be necessary to carry out*
18 *the provisions of this section, including—*

19 *“(A) provisions to ensure that each eligible*
20 *entity commits and expends funds allotted to the*
21 *entity under this subsection as efficiently as pos-*
22 *sible in accordance with this title and applicable*
23 *State laws; and*

24 *“(B) guidance to prevent waste, fraud, and*
25 *abuse.*

1 “(4) *PRIVATE SECTOR CONTRIBUTIONS.*—

2 “(A) *IN GENERAL.*—*A Loan Fund estab-*
3 *lished under this subsection may accept contribu-*
4 *tions from private sector entities, except that*
5 *such entities may not specify the recipient or re-*
6 *ipients of any loan issued under this subsection.*
7 *An eligible entity may agree to reimburse a pri-*
8 *vate sector entity for any contribution made*
9 *under this subparagraph, except that the amount*
10 *of such reimbursement may not be greater than*
11 *the principal amount of the contribution made.*

12 “(B) *AVAILABILITY OF INFORMATION.*—*An*
13 *eligible entity shall make publicly available the*
14 *identity of, and amount contributed by, any pri-*
15 *vate sector entity under subparagraph (A) and*
16 *may issue letters of commendation or make other*
17 *awards (that have no financial value) to any*
18 *such entity.*

19 “(h) *MATCHING REQUIREMENTS.*—

20 “(1) *IN GENERAL.*—*The National Coordinator*
21 *may not make a grant under subsection (a) to an eli-*
22 *gible entity unless the entity agrees to make available*
23 *(directly or through donations from public or private*
24 *entities) non-Federal contributions in cash to the costs*
25 *of carrying out the activities for which the grant is*

1 *awarded in an amount equal to not less than \$1 for*
2 *each \$5 of Federal funds provided under the grant.*

3 *“(2) DETERMINATION OF AMOUNT OF NON-FED-*
4 *ERAL CONTRIBUTION.—In determining the amount of*
5 *non-Federal contributions that an eligible entity has*
6 *provided pursuant to subparagraph (A), the National*
7 *Coordinator may not include any amounts provided*
8 *to the entity by the Federal Government.*

9 *“(i) EFFECTIVE DATE.—The Secretary may not make*
10 *an award under this section prior to January 1, 2010.*

11 **“SEC. 3015. DEMONSTRATION PROGRAM TO INTEGRATE IN-**
12 **FORMATION TECHNOLOGY INTO CLINICAL**
13 **EDUCATION.**

14 *“(a) IN GENERAL.—The Secretary may award grants*
15 *under this section to carry out demonstration projects to*
16 *develop academic curricula integrating certified EHR tech-*
17 *nology in the clinical education of health professionals.*
18 *Such awards shall be made on a competitive basis and pur-*
19 *suant to peer review.*

20 *“(b) ELIGIBILITY.—To be eligible to receive a grant*
21 *under subsection (a), an entity shall—*

22 *“(1) submit to the Secretary an application at*
23 *such time, in such manner, and containing such in-*
24 *formation as the Secretary may require;*

1 “(2) submit to the Secretary a strategic plan for
2 integrating certified EHR technology in the clinical
3 education of health professionals to reduce medical er-
4 rors, increase access to prevention, reduce chronic dis-
5 eases, and enhance health care quality;

6 “(3) be—

7 “(A) a school of medicine, osteopathic medi-
8 cine, dentistry, or pharmacy, a graduate pro-
9 gram in behavioral or mental health, or any
10 other graduate health professions school;

11 “(B) a graduate school of nursing or physi-
12 cian assistant studies;

13 “(C) a consortium of two or more schools
14 described in subparagraph (A) or (B); or

15 “(D) an institution with a graduate med-
16 ical education program in medicine, osteopathic
17 medicine, dentistry, pharmacy, nursing, or phy-
18 sician assistance studies.

19 “(4) provide for the collection of data regarding
20 the effectiveness of the demonstration project to be
21 funded under the grant in improving the safety of pa-
22 tients, the efficiency of health care delivery, and in
23 increasing the likelihood that graduates of the grantee
24 will adopt and incorporate certified EHR technology,
25 in the delivery of health care services; and

1 “(5) provide matching funds in accordance with
2 subsection (d).

3 “(c) *USE OF FUNDS.*—

4 “(1) *IN GENERAL.*—With respect to a grant
5 under subsection (a), an eligible entity shall—

6 “(A) use grant funds in collaboration with
7 2 or more disciplines; and

8 “(B) use grant funds to integrate certified
9 EHR technology into community-based clinical
10 education.

11 “(2) *LIMITATION.*—An eligible entity shall not
12 use amounts received under a grant under subsection
13 (a) to purchase hardware, software, or services.

14 “(d) *FINANCIAL SUPPORT.*—The Secretary may not
15 provide more than 50 percent of the costs of any activity
16 for which assistance is provided under subsection (a), except
17 in an instance of national economic conditions which would
18 render the cost-share requirement under this subsection det-
19 rimental to the program and upon notification to Congress
20 as to the justification to waive the cost-share requirement.

21 “(e) *EVALUATION.*—The Secretary shall take such ac-
22 tion as may be necessary to evaluate the projects funded
23 under this section and publish, make available, and dis-
24 seminate the results of such evaluations on as wide a basis
25 as is practicable.

1 “(f) *REPORTS.*—Not later than 1 year after the date
2 of enactment of this title, and annually thereafter, the Sec-
3 retary shall submit to the Committee on Health, Education,
4 Labor, and Pensions and the Committee on Finance of the
5 Senate, and the Committee on Energy and Commerce of
6 the House of Representatives a report that—

7 “(1) describes the specific projects established
8 under this section; and

9 “(2) contains recommendations for Congress
10 based on the evaluation conducted under subsection
11 (e).

12 **“SEC. 3016. INFORMATION TECHNOLOGY PROFESSIONALS**
13 **ON HEALTH CARE.**

14 “(a) *IN GENERAL.*—The Secretary, in consultation
15 with the Director of the National Science Foundation, shall
16 provide assistance to institutions of higher education (or
17 consortia thereof) to establish or expand medical health
18 informatics education programs, including certification,
19 undergraduate, and masters degree programs, for both
20 health care and information technology students to ensure
21 the rapid and effective utilization and development of
22 health information technologies (in the United States health
23 care infrastructure).

24 “(b) *ACTIVITIES.*—Activities for which assistance may
25 be provided under subsection (a) may include the following:

1 “(1) *Developing and revising curricula in med-*
2 *ical health informatics and related disciplines.*

3 “(2) *Recruiting and retaining students to the*
4 *program involved.*

5 “(3) *Acquiring equipment necessary for student*
6 *instruction in these programs, including the installa-*
7 *tion of testbed networks for student use.*

8 “(4) *Establishing or enhancing bridge programs*
9 *in the health informatics fields between community*
10 *colleges and universities.*

11 “(c) *PRIORITY.—In providing assistance under sub-*
12 *section (a), the Secretary shall give preference to the fol-*
13 *lowing:*

14 “(1) *Existing education and training programs.*

15 “(2) *Programs designed to be completed in less*
16 *than six months.*

17 “(d) *FINANCIAL SUPPORT.—The Secretary may not*
18 *provide more than 50 percent of the costs of any activity*
19 *for which assistance is provided under subsection (a), except*
20 *in an instance of national economic conditions which would*
21 *render the cost-share requirement under this subsection det-*
22 *rimonial to the program and upon notification to Congress*
23 *as to the justification to waive the cost-share requirement.*

1 **“SEC. 3017. GENERAL GRANT AND LOAN PROVISIONS.**

2 “(a) *REPORTS.*—*The Secretary may require that an*
3 *entity receiving assistance under this title shall submit to*
4 *the Secretary, not later than the date that is 1 year after*
5 *the date of receipt of such assistance, a report that in-*
6 *cludes—*

7 “(1) *an analysis of the effectiveness of such ac-*
8 *tivities for which the entity receives such assistance,*
9 *as compared to the goals for such activities; and*

10 “(2) *an analysis of the impact of the project on*
11 *healthcare quality and safety.*

12 “(b) *REQUIREMENT TO IMPROVE QUALITY OF CARE*
13 *AND DECREASE IN COSTS.*—*The National Coordinator shall*
14 *annually evaluate the activities conducted under this title*
15 *and shall, in awarding grants, implement the lessons*
16 *learned from such evaluation in a manner so that awards*
17 *made subsequent to each such evaluation are made in a*
18 *manner that, in the determination of the National Coordi-*
19 *nator, will result in the greatest improvement in the quality*
20 *and efficiency of health care.*

21 **“SEC. 3018. AUTHORIZATION FOR APPROPRIATIONS.**

22 “*For the purposes of carrying out this subtitle, there*
23 *is authorized to be appropriated such sums as may be nec-*
24 *essary for each of the fiscal years 2009 through 2013.*
25 *Amounts so appropriated shall remain available until ex-*
26 *pended.*”.

Subtitle D—Privacy

2 SEC. 13400. DEFINITIONS.

3 *In this subtitle, except as specified otherwise:*

4 (1) *BREACH.*—*The term “breach” means the un-*
5 *authorized acquisition, access, use, or disclosure of*
6 *protected health information which compromises the*
7 *security, privacy, or integrity of protected health in-*
8 *formation maintained by or on behalf of a person.*
9 *Such term does not include any unintentional acqui-*
10 *sition, access, use, or disclosure of such information*
11 *by an employee or agent of the covered entity or busi-*
12 *ness associate involved if such acquisition, access, use,*
13 *or disclosure, respectively, was made in good faith*
14 *and within the course and scope of the employment*
15 *or other contractual relationship of such employee or*
16 *agent, respectively, with the covered entity or business*
17 *associate and if such information is not further ac-*
18 *quired, accessed, used, or disclosed by such employee*
19 *or agent.*

20 (2) *BUSINESS ASSOCIATE.*—*The term “business*
21 *associate” has the meaning given such term in section*
22 *160.103 of title 45, Code of Federal Regulations.*

23 (3) *COVERED ENTITY.*—*The term “covered enti-*
24 *ty” has the meaning given such term in section*
25 *160.103 of title 45, Code of Federal Regulations.*

1 (4) *DISCLOSE.*—The terms “disclose” and “dis-
2 closure” have the meaning given the term “disclosure”
3 in section 160.103 of title 45, Code of Federal Regula-
4 tions.

5 (5) *ELECTRONIC HEALTH RECORD.*—The term
6 “electronic health record” means an electronic record
7 of health-related information on an individual that is
8 created, gathered, managed, and consulted by author-
9 ized health care clinicians and staff.

10 (6) *HEALTH CARE OPERATIONS.*—The term
11 “health care operation” has the meaning given such
12 term in section 164.501 of title 45, Code of Federal
13 Regulations.

14 (7) *HEALTH CARE PROVIDER.*—The term “health
15 care provider” has the meaning given such term in
16 section 160.103 of title 45, Code of Federal Regula-
17 tions.

18 (8) *HEALTH PLAN.*—The term “health plan” has
19 the meaning given such term in section 1171(5) of the
20 Social Security Act.

21 (9) *NATIONAL COORDINATOR.*—The term “Na-
22 tional Coordinator” means the head of the Office of
23 the National Coordinator for Health Information
24 Technology established under section 3001(a) of the
25 Public Health Service Act, as added by section 13101.

1 (10) *PAYMENT*.—*The term “payment” has the*
2 *meaning given such term in section 164.501 of title*
3 *45, Code of Federal Regulations.*

4 (11) *PERSONAL HEALTH RECORD*.—*The term*
5 *“personal health record” means an electronic record of*
6 *individually identifiable health information on an in-*
7 *dividual that can be drawn from multiple sources and*
8 *that is managed, shared, and controlled by or for the*
9 *individual.*

10 (12) *PROTECTED HEALTH INFORMATION*.—*The*
11 *term “protected health information” has the meaning*
12 *given such term in section 160.103 of title 45, Code*
13 *of Federal Regulations.*

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

16 (14) *SECURITY*.—*The term “security” has the*
17 *meaning given such term in section 164.304 of title*
18 *45, Code of Federal Regulations.*

19 (15) *STATE*.—*The term “State” means each of*
20 *the several States, the District of Columbia, Puerto*
21 *Rico, the Virgin Islands, Guam, American Samoa,*
22 *and the Northern Mariana Islands.*

23 (16) *TREATMENT*.—*The term “treatment” has*
24 *the meaning given such term in section 164.501 of*
25 *title 45, Code of Federal Regulations.*

1 (17) *USE.*—The term “use” has the meaning
2 given such term in section 160.103 of title 45, Code
3 of Federal Regulations.

4 (18) *VENDOR OF PERSONAL HEALTH*
5 *RECORDS.*—The term “vendor of personal health
6 records” means an entity, other than a covered entity
7 (as defined in paragraph (3)), that offers or main-
8 tains a personal health record.

9 ***PART I—IMPROVED PRIVACY PROVISIONS AND***
10 ***SECURITY PROVISIONS***

11 ***SEC. 13401. APPLICATION OF SECURITY PROVISIONS AND***
12 ***PENALTIES TO BUSINESS ASSOCIATES OF***
13 ***COVERED ENTITIES; ANNUAL GUIDANCE ON***
14 ***SECURITY PROVISIONS.***

15 (a) *APPLICATION OF SECURITY PROVISIONS.*—Sections
16 164.308, 164.310, 164.312, and 164.316 of title 45, Code
17 of Federal Regulations, shall apply to a business associate
18 of a covered entity in the same manner that such sections
19 apply to the covered entity. The additional requirements of
20 this title that relate to security and that are made applica-
21 ble with respect to covered entities shall also be applicable
22 to such a business associate and shall be incorporated into
23 the business associate agreement between the business asso-
24 ciate and the covered entity.

1 (b) *APPLICATION OF CIVIL AND CRIMINAL PEN-*
2 *ALTIES.*—*In the case of a business associate that violates*
3 *any security provision specified in subsection (a), sections*
4 *1176 and 1177 of the Social Security Act (42 U.S.C.*
5 *1320d–5, 1320d–6) shall apply to the business associate*
6 *with respect to such violation in the same manner such sec-*
7 *tions apply to a covered entity that violates such security*
8 *provision.*

9 (c) *ANNUAL GUIDANCE.*—*For the first year beginning*
10 *after the date of the enactment of this Act and annually*
11 *thereafter, the Secretary of Health and Human Services*
12 *shall, in consultation with industry stakeholders, annually*
13 *issue guidance on the most effective and appropriate tech-*
14 *nical safeguards for use in carrying out the sections referred*
15 *to in subsection (a) and the security standards in subpart*
16 *C of part 164 of title 45, Code of Federal Regulations, as*
17 *such provisions are in effect as of the date before the enact-*
18 *ment of this Act.*

19 **SEC. 13402. NOTIFICATION IN THE CASE OF BREACH.**

20 (a) *IN GENERAL.*—*A covered entity that accesses,*
21 *maintains, retains, modifies, records, stores, destroys, or*
22 *otherwise holds, uses, or discloses unsecured protected health*
23 *information (as defined in subsection (h)(1)) shall, in the*
24 *case of a breach of such information that is discovered by*
25 *the covered entity, notify each individual whose unsecured*

1 *protected health information has been, or is reasonably be-*
2 *lieved by the covered entity to have been, accessed, acquired,*
3 *or disclosed as a result of such breach.*

4 **(b) NOTIFICATION OF COVERED ENTITY BY BUSINESS**
5 **ASSOCIATE.**—*A business associate of a covered entity that*
6 *accesses, maintains, retains, modifies, records, stores, de-*
7 *stroys, or otherwise holds, uses, or discloses unsecured pro-*
8 *tected health information shall, following the discovery of*
9 *a breach of such information, notify the covered entity of*
10 *such breach. Such notice shall include the identification of*
11 *each individual whose unsecured protected health informa-*
12 *tion has been, or is reasonably believed by the business asso-*
13 *ciate to have been, accessed, acquired, or disclosed during*
14 *such breach.*

15 **(c) BREACHES TREATED AS DISCOVERED.**—*For pur-*
16 *poses of this section, a breach shall be treated as discovered*
17 *by a covered entity or by a business associate as of the first*
18 *day on which such breach is known to such entity or asso-*
19 *ciate, respectively, (including any person, other than the in-*
20 *dividual committing the breach, that is an employee, officer,*
21 *or other agent of such entity or associate, respectively) or*
22 *should reasonably have been known to such entity or asso-*
23 *ciate (or person) to have occurred.*

24 **(d) TIMELINESS OF NOTIFICATION.**—

1 (1) *IN GENERAL.*—Subject to subsection (g), all
2 notifications required under this section shall be made
3 without unreasonable delay and in no case later than
4 60 calendar days after the discovery of a breach by
5 the covered entity involved (or business associate in-
6 volved in the case of a notification required under
7 subsection (b)).

8 (2) *BURDEN OF PROOF.*—The covered entity in-
9 volved (or business associate involved in the case of a
10 notification required under subsection (b)), shall have
11 the burden of demonstrating that all notifications
12 were made as required under this part, including evi-
13 dence demonstrating the necessity of any delay.

14 (e) *METHODS OF NOTICE.*—

15 (1) *INDIVIDUAL NOTICE.*—Notice required under
16 this section to be provided to an individual, with re-
17 spect to a breach, shall be provided promptly and in
18 the following form:

19 (A) Written notification by first-class mail
20 to the individual (or the next of kin of the indi-
21 vidual if the individual is deceased) at the last
22 known address of the individual or the next of
23 kin, respectively, or, if specified as a preference
24 by the individual, by electronic mail. The notifi-

1 *cation may be provided in one or more mailings*
2 *as information is available.*

3 *(B) In the case in which there is insuffi-*
4 *cient, or out-of-date contact information (includ-*
5 *ing a phone number, email address, or any other*
6 *form of appropriate communication) that pre-*
7 *cludes direct written (or, if specified by the indi-*
8 *vidual under subparagraph (A), electronic) noti-*
9 *fication to the individual, a substitute form of*
10 *notice shall be provided, including, in the case*
11 *that there are 10 or more individuals for which*
12 *there is insufficient or out-of-date contact infor-*
13 *mation, a conspicuous posting for a period deter-*
14 *mined by the Secretary on the home page of the*
15 *Web site of the covered entity involved or notice*
16 *in major print or broadcast media, including*
17 *major media in geographic areas where the indi-*
18 *viduals affected by the breach likely reside. Such*
19 *a notice in media or web posting will include a*
20 *toll-free phone number where an individual can*
21 *learn whether or not the individual's unsecured*
22 *protected health information is possibly included*
23 *in the breach.*

24 *(C) In any case deemed by the covered enti-*
25 *ty involved to require urgency because of possible*

1 *imminent misuse of unsecured protected health*
2 *information, the covered entity, in addition to*
3 *notice provided under subparagraph (A), may*
4 *provide information to individuals by telephone*
5 *or other means, as appropriate.*

6 (2) *MEDIA NOTICE.*—*Notice shall be provided to*
7 *prominent media outlets serving a State or jurisdic-*
8 *tion, following the discovery of a breach described in*
9 *subsection (a), if the unsecured protected health infor-*
10 *mation of more than 500 residents of such State or*
11 *jurisdiction is, or is reasonably believed to have been,*
12 *accessed, acquired, or disclosed during such breach.*

13 (3) *NOTICE TO SECRETARY.*—*Notice shall be pro-*
14 *vided to the Secretary by covered entities of unsecured*
15 *protected health information that has been acquired*
16 *or disclosed in a breach. If the breach was with re-*
17 *spect to 500 or more individuals than such notice*
18 *must be provided immediately. If the breach was with*
19 *respect to less than 500 individuals, the covered entity*
20 *may maintain a log of any such breach occurring*
21 *and annually submit such a log to the Secretary doc-*
22 *umenting such breaches occurring during the year in-*
23 *volved.*

24 (4) *POSTING ON HHS PUBLIC WEBSITE.*—*The*
25 *Secretary shall make available to the public on the*

1 *Internet website of the Department of Health and*
2 *Human Services a list that identifies each covered en-*
3 *tity involved in a breach described in subsection (a)*
4 *in which the unsecured protected health information*
5 *of more than 500 individuals is acquired or disclosed.*

6 *(f) CONTENT OF NOTIFICATION.—Regardless of the*
7 *method by which notice is provided to individuals under*
8 *this section, notice of a breach shall include, to the extent*
9 *possible, the following:*

10 *(1) A brief description of what happened, includ-*
11 *ing the date of the breach and the date of the dis-*
12 *covery of the breach, if known.*

13 *(2) A description of the types of unsecured pro-*
14 *tected health information that were involved in the*
15 *breach (such as full name, Social Security number,*
16 *date of birth, home address, account number, or dis-*
17 *ability code).*

18 *(3) The steps individuals should take to protect*
19 *themselves from potential harm resulting from the*
20 *breach.*

21 *(4) A brief description of what the covered entity*
22 *involved is doing to investigate the breach, to mitigate*
23 *losses, and to protect against any further breaches.*

24 *(5) Contact procedures for individuals to ask*
25 *questions or learn additional information, which shall*

1 include a toll-free telephone number, an e-mail ad-
2 dress, Web site, or postal address.

3 (g) *DELAY OF NOTIFICATION AUTHORIZED FOR LAW*
4 *ENFORCEMENT PURPOSES.*—If a law enforcement official
5 determines that a notification, notice, or posting required
6 under this section would impede a criminal investigation
7 or cause damage to national security, such notification, no-
8 tice, or posting shall be delayed in the same manner as pro-
9 vided under section 164.528(a)(2) of title 45, Code of Fed-
10 eral Regulations, in the case of a disclosure covered under
11 such section.

12 (h) *UNSECURED PROTECTED HEALTH INFORMA-*
13 *TION.*—

14 (1) *DEFINITION.*—

15 (A) *IN GENERAL.*—Subject to subparagraph
16 (B), for purposes of this section, the term “unse-
17 cured protected health information” means pro-
18 tected health information that is not secured
19 through the use of a technology or methodology
20 specified by the Secretary in the guidance issued
21 under paragraph (2).

22 (B) *EXCEPTION IN CASE TIMELY GUIDANCE*
23 *NOT ISSUED.*—In the case that the Secretary does
24 not issue guidance under paragraph (2) by the
25 date specified in such paragraph, for purposes of

1 *this section, the term “unsecured protected health*
2 *information” shall mean protected health infor-*
3 *mation that is not secured by a technology*
4 *standard that renders protected health informa-*
5 *tion unusable, unreadable, or indecipherable to*
6 *unauthorized individuals and is developed or en-*
7 *dorsed by a standards developing organization*
8 *that is accredited by the American National*
9 *Standards Institute.*

10 (2) *GUIDANCE.—For purposes of paragraph (1)*
11 *and section 13407(f)(3), not later than the date that*
12 *is 60 days after the date of the enactment of this Act,*
13 *the Secretary shall, after consultation with stake-*
14 *holders, issue (and annually update) guidance speci-*
15 *fying the technologies and methodologies that render*
16 *protected health information unusable, unreadable, or*
17 *indecipherable to unauthorized individuals.*

18 (i) *REPORT TO CONGRESS ON BREACHES.—*

19 (1) *IN GENERAL.—Not later than 12 months*
20 *after the date of the enactment of this Act and annu-*
21 *ally thereafter, the Secretary shall prepare and sub-*
22 *mit to the Committee on Finance and the Committee*
23 *on Health, Education, Labor, and Pensions of the*
24 *Senate and the Committee on Ways and Means and*
25 *the Committee on Energy and Commerce of the House*

1 of Representatives a report containing the informa-
2 tion described in paragraph (2) regarding breaches
3 for which notice was provided to the Secretary under
4 subsection (e)(3).

5 (2) *INFORMATION.*—The information described
6 in this paragraph regarding breaches specified in
7 paragraph (1) shall include—

8 (A) the number and nature of such breaches;

9 and

10 (B) actions taken in response to such
11 breaches.

12 (j) *REGULATIONS; EFFECTIVE DATE.*—To carry out
13 this section, the Secretary of Health and Human Services
14 shall promulgate interim final regulations by not later than
15 the date that is 180 days after the date of the enactment
16 of this title. The provisions of this section shall apply to
17 breaches that are discovered on or after the date that is 30
18 days after the date of publication of such interim final regu-
19 lations.

20 **SEC. 13403. EDUCATION ON HEALTH INFORMATION PRI-**
21 **VACY.**

22 (a) *REGIONAL OFFICE PRIVACY ADVISORS.*—Not later
23 than 6 months after the date of the enactment of this Act,
24 the Secretary shall designate an individual in each regional
25 office of the Department of Health and Human Services to

1 offer guidance and education to covered entities, business
2 associates, and individuals on their rights and responsibil-
3 ities related to Federal privacy and security requirements
4 for protected health information.

5 (b) *EDUCATION INITIATIVE ON USES OF HEALTH IN-*
6 *FORMATION.*—Not later than 12 months after the date of
7 the enactment of this Act, the Office for Civil Rights within
8 the Department of Health and Human Services shall de-
9 velop and maintain a multi-faceted national education ini-
10 tiative to enhance public transparency regarding the uses
11 of protected health information, including programs to edu-
12 cate individuals about the potential uses of their protected
13 health information, the effects of such uses, and the rights
14 of individuals with respect to such uses. Such programs
15 shall be conducted in a variety of languages and present
16 information in a clear and understandable manner.

17 **SEC. 13404. APPLICATION OF PRIVACY PROVISIONS AND**
18 **PENALTIES TO BUSINESS ASSOCIATES OF**
19 **COVERED ENTITIES.**

20 (a) *APPLICATION OF CONTRACT REQUIREMENTS.*—In
21 the case of a business associate of a covered entity that ob-
22 tains or creates protected health information pursuant to
23 a written contract (or other written arrangement) described
24 in section 164.502(e)(2) of title 45, Code of Federal Regula-
25 tions, with such covered entity, the business associate may

1 *use and disclose such protected health information only if*
2 *such use or disclosure, respectively, is in compliance with*
3 *each applicable requirement of section 164.504(e) of such*
4 *title. The additional requirements of this subtitle that relate*
5 *to privacy and that are made applicable with respect to*
6 *covered entities shall also be applicable to such a business*
7 *associate and shall be incorporated into the business asso-*
8 *ciate agreement between the business associate and the cov-*
9 *ered entity.*

10 **(b) APPLICATION OF KNOWLEDGE ELEMENTS ASSOCI-**
11 *ATED WITH CONTRACTS.*—*Section 164.504(e)(1)(ii) of title*
12 *45, Code of Federal Regulations, shall apply to a business*
13 *associate described in subsection (a), with respect to compli-*
14 *ance with such subsection, in the same manner that such*
15 *section applies to a covered entity, with respect to compli-*
16 *ance with the standards in sections 164.502(e) and*
17 *164.504(e) of such title, except that in applying such section*
18 *164.504(e)(1)(ii) each reference to the business associate,*
19 *with respect to a contract, shall be treated as a reference*
20 *to the covered entity involved in such contract.*

21 **(c) APPLICATION OF CIVIL AND CRIMINAL PEN-**
22 *ALTIES.*—*In the case of a business associate that violates*
23 *any provision of subsection (a) or (b), the provisions of sec-*
24 *tions 1176 and 1177 of the Social Security Act (42 U.S.C.*
25 *1320d–5, 1320d–6) shall apply to the business associate*

1 *with respect to such violation in the same manner as such*
2 *provisions apply to a person who violates a provision of*
3 *part C of title XI of such Act.*

4 **SEC. 13405. RESTRICTIONS ON CERTAIN DISCLOSURES AND**
5 **SALES OF HEALTH INFORMATION; ACCOUNT-**
6 **ING OF CERTAIN PROTECTED HEALTH INFOR-**
7 **MATION DISCLOSURES; ACCESS TO CERTAIN**
8 **INFORMATION IN ELECTRONIC FORMAT.**

9 *(a) REQUESTED RESTRICTIONS ON CERTAIN DISCLO-*
10 *SURES OF HEALTH INFORMATION.—In the case that an in-*
11 *dividual requests under paragraph (a)(1)(i)(A) of section*
12 *164.522 of title 45, Code of Federal Regulations, that a cov-*
13 *ered entity restrict the disclosure of the protected health in-*
14 *formation of the individual, notwithstanding paragraph*
15 *(a)(1)(ii) of such section, the covered entity must comply*
16 *with the requested restriction if—*

17 *(1) except as otherwise required by law, the dis-*
18 *closure is to a health plan for purposes of carrying*
19 *out payment or health care operations (and is not for*
20 *purposes of carrying out treatment); and*

21 *(2) the protected health information pertains*
22 *solely to a health care item or service for which the*
23 *health care provider involved has been paid out of*
24 *pocket in full.*

1 **(b) DISCLOSURES REQUIRED TO BE LIMITED TO THE**
2 **LIMITED DATA SET OR THE MINIMUM NECESSARY.—**

3 **(1) IN GENERAL.—**

4 **(A) IN GENERAL.—***Subject to subparagraph*
5 *(B), a covered entity shall be treated as being in*
6 *compliance with section 164.502(b)(1) of title 45,*
7 *Code of Federal Regulations, with respect to the*
8 *use, disclosure, or request of protected health in-*
9 *formation described in such section, only if the*
10 *covered entity limits such protected health infor-*
11 *mation, to the extent practicable, to the limited*
12 *data set (as defined in section 164.514(e)(2) of*
13 *such title) or, if needed by such entity, to the*
14 *minimum necessary to accomplish the intended*
15 *purpose of such use, disclosure, or request, re-*
16 *spectively.*

17 **(B) GUIDANCE.—***Not later than 18 months*
18 *after the date of the enactment of this section, the*
19 *Secretary shall issue guidance on what con-*
20 *stitutes “minimum necessary” for purposes of*
21 *subpart E of part 164 of title 45, Code of Fed-*
22 *eral Regulation. In issuing such guidance the*
23 *Secretary shall take into consideration the guid-*
24 *ance under section 13424(c) and the information*

1 *necessary to improve patient outcomes and to de-*
2 *fect, prevent, and manage chronic disease.*

3 (C) *SUNSET.*—*Subparagraph (A) shall not*
4 *apply on and after the effective date on which*
5 *the Secretary issues the guidance under subpara-*
6 *graph (B).*

7 (2) *DETERMINATION OF MINIMUM NECESSARY.*—
8 *For purposes of paragraph (1), in the case of the dis-*
9 *closure of protected health information, the covered*
10 *entity or business associate disclosing such informa-*
11 *tion shall determine what constitutes the minimum*
12 *necessary to accomplish the intended purpose of such*
13 *disclosure.*

14 (3) *APPLICATION OF EXCEPTIONS.*—*The excep-*
15 *tions described in section 164.502(b)(2) of title 45,*
16 *Code of Federal Regulations, shall apply to the re-*
17 *quirement under paragraph (1) as of the effective date*
18 *described in section 13423 in the same manner that*
19 *such exceptions apply to section 164.502(b)(1) of such*
20 *title before such date.*

21 (4) *RULE OF CONSTRUCTION.*—*Nothing in this*
22 *subsection shall be construed as affecting the use, dis-*
23 *closure, or request of protected health information*
24 *that has been de-identified.*

1 (c) *ACCOUNTING OF CERTAIN PROTECTED HEALTH IN-*
2 *FORMATION DISCLOSURES REQUIRED IF COVERED ENTITY*
3 *USES ELECTRONIC HEALTH RECORD.—*

4 “(1) *IN GENERAL.—In applying section 164.528*
5 *of title 45, Code of Federal Regulations, in the case*
6 *that a covered entity uses or maintains an electronic*
7 *health record with respect to protected health informa-*
8 *tion—*

9 “(A) *the exception under paragraph*
10 *(a)(1)(i) of such section shall not apply to disclo-*
11 *tures through an electronic health record made*
12 *by such entity of such information; and*

13 “(B) *an individual shall have a right to re-*
14 *ceive an accounting of disclosures described in*
15 *such paragraph of such information made by*
16 *such covered entity during only the three years*
17 *prior to the date on which the accounting is re-*
18 *quested.*

19 “(2) *REGULATIONS.—The Secretary shall pro-*
20 *mulgate regulations on what disclosures must be in-*
21 *cluded in an accounting referred to in paragraph*
22 *(1)(A) and what information must be collected about*
23 *each such disclosure not later than 18 months after*
24 *the date on which the Secretary adopts standards on*
25 *accounting for disclosure described in the section*

1 3002(b)(2)(B)(iv) of the Public Health Service Act, as
2 added by section 13101. Such regulations shall only
3 require such information to be collected through an
4 electronic health record in a manner that takes into
5 account the interests of individuals in learning when
6 their protected health information was disclosed and
7 to whom it was disclosed, and the usefulness of such
8 information to the individual, and takes into account
9 the administrative and cost burden of accounting for
10 such disclosures.

11 “(3) CONSTRUCTION.—Nothing in this subsection
12 shall be construed as—

13 “(A) requiring a covered entity to account
14 for disclosures of protected health information
15 that are not made by such covered entity; or

16 “(B) requiring a business associate of a cov-
17 ered entity to account for disclosures of protected
18 health information that are not made by such
19 business associate.

20 “(4) REASONABLE FEE.—A covered entity may
21 impose a reasonable fee on an individual for an ac-
22 counting performed under paragraph (1)(B). Any
23 such fee shall not be greater than the entity’s labor
24 costs in responding to the request.

25 “(5) EFFECTIVE DATE.—

1 “(A) *CURRENT USERS OF ELECTRONIC*
2 *RECORDS.—In the case of a covered entity inso-*
3 *far as it acquired an electronic health record as*
4 *of January 1, 2009, paragraph (1) shall apply*
5 *to disclosures, with respect to protected health in-*
6 *formation, made by the covered entity from such*
7 *a record on and after January 1, 2014.*

8 “(B) *OTHERS.—In the case of a covered en-*
9 *tity insofar as it acquires an electronic health*
10 *record after January 1, 2009, paragraph (1)*
11 *shall apply to disclosures, with respect to pro-*
12 *ected health information, made by the covered*
13 *entity from such record on and after the later of*
14 *the following:*

15 “(i) *January 1, 2011; or*

16 “(ii) *the date that it acquires an elec-*
17 *tronic health record.*

18 “(C) *LATER DATE.—The Secretary may set*
19 *an effective date that is later than the date speci-*
20 *fied under subparagraph (A) or (B) if the Sec-*
21 *retary determines that such later date is nec-*
22 *essary, but in no case may the date specified*
23 *under—*

24 “(i) *subparagraph (A) be later than*
25 *2018; or*

1 “(i) subparagraph (B) be later than
2 2014.

3 (d) *REVIEW OF HEALTH CARE OPERATIONS.*—Not
4 later than 18 months after the date of the enactment of this
5 title, the Secretary shall review and evaluate the definition
6 of health care operations under section 164.501 of title 45,
7 Code of Federal Regulations, and to the extent appropriate,
8 eliminate by regulation activities that can reasonably and
9 efficiently be conducted through the use of information that
10 is de-identified (in accordance with the requirements of sec-
11 tion 164.514(b) of such title) or that should require a valid
12 authorization for use or disclosure. In promulgating such
13 regulations, the Secretary shall not require that data be de-
14 identified or require valid authorization for use or disclo-
15 sure for activities within a covered entity described in para-
16 graph (1) of the definition of health care operations under
17 such section 164.501. In promulgating such regulations, the
18 Secretary may choose to narrow or clarify activities that
19 the Secretary chooses to retain in the definition of health
20 care operations and the Secretary shall take into account
21 the report under section 13424(d). In such regulations the
22 Secretary shall specify the date on which such regulations
23 shall apply to disclosures made by a covered entity, but in
24 no case would such date be sooner than the date that is
25 24 months after the date of the enactment of this section.

1 *Nothing in this subsection may be construed to supersede*
2 *any provision under subsection (e) or section 13406(a).*

3 *(e) PROHIBITION ON SALE OF ELECTRONIC HEALTH*
4 *RECORDS OR PROTECTED HEALTH INFORMATION OB-*
5 *TAINED FROM ELECTRONIC HEALTH RECORDS.—*

6 *(1) IN GENERAL.—Except as provided in para-*
7 *graph (2), a covered entity or business associate shall*
8 *not directly or indirectly receive remuneration in ex-*
9 *change for any protected health information of an in-*
10 *dividual unless the covered entity obtained from the*
11 *individual, in accordance with section 164.508 of title*
12 *45, Code of Federal Regulations, a valid authoriza-*
13 *tion that includes, in accordance with such section, a*
14 *specification of whether the protected health informa-*
15 *tion can be further exchanged for remuneration by the*
16 *entity receiving protected health information of that*
17 *individual.*

18 *(2) EXCEPTIONS.—Paragraph (1) shall not*
19 *apply in the following cases:*

20 *(A) The purpose of the exchange is for re-*
21 *search or public health activities (as described in*
22 *sections 164.501, 164.512(i), and 164.512(b) of*
23 *title 45, Code of Federal Regulations).*

24 *(B) The purpose of the exchange is for the*
25 *treatment of the individual, subject to any regu-*

1 *lation that the Secretary may promulgate to pre-*
2 *vent protected health information from inappro-*
3 *propriate access, use, or disclosure.*

4 *(C) The purpose of the exchange is the*
5 *health care operation specifically described in*
6 *subparagraph (iv) of paragraph (6) of the defini-*
7 *tion of healthcare operations in section 164.501*
8 *of title 45, Code of Federal Regulations.*

9 *(D) The purpose of the exchange is for re-*
10 *muneration that is provided by a covered entity*
11 *to a business associate for activities involving the*
12 *exchange of protected health information that the*
13 *business associate undertakes on behalf of and at*
14 *the specific request of the covered entity pursuant*
15 *to a business associate agreement.*

16 *(E) The purpose of the exchange is to pro-*
17 *vide an individual with a copy of the individ-*
18 *ual's protected health information pursuant to*
19 *section 164.524 of title 45, Code of Federal Regu-*
20 *lations.*

21 *(F) The purpose of the exchange is otherwise*
22 *determined by the Secretary in regulations to be*
23 *similarly necessary and appropriate as the ex-*
24 *ceptions provided in subparagraphs (A) through*
25 *(E).*

1 (3) *REGULATIONS.*—*Not later than 18 months*
2 *after the date of enactment of this title, the Secretary*
3 *shall promulgate regulations to carry out this sub-*
4 *section. In promulgating such regulations, the Sec-*
5 *retary—*

6 (A) *shall evaluate the impact of restricting*
7 *the exception described in paragraph (2)(A) to*
8 *require that the price charged for the purposes*
9 *described in such paragraph reflects the costs of*
10 *the preparation and transmittal of the data for*
11 *such purpose, on research or public health activi-*
12 *ties, including those conducted by or for the use*
13 *of the Food and Drug Administration; and*

14 (B) *may further restrict the exception de-*
15 *scribed in paragraph (2)(A) to require that the*
16 *price charged for the purposes described in such*
17 *paragraph reflects the costs of the preparation*
18 *and transmittal of the data for such purpose, if*
19 *the Secretary finds that such further restriction*
20 *will not impede such research or public health*
21 *activities.*

22 (4) *EFFECTIVE DATE.*—*Paragraph (1) shall*
23 *apply to exchanges occurring on or after the date that*
24 *is 6 months after the date of the promulgation of final*
25 *regulations implementing this subsection.*

1 (f) *ACCESS TO CERTAIN INFORMATION IN ELECTRONIC*
2 *FORMAT.*—*In applying section 164.524 of title 45, Code of*
3 *Federal Regulations, in the case that a covered entity uses*
4 *or maintains an electronic health record with respect to*
5 *protected health information of an individual—*

6 (1) *the individual shall have a right to obtain*
7 *from such covered entity a copy of such information*
8 *in an electronic format; and*

9 (2) *notwithstanding paragraph (c)(4) of such*
10 *section, any fee that the covered entity may impose*
11 *for providing such individual with a copy of such in-*
12 *formation (or a summary or explanation of such in-*
13 *formation) if such copy (or summary or explanation)*
14 *is in an electronic form shall not be greater than the*
15 *entity's labor costs in responding to the request for the*
16 *copy (or summary or explanation).*

17 **SEC. 13406. CONDITIONS ON CERTAIN CONTACTS AS PART**
18 **OF HEALTH CARE OPERATIONS.**

19 (a) *MARKETING.*—

20 (1) *IN GENERAL.*—*A communication by a cov-*
21 *ered entity or business associate that is about a prod-*
22 *uct or service and that encourages recipients of the*
23 *communication to purchase or use the product or*
24 *service shall not be considered a health care operation*
25 *for purposes of subpart E of part 164 of title 45, Code*

1 *of Federal Regulations, unless the communication is*
2 *made as described in subparagraph (i), (ii), or (iii)*
3 *of paragraph (1) of the definition of marketing in sec-*
4 *tion 164.501 of such title.*

5 (2) *PAYMENT FOR CERTAIN COMMUNICATIONS.—*

6 *A communication by a covered entity or business as-*
7 *sociate that is described in subparagraph (i), (ii), or*
8 *(iii) of paragraph (1) of the definition of marketing*
9 *in section 164.501 of title 45, Code of Federal Regula-*
10 *tions, shall not be considered a health care operation*
11 *for purposes of subpart E of part 164 of title 45, Code*
12 *of Federal Regulations if the covered entity receives or*
13 *has received direct or indirect payment in exchange*
14 *for making such communication, except where—*

15 (A) *such communication describes only a*
16 *health care item or service that has previously*
17 *been prescribed for or administered to the recipi-*
18 *ent of the communication, or a family member*
19 *of such recipient;*

20 (B) *each of the following conditions apply—*

21 (i) *the communication is made by the*
22 *covered entity; and*

23 (ii) *the covered entity making such*
24 *communication obtains from the recipient*
25 *of the communication, in accordance with*

1 *section 164.508 of title 45, Code of Federal*
2 *Regulations, a valid authorization (as de-*
3 *scribed in paragraph (b) of such section)*
4 *with respect to such communication; or*
5 *(C) each of the following conditions apply—*
6 *(i) the communication is made on be-*
7 *half of the covered entity;*
8 *(ii) the communication is consistent*
9 *with the written contract (or other written*
10 *arrangement described in section*
11 *164.502(e)(2) of such title) between such*
12 *business associate and covered entity; and*
13 *(iii) the business associate making such*
14 *communication, or the covered entity on be-*
15 *half of which the communication is made,*
16 *obtains from the recipient of the commu-*
17 *nication, in accordance with section*
18 *164.508 of title 45, Code of Federal Regula-*
19 *tions, a valid authorization (as described in*
20 *paragraph (b) of such section) with respect*
21 *to such communication.*
22 *(c) EFFECTIVE DATE.—This section shall apply to*
23 *contracting occurring on or after the effective date specified*
24 *under section 13423.*

1 **SEC. 13407. TEMPORARY BREACH NOTIFICATION REQUIRE-**
2 **MENT FOR VENDORS OF PERSONAL HEALTH**
3 **RECORDS AND OTHER NON-HIPAA COVERED**
4 **ENTITIES.**

5 (a) *IN GENERAL.*—*In accordance with subsection (c),*
6 *each vendor of personal health records, following the dis-*
7 *covery of a breach of security of unsecured PHR identifiable*
8 *health information that is in a personal health record*
9 *maintained or offered by such vendor, and each entity de-*
10 *scribed in clause (ii) or (iii) of section 13424(b)(1)(A), fol-*
11 *lowing the discovery of a breach of security of such informa-*
12 *tion that is obtained through a product or service provided*
13 *by such entity, shall—*

14 (1) *notify each individual who is a citizen or*
15 *resident of the United States whose unsecured PHR*
16 *identifiable health information was acquired by an*
17 *unauthorized person as a result of such a breach of*
18 *security; and*

19 (2) *notify the Federal Trade Commission.*

20 (b) *NOTIFICATION BY THIRD PARTY SERVICE PRO-*
21 *VIDERS.*—*A third party service provider that provides serv-*
22 *ices to a vendor of personal health records or to an entity*
23 *described in clause (ii) or (iii) of section 13424(b)(1)(A)*
24 *in connection with the offering or maintenance of a per-*
25 *sonal health record or a related product or service and that*
26 *accesses, maintains, retains, modifies, records, stores, de-*

1 *stroys, or otherwise holds, uses, or discloses unsecured PHR*
2 *identifiable health information in such a record as a result*
3 *of such services shall, following the discovery of a breach*
4 *of security of such information, notify such vendor or enti-*
5 *ty, respectively, of such breach. Such notice shall include*
6 *the identification of each individual whose unsecured PHR*
7 *identifiable health information has been, or is reasonably*
8 *believed to have been, accessed, acquired, or disclosed during*
9 *such breach.*

10 *(c) APPLICATION OF REQUIREMENTS FOR TIMELINESS,*
11 *METHOD, AND CONTENT OF NOTIFICATIONS.—Subsections*
12 *(c), (d), (e), and (f) of section 13402 shall apply to a notifi-*
13 *cation required under subsection (a) and a vendor of per-*
14 *sonal health records, an entity described in subsection (a)*
15 *and a third party service provider described in subsection*
16 *(b), with respect to a breach of security under subsection*
17 *(a) of unsecured PHR identifiable health information in*
18 *such records maintained or offered by such vendor, in a*
19 *manner specified by the Federal Trade Commission.*

20 *(d) NOTIFICATION OF THE SECRETARY.—Upon receipt*
21 *of a notification of a breach of security under subsection*
22 *(a)(2), the Federal Trade Commission shall notify the Sec-*
23 *retary of such breach.*

24 *(e) ENFORCEMENT.—A violation of subsection (a) or*
25 *(b) shall be treated as an unfair and deceptive act or prac-*

1 *tice in violation of a regulation under section 18(a)(1)(B)*
2 *of the Federal Trade Commission Act (15 U.S.C.*
3 *57a(a)(1)(B)) regarding unfair or deceptive acts or prac-*
4 *tices.*

5 *(f) DEFINITIONS.—For purposes of this section:*

6 *(1) BREACH OF SECURITY.—The term “breach of*
7 *security” means, with respect to unsecured PHR*
8 *identifiable health information of an individual in a*
9 *personal health record, acquisition of such informa-*
10 *tion without the authorization of the individual.*

11 *(2) PHR IDENTIFIABLE HEALTH INFORMATION.—*
12 *The term “PHR identifiable health information”*
13 *means individually identifiable health information,*
14 *as defined in section 1171(6) of the Social Security*
15 *Act (42 U.S.C. 1320d(6)), and includes, with respect*
16 *to an individual, information—*

17 *(A) that is provided by or on behalf of the*
18 *individual; and*

19 *(B) that identifies the individual or with*
20 *respect to which there is a reasonable basis to be-*
21 *lieve that the information can be used to identify*
22 *the individual.*

23 *(3) UNSECURED PHR IDENTIFIABLE HEALTH IN-*
24 *FORMATION.—*

1 (A) *IN GENERAL.*—Subject to subparagraph
2 (B), the term “unsecured PHR identifiable
3 health information” means PHR identifiable
4 health information that is not protected through
5 the use of a technology or methodology specified
6 by the Secretary in the guidance issued under
7 section 13402(h)(2).

8 (B) *EXCEPTION IN CASE TIMELY GUIDANCE*
9 *NOT ISSUED.*—In the case that the Secretary does
10 not issue guidance under section 13402(h)(2) by
11 the date specified in such section, for purposes of
12 this section, the term “unsecured PHR identifi-
13 able health information” shall mean PHR iden-
14 tifiable health information that is not secured by
15 a technology standard that renders protected
16 health information unusable, unreadable, or in-
17 decipherable to unauthorized individuals and
18 that is developed or endorsed by a standards de-
19 veloping organization that is accredited by the
20 American National Standards Institute.

21 (g) *REGULATIONS; EFFECTIVE DATE; SUNSET.*—

22 (1) *REGULATIONS; EFFECTIVE DATE.*—To carry
23 out this section, the Federal Trade Commission shall,
24 in accordance with section 553 of title 5, United
25 States Code, promulgate interim final regulations by

1 *not later than the date that is 180 days after the date*
2 *of the enactment of this section. The provisions of this*
3 *section shall apply to breaches of security that are*
4 *discovered on or after the date that is 30 days after*
5 *the date of publication of such interim final regula-*
6 *tions.*

7 (2) *SUNSET.—The provisions of this section shall*
8 *not apply to breaches of security occurring on or after*
9 *the earlier of the following the dates:*

10 (A) *The date on which a standard relating*
11 *to requirements for entities that are not covered*
12 *entities that includes requirements relating to*
13 *breach notification has been promulgated by the*
14 *Secretary.*

15 (B) *The date on which a standard relating*
16 *to requirements for entities that are not covered*
17 *entities that includes requirements relating to*
18 *breach notification has been promulgated by the*
19 *Federal Trade Commission and has taken effect.*

20 **SEC. 13408. BUSINESS ASSOCIATE CONTRACTS REQUIRED**
21 **FOR CERTAIN ENTITIES.**

22 *Each organization, with respect to a covered entity,*
23 *that provides data transmission of protected health infor-*
24 *mation to such entity (or its business associate) and that*
25 *requires access on a routine basis to such protected health*

1 *information, such as a Health Information Exchange Orga-*
2 *nization, Regional Health Information Organization, E-*
3 *prescribing Gateway, or each vendor that contracts with a*
4 *covered entity to allow that covered entity to offer a per-*
5 *sonal health record to patients as part of its electronic*
6 *health record, is required to enter into a written contract*
7 *(or other written arrangement) described in section*
8 *164.502(e)(2) of title 45, Code of Federal Regulations and*
9 *a written contract (or other arrangement) described in sec-*
10 *tion 164.308(b) of such title, with such entity and shall be*
11 *treated as a business associate of the covered entity for pur-*
12 *poses of the provisions of this subtitle and subparts C and*
13 *E of part 164 of title 45, Code of Federal Regulations, as*
14 *such provisions are in effect as of the date of enactment*
15 *of this title.*

16 **SEC. 13409. CLARIFICATION OF APPLICATION OF WRONG-**
17 **FUL DISCLOSURES CRIMINAL PENALTIES.**

18 *Section 1177(a) of the Social Security Act (42 U.S.C.*
19 *1320d–6(a)) is amended by adding at the end the following*
20 *new sentence: “For purposes of the previous sentence, a per-*
21 *son (including an employee or other individual) shall be*
22 *considered to have obtained or disclosed individually identi-*
23 *fiable health information in violation of this part if the in-*
24 *formation is maintained by a covered entity (as defined in*
25 *the HIPAA privacy regulation described in section*

1 1180(b)(3)) and the individual obtained or disclosed such
2 information without authorization.”.

3 **SEC. 13410. IMPROVED ENFORCEMENT.**

4 (a) *IN GENERAL.*—Section 1176 of the Social Security
5 Act (42 U.S.C. 1320d–5) is amended—

6 (1) in subsection (b)(1), by striking “the act con-
7 stitutes an offense punishable under section 1177”
8 and inserting “a penalty has been imposed under sec-
9 tion 1177 with respect to such act”; and

10 (2) by adding at the end the following new sub-
11 section:

12 “(c) *NONCOMPLIANCE DUE TO WILLFUL NEGLIGENCE.*—

13 “(1) *IN GENERAL.*—A violation of a provision of
14 this part due to willful neglect is a violation for
15 which the Secretary is required to impose a penalty
16 under subsection (a)(1).

17 “(2) *REQUIRED INVESTIGATION.*—For purposes
18 of paragraph (1), the Secretary shall formally inves-
19 tigate any complaint of a violation of a provision of
20 this part if a preliminary investigation of the facts
21 of the complaint indicate such a possible violation
22 due to willful neglect.”.

23 (b) *EFFECTIVE DATE; REGULATIONS.*—

24 (1) The amendments made by subsection (a)
25 shall apply to penalties imposed on or after the date

1 *that is 24 months after the date of the enactment of*
2 *this title.*

3 (2) *Not later than 18 months after the date of the*
4 *enactment of this title, the Secretary of Health and*
5 *Human Services shall promulgate regulations to im-*
6 *plement such amendments.*

7 (c) *DISTRIBUTION OF CERTAIN CIVIL MONETARY PEN-*
8 *ALTIES COLLECTED.—*

9 (1) *IN GENERAL.—Subject to the regulation pro-*
10 *mulgated pursuant to paragraph (3), any civil mone-*
11 *tary penalty or monetary settlement collected with re-*
12 *spect to an offense punishable under this subtitle or*
13 *section 1176 of the Social Security Act (42 U.S.C.*
14 *1320d–5) insofar as such section relates to privacy or*
15 *security shall be transferred to the Office of Civil*
16 *Rights of the Department of Health and Human*
17 *Services to be used for purposes of enforcing the pro-*
18 *visions of this subtitle and subparts C and E of part*
19 *164 of title 45, Code of Federal Regulations, as such*
20 *provisions are in effect as of the date of enactment of*
21 *this Act.*

22 (2) *GAO REPORT.—Not later than 18 months*
23 *after the date of the enactment of this title, the Comp-*
24 *troller General shall submit to the Secretary a report*
25 *including recommendations for a methodology under*

1 *which an individual who is harmed by an act that*
2 *constitutes an offense referred to in paragraph (1)*
3 *may receive a percentage of any civil monetary pen-*
4 *alty or monetary settlement collected with respect to*
5 *such offense.*

6 (3) *ESTABLISHMENT OF METHODOLOGY TO DIS-*
7 *TRIBUTE PERCENTAGE OF CMPS COLLECTED TO*
8 *HARMED INDIVIDUALS.—Not later than 3 years after*
9 *the date of the enactment of this title, the Secretary*
10 *shall establish by regulation and based on the rec-*
11 *ommendations submitted under paragraph (2), a*
12 *methodology under which an individual who is*
13 *harmed by an act that constitutes an offense referred*
14 *to in paragraph (1) may receive a percentage of any*
15 *civil monetary penalty or monetary settlement col-*
16 *lected with respect to such offense.*

17 (4) *APPLICATION OF METHODOLOGY.—The meth-*
18 *odology under paragraph (3) shall be applied with re-*
19 *spect to civil monetary penalties or monetary settle-*
20 *ments imposed on or after the effective date of the reg-*
21 *ulation.*

22 (d) *TIERED INCREASE IN AMOUNT OF CIVIL MONE-*
23 *TARY PENALTIES.—*

24 (1) *IN GENERAL.—Section 1176(a)(1) of the So-*
25 *cial Security Act (42 U.S.C. 1320d–5(a)(1)) is*

1 *amended by striking “who violates a provision of this*
2 *part a penalty of not more than” and all that follows*
3 *and inserting the following: “who violates a provision*
4 *of this part—*

5 *“(A) in the case of a violation of such pro-*
6 *vision in which it is established that the person*
7 *did not know (and by exercising reasonable dili-*
8 *gence would not have known) that such person*
9 *violated such provision, a penalty for each such*
10 *violation of an amount that is at least the*
11 *amount described in paragraph (3)(A) but not to*
12 *exceed the amount described in paragraph*
13 *(3)(D);*

14 *“(B) in the case of a violation of such pro-*
15 *vision in which it is established that the viola-*
16 *tion was due to reasonable cause and not to will-*
17 *ful neglect, a penalty for each such violation of*
18 *an amount that is at least the amount described*
19 *in paragraph (3)(B) but not to exceed the*
20 *amount described in paragraph (3)(D); and*

21 *“(C) in the case of a violation of such provi-*
22 *sion in which it is established that the violation*
23 *was due to willful neglect—*

24 *“(i) if the violation is corrected as de-*
25 *scribed in subsection (b)(3)(A), a penalty in*

1 *an amount that is at least the amount de-*
2 *scribed in paragraph (3)(C) but not to ex-*
3 *ceed the amount described in paragraph*
4 *(3)(D); and*

5 *“(ii) if the violation is not corrected as*
6 *described in such subsection, a penalty in*
7 *an amount that is at least the amount de-*
8 *scribed in paragraph (3)(D).*

9 *In determining the amount of a penalty under*
10 *this section for a violation, the Secretary shall*
11 *base such determination on the nature and ex-*
12 *tent of the violation and the nature and extent*
13 *of the harm resulting from such violation.”.*

14 *(2) TIERS OF PENALTIES DESCRIBED.—Section*
15 *1176(a) of such Act (42 U.S.C. 1320d–5(a)) is further*
16 *amended by adding at the end the following new*
17 *paragraph:*

18 *“(3) TIERS OF PENALTIES DESCRIBED.—For*
19 *purposes of paragraph (1), with respect to a violation*
20 *by a person of a provision of this part—*

21 *“(A) the amount described in this subpara-*
22 *graph is \$100 for each such violation, except that*
23 *the total amount imposed on the person for all*
24 *such violations of an identical requirement or*

1 prohibition during a calendar year may not ex-
2 ceed \$25,000;

3 “(B) the amount described in this subpara-
4 graph is \$1,000 for each such violation, except
5 that the total amount imposed on the person for
6 all such violations of an identical requirement or
7 prohibition during a calendar year may not ex-
8 ceed \$100,000;

9 “(C) the amount described in this subpara-
10 graph is \$10,000 for each such violation, except
11 that the total amount imposed on the person for
12 all such violations of an identical requirement or
13 prohibition during a calendar year may not ex-
14 ceed \$250,000; and

15 “(D) the amount described in this subpara-
16 graph is \$50,000 for each such violation, except
17 that the total amount imposed on the person for
18 all such violations of an identical requirement or
19 prohibition during a calendar year may not ex-
20 ceed \$1,500,000.”.

21 (3) CONFORMING AMENDMENTS.—Section
22 1176(b) of such Act (42 U.S.C. 1320d–5(b)) is amend-
23 ed—

1 (A) by striking paragraph (2) and redesignig-
 2 nating paragraphs (3) and (4) as paragraphs
 3 (2) and (3), respectively; and

4 (B) in paragraph (2), as so redesignated—

5 (i) in subparagraph (A), by striking
 6 “in subparagraph (B), a penalty may not
 7 be imposed under subsection (a) if” and all
 8 that follows through “the failure to comply
 9 is corrected” and inserting “in subpara-
 10 graph (B) or subsection (a)(1)(C), a penalty
 11 may not be imposed under subsection (a) if
 12 the failure to comply is corrected”; and

13 (ii) in subparagraph (B), by striking
 14 “(A)(i)” and inserting “(A)” each place it
 15 appears.

16 (4) *EFFECTIVE DATE.*—The amendments made
 17 by this subsection shall apply to violations occurring
 18 after the date of the enactment of this title.

19 (e) *ENFORCEMENT THROUGH STATE ATTORNEYS GEN-*
 20 *ERAL.*—

21 (1) *IN GENERAL.*—Section 1176 of the Social Se-
 22 curity Act (42 U.S.C. 1320d–5) is amended by add-
 23 ing at the end the following new subsection:

24 “(d) *ENFORCEMENT BY STATE ATTORNEYS GEN-*
 25 *ERAL.*—

1 “(1) *CIVIL ACTION.*—*Except as provided in sub-*
2 *section (b), in any case in which the attorney general*
3 *of a State has reason to believe that an interest of one*
4 *or more of the residents of that State has been or is*
5 *threatened or adversely affected by any person who*
6 *violates a provision of this part, the attorney general*
7 *of the State, as parens patriae, may bring a civil ac-*
8 *tion on behalf of such residents of the State in a dis-*
9 *trict court of the United States of appropriate juris-*
10 *isdiction—*

11 “(A) *to enjoin further such violation by the*
12 *defendant; or*

13 “(B) *to obtain damages on behalf of such*
14 *residents of the State, in an amount equal to the*
15 *amount determined under paragraph (2).*

16 “(2) *STATUTORY DAMAGES.*—

17 “(A) *IN GENERAL.*—*For purposes of para-*
18 *graph (1)(B), the amount determined under this*
19 *paragraph is the amount calculated by multi-*
20 *plying the number of violations by up to \$100.*
21 *For purposes of the preceding sentence, in the*
22 *case of a continuing violation, the number of vio-*
23 *lations shall be determined consistent with the*
24 *HIPAA privacy regulations (as defined in sec-*
25 *tion 1180(b)(3)) for violations of subsection (a).*

1 “(B) *LIMITATION.*—*The total amount of*
2 *damages imposed on the person for all violations*
3 *of an identical requirement or prohibition dur-*
4 *ing a calendar year may not exceed \$25,000.*

5 “(C) *REDUCTION OF DAMAGES.*—*In assess-*
6 *ing damages under subparagraph (A), the court*
7 *may consider the factors the Secretary may con-*
8 *sider in determining the amount of a civil*
9 *money penalty under subsection (a) under the*
10 *HIPAA privacy regulations.*

11 “(3) *ATTORNEY FEES.*—*In the case of any suc-*
12 *cessful action under paragraph (1), the court, in its*
13 *discretion, may award the costs of the action and rea-*
14 *sonable attorney fees to the State.*

15 “(4) *NOTICE TO SECRETARY.*—*The State shall*
16 *serve prior written notice of any action under para-*
17 *graph (1) upon the Secretary and provide the Sec-*
18 *retary with a copy of its complaint, except in any*
19 *case in which such prior notice is not feasible, in*
20 *which case the State shall serve such notice imme-*
21 *diately upon instituting such action. The Secretary*
22 *shall have the right—*

23 “(A) *to intervene in the action;*

24 “(B) *upon so intervening, to be heard on all*
25 *matters arising therein; and*

1 “(C) to file petitions for appeal.

2 “(5) CONSTRUCTION.—For purposes of bringing
3 any civil action under paragraph (1), nothing in this
4 section shall be construed to prevent an attorney gen-
5 eral of a State from exercising the powers conferred
6 on the attorney general by the laws of that State.

7 “(6) VENUE; SERVICE OF PROCESS.—

8 “(A) VENUE.—Any action brought under
9 paragraph (1) may be brought in the district
10 court of the United States that meets applicable
11 requirements relating to venue under section
12 1391 of title 28, United States Code.

13 “(B) SERVICE OF PROCESS.—In an action
14 brought under paragraph (1), process may be
15 served in any district in which the defendant—

16 “(i) is an inhabitant; or

17 “(ii) maintains a physical place of
18 business.

19 “(7) LIMITATION ON STATE ACTION WHILE FED-
20 ERAL ACTION IS PENDING.—If the Secretary has insti-
21 tuted an action against a person under subsection (a)
22 with respect to a specific violation of this part, no
23 State attorney general may bring an action under
24 this subsection against the person with respect to such
25 violation during the pendency of that action.

1 “(8) *APPLICATION OF CMP STATUTE OF LIMITA-*
2 *TION.—A civil action may not be instituted with re-*
3 *spect to a violation of this part unless an action to*
4 *impose a civil money penalty may be instituted*
5 *under subsection (a) with respect to such violation*
6 *consistent with the second sentence of section*
7 *1128A(c)(1).”.*

8 (2) *CONFORMING AMENDMENTS.—Subsection (b)*
9 *of such section, as amended by subsection (d)(3), is*
10 *amended—*

11 (A) *in paragraph (1), by striking “A pen-*
12 *alty may not be imposed under subsection (a)”*
13 *and inserting “No penalty may be imposed*
14 *under subsection (a) and no damages obtained*
15 *under subsection (d)”;*

16 (B) *in paragraph (2)(A)—*

17 (i) *after “subsection (a)(1)(C),” by*
18 *striking “a penalty may not be imposed*
19 *under subsection (a)” and inserting “no*
20 *penalty may be imposed under subsection*
21 *(a) and no damages obtained under sub-*
22 *section (d)”;* and

23 (ii) *in clause (ii), by inserting “or*
24 *damages” after “the penalty”;*

1 (C) in paragraph (2)(B)(i), by striking
2 “The period” and inserting “With respect to the
3 imposition of a penalty by the Secretary under
4 subsection (a), the period”; and

5 (D) in paragraph (3), by inserting “and
6 any damages under subsection (d)” after “any
7 penalty under subsection (a)”.

8 (3) *EFFECTIVE DATE.*—The amendments made
9 by this subsection shall apply to violations occurring
10 after the date of the enactment of this Act.

11 (f) *ALLOWING CONTINUED USE OF CORRECTIVE AC-*
12 *TION.*—Such section is further amended by adding at the
13 end the following new subsection:

14 “(e) *ALLOWING CONTINUED USE OF CORRECTIVE AC-*
15 *TION.*—Nothing in this section shall be construed as pre-
16 venting the Office of Civil Rights of the Department of
17 Health and Human Services from continuing, in its discre-
18 tion, to use corrective action without a penalty in cases
19 where the person did not know (and by exercising reason-
20 able diligence would not have known) of the violation in-
21 volved.”.

22 **SEC. 13411. AUDITS.**

23 The Secretary shall provide for periodic audits to en-
24 sure that covered entities and business associates that are
25 subject to the requirements of this subtitle and subparts C

1 *and E of part 164 of title 45, Code of Federal Regulations,*
2 *as such provisions are in effect as of the date of enactment*
3 *of this Act, comply with such requirements.*

4 **PART II—RELATIONSHIP TO OTHER LAWS; REGU-**
5 **LATORY REFERENCES; EFFECTIVE DATE; RE-**
6 **PORTS**

7 **SEC. 13421. RELATIONSHIP TO OTHER LAWS.**

8 (a) *APPLICATION OF HIPAA STATE PREEMPTION.—*
9 *Section 1178 of the Social Security Act (42 U.S.C. 1320d–*
10 *7) shall apply to a provision or requirement under this sub-*
11 *title in the same manner that such section applies to a pro-*
12 *vision or requirement under part C of title XI of such Act*
13 *or a standard or implementation specification adopted or*
14 *established under sections 1172 through 1174 of such Act.*

15 (b) *HEALTH INSURANCE PORTABILITY AND ACCOUNT-*
16 *ABILITY ACT.—The standards governing the privacy and*
17 *security of individually identifiable health information pro-*
18 *mulgated by the Secretary under sections 262(a) and 264*
19 *of the Health Insurance Portability and Accountability Act*
20 *of 1996 shall remain in effect to the extent that they are*
21 *consistent with this subtitle. The Secretary shall by rule*
22 *amend such Federal regulations as required to make such*
23 *regulations consistent with this subtitle. In carrying out the*
24 *preceding sentence, the Secretary shall revise the definition*
25 *of “psychotherapy notes” in section 164.501 of title 45, Code*

1 *of Federal Regulations, to include test data that is related*
2 *to direct responses, scores, items, forms, protocols, manuals,*
3 *or other materials that are part of a mental health evalua-*
4 *tion, as determined by the mental health professional pro-*
5 *viding treatment or evaluation.*

6 **SEC. 13422. REGULATORY REFERENCES.**

7 *Each reference in this subtitle to a provision of the*
8 *Code of Federal Regulations refers to such provision as in*
9 *effect on the date of the enactment of this title (or to the*
10 *most recent update of such provision).*

11 **SEC. 13423. EFFECTIVE DATE.**

12 *Except as otherwise specifically provided, the provi-*
13 *sions of part I shall take effect on the date that is 12 months*
14 *after the date of the enactment of this title.*

15 **SEC. 13424. STUDIES, REPORTS, GUIDANCE.**

16 *(a) REPORT ON COMPLIANCE.—*

17 *(1) IN GENERAL.—For the first year beginning*
18 *after the date of the enactment of this Act and annu-*
19 *ally thereafter, the Secretary shall prepare and sub-*
20 *mit to the Committee on Health, Education, Labor,*
21 *and Pensions of the Senate and the Committee on*
22 *Ways and Means and the Committee on Energy and*
23 *Commerce of the House of Representatives a report*
24 *concerning complaints of alleged violations of law, in-*
25 *cluding the provisions of this subtitle as well as the*

1 *provisions of subparts C and E of part 164 of title*
2 *45, Code of Federal Regulations, (as such provisions*
3 *are in effect as of the date of enactment of this Act)*
4 *relating to privacy and security of health information*
5 *that are received by the Secretary during the year for*
6 *which the report is being prepared. Each such report*
7 *shall include, with respect to such complaints received*
8 *during the year—*

9 *(A) the number of such complaints;*

10 *(B) the number of such complaints resolved*
11 *informally, a summary of the types of such com-*
12 *plaints so resolved, and the number of covered*
13 *entities that received technical assistance from*
14 *the Secretary during such year in order to*
15 *achieve compliance with such provisions and the*
16 *types of such technical assistance provided;*

17 *(C) the number of such complaints that*
18 *have resulted in the imposition of civil monetary*
19 *penalties or have been resolved through monetary*
20 *settlements, including the nature of the com-*
21 *plaints involved and the amount paid in each*
22 *penalty or settlement;*

23 *(D) the number of compliance reviews con-*
24 *ducted and the outcome of each such review;*

1 (E) the number of subpoenas or inquiries
2 issued;

3 (F) the Secretary's plan for improving com-
4 pliance with and enforcement of such provisions
5 for the following year; and

6 (G) the number of audits performed and a
7 summary of audit findings pursuant to section
8 13411.

9 (2) *AVAILABILITY TO PUBLIC.*—Each report
10 under paragraph (1) shall be made available to the
11 public on the Internet website of the Department of
12 Health and Human Services.

13 (b) *STUDY AND REPORT ON APPLICATION OF PRIVACY*
14 *AND SECURITY REQUIREMENTS TO NON-HIPAA COVERED*
15 *ENTITIES.*—

16 (1) *STUDY.*—Not later than one year after the
17 date of the enactment of this title, the Secretary, in
18 consultation with the Federal Trade Commission,
19 shall conduct a study, and submit a report under
20 paragraph (2), on privacy and security requirements
21 for entities that are not covered entities or business
22 associates as of the date of the enactment of this title,
23 including—

24 (A) requirements relating to security, pri-
25 vacy, and notification in the case of a breach of

1 *security or privacy (including the applicability*
2 *of an exemption to notification in the case of in-*
3 *dividually identifiable health information that*
4 *has been rendered unusable, unreadable, or inde-*
5 *cipherable through technologies or methodologies*
6 *recognized by appropriate professional organiza-*
7 *tion or standard setting bodies to provide effec-*
8 *tive security for the information) that should be*
9 *applied to—*

10 *(i) vendors of personal health records;*

11 *(ii) entities that offer products or serv-*
12 *ices through the website of a vendor of per-*
13 *sonal health records;*

14 *(iii) entities that are not covered enti-*
15 *ties and that offer products or services*
16 *through the websites of covered entities that*
17 *offer individuals personal health records;*

18 *(iv) entities that are not covered enti-*
19 *ties and that access information in a per-*
20 *sonal health record or send information to*
21 *a personal health record; and*

22 *(v) third party service providers used*
23 *by a vendor or entity described in clause*
24 *(i), (ii), (iii), or (iv) to assist in providing*
25 *personal health record products or services;*

1 (B) a determination of which Federal gov-
2 ernment agency is best equipped to enforce such
3 requirements recommended to be applied to such
4 vendors, entities, and service providers under
5 subparagraph (A); and

6 (C) a timeframe for implementing regula-
7 tions based on such findings.

8 (2) *REPORT.*—The Secretary shall submit to the
9 Committee on Finance, the Committee on Health,
10 Education, Labor, and Pensions, and the Committee
11 on Commerce of the Senate and the Committee on
12 Ways and Means and the Committee on Energy and
13 Commerce of the House of Representatives a report on
14 the findings of the study under paragraph (1) and
15 shall include in such report recommendations on the
16 privacy and security requirements described in such
17 paragraph.

18 (c) *GUIDANCE ON IMPLEMENTATION SPECIFICATION*
19 *TO DE-IDENTIFY PROTECTED HEALTH INFORMATION.*—
20 Not later than 12 months after the date of the enactment
21 of this title, the Secretary shall, in consultation with stake-
22 holders, issue guidance on how best to implement the re-
23 quirements for the de-identification of protected health in-
24 formation under section 164.514(b) of title 45, Code of Fed-
25 eral Regulations.

1 (d) *GAO REPORT ON TREATMENT DISCLOSURES.*—Not
2 later than one year after the date of the enactment of this
3 title, the Comptroller General of the United States shall sub-
4 mit to the Committee on Health, Education, Labor, and
5 Pensions of the Senate and the Committee on Ways and
6 Means and the Committee on Energy and Commerce of the
7 House of Representatives a report on the best practices re-
8 lated to the disclosure among health care providers of pro-
9 tected health information of an individual for purposes of
10 treatment of such individual. Such report shall include an
11 examination of the best practices implemented by States
12 and by other entities, such as health information exchanges
13 and regional health information organizations, an exam-
14 ination of the extent to which such best practices are suc-
15 cessful with respect to the quality of the resulting health
16 care provided to the individual and with respect to the abil-
17 ity of the health care provider to manage such best prac-
18 tices, and an examination of the use of electronic informed
19 consent for disclosing protected health information for treat-
20 ment, payment, and health care operations.

21 (e) *REPORT REQUIRED.*—Not later than 1 year after
22 the date of enactment of this section, the Government Ac-
23 countability Office shall submit to Congress and the Sec-
24 retary of Health and Human Services a report on the im-
25 pact of any of the provisions of, or amendments made by,

1 *this division or division B that are related to the Health*
 2 *Insurance Portability and Accountability Act of 1996 and*
 3 *section 552a of title 5, United States Code, on health insur-*
 4 *ance premiums and overall health care costs.*

5 **TITLE XIV—STATE FISCAL**
 6 **STABILIZATION**

7 *DEPARTMENT OF EDUCATION*

8 *STATE FISCAL STABILIZATION FUND*

9 *For necessary expenses for a State Fiscal Stabilization*
 10 *Fund, \$39,000,000,000, which shall be administered by the*
 11 *Department of Education, and shall be available through*
 12 *September 30, 2010.*

13 *GENERAL PROVISIONS—THIS TITLE*

14 **SEC. 1401. ALLOCATIONS.**

15 *(a) OUTLYING AREAS.—The Secretary of Education*
 16 *shall first allocate one-half of 1 percent to the outlying areas*
 17 *on the basis of their respective needs, as determined by the*
 18 *Secretary, for activities consistent with this title under such*
 19 *terms and conditions as the Secretary may determine.*

20 *(b) ADMINISTRATION AND OVERSIGHT.—The Secretary*
 21 *may reserve up to \$25,000,000 for administration and over-*
 22 *sight of this title, including for program evaluation.*

23 *(c) RESERVATION FOR ADDITIONAL PROGRAMS.—After*
 24 *reserving funds under subsections (a) and (b), the Secretary*

1 shall reserve \$7,500,000,000 for grants under sections 1406
2 and 1407.

3 (d) *STATE ALLOCATIONS.*—After carrying out sub-
4 sections (a), (b), and (c), the Secretary shall allocate the
5 remaining funds made available to carry out this title to
6 the States as follows:

7 (1) 61 percent on the basis of their relative popu-
8 lation of individuals aged 5 through 24.

9 (2) 39 percent on the basis of their relative total
10 population.

11 (e) *STATE GRANTS.*—From funds allocated under sub-
12 section (d), the Secretary shall make grants to the Governor
13 of each State.

14 (f) *REALLOCATION.*—The Governor shall return to the
15 Secretary any funds received under subsection (e) that the
16 Governor does not obligate within 1 year of receiving a
17 grant, and the Secretary shall reallocate such funds to the
18 remaining States in accordance with subsection (d).

19 **SEC. 1402. STATE USES OF FUNDS.**

20 *EDUCATION FUND.*—(a) *IN GENERAL.*—The Governor
21 shall use the State's allocation under section 1401 for the
22 support of elementary, secondary, and postsecondary edu-
23 cation and, as applicable, early childhood education pro-
24 grams and services.

1 (b) *RESTORING 2008 STATE SUPPORT FOR EDU-*
2 *CATION.—*

3 (1) *IN GENERAL.—The Governor shall first use the*
4 *funds described in subsection (a)—*

5 (A) *to provide the amount of funds, through*
6 *the State’s principal elementary and secondary*
7 *funding formula, that is needed to restore State*
8 *support for elementary and secondary education*
9 *to the fiscal year 2008 level; and where applica-*
10 *ble, to allow existing State formula increases for*
11 *fiscal years 2009, 2010, and 2011 to be imple-*
12 *mented and allow funding for phasing in State*
13 *equity and adequacy adjustments that were en-*
14 *acted prior to July 1, 2008; and*

15 (B) *to provide the amount of funds to pub-*
16 *lic institutions of higher education in the State*
17 *that is needed to restore State support for post-*
18 *secondary education to the fiscal year 2008 level.*

19 (2) *SHORTFALL.—If the Governor determines that the*
20 *amount of funds available under subsection (a) is insuffi-*
21 *cient to restore State support for education to the levels de-*
22 *scribed in subparagraphs (A) and (B) of paragraph (1),*
23 *the Governor shall allocate those funds between those clauses*
24 *in proportion to the relative shortfall in State support for*
25 *the education sectors described in those clauses.*

1 (c) *SUBGRANTS TO IMPROVE BASIC PROGRAMS OPER-*
 2 *ATED BY LOCAL EDUCATIONAL AGENCIES.*—After carrying
 3 out subsection (b), the Governor shall use any funds remain-
 4 ing under subsection (a) to provide local educational agen-
 5 cies in the State with subgrants based on their relative
 6 shares of funding under part A of title I of the Elementary
 7 and Secondary Education Act of 1965 (20 U.S.C. 6311 et
 8 seq.) for the most recent year for which data are available.

9 **SEC. 1403. USES OF FUNDS BY LOCAL EDUCATIONAL AGEN-**
 10 **CIES.**

11 (1) *IN GENERAL.*—A local educational agency that re-
 12 ceives funds under this title may use the funds for any ac-
 13 tivity authorized by the Elementary and Secondary Edu-
 14 cation Act of 1965 (20 U.S.C. 6301 et seq.) (“ESEA”), the
 15 Individuals with Disabilities Education Act (20 U.S.C.
 16 1400 et seq.) (“IDEA”), or the Carl D. Perkins Career and
 17 Technical Education Act of 2006 (20 U.S.C. 2301 et seq.)
 18 (“the Perkins Act”).

19 (b) *PROHIBITION.*—A local educational agency may
 20 not use funds received under this title for capital projects
 21 unless authorized by ESEA, IDEA, or the Perkins Act.

22 **SEC. 1404. USES OF FUNDS BY INSTITUTIONS OF HIGHER**
 23 **EDUCATION.**

24 (a) *IN GENERAL.*—A public institution of higher edu-
 25 cation that receives funds under this title shall use the funds

1 *for education and general expenditures, and in such a way*
2 *as to mitigate the need to raise tuition and fees for in-State*
3 *students.*

4 (b) *PROHIBITION.—An institution of higher education*
5 *may not use funds received under this title to increase its*
6 *endowment.*

7 (c) *ADDITIONAL PROHIBITION.—An institution of*
8 *higher education may not use funds received under this title*
9 *for construction, renovation, or facility repair.*

10 **SEC. 1405. STATE APPLICATIONS.**

11 (a) *IN GENERAL.—The Governor of a State desiring*
12 *to receive an allocation under section 1401 shall submit an*
13 *application at such time, in such manner, and containing*
14 *such information as the Secretary may reasonably require.*

15 (b) *APPLICATION.—The Governor shall—*

16 (1) *include the assurances described in subsection*
17 *(d);*

18 (2) *provide baseline data that demonstrates the*
19 *State’s current status in each of the areas described*
20 *in such assurances; and*

21 (3) *describe how the State intends to use its allo-*
22 *cation.*

23 (c) *INCENTIVE GRANT APPLICATION.—The Governor of*
24 *a State seeking a grant under section 1406 shall—*

25 (1) *submit an application for consideration;*

1 (2) describe the status of the State's progress in
2 each of the areas described in subsection (d);

3 (3) describe the achievement and graduation
4 rates of public elementary and secondary school stu-
5 dents in the State, and the strategies the State is em-
6 ploying to help ensure that all subgroups of students
7 identified in 1111(b)(2) of ESEA in the State con-
8 tinue making progress toward meeting the State's stu-
9 dent academic achievement standards;

10 (4) describe how the State would use its grant
11 funding to improve student academic achievement in
12 the State, including how it will allocate the funds to
13 give priority to high-need schools and local edu-
14 cational agencies; and

15 (5) include a plan for evaluating its progress in
16 closing achievement gaps.

17 (d) ASSURANCES.—An application under subsection
18 (b) shall include the following assurances:

19 (1) MAINTENANCE OF EFFORT.—

20 (A) ELEMENTARY AND SECONDARY EDU-
21 CATION.—The State will, in each of fiscal years
22 2009 and 2010, maintain State support for ele-
23 mentary and secondary education at least at the
24 level of such support in fiscal year 2006.

1 (B) *HIGHER EDUCATION.*—*The State will,*
2 *in each of fiscal years 2009 and 2010, maintain*
3 *State support for public institutions of higher*
4 *education (not including support for capital*
5 *projects or for research and development) at least*
6 *at the level of such support in fiscal year 2006.*

7 (2) *ACHIEVING EQUITY IN TEACHER DISTRIBUTION.*—*The State will take action, including activi-*
8 *ties outlined in section 2113(c) of ESEA, to increase*
9 *the number, and improve the distribution, of effective*
10 *teachers and principals in high-poverty schools and*
11 *local educational agencies throughout the State.*

12 (3) *IMPROVING COLLECTION AND USE OF*
13 *DATA.*—*The State will establish a longitudinal data*
14 *system that includes the elements described in section*
15 *6401(e)(2)(D) of the America COMPETES Act (20*
16 *U.S.C. 9871).*

17 (4) *STANDARDS AND ASSESSMENTS.*—*The*
18 *State—*

19 (A) *will enhance the quality of academic as-*
20 *essments described in section 1111(b)(3) of*
21 *ESEA (20 U.S.C. 6311(b)(3)) through activities*
22 *such as those described in section 6112(a) of such*
23 *Act (20 U.S.C. 7301a(a));*
24

1 (B) will comply with the requirements of
2 paragraphs (3)(C)(ix) and (6) of section 1111(b)
3 of ESEA (20 U.S.C. 6311(b)) and section
4 612(a)(16) of IDEA (20 U.S.C. 1412(a)(16)) re-
5 lated to the inclusion of children with disabilities
6 and limited English proficient students in State
7 assessments, the development of valid and reli-
8 able assessments for those students, and the pro-
9 vision of accommodations that enable their par-
10 ticipation in State assessments; and

11 (C) will take steps to improve State aca-
12 demic content standards and student academic
13 achievement standards consistent with
14 6401(e)(1)(A)(i) of the America COMPETES
15 Act.

16 (5) will ensure compliance with the requirements
17 of section 1116(a)(7)(C)(iv) and section 1116(a)(8)(B)
18 with respect to schools identified under such sections.

19 **SEC. 1406. STATE INCENTIVE GRANTS.**

20 (a) *IN GENERAL.*—From the total amount reserved
21 under section 1401(c) that is not used for section 1407, the
22 Secretary shall, in fiscal year 2010, make grants to States
23 that have made significant progress in meeting the objec-
24 tives of paragraphs (2), (3), (4), and (5) of section 1405(d).

1 (b) *BASIS FOR GRANTS.*—*The Secretary shall deter-*
2 *mine which States receive grants under this section, and*
3 *the amount of those grants, on the basis of information pro-*
4 *vided in State applications under section 1405 and such*
5 *other criteria as the Secretary determines appropriate.*

6 (c) *SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.*—
7 *Each State receiving a grant under this section shall use*
8 *at least 50 percent of the grant to provide local educational*
9 *agencies in the State with subgrants based on their relative*
10 *shares of funding under part A of title I of ESEA (20*
11 *U.S.C. 6311 et seq.) for the most recent year.*

12 **SEC. 1407. INNOVATION FUND.**

13 (a) *IN GENERAL.*—

14 (1) *ELIGIBLE ENTITY.*—*For the purposes of this*
15 *section, the term “eligible entity” means—*

16 (A) *A local educational agency; or*

17 (B) *a partnership between a nonprofit orga-*
18 *nization and—*

19 (i) *one or more local educational agen-*
20 *cies;*

21 (ii) *or a consortium of schools.*

22 (2) *PROGRAM ESTABLISHED.*—*From the total*
23 *amount reserved under section 1401(c), the Secretary*
24 *may reserve up to \$650,000,000 to establish an Inno-*
25 *vation Fund, which shall consist of academic achieve-*

1 *ment awards that recognize eligible entities that meet*
2 *the requirements described in subsection (b).*

3 (3) *BASIS FOR AWARDS.—The Secretary shall*
4 *make awards to eligible entities that have made sig-*
5 *nificant gains in closing the achievement gap as de-*
6 *scribed in subsection (b)(1)—*

7 (A) *to allow such eligible entities to expand*
8 *their work and serve as models for best practices;*

9 (B) *to allow such eligible entities to work in*
10 *partnership with the private sector and the phil-*
11 *anthropic community; and*

12 (C) *to identify and document best practices*
13 *that can be shared, and taken to scale based on*
14 *demonstrated success.*

15 (b) *ELIGIBILITY.—To be eligible for such an award,*
16 *an eligible entity shall—*

17 (1) *have significantly closed the achievement*
18 *gaps between groups of students described in section*
19 *1111(b)(2) of ESEA (20 U.S.C. 6311(b)(2));*

20 (2) *have exceeded the State’s annual measurable*
21 *objectives consistent with such section 1111(b)(2) for*
22 *2 or more consecutive years or have demonstrated suc-*
23 *cess in significantly increasing student academic*
24 *achievement for all groups of students described in*

1 *such section through another measure, such as meas-*
2 *ures described in section 1111(c)(2) of ESEA;*

3 *(3) have made significant improvement in other*
4 *areas, such as graduation rates or increased recruit-*
5 *ment and placement of high-quality teachers and*
6 *school leaders, as demonstrated with meaningful data;*
7 *and*

8 *(4) demonstrate that they have established part-*
9 *nerships with the private sector, which may include*
10 *philanthropic organizations, and that the private sec-*
11 *tor will provide matching funds in order to help*
12 *bring results to scale.*

13 **SEC. 1408. STATE REPORTS.**

14 *A State receiving funds under this title shall submit*
15 *a report to the Secretary, at such time and in such manner*
16 *as the Secretary may require, that describes—*

17 *(1) the uses of funds provided under this title*
18 *within the State;*

19 *(2) how the State distributed the funds it re-*
20 *ceived under this title;*

21 *(3) the number of jobs that the Governor esti-*
22 *mates were saved or created with funds the State re-*
23 *ceived under this title;*

1 (4) *tax increases that the Governor estimates*
2 *were averted because of the availability of funds from*
3 *this title;*

4 (5) *the State's progress in reducing inequities in*
5 *the distribution of teachers, in implementing a State*
6 *student longitudinal data system, and in developing*
7 *and implementing valid and reliable assessments for*
8 *limited English proficient students and children with*
9 *disabilities;*

10 (6) *the tuition and fee increases for in-State stu-*
11 *dents imposed by public institutions of higher edu-*
12 *cation in the State during the period of availability*
13 *of funds under this title, and a description of any ac-*
14 *tions taken by the State to limit those increases; and*

15 (7) *the extent to which public institutions of*
16 *higher education maintained, increased, or decreased*
17 *enrollment of in-State students, including students el-*
18 *igible for Pell Grants or other need-based financial*
19 *assistance.*

20 **SEC. 1409. EVALUATION.**

21 *The Comptroller General of the United States shall*
22 *conduct evaluations of the programs under sections 1406*
23 *and 1407 which shall include, but not be limited to, the*
24 *criteria used for the awards made, the States selected for*
25 *awards, award amounts, how each State used the award*

1 *received, and the impact of this funding on the progress*
2 *made toward closing achievement gaps.*

3 **SEC. 1410. SECRETARY'S REPORT TO CONGRESS.**

4 *The Secretary shall submit a report to the Committee*
5 *on Education and Labor of the House of Representatives,*
6 *the Committee on Health, Education, Labor, and Pensions*
7 *of the Senate, and the Committees on Appropriations of the*
8 *House of Representatives and of the Senate, not less than*
9 *6 months following the submission of the State reports, that*
10 *evaluates the information provided in the State reports*
11 *under section 1408.*

12 **SEC. 1411. PROHIBITION ON PROVISION OF CERTAIN AS-**
13 **SISTANCE.**

14 *No recipient of funds under this title shall use such*
15 *funds to provide financial assistance to students to attend*
16 *private elementary or secondary schools, unless such funds*
17 *are used to provide special education and related services*
18 *to children with disabilities, as authorized by the Individ-*
19 *uals with Disabilities Education Act (20 U.S.C. 1400 et*
20 *seq.).*

21 **SEC. 1412. DEFINITIONS.**

22 *Except as otherwise provided in this title, as used in*
23 *this title—*

1 (1) *the term “institution of higher education”*
2 *has the meaning given such term in section 101 of the*
3 *Higher Education Act of 1965 (20 U.S.C. 1001);*

4 (2) *the term “Secretary” means the Secretary of*
5 *Education;*

6 (3) *the term “State” means each of the 50 States,*
7 *the District of Columbia, and the Commonwealth of*
8 *Puerto Rico; and*

9 (4) *any other term that is defined in section*
10 *9101 of ESEA (20 U.S.C. 7801) shall have the mean-*
11 *ing given the term in such section.*

12 **SEC. 1413. REGULATORY RELIEF.**

13 (a) *WAIVER AUTHORITY.—Subject to subsections (b)*
14 *and (c), the Secretary of Education may, as applicable,*
15 *waive or modify, in order to ease fiscal burdens, any re-*
16 *quirement relating to the following:*

17 (1) *Maintenance of effort.*

18 (2) *The use of Federal funds to supplement, not*
19 *supplant, non-Federal funds.*

20 (b) *DURATION.—A waiver under this section shall be*
21 *for fiscal years 2009 and 2010.*

22 (c) *LIMITATIONS.—*

23 (1) *RELATION TO IDEA.—Nothing in this section*
24 *shall be construed to permit the Secretary to waive or*
25 *modify any provision of the Individuals with Disabil-*

1 *ities Education Act (20 U.S.C. 1400 et seq.), except*
2 *as described in a(1) and a(2).*

3 (2) *MAINTENANCE OF EFFORT.*—*If the Secretary*
4 *grants a waiver or modification under this section*
5 *waiving or modifying a requirement relating to*
6 *maintenance of effort for fiscal years 2009 and 2010,*
7 *the level of effort required for fiscal year 2011 shall*
8 *not be reduced because of the waiver or modification.*

9 **TITLE XV—RECOVERY ACCOUNT-**
10 **ABILITY AND TRANSPARENCY**
11 **BOARD AND RECOVERY INDE-**
12 **PENDENT ADVISORY PANEL**

13 **SEC. 1501. DEFINITIONS.**

14 *In this title:*

15 (1) *AGENCY.*—*The term “agency” has the mean-*
16 *ing given under section 551 of title 5, United States*
17 *Code.*

18 (2) *BOARD.*—*The term “Board” means the Re-*
19 *covery Accountability and Transparency Board estab-*
20 *lished in section 1511.*

21 (3) *CHAIRPERSON.*—*The term “Chairperson”*
22 *means the Chairperson of the Board.*

23 (4) *COVERED FUNDS.*—*The term “covered funds”*
24 *means any funds that are expended or obligated—*

1 (C) appoint an individual as the Chair-
2 person of the Board, by and with the advice and
3 consent of the Senate.

4 (2) COMPENSATION.—

5 (A) DESIGNATION OF FEDERAL OFFICER.—
6 If the President designates a Federal officer
7 under paragraph (1)(A) or (B) to serve as
8 Chairperson, that Federal officer may not receive
9 additional compensation for services performed
10 as Chairperson.

11 (B) APPOINTMENT OF NON-FEDERAL OFFI-
12 CER.—If the President appoints an individual
13 as Chairperson under paragraph (1)(C), that in-
14 dividual shall be compensated at the rate of basic
15 pay prescribed for level IV of the Executive
16 Schedule under section 5315 of title 5, United
17 States Code.

18 (b) MEMBERS.—The members of the Board shall in-
19 clude—

20 (1) the Inspectors General of the Departments of
21 Agriculture, Commerce, Education, Energy, Health
22 and Human Services, Homeland Security, Justice,
23 Transportation, Treasury, and the Treasury Inspector
24 General for Tax Administration; and

1 (2) *any other Inspector General as designated by*
2 *the President from any agency that expends or obli-*
3 *gates covered funds.*

4 **SEC. 1513. FUNCTIONS OF THE BOARD.**

5 (a) *FUNCTIONS.—*

6 (1) *IN GENERAL.—The Board shall coordinate*
7 *and conduct oversight of covered funds in order to*
8 *prevent fraud, waste, and abuse.*

9 (2) *SPECIFIC FUNCTIONS.—The functions of the*
10 *Board shall include—*

11 (A) *reviewing whether the reporting of con-*
12 *tracts and grants using covered funds meets ap-*
13 *plicable standards and specifies the purpose of*
14 *the contract or grant and measures of perform-*
15 *ance;*

16 (B) *reviewing whether competition require-*
17 *ments applicable to contracts and grants using*
18 *covered funds have been satisfied;*

19 (C) *auditing and investigating covered*
20 *funds to determine whether wasteful spending,*
21 *poor contract or grant management, or other*
22 *abuses are occurring;*

23 (D) *reviewing whether there are sufficient*
24 *qualified acquisition and grant personnel over-*
25 *seeing covered funds;*

1 (E) reviewing whether personnel whose du-
2 ties involve acquisitions or grants made with
3 covered funds receive adequate training; and

4 (F) reviewing whether there are appropriate
5 mechanisms for interagency collaboration relat-
6 ing to covered funds.

7 (b) *REPORTS.*—

8 (1) *QUARTERLY REPORTS.*—*The Board shall sub-*
9 *mit quarterly reports to the President and Congress,*
10 *including the Committees on Appropriations of the*
11 *Senate and House of Representatives, summarizing*
12 *the findings of the Board and the findings of inspec-*
13 *tors general of agencies. The Board may submit addi-*
14 *tional reports as appropriate.*

15 (2) *ANNUAL REPORTS.*—*The Board shall submit*
16 *annual reports to the President and the Committees*
17 *on Appropriations of the Senate and House of Rep-*
18 *resentatives, consolidating applicable quarterly re-*
19 *ports on the use of covered funds.*

20 (3) *PUBLIC AVAILABILITY.*—

21 (A) *IN GENERAL.*—*All reports submitted*
22 *under this subsection shall be made publicly*
23 *available and posted on a website established by*
24 *the Board.*

1 (B) *REDACTIONS.*—Any portion of a report
2 submitted under this subsection may be redacted
3 when made publicly available, if that portion
4 would disclose information that is not subject to
5 disclosure under section 552 of title 5, United
6 States Code (commonly known as the Freedom of
7 Information Act).

8 (c) *RECOMMENDATIONS.*—

9 (1) *IN GENERAL.*—The Board shall make rec-
10 ommendations to agencies on measures to prevent
11 fraud, waste, and abuse relating to covered funds.

12 (2) *RESPONSIVE REPORTS.*—Not later than 30
13 days after receipt of a recommendation under para-
14 graph (1), an agency shall submit a report to the
15 President, the congressional committees of jurisdic-
16 tion, including the Committees on Appropriations of
17 the Senate and House of Representatives, and the
18 Board on—

19 (A) whether the agency agrees or disagrees
20 with the recommendations; and

21 (B) any actions the agency will take to im-
22 plement the recommendations.

1 **SEC. 1514. POWERS OF THE BOARD.**

2 (a) *IN GENERAL.*—*The Board shall conduct, supervise,*
3 *and coordinate audits and investigations by inspectors gen-*
4 *eral of agencies relating to covered funds.*

5 (b) *AUDITS AND INVESTIGATIONS.*—*The Board may—*

6 (1) *conduct its own independent audits and in-*
7 *vestigations relating to covered funds; and*

8 (2) *collaborate on audits and investigations re-*
9 *lating to covered funds with any inspector general of*
10 *an agency.*

11 (c) *AUTHORITIES.*—

12 (1) *AUDITS AND INVESTIGATIONS.*—*In con-*
13 *ducting audits and investigations, the Board shall*
14 *have the authorities provided under section 6 of the*
15 *Inspector General Act of 1978 (5 U.S.C. App.).*

16 (2) *STANDARDS AND GUIDELINES.*—*The Board*
17 *shall carry out the powers under subsections (a) and*
18 *(b) in accordance with section 4(b)(1) of the Inspector*
19 *General Act of 1978 (5 U.S.C. App.).*

20 (d) *PUBLIC HEARINGS.*—*The Board may hold public*
21 *hearings and Board personnel may conduct investigative*
22 *depositions. The head of each agency shall make all officers*
23 *and employees of that agency available to provide testimony*
24 *to the Board and Board personnel. The Board may issue*
25 *subpoenas to compel the testimony of persons who are not*
26 *Federal officers or employees. Any such subpoenas may be*

1 *enforced as provided under section 6 of the Inspector Gen-*
 2 *eral Act of 1978 (5 U.S.C. App.).*

3 *(e) CONTRACTS.—The Board may enter into contracts*
 4 *to enable the Board to discharge its duties under this sub-*
 5 *title, including contracts and other arrangements for au-*
 6 *dits, studies, analyses, and other services with public agen-*
 7 *cies and with private persons, and make such payments as*
 8 *may be necessary to carry out the duties of the Board.*

9 *(f) TRANSFER OF FUNDS.—The Board may transfer*
 10 *funds appropriated to the Board for expenses to support*
 11 *administrative support services and audits or investiga-*
 12 *tions of covered funds to any office of inspector general, the*
 13 *Office of Management and Budget, the General Services Ad-*
 14 *ministration, and the Panel.*

15 **SEC. 1515. EMPLOYMENT, PERSONNEL, AND RELATED AU-**
 16 **THORITIES.**

17 *(a) EMPLOYMENT AND PERSONNEL AUTHORITIES.—*

18 *(1) IN GENERAL.—*

19 *(A) AUTHORITIES.—Subject to paragraph*
 20 *(2), the Board may exercise the authorities of*
 21 *subsections (b) through (i) of section 3161 of title*
 22 *5, United States Code (without regard to sub-*
 23 *section (a) of that section).*

24 *(B) APPLICATION.—For purposes of exer-*
 25 *cising the authorities described under subpara-*

1 *graph (A), the term “Chairperson of the Board”*
2 *shall be substituted for the term “head of a tem-*
3 *porary organization”.*

4 (C) *CONSULTATION.*—*In exercising the au-*
5 *thorities described under subparagraph (A), the*
6 *Chairperson shall consult with members of the*
7 *Board.*

8 (2) *EMPLOYMENT AUTHORITIES.*—*In exercising*
9 *the employment authorities under subsection (b) of*
10 *section 3161 of title 5, United States Code, as pro-*
11 *vided under paragraph (1) of this subsection—*

12 (A) *paragraph (2) of subsection (b) of sec-*
13 *tion 3161 of that title (relating to periods of ap-*
14 *pointments) shall not apply; and*

15 (B) *no period of appointment may exceed*
16 *the date on which the Board terminates under*
17 *section 1521.*

18 (b) *INFORMATION AND ASSISTANCE.*—

19 (1) *IN GENERAL.*—*Upon request of the Board for*
20 *information or assistance from any agency or other*
21 *entity of the Federal Government, the head of such en-*
22 *tity shall, insofar as is practicable and not in con-*
23 *travention of any existing law, furnish such informa-*
24 *tion or assistance to the Board, or an authorized des-*
25 *ignee.*

1 (2) *REPORT OF REFUSALS.*—Whenever informa-
2 tion or assistance requested by the Board is, in the
3 judgment of the Board, unreasonably refused or not
4 provided, the Board shall report the circumstances to
5 the congressional committees of jurisdiction, including
6 the Committees on Appropriations of the Senate and
7 House of Representatives, without delay.

8 (c) *ADMINISTRATIVE SUPPORT.*—The General Services
9 Administration shall provide the Board with administra-
10 tive support services, including the provision of office space
11 and facilities.

12 **SEC. 1516. INDEPENDENCE OF INSPECTORS GENERAL.**

13 (a) *INDEPENDENT AUTHORITY.*—Nothing in this sub-
14 title shall affect the independent authority of an inspector
15 general to determine whether to conduct an audit or inves-
16 tigation of covered funds.

17 (b) *REQUESTS BY BOARD.*—If the Board requests that
18 an inspector general conduct or refrain from conducting an
19 audit or investigation and the inspector general rejects the
20 request in whole or in part, the inspector general shall, not
21 later than 30 days after rejecting the request, submit a re-
22 port to the Board, the head of the applicable agency, and
23 the congressional committees of jurisdiction, including the
24 Committees on Appropriations of the Senate and House of
25 Representatives. The report shall state the reasons that the

1 *inspector general has rejected the request in whole or in*
2 *part.*

3 **SEC. 1517. COORDINATION WITH THE COMPTROLLER GEN-**
4 **ERAL AND STATE AUDITORS.**

5 *The Board shall coordinate its oversight activities with*
6 *the Comptroller General of the United States and State*
7 *auditor generals.*

8 **SEC. 1518. PROTECTING STATE AND LOCAL GOVERNMENT**
9 **AND CONTRACTOR WHISTLEBLOWERS.**

10 *(a) PROHIBITION OF REPRISALS.—An employee of*
11 *any non-Federal employer receiving covered funds may not*
12 *be discharged, demoted, or otherwise discriminated against*
13 *as a reprisal for disclosing to the Board, an inspector gen-*
14 *eral, the Comptroller General, a member of Congress, or a*
15 *the head of a Federal agency, or their representatives, infor-*
16 *mation that the employee reasonably believes is evidence*
17 *of—*

18 *(1) gross mismanagement of an agency contract*
19 *or grant relating to covered funds;*

20 *(2) a gross waste of covered funds;*

21 *(3) a substantial and specific danger to public*
22 *health or safety; or*

23 *(4) a violation of law related to an agency con-*
24 *tract (including the competition for or negotiation of*

1 *a contract) or grant, awarded or issued relating to*
2 *covered funds.*

3 *(b) INVESTIGATION OF COMPLAINTS.—*

4 *(1) IN GENERAL.—A person who believes that the*
5 *person has been subjected to a reprisal prohibited by*
6 *subsection (a) may submit a complaint to the appro-*
7 *priate inspector general. Unless the inspector general*
8 *determines that the complaint is frivolous, the inspec-*
9 *tor general shall investigate the complaint and, upon*
10 *completion of such investigation, submit a report of*
11 *the findings of the investigation to the person, the*
12 *person's employer, the head of the appropriate agency,*
13 *and the Board.*

14 *(2) TIME LIMITATIONS FOR ACTIONS.—*

15 *(A) IN GENERAL.—Except as provided*
16 *under subparagraph (B), the inspector general*
17 *shall make a determination that a complaint is*
18 *frivolous or submit a report under paragraph (1)*
19 *within 180 days after receiving the complaint.*

20 *(B) EXTENSION.—If the inspector general is*
21 *unable to complete an investigation in time to*
22 *submit a report within the 180-day period speci-*
23 *fied under subparagraph (A) and the person sub-*
24 *mitting the complaint agrees to an extension of*
25 *time, the inspector general shall submit a report*

1 *under paragraph (1) within such additional pe-*
2 *riod of time as shall be agreed upon between the*
3 *inspector general and the person submitting the*
4 *complaint.*

5 *(c) REMEDY AND ENFORCEMENT AUTHORITY.—*

6 *(1) AGENCY ACTION.—Not later than 30 days*
7 *after receiving an inspector general report under sub-*
8 *section (b), the head of the agency concerned shall de-*
9 *termine whether there is sufficient basis to conclude*
10 *that the non-Federal employer has subjected the com-*
11 *plainant to a reprisal prohibited by subsection (a)*
12 *and shall either issue an order denying relief or shall*
13 *take 1 or more of the following actions:*

14 *(A) Order the employer to take affirmative*
15 *action to abate the reprisal.*

16 *(B) Order the employer to reinstate the per-*
17 *son to the position that the person held before the*
18 *reprisal, together with the compensation (includ-*
19 *ing back pay), employment benefits, and other*
20 *terms and conditions of employment that would*
21 *apply to the person in that position if the re-*
22 *prisal had not been taken.*

23 *(C) Order the employer to pay the com-*
24 *plainant an amount equal to the aggregate*
25 *amount of all costs and expenses (including at-*

1 *torneys' fees and expert witnesses' fees) that were*
2 *reasonably incurred by the complainant for, or*
3 *in connection with, bringing the complaint re-*
4 *garding the reprisal, as determined by the head*
5 *of the agency.*

6 (2) *CIVIL ACTION.*—*If the head of an agency*
7 *issues an order denying relief under paragraph (1) or*
8 *has not issued an order within 210 days after the*
9 *submission of a complaint under subsection (b), or in*
10 *the case of an extension of time under subsection*
11 *(b)(2)(B), not later than 30 days after the expiration*
12 *of the extension of time, and there is no showing that*
13 *such delay is due to the bad faith of the complainant,*
14 *the complainant shall be deemed to have exhausted all*
15 *administrative remedies with respect to the com-*
16 *plaint, and the complainant may bring a de novo ac-*
17 *tion at law or equity against the employer to seek*
18 *compensatory damages and other relief available*
19 *under this section in the appropriate district court of*
20 *the United States, which shall have jurisdiction over*
21 *such an action without regard to the amount in con-*
22 *troversy. Such an action shall, at the request of either*
23 *party to the action, be tried by the court with a jury.*

24 (3) *EVIDENCE.*—*An inspector general determina-*
25 *tion and an agency head order denying relief under*

1 *paragraph (2) shall be admissible in evidence in any*
2 *de novo action at law or equity brought in accordance*
3 *with this subsection.*

4 (4) *JUDICIAL ENFORCEMENT OF ORDER.*—*When-*
5 *ever a person fails to comply with an order issued*
6 *under paragraph (1), the head of the agency shall file*
7 *an action for enforcement of such order in the United*
8 *States district court for a district in which the re-*
9 *prisal was found to have occurred. In any action*
10 *brought under this paragraph, the court may grant*
11 *appropriate relief, including injunctive relief and*
12 *compensatory and exemplary damages.*

13 (5) *JUDICIAL REVIEW.*—*Any person adversely af-*
14 *ected or aggrieved by an order issued under para-*
15 *graph (1) may obtain review of the order's conform-*
16 *ance with this subsection, and any regulations issued*
17 *to carry out this section, in the United States court*
18 *of appeals for a circuit in which the reprisal is al-*
19 *leged in the order to have occurred. No petition seek-*
20 *ing such review may be filed more than 60 days after*
21 *issuance of the order by the head of the agency. Re-*
22 *view shall conform to chapter 7 of title 5, United*
23 *States Code.*

24 (d) *RULE OF CONSTRUCTION.*—*Nothing in this section*
25 *may be construed to authorize the discharge of, demotion*

1 *of, or discrimination against an employee for a disclosure*
2 *other than a disclosure protected by subsection (a) or to*
3 *modify or derogate from a right or remedy otherwise avail-*
4 *able to the employee.*

5 **SEC. 1519. BOARD WEBSITE.**

6 (a) *ESTABLISHMENT.*—*The Board shall establish and*
7 *maintain a user-friendly, public-facing website to foster*
8 *greater accountability and transparency in the use of cov-*
9 *ered funds.*

10 (b) *PURPOSE.*—*The website established and main-*
11 *tained under subsection (a) shall be a portal or gateway*
12 *to key information relating to this Act and provide connec-*
13 *tions to other Government websites with related informa-*
14 *tion.*

15 (c) *CONTENT AND FUNCTION.*—*In establishing the*
16 *website established and maintained under subsection (a),*
17 *the Board shall ensure the following:*

18 (1) *The website shall provide materials explain-*
19 *ing what this Act means for citizens. The materials*
20 *shall be easy to understand and regularly updated.*

21 (2) *The website shall provide accountability in-*
22 *formation, including a database of findings from au-*
23 *dits, inspectors general, and the Government Account-*
24 *ability Office.*

1 (3) *The website shall provide data on relevant*
2 *economic, financial, grant, and contract information*
3 *in user-friendly visual presentations to enhance pub-*
4 *lic awareness of the use of covered funds.*

5 (4) *The website shall provide detailed data on*
6 *contracts awarded by the Government that expend*
7 *covered funds, including information about the com-*
8 *petitiveness of the contracting process, notification of*
9 *solicitations for contracts to be awarded, and infor-*
10 *mation about the process that was used for the award*
11 *of contracts.*

12 (5) *The website shall include printable reports on*
13 *covered funds obligated by month to each State and*
14 *congressional district.*

15 (6) *The website shall provide a means for the*
16 *public to give feedback on the performance of con-*
17 *tracts that expend covered funds.*

18 (7) *The website shall be enhanced and updated*
19 *as necessary to carry out the purposes of this subtitle.*

20 (d) *WAIVER.—The Board may exclude posting con-*
21 *tractual or other information on the website on a case-by-*
22 *case basis when necessary to protect national security.*

23 **SEC. 1520. AUTHORIZATION OF APPROPRIATIONS.**

24 *There are authorized to be appropriated such sums as*
25 *necessary to carry out this subtitle.*

1 **SEC. 1521. TERMINATION OF THE BOARD.**

2 *The Board shall terminate on September 30, 2012.*

3 ***Subtitle B—Recovery Independent***
4 ***Advisory Panel***

5 **SEC. 1531. ESTABLISHMENT OF RECOVERY INDEPENDENT**

6 **ADVISORY PANEL.**

7 (a) *ESTABLISHMENT.*—*There is established the Recov-*
8 *ery Independent Advisory Panel.*

9 (b) *MEMBERSHIP.*—*The Panel shall be composed of 5*
10 *members who shall be appointed by the President.*

11 (c) *QUALIFICATIONS.*—*Members shall be appointed on*
12 *the basis of expertise in economics, public finance, con-*
13 *tracting, accounting, or any other relevant field.*

14 (d) *INITIAL MEETING.*—*Not later than 30 days after*
15 *the date on which all members of the Panel have been ap-*
16 *pointed, the Panel shall hold its first meeting.*

17 (e) *MEETINGS.*—*The Panel shall meet at the call of*
18 *the Chairperson of the Panel.*

19 (f) *QUORUM.*—*A majority of the members of the Panel*
20 *shall constitute a quorum, but a lesser number of members*
21 *may hold hearings.*

22 (g) *CHAIRPERSON AND VICE CHAIRPERSON.*—*The*
23 *Panel shall select a Chairperson and Vice Chairperson from*
24 *among its members.*

1 **SEC. 1532. DUTIES OF THE PANEL.**

2 *The Panel shall make recommendations to the Board*
3 *on actions the Board could take to prevent fraud, waste,*
4 *and abuse relating to covered funds.*

5 **SEC. 1533. POWERS OF THE PANEL.**

6 (a) *HEARINGS.*—*The Panel may hold such hearings,*
7 *sit and act at such times and places, take such testimony,*
8 *and receive such evidence as the Panel considers advisable*
9 *to carry out this subtitle.*

10 (b) *INFORMATION FROM FEDERAL AGENCIES.*—*The*
11 *Panel may secure directly from any agency such informa-*
12 *tion as the Panel considers necessary to carry out this sub-*
13 *title. Upon request of the Chairperson of the Panel, the head*
14 *of such agency shall furnish such information to the Panel.*

15 (c) *POSTAL SERVICES.*—*The Panel may use the*
16 *United States mails in the same manner and under the*
17 *same conditions as agencies of the Federal Government.*

18 (d) *GIFTS.*—*The Panel may accept, use, and dispose*
19 *of gifts or donations of services or property.*

20 **SEC. 1534. PANEL PERSONNEL MATTERS.**

21 (a) *COMPENSATION OF MEMBERS.*—*Each member of*
22 *the Panel who is not an officer or employee of the Federal*
23 *Government shall be compensated at a rate equal to the*
24 *daily equivalent of the annual rate of basic pay prescribed*
25 *for level IV of the Executive Schedule under section 5315*
26 *of title 5, United States Code, for each day (including travel*

1 *time) during which such member is engaged in the perform-*
2 *ance of the duties of the Panel. All members of the Panel*
3 *who are officers or employees of the United States shall serve*
4 *without compensation in addition to that received for their*
5 *services as officers or employees of the United States.*

6 **(b) TRAVEL EXPENSES.**—*The members of the Panel*
7 *shall be allowed travel expenses, including per diem in lieu*
8 *of subsistence, at rates authorized for employees of agencies*
9 *under subchapter I of chapter 57 of title 5, United States*
10 *Code, while away from their homes or regular places of*
11 *business in the performance of services for the Panel.*

12 **(c) STAFF.**—

13 **(1) IN GENERAL.**—*The Chairperson of the Panel*
14 *may, without regard to the civil service laws and reg-*
15 *ulations, appoint and terminate an executive director*
16 *and such other additional personnel as may be nec-*
17 *essary to enable the Panel to perform its duties. The*
18 *employment of an executive director shall be subject*
19 *to confirmation by the Panel.*

20 **(2) COMPENSATION.**—*The Chairperson of the*
21 *Panel may fix the compensation of the executive di-*
22 *rector and other personnel without regard to chapter*
23 *51 and subchapter III of chapter 53 of title 5, United*
24 *States Code, relating to classification of positions and*
25 *General Schedule pay rates, except that the rate of*

1 *pay for the executive director and other personnel*
2 *may not exceed the rate payable for level V of the Ex-*
3 *ecutive Schedule under section 5316 of such title.*

4 (3) *PERSONNEL AS FEDERAL EMPLOYEES.—*

5 (A) *IN GENERAL.—The executive director*
6 *and any personnel of the Panel who are employ-*
7 *ees shall be employees under section 2105 of title*
8 *5, United States Code, for purposes of chapters*
9 *63, 81, 83, 84, 85, 87, 89, 89A, 89B, and 90 of*
10 *that title.*

11 (B) *MEMBERS OF PANEL.—Subparagraph*

12 (A) *shall not be construed to apply to members*
13 *of the Panel.*

14 (d) *DETAIL OF GOVERNMENT EMPLOYEES.—Any Fed-*

15 *eral Government employee may be detailed to the Panel*
16 *without reimbursement, and such detail shall be without*
17 *interruption or loss of civil service status or privilege.*

18 (e) *PROCUREMENT OF TEMPORARY AND INTERMIT-*

19 *TENT SERVICES.—The Chairperson of the Panel may pro-*
20 *cure temporary and intermittent services under section*
21 *3109(b) of title 5, United States Code, at rates for individ-*
22 *uals which do not exceed the daily equivalent of the annual*
23 *rate of basic pay prescribed for level V of the Executive*
24 *Schedule under section 5316 of such title.*

1 (f) *ADMINISTRATIVE SUPPORT.*—*The General Services*
2 *Administration shall provide the Board with administra-*
3 *tive support services, including the provision of office space*
4 *and facilities.*

5 **SEC. 1535. TERMINATION OF THE PANEL.**

6 *The Panel shall terminate on September 30, 2012.*

7 **SEC. 1536. AUTHORIZATION OF APPROPRIATIONS.**

8 *There are authorized to be appropriated such sums as*
9 *necessary to carry out this subtitle.*

10 ***Subtitle C—Reports of the Council***
11 ***of Economic Advisers***

12 **SEC. 1541. REPORTS OF THE COUNCIL OF ECONOMIC ADVIS-**
13 ***ERS.***

14 (a) *IN GENERAL.*—*In consultation with the Director*
15 *of the Office of Management and Budget and the Secretary*
16 *of the Treasury, the Chairperson of the Council of Economic*
17 *Advisers shall submit to the Committees on Appropriations*
18 *of the Senate and House of Representatives quarterly re-*
19 *ports based on the reports required under section 1551 that*
20 *detail the impact of programs funded through covered funds*
21 *on employment, estimated economic growth, and other key*
22 *economic indicators.*

23 (b) *SUBMISSION OF REPORTS.*—

24 (1) *FIRST REPORT.*—*The first report submitted*
25 *under subsection (a) shall be submitted not later than*

1 45 days after the end of the first full quarter following
2 the date of enactment of this Act.

3 (2) *LAST REPORT.*—The last report required to
4 be submitted under subsection (a) shall apply to the
5 quarter in which the Board terminates under section
6 1521.

7 ***Subtitle D—Reports on Use of***
8 ***Funds***

9 ***SEC. 1551. REPORTS ON USE OF FUNDS.***

10 (a) *SHORT TITLE.*—This section may be cited as the
11 “Jobs Accountability Act”.

12 (b) *DEFINITIONS.*—In this section:

13 (1) *AGENCY.*—The term “agency” has the mean-
14 ing given under section 551 of title 5, United States
15 Code.

16 (2) *RECIPIENT.*—The term “recipient”—

17 (A) means any entity that receives recovery
18 funds (including recovery funds received through
19 grant, loan, or contract) other than an indi-
20 vidual; and

21 (B) includes a State that receives recovery
22 funds.

23 (3) *RECOVERY FUNDS.*—The term “recovery
24 funds” means any funds that are made available—

1 (A) from appropriations made under this
2 Act; and

3 (B) under any other authorities provided
4 under this Act.

5 (c) *RECIPIENT REPORTS.*—Not later than 10 days
6 after the end of each calendar quarter, each recipient that
7 received recovery funds from an agency shall submit a re-
8 port to that agency that contains—

9 (1) the total amount of recovery funds received
10 from that agency;

11 (2) the amount of recovery funds received that
12 were expended or obligated to projects or activities;
13 and

14 (3) a detailed list of all projects or activities for
15 which recovery funds were expended or obligated, in-
16 cluding—

17 (A) the name of the project or activity;

18 (B) a description of the project or activity;

19 (C) an evaluation of the completion status
20 of the project or activity; and

21 (D) an analysis of the number of jobs cre-
22 ated and the number of jobs retained by the
23 project or activity.

24 (d) *AGENCY REPORTS.*—Not later than 30 days after
25 the end of each calendar quarter, each agency that made

1 *recovery funds available to any recipient shall make the in-*
2 *formation in reports submitted under subsection (c) pub-*
3 *licly available by posting the information on a website.*

4 *(e) OTHER REPORTS.—The Congressional Budget Of-*
5 *fice and the Government Accountability Office shall com-*
6 *ment on the information described in subsection (c)(3)(D)*
7 *for any reports submitted under subsection (c). Such com-*
8 *ments shall be due within 7 days after such reports are sub-*
9 *mited.*

10 *TITLE XVI—GENERAL PROVISIONS—THIS ACT*

11 *EMERGENCY DESIGNATION*

12 *SEC. 1601. Each amount in this Act is designated as*
13 *an emergency requirement and necessary to meet emergency*
14 *needs pursuant to section 204(a) of S. Con. Res. 21 (110th*
15 *Congress) and section 301(b)(2) of S. Con. Res. 70 (110th*
16 *Congress), the concurrent resolutions on the budget for fiscal*
17 *years 2008 and 2009.*

18 *AVAILABILITY*

19 *SEC. 1602. No part of any appropriation contained*
20 *in this Act shall remain available for obligation beyond the*
21 *current fiscal year unless expressly so provided herein.*

22 *RELATIONSHIP TO OTHER APPROPRIATIONS*

23 *SEC. 1603. Each amount appropriated or made avail-*
24 *able in this Act is in addition to amounts otherwise appro-*
25 *priated for the fiscal year involved. Enactment of this Act*

1 *shall have no effect on the availability of amounts under*
2 *the Continuing Appropriations Resolution, 2009 (division*
3 *A of Public Law 110–329).*

4 *BUY AMERICAN*

5 *SEC. 1604. USE OF AMERICAN IRON, STEEL, AND*
6 *MANUFACTURED GOODS. (a) None of the funds appro-*
7 *priated or otherwise made available by this Act may be used*
8 *for a project for the construction, alteration, maintenance,*
9 *or repair of a public building or public work unless all of*
10 *the iron, steel, and manufactured goods used in the project*
11 *are produced in the United States.*

12 *(b) Subsection (a) shall not apply in any case in which*
13 *the head of the Federal department or agency involved finds*
14 *that—*

15 *(1) applying subsection (a) would be inconsistent*
16 *with the public interest;*

17 *(2) iron, steel, and the relevant manufactured*
18 *goods are not produced in the United States if suffi-*
19 *cient and reasonably available quantities and of a*
20 *satisfactory quality; or*

21 *(3) inclusion of iron, steel, and manufactured*
22 *goods produced in the United States will increase the*
23 *cost of the overall project by more than 25 percent.*

24 *(c) If the head of a Federal department or agency de-*
25 *termines that it is necessary to waive the application of*

1 *subsection (a) based on a finding under subsection (b), the*
2 *head of the department or agency shall publish in the Fed-*
3 *eral Register a detailed written jurisdiction as to why the*
4 *provision is being waived.*

5 *(d) This section shall be applied in a manner con-*
6 *sistent with United States obligations under international*
7 *agreements.*

8 *CERTIFICATION*

9 *SEC. 1605. With respect to funds in titles I through XVI*
10 *of this Act made available to State, or local government*
11 *agencies, the Governor, mayor, or other chief executive, as*
12 *appropriate, shall certify that the infrastructure investment*
13 *has received the full review and vetting required by law and*
14 *that the chief executive accepts responsibility that the infra-*
15 *structure investment is an appropriate use of taxpayer dol-*
16 *lars. A State or local agency may not receive infrastructure*
17 *investment funding from funds made available in this Act*
18 *unless this certification is made.*

19 *ECONOMIC STABILIZATION CONTRACTING*

20 *SEC. 1606. REFORM OF CONTRACTING PROCEDURES*
21 *UNDER EESA. Section 107(b) of the Emergency Economic*
22 *Stabilization Act of 2008 (12 U.S.C. 5217(b)) is amended*
23 *by inserting “and individuals with disabilities and busi-*
24 *nesses owned by individuals with disabilities (for purposes*
25 *of this subsection the term ‘individual with disability’ has*

1 *the same meaning as the term ‘handicapped individual’ as*
2 *that term is defined in section 3(f) of the Small Business*
3 *Act (15 U.S.C. 632(f)),” after “(12 U.S.C. 1441a(r)(4)),”.*

4 *SEC. 1607. FINDINGS.—*

5 *(1) The National Environmental Policy Act pro-*
6 *pects public health, safety and environmental quality:*
7 *by ensuring transparency, accountability and public*
8 *involvement in federal actions and in the use of pub-*
9 *lic funds;*

10 *(2) When President Nixon signed the National*
11 *Environmental Policy Act into law on January 1,*
12 *1970, he said that the Act provided the “direction”*
13 *for the country to “regain a productive harmony be-*
14 *tween man and nature”;*

15 *(3) The National Environmental Policy Act*
16 *helps to provide an orderly process for considering*
17 *federal actions and funding decisions and prevents li-*
18 *gation and delay that would otherwise be inevitable*
19 *and existed prior to the establishment of the National*
20 *Environmental Policy Act.*

21 *(a) Adequate resources within this bill must be devoted*
22 *to ensuring that applicable environmental reviews under*
23 *the National Environmental Policy Act are completed on*
24 *an expeditious basis and that the shortest existing applica-*

1 ble process under the National Environmental Policy Act
2 shall be utilized.

3 (b) The President shall report to the Senate Environ-
4 ment and Public Works Committee and the House Natural
5 Resources Committee every 90 days following the date of
6 enactment until September 30, 2011 on the status and
7 progress of projects and activities funded by this Act with
8 respect to compliance with National Environmental Policy
9 Act requirements and documentation.

10 *PROHIBITION ON NO-BID CONTRACTS AND EARMARKS*

11 *SEC. 1608. (a) Notwithstanding any other provision*
12 *of this Act, none of the funds appropriated or otherwise*
13 *made available by this Act may be used to make any pay-*
14 *ment in connection with a contract unless the contract is*
15 *awarded using competitive procedures in accordance with*
16 *the requirements of section 303 of the Federal Property and*
17 *Administrative Services Act of 1949 (41 U.S.C. 253), sec-*
18 *tion 2304 of title 10, United States Code, and the Federal*
19 *Acquisition Regulation.*

20 (b) Notwithstanding any other provision of this Act,
21 none of the funds appropriated or otherwise made available
22 by this Act may be awarded by grant or cooperative agree-
23 ment unless the process used to award such grant or cooper-
24 ative agreement uses competitive procedures to select the
25 grantee or award recipient.

26 *SEC. 1609. LIMIT ON FUNDS.*

1 None of the amounts appropriated or otherwise made
2 available by this Act may be used for any casino or other
3 gambling establishment, aquarium, zoo, golf course, swim-
4 ming pool, stadium, community park, museum, theater, art
5 center, and highway beautification project.

6 *SEC. 1610. HIRING AMERICAN WORKERS IN COMPANIES RE-*
7 *CEIVING TARP FUNDING.*

8 (a) *SHORT TITLE.*—This section may be cited as the
9 “Employ American Workers Act”.

10 (b) *PROHIBITION.*—

11 (1) *IN GENERAL.*—Notwithstanding any other
12 provision of law, it shall be unlawful for any recipi-
13 ent of funding under title I of the Emergency Eco-
14 nomic Stabilization Act of 2008 (Public Law 110–
15 343) or section 13 of the Federal Reserve Act (12
16 U.S.C. 342 et seq.) to hire any nonimmigrant de-
17 scribed in section 101(a)(15)(h)(i)(b) of the Immigra-
18 tion and Nationality Act (8 U.S.C.
19 1101(a)(15)(h)(i)(b)) unless the recipient is in com-
20 pliance with the requirements for an H–1B dependent
21 employer (as defined in section 212(n)(3) of such Act
22 (8 U.S.C. 1182(n)(3))), except that the second sen-
23 tence of section 212(n)(1)(E)(i) of such Act shall not
24 apply.

1 (2) *DEFINED TERM.*—*In this subsection, the*
 2 *term “hire” means to permit a new employee to com-*
 3 *mence a period of employment.*

4 (c) *SUNSET PROVISION.*—*This section shall be effective*
 5 *during the 2-year period beginning on the date of the enact-*
 6 *ment of this Act.*

7 ***DIVISION B—TAX, UNEMPLOY-***
 8 ***MENT, HEALTH, STATE FIS-***
 9 ***CAL RELIEF, AND OTHER PRO-***
 10 ***VISIONS***

11 ***TITLE I—TAX PROVISIONS***

12 ***SEC. 1000. SHORT TITLE, ETC.***

13 (a) *SHORT TITLE.*—*This title may be cited as the*
 14 *“American Recovery and Reinvestment Tax Act of 2009”.*

15 (b) *REFERENCE.*—*Except as otherwise expressly pro-*
 16 *vided, whenever in this title an amendment or repeal is ex-*
 17 *pressed in terms of an amendment to, or repeal of, a section*
 18 *or other provision, the reference shall be considered to be*
 19 *made to a section or other provision of the Internal Revenue*
 20 *Code of 1986.*

21 (c) *TABLE OF CONTENTS.*—*The table of contents for*
 22 *this title is as follows:*

TITLE I—TAX PROVISIONS

Sec. 1000. Short title, etc.

*Subtitle A—Tax Relief for Individuals and Families**PART I—GENERAL TAX RELIEF*

- Sec. 1001. Making work pay credit.*
- Sec. 1002. Temporary increase in earned income tax credit.*
- Sec. 1003. Temporary increase of refundable portion of child credit.*
- Sec. 1004. American opportunity tax credit.*
- Sec. 1005. Computer technology and equipment allowed as a qualified higher education expense for section 529 accounts in 2009 and 2010.*
- Sec. 1006. Credit for certain home purchases.*
- Sec. 1007. Suspension of tax on portion of unemployment compensation.*
- Sec. 1008. Above-the-line deduction for interest on indebtedness with respect to the purchase of certain motor vehicles.*
- Sec. 1009. Above-the-line deduction for State sales tax and excise tax on the purchase of certain motor vehicles.*

PART II—ALTERNATIVE MINIMUM TAX RELIEF

- Sec. 1011. Extension of alternative minimum tax relief for nonrefundable personal credits.*
- Sec. 1012. Extension of increased alternative minimum tax exemption amount.*

*Subtitle B—Energy Incentives**PART I—RENEWABLE ENERGY INCENTIVES*

- Sec. 1101. Extension of credit for electricity produced from certain renewable resources.*
- Sec. 1102. Election of investment credit in lieu of production credit.*
- Sec. 1103. Repeal of certain limitations on credit for renewable energy property.*

PART II—INCREASED ALLOCATIONS OF NEW CLEAN RENEWABLE ENERGY BONDS AND QUALIFIED ENERGY CONSERVATION BONDS

- Sec. 1111. Increased limitation on issuance of new clean renewable energy bonds.*
- Sec. 1112. Increased limitation on issuance of qualified energy conservation bonds.*

PART III—ENERGY CONSERVATION INCENTIVES

- Sec. 1121. Extension and modification of credit for nonbusiness energy property.*
- Sec. 1122. Modification of credit for residential energy efficient property.*
- Sec. 1123. Temporary increase in credit for alternative fuel vehicle refueling property.*

PART IV—ENERGY RESEARCH INCENTIVES

- Sec. 1131. Increased research credit for energy research.*

PART V—MODIFICATION OF CREDIT FOR CARBON DIOXIDE SEQUESTRATION

- Sec. 1141. Application of monitoring requirements to carbon dioxide used as a tertiary injectant.*

PART VI—PLUG-IN ELECTRIC DRIVE MOTOR VEHICLES

- Sec. 1151. Modification of credit for qualified plug-in electric motor vehicles.*

*Subtitle C—Tax Incentives for Business**PART I—TEMPORARY INVESTMENT INCENTIVES*

- Sec. 1201. Special allowance for certain property acquired during 2009.*
Sec. 1202. Temporary increase in limitations on expensing of certain depreciable business assets.

PART II—5-YEAR CARRYBACK OF OPERATING LOSSES

- Sec. 1211. 5-year carryback of operating losses.*
Sec. 1212. Exception for TARP recipients.

PART III—INCENTIVES FOR NEW JOBS

- Sec. 1221. Incentives to hire unemployed veterans and disconnected youth.*

PART IV—CANCELLATION OF INDEBTEDNESS

- Sec. 1231. Deferral and ratable inclusion of income arising from indebtedness discharged by the repurchase of a debt instrument.*

PART V—QUALIFIED SMALL BUSINESS STOCK

- Sec. 1241. Special rules applicable to qualified small business stock for 2009 and 2010.*

PART VI—PARITY FOR TRANSPORTATION FRINGE BENEFITS

- Sec. 1251. Increased exclusion amount for commuter transit benefits and transit passes.*

PART VII—S CORPORATIONS

- Sec. 1261. Temporary reduction in recognition period for built-in gains tax.*

PART VIII—BROADBAND INCENTIVES

- Sec. 1271. Broadband Internet access tax credit.*

PART IX—CLARIFICATION OF REGULATIONS RELATED TO LIMITATIONS ON CERTAIN BUILT-IN LOSSES FOLLOWING AN OWNERSHIP CHANGE

- Sec. 1281. Clarification of regulations related to limitations on certain built-in losses following an ownership change.*

Subtitle D—Manufacturing Recovery Provisions

- Sec. 1301. Temporary expansion of availability of industrial development bonds to facilities manufacturing intangible property.*
Sec. 1302. Credit for investment in advanced energy facilities.

Subtitle E—Economic Recovery Tools

- Sec. 1401. Recovery zone bonds.*
Sec. 1402. Tribal economic development bonds.
Sec. 1403. Modifications to new markets tax credit.

*Subtitle F—Infrastructure Financing Tools**PART I—IMPROVED MARKETABILITY FOR TAX-EXEMPT BONDS*

- Sec. 1501. De minimis safe harbor exception for tax-exempt interest expense of financial institutions.*
- Sec. 1502. Modification of small issuer exception to tax-exempt interest expense allocation rules for financial institutions.*
- Sec. 1503. Temporary modification of alternative minimum tax limitations on tax-exempt bonds.*
- Sec. 1504. Modification to high speed intercity rail facility bonds.*

PART II—DELAY IN APPLICATION OF WITHHOLDING TAX ON GOVERNMENT CONTRACTORS

- Sec. 1511. Delay in application of withholding tax on government contractors.*

PART III—TAX CREDIT BONDS FOR SCHOOLS

- Sec. 1521. Qualified school construction bonds.*
- Sec. 1522. Extension and expansion of qualified zone academy bonds.*

PART IV—BUILD AMERICA BONDS

- Sec. 1531. Build America bonds.*

Subtitle G—Economic Recovery Payments to Certain Individuals

- Sec. 1601. Economic recovery payment to recipients of Social Security, supplemental security income, railroad retirement benefits, and veterans disability compensation or pension benefits.*

Subtitle H—Trade Adjustment Assistance

- Sec. 1701. Temporary extension of Trade Adjustment Assistance program.*

Subtitle I—Prohibition on Collection of Certain Payments Made Under the Continued Dumping and Subsidy Offset Act of 2000

- Sec. 1801. Prohibition on collection of certain payments made under the Continued Dumping and Subsidy Offset Act of 2000.*

Subtitle J—Other Provisions

- Sec. 1901. Application of certain labor standards to projects financed with certain tax-favored bonds.*
- Sec. 1902. Increase in public debt limit.*
- Sec. 1903. Election to accelerate the low-income housing tax credit.*

1 ***Subtitle A—Tax Relief for***
2 ***Individuals and Families***

3 ***PART I—GENERAL TAX RELIEF***

4 **SEC. 1001. MAKING WORK PAY CREDIT.**

5 (a) *IN GENERAL.*—Subpart C of part IV of subchapter
6 *A* of chapter 1 is amended by inserting after section 36 the
7 following new section:

8 **“SEC. 36A. MAKING WORK PAY CREDIT.**

9 “(a) *ALLOWANCE OF CREDIT.*—In the case of an eligi-
10 ble individual, there shall be allowed as a credit against
11 the tax imposed by this subtitle for the taxable year an
12 amount equal to the lesser of—

13 “(1) 6.2 percent of earned income of the tax-
14 payer, or

15 “(2) \$500 (\$1,000 in the case of a joint return).

16 “(b) *LIMITATION BASED ON MODIFIED ADJUSTED*
17 *GROSS INCOME.*—

18 “(1) *IN GENERAL.*—The amount allowable as a
19 credit under subsection (a) (determined without re-
20 gard to this paragraph and subsection (c)) for the
21 taxable year shall be reduced (but not below zero) by
22 4 percent of so much of the taxpayer’s modified ad-
23 justed gross income as exceeds \$70,000 (\$140,000 in
24 the case of a joint return).

1 “(2) *MODIFIED ADJUSTED GROSS INCOME.*—For
2 purposes of subparagraph (A), the term ‘modified ad-
3 justed gross income’ means the adjusted gross income
4 of the taxpayer for the taxable year increased by any
5 amount excluded from gross income under section
6 911, 931, or 933.

7 “(c) *REDUCTION FOR CERTAIN OTHER PAYMENTS.*—
8 The credit allowed under subsection (a) for any taxable year
9 shall be reduced by the amount of any payments received
10 by the taxpayer during such taxable year under section
11 1601 of the American Recovery and Reinvestment Tax Act
12 of 2009.

13 “(d) *DEFINITIONS.*—For purposes of this section—

14 “(1) *ELIGIBLE INDIVIDUAL.*—The term ‘eligible
15 individual’ means any individual other than—

16 “(A) any nonresident alien individual,

17 “(B) any individual with respect to whom
18 a deduction under section 151 is allowable to an-
19 other taxpayer for a taxable year beginning in
20 the calendar year in which the individual’s tax-
21 able year begins, and

22 “(C) an estate or trust.

23 Such term shall not include any individual unless the
24 requirements of section 32(c)(1)(E) are met with re-
25 spect to such individual.

1 “(2) *EARNED INCOME.*—*The term ‘earned in-*
2 *come’ has the meaning given such term by section*
3 *32(c)(2), except that such term shall not include net*
4 *earnings from self-employment which are not taken*
5 *into account in computing taxable income. For pur-*
6 *poses of the preceding sentence, any amount excluded*
7 *from gross income by reason of section 112 shall be*
8 *treated as earned income which is taken into account*
9 *in computing taxable income for the taxable year.*

10 “(e) *TERMINATION.*—*This section shall not apply to*
11 *taxable years beginning after December 31, 2010.”.*

12 (b) *TREATMENT OF POSSESSIONS.*—

13 (1) *PAYMENTS TO POSSESSIONS.*—

14 (A) *MIRROR CODE POSSESSION.*—*The Sec-*
15 *retary of the Treasury shall pay to each posses-*
16 *sion of the United States with a mirror code tax*
17 *system amounts equal to the loss to that posses-*
18 *sion by reason of the amendments made by this*
19 *section with respect to taxable years beginning*
20 *in 2009 and 2010. Such amounts shall be deter-*
21 *mined by the Secretary of the Treasury based on*
22 *information provided by the government of the*
23 *respective possession.*

24 (B) *OTHER POSSESSIONS.*—*The Secretary*
25 *of the Treasury shall pay to each possession of*

1 *the United States which does not have a mirror*
2 *code tax system amounts estimated by the Sec-*
3 *retary of the Treasury as being equal to the ag-*
4 *gregate benefits that would have been provided to*
5 *residents of such possession by reason of the*
6 *amendments made by this section for taxable*
7 *years beginning in 2009 and 2010 if a mirror*
8 *code tax system had been in effect in such posses-*
9 *sion. The preceding sentence shall not apply with*
10 *respect to any possession of the United States*
11 *unless such possession has a plan, which has*
12 *been approved by the Secretary of the Treasury,*
13 *under which such possession will promptly dis-*
14 *tribute such payments to the residents of such*
15 *possession.*

16 (2) *COORDINATION WITH CREDIT ALLOWED*
17 *AGAINST UNITED STATES INCOME TAXES.—No credit*
18 *shall be allowed against United States income taxes*
19 *for any taxable year under section 36A of the Internal*
20 *Revenue Code of 1986 (as added by this section) to*
21 *any person—*

22 (A) *to whom a credit is allowed against*
23 *taxes imposed by the possession by reason of the*
24 *amendments made by this section for such tax-*
25 *able year, or*

1 (B) who is eligible for a payment under a
2 plan described in paragraph (1)(B) with respect
3 to such taxable year.

4 (3) *DEFINITIONS AND SPECIAL RULES.*—

5 (A) *POSSESSION OF THE UNITED STATES.*—

6 For purposes of this subsection, the term “possession of the United States” includes the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands.

10 (B) *MIRROR CODE TAX SYSTEM.*—For purposes of this subsection, the term “mirror code tax system” means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

11 For purposes of this subsection, the term “mirror code tax system” means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

19 (C) *TREATMENT OF PAYMENTS.*—For purposes of section 1324(b)(2) of title 31, United States Code, the payments under this subsection shall be treated in the same manner as a refund due from the credit allowed under section 36A of the Internal Revenue Code of 1986 (as added by this section).

20 For purposes of section 1324(b)(2) of title 31, United States Code, the payments under this subsection shall be treated in the same manner as a refund due from the credit allowed under section 36A of the Internal Revenue Code of 1986 (as added by this section).

1 (c) *REFUNDS DISREGARDED IN THE ADMINISTRATION*
2 *OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PRO-*
3 *GRAMS.*—*Any credit or refund allowed or made to any indi-*
4 *vidual by reason of section 36A of the Internal Revenue*
5 *Code of 1986 (as added by this section) or by reason of sub-*
6 *section (b) of this section shall not be taken into account*
7 *as income and shall not be taken into account as resources*
8 *for the month of receipt and the following 2 months, for*
9 *purposes of determining the eligibility of such individual*
10 *or any other individual for benefits or assistance, or the*
11 *amount or extent of benefits or assistance, under any Fed-*
12 *eral program or under any State or local program financed*
13 *in whole or in part with Federal funds.*

14 (d) *AUTHORITY RELATING TO CLERICAL ERRORS.*—
15 *Section 6213(g)(2) is amended by striking “and” at the end*
16 *of subparagraph (L)(ii), by striking the period at the end*
17 *of subparagraph (M) and inserting “, and”, and by adding*
18 *at the end the following new subparagraph:*

19 *“(N) an omission of the reduction required*
20 *under section 36A(c) with respect to the credit*
21 *allowed under section 36A or an omission of the*
22 *correct TIN required under section 36A(d)(1).”.*

23 (e) *CONFORMING AMENDMENTS.*—

24 (1) *Section 6211(b)(4)(A) is amended by insert-*
25 *ing “36A,” after “36.”.*

1 (2) *Section 1324(b)(2) of title 31, United States*
2 *Code, is amended by inserting “36A,” after “36,”.*

3 (3) *The table of sections for subpart C of part IV*
4 *of subchapter A of chapter 1 is amended by inserting*
5 *after the item relating to section 36 the following new*
6 *item:*

“Sec. 36A. Making work pay credit.”.

7 (f) *EFFECTIVE DATE.—This section, and the amend-*
8 *ments made by this section, shall apply to taxable years*
9 *beginning after December 31, 2008.*

10 **SEC. 1002. TEMPORARY INCREASE IN EARNED INCOME TAX**
11 **CREDIT.**

12 (a) *IN GENERAL.—Subsection (b) of section 32 is*
13 *amended by adding at the end the following new paragraph:*

14 (3) *SPECIAL RULES FOR 2009 AND 2010.—In the*
15 *case of any taxable year beginning in 2009 or 2010—*

16 (A) *INCREASED CREDIT PERCENTAGE FOR*
17 *3 OR MORE QUALIFYING CHILDREN.—In the case*
18 *of a taxpayer with 3 or more qualifying chil-*
19 *dren, the credit percentage is 45 percent.*

20 (B) *REDUCTION OF MARRIAGE PENALTY.—*

21 (i) *IN GENERAL.—The dollar amount*
22 *in effect under paragraph (2)(B) shall be*
23 *\$5,000.*

24 (ii) *INFLATION ADJUSTMENT.—In the*
25 *case of any taxable year beginning in 2010,*

1 the \$5,000 amount in clause (i) shall be in-
2 creased by an amount equal to—

3 “(I) such dollar amount, multi-
4 plied by

5 “(II) the cost of living adjustment
6 determined under section 1(f)(3) for
7 the calendar year in which the taxable
8 year begins determined by substituting
9 ‘calendar year 2008’ for ‘calendar year
10 1992’ in subparagraph (B) thereof.

11 “(iii) *ROUNDING.*—Subparagraph (A)
12 of subsection (j)(2) shall apply after taking
13 into account any increase under clause
14 (ii).”.

15 (b) *EFFECTIVE DATE.*—The amendments made by this
16 section shall apply to taxable years beginning after Decem-
17 ber 31, 2008.

18 **SEC. 1003. TEMPORARY INCREASE OF REFUNDABLE POR-**
19 **TION OF CHILD CREDIT.**

20 (a) *IN GENERAL.*—Paragraph (4) of section 24(d) is
21 amended to read as follows:

22 “(4) *SPECIAL RULE FOR 2009 AND 2010.*—Not-
23 withstanding paragraph (3), in the case of any tax-
24 able year beginning in 2009 or 2010, the dollar

1 *amount in effect for such taxable year under para-*
2 *graph (1)(B)(i) shall be \$8,100.”.*

3 *(b) EFFECTIVE DATE.—The amendments made by this*
4 *section shall apply to taxable years beginning after Decem-*
5 *ber 31, 2008.*

6 **SEC. 1004. AMERICAN OPPORTUNITY TAX CREDIT.**

7 *(a) IN GENERAL.—Section 25A (relating to Hope*
8 *scholarship credit) is amended by redesignating subsection*
9 *(i) as subsection (j) and by inserting after subsection (h)*
10 *the following new subsection:*

11 *“(i) AMERICAN OPPORTUNITY TAX CREDIT.—In the*
12 *case of any taxable year beginning in 2009 or 2010—*

13 *“(1) INCREASE IN CREDIT.—The Hope Scholar-*
14 *ship Credit shall be an amount equal to the sum of—*

15 *“(A) 100 percent of so much of the qualified*
16 *tuition and related expenses paid by the tax-*
17 *payer during the taxable year (for education fur-*
18 *nished to the eligible student during any aca-*
19 *ademic period beginning in such taxable year) as*
20 *does not exceed \$2,000, plus*

21 *“(B) 25 percent of such expenses so paid as*
22 *exceeds \$2,000 but does not exceed \$4,000.*

23 *“(2) CREDIT ALLOWED FOR FIRST 4 YEARS OF*
24 *POST-SECONDARY EDUCATION.—Subparagraphs (A)*

1 *and (C) of subsection (b)(2) shall be applied by sub-*
2 *stituting ‘4’ for ‘2’.*

3 “(3) *QUALIFIED TUITION AND RELATED EX-*
4 *PENSES TO INCLUDE REQUIRED COURSE MATE-*
5 *RIALS.—Subsection (f)(1)(A) shall be applied by sub-*
6 *stituting ‘tuition, fees, and course materials’ for ‘tui-*
7 *tion and fees’.*

8 “(4) *INCREASE IN AGI LIMITS FOR HOPE SCHOL-*
9 *ARSHIP CREDIT.—In lieu of applying subsection (d)*
10 *with respect to the Hope Scholarship Credit, such*
11 *credit (determined without regard to this paragraph)*
12 *shall be reduced (but not below zero) by the amount*
13 *which bears the same ratio to such credit (as so deter-*
14 *mined) as—*

15 “(A) *the excess of—*

16 “(i) *the taxpayer’s modified adjusted*
17 *gross income (as defined in subsection*
18 *(d)(3)) for such taxable year, over*

19 “(ii) *\$80,000 (\$160,000 in the case of*
20 *a joint return), bears to*

21 “(B) *\$10,000 (\$20,000 in the case of a joint*
22 *return).*

23 “(5) *CREDIT ALLOWED AGAINST ALTERNATIVE*
24 *MINIMUM TAX.—In the case of a taxable year to which*
25 *section 26(a)(2) does not apply, so much of the credit*

1 *allowed under subsection (a) as is attributable to the*
2 *Hope Scholarship Credit shall not exceed the excess*
3 *of—*

4 *“(A) the sum of the regular tax liability (as*
5 *defined in section 26(b)) plus the tax imposed by*
6 *section 55, over*

7 *“(B) the sum of the credits allowable under*
8 *this subpart (other than this subsection and sec-*
9 *tions 23, 25D, and 30D) and section 27 for the*
10 *taxable year.*

11 *Any reference in this section or section 24, 25, 26,*
12 *25B, 904, or 1400C to a credit allowable under this*
13 *subsection shall be treated as a reference to so much*
14 *of the credit allowable under subsection (a) as is at-*
15 *tributable to the Hope Scholarship Credit.*

16 *“(6) PORTION OF CREDIT MADE REFUNDABLE.—*
17 *30 percent of so much of the credit allowed under sub-*
18 *section (a) as is attributable to the Hope Scholarship*
19 *Credit (determined after application of paragraph (4)*
20 *and without regard to this paragraph and section*
21 *26(a)(2) or paragraph (5), as the case may be) shall*
22 *be treated as a credit allowable under subpart C (and*
23 *not allowed under subsection (a)). The preceding sen-*
24 *tence shall not apply to any taxpayer for any taxable*

1 *year if such taxpayer is a child to whom subsection*
2 *(g) of section 1 applies for such taxable year.*

3 *“(7) COORDINATION WITH MIDWESTERN DIS-*
4 *ASTER AREA BENEFITS.—In the case of a taxpayer*
5 *with respect to whom section 702(a)(1)(B) of the*
6 *Heartland Disaster Tax Relief Act of 2008 applies for*
7 *any taxable year, such taxpayer may elect to waive*
8 *the application of this subsection to such taxpayer for*
9 *such taxable year.”.*

10 *(b) CONFORMING AMENDMENTS.—*

11 *(1) Section 24(b)(3)(B) is amended by inserting*
12 *“25A(i),” after “23,”.*

13 *(2) Section 25(e)(1)(C)(ii) is amended by insert-*
14 *ing “25A(i),” after “24,”.*

15 *(3) Section 26(a)(1) is amended by inserting*
16 *“25A(i),” after “24,”.*

17 *(4) Section 25B(g)(2) is amended by inserting*
18 *“25A(i),” after “23,”.*

19 *(5) Section 904(i) is amended by inserting*
20 *“25A(i),” after “24,”.*

21 *(6) Section 1400C(d)(2) is amended by inserting*
22 *“25A(i),” after “24,”.*

23 *(7) Section 1324(b)(2) of title 31, United States*
24 *Code, is amended by inserting “25A,” before “35”.*

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply to taxable years beginning after Decem-*
3 *ber 31, 2008.*

4 (d) *APPLICATION OF EGTRRA SUNSET.*—*The amend-*
5 *ment made by subsection (b)(1) shall be subject to title IX*
6 *of the Economic Growth and Tax Relief Reconciliation Act*
7 *of 2001 in the same manner as the provision of such Act*
8 *to which such amendment relates.*

9 (e) *TREASURY STUDIES REGARDING EDUCATION IN-*
10 *CENTIVES.*—

11 (1) *STUDY REGARDING COORDINATION WITH*
12 *NON-TAX EDUCATIONAL INCENTIVES.*—*The Secretary*
13 *of the Treasury, or the Secretary's delegate, shall*
14 *study how to coordinate the credit allowed under sec-*
15 *tion 25A of the Internal Revenue Code of 1986 with*
16 *the Federal Pell Grant program under section 401 of*
17 *the Higher Education Act of 1965.*

18 (2) *STUDY REGARDING IMPOSITION OF COMMU-*
19 *NITY SERVICE REQUIREMENTS.*—*The Secretary of the*
20 *Treasury, or the Secretary's delegate, shall study the*
21 *feasibility of requiring students to perform commu-*
22 *nity service as a condition of taking their tuition and*
23 *related expenses into account under section 25A of the*
24 *Internal Revenue Code of 1986.*

1 (3) *REPORT.*—Not later than 1 year after the
2 date of the enactment of this Act, the Secretary of the
3 Treasury, or the Secretary’s delegate, shall report to
4 Congress on the results of the studies conducted under
5 this paragraph.

6 **SEC. 1005. COMPUTER TECHNOLOGY AND EQUIPMENT AL-**
7 **LOWED AS A QUALIFIED HIGHER EDUCATION**
8 **EXPENSE FOR SECTION 529 ACCOUNTS IN**
9 **2009 AND 2010.**

10 (a) *IN GENERAL.*—Section 529(e)(3)(A) is amended by
11 striking “and” at the end of clause (i), by striking the pe-
12 riod at the end of clause (ii), and by adding at the end
13 the following:

14 “(iii) expenses paid or incurred in
15 2009 or 2010 for the purchase of any com-
16 puter technology or equipment (as defined
17 in section 170(e)(6)(F)(i)) or Internet access
18 and related services, if such technology,
19 equipment, or services are to be used by the
20 beneficiary and the beneficiary’s family
21 during any of the years the beneficiary is
22 enrolled at an eligible educational institu-
23 tion.

24 Clause (iii) shall not include expenses for com-
25 puter software designed for sports, games, or hob-

1 **ies unless the software is predominantly edu-**
2 **ational in nature.”.**

3 **(b) EFFECTIVE DATE.—***The amendments made by this*
4 *section shall apply to expenses paid or incurred after De-*
5 *cember 31, 2008.*

6 **SEC. 1006. CREDIT FOR CERTAIN HOME PURCHASES.**

7 **(a) ALLOWANCE OF CREDIT.—***Subpart A of part IV*
8 *of subchapter A of chapter 1 is amended by inserting after*
9 *section 25D the following new section:*

10 **“SEC. 25E. CREDIT FOR CERTAIN HOME PURCHASES.**

11 **“(a) ALLOWANCE OF CREDIT.—**

12 **“(1) IN GENERAL.—***In the case of an individual*
13 *who is a purchaser of a principal residence during*
14 *the taxable year, there shall be allowed as a credit*
15 *against the tax imposed by this chapter an amount*
16 *equal to 10 percent of the purchase price of the resi-*
17 *dence.*

18 **“(2) DOLLAR LIMITATION.—***The amount of the*
19 *credit allowed under paragraph (1) shall not exceed*
20 *\$15,000.*

21 **“(3) ALLOCATION OF CREDIT AMOUNT.—***At the*
22 *election of the taxpayer, the amount of the credit al-*
23 *lowed under paragraph (1) (after application of*
24 *paragraph (2)) may be equally divided among the 2*

1 *taxable years beginning with the taxable year in*
2 *which the purchase of the principal residence is made.*

3 “(b) *LIMITATIONS.—*

4 “(1) *DATE OF PURCHASE.—The credit allowed*
5 *under subsection (a) shall be allowed only with re-*
6 *spect to purchases made—*

7 “(A) *after the date of the enactment of the*
8 *American Recovery and Reinvestment Tax Act of*
9 *2009, and*

10 “(B) *on or before the date that is 1 year*
11 *after such date of enactment.*

12 “(2) *LIMITATION BASED ON AMOUNT OF TAX.—*
13 *In the case of a taxable year to which section 26(a)(2)*
14 *does not apply, the credit allowed under subsection*
15 *(a) for any taxable year shall not exceed the excess*
16 *of—*

17 “(A) *the sum of the regular tax liability (as*
18 *defined in section 26(b)) plus the tax imposed by*
19 *section 55, over*

20 “(B) *the sum of the credits allowable under*
21 *this subpart (other than this section) for the tax-*
22 *able year.*

23 “(3) *ONE-TIME ONLY.—*

24 “(A) *IN GENERAL.—If a credit is allowed*
25 *under this section in the case of any individual*

1 *(and such individual's spouse, if married) with*
2 *respect to the purchase of any principal resi-*
3 *dence, no credit shall be allowed under this sec-*
4 *tion in any taxable year with respect to the pur-*
5 *chase of any other principal residence by such*
6 *individual or a spouse of such individual.*

7 “(B) *JOINT PURCHASE.*—*In the case of a*
8 *purchase of a principal residence by 2 or more*
9 *unmarried individuals or by 2 married individ-*
10 *uals filing separately, no credit shall be allowed*
11 *under this section if a credit under this section*
12 *has been allowed to any of such individuals in*
13 *any taxable year with respect to the purchase of*
14 *any other principal residence.*

15 “(c) *PRINCIPAL RESIDENCE.*—*For purposes of this sec-*
16 *tion, the term ‘principal residence’ has the same meaning*
17 *as when used in section 121.*

18 “(d) *DENIAL OF DOUBLE BENEFIT.*—*No credit shall*
19 *be allowed under this section for any purchase for which*
20 *a credit is allowed under section 36 or section 1400C.*

21 “(e) *SPECIAL RULES.*—

22 “(1) *JOINT PURCHASE.*—

23 “(A) *MARRIED INDIVIDUALS FILING SEPA-*
24 *RATELY.*—*In the case of 2 married individuals*
25 *filing separately, subsection (a) shall be applied*

1 to each such individual by substituting ‘\$7,500’
2 for ‘\$15,000’ in subsection (a)(1).

3 “(B) *UNMARRIED INDIVIDUALS.*—If 2 or
4 more individuals who are not married purchase
5 a principal residence, the amount of the credit
6 allowed under subsection (a) shall be allocated
7 among such individuals in such manner as the
8 Secretary may prescribe, except that the total
9 amount of the credits allowed to all such individ-
10 uals shall not exceed \$15,000.

11 “(2) *PURCHASE.*—In defining the purchase of a
12 principal residence, rules similar to the rules of para-
13 graphs (2) and (3) of section 1400C(e) (as in effect
14 on the date of the enactment of this section) shall
15 apply.

16 “(3) *REPORTING REQUIREMENT.*—Rules similar
17 to the rules of section 1400C(f) (as so in effect) shall
18 apply.

19 “(f) *RECAPTURE OF CREDIT IN THE CASE OF CERTAIN*
20 *DISPOSITIONS.*—

21 “(1) *IN GENERAL.*—In the event that a tax-
22 payer—

23 “(A) disposes of the principal residence with
24 respect to which a credit was allowed under sub-
25 section (a), or

1 “(B) fails to occupy such residence as the
2 taxpayer’s principal residence,
3 at any time within 24 months after the date on which
4 the taxpayer purchased such residence, then the tax
5 imposed by this chapter for the taxable year during
6 which such disposition occurred or in which the tax-
7 payer failed to occupy the residence as a principal
8 residence shall be increased by the amount of such
9 credit.

10 “(2) EXCEPTIONS.—

11 “(A) DEATH OF TAXPAYER.—Paragraph (1)
12 shall not apply to any taxable year ending after
13 the date of the taxpayer’s death.

14 “(B) INVOLUNTARY CONVERSION.—Para-
15 graph (1) shall not apply in the case of a resi-
16 dence which is compulsorily or involuntarily
17 converted (within the meaning of section
18 1033(a)) if the taxpayer acquires a new prin-
19 cipal residence within the 2-year period begin-
20 ning on the date of the disposition or cessation
21 referred to in such paragraph. Paragraph (1)
22 shall apply to such new principal residence dur-
23 ing the remainder of the 24-month period de-
24 scribed in such paragraph as if such new prin-
25 cipal residence were the converted residence.

1 “(C) *TRANSFERS BETWEEN SPOUSES OR IN-*
2 *CIDENT TO DIVORCE.*—*In the case of a transfer*
3 *of a residence to which section 1041(a) applies—*

4 “(i) *paragraph (1) shall not apply to*
5 *such transfer, and*

6 “(ii) *in the case of taxable years end-*
7 *ing after such transfer, paragraph (1) shall*
8 *apply to the transferee in the same manner*
9 *as if such transferee were the transferor*
10 *(and shall not apply to the transferor).*

11 “(D) *RELOCATION OF MEMBERS OF THE*
12 *ARMED FORCES.*—*Paragraph (1) shall not apply*
13 *in the case of a member of the Armed Forces of*
14 *the United States on active duty who moves pur-*
15 *suant to a military order and incident to a per-*
16 *manent change of station.*

17 “(3) *JOINT RETURNS.*—*In the case of a credit al-*
18 *lowed under subsection (a) with respect to a joint re-*
19 *turn, half of such credit shall be treated as having*
20 *been allowed to each individual filing such return for*
21 *purposes of this subsection.*

22 “(4) *RETURN REQUIREMENT.*—*If the tax im-*
23 *posed by this chapter for the taxable year is increased*
24 *under this subsection, the taxpayer shall, notwith-*

1 *standing section 6012, be required to file a return*
2 *with respect to the taxes imposed under this subtitle.*

3 “(g) *BASIS ADJUSTMENT.*—*For purposes of this sub-*
4 *title, if a credit is allowed under this section with respect*
5 *to the purchase of any residence, the basis of such residence*
6 *shall be reduced by the amount of the credit so allowed.*

7 “(h) *ELECTION TO TREAT PURCHASE IN PRIOR*
8 *YEAR.*—*In the case of a purchase of a principal residence*
9 *during the period described in subsection (b)(1), a taxpayer*
10 *may elect to treat such purchase as made on December 31,*
11 *2008, for purposes of this section.”.*

12 (b) *CLERICAL AMENDMENT.*—*The table of sections for*
13 *subpart A of part IV of subchapter A of chapter 1 is amend-*
14 *ed by inserting after the item relating to section 25D the*
15 *following new item:*

 “*Sec. 25E. Credit for certain home purchases.*”.

16 (c) *SUNSET OF CURRENT FIRST-TIME HOMEBUYER*
17 *CREDIT.*—

18 (1) *IN GENERAL.*—*Subsection (h) of section 36 is*
19 *amended by striking “July 1, 2009” and inserting*
20 *“the date of the enactment of the American Recovery*
21 *and Reinvestment Tax Act of 2009”.*

22 (2) *ELECTION TO TREAT PURCHASE IN PRIOR*
23 *YEAR.*—*Subsection (g) of section 36 is amended by*
24 *striking “July 1, 2009” and inserting “the date of the*

1 (2) *by striking the period at the end of subpara-*
2 *graph (F) and inserting “, and”, and*

3 (3) *by adding at the end the following new sub-*
4 *paragraph:*

5 “(G) *any qualified motor vehicle interest*
6 *(within the meaning of paragraph (5)).”.*

7 (b) *QUALIFIED MOTOR VEHICLE INTEREST.—Section*
8 *163(h) of the Internal Revenue Code of 1986 is amended*
9 *by adding at the end the following new paragraph:*

10 “(5) *QUALIFIED MOTOR VEHICLE INTEREST.—*
11 *For purposes of this subsection—*

12 “(A) *IN GENERAL.—The term ‘qualified*
13 *motor vehicle interest’ means any interest which*
14 *is paid or accrued during the taxable year on*
15 *any indebtedness which—*

16 “(i) *is incurred after November 12,*
17 *2008, and before January 1, 2010, in ac-*
18 *quiring any qualified motor vehicle of the*
19 *taxpayer, and*

20 “(ii) *is secured by such qualified motor*
21 *vehicle.*

22 *Such term also includes any indebtedness secured*
23 *by such qualified motor vehicle resulting from*
24 *the refinancing of indebtedness meeting the re-*
25 *quirements of the preceding sentence (or this sen-*

1 *tence*); *but only to the extent the amount of the*
2 *indebtedness resulting from such refinancing does*
3 *not exceed the amount of the refinanced indebted-*
4 *ness.*

5 “(B) *DOLLAR LIMITATION.*—*The aggregate*
6 *amount of indebtedness treated as described in*
7 *subparagraph (A) for any period shall not exceed*
8 *\$49,500 (\$24,750 in the case of a separate return*
9 *by a married individual).*

10 “(C) *INCOME LIMITATION.*—*The amount*
11 *otherwise treated as interest under subparagraph*
12 *(A) for any taxable year (after the application of*
13 *subparagraph (B)) shall be reduced (but not*
14 *below zero) by the amount which bears the same*
15 *ratio to the amount which is so treated as—*

16 “(i) *the excess (if any) of—*

17 “(I) *the taxpayer’s modified ad-*
18 *justed gross income for such taxable*
19 *year, over*

20 “(II) *\$125,000 (\$250,000 in the*
21 *case of a joint return), bears to*

22 “(ii) *\$10,000.*

23 *For purposes of the preceding sentence, the term*
24 *‘modified adjusted gross income’ means the ad-*
25 *justed gross income of the taxpayer for the tax-*

1 *able year increased by any amount excluded*
2 *from gross income under section 911, 931, or*
3 *933.*

4 “(D) *QUALIFIED MOTOR VEHICLE.*—*The*
5 *term ‘qualified motor vehicle’ means a passenger*
6 *automobile (within the meaning of section*
7 *30B(h)(3)) or a light truck (within the meaning*
8 *of such section)—*

9 *“(i) which is acquired for use by the*
10 *taxpayer and not for resale after November*
11 *12, 2008, and before January 1, 2010,*

12 *“(ii) the original use of which com-*
13 *mences with the taxpayer, and*

14 *“(iii) which has a gross vehicle weight*
15 *rating of not more than 8,500 pounds.”.*

16 *(c) DEDUCTION ALLOWED ABOVE-THE-LINE.*—*Section*
17 *62(a) of the Internal Revenue Code of 1986 is amended by*
18 *inserting after paragraph (21) the following new para-*
19 *graph:*

20 *“(22) QUALIFIED MOTOR VEHICLE INTEREST.*—
21 *The deduction allowed under section 163 by reason of*
22 *subsection (h)(2)(G) thereof.”.*

23 *(d) REPORTING OF QUALIFIED MOTOR VEHICLE IN-*
24 *TEREST.*—

1 (1) *IN GENERAL.*—Subpart B of part III of sub-
2 chapter A of chapter 61 of the Internal Revenue Code
3 of 1986 is amended by adding at the end the fol-
4 lowing new section:

5 **“SEC. 6050X. RETURNS RELATING TO QUALIFIED MOTOR**
6 **VEHICLE INTEREST RECEIVED IN TRADE OR**
7 **BUSINESS FROM INDIVIDUALS.**

8 “(a) *QUALIFIED MOTOR VEHICLE INTEREST.*—Any
9 person—

10 “(1) *who is engaged in a trade or business, and*

11 “(2) *who, in the course of such trade or business,*
12 *receives from any individual interest aggregating*
13 *\$600 or more for any calendar year on any indebted-*
14 *ness secured by a qualified motor vehicle (as defined*
15 *in section 163(h)(5)(D)),*

16 *shall make the return described in subsection (b) with re-*
17 *spect to each individual from whom such interest was re-*
18 *ceived at such time as the Secretary may by regulations*
19 *prescribe.*

20 “(b) *FORM AND MANNER OF RETURNS.*—A return is
21 *described in this subsection if such return—*

22 “(1) *is in such form as the Secretary may pre-*
23 *scribe,*

24 “(2) *contains—*

1 “(A) *the name and address of the indi-*
2 *vidual from whom the interest described in sub-*
3 *section (a)(2) was received,*

4 “(B) *the amount of such interest received*
5 *for the calendar year, and*

6 “(C) *such other information as the Sec-*
7 *retary may prescribe.*

8 “(c) *APPLICATION TO GOVERNMENTAL UNITS.—For*
9 *purposes of subsection (a)—*

10 “(1) *TREATED AS PERSONS.—The term ‘person’*
11 *includes any governmental unit (and any agency or*
12 *instrumentality thereof).*

13 “(2) *SPECIAL RULES.—In the case of a govern-*
14 *mental unit or any agency or instrumentality there-*
15 *of—*

16 “(A) *subsection (a) shall be applied without*
17 *regard to the trade or business requirement con-*
18 *tained therein, and*

19 “(B) *any return required under subsection*
20 *(a) shall be made by the officer or employee ap-*
21 *propriately designated for the purpose of making*
22 *such return.*

23 “(d) *STATEMENTS TO BE FURNISHED TO INDIVID-*
24 *UALS WITH RESPECT TO WHOM INFORMATION IS RE-*
25 *QUIRED.—Every person required to make a return under*

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

4 “(1) the name, address, and phone number of the
5 information contact of the person required to make
6 such return, and

7 “(2) the aggregate amount of interest described
8 in subsection (a)(2) received by the person required to
9 make such return from the individual to whom the
10 statement is required to be furnished.

11 The written statement required under the preceding sen-
12 tence shall be furnished on or before January 31 of the year
13 following the calendar year for which the return under sub-
14 section (a) was required to be made.

15 “(e) RETURNS WHICH WOULD BE REQUIRED TO BE
16 MADE BY 2 OR MORE PERSONS.—Except to the extent pro-
17 vided in regulations prescribed by the Secretary, in the case
18 of interest received by any person on behalf of another per-
19 son, only the person first receiving such interest shall be
20 required to make the return under subsection (a).”.

21 (2) AMENDMENTS RELATING TO PENALTIES.—

22 (A) Section 6721(e)(2)(A) of such Code is
23 amended by striking “or 6050L” and inserting
24 “6050L, or 6050X”.

1 (B) Section 6722(c)(1)(A) of such Code is
2 amended by striking “or 6050L(c)” and insert-
3 ing “6050L(c), or 6050X(d)”.

4 (C) Subparagraph (B) of section 6724(d)(1)
5 of such Code is amended by redesignating clauses
6 (xvi) through (xxii) as clauses (xvii) through
7 (xxiii), respectively, and by inserting after clause
8 (xii) the following new clause:

9 “(xvi) section 6050X (relating to re-
10 turns relating to qualified motor vehicle in-
11 terest received in trade or business from in-
12 dividuals),”.

13 (D) Paragraph (2) of section 6724(d) of
14 such Code is amended by striking the period at
15 the end of subparagraph (DD) and inserting “,
16 or” and by inserting after subparagraph (DD)
17 the following new subparagraph:

18 “(EE) section 6050X(d) (relating to returns
19 relating to qualified motor vehicle interest re-
20 ceived in trade or business from individuals).”.

21 (3) CLERICAL AMENDMENT.—The table of sec-
22 tions for subpart B of part III of subchapter A of
23 chapter 61 of such Code is amended by inserting after
24 the item relating to section 6050W the following new
25 item:

“Sec. 6050X. Returns relating to qualified motor vehicle interest received in trade or business from individuals.”.

1 (e) *EFFECTIVE DATE.*—*The amendments made by this*
 2 *section shall apply to taxable years beginning after Decem-*
 3 *ber 31, 2008.*

4 **SEC. 1009. ABOVE-THE-LINE DEDUCTION FOR STATE SALES**
 5 **TAX AND EXCISE TAX ON THE PURCHASE OF**
 6 **CERTAIN MOTOR VEHICLES.**

7 (a) *IN GENERAL.*—*Subsection (a) of section 164 of the*
 8 *Internal Revenue Code of 1986 is amended by inserting*
 9 *after paragraph (5) the following new paragraph:*

10 *“(6) Qualified motor vehicle taxes.”.*

11 (b) *QUALIFIED MOTOR VEHICLE TAXES.*—*Subsection*
 12 *(b) of section 164 of the Internal Revenue Code of 1986 is*
 13 *amended by adding at the end the following new paragraph:*

14 *“(6) QUALIFIED MOTOR VEHICLE TAXES.—*

15 *“(A) IN GENERAL.—For purposes of this*
 16 *section, the term ‘qualified motor vehicle taxes’*
 17 *means any State or local sales or excise tax im-*
 18 *posed on the purchase of a qualified motor vehi-*
 19 *cle (as defined in section 163(h)(5)(D)).*

20 *“(B) DOLLAR LIMITATION.—The amount*
 21 *taken into account under subparagraph (A) for*
 22 *any taxable year shall not exceed \$49,500*
 23 *(\$24,750 in the case of a separate return by a*
 24 *married individual).*

1 “(C) *INCOME LIMITATION.*—*The amount*
2 *otherwise taken into account under subpara-*
3 *graph (A) (after the application of subparagraph*
4 *(B)) for any taxable year shall be reduced (but*
5 *not below zero) by the amount which bears the*
6 *same ratio to the amount which is so treated*
7 *as—*

8 “(i) *the excess (if any) of—*

9 “(I) *the taxpayer’s modified ad-*
10 *justed gross income for such taxable*
11 *year, over*

12 “(II) *\$125,000 (\$250,000 in the*
13 *case of a joint return), bears to*

14 “(ii) *\$10,000.*

15 *For purposes of the preceding sentence, the term*
16 *‘modified adjusted gross income’ means the ad-*
17 *justed gross income of the taxpayer for the tax-*
18 *able year increased by any amount excluded*
19 *from gross income under section 911, 931, or*
20 *933.*

21 “(D) *QUALIFIED MOTOR VEHICLE TAXES*
22 *NOT INCLUDED IN COST OF ACQUIRED PROP-*
23 *ERTY.*—*The last sentence of subsection (a) shall*
24 *not apply to any qualified motor vehicle taxes.*

1 “(E) *COORDINATION WITH GENERAL SALES*
2 *TAX.—This paragraph shall not apply in the*
3 *case of a taxpayer who makes an election under*
4 *paragraph (5) for the taxable year.”.*

5 (c) *CONFORMING AMENDMENTS.—Paragraph (5) of*
6 *section 163(h) of the Internal Revenue Code of 1986, as*
7 *added by section 1, is amended—*

8 (1) *by adding at the end the following new sub-*
9 *paragraph:*

10 “(E) *EXCLUSION.—If the indebtedness de-*
11 *scribed in subparagraph (A) includes the*
12 *amounts of any State or local sales or excise*
13 *taxes paid or accrued by the taxpayer in connec-*
14 *tion with the acquisition of a qualified motor ve-*
15 *hicle, the aggregate amount of such indebtedness*
16 *taken into account under such subparagraph*
17 *shall be reduced, but not below zero, by the*
18 *amount of any such taxes for which a deduction*
19 *is allowed under section 164(a) by reason of*
20 *paragraph (6) thereof.”, and*

21 (2) *by inserting “, after the application of sub-*
22 *paragraph (E),” after “for any period” in subpara-*
23 *graph (B).*

24 (d) *DEDUCTION ALLOWED ABOVE-THE-LINE.—Section*
25 *62(a) of the Internal Revenue Code of 1986, as amended*

1 by section 1, is amended by inserting after paragraph (22)
2 the following new paragraph:

3 “(23) *QUALIFIED MOTOR VEHICLE TAXES.*—*The*
4 *deduction allowed under section 164 by reason of sub-*
5 *section (a)(6) thereof.*”.

6 *(e) EFFECTIVE DATE.*—*The amendments made by this*
7 *section shall apply to taxable years beginning after Decem-*
8 *ber 31, 2008.*

9 ***PART II—ALTERNATIVE MINIMUM TAX RELIEF***

10 ***SEC. 1011. EXTENSION OF ALTERNATIVE MINIMUM TAX RE-***

11 ***LIEF FOR NONREFUNDABLE PERSONAL***

12 ***CREDITS.***

13 *(a) IN GENERAL.*—*Paragraph (2) of section 26(a) (re-*
14 *lating to special rule for taxable years 2000 through 2008)*
15 *is amended—*

16 *(1) by striking “or 2008” and inserting “2008,*
17 *or 2009”, and*

18 *(2) by striking “2008” in the heading thereof*
19 *and inserting “2009”.*

20 *(b) EFFECTIVE DATE.*—*The amendments made by this*
21 *section shall apply to taxable years beginning after Decem-*
22 *ber 31, 2008.*

1 **SEC. 1012. EXTENSION OF INCREASED ALTERNATIVE MIN-**
2 **IMUM TAX EXEMPTION AMOUNT.**

3 (a) *IN GENERAL.*—Paragraph (1) of section 55(d) (re-
4 lating to exemption amount) is amended—

5 (1) by striking “(\$69,950 in the case of taxable
6 years beginning in 2008)” in subparagraph (A) and
7 inserting “(\$70,950 in the case of taxable years begin-
8 ning in 2009)”, and

9 (2) by striking “(\$46,200 in the case of taxable
10 years beginning in 2008)” in subparagraph (B) and
11 inserting “(\$46,700 in the case of taxable years begin-
12 ning in 2009)”.

13 (b) *EFFECTIVE DATE.*—The amendments made by this
14 section shall apply to taxable years beginning after Decem-
15 ber 31, 2008.

16 **Subtitle B—Energy Incentives**

17 **PART I—RENEWABLE ENERGY INCENTIVES**

18 **SEC. 1101. EXTENSION OF CREDIT FOR ELECTRICITY PRO-**
19 **DUCED FROM CERTAIN RENEWABLE RE-**
20 **SOURCES.**

21 (a) *IN GENERAL.*—Subsection (d) of section 45 is
22 amended—

23 (1) by striking “2010” in paragraph (1) and in-
24 serting “2013”,

1 (2) *by striking “2011” each place it appears in*
2 *paragraphs (2), (3), (4), (6), (7) and (9) and insert-*
3 *ing “2014”, and*

4 (3) *by striking “2012” in paragraph (11)(B)*
5 *and inserting “2014”.*

6 (b) *TECHNICAL AMENDMENT.—Paragraph (5) of sec-*
7 *tion 45(d) is amended by striking “and before” and all that*
8 *follows and inserting “ and before October 3, 2008.”.*

9 (c) *EFFECTIVE DATE.—*

10 (1) *IN GENERAL.—The amendments made by*
11 *subsection (a) shall apply to property placed in serv-*
12 *ice after the date of the enactment of this Act.*

13 (2) *TECHNICAL AMENDMENT.—The amendment*
14 *made by subsection (b) shall take effect as if included*
15 *in section 102 of the Energy Improvement and Exten-*
16 *sion Act of 2008.*

17 **SEC. 1102. ELECTION OF INVESTMENT CREDIT IN LIEU OF**
18 **PRODUCTION CREDIT.**

19 (a) *IN GENERAL.—Subsection (a) of section 48 is*
20 *amended by adding at the end the following new paragraph:*

21 “*(5) ELECTION TO TREAT QUALIFIED FACILITIES*
22 *AS ENERGY PROPERTY.—*

23 “*(A) IN GENERAL.—In the case of any*
24 *qualified investment credit facility—*

1 “(i) *such facility shall be treated as en-*
2 *ergy property for purposes of this section,*
3 *and*

4 “(ii) *the energy percentage with respect*
5 *to such property shall be 30 percent.*

6 “(B) *DENIAL OF PRODUCTION CREDIT.—No*
7 *credit shall be allowed under section 45 for any*
8 *taxable year with respect to any qualified invest-*
9 *ment credit facility.*

10 “(C) *QUALIFIED INVESTMENT CREDIT FA-*
11 *CILITY.—For purposes of this paragraph, the*
12 *term ‘qualified investment credit facility’ means*
13 *any of the following facilities if no credit has*
14 *been allowed under section 45 with respect to*
15 *such facility and the taxpayer makes an irrev-*
16 *ocable election to have this paragraph apply to*
17 *such facility:*

18 “(i) *WIND FACILITIES.—Any facility*
19 *described in paragraph (1) of section 45(d)*
20 *if such facility is placed in service in 2009,*
21 *2010, 2011, or 2012.*

22 “(ii) *OTHER FACILITIES.—Any facility*
23 *described in paragraph (2), (3), (4), (6),*
24 *(7), (9), or (11) of section 45(d) if such fa-*

1 *cility is placed in service in 2009, 2010,*
2 *2011, 2012, or 2013.”.*

3 *(b) EFFECTIVE DATE.—The amendments made by this*
4 *section shall apply to facilities placed in service after De-*
5 *cember 31, 2008.*

6 **SEC. 1103. REPEAL OF CERTAIN LIMITATIONS ON CREDIT**
7 **FOR RENEWABLE ENERGY PROPERTY.**

8 *(a) REPEAL OF LIMITATION ON CREDIT FOR QUALI-*
9 *FIED SMALL WIND ENERGY PROPERTY.—Paragraph (4) of*
10 *section 48(c) is amended by striking subparagraph (B) and*
11 *by redesignating subparagraphs (C) and (D) as subpara-*
12 *graphs (B) and (C).*

13 *(b) REPEAL OF LIMITATION ON PROPERTY FINANCED*
14 *BY SUBSIDIZED ENERGY FINANCING.—*

15 *(1) IN GENERAL.—Section 48(a)(4) is amended*
16 *by adding at the end the following new subparagraph:*

17 *“(D) TERMINATION.—This paragraph shall*
18 *not apply to periods after December 31, 2008,*
19 *under rules similar to the rules of section 48(m)*
20 *(as in effect on the day before the date of the en-*
21 *actment of the Revenue Reconciliation Act of*
22 *1990).”.*

23 *(2) CONFORMING AMENDMENTS.—*

24 *(A) Section 25C(e)(1) is amended by strik-*
25 *ing “(8), and (9)” and inserting “and (8)”.*

1 (B) Section 25D(e) is amended by striking
2 paragraph (9).

3 (C) Section 48A(b)(2) is amended by insert-
4 ing “(without regard to subparagraph (D) there-
5 of)” after “section 48(a)(4)”.

6 (D) Section 48B(b)(2) is amended by in-
7 serting “(without regard to subparagraph (D)
8 thereof)” after “section 48(a)(4)”.

9 (c) *EFFECTIVE DATE.*—

10 (1) *IN GENERAL.*—Except as provided in para-
11 graph (2), the amendment made by this section shall
12 apply to periods after December 31, 2008, under rules
13 similar to the rules of section 48(m) of the Internal
14 Revenue Code of 1986 (as in effect on the day before
15 the date of the enactment of the Revenue Reconcili-
16 ation Act of 1990).

17 (2) *CONFORMING AMENDMENTS.*—The amend-
18 ments made by subsection (b)(2) shall apply to tax-
19 able years beginning after December 31, 2008.

1 **PART II—INCREASED ALLOCATIONS OF NEW**
2 **CLEAN RENEWABLE ENERGY BONDS AND**
3 **QUALIFIED ENERGY CONSERVATION BONDS**

4 **SEC. 1111. INCREASED LIMITATION ON ISSUANCE OF NEW**
5 **CLEAN RENEWABLE ENERGY BONDS.**

6 *Subsection (c) of section 54C is amended by adding*
7 *at the end the following new paragraph:*

8 *“(4) ADDITIONAL LIMITATION.—The national*
9 *new clean renewable energy bond limitation shall be*
10 *increased by \$1,600,000,000. Such increase shall be*
11 *allocated by the Secretary consistent with the rules of*
12 *paragraphs (2) and (3).”.*

13 **SEC. 1112. INCREASED LIMITATION ON ISSUANCE OF**
14 **QUALIFIED ENERGY CONSERVATION BONDS.**

15 *(a) IN GENERAL.—Section 54D(d) is amended by*
16 *striking “800,000,000” and inserting “\$3,200,000,000”.*

17 *(b) CLARIFICATION WITH RESPECT TO GREEN COM-*
18 *MUNITY PROGRAMS.—Clause (ii) of section 54D(f)(1)(A) is*
19 *amended by inserting “(including the use of loans, grants,*
20 *or other repayment mechanisms to implement such pro-*
21 *grams)” after “green community programs”.*

1 **PART III—ENERGY CONSERVATION INCENTIVES**

2 **SEC. 1121. EXTENSION AND MODIFICATION OF CREDIT FOR**
 3 **NONBUSINESS ENERGY PROPERTY.**

4 (a) *IN GENERAL.*—Section 25C is amended by striking
 5 subsections (a) and (b) and inserting the following new sub-
 6 sections:

7 “(a) *ALLOWANCE OF CREDIT.*—In the case of an indi-
 8 vidual, there shall be allowed as a credit against the tax
 9 imposed by this chapter for the taxable year an amount
 10 equal to 30 percent of the sum of—

11 “(1) the amount paid or incurred by the tax-
 12 payer during such taxable year for qualified energy
 13 efficiency improvements, and

14 “(2) the amount of the residential energy prop-
 15 erty expenditures paid or incurred by the taxpayer
 16 during such taxable year.

17 “(b) *LIMITATION.*—The aggregate amount of the cred-
 18 its allowed under this section for taxable years beginning
 19 in 2009 and 2010 with respect to any taxpayer shall not
 20 exceed \$1,500.”.

21 (b) *MODIFICATIONS OF STANDARDS FOR ENERGY-EF-*
 22 *FICIENT BUILDING PROPERTY.*—

23 (1) *ELECTRIC HEAT PUMPS.*—Subparagraph (B)
 24 of section 25C(d)(3) is amended to read as follows:

25 “(B) an electric heat pump which achieves
 26 the highest efficiency tier established by the Con-

1 *sortium for Energy Efficiency, as in effect on*
2 *January 1, 2009.”.*

3 (2) *CENTRAL AIR CONDITIONERS.*—Subpara-
4 *graph (C) of section 25C(d)(3) is amended by striking*
5 *“2006” and inserting “2009”.*

6 (3) *WATER HEATERS.*—Subparagraph (D) of
7 *section 25C(d)(3) is amended to read as follows:*

8 *“(E) a natural gas, propane, or oil water*
9 *heater which has either an energy factor of at*
10 *least 0.82 or a thermal efficiency of at least 90*
11 *percent.”.*

12 (4) *WOOD STOVES.*—Subparagraph (E) of sec-
13 *tion 25C(d)(3) is amended by inserting “, as meas-*
14 *ured using a lower heating value” after “75 percent”.*

15 (c) *MODIFICATIONS OF STANDARDS FOR OIL FUR-*
16 *NACES AND HOT WATER BOILERS.*—

17 (1) *IN GENERAL.*—Paragraph (4) of section
18 *25C(d) is amended to read as follows:*

19 *“(4) QUALIFIED NATURAL GAS, PROPANE, AND*
20 *OIL FURNACES AND HOT WATER BOILERS.*—

21 *“(A) QUALIFIED NATURAL GAS FURNACE.*—
22 *The term ‘qualified natural gas furnace’ means*
23 *any natural gas furnace which achieves an an-*
24 *nuual fuel utilization efficiency rate of not less*
25 *than 95.*

1 “(B) *QUALIFIED NATURAL GAS HOT WATER*
2 *BOILER.*—*The term ‘qualified natural gas hot*
3 *water boiler’ means any natural gas hot water*
4 *boiler which achieves an annual fuel utilization*
5 *efficiency rate of not less than 90.*

6 “(C) *QUALIFIED PROPANE FURNACE.*—*The*
7 *term ‘qualified propane furnace’ means any pro-*
8 *pane furnace which achieves an annual fuel uti-*
9 *lization efficiency rate of not less than 95.*

10 “(D) *QUALIFIED PROPANE HOT WATER*
11 *BOILER.*—*The term ‘qualified propane hot water*
12 *boiler’ means any propane hot water boiler*
13 *which achieves an annual fuel utilization effi-*
14 *ciency rate of not less than 90.*

15 “(E) *QUALIFIED OIL FURNACES.*—*The term*
16 *‘qualified oil furnace’ means any oil furnace*
17 *which achieves an annual fuel utilization effi-*
18 *ciency rate of not less than 90.*

19 “(F) *QUALIFIED OIL HOT WATER BOILER.*—
20 *The term ‘qualified oil hot water boiler’ means*
21 *any oil hot water boiler which achieves an an-*
22 *annual fuel utilization efficiency rate of not less*
23 *than 90.”.*

24 (2) *CONFORMING AMENDMENT.*—*Clause (ii) of*
25 *section 25C(d)(2)(A) is amended to read as follows:*

1 “(ii) any qualified natural gas fur-
 2 nace, qualified propane furnace, qualified
 3 oil furnace, qualified natural gas hot water
 4 boiler, qualified propane hot water boiler, or
 5 qualified oil hot water boiler, or”.

6 (d) *MODIFICATIONS OF STANDARDS FOR QUALIFIED*
 7 *ENERGY EFFICIENCY IMPROVEMENTS.—*

8 (1) *QUALIFICATIONS FOR EXTERIOR WINDOWS,*
 9 *DOORS, AND SKYLIGHTS.—*Subsection (c) of section
 10 *25C is amended by adding at the end the following*
 11 *new paragraph:*

12 “(4) *QUALIFICATIONS FOR EXTERIOR WINDOWS,*
 13 *DOORS, AND SKYLIGHTS.—*Such term shall not in-
 14 *clude any component described in subparagraph (B)*
 15 *or (C) of paragraph (2) unless such component is*
 16 *equal to or below a U factor of 0.30 and SHGC of*
 17 *0.30.”.*

18 (2) *ADDITIONAL QUALIFICATION FOR INSULA-*
 19 *TION.—*Subparagraph (A) of section 25C(c)(2) is
 20 *amended by inserting “and meets the prescriptive cri-*
 21 *teria for such material or system established by the*
 22 *2009 International Energy Conservation Code, as*
 23 *such Code (including supplements) is in effect on the*
 24 *date of the enactment of the American Recovery and*

1 *Reinvestment Tax Act of 2009*” after “such dwelling
2 *unit*”.

3 (e) *EXTENSION*.—Section 25C(g)(2) is amended by
4 striking “December 31, 2009” and inserting “December 31,
5 2010”.

6 (f) *EFFECTIVE DATES*.—

7 (1) *IN GENERAL*.—Except as provided in para-
8 graph (2), the amendments made by this section shall
9 apply to taxable years beginning after December 31,
10 2008.

11 (2) *EFFICIENCY STANDARDS*.—The amendments
12 made by paragraphs (1), (2), and (3) of subsection
13 (b) and subsections (c) and (d) shall apply to prop-
14 erty placed in service after December 31, 2009.

15 **SEC. 1122. MODIFICATION OF CREDIT FOR RESIDENTIAL**
16 **ENERGY EFFICIENT PROPERTY.**

17 (a) *REMOVAL OF CREDIT LIMITATION FOR PROPERTY*
18 *PLACED IN SERVICE*.—

19 (1) *IN GENERAL*.—Paragraph (1) of section
20 25D(b) is amended to read as follows:

21 “(1) *MAXIMUM CREDIT FOR FUEL CELLS*.—In
22 the case of any qualified fuel cell property expendi-
23 ture, the credit allowed under subsection (a) (deter-
24 mined without regard to subsection (c)) for any tax-
25 able year shall not exceed \$500 with respect to each

1 *half kilowatt of capacity of the qualified fuel cell*
2 *property (as defined in section 48(c)(1)) to which*
3 *such expenditure relates.”.*

4 (2) *CONFORMING AMENDMENT.—Paragraph (4)*
5 *of section 25D(e) is amended—*

6 (A) *by striking all that precedes subpara-*
7 *graph (B) and inserting the following:*

8 “(4) *FUEL CELL EXPENDITURE LIMITATIONS IN*
9 *CASE OF JOINT OCCUPANCY.—In the case of any*
10 *dwelling unit with respect to which qualified fuel cell*
11 *property expenditures are made and which is jointly*
12 *occupied and used during any calendar year as a res-*
13 *idence by two or more individuals the following rules*
14 *shall apply:*

15 “(A) *MAXIMUM EXPENDITURES FOR FUEL*
16 *CELLS.—The maximum amount of such expendi-*
17 *tures which may be taken into account under*
18 *subsection (a) by all such individuals with re-*
19 *spect to such dwelling unit during such calendar*
20 *year shall be \$1,667 in the case of each half kilo-*
21 *watt of capacity of qualified fuel cell property*
22 *(as defined in section 48(c)(1)) with respect to*
23 *which such expenditures relate.”, and*

24 (B) *by striking subparagraph (C).*

1 (b) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply to taxable years beginning after Decem-*
3 *ber 31, 2008.*

4 **SEC. 1123. TEMPORARY INCREASE IN CREDIT FOR ALTER-**
5 **NATIVE FUEL VEHICLE REFUELING PROP-**
6 **ERTY.**

7 (a) *IN GENERAL.*—*Section 30C(e) is amended by add-*
8 *ing at the end the following new paragraph:*

9 “(6) *SPECIAL RULE FOR PROPERTY PLACED IN*
10 *SERVICE DURING 2009 AND 2010.*—*In the case of prop-*
11 *erty placed in service in taxable years beginning after*
12 *December 31, 2008, and before January 1, 2011—*

13 “(A) *in the case of any such property which*
14 *does not relate to hydrogen—*

15 “(i) *subsection (a) shall be applied by*
16 *substituting ‘50 percent’ for ‘30 percent’,*

17 “(ii) *subsection (b)(1) shall be applied*
18 *by substituting ‘\$50,000’ for ‘\$30,000’, and*

19 “(iii) *subsection (b)(2) shall be applied*
20 *by substituting ‘\$2,000’ for ‘\$1,000’, and*

21 “(B) *in the case of any such property which*
22 *relates to hydrogen, subsection (b)(1) shall be ap-*
23 *plied by substituting ‘\$200,000’ for ‘\$30,000’.*”.

24 (b) *ENSURING CONSUMER ACCESSIBILITY TO ALTER-*
25 *NATIVE FUEL VEHICLE REFUELING PROPERTY IN THE*

1 *CASE OF ELECTRICITY.*—Section 179(d)(3) is amended by
2 *striking subparagraph (B) and inserting the following:*

3 “(B) for the recharging of motor vehicles
4 *propelled by electricity, but only if—*

5 “(i) *the property complies with the So-*
6 *ciety of Automotive Engineers’ connection*
7 *standards,*

8 “(ii) *the property provides for non-re-*
9 *strictive access for charging and for pay-*
10 *ment interoperability with other systems,*
11 *and*

12 “(iii) *the property—*

13 “(I) *is located on property owned*
14 *by the taxpayer, or*

15 “(II) *is located on property owned*
16 *by another person, is placed in service*
17 *with the permission of such other per-*
18 *son, and is fully maintained by the*
19 *taxpayer.”.*

20 (c) *EFFECTIVE DATE.*—*The amendments made by this*
21 *section shall apply to taxable years beginning after Decem-*
22 *ber 31, 2008.*

23 **SEC. 1124. RECOVERY PERIOD FOR DEPRECIATION OF**
24 **SMART METERS.**

25 (a) *TEMPORARY 5-YEAR RECOVERY PERIOD.*—

1 (1) *IN GENERAL.*—Subparagraph (B) of section
2 168(e)(3) is amended by striking “and” at the end of
3 clause (vi), by striking the period at the end of clause
4 (vii) and inserting “, and”, and by adding at the end
5 the following new clause:

6 “(viii) any qualified smart electric
7 meter which is placed in service before Jan-
8 uary 1, 2011.”.

9 (2) *CONFORMING AMENDMENT.*—Clause (iii) of
10 section 168(e)(3)(D) is amended by inserting “which
11 is placed in service after December 31, 2010” after
12 “electric meter”.

13 (b) *TECHNICAL AMENDMENTS.*—Paragraphs
14 (18)(A)(ii) and (19)(A)(ii) of section 168(i) are each
15 amended by striking “16 years” and inserting “10 years”.

16 (c) *EFFECTIVE DATES.*—

17 (1) *IN GENERAL.*—Except as provided in para-
18 graph (2), the amendments made by this section shall
19 apply to property placed in service after the date of
20 the enactment of this Act.

21 (2) *TECHNICAL AMENDMENT.*—The amendments
22 made by subsection (b) shall take effect as if included
23 in section 306 of the Energy Improvement and Exten-
24 sion Act of 2008.

1 **PART IV—ENERGY RESEARCH INCENTIVES**

2 **SEC. 1131. INCREASED RESEARCH CREDIT FOR ENERGY RE-**
3 **SEARCH.**

4 (a) *IN GENERAL.*—Section 41 is amended by redesignig-
5 nating subsection (h) as subsection (i) and by inserting
6 after subsection (g) the following new subsection:

7 “(h) *ENERGY RESEARCH CREDIT.*—In the case of any
8 taxable year beginning in 2009 or 2010—

9 “(1) *IN GENERAL.*—The credit determined under
10 subsection (a)(1) shall be increased by 20 percent of
11 the qualified energy research expenses for the taxable
12 year.

13 “(2) *QUALIFIED ENERGY RESEARCH EX-*
14 *PENSES.*—For purposes of this subsection—

15 “(A) *IN GENERAL.*—The term ‘qualified en-
16 ergy research expenses’ means so much of the
17 taxpayer’s qualified research expenses as are re-
18 lated to the fields of fuel cells and battery tech-
19 nology, renewable energy and renewable fuels,
20 energy conservation technology, efficient trans-
21 mission and distribution of electricity, and car-
22 bon capture and sequestration.

23 “(B) *COORDINATION WITH QUALIFYING AD-*
24 *VANCED ENERGY PROJECT CREDIT.*—Such term
25 shall not include expenditures taken into account

1 *in determining the amount of the credit under*
2 *section 48 or 48C.*

3 “(3) *COORDINATION WITH OTHER RESEARCH*
4 *CREDITS.—*

5 “(A) *IN GENERAL.—The amount of quali-*
6 *fied energy research expenses taken into account*
7 *under subsection (a)(1)(A) shall not exceed the*
8 *base amount.*

9 “(B) *ALTERNATIVE SIMPLIFIED CREDIT.—*
10 *For purposes of subsection (c)(5), the amount of*
11 *qualified energy research expenses taken into ac-*
12 *count for the taxable year for which the credit is*
13 *being determined shall not exceed—*

14 “(i) *in the case of subsection (c)(5)(A),*
15 *50 percent of the average qualified research*
16 *expenses for the 3 taxable years preceding*
17 *the taxable year for which the credit is*
18 *being determined, and*

19 “(ii) *in the case of subsection*
20 *(c)(5)(B)(ii), zero.*

21 “(C) *BASIC RESEARCH AND ENERGY RE-*
22 *SEARCH CONSORTIUM PAYMENTS.—Any amount*
23 *taken into account under paragraph (1) shall*
24 *not be taken into account under paragraph (2)*
25 *or (3) of subsection (a).”.*

1 (b) *CONFORMING AMENDMENT.*—Subparagraph (B) of
2 section 41(i)(1)(B), as redesignated by subsection (a), is
3 amended by inserting “(in the case of the increase in the
4 credit determined under subsection (h), December 31,
5 2010)” after “December 31, 2009”.

6 (c) *EFFECTIVE DATE.*—The amendments made by this
7 section shall apply to taxable years beginning after Decem-
8 ber 31, 2008.

9 **PART V—MODIFICATION OF CREDIT FOR CARBON**

10 **DIOXIDE SEQUESTRATION**

11 **SEC. 1141. APPLICATION OF MONITORING REQUIREMENTS**

12 **TO CARBON DIOXIDE USED AS A TERTIARY**

13 **INJECTANT.**

14 (a) *IN GENERAL.*—Section 45Q(a)(2) is amended by
15 striking “and” at the end of subparagraph (A), by striking
16 the period at the end of subparagraph (B) and inserting
17 “, and”, and by adding at the end the following new sub-
18 paragraph:

19 “(C) disposed of by the taxpayer in secure
20 geological storage.”.

21 (b) *CONFORMING AMENDMENTS.*—

22 (1) Section 45Q(d)(2) is amended—

23 (A) by striking “subsection (a)(1)(B)” and
24 inserting “paragraph (1)(B) or (2)(C) of sub-
25 section (a)”,

1 30(c)(2)), which is treated as a motor vehicle for pur-
2 poses of title II of the Clean Air Act.”.

3 (c) CREDIT FOR CERTAIN OTHER VEHICLES.—Section
4 30D is amended—

5 (1) by redesignating subsections (f) and (g) as
6 subsections (g) and (h), respectively, and

7 (2) by inserting after subsection (e) the following
8 new subsection:

9 “(f) CREDIT FOR CERTAIN OTHER VEHICLES.—For
10 purposes of this section—

11 “(1) IN GENERAL.—In the case of a specified ve-
12 hicle, this section shall be applied with the following
13 modifications:

14 “(A) For purposes of subsection (a)(1), in
15 lieu of the applicable amount determined under
16 subsection (a)(2), the applicable amount shall be
17 10 percent of so much of the cost of the specified
18 vehicle as does not exceed \$40,000.

19 “(B) Subsection (b) shall not apply and no
20 specified vehicle shall be taken into account
21 under subsection (b)(2).

22 “(C) In the case of a specified vehicle which
23 is a 2-or 3-wheeled motor vehicle, subsection
24 (c)(1) shall be applied by substituting ‘2.5 kilo-
25 watt hours’ for ‘4 kilowatt hours’.

1 “(D) *In the case of a specified vehicle which*
2 *is a low-speed motor vehicle, subsection (c)(3)*
3 *shall not apply.*

4 “(2) *SPECIFIED VEHICLE.—For purposes of this*
5 *subsection—*

6 “(A) *IN GENERAL.—The term ‘specified ve-*
7 *hicle’ means—*

8 “(i) *any 2- or 3- wheeled motor vehicle,*
9 *or*

10 “(ii) *any low-speed motor vehicle,*
11 *which is placed in service after December 31,*
12 *2009, and before January 1, 2012.*

13 “(B) *2- OR 3-WHEELED MOTOR VEHICLE.—*
14 *The term ‘2- or 3-wheeled motor vehicle’ means*
15 *any vehicle—*

16 “(i) *which would be described in sec-*
17 *tion 30(c)(2) except that it has 2 or 3*
18 *wheels,*

19 “(ii) *with motive power having a seat*
20 *or saddle for the use of the rider and de-*
21 *signed to travel on not more than 3 wheels*
22 *in contact with the ground,*

23 “(iii) *which has an electric motor that*
24 *produces in excess of 5-brake horsepower,*

1 “(iv) which draws propulsion from 1
2 or more traction batteries, and

3 “(v) which has been certified to the De-
4 partment of Transportation pursuant to
5 section 567 of title 49, Code of Federal Reg-
6 ulations, as conforming to all applicable
7 Federal motor vehicle safety standards in
8 effect on the date of the manufacture of the
9 vehicle.

10 “(C) *LOW-SPEED MOTOR VEHICLE.*—The
11 term ‘low-speed motor vehicle’ means a motor ve-
12 hicle (as defined in section 30(c)(2)) which—

13 “(i) is placed in service after December
14 31, 2009, and

15 “(ii) meets the requirements of section
16 571.500 of title 49, Code of Federal Regula-
17 tions.”.

18 (d) *EFFECTIVE DATES.*—

19 (1) *IN GENERAL.*—The amendment made by sub-
20 sections (a) and (c) shall take effect on the date of the
21 enactment of this Act.

22 (2) *OTHER MODIFICATIONS.*—The amendments
23 made by subsection (b) shall apply to property placed
24 in service after December 31, 2009, in taxable years
25 beginning after such date.

1 **SEC. 1152. CONVERSION KITS.**

2 (a) *IN GENERAL.*—Section 30B (relating to alternative
3 motor vehicle credit) is amended by redesignating sub-
4 sections (i) and (j) as subsections (j) and (k), respectively,
5 and by inserting after subsection (h) the following new sub-
6 section:

7 “(i) *PLUG-IN CONVERSION CREDIT.*—

8 “(1) *IN GENERAL.*—For purposes of subsection
9 (a), the plug-in conversion credit determined under
10 this subsection with respect to any motor vehicle
11 which is converted to a qualified plug-in electric drive
12 motor vehicle is 10 percent of so much of the cost of
13 the converting such vehicle as does not exceed \$40,000.

14 “(2) *DEFINITIONS AND SPECIAL RULES.*—For
15 purposes of this subsection—

16 “(A) *QUALIFIED PLUG-IN ELECTRIC DRIVE*
17 *MOTOR VEHICLE.*—The term ‘qualified plug-in
18 electric drive motor vehicle’ means any new
19 qualified plug-in electric drive motor vehicle (as
20 defined in section 30D(c), determined without re-
21 gard to paragraphs (4) and (6) thereof).

22 “(B) *PLUG-IN TRACTION BATTERY MOD-*
23 *ULE.*—The term ‘plug-in traction battery mod-
24 ule’ means an electro-chemical energy storage de-
25 vice which—

1 “(i) which has a traction battery ca-
2 pacity of not less than 2.5 kilowatt hours,

3 “(ii) which is equipped with an elec-
4 trical plug by means of which it can be en-
5 ergized and recharged when plugged into an
6 external source of electric power,

7 “(iii) which consists of a standardized
8 configuration and is mass produced,

9 “(iv) which has been tested and ap-
10 proved by the National Highway Transpor-
11 tation Safety Administration as compliant
12 with applicable motor vehicle and motor ve-
13 hicle equipment safety standards when in-
14 stalled by a mechanic with standardized
15 training in protocols established by the bat-
16 tery manufacturer as part of a nationwide
17 distribution program,

18 “(v) which complies with the require-
19 ments of section 32918 of title 49, United
20 States Code, and

21 “(vi) which is certified by a battery
22 manufacturer as meeting the requirements
23 of clauses (i) through (v).

24 “(C) CREDIT ALLOWED TO LESSOR OF BAT-
25 TERY MODULE.—In the case of a plug-in traction

1 *battery module which is leased to the taxpayer,*
2 *the credit allowed under this subsection shall be*
3 *allowed to the lessor of the plug-in traction bat-*
4 *tery module.*

5 “(D) CREDIT ALLOWED IN ADDITION TO
6 OTHER CREDITS.—*The credit allowed under this*
7 *subsection shall be allowed with respect to a*
8 *motor vehicle notwithstanding whether a credit*
9 *has been allowed with respect to such motor vehi-*
10 *cle under this section (other than this subsection)*
11 *in any preceding taxable year.*

12 “(3) TERMINATION.—*This subsection shall not*
13 *apply to conversions made after December 31, 2012.”.*

14 (b) CREDIT TREATED AS PART OF ALTERNATIVE
15 MOTOR VEHICLE CREDIT.—*Section 30B(a) is amended by*
16 *striking “and” at the end of paragraph (3), by striking the*
17 *period at the end of paragraph (4) and inserting “, and”,*
18 *and by adding at the end the following new paragraph:*

19 “(5) *the plug-in conversion credit determined*
20 *under subsection (i).”.*

21 (c) NO RECAPTURE FOR VEHICLES CONVERTED TO
22 QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR VEHI-
23 CLES.—*Paragraph (8) of section 30B(h) is amended by*
24 *adding at the end the following: “, except that no benefit*
25 *shall be recaptured if such property ceases to be eligible for*

1 *such credit by reason of conversion to a qualified plug-in*
2 *electric drive motor vehicle.”.*

3 (d) *EFFECTIVE DATE.*—*The amendments made by this*
4 *section shall apply to property placed in service after De-*
5 *cember 31, 2008, in taxable years beginning after such date.*

6 ***Subtitle C—Tax Incentives for***
7 ***Business***

8 ***PART I—TEMPORARY INVESTMENT INCENTIVES***

9 ***SEC. 1201. SPECIAL ALLOWANCE FOR CERTAIN PROPERTY***
10 ***ACQUIRED DURING 2009.***

11 (a) *EXTENSION OF SPECIAL ALLOWANCE.*—

12 (1) *IN GENERAL.*—*Paragraph (2) of section*
13 *168(k) is amended—*

14 (A) *by striking “January 1, 2010” and in-*
15 *serting “January 1, 2011”, and*

16 (B) *by striking “January 1, 2009” each*
17 *place it appears and inserting “January 1,*
18 *2010”.*

19 (2) *CONFORMING AMENDMENTS.*—

20 (A) *The heading for subsection (k) of section*
21 *168 is amended by striking “JANUARY 1, 2009”*
22 *and inserting “JANUARY 1, 2010”.*

23 (B) *The heading for clause (ii) of section*
24 *168(k)(2)(B) is amended by striking “PRE-JANU-*

1 ARY 1, 2009” and inserting “PRE-JANUARY 1,
2 2010”.

3 (C) Subparagraph (B) of section 168(l)(5)
4 is amended by striking “January 1, 2009” and
5 inserting “January 1, 2010”.

6 (D) Subparagraph (C) of section 168(n)(2)
7 is amended by striking “January 1, 2009” and
8 inserting “January 1, 2010”.

9 (E) Subparagraph (B) of section
10 1400N(d)(3) is amended by striking “January 1,
11 2009” and inserting “January 1, 2010”.

12 (3) TECHNICAL AMENDMENT.—Subparagraph
13 (D) of section 168(k)(4) is amended—

14 (A) by striking “and” at the end of clause
15 (i),

16 (B) by redesignating clause (ii) as clause
17 (iii), and

18 (C) by inserting after clause (i) the fol-
19 lowing new clause:

20 “(ii) ‘April 1, 2008’ shall be sub-
21 stituted for ‘January 1, 2008’ in subpara-
22 graph (A)(iii)(I) thereof, and”.

23 (b) EXTENSION OF ELECTION TO ACCELERATE THE
24 AMT AND RESEARCH CREDITS IN LIEU OF BONUS DEPRE-
25 CIATION.—Section 168(k)(4) (relating to election to accel-

1 *erate the AMT and research credits in lieu of bonus depre-*
2 *ciation) is amended—*

3 *(1) by striking “2009” and inserting “2010” in*
4 *subparagraph (D)(iii) (as redesignated by subsection*
5 *(a)(3)), and*

6 *(2) by adding at the end the following new sub-*
7 *paragraph:*

8 *“(H) SPECIAL RULES FOR EXTENSION*
9 *PROPERTY.—*

10 *“(i) TAXPAYERS PREVIOUSLY ELECT-*
11 *ING ACCELERATION.—In the case of a tax-*
12 *payer who made the election under subpara-*
13 *graph (A) for its first taxable year ending*
14 *after March 31, 2008—*

15 *“(I) the taxpayer may elect not to*
16 *have this paragraph apply to extension*
17 *property, but*

18 *“(II) if the taxpayer does not*
19 *make the election under subclause (I),*
20 *in applying this paragraph to the tax-*
21 *payer a separate bonus depreciation*
22 *amount, maximum amount, and max-*
23 *imum increase amount shall be com-*
24 *puted and applied to eligible qualified*
25 *property which is extension property*

1 *and to eligible qualified property*
2 *which is not extension property.*

3 “(ii) *TAXPAYERS NOT PREVIOUSLY*
4 *ELECTING ACCELERATION.—In the case of a*
5 *taxpayer who did not make the election*
6 *under subparagraph (A) for its first taxable*
7 *year ending after March 31, 2008—*

8 *“(I) the taxpayer may elect to*
9 *have this paragraph apply to its first*
10 *taxable year ending after December 31,*
11 *2008, and each subsequent taxable*
12 *year, and*

13 *“(II) if the taxpayer makes the*
14 *election under subclause (I), this para-*
15 *graph shall only apply to eligible*
16 *qualified property which is extension*
17 *property.*

18 “(iii) *EXTENSION PROPERTY.—For*
19 *purposes of this subparagraph, the term ‘ex-*
20 *ension property’ means property which is*
21 *eligible qualified property solely by reason*
22 *of the extension of the application of the*
23 *special allowance under paragraph (1) pur-*
24 *suant to the amendments made by section*
25 *1201(a) of the American Recovery and Re-*

1 *investment Tax Act of 2009 (and the appli-*
2 *cation of such extension to this paragraph*
3 *pursuant to the amendment made by section*
4 *1201(b)(1) of such Act).”.*

5 *(c) EFFECTIVE DATES.—*

6 (1) *IN GENERAL.—Except as provided in para-*
7 *graph (2), the amendments made by this section shall*
8 *apply to property placed in service after December*
9 *31, 2008, in taxable years ending after such date.*

10 (2) *TECHNICAL AMENDMENT.—The amendments*
11 *made by subsection (a)(3) shall apply to taxable years*
12 *ending after March 31, 2008.*

13 **SEC. 1202. TEMPORARY INCREASE IN LIMITATIONS ON EX-**
14 **PENSING OF CERTAIN DEPRECIABLE BUSI-**
15 **NESS ASSETS.**

16 (a) *IN GENERAL.—Paragraph (7) of section 179(b) is*
17 *amended—*

18 (1) *by striking “2008” and inserting “2008, or*
19 *2009”, and*

20 (2) *by striking “2008” in the heading thereof and*
21 *inserting “2008, AND 2009”.*

22 (b) *EFFECTIVE DATE.—The amendments made by this*
23 *section shall apply to taxable years beginning after Decem-*
24 *ber 31, 2008.*

1 **PART II—5-YEAR CARRYBACK OF OPERATING**

2 **LOSSES**

3 **SEC. 1211. 5-YEAR CARRYBACK OF OPERATING LOSSES.**

4 *(a) IN GENERAL.—Subparagraph (H) of section*
5 *172(b)(1) is amended to read as follows:*

6 *“(H) CARRYBACK FOR 2008 AND 2009 NET*
7 *OPERATING LOSSES.—*

8 *“(i) IN GENERAL.—In the case of an*
9 *applicable 2008 or 2009 net operating loss*
10 *with respect to which the taxpayer has elect-*
11 *ed the application of this subparagraph—*

12 *“(I) subparagraph (A)(i) shall be*
13 *applied by substituting any whole*
14 *number elected by the taxpayer which*
15 *is more than 2 and less than 6 for ‘2’,*

16 *“(II) subparagraph (E)(ii) shall*
17 *be applied by substituting the whole*
18 *number which is one less than the*
19 *whole number substituted under sub-*
20 *clause (II) for ‘2’, and*

21 *“(III) subparagraph (F) shall not*
22 *apply.*

23 *“(ii) APPLICABLE 2008 OR 2009 NET OP-*
24 *ERATING LOSS.—For purposes of this sub-*
25 *paragraph, the term ‘applicable 2008 or*
26 *2009 net operating loss’ means—*

1 “(I) the taxpayer’s net operating
2 loss for any taxable year ending in
3 2008 or 2009, or

4 “(II) if the taxpayer elects to have
5 this subclause apply in lieu of sub-
6 clause (I), the taxpayer’s net operating
7 loss for any taxable year beginning in
8 2008 or 2009.

9 “(iii) *ELECTION.*—Any election under
10 this subparagraph shall be made in such
11 manner as may be prescribed by the Sec-
12 retary, and shall be made by the due date
13 (including extension of time) for filing the
14 taxpayer’s return for the taxable year of the
15 net operating loss. Any such election, once
16 made, shall be irrevocable.

17 “(iv) *COORDINATION WITH ALTER-*
18 *NATIVE TAX NET OPERATING LOSS DEDUC-*
19 *TION.*—In the case of a taxpayer who elects
20 to have clause (ii)(II) apply, section
21 56(d)(1)(A)(ii) shall be applied by sub-
22 stituting ‘ending during 2001 or 2002 or
23 beginning during 2008 or 2009’ for ‘ending
24 during 2001, 2002, 2008, or 2009’.”.

1 (b) *ALTERNATIVE TAX NET OPERATING LOSS DEDUC-*
2 *TION.*—*Subclause (I) of section 56(d)(1)(A)(ii) is amended*
3 *to read as follows:*

4 “(I) *the amount of such deduction*
5 *attributable to the sum of carrybacks of*
6 *net operating losses from taxable years*
7 *ending during 2001, 2002, 2008, or*
8 *2009 and carryovers of net operating*
9 *losses to such taxable years, or”.*

10 (c) *LOSS FROM OPERATIONS OF LIFE INSURANCE*
11 *COMPANIES.*—*Subsection (b) of section 810 is amended by*
12 *adding at the end the following new paragraph:*

13 “(4) *CARRYBACK FOR 2008 AND 2009 LOSSES.*—

14 “(A) *IN GENERAL.*—*In the case of an appli-*
15 *cable 2008 or 2009 loss from operations with re-*
16 *spect to which the taxpayer has elected the appli-*
17 *cation of this paragraph, paragraph (1)(A) shall*
18 *be applied, at the election of the taxpayer, by*
19 *substituting ‘5’ or ‘4’ for ‘3’.*

20 “(B) *APPLICABLE 2008 OR 2009 LOSS FROM*
21 *OPERATIONS.*—*For purposes of this paragraph,*
22 *the term ‘applicable 2008 or 2009 loss from oper-*
23 *ations’ means—*

1 “(i) the taxpayer’s loss from operations
2 for any taxable year ending in 2008 or
3 2009, or

4 “(ii) if the taxpayer elects to have this
5 clause apply in lieu of clause (i), the tax-
6 payer’s loss from operations for any taxable
7 year beginning in 2008 or 2009.

8 “(C) *ELECTION.*—Any election under this
9 paragraph shall be made in such manner as may
10 be prescribed by the Secretary, and shall be made
11 by the due date (including extension of time) for
12 filing the taxpayer’s return for the taxable year
13 of the loss from operations. Any such election,
14 once made, shall be irrevocable.

15 “(D) *COORDINATION WITH ALTERNATIVE*
16 *TAX NET OPERATING LOSS DEDUCTION.*—In the
17 case of a taxpayer who elects to have subpara-
18 graph (B)(ii) apply, section 56(d)(1)(A)(ii) shall
19 be applied by substituting ‘ending during 2001
20 or 2002 or beginning during 2008 or 2009’ for
21 ‘ending during 2001, 2002, 2008, or 2009’.”.

22 (d) *CONFORMING AMENDMENT.*—Section 172 is
23 amended by striking subsection (k) and by redesignating
24 subsection (l) as subsection (k).

25 (e) *EFFECTIVE DATE.*—

1 (1) *IN GENERAL.*—*Except as otherwise provided*
2 *in this subsection, the amendments made by this sec-*
3 *tion shall apply to net operating losses arising in tax-*
4 *able years ending after December 31, 2007.*

5 (2) *ALTERNATIVE TAX NET OPERATING LOSS DE-*
6 *DUCTION.*—*The amendment made by subsection (b)*
7 *shall apply to taxable years ending after 1997.*

8 (3) *LOSS FROM OPERATIONS OF LIFE INSURANCE*
9 *COMPANIES.*—*The amendment made by subsection (d)*
10 *shall apply to losses from operations arising in tax-*
11 *able years ending after December 31, 2007.*

12 (4) *TRANSITIONAL RULE.*—*In the case of a net*
13 *operating loss (or, in the case of a life insurance com-*
14 *pany, a loss from operations) for a taxable year end-*
15 *ing before the date of the enactment of this Act—*

16 (A) *any election made under section*
17 *172(b)(3) or 810(b)(3) of the Internal Revenue*
18 *Code of 1986 with respect to such loss may (not-*
19 *withstanding such section) be revoked before the*
20 *applicable date,*

21 (B) *any election made under section 172(k)*
22 *or 810(b)(4) of such Code with respect to such*
23 *loss shall (notwithstanding such section) be treat-*
24 *ed as timely made if made before the applicable*
25 *date, and*

1 (C) any application under section 6411(a)
2 of such Code with respect to such loss shall be
3 treated as timely filed if filed before the applica-
4 ble date.

5 For purposes of this paragraph, the term “applicable
6 date” means the date which is 60 days after the date
7 of the enactment of this Act.

8 **SEC. 1212. EXCEPTION FOR TARP RECIPIENTS.**

9 The amendments made by this part shall not apply
10 to—

11 (1) any taxpayer if—

12 (A) the Federal Government acquires, at
13 any time, an equity interest in the taxpayer
14 pursuant to the Emergency Economic Stabiliza-
15 tion Act of 2008, or

16 (B) the Federal Government acquires, at
17 any time, any warrant (or other right) to ac-
18 quire any equity interest with respect to the tax-
19 payer pursuant to such Act,

20 (2) the Federal National Mortgage Association
21 and the Federal Home Loan Mortgage Corporation,
22 and

23 (3) any taxpayer which at any time in 2008 or
24 2009 is a member of the same affiliated group (as de-
25 fined in section 1504 of the Internal Revenue Code of

1 1986, determined without regard to subsection (b)
2 thereof) as a taxpayer described in paragraph (1) or
3 (2).

4 **PART III—INCENTIVES FOR NEW JOBS**

5 **SEC. 1221. INCENTIVES TO HIRE UNEMPLOYED VETERANS**
6 **AND DISCONNECTED YOUTH.**

7 (a) *IN GENERAL.*—Subsection (d) of section 51 is
8 amended by adding at the end the following new paragraph:

9 “(14) *CREDIT ALLOWED FOR UNEMPLOYED VET-*
10 *ERANS AND DISCONNECTED YOUTH HIRED IN 2009 OR*
11 *2010.*—

12 “(A) *IN GENERAL.*—Any unemployed vet-
13 eran or disconnected youth who begins work for
14 the employer during 2009 or 2010 shall be treat-
15 ed as a member of a targeted group for purposes
16 of this subpart.

17 “(B) *DEFINITIONS.*—For purposes of this
18 paragraph—

19 “(i) *UNEMPLOYED VETERAN.*—The
20 term ‘unemployed veteran’ means any vet-
21 eran (as defined in paragraph (3)(B), deter-
22 mined without regard to clause (ii) thereof)
23 who is certified by the designated local
24 agency as—

1 (I) *having been discharged or re-*
2 *leased from active duty in the Armed*
3 *Forces during the period beginning on*
4 *September 1, 2001, and ending on De-*
5 *cember 31, 2010, and*

6 “(II) *being in receipt of unem-*
7 *ployment compensation under State or*
8 *Federal law for not less than 4 weeks*
9 *during the 1-year period ending on the*
10 *hiring date.*

11 “(ii) *DISCONNECTED YOUTH.—The*
12 *term ‘disconnected youth’ means any indi-*
13 *vidual who is certified by the designated*
14 *local agency—*

15 “(I) *as having attained age 16*
16 *but not age 25 on the hiring date,*

17 “(II) *as not regularly attending*
18 *any secondary, technical, or post-sec-*
19 *ondary school during the 6-month pe-*
20 *riod preceding the hiring date,*

21 “(III) *as not regularly employed*
22 *during such 6-month period, and*

23 “(IV) *as not readily employable*
24 *by reason of lacking a sufficient num-*
25 *ber of basic skills.”.*

1 (b) *EFFECTIVE DATE.*—*The amendments made by this*
 2 *section shall apply to individuals who begin work for the*
 3 *employer after December 31, 2008.*

4 **PART IV—CANCELLATION OF INDEBTEDNESS**

5 **SEC. 1231. DEFERRAL AND RATABLE INCLUSION OF INCOME**

6 **ARISING FROM INDEBTEDNESS DISCHARGED**

7 **BY THE REPURCHASE OF A DEBT INSTRU-**

8 **MENT.**

9 (a) *IN GENERAL.*—*Section 108 (relating to income*
 10 *from discharge of indebtedness) is amended by adding at*
 11 *the end the following new subsection:*

12 “(i) *DEFERRAL AND RATABLE INCLUSION OF INCOME*
 13 *ARISING FROM INDEBTEDNESS DISCHARGED BY THE RE-*
 14 *PURCHASE OF A DEBT INSTRUMENT.*—

15 “(1) *IN GENERAL.*—*Notwithstanding section 61,*
 16 *income from the discharge of indebtedness in connec-*
 17 *tion with the repurchase of a debt instrument after*
 18 *December 31, 2008, and before January 1, 2011, shall*
 19 *be includible in gross income ratably over the 8-tax-*
 20 *able-year period beginning with—*

21 “(A) *in the case of a repurchase occurring*
 22 *in 2009, the second taxable year following the*
 23 *taxable year in which the repurchase occurs, and*

1 “(B) in the case of a repurchase occurring
2 in 2010, the taxable year following the taxable
3 year in which the repurchase occurs.

4 “(2) *DEBT INSTRUMENT*.—For purposes of this
5 subsection, the term ‘debt instrument’ means a bond,
6 debenture, note, certificate, or any other instrument
7 or contractual arrangement constituting indebtedness
8 (within the meaning of section 1275(a)(1)).

9 “(3) *REPURCHASE*.—For purposes of this sub-
10 section, the term ‘repurchase’ means, with respect to
11 any debt instrument, a cash purchase of the debt in-
12 strument by—

13 “(A) the debtor which issued the debt in-
14 strument, or

15 “(B) any person related to such debtor.

16 For purposes of subparagraph (B), the determination
17 of whether a person is related to another person shall
18 be made in the same manner as under subsection
19 (e)(4).

20 “(4) *AUTHORITY TO PRESCRIBE REGULATIONS*.—
21 The Secretary may prescribe such regulations as may
22 be necessary or appropriate for purposes of applying
23 this subsection.”.

1 (b) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply to discharges in taxable years ending*
3 *after December 31, 2008.*

4 **PART V—QUALIFIED SMALL BUSINESS STOCK**

5 **SEC. 1241. SPECIAL RULES APPLICABLE TO QUALIFIED**
6 **SMALL BUSINESS STOCK FOR 2009 AND 2010.**

7 (a) *IN GENERAL.*—*Section 1202(a) is amended by*
8 *adding at the end the following new paragraph:*

9 “(3) *SPECIAL RULES FOR 2009 AND 2010.*—*In the*
10 *case of qualified small business stock acquired after*
11 *the date of the enactment of this paragraph and before*
12 *January 1, 2011—*

13 “(A) *paragraph (1) shall be applied by sub-*
14 *stituting ‘75 percent’ for ‘50 percent’, and*

15 “(B) *paragraph (2) shall not apply.*”.

16 (b) *EFFECTIVE DATE.*—*The amendment made by this*
17 *section shall apply to stock acquired after the date of the*
18 *enactment of this Act.*

19 **PART VI—PARITY FOR TRANSPORTATION FRINGE**
20 **BENEFITS**

21 **SEC. 1251. INCREASED EXCLUSION AMOUNT FOR COM-**
22 **MUTER TRANSIT BENEFITS AND TRANSIT**
23 **PASSES.**

24 (a) *IN GENERAL.*—*Paragraph (2) of section 132(f) is*
25 *amended by adding at the end the following flush sentence:*

1 *“In the case of any month beginning on or after the*
2 *date of the enactment of this sentence and before Jan-*
3 *uary 1, 2011, subparagraph (A) shall be applied as*
4 *if the dollar amount therein were the same as the dol-*
5 *lar amount under subparagraph (B) (as in effect for*
6 *such month).”.*

7 ***(b) EFFECTIVE DATE.***—*The amendment made by this*
8 *section shall apply to months beginning on or after the date*
9 *of the enactment of this section.*

10 **PART VII—S CORPORATIONS**

11 **SEC. 1261. TEMPORARY REDUCTION IN RECOGNITION PE-**
12 **RIOD FOR BUILT-IN GAINS TAX.**

13 ***(a) IN GENERAL.***—*Paragraph (7) of section 1374(d)*
14 *(relating to definitions and special rules) is amended to*
15 *read as follows:*

16 ***“(7) RECOGNITION PERIOD.***—

17 ***“(A) IN GENERAL.***—*The term ‘recognition*
18 *period’ means the 10-year period beginning with*
19 *the 1st day of the 1st taxable year for which the*
20 *corporation was an S corporation.*

21 ***“(B) SPECIAL RULE FOR 2009 AND 2010.***—*In*
22 *the case of any taxable year beginning in 2009*
23 *or 2010, no tax shall be imposed on the net un-*
24 *recognized built-in gain of an S corporation if*
25 *the 7th taxable year in the recognition period*

1 *preceded such taxable year. The preceding sen-*
2 *tence shall be applied separately with respect to*
3 *any asset to which paragraph (8) applies.*

4 “(C) *SPECIAL RULE FOR DISTRIBUTIONS TO*
5 *SHAREHOLDERS.—For purposes of applying this*
6 *section to any amount includible in income by*
7 *reason of distributions to shareholders pursuant*
8 *to section 593(e)—*

9 “(i) *subparagraph (A) shall be applied*
10 *without regard to the phrase ‘10-year’, and*

11 “(ii) *subparagraph (B) shall not*
12 *apply.”.*

13 (b) *EFFECTIVE DATE.—The amendment made by this*
14 *section shall apply to taxable years beginning after Decem-*
15 *ber 31, 2008.*

16 **PART VIII—BROADBAND INCENTIVES**

17 **SEC. 1271. BROADBAND INTERNET ACCESS TAX CREDIT.**

18 (a) *IN GENERAL.—Subpart E of part IV of chapter*
19 *1 of the Internal Revenue Code of 1986 (relating to rules*
20 *for computing investment credit), as amended by this Act,*
21 *is amended by inserting after section 48C the following new*
22 *section:*

23 **“SEC. 48D. BROADBAND INTERNET ACCESS CREDIT.**

24 “(a) *GENERAL RULE.—For purposes of section 46, the*
25 *broadband credit for any taxable year is the sum of—*

1 “(1) *the current generation broadband credit,*
2 *plus*

3 “(2) *the next generation broadband credit.*

4 “(b) *CURRENT GENERATION BROADBAND CREDIT;*
5 *NEXT GENERATION BROADBAND CREDIT.—For purposes of*
6 *this section—*

7 “(1) *CURRENT GENERATION BROADBAND CRED-*
8 *IT.—The current generation broadband credit for any*
9 *taxable year is equal to 10 percent (20 percent in the*
10 *case of qualified subscribers which are unserved sub-*
11 *scribers) of the qualified broadband expenditures in-*
12 *curring with respect to qualified equipment providing*
13 *current generation broadband services to qualified*
14 *subscribers and taken into account with respect to*
15 *such taxable year.*

16 “(2) *NEXT GENERATION BROADBAND CREDIT.—*
17 *The next generation broadband credit for any taxable*
18 *year is equal to 20 percent of the qualified broadband*
19 *expenditures incurred with respect to qualified equip-*
20 *ment providing next generation broadband services to*
21 *qualified subscribers and taken into account with re-*
22 *spect to such taxable year.*

23 “(c) *WHEN EXPENDITURES TAKEN INTO ACCOUNT.—*
24 *For purposes of this section—*

1 “(1) *IN GENERAL.*—*Qualified broadband expend-*
2 *itures with respect to qualified equipment shall be*
3 *taken into account with respect to the first taxable*
4 *year in which—*

5 “(A) *current generation broadband services*
6 *are provided through such equipment to qualified*
7 *subscribers, or*

8 “(B) *next generation broadband services are*
9 *provided through such equipment to qualified*
10 *subscribers.*

11 “(2) *LIMITATION.*—

12 “(A) *IN GENERAL.*—*Qualified broadband*
13 *expenditures shall be taken into account under*
14 *paragraph (1) only with respect to qualified*
15 *equipment—*

16 “(i) *the original use of which com-*
17 *mences with the taxpayer, and*

18 “(ii) *which is placed in service, after*
19 *December 31, 2008, and before January 1,*
20 *2011.*

21 “(B) *SALE-LEASEBACKS.*—*For purposes of*
22 *subparagraph (A), if property—*

23 “(i) *is originally placed in service*
24 *after December 31, 2008, by any person,*
25 *and*

1 “(ii) sold and leased back by such per-
2 son within 3 months after the date such
3 property was originally placed in service,
4 such property shall be treated as originally
5 placed in service not earlier than the date on
6 which such property is used under the leaseback
7 referred to in clause (ii).

8 “(d) *SPECIAL ALLOCATION RULES FOR CURRENT*
9 *GENERATION BROADBAND SERVICES.*—For purposes of de-
10 termining the current generation broadband credit under
11 subsection (a)(1) with respect to qualified equipment
12 through which current generation broadband services are
13 provided, if the qualified equipment is capable of serving
14 both qualified subscribers and other subscribers, the quali-
15 fied broadband expenditures shall be multiplied by a frac-
16 tion—

17 “(1) the numerator of which is the sum of the
18 number of potential qualified subscribers within the
19 rural areas and the underserved areas and the
20 unserved areas which the equipment is capable of
21 serving with current generation broadband services,
22 and

23 “(2) the denominator of which is the total poten-
24 tial subscriber population of the area which the

1 *equipment is capable of serving with current genera-*
2 *tion broadband services.*

3 “(e) *DEFINITIONS.*—*For purposes of this section—*

4 “(1) *ANTENNA.*—*The term ‘antenna’ means any*
5 *device used to transmit or receive signals through the*
6 *electromagnetic spectrum, including satellite equip-*
7 *ment.*

8 “(2) *CABLE OPERATOR.*—*The term ‘cable oper-*
9 *ator’ has the meaning given such term by section*
10 *602(5) of the Communications Act of 1934 (47 U.S.C.*
11 *522(5)).*

12 “(3) *COMMERCIAL MOBILE SERVICE CARRIER.*—
13 *The term ‘commercial mobile service carrier’ means*
14 *any person authorized to provide commercial mobile*
15 *radio service as defined in section 20.3 of title 47,*
16 *Code of Federal Regulations.*

17 “(4) *CURRENT GENERATION BROADBAND SERV-*
18 *ICE.*—*The term ‘current generation broadband serv-*
19 *ice’ means the transmission of signals at a rate of at*
20 *least 5,000,000 bits per second to the subscriber and*
21 *at least 1,000,000 bits per second from the subscriber*
22 *(at least 3,000,000 bits per second to the subscriber*
23 *and at least 768,000 bits per second from the sub-*
24 *scriber in the case of service through radio trans-*
25 *mission of energy).*

1 “(5) *MULTIPLEXING OR DEMULTIPLEXING.*—The
2 term ‘multiplexing’ means the transmission of 2 or
3 more signals over a single channel, and the term
4 ‘demultiplexing’ means the separation of 2 or more
5 signals previously combined by compatible multi-
6 plexing equipment.

7 “(6) *NEXT GENERATION BROADBAND SERVICE.*—
8 The term ‘next generation broadband service’ means
9 the transmission of signals at a rate of at least
10 100,000,000 bits per second to the subscriber (or its
11 equivalent when the data rate is measured before
12 being compressed for transmission) and at least
13 20,000,000 bits per second from the subscriber (or its
14 equivalent as so measured).

15 “(7) *NONRESIDENTIAL SUBSCRIBER.*—The term
16 ‘nonresidential subscriber’ means any person who
17 purchases broadband services which are delivered to
18 the permanent place of business of such person.

19 “(8) *OPEN VIDEO SYSTEM OPERATOR.*—The term
20 ‘open video system operator’ means any person au-
21 thorized to provide service under section 653 of the
22 Communications Act of 1934 (47 U.S.C. 573).

23 “(9) *OTHER WIRELESS CARRIER.*—The term
24 ‘other wireless carrier’ means any person (other than
25 a telecommunications carrier, commercial mobile

1 *service carrier, cable operator, open video system op-*
2 *erator, or satellite carrier) providing current genera-*
3 *tion broadband services or next generation broadband*
4 *service to subscribers through the radio transmission*
5 *of energy.*

6 “(10) *PACKET SWITCHING.*—*The term ‘packet*
7 *switching’ means controlling or routing the path of a*
8 *digitized transmission signal which is assembled into*
9 *packets or cells.*

10 “(11) *PROVIDER.*—*The term ‘provider’ means,*
11 *with respect to any qualified equipment any—*

12 “(A) *cable operator,*

13 “(B) *commercial mobile service carrier,*

14 “(C) *open video system operator,*

15 “(D) *satellite carrier,*

16 “(E) *telecommunications carrier, or*

17 “(F) *other wireless carrier,*

18 *providing current generation broadband services or*
19 *next generation broadband services to subscribers*
20 *through such qualified equipment.*

21 “(12) *PROVISION OF SERVICES.*—*A provider*
22 *shall be treated as providing services to 1 or more*
23 *subscribers if—*

1 “(A) such a subscriber has been passed by
2 the provider’s equipment and can be connected to
3 such equipment for a standard connection fee,

4 “(B) the provider is physically able to de-
5 liver current generation broadband services or
6 next generation broadband services, as applica-
7 ble, to such a subscriber without making more
8 than an insignificant investment with respect to
9 such subscriber,

10 “(C) the provider has made reasonable ef-
11 forts to make such subscribers aware of the avail-
12 ability of such services,

13 “(D) such services have been purchased by
14 1 or more such subscribers, and

15 “(E) such services are made available to
16 such subscribers at average prices comparable to
17 those at which the provider makes available
18 similar services in any areas in which the pro-
19 vider makes available such services.

20 “(13) QUALIFIED EQUIPMENT.—

21 “(A) IN GENERAL.—The term ‘qualified
22 equipment’ means property with respect to which
23 depreciation (or amortization in lieu of depre-
24 ciation) is allowable and which provides current

1 *generation broadband services or next generation*
2 *broadband services—*

3 “(i) *at least a majority of the time*
4 *during periods of maximum demand to*
5 *each subscriber who is utilizing such serv-*
6 *ices, and*

7 “(ii) *in a manner substantially the*
8 *same as such services are provided by the*
9 *provider to subscribers through equipment*
10 *with respect to which no credit is allowed*
11 *under subsection (a)(1).*

12 “(B) *ONLY CERTAIN INVESTMENT TAKEN*
13 *INTO ACCOUNT.—Except as provided in subpara-*
14 *graph (C) or (D), equipment shall be taken into*
15 *account under subparagraph (A) only to the ex-*
16 *tent it—*

17 “(i) *extends from the last point of*
18 *switching to the outside of the unit, build-*
19 *ing, dwelling, or office owned or leased by*
20 *a subscriber in the case of a telecommuni-*
21 *cations carrier or broadband-over-powerline*
22 *operator,*

23 “(ii) *extends from the customer side of*
24 *the mobile telephone switching office to a*
25 *transmission/receive antenna (including*

1 *such antenna) owned or leased by a sub-*
2 *scriber in the case of a commercial mobile*
3 *service carrier,*

4 *“(iii) extends from the customer side of*
5 *the headend to the outside of the unit, build-*
6 *ing, dwelling, or office owned or leased by*
7 *a subscriber in the case of a cable operator*
8 *or open video system operator, or*

9 *“(iv) extends from a transmission/re-*
10 *ceive antenna (including such antenna)*
11 *which transmits and receives signals to or*
12 *from multiple subscribers, to a trans-*
13 *mission/receive antenna (including such an-*
14 *tenna) on the outside of the unit, building,*
15 *dwelling, or office owned or leased by a sub-*
16 *scriber in the case of a satellite carrier or*
17 *other wireless carrier, unless such other*
18 *wireless carrier is also a telecommuni-*
19 *cations carrier.*

20 *“(C) PACKET SWITCHING EQUIPMENT.—*
21 *Packet switching equipment, regardless of loca-*
22 *tion, shall be taken into account under subpara-*
23 *graph (A) only if it is deployed in connection*
24 *with equipment described in subparagraph (B)*
25 *and is uniquely designed to perform the function*

1 *of packet switching for current generation*
2 *broadband services or next generation broadband*
3 *services, but only if such packet switching is the*
4 *last in a series of such functions performed in*
5 *the transmission of a signal to a subscriber or*
6 *the first in a series of such functions performed*
7 *in the transmission of a signal from a sub-*
8 *scriber.*

9 “(D) *MULTIPLEXING AND DEMULTIPLEXING*
10 *EQUIPMENT.—Multiplexing and demultiplexing*
11 *equipment shall be taken into account under sub-*
12 *paragraph (A) only to the extent it is deployed*
13 *in connection with equipment described in sub-*
14 *paragraph (B) and is uniquely designed to per-*
15 *form the function of multiplexing and*
16 *demultiplexing packets or cells of data and mak-*
17 *ing associated application adaptations, but only if*
18 *such multiplexing or demultiplexing equipment*
19 *is located between packet switching equipment*
20 *described in subparagraph (C) and the sub-*
21 *scriber’s premises.*

22 “(14) *QUALIFIED BROADBAND EXPENDITURE.—*

23 “(A) *IN GENERAL.—The term ‘qualified*
24 *broadband expenditure’ means any amount—*

1 “(i) chargeable to capital account with
2 respect to the purchase and installation of
3 qualified equipment (including any up-
4 grades thereto) for which depreciation is al-
5 lowable under section 168, and

6 “(ii) incurred after December 31, 2008,
7 and before January 1, 2011.

8 “(B) CERTAIN SATELLITE EXPENDITURES
9 EXCLUDED.—Such term shall not include any
10 expenditure with respect to the launching of any
11 satellite equipment.

12 “(C) LEASED EQUIPMENT.—Such term shall
13 include so much of the purchase price paid by
14 the lessor of equipment subject to a lease de-
15 scribed in subsection (c)(2)(B) as is attributable
16 to expenditures incurred by the lessee which
17 would otherwise be described in subparagraph
18 (A).

19 “(15) QUALIFIED SUBSCRIBER.—The term
20 ‘qualified subscriber’ means—

21 “(A) with respect to the provision of current
22 generation broadband services—

23 “(i) any nonresidential subscriber
24 maintaining a permanent place of business

1 *in a rural area, an underserved area, or an*
2 *unserved area, or*

3 “(ii) *any residential subscriber resid-*
4 *ing in a dwelling located in a rural area,*
5 *an underserved area, or an unserved area*
6 *which is not a saturated market, and*

7 “(B) *with respect to the provision of next*
8 *generation broadband services—*

9 “(i) *any nonresidential subscriber*
10 *maintaining a permanent place of business*
11 *in a rural area, an underserved area, or an*
12 *unserved area , or*

13 “(ii) *any residential subscriber.*

14 “(16) *RESIDENTIAL SUBSCRIBER.—The term*
15 *‘residential subscriber’ means any individual who*
16 *purchases broadband services which are delivered to*
17 *such individual’s dwelling.*

18 “(17) *RURAL AREA.—The term ‘rural area’*
19 *means any census tract which—*

20 “(A) *is not within 10 miles of any incor-*
21 *porated or census designated place containing*
22 *more than 25,000 people, and*

23 “(B) *is not within a county or county*
24 *equivalent which has an overall population den-*

1 *sity of more than 500 people per square mile of*
2 *land.*

3 “(18) *RURAL SUBSCRIBER.*—*The term ‘rural*
4 *subscriber’ means any residential subscriber residing*
5 *in a dwelling located in a rural area or nonresiden-*
6 *tial subscriber maintaining a permanent place of*
7 *business located in a rural area.*

8 “(19) *SATELLITE CARRIER.*—*The term ‘satellite*
9 *carrier’ means any person using the facilities of a*
10 *satellite or satellite service licensed by the Federal*
11 *Communications Commission and operating in the*
12 *Fixed-Satellite Service under part 25 of title 47 of the*
13 *Code of Federal Regulations or the Direct Broadcast*
14 *Satellite Service under part 100 of title 47 of such*
15 *Code to establish and operate a channel of commu-*
16 *nications for distribution of signals, and owning or*
17 *leasing a capacity or service on a satellite in order*
18 *to provide such point-to-multipoint distribution.*

19 “(20) *SATURATED MARKET.*—*The term ‘satu-*
20 *rated market’ means any census tract in which, as of*
21 *the date of the enactment of this section—*

22 “(A) *current generation broadband services*
23 *have been provided by a single provider to 85*
24 *percent or more of the total number of potential*

1 *residential subscribers residing in dwellings lo-*
2 *cated within such census tract, and*

3 “(B) such services can be utilized—

4 “(i) at least a majority of the time
5 during periods of maximum demand by
6 each such subscriber who is utilizing such
7 services, and

8 “(ii) in a manner substantially the
9 same as such services are provided by the
10 provider to subscribers through equipment
11 with respect to which no credit is allowed
12 under subsection (a)(1).

13 “(21) *SUBSCRIBER.*—The term ‘subscriber’
14 means any person who purchases current generation
15 broadband services or next generation broadband serv-
16 ices.

17 “(22) *TELECOMMUNICATIONS CARRIER.*—The
18 term ‘telecommunications carrier’ has the meaning
19 given such term by section 3(44) of the Communica-
20 tions Act of 1934 (47 U.S.C. 153(44)), but—

21 “(A) includes all members of an affiliated
22 group of which a telecommunications carrier is
23 a member, and

24 “(B) does not include any commercial mo-
25 bile service carrier.

1 “(23) *TOTAL POTENTIAL SUBSCRIBER POPU-*
2 *LATION.—The term ‘total potential subscriber popu-*
3 *lation’ means, with respect to any area and based on*
4 *the most recent census data, the total number of po-*
5 *tential residential subscribers residing in dwellings*
6 *located in such area and potential nonresidential sub-*
7 *scribers maintaining permanent places of business lo-*
8 *cated in such area.*

9 “(24) *UNDERSERVED AREA.—The term ‘under-*
10 *served area’ means any census tract which is located*
11 *in—*

12 “(A) *an empowerment zone or enterprise*
13 *community designated under section 1391,*

14 “(B) *the District of Columbia Enterprise*
15 *Zone established under section 1400,*

16 “(C) *a renewal community designated*
17 *under section 1400E, or*

18 “(D) *a low-income community designated*
19 *under section 45D.*

20 “(25) *UNDERSERVED SUBSCRIBER.—The term*
21 *‘underserved subscriber’ means any residential sub-*
22 *scriber residing in a dwelling located in an under-*
23 *served area or nonresidential subscriber maintaining*
24 *a permanent place of business located in an under-*
25 *served area.*

1 “(26) *UNSERVED AREA*.—The term ‘unserved
2 area’ means any census tract in which no current
3 generation broadband services are provided, as cer-
4 tified by the State in which such tract is located not
5 later than September 30, 2009.

6 “(27) *UNSERVED SUBSCRIBER*.—The term
7 ‘unserved subscriber’ means any residential subscriber
8 residing in a dwelling located in an unserved area or
9 nonresidential subscriber maintaining a permanent
10 place of business located in an unserved area.”.

11 (b) *CREDIT TO BE PART OF INVESTMENT CREDIT*.—
12 Section 46 (relating to the amount of investment credit),
13 as amended by this Act, is amended by striking “and” at
14 the end of paragraph (4), by striking the period at the end
15 of paragraph (5) and inserting “, and”, and by adding at
16 the end the following:

17 “(6) the broadband Internet access credit.”

18 (c) *SPECIAL RULE FOR MUTUAL OR COOPERATIVE*
19 *TELEPHONE COMPANIES*.—Section 501(c)(12)(B) (relating
20 to list of exempt organizations) is amended by striking “or”
21 at the end of clause (iii), by striking the period at the end
22 of clause (iv) and inserting “, or”, and by adding at the
23 end the following new clause:

24 “(v) from the sale of property subject to
25 a lease described in section 48D(c)(2)(B),

1 *but only to the extent such income does not*
2 *in any year exceed an amount equal to the*
3 *credit for qualified broadband expenditures*
4 *which would be determined under section*
5 *48D for such year if the mutual or coopera-*
6 *tive telephone company was not exempt*
7 *from taxation and was treated as the owner*
8 *of the property subject to such lease.”.*

9 *(d) CONFORMING AMENDMENTS.—*

10 *(1) Section 49(a)(1)(C), as amended by this Act,*
11 *is amended by striking “and” at the end of clause*
12 *(iv), by striking the period at the end of clause (v)*
13 *and inserting “, and”, and by adding after clause (v)*
14 *the following new clause:*

15 *“(vi) the portion of the basis of any*
16 *qualified equipment attributable to quali-*
17 *fied broadband expenditures under section*
18 *48D.”.*

19 *(2) The table of sections for subpart E of part IV*
20 *of subchapter A of chapter 1, as amended by this Act,*
21 *is amended by inserting after the item relating to sec-*
22 *tion 48C the following:*

“Sec. 48D. Broadband internet access credit”.

23 *(e) DESIGNATION OF CENSUS TRACTS.—*

24 *(1) IN GENERAL.—The Secretary of the Treasury*
25 *shall, not later than 90 days after the date of the en-*

1 *actment of this Act, designate and publish those cen-*
2 *sus tracts meeting the criteria described in para-*
3 *graphs (17), (23), (24), and (26) of section 48D(e) of*
4 *the Internal Revenue Code of 1986 (as added by this*
5 *section). In making such designations, the Secretary*
6 *of the Treasury shall consult with such other depart-*
7 *ments and agencies as the Secretary determines ap-*
8 *propriate.*

9 (2) *SATURATED MARKET.—*

10 (A) *IN GENERAL.—For purposes of desig-*
11 *nating and publishing those census tracts meet-*
12 *ing the criteria described in subsection (e)(20) of*
13 *such section 48D—*

14 (i) *the Secretary of the Treasury shall*
15 *prescribe not later than 30 days after the*
16 *date of the enactment of this Act the form*
17 *upon which any provider which takes the*
18 *position that it meets such criteria with re-*
19 *spect to any census tract shall submit a list*
20 *of such census tracts (and any other infor-*
21 *mation required by the Secretary) not later*
22 *than 60 days after the date of the publica-*
23 *tion of such form, and*

24 (ii) *the Secretary of the Treasury shall*
25 *publish an aggregate list of such census*

1 *tracts submitted and the applicable pro-*
2 *viders not later than 30 days after the last*
3 *date such submissions are allowed under*
4 *clause (i).*

5 *(B) NO SUBSEQUENT LISTS REQUIRED.—*
6 *The Secretary of the Treasury shall not be re-*
7 *quired to publish any list of census tracts meet-*
8 *ing such criteria subsequent to the list described*
9 *in subparagraph (A)(ii).*

10 *(C) AUTHORITY TO DISREGARD FALSE SUB-*
11 *MISSIONS.—In addition to imposing any other*
12 *applicable penalties, the Secretary of the Treas-*
13 *ury shall have the discretion to disregard any*
14 *form described in subparagraph (A)(i) on which*
15 *a provider knowingly submitted false informa-*
16 *tion.*

17 *(f) OTHER REGULATORY MATTERS.—*

18 *(1) PROHIBITION.—No Federal or State agency*
19 *or instrumentality shall adopt regulations or rate-*
20 *making procedures that would have the effect of elimi-*
21 *nating or reducing any credit or portion thereof al-*
22 *lowed under section 48D of the Internal Revenue Code*
23 *of 1986 (as added by this section) or otherwise sub-*
24 *verting the purpose of this section.*

1 (2) *TREASURY REGULATORY AUTHORITY.*—*It is*
2 *the intent of Congress in providing the broadband*
3 *Internet access credit under section 48D of the Inter-*
4 *nal Revenue Code of 1986 (as added by this section)*
5 *to provide incentives for the purchase, installation,*
6 *and connection of equipment and facilities offering*
7 *expanded broadband access to the Internet for users*
8 *in certain low income and rural areas of the United*
9 *States, as well as to residential users nationwide, in*
10 *a manner that maintains competitive neutrality*
11 *among the various classes of providers of broadband*
12 *services. Accordingly, the Secretary of the Treasury*
13 *shall prescribe such regulations as may be necessary*
14 *or appropriate to carry out the purposes of section*
15 *48D of such Code, including—*

16 (A) *regulations to determine how and when*
17 *a taxpayer that incurs qualified broadband ex-*
18 *penditures satisfies the requirements of section*
19 *48D of such Code to provide broadband services,*
20 *and*

21 (B) *regulations describing the information,*
22 *records, and data taxpayers are required to pro-*
23 *vide the Secretary to substantiate compliance*
24 *with the requirements of section 48D of such*
25 *Code.*

1 (g) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply to expenditures incurred after December*
3 *31, 2008.*

4 **PART IX—CLARIFICATION OF REGULATIONS RE-**
5 **LATED TO LIMITATIONS ON CERTAIN BUILT-**
6 **IN LOSSES FOLLOWING AN OWNERSHIP**
7 **CHANGE**

8 **SEC. 1281. CLARIFICATION OF REGULATIONS RELATED TO**
9 **LIMITATIONS ON CERTAIN BUILT-IN LOSSES**
10 **FOLLOWING AN OWNERSHIP CHANGE.**

11 (a) *FINDINGS.*—*Congress finds as follows:*

12 (1) *The delegation of authority to the Secretary*
13 *of the Treasury under section 382(m) of the Internal*
14 *Revenue Code of 1986 does not authorize the Sec-*
15 *retary to provide exemptions or special rules that are*
16 *restricted to particular industries or classes of tax-*
17 *payers.*

18 (2) *Internal Revenue Service Notice 2008–83 is*
19 *inconsistent with the congressional intent in enacting*
20 *such section 382(m).*

21 (3) *The legal authority to prescribe Internal Rev-*
22 *enue Service Notice 2008–83 is doubtful.*

23 (4) *However, as taxpayers should generally be*
24 *able to rely on guidance issued by the Secretary of the*
25 *Treasury legislation is necessary to clarify the force*

1 *and effect of Internal Revenue Service Notice 2008–*
2 *83 and restore the proper application under the Inter-*
3 *nal Revenue Code of 1986 of the limitation on built-*
4 *in losses following an ownership change of a bank.*

5 *(b) DETERMINATION OF FORCE AND EFFECT OF IN-*
6 *TERNAL REVENUE SERVICE NOTICE 2008–83 EXEMPTING*
7 *BANKS FROM LIMITATION ON CERTAIN BUILT-IN LOSSES*
8 *FOLLOWING OWNERSHIP CHANGE.—*

9 *(1) IN GENERAL.—Internal Revenue Service No-*
10 *tice 2008–83—*

11 *(A) shall be deemed to have the force and ef-*
12 *fect of law with respect to any ownership change*
13 *(as defined in section 382(g) of the Internal Rev-*
14 *enue Code of 1986) occurring on or before Janu-*
15 *ary 16, 2009, and*

16 *(B) shall have no force or effect with respect*
17 *to any ownership change after such date.*

18 *(2) BINDING CONTRACTS.—Notwithstanding*
19 *paragraph (1), Internal Revenue Service Notice*
20 *2008–83 shall have the force and effect of law with re-*
21 *spect to any ownership change (as so defined) which*
22 *occurs after January 16, 2009, if such change—*

23 *(A) is pursuant to a written binding con-*
24 *tract entered into on or before such date, or*

1 (B) is pursuant to a written agreement en-
2 tered into on or before such date and such agree-
3 ment was described on or before such date in a
4 public announcement or in a filing with the Se-
5 curities and Exchange Commission required by
6 reason of such ownership change.

7 **Subtitle D—Manufacturing**
8 **Recovery Provisions**

9 **SEC. 1301. TEMPORARY EXPANSION OF AVAILABILITY OF IN-**
10 **DUSTRIAL DEVELOPMENT BONDS TO FACILI-**
11 **TIES MANUFACTURING INTANGIBLE PROP-**
12 **ERTY.**

13 (a) *IN GENERAL.*—Subparagraph (C) of section
14 144(a)(12) is amended—

15 (1) by striking “For purposes of this paragraph,
16 the term” and inserting “For purposes of this para-
17 graph—

18 “(i) *IN GENERAL.*—The term”, and

19 (2) by striking the last sentence and inserting
20 the following new clauses:

21 “(ii) *CERTAIN FACILITIES IN-*
22 *CLUDED.*—Such term includes facilities
23 which are directly related and ancillary to
24 a manufacturing facility (determined with-
25 out regard to this clause) if—

1 “(I) such facilities are located on
2 the same site as the manufacturing fa-
3 cility, and

4 “(II) not more than 25 percent of
5 the net proceeds of the issue are used to
6 provide such facilities.

7 “(iii) *SPECIAL RULES FOR BONDS*
8 *ISSUED IN 2009 AND 2010.—In the case of*
9 *any issue made after the date of enactment*
10 *of this clause and before January 1, 2011,*
11 *clause (ii) shall not apply and the net pro-*
12 *ceeds from a bond shall be considered to be*
13 *used to provide a manufacturing facility if*
14 *such proceeds are used to provide—*

15 “(I) a facility which is used in
16 the creation or production of intangible
17 property which is described in section
18 197(d)(1)(C)(iii), or

19 “(II) a facility which is function-
20 ally related and subordinate to a man-
21 ufacturing facility (determined without
22 regard to this subclause) if such facil-
23 ity is located on the same site as the
24 manufacturing facility.”.

1 (b) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply to bonds issued after the date of the en-*
3 *actment of this Act.*

4 **SEC. 1302. CREDIT FOR INVESTMENT IN ADVANCED EN-**
5 **ERGY FACILITIES.**

6 (a) *IN GENERAL.*—*Section 46 (relating to amount of*
7 *credit) is amended by striking “and” at the end of para-*
8 *graph (3), by striking the period at the end of paragraph*
9 *(4), and by adding at the end the following new paragraph:*

10 “(5) *the qualifying advanced energy project cred-*
11 *it.*”.

12 (b) *AMOUNT OF CREDIT.*—*Subpart E of part IV of*
13 *subchapter A of chapter 1 (relating to rules for computing*
14 *investment credit) is amended by inserting after section*
15 *48B the following new section:*

16 **“SEC. 48C. QUALIFYING ADVANCED ENERGY PROJECT**
17 **CREDIT.**

18 “(a) *IN GENERAL.*—*For purposes of section 46, the*
19 *qualifying advanced energy project credit for any taxable*
20 *year is an amount equal to 30 percent of the qualified in-*
21 *vestment for such taxable year with respect to any quali-*
22 *fying advanced energy project of the taxpayer.*

23 “(b) *QUALIFIED INVESTMENT.*—

24 “(1) *IN GENERAL.*—*For purposes of subsection*
25 *(a), the qualified investment for any taxable year is*

1 *the basis of eligible property placed in service by the*
2 *taxpayer during such taxable year which is part of*
3 *a qualifying advanced energy project—*

4 *“(A)(i) the construction, reconstruction, or*
5 *erection of which is completed by the taxpayer*
6 *after October 31, 2008, or*

7 *“(ii) which is acquired by the taxpayer if*
8 *the original use of such eligible property com-*
9 *mences with the taxpayer after October 31, 2008,*
10 *and*

11 *“(B) with respect to which depreciation (or*
12 *amortization in lieu of depreciation) is allow-*
13 *able.*

14 *“(2) CERTAIN QUALIFIED PROGRESS EXPENDI-*
15 *TURES RULES MADE APPLICABLE.—Rules similar to*
16 *the rules of subsections (c)(4) and (d) of section 46 (as*
17 *in effect on the day before the enactment of the Rev-*
18 *enue Reconciliation Act of 1990) shall apply for pur-*
19 *poses of this section.*

20 *“(3) LIMITATION.—The amount which is treated*
21 *for all taxable years with respect to any qualifying*
22 *advanced energy project shall not exceed the amount*
23 *designated by the Secretary as eligible for the credit*
24 *under this section.*

25 *“(c) DEFINITIONS.—*

1 “(1) QUALIFYING ADVANCED ENERGY
2 PROJECT.—

3 “(A) IN GENERAL.—The term ‘qualifying
4 advanced energy project’ means a project—

5 “(i) which re-equips, expands, or estab-
6 lishes a manufacturing facility for the pro-
7 duction of property which is—

8 “(I) designed to be used to
9 produce energy from the sun, wind,
10 geothermal deposits (within the mean-
11 ing of section 613(e)(2)), or other re-
12 newable resources,

13 “(II) designed to manufacture fuel
14 cells, microturbines, or an energy stor-
15 age system for use with electric or hy-
16 brid-electric motor vehicles,

17 “(III) designed to manufacture
18 electric grids to support the trans-
19 mission of intermittent sources of re-
20 newable energy, including storage of
21 such energy,

22 “(IV) designed to capture and se-
23 quester carbon dioxide emissions,

24 “(V) designed to refine or blend
25 renewable fuels or to produce energy

1 *conservation technologies (including*
2 *energy-conserving lighting technologies*
3 *and smart grid technologies), or*

4 “*(VI) other advanced energy prop-*
5 *erty designed to reduce greenhouse gas*
6 *emissions as may be determined by the*
7 *Secretary, and*

8 “*(ii) any portion of the qualified in-*
9 *vestment of which is certified by the Sec-*
10 *retary under subsection (d) as eligible for a*
11 *credit under this section.*

12 “*(B) EXCEPTION.—Such term shall not in-*
13 *clude any portion of a project for the production*
14 *of any property which is used in the refining or*
15 *blending of any transportation fuel (other than*
16 *renewable fuels).*

17 “*(2) ELIGIBLE PROPERTY.—The term ‘eligible*
18 *property’ means any property which is part of a*
19 *qualifying advanced energy project and is necessary*
20 *for the production of property described in paragraph*
21 *(1)(A)(i).*

22 “*(d) QUALIFYING ADVANCED ENERGY PROJECT PRO-*
23 *GRAM.—*

24 “*(1) ESTABLISHMENT.—*

1 “(A) *IN GENERAL.*—Not later than 180
2 *days after the date of enactment of this section,*
3 *the Secretary, in consultation with the Secretary*
4 *of Energy, shall establish a qualifying advanced*
5 *energy project program to consider and award*
6 *certifications for qualified investments eligible*
7 *for credits under this section to qualifying ad-*
8 *vanced energy project sponsors.*

9 “(B) *LIMITATION.*—The total amount of
10 *credits that may be allocated under the program*
11 *shall not exceed \$2,000,000,000.*

12 “(2) *CERTIFICATION.*—

13 “(A) *APPLICATION PERIOD.*—Each appli-
14 *cant for certification under this paragraph shall*
15 *submit an application containing such informa-*
16 *tion as the Secretary may require during the 3-*
17 *year period beginning on the date the Secretary*
18 *establishes the program under paragraph (1).*

19 “(B) *TIME TO MEET CRITERIA FOR CER-*
20 *TIFICATION.*—Each applicant for certification
21 *shall have 2 years from the date of acceptance by*
22 *the Secretary of the application during which to*
23 *provide to the Secretary evidence that the re-*
24 *quirements of the certification have been met.*

1 “(C) *PERIOD OF ISSUANCE.*—*An applicant*
2 *which receives a certification shall have 5 years*
3 *from the date of issuance of the certification in*
4 *order to place the project in service and if such*
5 *project is not placed in service by that time pe-*
6 *riod then the certification shall no longer be*
7 *valid.*

8 “(3) *SELECTION CRITERIA.*—*In determining*
9 *which qualifying advanced energy projects to certify*
10 *under this section, the Secretary—*

11 “(A) *shall take into consideration only those*
12 *projects where there is a reasonable expectation*
13 *of commercial viability, and*

14 “(B) *shall take into consideration which*
15 *projects—*

16 “(i) *will provide the greatest domestic*
17 *job creation (both direct and indirect) dur-*
18 *ing the credit period,*

19 “(ii) *will provide the greatest net im-*
20 *pect in avoiding or reducing air pollutants*
21 *or anthropogenic emissions of greenhouse*
22 *gases,*

23 “(iii) *have the greatest readiness for*
24 *commercial employment, replication, and*

1 *further commercial use in the United*
2 *States,*

3 “(iv) *will provide the greatest benefit*
4 *in terms of newness in the commercial mar-*
5 *ket,*

6 “(v) *have the lowest levelized cost of*
7 *generated or stored energy, or of measured*
8 *reduction in energy consumption or green-*
9 *house gas emission (based on costs of the*
10 *full supply chain), and*

11 “(vi) *have the shortest project time*
12 *from certification to completion.*

13 “(4) *REVIEW AND REDISTRIBUTION.—*

14 “(A) *REVIEW.—Not later than 6 years after*
15 *the date of enactment of this section, the Sec-*
16 *retary shall review the credits allocated under*
17 *this section as of the date which is 6 years after*
18 *the date of enactment of this section.*

19 “(B) *REDISTRIBUTION.—The Secretary*
20 *may reallocate credits awarded under this sec-*
21 *tion if the Secretary determines that—*

22 “(i) *there is an insufficient quantity of*
23 *qualifying applications for certification*
24 *pending at the time of the review, or*

1 “(ii) any certification made pursuant
2 to paragraph (2) has been revoked pursuant
3 to paragraph (2)(B) because the project sub-
4 ject to the certification has been delayed as
5 a result of third party opposition or litiga-
6 tion to the proposed project.

7 “(C) REALLOCATION.—If the Secretary de-
8 termines that credits under this section are
9 available for reallocation pursuant to the re-
10 quirements set forth in paragraph (2), the Sec-
11 retary is authorized to conduct an additional
12 program for applications for certification.

13 “(5) DISCLOSURE OF ALLOCATIONS.—The Sec-
14 retary shall, upon making a certification under this
15 subsection, publicly disclose the identity of the appli-
16 cant and the amount of the credit with respect to such
17 applicant.

18 “(e) DENIAL OF DOUBLE BENEFIT.—A credit shall not
19 be allowed under this section for any qualified investment
20 for which a credit is allowed under section 48, 48A, or
21 48B.”.

22 (c) CONFORMING AMENDMENTS.—

23 (1) Section 49(a)(1)(C) is amended by striking
24 “and” at the end of clause (iii), by striking the period

1 at the end of clause (iv) and inserting “, and”, and
2 by adding after clause (iv) the following new clause:

3 “(v) the basis of any property which is
4 part of a qualifying advanced energy
5 project under section 48C.”.

6 (2) *The table of sections for subpart E of part IV*
7 *of subchapter A of chapter 1 is amended by inserting*
8 *after the item relating to section 48B the following*
9 *new item:*

 “48C. Qualifying advanced energy project credit.”.

10 (d) *EFFECTIVE DATE.*—*The amendments made by this*
11 *section shall apply to periods after the date of the enactment*
12 *of this Act, under rules similar to the rules of section 48(m)*
13 *of the Internal Revenue Code of 1986 (as in effect on the*
14 *day before the date of the enactment of the Revenue Rec-*
15 *onciliation Act of 1990).*

16 **SEC. 1303. INCENTIVES FOR MANUFACTURING FACILITIES**
17 **PRODUCING PLUG-IN ELECTRIC DRIVE**
18 **MOTOR VEHICLES AND COMPONENTS.**

19 (a) *DEDUCTION FOR MANUFACTURING FACILITIES.*—
20 *Part VI of subchapter B of chapter 1 (relating to itemized*
21 *deductions for individuals and corporations) is amended by*
22 *inserting after section 179E the following new section:*

1 **“SEC. 179F. ELECTION TO EXPENSE MANUFACTURING FA-**
2 **CILITIES PRODUCING PLUG-IN ELECTRIC**
3 **DRIVE MOTOR VEHICLES AND COMPONENTS.**

4 “(a) *TREATMENT AS EXPENSES.*—A taxpayer may
5 elect to treat the applicable percentage of the cost of any
6 qualified plug-in electric drive motor vehicle manufacturing
7 facility property as an expense which is not chargeable to
8 a capital account. Any cost so treated shall be allowed as
9 a deduction for the taxable year in which the qualified man-
10 ufacturing facility property is placed in service.

11 “(b) *APPLICABLE PERCENTAGE.*—For purposes of sub-
12 section (a), the applicable percentage is—

13 “(1) 100 percent, in the case of qualified plug-
14 in electric drive motor vehicle manufacturing facility
15 property which is placed in service before January 1,
16 2012, and

17 “(2) 50 percent, in the case of qualified plug-in
18 electric drive motor vehicle manufacturing facility
19 property which is placed in service after December 31,
20 2011, and before January 1, 2015.

21 “(c) *ELECTION.*—

22 “(1) *IN GENERAL.*—An election under this sec-
23 tion for any taxable year shall be made on the tax-
24 payer’s return of the tax imposed by this chapter for
25 the taxable year. Such election shall be made in such

1 *manner as the Secretary may by regulations pre-*
2 *scribe.*

3 “(2) *ELECTION IRREVOCABLE.*—*Any election*
4 *made under this section may not be revoked except*
5 *with the consent of the Secretary.*

6 “(d) *QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR*
7 *VEHICLE MANUFACTURING FACILITY PROPERTY.*—*For*
8 *purposes of this section—*

9 “(1) *IN GENERAL.*—*The term ‘qualified plug-in*
10 *electric drive motor vehicle manufacturing facility*
11 *property’ means any qualified property—*

12 “(A) *the original use of which commences*
13 *with the taxpayer,*

14 “(B) *which is placed in service by the tax-*
15 *payer after the date of the enactment of this sec-*
16 *tion and before January 1, 2015, and*

17 “(C) *no written binding contract for the*
18 *construction of which was in effect on or before*
19 *the date of the enactment of this section.*

20 “(2) *QUALIFIED PROPERTY.*—

21 “(A) *IN GENERAL.*—*The term ‘qualified*
22 *property’ means any property which is a facility*
23 *or a portion of a facility used for the production*
24 *of—*

1 “(i) any new qualified plug-in electric
2 drive motor vehicle (as defined by section
3 30D(c)), or

4 “(ii) any eligible component.

5 “(B) *ELIGIBLE COMPONENT*.—The term ‘eli-
6 gible component’ means any battery, any electric
7 motor or generator, or any power control unit
8 which is designed specifically for use with a new
9 qualified plug-in electric drive motor vehicle (as
10 so defined).

11 “(e) *SPECIAL RULE FOR DUAL USE PROPERTY*.—In
12 the case of any qualified plug-in electric drive motor vehicle
13 manufacturing facility property which is used to produce
14 both qualified property and other property which is not
15 qualified property, the amount of costs taken into account
16 under subsection (a) shall be reduced by an amount equal
17 to—

18 “(1) the total amount of such costs (determined
19 before the application of this subsection), multiplied
20 by

21 “(2) the percentage of property expected to be
22 produced which is not qualified property.

23 “(f) *ELECTION TO RECEIVE LOAN IN LIEU OF DEDUC-*
24 *TION*.—

1 “(1) *IN GENERAL.*—If a taxpayer elects to have
2 this subsection apply for any taxable year—

3 “(A) subsection (a) shall not apply to any
4 qualified plug-in electric drive motor vehicle
5 manufacturing facility property placed in serv-
6 ice by the taxpayer,

7 “(B) such taxpayer shall receive a loan
8 from the Secretary in an amount and under
9 such terms as provided in section 1303(b) of the
10 *American Recovery and Reinvestment Tax Act of*
11 2009, and

12 “(C) in the taxable year in which such
13 qualified loan is repaid, each of the limitations
14 described in paragraph (2) shall be increased by
15 the qualified plug-in electric drive motor vehicle
16 manufacturing facility amount which is—

17 “(i) determined under paragraph (3),

18 and

19 “(ii) allocated to such limitation under
20 paragraph (4).

21 “(2) *LIMITATIONS TO BE INCREASED.*—The limi-
22 tations described in this paragraph are—

23 “(A) the limitation imposed by section
24 38(c), and

1 “(B) *the limitation imposed by section*
2 *53(c).*”

3 “(3) *QUALIFIED PLUG-IN ELECTRIC DRIVE*
4 *MOTOR VEHICLE MANUFACTURING FACILITY*
5 *AMOUNT.—For purposes of this paragraph—*

6 “(A) *IN GENERAL.—The qualified plug-in*
7 *electric drive motor vehicle manufacturing facil-*
8 *ity amount is an amount equal to the applicable*
9 *percentage of any qualified plug-in electric drive*
10 *motor vehicle manufacturing facility which is*
11 *placed in service during the taxable year.*”

12 “(B) *APPLICABLE PERCENTAGE.—For pur-*
13 *poses of subparagraph (A), the applicable per-*
14 *centage is—*

15 “(i) *35 percent, in the case of qualified*
16 *plug-in electric drive motor vehicle manu-*
17 *facturing facility property which is placed*
18 *in service before January 1, 2012, and*

19 “(ii) *17.5 percent, in the case of quali-*
20 *fied plug-in electric drive motor vehicle*
21 *manufacturing facility property which is*
22 *placed in service after December 31, 2011,*
23 *and before January 1, 2015.*”

24 “(C) *SPECIAL RULE FOR DUAL USE PROP-*
25 *ERTY.—In the case of any qualified plug-in elec-*

1 *tric drive motor vehicle manufacturing facility*
2 *property which is used to produce both qualified*
3 *property and other property which is not quali-*
4 *fied property, the amount of costs taken into ac-*
5 *count under subparagraph (A) shall be reduced*
6 *by an amount equal to—*

7 *“(i) the total amount of such costs (de-*
8 *termined before the application of this sub-*
9 *paragraph), multiplied by*

10 *“(ii) the percentage of property ex-*
11 *pected to be produced which is not qualified*
12 *property.*

13 *“(4) ALLOCATION OF QUALIFIED PLUG-IN ELEC-*
14 *TRIC DRIVE MOTOR VEHICLE MANUFACTURING FACIL-*
15 *ITY AMOUNT.—The taxpayer shall, at such time and*
16 *in such manner as the Secretary may prescribe, speci-*
17 *fy the portion (if any) of the qualified plug-in electric*
18 *drive motor vehicle manufacturing facility amount*
19 *for the taxable year which is to be allocated to each*
20 *of the limitations described in paragraph (2) for such*
21 *taxable year.*

22 *“(5) ELECTION.—*

23 *“(A) IN GENERAL.—An election under this*
24 *subsection for any taxable year shall be made on*
25 *the taxpayer’s return of the tax imposed by this*

1 *chapter for the taxable year. Such election shall*
2 *be made in such manner as the Secretary may*
3 *by regulations prescribe.*

4 “(B) *ELECTION IRREVOCABLE.—Any elec-*
5 *tion made under this subsection may not be re-*
6 *voked except with the consent of the Secretary.”.*

7 **(b) LOAN PROGRAM.—**

8 **(1) IN GENERAL.—***The Secretary of the Treasury*
9 *(or the Secretary’s delegate) shall provide a loan to*
10 *any person who is allowed a deduction under section*
11 *179F of the Internal Revenue Code and who makes an*
12 *election under section 179F(f) of such Code in an*
13 *amount equal to the qualified plug-in electric drive*
14 *motor vehicle manufacturing facility amount (as de-*
15 *fined in such section 179F(f)).*

16 **(2) TERM.—***Such loan shall be in the form of a*
17 *senior note issued by the taxpayer to the Secretary of*
18 *the Treasury, secured by the qualified plug-in electric*
19 *drive motor vehicle manufacturing facility property*
20 *(as defined in section 179F of the Internal Revenue*
21 *Code of 1986) of the taxpayer, and having a term of*
22 *20 years and interest payable at the applicable Fed-*
23 *eral rate (as determined under section 1274(d) of the*
24 *Internal Revenue Code of 1986).*

1 (3) *APPROPRIATIONS.*—*There is hereby appro-*
 2 *priated to the Secretary of the Treasury such sums as*
 3 *may be necessary to carry out this subsection.*

4 (c) *CLERICAL AMENDMENT.*—*The table of sections for*
 5 *part VI of subchapter B of chapter 1 is amended by adding*
 6 *at the end the following new item:*

*“Sec. 179F. Election to expense manufacturing facilities producing plug-in elec-
 tric drive motor vehicle and components.”.*

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

10 **Subtitle E—Economic Recovery**

11 **Tools**

12 **SEC. 1401. RECOVERY ZONE BONDS.**

13 (a) *IN GENERAL.*—*Subchapter Y of chapter 1 is*
 14 *amended by adding at the end the following new part:*

15 **“PART III—RECOVERY ZONE BONDS**

“Sec. 1400U-1. Allocation of recovery zone bonds.

“Sec. 1400U-2. Recovery zone economic development bonds.

“Sec. 1400U-3. Recovery zone facility bonds.

16 **“SEC. 1400U-1. ALLOCATION OF RECOVERY ZONE BONDS.**

17 **“(a) ALLOCATIONS.**—

18 **“(1) IN GENERAL.**—*The Secretary shall allocate*
 19 *the national recovery zone economic development bond*
 20 *limitation and the national recovery zone facility*
 21 *bond limitation among the States—*

1 “(A) by allocating 1 percent of each such
2 limitation to each State, and

3 “(B) by allocating the remainder of each
4 such limitation among the States in the propor-
5 tion that each State’s 2008 State employment de-
6 cline bears to the aggregate of the 2008 State em-
7 ployment declines for all of the States.

8 “(2) 2008 STATE EMPLOYMENT DECLINE.—For
9 purposes of this subsection, the term ‘2008 State em-
10 ployment decline’ means, with respect to any State,
11 the excess (if any) of—

12 “(A) the number of individuals employed in
13 such State determined for December 2007, over

14 “(B) the number of individuals employed in
15 such State determined for December 2008.

16 “(3) ALLOCATIONS BY STATES.—

17 “(A) IN GENERAL.—Each State with respect
18 to which an allocation is made under paragraph
19 (1) shall reallocate such allocation among the
20 counties and large municipalities in such State
21 in the proportion the each such county’s or mu-
22 nicipality’s 2008 employment decline bears to
23 the aggregate of the 2008 employment declines
24 for all the counties and municipalities in such
25 State.

1 “(B) *LARGE MUNICIPALITIES.*—*For pur-*
2 *poses of subparagraph (A), the term ‘large mu-*
3 *nicipality’ means a municipality with a popu-*
4 *lation of more than 100,000.*

5 “(C) *DETERMINATION OF LOCAL EMPLOY-*
6 *MENT DECLINES.*—*For purposes of this para-*
7 *graph, the employment decline of any munici-*
8 *pality or county shall be determined in the same*
9 *manner as determining the State employment*
10 *decline under paragraph (2), except that in the*
11 *case of a municipality any portion of which is*
12 *in a county, such portion shall be treated as part*
13 *of such municipality and not part of such coun-*
14 *ty.*

15 “(4) *NATIONAL LIMITATIONS.*—

16 “(A) *RECOVERY ZONE ECONOMIC DEVELOP-*
17 *MENT BONDS.*—*There is a national recovery zone*
18 *economic development bond limitation of*
19 *\$5,000,000,000.*

20 “(B) *RECOVERY ZONE FACILITY BONDS.*—
21 *There is a national recovery zone facility bond*
22 *limitation of \$10,000,000,000.*

23 “(b) *RECOVERY ZONE.*—*For purposes of this part, the*
24 *term ‘recovery zone’ means—*

1 “(1) any area designated by the issuer as having
2 significant poverty, unemployment, rate of home fore-
3 closures, or general distress, and

4 “(2) any area for which a designation as an em-
5 powerment zone or renewal community is in effect.

6 **“SEC. 1400U-2. RECOVERY ZONE ECONOMIC DEVELOPMENT**
7 **BONDS.**

8 “(a) *IN GENERAL.*—*In the case of a recovery zone eco-*
9 *nomie development bond—*

10 “(1) such bond shall be treated as a qualified
11 bond for purposes of section 6431, and

12 “(2) subsection (b) of such section shall be ap-
13 plied by substituting ‘40 percent’ for ‘35 percent’.

14 “(b) *RECOVERY ZONE ECONOMIC DEVELOPMENT*
15 *BOND.*—

16 “(1) *IN GENERAL.*—*For purposes of this section,*
17 *the term ‘recovery zone economic development bond’*
18 *means any build America bond (as defined in section*
19 *54AA(d)) issued before January 1, 2011, as part of*
20 *issue if—*

21 “(A) 100 percent of the available project
22 proceeds (as defined in section 54A) of such issue
23 are to be used for one or more qualified economic
24 development purposes, and

1 “(B) *the issuer designates such bond for*
2 *purposes of this section.*

3 “(2) *LIMITATION ON AMOUNT OF BONDS DES-*
4 *IGNATED.—The maximum aggregate face amount of*
5 *bonds which may be designated by any issuer under*
6 *paragraph (1) shall not exceed the amount of the re-*
7 *covery zone economic development bond limitation al-*
8 *located to such issuer under section 1400U–1.*

9 “(c) *QUALIFIED ECONOMIC DEVELOPMENT PUR-*
10 *POSE.—For purposes of this section, the term ‘qualified eco-*
11 *nomie development purpose’ means expenditures for pur-*
12 *poses of promoting development or other economic activity*
13 *in a recovery zone, including—*

14 “(1) *capital expenditures paid or incurred with*
15 *respect to property located in such zone,*

16 “(2) *expenditures for public infrastructure and*
17 *construction of public facilities, and*

18 “(3) *expenditures for job training and edu-*
19 *cational programs.*

20 **“SEC. 1400U–3. RECOVERY ZONE FACILITY BONDS.**

21 “(a) *IN GENERAL.—For purposes of part IV of sub-*
22 *chapter B (relating to tax exemption requirements for State*
23 *and local bonds), the term ‘exempt facility bond’ includes*
24 *any recovery zone facility bond.*

25 “(b) *RECOVERY ZONE FACILITY BOND.—*

1 “(1) *IN GENERAL.*—For purposes of this section,
2 the term ‘recovery zone facility bond’ means any bond
3 issued as part of an issue if—

4 “(A) 95 percent or more of the net proceeds
5 (as defined in section 150(a)(3)) of such issue
6 are to be used for recovery zone property,

7 “(B) such bond is issued before January 1,
8 2011, and

9 “(C) the issuer designates such bond for
10 purposes of this section.

11 “(2) *LIMITATION ON AMOUNT OF BONDS DES-*
12 *IGNATED.*—The maximum aggregate face amount of
13 bonds which may be designated by any issuer under
14 paragraph (1) shall not exceed the amount of recovery
15 zone facility bond limitation allocated to such issuer
16 under section 1400U-1.

17 “(c) *RECOVERY ZONE PROPERTY.*—For purposes of
18 this section—

19 “(1) *IN GENERAL.*—The term ‘recovery zone
20 property’ means any property to which section 168
21 applies (or would apply but for section 179) if—

22 “(A) such property was acquired by the tax-
23 payer by purchase (as defined in section
24 179(d)(2)) after the date on which the designa-
25 tion of the recovery zone took effect,

1 “(B) the original use of which in the recov-
2 ery zone commences with the taxpayer, and

3 “(C) substantially all of the use of which is
4 in the recovery zone and is in the active conduct
5 of a qualified business by the taxpayer in such
6 zone.

7 “(2) *QUALIFIED BUSINESS.*—The term ‘qualified
8 business’ means any trade or business except that—

9 “(A) the rental to others of real property lo-
10 cated in a recovery zone shall be treated as a
11 qualified business only if the property is not res-
12 idential rental property (as defined in section
13 168(e)(2)), and

14 “(B) such term shall not include any trade
15 or business consisting of the operation of any fa-
16 cility described in section 144(c)(6)(B).

17 “(3) *SPECIAL RULES FOR SUBSTANTIAL RENOVA-*
18 *TIONS AND SALE-LEASEBACK.*—Rules similar to the
19 rules of subsections (a)(2) and (b) of section 1397D
20 shall apply for purposes of this subsection.

21 “(d) *NONAPPLICATION OF CERTAIN RULES.*—Sections
22 146 (relating to volume cap) and 147(d) (relating to acqui-
23 sition of existing property not permitted) shall not apply
24 to any recovery zone facility bond.”.

1 (b) *CLERICAL AMENDMENT.*—*The table of parts for*
 2 *subchapter Y of chapter 1 of such Code is amended by add-*
 3 *ing at the end the following new item:*

“PART III. RECOVERY ZONE BONDS.”.

4 (c) *EFFECTIVE DATE.*—*The amendments made by this*
 5 *section shall apply to obligations issued after the date of*
 6 *the enactment of this Act.*

7 **SEC. 1402. TRIBAL ECONOMIC DEVELOPMENT BONDS.**

8 (a) *IN GENERAL.*—*Section 7871 is amended by adding*
 9 *at the end the following new subsection:*

10 “(f) *TRIBAL ECONOMIC DEVELOPMENT BONDS.*—

11 “(1) *ALLOCATION OF LIMITATION.*—

12 “(A) *IN GENERAL.*—*The Secretary shall al-*
 13 *locate the national tribal economic development*
 14 *bond limitation among the Indian tribal govern-*
 15 *ments in such manner as the Secretary, in con-*
 16 *sultation with the Secretary of the Interior, de-*
 17 *termines appropriate.*

18 “(B) *NATIONAL LIMITATION.*—*There is a*
 19 *national tribal economic development bond limi-*
 20 *tation of \$2,000,000,000.*

21 “(2) *BONDS TREATED AS EXEMPT FROM TAX.*—

22 *In the case of a tribal economic development bond—*

23 “(A) *notwithstanding subsection (c), such*
 24 *bond shall be treated for purposes of this title in*

1 *the same manner as if such bond were issued by*
2 *a State,*

3 “(B) *the Indian tribal government issuing*
4 *such bond and any instrumentality of such In-*
5 *Indian tribal government shall be treated as a*
6 *State for purposes of section 141, and*

7 “(C) *section 146 shall not apply.*

8 “(3) *TRIBAL ECONOMIC DEVELOPMENT BOND.—*

9 “(A) *IN GENERAL.—For purposes of this*
10 *section, the term ‘tribal economic development*
11 *bond’ means any bond issued by an Indian trib-*
12 *al government—*

13 “(i) *the interest on which would be ex-*
14 *empt from tax under section 103 if issued*
15 *by a State or local government, and*

16 “(ii) *which is designated by the Indian*
17 *tribal government as a tribal economic de-*
18 *velopment bond for purposes of this sub-*
19 *section.*

20 “(B) *EXCEPTIONS.—The term tribal eco-*
21 *nomical development bond shall not include any*
22 *bond issued as part of an issue if any portion*
23 *of the proceeds of such issue are used to fi-*
24 *nance—*

1 “(i) any portion of a building in
2 which class II or class III gaming (as de-
3 fined in section 4 of the Indian Gaming
4 Regulatory Act) is conducted or housed or
5 any other property actually used in the con-
6 duct of such gaming, or

7 “(ii) any facility located outside the
8 Indian reservation (as defined in section
9 168(j)(6)).

10 “(C) *LIMITATION ON AMOUNT OF BONDS*
11 *DESIGNATED.—The maximum aggregate face*
12 *amount of bonds which may be designated by*
13 *any Indian tribal government under subpara-*
14 *graph (A) shall not exceed the amount of na-*
15 *tional tribal economic development bond limita-*
16 *tion allocated to such government under para-*
17 *graph (1).”.*

18 (b) *STUDY.—The Secretary of the Treasury, or the Sec-*
19 *retary’s delegate, shall conduct a study of the effects of the*
20 *amendment made by subsection (a). Not later than 1 year*
21 *after the date of the enactment of this Act, the Secretary*
22 *of the Treasury, or the Secretary’s delegate, shall report to*
23 *Congress on the results of the study conducted under this*
24 *paragraph, including the Secretary’s recommendations re-*
25 *garding such amendment.*

1 (c) *EFFECTIVE DATE.*—*The amendment made by sub-*
2 *section (a) shall apply to obligations issued after the date*
3 *of the enactment of this Act.*

4 **SEC. 1403. MODIFICATIONS TO NEW MARKETS TAX CREDIT.**

5 (a) *INCREASE IN NATIONAL LIMITATION.*—

6 (1) *IN GENERAL.*—*Section 45D(f)(1) is amend-*
7 *ed—*

8 (A) *by striking “and” at the end of sub-*
9 *paragraph (C),*

10 (B) *by striking “, 2007, 2008, and 2009.”*
11 *in subparagraph (D), and inserting “and*
12 *2007,” and*

13 (C) *by adding at the end the following new*
14 *subparagraphs:*

15 “(E) \$5,000,000,000 for 2008, and

16 “(F) \$5,000,000,000 for 2009.”.

17 (2) *SPECIAL RULE FOR ALLOCATION OF IN-*
18 *CREASED 2008 LIMITATION.*—*The amount of the in-*
19 *crease in the new markets tax credit limitation for*
20 *calendar year 2008 by reason of the amendments*
21 *made by subsection (a) shall be allocated in accord-*
22 *ance with section 45D(f)(2) of the Internal Revenue*
23 *Code of 1986 to qualified community development en-*
24 *tities (as defined in section 45D(c) of such Code)*
25 *which—*

1 (A) submitted an allocation application
2 with respect to calendar year 2008, and

3 (B)(i) did not receive an allocation for such
4 calendar year, or

5 (ii) received an allocation for such calendar
6 year in an amount less than the amount re-
7 quested in the allocation application.

8 (b) *ALTERNATIVE MINIMUM TAX RELIEF.*—

9 (1) *IN GENERAL.*—Section 38(c)(4)(B) is amend-
10 ed by redesignating clauses (v) through (viii) as
11 clauses (vi) through (ix), respectively, and by insert-
12 ing after clause (iv) the following new clause:

13 “(v) the credit determined under sec-
14 tion 45D to the extent that such credit is at-
15 tributable to a qualified equity investment
16 which is designated as such under section
17 45D(b)(1)(C) pursuant to an allocation of
18 the new markets tax credit limitation for
19 calendar year 2009,”.

20 (2) *EFFECTIVE DATE.*—The amendments made
21 by this subsection shall apply to credits determined
22 under section 45D of the Internal Revenue Code of
23 1986 in taxable years ending after the date of the en-
24 actment of this Act, and to carrybacks of such credits.

1 **Subtitle F—Infrastructure**
2 **Financing Tools**

3 **PART I—IMPROVED MARKETABILITY FOR TAX-**
4 **EXEMPT BONDS**

5 **SEC. 1501. DE MINIMIS SAFE HARBOR EXCEPTION FOR TAX-**
6 **EXEMPT INTEREST EXPENSE OF FINANCIAL**
7 **INSTITUTIONS.**

8 (a) *IN GENERAL.*—Subsection (b) of section 265 is
9 amended by adding at the end the following new paragraph:

10 “(7) *DE MINIMIS EXCEPTION FOR BONDS ISSUED*
11 *DURING 2009 OR 2010.*—

12 “(A) *IN GENERAL.*—In applying paragraph
13 (2)(A), there shall not be taken into account tax-
14 exempt obligations issued during 2009 or 2010.

15 “(B) *LIMITATION.*—The amount of tax-ex-
16 empt obligations not taken into account by rea-
17 son of subparagraph (A) shall not exceed 2 per-
18 cent of the amount determined under paragraph
19 (2)(B).

20 “(C) *REFUNDINGS.*—For purposes of this
21 paragraph, a refunding bond (whether a current
22 or advance refunding) shall be treated as issued
23 on the date of the issuance of the refunded bond
24 (or in the case of a series of refundings, the
25 original bond).”.

1 “(ii) *QUALIFIED 501(C)(3) BONDS*
2 *TREATED AS ISSUED BY EXEMPT ORGANIZA-*
3 *TION.—In the case of a qualified 501(c)(3)*
4 *bond (as defined in section 145) issued dur-*
5 *ing 2009 or 2010, this paragraph shall be*
6 *applied by treating the 501(c)(3) organiza-*
7 *tion for whose benefit such bond was issued*
8 *as the issuer.*

9 “(iii) *SPECIAL RULE FOR QUALIFIED*
10 *FINANCINGS.—In the case of a qualified fi-*
11 *nancing issue issued during 2009 or 2010—*

12 “(I) *subparagraph (F) shall not*
13 *apply, and*

14 “(II) *any obligation issued as a*
15 *part of such issue shall be treated as a*
16 *qualified tax-exempt obligation if the*
17 *requirements of this paragraph are met*
18 *with respect to each qualified portion*
19 *of the issue (determined by treating*
20 *each qualified portion as a separate*
21 *issue which is issued by the qualified*
22 *borrower with respect to which such*
23 *portion relates).*

24 “(iv) *QUALIFIED FINANCING ISSUE.—*
25 *For purposes of this subparagraph, the term*

1 *‘qualified financing issue’ means any com-*
2 *posite, pooled, or other conduit financing*
3 *issue the proceeds of which are used directly*
4 *or indirectly to make or finance loans to 1*
5 *or more ultimate borrowers each of whom is*
6 *a qualified borrower.*

7 “(v) *QUALIFIED PORTION.*—*For pur-*
8 *poses of this subparagraph, the term ‘quali-*
9 *fied portion’ means that portion of the pro-*
10 *ceeds which are used with respect to each*
11 *qualified borrower under the issue.*

12 “(vi) *QUALIFIED BORROWER.*—*For*
13 *purposes of this subparagraph, the term*
14 *‘qualified borrower’ means a borrower*
15 *which is a State or political subdivision*
16 *thereof or an organization described in sec-*
17 *tion 501(c)(3) and exempt from taxation*
18 *under section 501(a).”.*

19 (b) *EFFECTIVE DATE.*—*The amendment made by this*
20 *section shall apply to obligations issued after December 31,*
21 *2008.*

1 **SEC. 1503. TEMPORARY MODIFICATION OF ALTERNATIVE**
2 **MINIMUM TAX LIMITATIONS ON TAX-EXEMPT**
3 **BONDS.**

4 *(a) INTEREST ON PRIVATE ACTIVITY BONDS ISSUED*
5 *DURING 2009 AND 2010 NOT TREATED AS TAX PREF-*
6 *ERENCE ITEM.—Subparagraph (C) of section 57(a)(5) is*
7 *amended by adding at the end a new clause:*

8 *“(vi) EXCEPTION FOR BONDS ISSUED*
9 *IN 2009 AND 2010.—For purposes of clause*
10 *(i), the term ‘private activity bond’ shall*
11 *not include any bond issued after December*
12 *31, 2008, and before January 1, 2011. For*
13 *purposes of the preceding sentence, a re-*
14 *funding bond (whether a current or advance*
15 *refunding) shall be treated as issued on the*
16 *date of the issuance of the refunded bond (or*
17 *in the case of a series of refundings, the*
18 *original bond).”.*

19 *(b) NO ADJUSTMENT TO ADJUSTED CURRENT EARN-*
20 *INGS FOR INTEREST ON TAX-EXEMPT BONDS ISSUED DUR-*
21 *ING 2009 AND 2010.—Subparagraph (B) of section 56(g)(4)*
22 *is amended by adding at the end the following new clause:*

23 *“(iv) TAX EXEMPT INTEREST ON*
24 *BONDS ISSUED IN 2009 AND 2010.—Clause (i)*
25 *shall not apply in the case of any interest*
26 *on a bond issued after December 31, 2008,*

1 **PART II—DELAY IN APPLICATION OF WITH-**
2 **HOLDING TAX ON GOVERNMENT CONTRAC-**
3 **TORS**

4 **SEC. 1511. DELAY IN APPLICATION OF WITHHOLDING TAX**
5 **ON GOVERNMENT CONTRACTORS.**

6 *Subsection (b) of section 511 of the Tax Increase Pre-*
7 *vention and Reconciliation Act of 2005 is amended by strik-*
8 *ing “December 31, 2010” and inserting “December 31,*
9 *2011”.*

10 **PART III—TAX CREDIT BONDS FOR SCHOOLS**

11 **SEC. 1521. QUALIFIED SCHOOL CONSTRUCTION BONDS.**

12 *(a) IN GENERAL.—Subpart I of part IV of subchapter*
13 *A of chapter 1 is amended by adding at the end the fol-*
14 *lowing new section:*

15 **“SEC. 54F. QUALIFIED SCHOOL CONSTRUCTION BONDS.**

16 **“(a) QUALIFIED SCHOOL CONSTRUCTION BOND.—For**
17 *purposes of this subchapter, the term ‘qualified school con-*
18 *struction bond’ means any bond issued as part of an issue*
19 *if—*

20 *“(1) 100 percent of the available project proceeds*
21 *of such issue are to be used for the construction, reha-*
22 *ilitation, or repair of a public school facility or for*
23 *the acquisition of land on which such a facility is to*
24 *be constructed with part of the proceeds of such issue,*

1 “(2) *the bond is issued by a State or local gov-*
2 *ernment within the jurisdiction of which such school*
3 *is located, and*

4 “(3) *the issuer designates such bond for purposes*
5 *of this section.*

6 “(b) *LIMITATION ON AMOUNT OF BONDS DES-*
7 *IGNATED.—The maximum aggregate face amount of bonds*
8 *issued during any calendar year which may be designated*
9 *under subsection (a) by any issuer shall not exceed the limi-*
10 *tation amount allocated under subsection (d) for such cal-*
11 *endar year to such issuer.*

12 “(c) *NATIONAL LIMITATION ON AMOUNT OF BONDS*
13 *DESIGNATED.—There is a national qualified school con-*
14 *struction bond limitation for each calendar year. Such lim-*
15 *itation is—*

16 “(1) *\$5,000,000,000 for 2009,*

17 “(2) *\$5,000,000,000 for 2010, and*

18 “(3) *except as provided in subsection (e), zero*
19 *after 2010.*

20 “(d) *LIMITATION ALLOCATED AMONG STATES.—*

21 “(1) *IN GENERAL.—The limitation applicable*
22 *under subsection (c) for any calendar year shall be al-*
23 *located by the Secretary among the States in propor-*
24 *tion to the respective numbers of children in each*
25 *State who have attained age 5 but not age 18 for the*

1 *most recent fiscal year ending before such calendar*
2 *year. The limitation amount allocated to a State*
3 *under the preceding sentence shall be allocated by the*
4 *State to issuers within such State.*

5 “(2) *MINIMUM ALLOCATIONS TO STATES.*—

6 “(A) *IN GENERAL.*—*The Secretary shall ad-*
7 *just the allocations under this subsection for any*
8 *calendar year for each State to the extent nec-*
9 *essary to ensure that the amount allocated to*
10 *such State under this subsection for such year is*
11 *not less than an amount equal to such State’s*
12 *adjusted minimum percentage of the amount to*
13 *be allocated under paragraph (1) for the cal-*
14 *endar year.*

15 “(B) *MINIMUM PERCENTAGE.*—*A State’s*
16 *minimum percentage for any calendar year is*
17 *equal to the product of—*

18 “(i) *the quotient of—*

19 “(I) *the amount the State is eligi-*
20 *ble to receive under section 1124(d) of*
21 *the Elementary and Secondary Edu-*
22 *cation Act of 1965 (20 U.S.C. 6333(d))*
23 *for the most recent fiscal year ending*
24 *before such calendar year, divided by*

1 “(II) *the amount all States are el-*
2 *igible to receive under section 1124 of*
3 *such Act (20 U.S.C. 6333) for such fis-*
4 *cal year, multiplied by*
5 “(ii) 100.

6 “(3) *ALLOCATIONS TO CERTAIN POSSESSIONS.—*
7 *The amount to be allocated under paragraph (1) to*
8 *any possession of the United States other than Puerto*
9 *Rico shall be the amount which would have been allo-*
10 *cated if all allocations under paragraph (1) were*
11 *made on the basis of respective populations of indi-*
12 *viduals below the poverty line (as defined by the Of-*
13 *fice of Management and Budget). In making other al-*
14 *locations, the amount to be allocated under paragraph*
15 *(1) shall be reduced by the aggregate amount allocated*
16 *under this paragraph to possessions of the United*
17 *States.*

18 “(4) *ALLOCATIONS FOR INDIAN SCHOOLS.—In*
19 *addition to the amounts otherwise allocated under*
20 *this subsection, \$200,000,000 for calendar year 2009,*
21 *and \$200,000,000 for calendar year 2010, shall be al-*
22 *located by the Secretary of the Interior for purposes*
23 *of the construction, rehabilitation, and repair of*
24 *schools funded by the Bureau of Indian Affairs. In the*
25 *case of amounts allocated under the preceding sen-*

1 *tence, Indian tribal governments (as defined in sec-*
2 *tion 7701(a)(40)) shall be treated as qualified issuers*
3 *for purposes of this subchapter.*

4 *“(e) CARRYOVER OF UNUSED LIMITATION.—If for any*
5 *calendar year—*

6 *“(1) the amount allocated under subsection (d) to*
7 *any State, exceeds*

8 *“(2) the amount of bonds issued during such*
9 *year which are designated under subsection (a) pur-*
10 *suant to such allocation,*

11 *the limitation amount under such subsection for such State*
12 *for the following calendar year shall be increased by the*
13 *amount of such excess. A similar rule shall apply to the*
14 *amounts allocated under subsection (d)(4).”.*

15 *(b) CONFORMING AMENDMENTS.—*

16 *(1) Paragraph (1) of section 54A(d) is amended*
17 *by striking “or” at the end of subparagraph (C), by*
18 *inserting “or” at the end of subparagraph (D), and*
19 *by inserting after subparagraph (D) the following*
20 *new subparagraph:*

21 *“(E) a qualified school construction bond,”.*

22 *(2) Subparagraph (C) of section 54A(d)(2) is*
23 *amended by striking “and” at the end of clause (iii),*
24 *by striking the period at the end of clause (iv) and*

1 *inserting “, and”, and by adding at the end the fol-*
2 *lowing new clause:*

3 *“(v) in the case of a qualified school*
4 *construction bond, a purpose specified in*
5 *section 54F(a)(1).”.*

6 *(3) The table of sections for subpart I of part IV*
7 *of subchapter A of chapter 1 is amended by adding*
8 *at the end the following new item:*

“Sec. 54F. Qualified school construction bonds.”.

9 *(c) EFFECTIVE DATE.—The amendments made by this*
10 *section shall apply to obligations issued after the date of*
11 *the enactment of this Act.*

12 **SEC. 1522. EXTENSION AND EXPANSION OF QUALIFIED**
13 **ZONE ACADEMY BONDS.**

14 *(a) IN GENERAL.—Section 54E(c)(1) is amended by*
15 *striking “and 2009” and inserting “and \$1,400,000,000 for*
16 *2009 and 2010”.*

17 *(b) EFFECTIVE DATE.—The amendment made by this*
18 *section shall apply to obligations issued after December 31,*
19 *2008.*

20 **PART IV—BUILD AMERICA BONDS**

21 **SEC. 1531. BUILD AMERICA BONDS.**

22 *(a) IN GENERAL.—Part IV of subchapter A of chapter*
23 *1 is amended by adding at the end the following new sub-*
24 *part:*

1 **“Subpart J—Build America Bonds**

“Sec. 54AA. Build America bonds.

2 **“SEC. 54AA. BUILD AMERICA BONDS.**

3 “(a) *IN GENERAL.*—If a taxpayer holds a build Amer-
4 ica bond on one or more interest payment dates of the bond
5 during any taxable year, there shall be allowed as a credit
6 against the tax imposed by this chapter for the taxable year
7 an amount equal to the sum of the credits determined under
8 subsection (b) with respect to such dates.

9 “(b) *AMOUNT OF CREDIT.*—The amount of the credit
10 determined under this subsection with respect to any inter-
11 est payment date for a build America bond is 35 percent
12 of the amount of interest payable by the issuer with respect
13 to such date (40 percent in the case of an issuer described
14 in section 148(f)(4)(D) (determined without regard to
15 clauses (v), (vi), and (vii) thereof and by substituting
16 ‘\$30,000,000’ for ‘\$5,000,000’ each place it appears there-
17 in).

18 “(c) *LIMITATION BASED ON AMOUNT OF TAX.*—

19 “(1) *IN GENERAL.*—The credit allowed under
20 subsection (a) for any taxable year shall not exceed
21 the excess of—

22 “(A) the sum of the regular tax liability (as
23 defined in section 26(b)) plus the tax imposed by
24 section 55, over

1 “(B) the sum of the credits allowable under
2 this part (other than subpart C and this sub-
3 part).

4 “(2) CARRYOVER OF UNUSED CREDIT.—If the
5 credit allowable under subsection (a) exceeds the limi-
6 tation imposed by paragraph (1) for such taxable
7 year, such excess shall be carried to the succeeding
8 taxable year and added to the credit allowable under
9 subsection (a) for such taxable year (determined be-
10 fore the application of paragraph (1) for such suc-
11 ceeding taxable year).

12 “(d) BUILD AMERICA BOND.—

13 “(1) IN GENERAL.—For purposes of this section,
14 the term ‘build America bond’ means any obligation
15 (other than a private activity bond) if—

16 “(A) the interest on such obligation would
17 (but for this section) be excludable from gross in-
18 come under section 103,

19 “(B) such obligation is issued before Janu-
20 ary 1, 2011, and

21 “(C) the issuer makes an irrevocable elec-
22 tion to have this section apply.

23 “(2) APPLICABLE RULES.—For purposes of ap-
24 plying paragraph (1)—

1 “(A) for purposes of section 149(b), a build
2 America bond shall not be treated as federally
3 guaranteed by reason of the credit allowed under
4 subsection (a) or section 6431,

5 “(B) for purposes of section 148, the yield
6 on a build America bond shall be determined
7 without regard to the credit allowed under sub-
8 section (a), and

9 “(C) a bond shall not be treated as a build
10 America bond if the issue price has more than
11 a de minimis amount (determined under rules
12 similar to the rules of section 1273(a)(3)) of pre-
13 mium over the stated principal amount of the
14 bond.

15 “(e) *INTEREST PAYMENT DATE.*—For purposes of this
16 section, the term ‘interest payment date’ means any date
17 on which the holder of record of the build America bond
18 is entitled to a payment of interest under such bond.

19 “(f) *SPECIAL RULES.*—

20 “(1) *INTEREST ON BUILD AMERICA BONDS IN-*
21 *CLUDIBLE IN GROSS INCOME FOR FEDERAL INCOME*
22 *TAX PURPOSES.*—For purposes of this title, interest
23 on any build America bond shall be includible in
24 gross income.

1 “(2) *APPLICATION OF CERTAIN RULES.—Rules*
2 *similar to the rules of subsections (f), (g), (h), and (i)*
3 *of section 54A shall apply for purposes of the credit*
4 *allowed under subsection (a).*

5 “(g) *SPECIAL RULE FOR QUALIFIED BONDS ISSUED*
6 *BEFORE 2011.—In the case of a qualified bond issued before*
7 *January 1, 2011—*

8 “(1) *ISSUER ALLOWED REFUNDABLE CREDIT.—*
9 *In lieu of any credit allowed under this section with*
10 *respect to such bond, the issuer of such bond shall be*
11 *allowed a credit as provided in section 6431.*

12 “(2) *QUALIFIED BOND.—For purposes of this*
13 *subsection, the term ‘qualified bond’ means any build*
14 *America bond issued as part of an issue if—*

15 “(A) *100 percent of the available project*
16 *proceeds (as defined in section 54A) of such issue*
17 *are to be used for capital expenditures, and*

18 “(B) *the issuer makes an irrevocable elec-*
19 *tion to have this subsection apply.*

20 “(h) *REGULATIONS.—The Secretary may prescribe*
21 *such regulations and other guidance as may be necessary*
22 *or appropriate to carry out this section and section 6431.”.*

23 “(b) *CREDIT FOR QUALIFIED BONDS ISSUED BEFORE*
24 *2011.—Subchapter B of chapter 65 is amended by adding*
25 *at the end the following new section:*

1 **“SEC. 6431. CREDIT FOR QUALIFIED BONDS ALLOWED TO**
2 **ISSUER.**

3 “(a) *IN GENERAL.*—*In the case of a qualified bond*
4 *issued before January 1, 2011, the issuer of such bond shall*
5 *be allowed a credit with respect to each interest payment*
6 *under such bond which shall be payable by the Secretary*
7 *as provided in subsection (b).*

8 “(b) *PAYMENT OF CREDIT.*—*The Secretary shall pay*
9 *(contemporaneously with each interest payment date under*
10 *such bond) to the issuer of such bond (or to any person*
11 *who makes such interest payments on behalf of the issuer)*
12 *35 percent of the interest payable under such bond on such*
13 *date (40 percent in the case of an issuer described in section*
14 *148(f)(4)(D) (determined without regard to clauses (v), (vi),*
15 *and (vii) thereof and by substituting ‘\$30,000,000’ for*
16 *‘\$5,000,000’ each place it appears therein).*

17 “(c) *APPLICATION OF ARBITRAGE RULES.*—*For pur-*
18 *poses of section 148, the yield on a qualified bond shall be*
19 *reduced by the credit allowed under this section.*

20 “(d) *INTEREST PAYMENT DATE.*—*For purposes of this*
21 *subsection, the term ‘interest payment date’ means each*
22 *date on which interest is payable by the issuer under the*
23 *terms of the bond.*

24 “(e) *QUALIFIED BOND.*—*For purposes of this sub-*
25 *section, the term ‘qualified bond’ has the meaning given*
26 *such term in section 54AA(g).”.*

1 (c) *CONFORMING AMENDMENTS.*—

2 (1) *Section 1324(b)(2) of title 31, United States*
3 *Code, is amended by striking “or 6428” and inserting*
4 *“6428, or 6431.”*

5 (2) *Section 54A(c)(1)(B) is amended by striking*
6 *“subpart C” and inserting “subparts C and J”.*

7 (3) *Sections 54(c)(2), 1397E(c)(2), and*
8 *1400N(l)(3)(B) are each amended by striking “and I”*
9 *and inserting “, I, and J”.*

10 (4) *Section 6401(b)(1) is amended by striking*
11 *“and I” and inserting “I, and J”.*

12 (5) *The table of subparts for part IV of sub-*
13 *chapter A of chapter 1 is amended by adding at the*
14 *end the following new item:*

“Subpart J. Build America bonds.”.

15 (6) *The table of section for subchapter B of chap-*
16 *ter 65 is amended by adding at the end the following*
17 *new item:*

“Sec. 6431. Credit for qualified bonds allowed to issuer.”.

18 (d) *TRANSITIONAL COORDINATION WITH STATE*
19 *LAW.*—*Except as otherwise provided by a State after the*
20 *date of the enactment of this Act, the interest on any build*
21 *America bond (as defined in section 54AA of the Internal*
22 *Revenue Code of 1986, as added by this section) and the*
23 *amount of any credit determined under such section with*
24 *respect to such bond shall be treated for purposes of the in-*

1 *come tax laws of such State as being exempt from Federal*
2 *income tax.*

3 *(e) EFFECTIVE DATE.—The amendments made by this*
4 *section shall apply to obligations issued after the date of*
5 *the enactment of this Act.*

6 ***Subtitle G—Economic Recovery***
7 ***Payments to Certain Individuals***

8 ***SEC. 1601. ECONOMIC RECOVERY PAYMENT TO RECIPIENTS***
9 ***OF SOCIAL SECURITY, SUPPLEMENTAL SECU-***
10 ***RITY INCOME, RAILROAD RETIREMENT BENE-***
11 ***FITS, AND VETERANS DISABILITY COMPENSA-***
12 ***TION OR PENSION BENEFITS.***

13 *(a) AUTHORITY TO MAKE PAYMENTS.—*

14 *(1) ELIGIBILITY.—*

15 *(A) IN GENERAL.—Subject to paragraph*
16 *(5)(B), the Secretary of the Treasury shall make*
17 *a \$300 payment to each individual who, for any*
18 *month during the 3-month period ending with*
19 *the month which ends prior to the month that*
20 *includes the date of the enactment of this Act, is*
21 *entitled to a benefit payment described in clause*
22 *(i), (ii), or (iii) of subparagraph (B) or is eligi-*
23 *ble for a SSI cash benefit described in subpara-*
24 *graph (C).*

1 (B) *BENEFIT PAYMENT DESCRIBED.*—*For*
2 *purposes of subparagraph (A):*

3 (i) *TITLE II BENEFIT.*—*A benefit pay-*
4 *ment described in this clause is a monthly*
5 *insurance benefit payable (without regard*
6 *to sections 202(j)(1) and 223(b) of the So-*
7 *cial Security Act (42 U.S.C. 402(j)(1),*
8 *423(b)) under—*

9 (I) *section 202(a) of such Act (42*
10 *U.S.C. 402(a));*

11 (II) *section 202(b) of such Act (42*
12 *U.S.C. 402(b));*

13 (III) *section 202(c) of such Act*
14 *(42 U.S.C. 402(c));*

15 (IV) *section 202(d)(1)(B)(i) of*
16 *such Act (42 U.S.C. 402(d)(1)(B)(i));*

17 (V) *section 202(e) of such Act (42*
18 *U.S.C. 402(e));*

19 (VI) *section 202(f) of such Act (42*
20 *U.S.C. 402(f));*

21 (VII) *section 202(g) of such Act*
22 *(42 U.S.C. 402(g));*

23 (VIII) *section 202(h) of such Act*
24 *(42 U.S.C. 402(h));*

1 *(IX) section 223(a) of such Act*
2 *(42 U.S.C. 423(a));*

3 *(X) section 227 of such Act (42*
4 *U.S.C. 427); or*

5 *(XI) section 228 of such Act (42*
6 *U.S.C. 428).*

7 *(ii) RAILROAD RETIREMENT BEN-*
8 *EFIT.—A benefit payment described in this*
9 *clause is a monthly annuity or pension*
10 *payment payable (without regard to section*
11 *5(a)(ii) of the Railroad Retirement Act of*
12 *1974 (45 U.S.C. 231d(a)(ii)) under—*

13 *(I) section 2(a)(1) of such Act (45*
14 *U.S.C. 231a(a)(1));*

15 *(II) section 2(c) of such Act (45*
16 *U.S.C. 231a(c));*

17 *(III) section 2(d)(1)(i) of such Act*
18 *(45 U.S.C. 231a(d)(1)(i));*

19 *(IV) section 2(d)(1)(ii) of such Act*
20 *(45 U.S.C. 231a(d)(1)(ii));*

21 *(V) section 2(d)(1)(iii)(C) of such*
22 *Act to an adult disabled child (45*
23 *U.S.C. 231a(d)(1)(iii)(C));*

24 *(VI) section 2(d)(1)(iv) of such*
25 *Act (45 U.S.C. 231a(d)(1)(iv));*

1 (VII) section 2(d)(1)(v) of such
2 Act (45 U.S.C. 231a(d)(1)(v)); or

3 (VIII) section 7(b)(2) of such Act
4 (45 U.S.C. 231f(b)(2)) with respect to
5 any of the benefit payments described
6 in clause (i) of this subparagraph.

7 (iii) *VETERANS BENEFIT*.—A benefit
8 payment described in this clause is a com-
9 pensation or pension payment payable
10 under—

11 (I) section 1110, 1117, 1121,
12 1131, 1141, or 1151 of title 38, United
13 States Code;

14 (II) section 1310, 1312, 1313,
15 1315, 1316, or 1318 of title 38, United
16 States Code;

17 (III) section 1513, 1521, 1533,
18 1536, 1537, 1541, 1542, or 1562 of
19 title 38, United States Code; or

20 (IV) section 1805, 1815, or 1821
21 of title 38, United States Code,

22 to a veteran, surviving spouse, child, or
23 parent as described in paragraph (2), (3),
24 (4)(A)(ii), or (5) of section 101, title 38,
25 United States Code, who received that ben-

1 *efit during any month within the 3 month*
2 *period ending with the month which ends*
3 *prior to the month that includes the date of*
4 *the enactment of this Act.*

5 *(C) SSI CASH BENEFIT DESCRIBED.—A*
6 *SSI cash benefit described in this subparagraph*
7 *is a cash benefit payable under section 1611*
8 *(other than under subsection (e)(1)(B) of such*
9 *section) or 1619(a) of the Social Security Act*
10 *(42 U.S.C. 1382, 1382h).*

11 *(2) REQUIREMENT.—A payment shall be made*
12 *under paragraph (1) only to individuals who reside*
13 *in 1 of the 50 States, the District of Columbia, Puerto*
14 *Rico, Guam, the United States Virgin Islands, Amer-*
15 *ican Samoa, or the Northern Mariana Islands. For*
16 *purposes of the preceding sentence, the determination*
17 *of the individual's residence shall be based on the cur-*
18 *rent address of record under a program specified in*
19 *paragraph (1).*

20 *(3) NO DOUBLE PAYMENTS.—An individual shall*
21 *be paid only 1 payment under this section, regardless*
22 *of whether the individual is entitled to, or eligible for,*
23 *more than 1 benefit or cash payment described in*
24 *paragraph (1).*

1 (4) *LIMITATION.*—A payment under this section
2 shall not be made—

3 (A) in the case of an individual entitled to
4 a benefit specified in paragraph (1)(B)(i) or
5 paragraph (1)(B)(ii)(VIII) if, for the most recent
6 month of such individual's entitlement in the 3-
7 month period described in paragraph (1), such
8 individual's benefit under such paragraph was
9 not payable by reason of subsection (x) or (y) of
10 section 202 the Social Security Act (42 U.S.C.
11 402) or section 1129A of such Act (42 U.S.C.
12 1320a-8a);

13 (B) in the case of an individual entitled to
14 a benefit specified in paragraph (1)(B)(iii) if,
15 for the most recent month of such individual's
16 entitlement in the 3 month period described in
17 paragraph (1), such individual's benefit under
18 such paragraph was not payable, or was re-
19 duced, by reason of section 1505, 5313, or 5313B
20 of title 38, United States Code;

21 (C) in the case of an individual entitled to
22 a benefit specified in paragraph (1)(C) if, for
23 such most recent month, such individual's benefit
24 under such paragraph was not payable by rea-
25 son of subsection (e)(1)(A) or (e)(4) of section

1 1611 (42 U.S.C. 1382) or section 1129A of such
2 Act (42 U.S.C. 1320a-8a); or

3 (D) in the case of any individual whose
4 date of death occurs before the date on which the
5 individual is certified under subsection (b) to re-
6 ceive a payment under this section.

7 (5) *TIMING AND MANNER OF PAYMENTS.*—

8 (A) *IN GENERAL.*—The Secretary of the
9 Treasury shall commence making payments
10 under this section at the earliest practicable date
11 but in no event later than 120 days after the
12 date of enactment of this Act. The Secretary of
13 the Treasury may make any payment electroni-
14 cally to an individual in such manner as if such
15 payment was a benefit payment or cash benefit
16 to such individual under the applicable program
17 described in subparagraph (B) or (C) of para-
18 graph (1).

19 (B) *DEADLINE.*—No payments shall be
20 made under this section after December 31, 2010,
21 regardless of any determinations of entitlement
22 to, or eligibility for, such payments made after
23 such date.

24 (b) *IDENTIFICATION OF RECIPIENTS.*—The Commis-
25 sioner of Social Security, the Railroad Retirement Board,

1 *and the Secretary of Veterans Affairs shall certify the indi-*
2 *viduals entitled to receive payments under this section and*
3 *provide the Secretary of the Treasury with the information*
4 *needed to disburse such payments. A certification of an in-*
5 *dividual shall be unaffected by any subsequent determina-*
6 *tion or redetermination of the individual's entitlement to,*
7 *or eligibility for, a benefit specified in subparagraph (B)*
8 *or (C) of subsection (a)(1).*

9 *(c) TREATMENT OF PAYMENTS.—*

10 *(1) PAYMENT TO BE DISREGARDED FOR PUR-*
11 *POSES OF ALL FEDERAL AND FEDERALLY ASSISTED*
12 *PROGRAMS.—A payment under subsection (a) shall*
13 *not be regarded as income and shall not be regarded*
14 *as a resource for the month of receipt and the fol-*
15 *lowing 9 months, for purposes of determining the eli-*
16 *gibility of the recipient (or the recipient's spouse or*
17 *family) for benefits or assistance, or the amount or*
18 *extent of benefits or assistance, under any Federal*
19 *program or under any State or local program fi-*
20 *nanced in whole or in part with Federal funds.*

21 *(2) PAYMENT NOT CONSIDERED INCOME FOR*
22 *PURPOSES OF TAXATION.—A payment under sub-*
23 *section (a) shall not be considered as gross income for*
24 *purposes of the Internal Revenue Code of 1986.*

1 (3) *PAYMENTS PROTECTED FROM ASSIGNMENT.*—
2 *The provisions of sections 207 and 1631(d)(1) of the*
3 *Social Security Act (42 U.S.C. 407, 1383(d)(1)), sec-*
4 *tion 14(a) of the Railroad Retirement Act of 1974 (45*
5 *U.S.C. 231m(a)), and section 5301 of title 38, United*
6 *States Code, shall apply to any payment made under*
7 *subsection (a) as if such payment was a benefit pay-*
8 *ment or cash benefit to such individual under the ap-*
9 *licable program described in subparagraph (B) or*
10 *(C) of subsection (a)(1).*

11 (4) *PAYMENTS SUBJECT TO OFFSET.*—*Notwith-*
12 *standing paragraph (3), for purposes of section 3716*
13 *of title 31, United States Code, any payment made*
14 *under this section shall not be considered a benefit*
15 *payment or cash benefit made under the applicable*
16 *program described in subparagraph (B) or (C) of sub-*
17 *section (a)(1) and all amounts paid shall be subject*
18 *to offset to collect delinquent debts.*

19 (d) *PAYMENT TO REPRESENTATIVE PAYEES AND FI-*
20 *DUCIARIES.*—

21 (1) *IN GENERAL.*—*In any case in which an indi-*
22 *vidual who is entitled to a payment under subsection*
23 *(a) and whose benefit payment or cash benefit de-*
24 *scribed in paragraph (1) of that subsection is paid to*
25 *a representative payee or fiduciary, the payment*

1 *under subsection (a) shall be made to the individual's*
2 *representative payee or fiduciary and the entire pay-*
3 *ment shall be used only for the benefit of the indi-*
4 *vidual who is entitled to the payment.*

5 (2) *APPLICABILITY.—*

6 (A) *PAYMENT ON THE BASIS OF A TITLE II*
7 *OR SSI BENEFIT.—Section 1129(a)(3) of the So-*
8 *cial Security Act (42 U.S.C. 1320a–8(a)(3))*
9 *shall apply to any payment made on the basis*
10 *of an entitlement to a benefit specified in para-*
11 *graph (1)(B)(i) or (1)(C) of subsection (a) in the*
12 *same manner as such section applies to a pay-*
13 *ment under title II or XVI of such Act.*

14 (B) *PAYMENT ON THE BASIS OF A RAIL-*
15 *ROAD RETIREMENT BENEFIT.—Section 13 of the*
16 *Railroad Retirement Act (45 U.S.C. 231l) shall*
17 *apply to any payment made on the basis of an*
18 *entitlement to a benefit specified in paragraph*
19 *(1)(B)(ii) of subsection (a) in the same manner*
20 *as such section applies to a payment under such*
21 *Act.*

22 (C) *PAYMENT ON THE BASIS OF A VET-*
23 *ERANS BENEFIT.—Sections 5502, 6106, and*
24 *6108 of title 38, United States Code, shall apply*
25 *to any payment made on the basis of an entitle-*

1 *ment to a benefit specified in paragraph*
2 *(1)(B)(iii) of subsection (a) in the same manner*
3 *as those sections apply to a payment under that*
4 *title.*

5 *(e) APPROPRIATION.—Out of any sums in the Treas-*
6 *ury of the United States not otherwise appropriated, the*
7 *following sums are appropriated for the period of fiscal*
8 *years 2009 and 2010 to carry out this section:*

9 *(1) For the Secretary of the Treasury—*

10 *(A) such sums as may be necessary to make*
11 *payments under this section; and*

12 *(B) \$57,000,000 for administrative costs in-*
13 *curring in carrying out this section and section*
14 *36A of the Internal Revenue Code of 1986 (as*
15 *added by this Act).*

16 *(2) For the Commissioner of Social Security,*
17 *\$90,000,000 for the Social Security Administration's*
18 *Limitation on Administrative Expenses for costs in-*
19 *curring in carrying out this section.*

20 *(3) For the Railroad Retirement Board,*
21 *\$1,000,000 for administrative costs incurred in car-*
22 *rying out this section.*

23 *(4) For the Secretary of Veterans Affairs,*
24 *\$100,000 for the Information Systems Technology ac-*
25 *count and \$7,100,000 for the General Operating Ex-*

1 *penses account for administrative costs incurred in*
2 *carrying out this section.*

3 ***Subtitle H—Trade Adjustment***
4 ***Assistance***

5 ***SEC. 1701. TEMPORARY EXTENSION OF TRADE ADJUST-***
6 ***MENT ASSISTANCE PROGRAM.***

7 *(a) ASSISTANCE FOR WORKERS.—*

8 *(1) IN GENERAL.—Section 245(a) of the Trade*
9 *Act of 1974 (19 U.S.C. 2317(a)) is amended by strik-*
10 *ing “December 31, 2007” and inserting “December*
11 *31, 2010”.*

12 *(2) ALTERNATIVE TRADE ADJUSTMENT ASSIST-*
13 *ANCE.—Section 246(b)(1) of the Trade Act of 1974*
14 *(19 U.S.C. 2318(b)(1)) is amended by striking “5*
15 *years” and inserting “7 years”.*

16 *(b) ASSISTANCE FOR FIRMS.—Section 256(b) of the*
17 *Trade Act of 1974 (19 U.S.C. 2346(b)) is amended by strik-*
18 *ing “2007, and \$4,000,000 for the 3-month period begin-*
19 *ning on October 1, 2007,” and inserting “December 31,*
20 *2010”.*

21 *(c) ASSISTANCE FOR FARMERS.—Section 298(a) of the*
22 *Trade Act of 1974 (19 U.S.C. 2401g(a)) is amended by*
23 *striking “through 2007” and all that follows through the*
24 *end period and inserting “through December 31, 2010 to*
25 *carry out the purposes of this chapter.”.*

1 (d) *EXTENSION OF TERMINATION DATES.*—Section
2 285 of the Trade Act of 1974 (19 U.S.C. 2271 note) is
3 amended by striking “December 31, 2007” each place it ap-
4 pears and inserting “December 31, 2010”.

5 (e) *SENSE OF THE SENATE REGARDING ADJUSTMENT*
6 *ASSISTANCE FOR COMMUNITIES.*—It is the sense of the Sen-
7 ate that title II of the Trade Act of 1974 (19 U.S.C. 2271
8 et seq.) should be amended to assist any community im-
9 pacted by trade with economic adjustment through—

10 (1) the coordination of efforts by State and local
11 governments and economic organizations;

12 (2) the coordination of Federal, State, and local
13 resources;

14 (3) the creation of community-based development
15 strategies; and

16 (4) the development and provision of training
17 programs.

18 (f) *EFFECTIVE DATE.*—The amendments made by this
19 section shall be effective as of January 1, 2008.

1 ***Subtitle I—Prohibition on Collec-***
2 ***tion of Certain Payments Made***
3 ***Under the Continued Dumping***
4 ***and Subsidy Offset Act of 2000***

5 ***SEC. 1801. PROHIBITION ON COLLECTION OF CERTAIN PAY-***
6 ***MENTS MADE UNDER THE CONTINUED DUMP-***
7 ***ING AND SUBSIDY OFFSET ACT OF 2000.***

8 *(a) IN GENERAL.—Notwithstanding any other provi-*
9 *sion of law, neither the Secretary of Homeland Security nor*
10 *any other person may—*

11 *(1) require repayment of, or attempt in any*
12 *other way to recoup, any payments described in sub-*
13 *section (b); or*

14 *(2) offset any past, current, or future distribu-*
15 *tions of antidumping or countervailing duties as-*
16 *sessed with respect to imports from countries that are*
17 *not parties to the North American Free Trade Agree-*
18 *ment in an attempt to recoup any payments de-*
19 *scribed in subsection (b).*

20 *(b) PAYMENTS DESCRIBED.—Payments described in*
21 *this subsection are payments of antidumping or counter-*
22 *vailing duties made pursuant to the Continued Dumping*
23 *and Subsidy Offset Act of 2000 (section 754 of the Tariff*
24 *Act of 1930 (19 U.S.C. 1675c; repealed by subtitle F of title*

1 *VII of the Deficit Reduction Act of 2005 (Public Law 109–*
2 *171; 120 Stat. 154))) that were—*

3 *(1) assessed and paid on imports of goods from*
4 *countries that are parties to the North American Free*
5 *Trade Agreement; and*

6 *(2) distributed on or after January 1, 2001, and*
7 *before January 1, 2006.*

8 *(c) PAYMENT OF FUNDS COLLECTED OR WITHHELD.—*

9 *Not later than the date that is 60 days after the date of*
10 *the enactment of this Act, the Secretary of Homeland Secu-*
11 *rity shall—*

12 *(1) refund any repayments, or any other*
13 *recoupment, of payments described in subsection (b);*
14 *and*

15 *(2) fully distribute any antidumping or counter-*
16 *vailing duties that the U.S. Customs and Border Pro-*
17 *tection is withholding as an offset as described in sub-*
18 *section (a)(2).*

19 *(d) LIMITATION.—Nothing in this section shall be con-*
20 *strued to prevent the Secretary of Homeland Security, or*
21 *any other person, from requiring repayment of, or attempt-*
22 *ing to otherwise recoup, any payments described in sub-*
23 *section (b) as a result of—*

24 *(1) a finding of false statements or other mis-*
25 *conduct by a recipient of such a payment; or*

1 (2) *the reliquidation of an entry with respect to*
2 *which such a payment was made.*

3 ***Subtitle J—Other Provisions***

4 ***SEC. 1901. APPLICATION OF CERTAIN LABOR STANDARDS*** 5 ***TO PROJECTS FINANCED WITH CERTAIN TAX-*** 6 ***FAVORED BONDS.***

7 *Subchapter IV of chapter 31 of the title 40, United*
8 *States Code, shall apply to projects financed with the pro-*
9 *ceeds of—*

10 (1) *any new clean renewable energy bond (as de-*
11 *efined in section 54C of the Internal Revenue Code of*
12 *1986) issued after the date of the enactment of this*
13 *Act,*

14 (2) *any qualified energy conservation bond (as*
15 *defined in section 54D of the Internal Revenue Code*
16 *of 1986) issued after the date of the enactment of this*
17 *Act,*

18 (3) *any qualified zone academy bond (as defined*
19 *in section 54E of the Internal Revenue Code of 1986)*
20 *issued after the date of the enactment of this Act,*

21 (4) *any qualified school construction bond (as*
22 *defined in section 54F of the Internal Revenue Code*
23 *of 1986), and*

1 (5) any recovery zone economic development
2 bond (as defined in section 1400U-2 of the Internal
3 Revenue Code of 1986).

4 **SEC. 1902. INCREASE IN PUBLIC DEBT LIMIT.**

5 Subsection (b) of section 3101 of title 31, United States
6 Code, is amended by striking out the dollar limitation con-
7 tained in such subsection and inserting
8 “\$12,140,000,000,000”.

9 **SEC. 1903. ELECTION TO ACCELERATE THE LOW-INCOME**
10 **HOUSING TAX CREDIT.**

11 (a) *IN GENERAL.*—At the election of the taxpayer, the
12 credit determined under section 42 of the Internal Revenue
13 Code of 1986 for the taxpayer’s first three taxable years be-
14 ginning after December 31, 2008, in which credits are al-
15 lowable for any non-federally subsidized low-income hous-
16 ing project initially placed in service after such date—

17 (1) with respect to initial investments made pur-
18 suant to a binding agreement by such taxpayer after
19 December 31, 2008, and before January 1, 2011, and

20 (2) only from allocations of a State housing
21 credit ceiling before 2011,

22 shall be 200 percent of the amount which would (but for
23 this subsection) be so allowable.

24 (b) *ELIGIBILITY FOR ELECTION.*—The election under
25 subsection (a) shall take effect with respect to the first tax-

1 *able year referred to in such subsection only when all rental*
2 *requirements pursuant to section 42(g)(1) of the Internal*
3 *Revenue Code of 1986 have been met with respect to such*
4 *low-income housing project.*

5 *(c) REDUCTION IN AGGREGATE CREDIT TO REFLECT*
6 *ACCELERATED CREDIT.—The aggregate credit allowable to*
7 *any taxpayer under section 42 of the Internal Revenue Code*
8 *of 1986 with respect to any investment for taxable years*
9 *after the first three taxable years referred to in subsection*
10 *(a) shall be reduced on a pro rata basis by the amount of*
11 *the increased credit allowable by reason of subsection (a)*
12 *with respect to such first three taxable years. The preceding*
13 *sentence shall not be construed to affect whether any taxable*
14 *year is part of the credit, compliance, or extended use peri-*
15 *ods under such section 42.*

16 *(d) ELECTION.—The election under subsection (a)*
17 *shall be made at the time and in the manner prescribed*
18 *by the Secretary of the Treasury or the Secretary's delegate,*
19 *and, once made, shall be irrevocable. In the case of a part-*
20 *nership, such election shall be made by the partnership.*

1 **TITLE II—ASSISTANCE FOR UN-**
 2 **EMPLOYED WORKERS AND**
 3 **STRUGGLING FAMILIES**

4 **SEC. 2000. SHORT TITLE; TABLE OF CONTENTS.**

5 (a) *SHORT TITLE.*—This title may be cited as the “As-
 6 sistance for Unemployed Workers and Struggling Families
 7 Act”.

8 (b) *TABLE OF CONTENTS.*—The table of contents for
 9 this title is as follows:

**TITLE II—ASSISTANCE FOR UNEMPLOYED WORKERS AND
 STRUGGLING FAMILIES**

Sec. 2000. Short title; table of contents.

Subtitle A—Unemployment Insurance

Sec. 2001. Extension of emergency unemployment compensation program.

Sec. 2002. Increase in unemployment compensation benefits.

Sec. 2003. Unemployment compensation modernization.

Sec. 2004. Temporary assistance for States with advances.

Subtitle B—Assistance for Vulnerable Individuals

Sec. 2101. Emergency fund for TANF program.

Sec. 2102. Extension of TANF supplemental grants.

*Sec. 2103. Clarification of authority of states to use tanf funds carried over from
 prior years to provide tanf benefits and services.*

*Sec. 2104. Temporary reinstatement of authority to provide Federal matching
 payments for State spending of child support incentive pay-
 ments.*

10 **Subtitle A—Unemployment**
 11 **Insurance**

12 **SEC. 2001. EXTENSION OF EMERGENCY UNEMPLOYMENT**
 13 **COMPENSATION PROGRAM.**

14 (a) *IN GENERAL.*—Section 4007 of the Supplemental
 15 Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C.
 16 3304 note), as amended by section 4 of the Unemployment

1 *Compensation Extension Act of 2008 (Public Law 110–449;*
2 *122 Stat. 5015), is amended—*

3 *(1) by striking “March 31, 2009” each place it*
4 *appears and inserting “December 31, 2009”;*

5 *(2) in the heading for subsection (b)(2), by strik-*
6 *ing “MARCH 31, 2009” and inserting “DECEMBER 31,*
7 *2009”; and*

8 *(3) in subsection (b)(3), by striking “August 27,*
9 *2009” and inserting “May 31, 2010”.*

10 *(b) FINANCING PROVISIONS.—Section 4004 of such Act*
11 *is amended by adding at the end the following:*

12 *“(e) TRANSFER OF FUNDS.—Notwithstanding any*
13 *other provision of law, the Secretary of the Treasury shall*
14 *transfer from the general fund of the Treasury (from funds*
15 *not otherwise appropriated)—*

16 *“(1) to the extended unemployment compensation*
17 *account (as established by section 905 of the Social*
18 *Security Act) such sums as the Secretary of Labor es-*
19 *timates to be necessary to make payments to States*
20 *under this title by reason of the amendments made by*
21 *section 2001(a) of the Assistance for Unemployed*
22 *Workers and Struggling Families Act; and*

23 *“(2) to the employment security administration*
24 *account (as established by section 901 of the Social*
25 *Security Act) such sums as the Secretary of Labor es-*

1 *timates to be necessary for purposes of assisting*
2 *States in meeting administrative costs by reason of*
3 *the amendments referred to in paragraph (1).*

4 *There are appropriated from the general fund of the Treas-*
5 *ury, without fiscal year limitation, the sums referred to in*
6 *the preceding sentence and such sums shall not be required*
7 *to be repaid.”.*

8 **SEC. 2002. INCREASE IN UNEMPLOYMENT COMPENSATION**
9 **BENEFITS.**

10 *(a) FEDERAL-STATE AGREEMENTS.—Any State which*
11 *desires to do so may enter into and participate in an agree-*
12 *ment under this section with the Secretary of Labor (herein-*
13 *after in this section referred to as the “Secretary”). Any*
14 *State which is a party to an agreement under this section*
15 *may, upon providing 30 days’ written notice to the Sec-*
16 *retary, terminate such agreement.*

17 *(b) PROVISIONS OF AGREEMENT.—*

18 *(1) ADDITIONAL COMPENSATION.—Any agree-*
19 *ment under this section shall provide that the State*
20 *agency of the State will make payments of regular*
21 *compensation to individuals in amounts and to the*
22 *extent that they would be determined if the State law*
23 *of the State were applied, with respect to any week*
24 *for which the individual is (disregarding this section)*
25 *otherwise entitled under the State law to receive reg-*

1 ular compensation, as if such State law had been
2 modified in a manner such that the amount of reg-
3 ular compensation (including dependents' allowances)
4 payable for any week shall be equal to the amount de-
5 termined under the State law (before the application
6 of this paragraph) plus an additional \$25.

7 (2) *ALLOWABLE METHODS OF PAYMENT.*—Any
8 additional compensation provided for in accordance
9 with paragraph (1) shall be payable either—

10 (A) as an amount which is paid at the
11 same time and in the same manner as any reg-
12 ular compensation otherwise payable for the
13 week involved; or

14 (B) at the option of the State, by payments
15 which are made separately from, but on the same
16 weekly basis as, any regular compensation other-
17 wise payable.

18 (c) *NONREDUCTION RULE.*—An agreement under this
19 section shall not apply (or shall cease to apply) with respect
20 to a State upon a determination by the Secretary that the
21 method governing the computation of regular compensation
22 under the State law of that State has been modified in a
23 manner such that—

24 (1) the average weekly benefit amount of regular
25 compensation which will be payable during the period

1 of the agreement (determined disregarding any addi-
2 tional amounts attributable to the modification de-
3 scribed in subsection (b)(1)) will be less than

4 (2) the average weekly benefit amount of regular
5 compensation which would otherwise have been pay-
6 able during such period under the State law, as in ef-
7 fect on December 31, 2008.

8 (d) *PAYMENTS TO STATES.*—

9 (1) *IN GENERAL.*—

10 (A) *FULL REIMBURSEMENT.*—There shall be
11 paid to each State which has entered into an
12 agreement under this section an amount equal to
13 100 percent of—

14 (i) the total amount of additional com-
15 pensation (as described in subsection (b)(1))
16 paid to individuals by the State pursuant
17 to such agreement; and

18 (ii) any additional administrative ex-
19 penses incurred by the State by reason of
20 such agreement (as determined by the Sec-
21 retary).

22 (B) *TERMS OF PAYMENTS.*—Sums payable
23 to any State by reason of such State's having an
24 agreement under this section shall be payable, ei-
25 ther in advance or by way of reimbursement (as

1 *determined by the Secretary), in such amounts*
2 *as the Secretary estimates the State will be enti-*
3 *tled to receive under this section for each cal-*
4 *endar month, reduced or increased, as the case*
5 *may be, by any amount by which the Secretary*
6 *finds that his estimates for any prior calendar*
7 *month were greater or less than the amounts*
8 *which should have been paid to the State. Such*
9 *estimates may be made on the basis of such sta-*
10 *tistical, sampling, or other method as may be*
11 *agreed upon by the Secretary and the State*
12 *agency of the State involved.*

13 (2) *CERTIFICATIONS.*—*The Secretary shall from*
14 *time to time certify to the Secretary of the Treasury*
15 *for payment to each State the sums payable to such*
16 *State under this section.*

17 (3) *APPROPRIATION.*—*There are appropriated*
18 *from the general fund of the Treasury, without fiscal*
19 *year limitation, such sums as may be necessary for*
20 *purposes of this subsection.*

21 (e) *APPLICABILITY.*—

22 (1) *IN GENERAL.*—*An agreement entered into*
23 *under this section shall apply to weeks of unemploy-*
24 *ment—*

1 (A) beginning after the date on which such
2 agreement is entered into; and

3 (B) ending before January 1, 2010.

4 (2) *TRANSITION RULE FOR INDIVIDUALS REMAIN-*
5 *ING ENTITLED TO REGULAR COMPENSATION AS OF*
6 *JANUARY 1, 2010.—In the case of any individual who,*
7 *as of the date specified in paragraph (1)(B), has not*
8 *yet exhausted all rights to regular compensation*
9 *under the State law of a State with respect to a ben-*
10 *efit year that began before such date, additional com-*
11 *pensation (as described in subsection (b)(1)) shall*
12 *continue to be payable to such individual for any*
13 *week beginning on or after such date for which the in-*
14 *dividual is otherwise eligible for regular compensation*
15 *with respect to such benefit year.*

16 (3) *TERMINATION.—Notwithstanding any other*
17 *provision of this subsection, no additional compensa-*
18 *tion (as described in subsection (b)(1)) shall be pay-*
19 *able for any week beginning after June 30, 2010.*

20 (f) *FRAUD AND OVERPAYMENTS.—The provisions of*
21 *section 4005 of the Supplemental Appropriations Act, 2008*
22 *(Public Law 110–252; 122 Stat. 2356) shall apply with re-*
23 *spect to additional compensation (as described in subsection*
24 *(b)(1)) to the same extent and in the same manner as in*
25 *the case of emergency unemployment compensation.*

1 (g) *APPLICATION TO OTHER UNEMPLOYMENT BENE-*
2 *FITS.—*

3 (1) *IN GENERAL.—Each agreement under this*
4 *section shall include provisions to provide that the*
5 *purposes of the preceding provisions of this section*
6 *shall be applied with respect to unemployment bene-*
7 *fits described in subsection (i)(3) to the same extent*
8 *and in the same manner as if those benefits were reg-*
9 *ular compensation.*

10 (2) *ELIGIBILITY AND TERMINATION RULES.—Ad-*
11 *ditional compensation (as described in subsection*
12 *(b)(1))—*

13 (A) *shall not be payable, pursuant to this*
14 *subsection, with respect to any unemployment*
15 *benefits described in subsection (i)(3) for any*
16 *week beginning on or after the date specified in*
17 *subsection (e)(1)(B), except in the case of an in-*
18 *dividual who was eligible to receive additional*
19 *compensation (as so described) in connection*
20 *with any regular compensation or any unem-*
21 *ployment benefits described in subsection (i)(3)*
22 *for any period of unemployment ending before*
23 *such date; and*

1 (B) shall in no event be payable for any
2 week beginning after the date specified in sub-
3 section (e)(3).

4 (h) *DISREGARD OF ADDITIONAL COMPENSATION FOR*
5 *PURPOSES OF MEDICAID AND SCHIP.*—A State that enters
6 into an agreement under this section shall disregard the
7 monthly equivalent of \$25 per week for any individual who
8 receives additional compensation under subsection (b)(1) in
9 considering the amount of income of the individual for any
10 purposes under the Medicaid program under title XIX of
11 the Social Security Act and the State Children’s Health In-
12 surance Program under title XXI of such Act.

13 (i) *DEFINITIONS.*—For purposes of this section—

14 (1) the terms “compensation”, “regular com-
15 pensation”, “benefit year”, “State”, “State agency”,
16 “State law”, and “week” have the respective meanings
17 given such terms under section 205 of the Federal-
18 State Extended Unemployment Compensation Act of
19 1970 (26 U.S.C. 3304 note);

20 (2) the term “emergency unemployment com-
21 pensation” means emergency unemployment com-
22 pensation under title IV of the Supplemental Appro-
23 priations Act, 2008 (Public Law 110–252; 122 Stat.
24 2353); and

1 (3) any reference to unemployment benefits de-
2 scribed in this paragraph shall be considered to refer
3 to—

4 (A) extended compensation (as defined by
5 section 205 of the Federal-State Extended Unem-
6 ployment Compensation Act of 1970); and

7 (B) unemployment compensation (as de-
8 fined by section 85(b) of the Internal Revenue
9 Code of 1986) provided under any program ad-
10 ministered by a State under an agreement with
11 the Secretary.

12 **SEC. 2003. UNEMPLOYMENT COMPENSATION MODERNIZA-**
13 **TION.**

14 (a) *IN GENERAL.*—Section 903 of the Social Security
15 Act (42 U.S.C. 1103) is amended by adding at the end the
16 following:

17 “Special Transfers for Modernization

18 “(f)(1)(A) In addition to any other amounts, the Sec-
19 retary of Labor shall provide for the making of unemploy-
20 ment compensation modernization incentive payments
21 (hereinafter ‘incentive payments’) to the accounts of the
22 States in the Unemployment Trust Fund, by transfer from
23 amounts reserved for that purpose in the Federal unemploy-
24 ment account, in accordance with succeeding provisions of
25 this subsection.

1 “(B) *The maximum incentive payment allowable*
2 *under this subsection with respect to any State shall, as*
3 *determined by the Secretary of Labor, be equal to the*
4 *amount obtained by multiplying \$7,000,000,000 by the*
5 *same ratio as would apply under subsection (a)(2)(B) for*
6 *purposes of determining such State’s share of any excess*
7 *amount (as described in subsection (a)(1)) that would have*
8 *been subject to transfer to State accounts, as of October 1,*
9 *2008, under the provisions of subsection (a).*

10 “(C) *Of the maximum incentive payment determined*
11 *under subparagraph (B) with respect to a State—*

12 “(i) *one-third shall be transferred to the account*
13 *of such State upon a certification under paragraph*
14 *(4)(B) that the State law of such State meets the re-*
15 *quirements of paragraph (2); and*

16 “(ii) *the remainder shall be transferred to the ac-*
17 *count of such State upon a certification under para-*
18 *graph (4)(B) that the State law of such State meets*
19 *the requirements of paragraph (3).*

20 “(2) *The State law of a State meets the requirements*
21 *of this paragraph if such State law—*

22 “(A) *uses a base period that includes the most*
23 *recently completed calendar quarter before the start of*
24 *the benefit year for purposes of determining eligibility*
25 *for unemployment compensation; or*

1 “(B) provides that, in the case of an individual
2 who would not otherwise be eligible for unemployment
3 compensation under the State law because of the use
4 of a base period that does not include the most re-
5 cently completed calendar quarter before the start of
6 the benefit year, eligibility shall be determined using
7 a base period that includes such calendar quarter.

8 “(3) The State law of a State meets the requirements
9 of this paragraph if such State law includes provisions to
10 carry out at least 2 of the following subparagraphs:

11 “(A) An individual shall not be denied regular
12 unemployment compensation under any State law
13 provisions relating to availability for work, active
14 search for work, or refusal to accept work, solely be-
15 cause such individual is seeking only part-time (and
16 not full-time) work, except that the State law provi-
17 sions carrying out this subparagraph may exclude an
18 individual if a majority of the weeks of work in such
19 individual’s base period do not include part-time
20 work.

21 “(B) An individual shall not be disqualified
22 from regular unemployment compensation for sepa-
23 rating from employment if that separation is for any
24 compelling family reason. For purposes of this sub-

1 paragraph, the term ‘compelling family reason’
2 means the following:

3 “(i) Domestic violence, verified by such rea-
4 sonable and confidential documentation as the
5 State law may require, which causes the indi-
6 vidual reasonably to believe that such individ-
7 ual’s continued employment would jeopardize the
8 safety of the individual or of any member of the
9 individual’s immediate family (as defined by the
10 Secretary of Labor).

11 “(ii) The illness or disability of a member
12 of the individual’s immediate family (as defined
13 by the Secretary of Labor).

14 “(iii) The need for the individual to accom-
15 pany such individual’s spouse—

16 “(I) to a place from which it is im-
17 practical for such individual to commute;
18 and

19 “(II) due to a change in location of the
20 spouse’s employment.

21 “(C) Weekly unemployment compensation is
22 payable under this subparagraph to any individual
23 who is unemployed (as determined under the State
24 unemployment compensation law), has exhausted all
25 rights to regular unemployment compensation under

1 *the State law, and is enrolled and making satisfac-*
2 *tory progress in a State-approved training program*
3 *or in a job training program authorized under the*
4 *Workforce Investment Act of 1998. Such programs*
5 *shall prepare individuals who have been separated*
6 *from a declining occupation, or who have been invol-*
7 *untarily and indefinitely separated from employment*
8 *as a result of a permanent reduction of operations at*
9 *the individual's place of employment, for entry into*
10 *a high-demand occupation. The amount of unemploy-*
11 *ment compensation payable under this subparagraph*
12 *to an individual for a week of unemployment shall be*
13 *equal to the individual's average weekly benefit*
14 *amount (including dependents' allowances) for the*
15 *most recent benefit year, and the total amount of un-*
16 *employment compensation payable under this sub-*
17 *paragraph to any individual shall be equal to at least*
18 *26 times the individual's average weekly benefit*
19 *amount (including dependents' allowances) for the*
20 *most recent benefit year.*

21 *“(D) Dependents' allowances are provided, in the*
22 *case of any individual who is entitled to receive reg-*
23 *ular unemployment compensation and who has any*
24 *dependents (as defined by State law), in an amount*
25 *equal to at least \$15 per dependent per week, subject*

1 to any aggregate limitation on such allowances which
2 the State law may establish (but which aggregate lim-
3 itation on the total allowance for dependents paid to
4 an individual may not be less than \$50 for each week
5 of unemployment or 50 percent of the individual's
6 weekly benefit amount for the benefit year, whichever
7 is less).

8 “(4)(A) Any State seeking an incentive payment under
9 this subsection shall submit an application therefor at such
10 time, in such manner, and complete with such information
11 as the Secretary of Labor may within 60 days after the
12 date of the enactment of this subsection prescribe (whether
13 by regulation or otherwise), including information relating
14 to compliance with the requirements of paragraph (2) or
15 (3), as well as how the State intends to use the incentive
16 payment to improve or strengthen the State's unemploy-
17 ment compensation program. The Secretary of Labor shall,
18 within 30 days after receiving a complete application, no-
19 tify the State agency of the State of the Secretary's findings
20 with respect to the requirements of paragraph (2) or (3)
21 (or both).

22 “(B)(i) If the Secretary of Labor finds that the State
23 law provisions (disregarding any State law provisions
24 which are not then currently in effect as permanent law
25 or which are subject to discontinuation) meet the require-

1 *ments of paragraph (2) or (3), as the case may be, the Sec-*
2 *retary of Labor shall thereupon make a certification to that*
3 *effect to the Secretary of the Treasury, together with a cer-*
4 *tification as to the amount of the incentive payment to be*
5 *transferred to the State account pursuant to that finding.*
6 *The Secretary of the Treasury shall make the appropriate*
7 *transfer within 7 days after receiving such certification.*

8 “(ii) *For purposes of clause (i), State law provisions*
9 *which are to take effect within 12 months after the date*
10 *of their certification under this subparagraph shall be con-*
11 *sidered to be in effect as of the date of such certification.*

12 “(C)(i) *No certification of compliance with the require-*
13 *ments of paragraph (2) or (3) may be made with respect*
14 *to any State whose State law is not otherwise eligible for*
15 *certification under section 303 or approvable under section*
16 *3304 of the Federal Unemployment Tax Act.*

17 “(ii) *No certification of compliance with the require-*
18 *ments of paragraph (3) may be made with respect to any*
19 *State whose State law is not in compliance with the re-*
20 *quirements of paragraph (2).*

21 “(iii) *No application under subparagraph (A) may be*
22 *considered if submitted before the date of the enactment of*
23 *this subsection or after the latest date necessary (as specified*
24 *by the Secretary of Labor) to ensure that all incentive pay-*
25 *ments under this subsection are made before October 1,*

1 2010. In the case of a State in which the first day of the
2 first regularly scheduled session of the State legislature be-
3 ginning after the date of enactment of this subsection begins
4 after December 31, 2010, the preceding sentence shall be ap-
5 plied by substituting ‘October 1, 2011’ for ‘October 1, 2010’.

6 “(5)(A) Except as provided in subparagraph (B), any
7 amount transferred to the account of a State under this sub-
8 section may be used by such State only in the payment of
9 cash benefits to individuals with respect to their unemploy-
10 ment (including for dependents’ allowances and for unem-
11 ployment compensation under paragraph (3)(C)), exclusive
12 of expenses of administration.

13 “(B) A State may, subject to the same conditions as
14 set forth in subsection (c)(2) (excluding subparagraph (B)
15 thereof, and deeming the reference to ‘subsections (a) and
16 (b)’ in subparagraph (D) thereof to include this subsection),
17 use any amount transferred to the account of such State
18 under this subsection for the administration of its unem-
19 ployment compensation law and public employment offices.

20 “(6) Out of any money in the Federal unemployment
21 account not otherwise appropriated, the Secretary of the
22 Treasury shall reserve \$7,000,000,000 for incentive pay-
23 ments under this subsection. Any amount so reserved shall
24 not be taken into account for purposes of any determination
25 under section 902, 910, or 1203 of the amount in the Fed-

1 eral unemployment account as of any given time. Any
2 amount so reserved for which the Secretary of the Treasury
3 has not received a certification under paragraph (4)(B) by
4 the deadline described in paragraph (4)(C)(iii) shall, upon
5 the close of fiscal year 2011, become unrestricted as to use
6 as part of the Federal unemployment account.

7 “(7) For purposes of this subsection, the terms ‘benefit
8 year’, ‘base period’, and ‘week’ have the respective meanings
9 given such terms under section 205 of the Federal-State Ex-
10 tended Unemployment Compensation Act of 1970 (26
11 U.S.C. 3304 note).

12 “Special Transfer in Fiscal Year 2009 for Administration

13 “(g)(1) In addition to any other amounts, the Sec-
14 retary of the Treasury shall transfer from the employment
15 security administration account to the account of each
16 State in the Unemployment Trust Fund, within 30 days
17 after the date of the enactment of this subsection, the
18 amount determined with respect to such State under para-
19 graph (2).

20 “(2) The amount to be transferred under this sub-
21 section to a State account shall (as determined by the Sec-
22 retary of Labor and certified by such Secretary to the Sec-
23 retary of the Treasury) be equal to the amount obtained
24 by multiplying \$500,000,000 by the same ratio as deter-
25 mined under subsection (f)(1)(B) with respect to such State.

1 “(3) Any amount transferred to the account of a State
2 as a result of the enactment of this subsection may be used
3 by the State agency of such State only in the payment of
4 expenses incurred by it for—

5 “(A) the administration of the provisions of its
6 State law carrying out the purposes of subsection
7 (f)(2) or any subparagraph of subsection (f)(3);

8 “(B) improved outreach to individuals who
9 might be eligible for regular unemployment compensa-
10 tion by virtue of any provisions of the State law
11 which are described in subparagraph (A);

12 “(C) the improvement of unemployment benefit
13 and unemployment tax operations, including respond-
14 ing to increased demand for unemployment com-
15 pensation; and

16 “(D) staff-assisted reemployment services for un-
17 employment compensation claimants.”.

18 (b) REGULATIONS.—The Secretary of Labor may pre-
19 scribe any regulations, operating instructions, or other
20 guidance necessary to carry out the amendment made by
21 subsection (a).

1 **SEC. 2004. TEMPORARY ASSISTANCE FOR STATES WITH AD-**
2 **VANCES.**

3 *Section 1202(b) of the Social Security Act (42 U.S.C.*
4 *1322(b)) is amended by adding at the end the following new*
5 *paragraph:*

6 *“(10)(A) With respect to the period beginning on the*
7 *date of enactment of this paragraph and ending on Decem-*
8 *ber 31, 2010—*

9 *“(i) any interest payment otherwise due from a*
10 *State under this subsection during such period shall*
11 *be deemed to have been made by the State; and*

12 *“(ii) no interest shall accrue on any advance or*
13 *advances made under section 1201 to a State during*
14 *such period.*

15 *“(B) The provisions of subparagraph (A) shall have*
16 *no effect on the requirement for interest payments under*
17 *this subsection after the period described in such subpara-*
18 *graph or on the accrual of interest under this subsection*
19 *after such period.”.*

20 ***Subtitle B—Assistance for***
21 ***Vulnerable Individuals***

22 **SEC. 2101. EMERGENCY FUND FOR TANF PROGRAM.**

23 *(a) TEMPORARY FUND.—*

24 *(1) IN GENERAL.—Section 403 of the Social Se-*
25 *curity Act (42 U.S.C. 603) is amended by adding at*
26 *the end the following:*

1 “(c) *EMERGENCY FUND.*—

2 “(1) *ESTABLISHMENT.*—*There is established in*
3 *the Treasury of the United States a fund which shall*
4 *be known as the ‘Emergency Contingency Fund for*
5 *State Temporary Assistance for Needy Families Pro-*
6 *grams’ (in this subsection referred to as the ‘Emer-*
7 *gency Fund’).*

8 “(2) *DEPOSITS INTO FUND.*—

9 “(A) *IN GENERAL.*—*Out of any money in*
10 *the Treasury of the United States not otherwise*
11 *appropriated, there are appropriated for fiscal*
12 *year 2009, \$3,000,000,000 for payment to the*
13 *Emergency Fund.*

14 “(B) *AVAILABILITY AND USE OF FUNDS.*—
15 *The amounts appropriated to the Emergency*
16 *Fund under subparagraph (A) shall remain*
17 *available through fiscal year 2010 and shall be*
18 *used to make grants to States in each of fiscal*
19 *years 2009 and 2010 in accordance with the re-*
20 *quirements of paragraph (3).*

21 “(C) *LIMITATION.*—*In no case may the Sec-*
22 *retary make a grant from the Emergency Fund*
23 *for a fiscal year after fiscal year 2010.*

24 “(3) *GRANTS.*—

1 “(A) *GRANT RELATED TO CASELOAD IN-*
2 *CREASES.*—

3 “(i) *IN GENERAL.*—*For each calendar*
4 *quarter in fiscal year 2009 or 2010, the*
5 *Secretary shall make a grant from the*
6 *Emergency Fund to each State that—*

7 “(I) *requests a grant under this*
8 *subparagraph for the quarter; and*

9 “(II) *meets the requirement of*
10 *clause (ii) for the quarter.*

11 “(ii) *CASELOAD INCREASE REQUIRE-*
12 *MENT.*—*A State meets the requirement of*
13 *this clause for a quarter if the average*
14 *monthly assistance caseload of the State for*
15 *the quarter exceeds the average monthly as-*
16 *sistance caseload of the State for the cor-*
17 *responding quarter in the emergency fund*
18 *base year of the State.*

19 “(iii) *AMOUNT OF GRANT.*—*Subject to*
20 *paragraph (5), the amount of the grant to*
21 *be made to a State under this subparagraph*
22 *for a quarter shall be 80 percent of the*
23 *amount (if any) by which the total expendi-*
24 *tures of the State for basic assistance (as de-*
25 *finied by the Secretary) in the quarter,*

1 *whether under the State program funded*
2 *under this part or as qualified State ex-*
3 *penditures, exceeds the total expenditures of*
4 *the State for such assistance for the cor-*
5 *responding quarter in the emergency fund*
6 *base year of the State.*

7 “(B) *GRANT RELATED TO INCREASED EX-*
8 *PENDITURES FOR NON-RECURRENT SHORT TERM*
9 *BENEFITS.—*

10 “(i) *IN GENERAL.—For each calendar*
11 *quarter in fiscal year 2009 or 2010, the*
12 *Secretary shall make a grant from the*
13 *Emergency Fund to each State that—*

14 “(I) *requests a grant under this*
15 *subparagraph for the quarter; and*

16 “(II) *meets the requirement of*
17 *clause (ii) for the quarter.*

18 “(ii) *NON-RECURRENT SHORT TERM*
19 *EXPENDITURE REQUIREMENT.—A State*
20 *meets the requirement of this clause for a*
21 *quarter if the total expenditures of the State*
22 *for non-recurrent short term benefits in the*
23 *quarter, whether under the State program*
24 *funded under this part or as qualified State*
25 *expenditures, exceeds the total such expendi-*

1 *tures of the State for non-recurrent short*
2 *term benefits in the corresponding quarter*
3 *in the emergency fund base year of the*
4 *State.*

5 “(iii) *AMOUNT OF GRANT.*—*Subject to*
6 *paragraph (5), the amount of the grant to*
7 *be made to a State under this subparagraph*
8 *for a quarter shall be an amount equal to*
9 *80 percent of the excess described in clause*
10 *(ii).*

11 “(C) *GRANT RELATED TO INCREASED EX-*
12 *PENDITURES FOR SUBSIDIZED EMPLOYMENT.*—

13 “(i) *IN GENERAL.*—*For each calendar*
14 *quarter in fiscal year 2009 or 2010, the*
15 *Secretary shall make a grant from the*
16 *Emergency Fund to each State that—*

17 “(I) *requests a grant under this*
18 *subparagraph for the quarter; and*

19 “(II) *meets the requirement of*
20 *clause (ii) for the quarter.*

21 “(ii) *SUBSIDIZED EMPLOYMENT EX-*
22 *PENDITURE REQUIREMENT.*—*A State meets*
23 *the requirement of this clause for a quarter*
24 *if the total expenditures of the State for sub-*
25 *sidized employment in the quarter, whether*

1 *under the State program funded under this*
2 *part or as qualified State expenditures, ex-*
3 *ceeds the total of such expenditures of the*
4 *State in the corresponding quarter in the*
5 *emergency fund base year of the State.*

6 *“(iii) AMOUNT OF GRANT.—Subject to*
7 *paragraph (5), the amount of the grant to*
8 *be made to a State under this subparagraph*
9 *for a quarter shall be an amount equal to*
10 *80 percent of the excess described in clause*
11 *(ii).*

12 *“(4) AUTHORITY TO MAKE NECESSARY ADJUST-*
13 *MENTS TO DATA AND COLLECT NEEDED DATA.—In de-*
14 *termining the size of the caseload of a State and the*
15 *expenditures of a State for basic assistance, non-re-*
16 *current short-term benefits, and subsidized employ-*
17 *ment, during any period for which the State requests*
18 *funds under this subsection, and during the emer-*
19 *gency fund base year of the State, the Secretary may*
20 *make appropriate adjustments to the data to ensure*
21 *that the data reflect expenditures under the State pro-*
22 *gram funded under this part and qualified State ex-*
23 *penditures. The Secretary may develop a mechanism*
24 *for collecting expenditure data, including procedures*

1 *which allow States to make reasonable estimates, and*
2 *may set deadlines for making revisions to the data.*

3 “(5) *LIMITATION.*—*The total amount payable to*
4 *a single State under subsection (b) and this subsection*
5 *for a fiscal year shall not exceed 25 percent of the*
6 *State family assistance grant.*

7 “(6) *LIMITATIONS ON USE OF FUNDS.*—*A State*
8 *to which an amount is paid under this subsection*
9 *may use the amount only as authorized by section*
10 *404.*

11 “(7) *TIMING OF IMPLEMENTATION.*—*The Sec-*
12 *retary shall implement this subsection as quickly as*
13 *reasonably possible, pursuant to appropriate guidance*
14 *to States.*

15 “(8) *DEFINITIONS.*—*In this subsection:*

16 “(A) *AVERAGE MONTHLY ASSISTANCE CASE-*
17 *LOAD DEFINED.*—*The term ‘average monthly as-*
18 *sistance caseload’ means, with respect to a State*
19 *and a quarter, the number of families receiving*
20 *assistance during the quarter under the State*
21 *program funded under this part or as qualified*
22 *State expenditures, subject to adjustment under*
23 *paragraph (4).*

24 “(B) *EMERGENCY FUND BASE YEAR.*—

1 “(i) *IN GENERAL.*—*The term ‘emer-*
2 *gency fund base year’ means, with respect*
3 *to a State and a category described in*
4 *clause (ii), whichever of fiscal year 2007 or*
5 *2008 is the fiscal year in which the amount*
6 *described by the category with respect to the*
7 *State is the lesser.*

8 “(ii) *CATEGORIES DESCRIBED.*—*The*
9 *categories described in this clause are the*
10 *following:*

11 “(I) *The average monthly assist-*
12 *ance caseload of the State.*

13 “(II) *The total expenditures of the*
14 *State for non-recurrent short term ben-*
15 *efits, whether under the State program*
16 *funded under this part or as qualified*
17 *State expenditures.*

18 “(III) *The total expenditures of*
19 *the State for subsidized employment,*
20 *whether under the State program fund-*
21 *ed under this part or as qualified State*
22 *expenditures.*

23 “(C) *QUALIFIED STATE EXPENDITURES.*—
24 *The term ‘qualified State expenditures’ has the*
25 *meaning given the term in section 409(a)(7).”.*

1 (2) *REPEAL.*—Effective October 1, 2010, sub-
2 section (c) of section 403 of the Social Security Act
3 (42 U.S.C. 603) (as added by paragraph (1)) is re-
4 pealed.

5 (b) *TEMPORARY MODIFICATION OF CASELOAD REDUC-*
6 *TION CREDIT.*—Section 407(b)(3)(A)(i) of such Act (42
7 U.S.C. 607(b)(3)(A)(i)) is amended by inserting “(or if the
8 immediately preceding fiscal year is fiscal year 2008, 2009,
9 or 2010, then, at State option, during the emergency fund
10 base year of the State with respect to the average monthly
11 assistance caseload of the State (within the meaning of sec-
12 tion 403(c)(8)(B), except that, if a State elects such option
13 for fiscal year 2008, the emergency fund base year of the
14 State with respect to such caseload shall be fiscal year
15 2007))” before “under the State”.

16 (c) *DISREGARD FROM LIMITATION ON TOTAL PAY-*
17 *MENTS TO TERRITORIES.*—Section 1108(a)(2) of the Social
18 Security Act (42 U.S.C. 1308(a)(2)) is amended by insert-
19 ing “403(c)(3),” after “403(a)(5),”.

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

23 **SEC. 2102. EXTENSION OF TANF SUPPLEMENTAL GRANTS.**

24 (a) *EXTENSION THROUGH FISCAL YEAR 2010.*—Sec-
25 tion 7101(a) of the Deficit Reduction Act of 2005 (Public

1 *Law 109–171; 120 Stat. 135), as amended by section 301(a)*
2 *of the Medicare Improvements for Patients and Providers*
3 *Act of 2008 (Public Law 110–275), is amended by striking*
4 *“fiscal year 2009” and inserting “fiscal year 2010”.*

5 (b) *CONFORMING AMENDMENT.—Section*
6 *403(a)(3)(H)(ii) of the Social Security Act (42 U.S.C.*
7 *603(a)(3)(H)(ii)) is amended to read as follows:*

8 *“(ii) subparagraph (G) shall be ap-*
9 *plied as if ‘fiscal year 2010’ were sub-*
10 *stituted for ‘fiscal year 2001’; and”.*

11 **SEC. 2103. CLARIFICATION OF AUTHORITY OF STATES TO**
12 **USE TANF FUNDS CARRIED OVER FROM**
13 **PRIOR YEARS TO PROVIDE TANF BENEFITS**
14 **AND SERVICES.**

15 *Section 404(e) of the Social Security Act (42 U.S.C.*
16 *604(e)) is amended to read as follows:*

17 *“(e) AUTHORITY TO CARRY OVER CERTAIN AMOUNTS*
18 *FOR BENEFITS OR SERVICES OR FOR FUTURE CONTIN-*
19 *GENCIES.—A State or tribe may use a grant made to the*
20 *State or tribe under this part for any fiscal year to provide,*
21 *without fiscal year limitation, any benefit or service that*
22 *may be provided under the State or tribal program funded*
23 *under this part.”.*

1 **SEC. 2104. TEMPORARY REINSTATEMENT OF AUTHORITY TO**
 2 **PROVIDE FEDERAL MATCHING PAYMENTS**
 3 **FOR STATE SPENDING OF CHILD SUPPORT**
 4 **INCENTIVE PAYMENTS.**

5 *During the period that begins on October 1, 2008, and*
 6 *ends on December 31, 2010, section 455(a)(1) of the Social*
 7 *Security Act (42 U.S.C. 655(a)(1)) shall be applied without*
 8 *regard to the amendment made by section 7309(a) of the*
 9 *Deficit Reduction Act of 2005 (Public Law 109–171, 120*
 10 *Stat. 147).*

11 **TITLE III—HEALTH INSURANCE**
 12 **ASSISTANCE**

13 **SEC. 3000. TABLE OF CONTENTS OF TITLE.**

14 *The table of contents for this title is as follows:*

TITLE III—HEALTH INSURANCE ASSISTANCE

Sec. 3000. Table of contents of title.

*Subtitle A—Premium Subsidies for COBRA Continuation Coverage for
Unemployed Workers*

Sec. 3001. Premium assistance for COBRA benefits.

Subtitle B—Transitional Medical Assistance (TMA)

Sec. 3101. Extension of transitional medical assistance (TMA).

Subtitle C—Extension of the Qualified Individual (QI) Program

Sec. 3201. Extension of the qualifying individual (QI) program.

Subtitle D—Other Provisions

*Sec. 3301. Premiums and cost sharing protections under Medicaid, eligibility de-
terminations under Medicaid and CHIP, and protection of cer-
tain Indian property from Medicaid estate recovery.*

*Sec. 3302. Rules applicable under Medicaid and CHIP to managed care entities
with respect to Indian enrollees and Indian health care pro-
viders and Indian managed care entities.*

Sec. 3303. Consultation on Medicaid, CHIP, and other health care programs funded under the Social Security Act involving Indian Health Programs and Urban Indian Organizations.

Sec. 3304. Application of prompt pay requirements to nursing facilities.

Sec. 3305. Period of application; sunset.

1 ***Subtitle A—Premium Subsidies for***
 2 ***COBRA Continuation Coverage***
 3 ***for Unemployed Workers***

4 ***SEC. 3001. PREMIUM ASSISTANCE FOR COBRA BENEFITS.***

5 *(a) TABLE OF CONTENTS OF SUBTITLE.—The table of*
 6 *contents of this subtitle is as follows:*

Sec. 3001. Premium assistance for COBRA benefits.

7 *(b) PREMIUM ASSISTANCE FOR COBRA CONTINU-*
 8 *ATION COVERAGE FOR UNEMPLOYED WORKERS AND THEIR*
 9 *FAMILIES.—*

10 *(1) PROVISION OF PREMIUM ASSISTANCE.—*

11 *(A) REDUCTION OF PREMIUMS PAYABLE.—*

12 *In the case of any premium for a month of cov-*
 13 *erage beginning after the date of the enactment*
 14 *of the Act for COBRA continuation coverage*
 15 *with respect to any assistance eligible indi-*
 16 *vidual, such individual shall be treated for pur-*
 17 *poses of any COBRA continuation provision as*
 18 *having paid the amount of such premium if such*
 19 *individual pays 50 percent of the amount of such*
 20 *premium (as determined without regard to this*
 21 *subsection).*

22 *(B) PLAN ENROLLMENT OPTION.—*

1 (i) *IN GENERAL.*—*Notwithstanding the*
2 *COBRA continuation provisions, an assist-*
3 *ance eligible individual may, not later than*
4 *90 days after the date of notice of the plan*
5 *enrollment option described in this subpara-*
6 *graph, elect to enroll in coverage under a*
7 *plan offered by the employer involved, or the*
8 *employee organization involved (including,*
9 *for this purpose, a joint board of trustees of*
10 *a multiemployer trust affiliated with one or*
11 *more multiemployer plans), that is different*
12 *than coverage under the plan in which such*
13 *individual was enrolled at the time the*
14 *qualifying event occurred, and such cov-*
15 *erage shall be treated as COBRA continu-*
16 *ation coverage for purposes of the applicable*
17 *COBRA continuation coverage provision.*

18 (ii) *REQUIREMENTS.*—*An assistance*
19 *eligible individual may elect to enroll in*
20 *different coverage as described in clause (i)*
21 *only if—*

22 (I) *the employer involved has*
23 *made a determination that such em-*
24 *ployer will permit assistance eligible*
25 *individuals to enroll in different cov-*

1 *erage as provided for this subpara-*
2 *graph;*

3 *(II) the premium for such dif-*
4 *ferent coverage does not exceed the pre-*
5 *mium for coverage in which the indi-*
6 *vidual was enrolled at the time the*
7 *qualifying event occurred;*

8 *(III) the different coverage in*
9 *which the individual elects to enroll is*
10 *coverage that is also offered to the ac-*
11 *tive employees of the employer at the*
12 *time at which such election is made;*
13 *and*

14 *(IV) the different coverage is*
15 *not—*

16 *(aa) coverage that provides*
17 *only dental, vision, counseling, or*
18 *referral services (or a combination*
19 *of such services);*

20 *(bb) a health flexible spend-*
21 *ing account or health reimburse-*
22 *ment arrangement; or*

23 *(cc) coverage that provides*
24 *coverage for services or treatments*
25 *furnished in an on-site medical*

1 *facility maintained by the em-*
2 *ployer and that consists primarily*
3 *of first-aid services, prevention*
4 *and wellness care, or similar care*
5 *(or a combination of such care).*

6 (C) *PREMIUM REIMBURSEMENT.*—*For pro-*
7 *visions providing the balance of such premium,*
8 *see section 6432 of the Internal Revenue Code of*
9 *1986, as added by paragraph (12).*

10 (2) *LIMITATION OF PERIOD OF PREMIUM ASSIST-*
11 *ANCE.*—

12 (A) *IN GENERAL.*—*Paragraph (1)(A) shall*
13 *not apply with respect to any assistance eligible*
14 *individual for months of coverage beginning on*
15 *or after the earlier of—*

16 (i) *the first date that such individual*
17 *is eligible for coverage under any other*
18 *group health plan (other than coverage con-*
19 *sisting of only dental, vision, counseling, or*
20 *referral services (or a combination thereof),*
21 *coverage under a health reimbursement ar-*
22 *rangement or a health flexible spending ar-*
23 *rangement, or coverage of treatment that is*
24 *furnished in an on-site medical facility*
25 *maintained by the employer and that con-*

1 *sists primarily of first-aid services, preven-*
2 *tion and wellness care, or similar care (or*
3 *a combination thereof)) or is eligible for*
4 *benefits under title XVIII of the Social Se-*
5 *curity Act; or*

6 *(ii) the earliest of—*

7 *(I) the date which is 12 months*
8 *after the first day of first month that*
9 *paragraph (1)(A) applies with respect*
10 *to such individual,*

11 *(II) the date following the expira-*
12 *tion of the maximum period of con-*
13 *tinuation coverage required under the*
14 *applicable COBRA continuation cov-*
15 *erage provision, or*

16 *(III) the date following the expi-*
17 *ration of the period of continuation*
18 *coverage allowed under paragraph*
19 *(4)(B)(ii).*

20 *(B) TIMING OF ELIGIBILITY FOR ADDI-*
21 *TIONAL COVERAGE.—For purposes of subpara-*
22 *graph (A)(i), an individual shall not be treated*
23 *as eligible for coverage under a group health*
24 *plan before the first date on which such indi-*
25 *vidual could be covered under such plan.*

1 (C) *NOTIFICATION REQUIREMENT.*—*An as-*
2 *stance eligible individual shall notify in writ-*
3 *ing the group health plan with respect to which*
4 *paragraph (1)(A) applies if such paragraph*
5 *ceases to apply by reason of subparagraph*
6 *(A)(i). Such notice shall be provided to the group*
7 *health plan in such time and manner as may be*
8 *specified by the Secretary of Labor.*

9 (3) *ASSISTANCE ELIGIBLE INDIVIDUAL.*—*For*
10 *purposes of this section, the term “assistance eligible*
11 *individual” means any qualified beneficiary if—*

12 (A) *at any time during the period that be-*
13 *gins with September 1, 2008, and ends with De-*
14 *ember 31, 2009, such qualified beneficiary is el-*
15 *igible for COBRA continuation coverage,*

16 (B) *such qualified beneficiary elects such*
17 *coverage, and*

18 (C) *the qualifying event with respect to the*
19 *COBRA continuation coverage consists of the in-*
20 *voluntary termination of the covered employee’s*
21 *employment and occurred during such period.*

22 (4) *EXTENSION OF ELECTION PERIOD AND EF-*
23 *FECT ON COVERAGE.*—

24 (A) *IN GENERAL.*—*Notwithstanding section*
25 *605(a) of the Employee Retirement Income Secu-*

1 *rity Act of 1974, section 4980B(f)(5)(A) of the*
2 *Internal Revenue Code of 1986, section 2205(a)*
3 *of the Public Health Service Act, and section*
4 *8905a(c)(2) of title 5, United States Code, in the*
5 *case of an individual who is a qualified bene-*
6 *ficiary described in paragraph (3)(A) as of the*
7 *date of the enactment of this Act and has not*
8 *made the election referred to in paragraph*
9 *(3)(B) as of such date, such individual may elect*
10 *the COBRA continuation coverage under the*
11 *COBRA continuation coverage provisions con-*
12 *taining such sections during the 60-day period*
13 *commencing with the date on which the notifica-*
14 *tion required under paragraph (7)(C) is pro-*
15 *vided to such individual.*

16 *(B) COMMENCEMENT OF COVERAGE; NO*
17 *REACH-BACK.—Any COBRA continuation cov-*
18 *erage elected by a qualified beneficiary during*
19 *an extended election period under subparagraph*
20 *(A)—*

21 *(i) shall commence on the date of the*
22 *enactment of this Act, and*

23 *(ii) shall not extend beyond the period*
24 *of COBRA continuation coverage that*
25 *would have been required under the applica-*

1 *ble COBRA continuation coverage provision*
2 *if the coverage had been elected as required*
3 *under such provision.*

4 (C) *PREEXISTING CONDITIONS.*—*With re-*
5 *spect to a qualified beneficiary who elects*
6 *COBRA continuation coverage pursuant to sub-*
7 *paragraph (A), the period—*

8 *(i) beginning on the date of the quali-*
9 *fying event, and*

10 *(ii) ending with the day before the date*
11 *of the enactment of this Act,*

12 *shall be disregarded for purposes of determining*
13 *the 63-day periods referred to in section 701(2)*
14 *of the Employee Retirement Income Security Act*
15 *of 1974, section 9801(c)(2) of the Internal Rev-*
16 *enue Code of 1986, and section 2701(c)(2) of the*
17 *Public Health Service Act.*

18 (5) *EXPEDITED REVIEW OF DENIALS OF PRE-*
19 *MIUM ASSISTANCE.*—*In any case in which an indi-*
20 *vidual requests treatment as an assistance eligible in-*
21 *dividual and is denied such treatment by the group*
22 *health plan by reason of such individual's ineligi-*
23 *bility for COBRA continuation coverage, the Sec-*
24 *retary of Labor (or the Secretary of Health and*
25 *Human services in connection with COBRA continu-*

1 *ation coverage which is provided other than pursuant*
2 *to part 6 of subtitle B of title I of the Employee Re-*
3 *irement Income Security Act of 1974), in consulta-*
4 *tion with the Secretary of the Treasury, shall provide*
5 *for expedited review of such denial. An individual*
6 *shall be entitled to such review upon application to*
7 *such Secretary in such form and manner as shall be*
8 *provided by such Secretary. Such Secretary shall*
9 *make a determination regarding such individual's eli-*
10 *gibility within 10 business days after receipt of such*
11 *individual's application for review under this para-*
12 *graph.*

13 *(6) DISREGARD OF SUBSIDIES FOR PURPOSES OF*
14 *FEDERAL AND STATE PROGRAMS.—Notwithstanding*
15 *any other provision of law, any premium reduction*
16 *with respect to an assistance eligible individual under*
17 *this subsection shall not be considered income or re-*
18 *sources in determining eligibility for, or the amount*
19 *of assistance or benefits provided under, any other*
20 *public benefit provided under Federal law or the law*
21 *of any State or political subdivision thereof.*

22 *(7) NOTICES TO INDIVIDUALS.—*

23 *(A) GENERAL NOTICE.—*

24 *(i) IN GENERAL.—In the case of notices*
25 *provided under section 606(4) of the Em-*

1 *ployee Retirement Income Security Act of*
2 *1974 (29 U.S.C. 1166(4)), section*
3 *4980B(f)(6)(D) of the Internal Revenue*
4 *Code of 1986, section 2206(4) of the Public*
5 *Health Service Act (42 U.S.C. 300bb–6(4)),*
6 *or section 8905a(f)(2)(A) of title 5, United*
7 *States Code, with respect to individuals*
8 *who, during the period described in para-*
9 *graph (3)(A), become entitled to elect*
10 *COBRA continuation coverage, such notices*
11 *shall include an additional notification to*
12 *the recipient of—*

13 *(I) the availability of premium*
14 *reduction with respect to such coverage*
15 *under this subsection; and*

16 *(II) the option to enroll in dif-*
17 *ferent coverage if an employer that*
18 *permits assistance eligible individuals*
19 *to elect enrollment in different coverage*
20 *(as described in paragraph (1)(B)).*

21 *(ii) ALTERNATIVE NOTICE.—In the*
22 *case of COBRA continuation coverage to*
23 *which the notice provision under such sec-*
24 *tions does not apply, the Secretary of*
25 *Labor, in consultation with the Secretary of*

1 *the Treasury and the Secretary of Health*
2 *and Human Services, shall, in coordination*
3 *with administrators of the group health*
4 *plans (or other entities) that provide or ad-*
5 *minister the COBRA continuation coverage*
6 *involved, provide rules requiring the provi-*
7 *sion of such notice.*

8 *(iii) FORM.—The requirement of the*
9 *additional notification under this subpara-*
10 *graph may be met by amendment of exist-*
11 *ing notice forms or by inclusion of a sepa-*
12 *rate document with the notice otherwise re-*
13 *quired.*

14 *(B) SPECIFIC REQUIREMENTS.—Each addi-*
15 *tional notification under subparagraph (A) shall*
16 *include—*

17 *(i) the forms necessary for establishing*
18 *eligibility for premium reduction under this*
19 *subsection,*

20 *(ii) the name, address, and telephone*
21 *number necessary to contact the plan ad-*
22 *ministrator and any other person main-*
23 *taining relevant information in connection*
24 *with such premium reduction,*

1 (iii) a description of the extended elec-
2 tion period provided for in paragraph
3 (4)(A),

4 (iv) a description of the obligation of
5 the qualified beneficiary under paragraph
6 (2)(C) to notify the plan providing continu-
7 ation coverage of eligibility for subsequent
8 coverage under another group health plan
9 or eligibility for benefits under title XVIII
10 of the Social Security Act and the penalty
11 provided for failure to so notify the plan,

12 (v) a description, displayed in a
13 prominent manner, of the qualified bene-
14 ficiary's right to a reduced premium and
15 any conditions on entitlement to the re-
16 duced premium; and

17 (vi) a description of the option of the
18 qualified beneficiary to enroll in different
19 coverage if the employer permits such bene-
20 ficiary to elect to enroll in such different
21 coverage under paragraph (1)(B).

22 (C) NOTICE RELATING TO RETROACTIVE
23 COVERAGE.—In the case of an individual de-
24 scribed in paragraph (3)(A) who has elected
25 COBRA continuation coverage as of the date of

1 *enactment of this Act or an individual described*
2 *in paragraph (4)(A), the administrator of the*
3 *group health plan (or other person) involved*
4 *shall provide (within 60 days after the date of*
5 *enactment of this Act) for the additional notifi-*
6 *cation required to be provided under subpara-*
7 *graph (A).*

8 *(D) MODEL NOTICES.—Not later than 30*
9 *days after the date of enactment of this Act, the*
10 *Secretary of the Labor, in consultation with the*
11 *Secretary of the Treasury and the Secretary of*
12 *Health and Human Services, shall prescribe*
13 *models for the additional notification required*
14 *under this paragraph.*

15 *(8) SAFEGUARDS.—The Secretary of the Treas-*
16 *ury shall provide such rules, procedures, regulations,*
17 *and other guidance as may be necessary and appro-*
18 *priate to prevent fraud and abuse under this sub-*
19 *section.*

20 *(9) OUTREACH.—The Secretary of Labor, in con-*
21 *sultation with the Secretary of the Treasury and the*
22 *Secretary of Health and Human Services, shall pro-*
23 *vide outreach consisting of public education and en-*
24 *rollment assistance relating to premium reduction*
25 *provided under this subsection. Such outreach shall*

1 target employers, group health plan administrators,
2 public assistance programs, States, insurers, and
3 other entities as determined appropriate by such Sec-
4 retaries. Such outreach shall include an initial focus
5 on those individuals electing continuation coverage
6 who are referred to in paragraph (7)(C). Information
7 on such premium reduction, including enrollment,
8 shall also be made available on website of the Depart-
9 ments of Labor, Treasury, and Health and Human
10 Services.

11 (10) *DEFINITIONS.*—For purposes of this sub-
12 section—

13 (A) *ADMINISTRATOR.*—The term “adminis-
14 trator” has the meaning given such term in sec-
15 tion 3(16) of the Employee Retirement Income
16 Security Act of 1974

17 (B) *COBRA CONTINUATION COVERAGE.*—
18 The term “COBRA continuation coverage”
19 means continuation coverage provided pursuant
20 to part 6 of subtitle B of title I of the Employee
21 Retirement Income Security Act of 1974 (other
22 than under section 609), title XXII of the Public
23 Health Service Act, section 4980B of the Internal
24 Revenue Code of 1986 (other than subsection
25 (f)(1) of such section insofar as it relates to pedi-

1 *atric vaccines), or section 8905a of title 5,*
2 *United States Code, or under a State program*
3 *that provides continuation coverage comparable*
4 *to such continuation coverage. Such term does*
5 *not include coverage under a health flexible*
6 *spending arrangement.*

7 (C) *COBRA CONTINUATION PROVISION.—*
8 *The term “COBRA continuation provision”*
9 *means the provisions of law described in sub-*
10 *paragraph (B).*

11 (D) *COVERED EMPLOYEE.—The term “cov-*
12 *ered employee” has the meaning given such term*
13 *in section 607(2) of the Employee Retirement In-*
14 *come Security Act of 1974.*

15 (E) *QUALIFIED BENEFICIARY.—The term*
16 *“qualified beneficiary” has the meaning given*
17 *such term in section 607(3) of the Employee Re-*
18 *irement Income Security Act of 1974.*

19 (F) *GROUP HEALTH PLAN.—The term*
20 *“group health plan” has the meaning given such*
21 *term in section 607(1) of the Employee Retire-*
22 *ment Income Security Act of 1974.*

23 (G) *STATE.—The term “State” includes the*
24 *District of Columbia, the Commonwealth of*
25 *Puerto Rico, the Virgin Islands, Guam, Amer-*

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

3 *(11) REPORTS.—*

4 *(A) INTERIM REPORT.—The Secretary of the*
5 *Treasury shall submit an interim report to the*
6 *Committee on Education and Labor, the Com-*
7 *mittee on Ways and Means, and the Committee*
8 *on Energy and Commerce of the House of Rep-*
9 *resentatives and the Committee on Health, Edu-*
10 *cation, Labor, and Pensions and the Committee*
11 *on Finance of the Senate regarding the premium*
12 *reduction provided under this subsection that in-*
13 *cludes—*

14 *(i) the number of individuals provided*
15 *such assistance as of the date of the report;*
16 *and*

17 *(ii) the total amount of expenditures*
18 *incurred (with administrative expenditures*
19 *noted separately) in connection with such*
20 *assistance as of the date of the report.*

21 *(B) FINAL REPORT.—As soon as practicable*
22 *after the last period of COBRA continuation cov-*
23 *erage for which premium reduction is provided*
24 *under this section, the Secretary of the Treasury*

1 *shall submit a final report to each Committee re-*
2 *ferred to in subparagraph (A) that includes—*

3 *(i) the number of individuals provided*
4 *premium reduction under this section;*

5 *(ii) the average dollar amount (month-*
6 *ly and annually) of premium reductions*
7 *provided to such individuals; and*

8 *(iii) the total amount of expenditures*
9 *incurred (with administrative expenditures*
10 *noted separately) in connection with pre-*
11 *mium reduction under this section.*

12 *(12) COBRA PREMIUM ASSISTANCE.—*

13 *(A) IN GENERAL.—Subchapter B of chapter*
14 *65 of the Internal Revenue Code of 1986 is*
15 *amended by adding at the end the following new*
16 *section:*

17 **“SEC. 6432. COBRA PREMIUM ASSISTANCE.**

18 **“(a) IN GENERAL.—The person to whom premiums**
19 **are payable under COBRA continuation coverage shall be**
20 **reimbursed for the amount of premiums not paid by plan**
21 **beneficiaries by reason of section 3001(b) of the American**
22 **Recovery and Reinvestment Act of 2009. Such amount shall**
23 **be treated as a credit against the requirement of such person**
24 **to make deposits of payroll taxes and the liability of such**
25 **person for payroll taxes. To the extent that such amount**

1 *exceeds the amount of such taxes, the Secretary shall pay*
2 *to such person the amount of such excess. No payment may*
3 *be made under this subsection to a person with respect to*
4 *any assistance eligible individual until after such person*
5 *has received the reduced premium from such individual re-*
6 *quired under section 3001(a)(1)(A) of such Act.*

7 “(b) *PAYROLL TAXES.*—*For purposes of this section,*
8 *the term ‘payroll taxes’ means—*

9 “(1) *amounts required to be deducted and with-*
10 *held for the payroll period under section 3401 (relat-*
11 *ing to wage withholding),*

12 “(2) *amounts required to be deducted for the*
13 *payroll period under section 3102 (relating to FICA*
14 *employee taxes), and*

15 “(3) *amounts of the taxes imposed for the payroll*
16 *period under section 3111 (relating to FICA employer*
17 *taxes).*

18 “(c) *TREATMENT OF CREDIT.*—*Except as otherwise*
19 *provided by the Secretary, the credit described in subsection*
20 *(a) shall be applied as though the employer had paid to*
21 *the Secretary, on the day that the qualified beneficiary’s*
22 *premium payment is received, an amount equal to such*
23 *credit.*

24 “(d) *TREATMENT OF PAYMENT.*—*For purposes of sec-*
25 *tion 1324(b)(2) of title 31, United States Code, any pay-*

1 *ment under this subsection shall be treated in the same*
2 *manner as a refund of the credit under section 35.*

3 “(e) *REPORTING.*—

4 “(1) *IN GENERAL.*—*Each person entitled to re-*
5 *imbursement under subsection (a) for any period*
6 *shall submit such reports as the Secretary may re-*
7 *quire, including—*

8 “(A) *an attestation of involuntary termi-*
9 *nation of employment for each covered employee*
10 *on the basis of whose termination entitlement to*
11 *reimbursement is claimed under subsection (a),*
12 *and*

13 “(B) *a report of the amount of payroll taxes*
14 *offset under subsection (a) for the reporting pe-*
15 *riod and the estimated offsets of such taxes for*
16 *the subsequent reporting period in connection*
17 *with reimbursements under subsection (a).*

18 “(2) *TIMING OF REPORTS RELATING TO AMOUNT*
19 *OF PAYROLL TAXES.*—*Reports required under para-*
20 *graph (1)(B) shall be submitted at the same time as*
21 *deposits of taxes imposed by chapters 21, 22, and 24*
22 *or at such time as is specified by the Secretary.*

23 “(f) *REGULATIONS.*—*The Secretary may issue such*
24 *regulations or other guidance as may be necessary or appro-*
25 *priate to carry out this section, including the requirement*

1 *to report information or the establishment of other methods*
2 *for verifying the correct amounts of payments and credits*
3 *under this section, and the application of this section to*
4 *group health plans which are multiemployer plans.”.*

5 (B) *SOCIAL SECURITY TRUST FUNDS HELD*
6 *HARMLESS.—In determining any amount trans-*
7 *ferred or appropriated to any fund under the So-*
8 *cial Security Act, section 6432 of the Internal*
9 *Revenue Code of 1986 shall not be taken into ac-*
10 *count.*

11 (C) *CLERICAL AMENDMENT.—The table of*
12 *sections for subchapter B of chapter 65 of the In-*
13 *ternal Revenue Code of 1986 is amended by add-*
14 *ing at the end the following new item:*

“Sec. 6432. COBRA premium assistance.”.

15 (D) *EFFECTIVE DATE.—The amendments*
16 *made by this paragraph shall apply to pre-*
17 *miums to which subsection (a)(1)(A) applies.*

18 (E) *SPECIAL RULE.—*

19 (i) *IN GENERAL.—In the case of an as-*
20 *sistance eligible individual who pays the*
21 *full premium amount required for COBRA*
22 *continuation coverage for any month during*
23 *the 60-day period beginning on the first day*
24 *of the first month after the date of enact-*

1 *ment of this Act, the person to whom such*
2 *payment is made shall—*

3 (I) *make a reimbursement pay-*
4 *ment to such individual for the*
5 *amount of such premium paid in ex-*
6 *cess of the amount required to be paid*
7 *under subsection (b)(1)(A); or*

8 (II) *provide credit to the indi-*
9 *vidual for such amount in a manner*
10 *that reduces one or more subsequent*
11 *premium payments that the individual*
12 *is required to pay under such sub-*
13 *section for the coverage involved.*

14 (ii) *REIMBURSING EMPLOYER.—A per-*
15 *son to which clause (i) applies shall be re-*
16 *imbursed as provided for in section 6432 of*
17 *the Internal Revenue Code of 1986 for any*
18 *payment made, or credit provided, to the*
19 *employee under such clause.*

20 (iii) *PAYMENT OR CREDITS.—Unless it*
21 *is reasonable to believe that the credit for*
22 *the excess payment in clause (i)(II) will be*
23 *used by the assistance eligible individual*
24 *within 180 days of the date on which the*
25 *person receives from the individual the pay-*

1 *ment of the full premium amount, a person*
2 *to which clause (i) applies shall make the*
3 *payment required under such clause to the*
4 *individual within 60 days of such payment*
5 *of the full premium amount. If, as of any*
6 *day within the 180-day period, it is no*
7 *longer reasonable to believe that the credit*
8 *will be used during that period, payment*
9 *equal to the remainder of the credit out-*
10 *standing shall be made to the individual*
11 *within 60 days of such day.*

12 (13) *PENALTY FOR FAILURE TO NOTIFY HEALTH*
13 *PLAN OF CESSATION OF ELIGIBILITY FOR PREMIUM*
14 *ASSISTANCE.—*

15 (A) *IN GENERAL.—Part I of subchapter B*
16 *of chapter 68 of the Internal Revenue Code of*
17 *1986 is amended by adding at the end the fol-*
18 *lowing new section:*

19 **“SEC. 6720C. PENALTY FOR FAILURE TO NOTIFY HEALTH**
20 **PLAN OF CESSATION OF ELIGIBILITY FOR**
21 **COBRA PREMIUM ASSISTANCE.**

22 “(a) *IN GENERAL.—Any person required to notify a*
23 *group health plan under section 3001(a)(2)(C) of the Amer-*
24 *ican Recovery and Reinvestment Act of 2009 who fails to*
25 *make such a notification at such time and in such manner*

1 *as the Secretary of Labor may require shall pay a penalty*
2 *of 110 percent of the premium reduction provided under*
3 *such section after termination of eligibility under such sub-*
4 *section.*

5 “(b) *REASONABLE CAUSE EXCEPTION.*—No penalty
6 *shall be imposed under subsection (a) with respect to any*
7 *failure if it is shown that such failure is due to reasonable*
8 *cause and not to willful neglect.”.*

9 (B) *CLERICAL AMENDMENT.*—The table of
10 sections of part I of subchapter B of chapter 68
11 of such Code is amended by adding at the end
12 the following new item:

 “Sec. 6720C. *Penalty for failure to notify health plan of cessation of eligibility*
 for COBRA premium assistance.”.

13 (C) *EFFECTIVE DATE.*—The amendments
14 made by this paragraph shall apply to failures
15 occurring after the date of the enactment of this
16 Act.

17 (14) *COORDINATION WITH HCTC.*—

18 (A) *IN GENERAL.*—Subsection (g) of section
19 35 of the Internal Revenue Code of 1986 is
20 amended by redesignating paragraph (9) as
21 paragraph (10) and inserting after paragraph
22 (8) the following new paragraph:

23 “(9) *COBRA PREMIUM ASSISTANCE.*—In the
24 case of an assistance eligible individual who receives

1 *premium reduction for COBRA continuation coverage*
2 *under section 3001(a) of the American Recovery and*
3 *Reinvestment Act of 2009 for any month during the*
4 *taxable year, such individual shall not be treated as*
5 *an eligible individual, a certified individual, or a*
6 *qualifying family member for purposes of this section*
7 *or section 7527 with respect to such month.”.*

8 (B) *EFFECTIVE DATE.*—*The amendment*
9 *made by subparagraph (A) shall apply to tax-*
10 *able years ending after the date of the enactment*
11 *of this Act.*

12 (15) *EXCLUSION OF COBRA PREMIUM ASSIST-*
13 *ANCE FROM GROSS INCOME.*—

14 (A) *IN GENERAL.*—*Part III of subchapter B*
15 *of chapter 1 of the Internal Revenue Code of*
16 *1986 is amended by inserting after section 139B*
17 *the following new section:*

18 **“SEC. 139C. COBRA PREMIUM ASSISTANCE.**

19 *“In the case of an assistance eligible individual (as*
20 *defined in section 3001 of the American Recovery and Rein-*
21 *vestment Act of 2009), gross income does not include any*
22 *premium reduction provided under subsection (a) of such*
23 *section.”.*

24 (B) *CLERICAL AMENDMENT.*—*The table of*
25 *sections for part III of subchapter B of chapter*

1 *1 of such Code is amended by inserting after the*
 2 *item relating to section 139B the following new*
 3 *item:*

“*Sec. 139C. COBRA premium assistance.*”.

4 (C) *EFFECTIVE DATE.*—*The amendments*
 5 *made by this paragraph shall apply to taxable*
 6 *years ending after the date of the enactment of*
 7 *this Act.*

8 ***Subtitle B—Transitional Medical***
 9 ***Assistance (TMA)***

10 ***SEC. 3101. EXTENSION OF TRANSITIONAL MEDICAL ASSIST-***
 11 ***ANCE (TMA).***

12 (a) *18-MONTH EXTENSION.*—

13 (1) *IN GENERAL.*—*Sections 1902(e)(1)(B) and*
 14 *1925(f) of the Social Security Act (42 U.S.C.*
 15 *1396a(e)(1)(B), 1396r–6(f)) are each amended by*
 16 *striking “September 30, 2003” and inserting “Decem-*
 17 *ber 31, 2010”.*

18 (2) *EFFECTIVE DATE.*—*The amendments made*
 19 *by this subsection shall take effect on July 1, 2009.*

20 (b) *STATE OPTION OF INITIAL 12-MONTH ELIGI-*
 21 *BILITY.*—*Section 1925 of the Social Security Act (42 U.S.C.*
 22 *1396r–6) is amended—*

23 (1) *in subsection (a)(1), by inserting “but subject*
 24 *to paragraph (5)” after “Notwithstanding any other*
 25 *provision of this title”;*

1 (2) *by adding at the end of subsection (a) the fol-*
 2 *lowing:*

3 “(5) *OPTION OF 12-MONTH INITIAL ELIGIBILITY*
 4 *PERIOD.—A State may elect to treat any reference in*
 5 *this subsection to a 6-month period (or 6 months) as*
 6 *a reference to a 12-month period (or 12 months). In*
 7 *the case of such an election, subsection (b) shall not*
 8 *apply.*”; and

9 (3) *in subsection (b)(1), by inserting “but subject*
 10 *to subsection (a)(5)” after “Notwithstanding any*
 11 *other provision of this title”.*

12 (c) *REMOVAL OF REQUIREMENT FOR PREVIOUS RE-*
 13 *CEIPT OF MEDICAL ASSISTANCE.—Section 1925(a)(1) of*
 14 *such Act (42 U.S.C. 1396r-6(a)(1)), as amended by sub-*
 15 *section (b)(1), is further amended—*

16 (1) *by inserting “subparagraph (B) and” before*
 17 *“paragraph (5)”;*

18 (2) *by redesignating the matter after “REQUIRE-*
 19 *MENT.—” as a subparagraph (A) with the heading*
 20 *“IN GENERAL.—” and with the same indentation as*
 21 *subparagraph (B) (as added by paragraph (3)); and*

22 (3) *by adding at the end the following:*

23 “(B) *STATE OPTION TO WAIVE REQUIRE-*
 24 *MENT FOR 3 MONTHS BEFORE RECEIPT OF MED-*
 25 *ICAL ASSISTANCE.—A State may, at its option,*

1 *elect also to apply subparagraph (A) in the case*
2 *of a family that was receiving such aid for fewer*
3 *than three months or that had applied for and*
4 *was eligible for such aid for fewer than 3 months*
5 *during the 6 immediately preceding months de-*
6 *scribed in such subparagraph.”.*

7 *(d) CMS REPORT ON ENROLLMENT AND PARTICIPA-*
8 *TION RATES UNDER TMA.—Section 1925 of such Act (42*
9 *U.S.C. 1396r-6), as amended by this section, is further*
10 *amended by adding at the end the following new subsection:*

11 “(g) *COLLECTION AND REPORTING OF PARTICIPATION*
12 *INFORMATION.—*

13 “(1) *COLLECTION OF INFORMATION FROM*
14 *STATES.—Each State shall collect and submit to the*
15 *Secretary (and make publicly available), in a format*
16 *specified by the Secretary, information on average*
17 *monthly enrollment and average monthly participa-*
18 *tion rates for adults and children under this section*
19 *and of the number and percentage of children who be-*
20 *come ineligible for medical assistance under this sec-*
21 *tion whose medical assistance is continued under an-*
22 *other eligibility category or who are enrolled under*
23 *the State’s child health plan under title XXI. Such*
24 *information shall be submitted at the same time and*

1 *frequency in which other enrollment information*
 2 *under this title is submitted to the Secretary.*

3 “(2) *ANNUAL REPORTS TO CONGRESS.*—Using
 4 *the information submitted under paragraph (1), the*
 5 *Secretary shall submit to Congress annual reports*
 6 *concerning enrollment and participation rates de-*
 7 *scribed in such paragraph.”.*

8 *(e) EFFECTIVE DATE.*—The amendments made by sub-
 9 *sections (b) through (d) shall take effect on July 1, 2009.*

10 ***Subtitle C—Extension of the***
 11 ***Qualified Individual (QI) Program***

12 ***SEC. 3201. EXTENSION OF THE QUALIFYING INDIVIDUAL***
 13 ***(QI) PROGRAM.***

14 *(a) EXTENSION.*—Section 1902(a)(10)(E)(iv) of the
 15 *Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iv)) is*
 16 *amended by striking “December 2009” and inserting “De-*
 17 *cember 2010”.*

18 *(b) EXTENDING TOTAL AMOUNT AVAILABLE FOR AL-*
 19 *LOCATION.*—Section 1933(g) of such Act (42 U.S.C. 1396u-
 20 *3(g)) is amended—*

21 *(1) in paragraph (2)—*

22 *(A) by striking “and” at the end of sub-*
 23 *paragraph (K);*

24 *(B) in subparagraph (L), by striking the*
 25 *period at the end and inserting a semicolon; and*

1 (C) by adding at the end the following new
2 subparagraphs:

3 “(M) for the period that begins on January
4 1, 2010, and ends on September 30, 2010, the
5 total allocation amount is \$412,500,000; and

6 “(N) for the period that begins on October
7 1, 2010, and ends on December 31, 2010, the
8 total allocation amount is \$150,000,000.”; and

9 (2) in paragraph (3), in the matter preceding
10 subparagraph (A), by striking “or (L)” and inserting
11 “(L), or (N)”.

12 ***Subtitle D—Other Provisions***

13 ***SEC. 3301. PREMIUMS AND COST SHARING PROTECTIONS***

14 ***UNDER MEDICAID, ELIGIBILITY DETERMINA-*** 15 ***TIONS UNDER MEDICAID AND CHIP, AND PRO-*** 16 ***TECTION OF CERTAIN INDIAN PROPERTY*** 17 ***FROM MEDICAID ESTATE RECOVERY.***

18 ***(a) PREMIUMS AND COST SHARING PROTECTION***

19 ***UNDER MEDICAID.—***

20 (1) ***IN GENERAL.***—Section 1916 of the Social Se-
21 curity Act (42 U.S.C. 1396o) is amended—

22 (A) in subsection (a), in the matter pre-
23 ceding paragraph (1), by striking “and (i)” and
24 inserting “, (i), and (j)”;

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

3 “(j) NO PREMIUMS OR COST SHARING FOR INDIANS
4 FURNISHED ITEMS OR SERVICES DIRECTLY BY INDIAN
5 HEALTH PROGRAMS OR THROUGH REFERRAL UNDER CON-
6 TRACT HEALTH SERVICES.—

7 “(1) NO COST SHARING FOR ITEMS OR SERVICES
8 FURNISHED TO INDIANS THROUGH INDIAN HEALTH
9 PROGRAMS.—

10 “(A) IN GENERAL.—No enrollment fee, pre-
11 mium, or similar charge, and no deduction, co-
12 payment, cost sharing, or similar charge shall be
13 imposed against an Indian who is furnished an
14 item or service directly by the Indian Health
15 Service, an Indian Tribe, Tribal Organization,
16 or Urban Indian Organization or through refer-
17 ral under contract health services for which pay-
18 ment may be made under this title.

19 “(B) NO REDUCTION IN AMOUNT OF PAY-
20 MENT TO INDIAN HEALTH PROVIDERS.—Payment
21 due under this title to the Indian Health Service,
22 an Indian Tribe, Tribal Organization, or Urban
23 Indian Organization, or a health care provider
24 through referral under contract health services
25 for the furnishing of an item or service to an In-

1 *dian who is eligible for assistance under such*
2 *title, may not be reduced by the amount of any*
3 *enrollment fee, premium, or similar charge, or*
4 *any deduction, copayment, cost sharing, or simi-*
5 *lar charge that would be due from the Indian but*
6 *for the operation of subparagraph (A).*

7 “(2) *RULE OF CONSTRUCTION.*—*Nothing in this*
8 *subsection shall be construed as restricting the appli-*
9 *cation of any other limitations on the imposition of*
10 *premiums or cost sharing that may apply to an indi-*
11 *vidual receiving medical assistance under this title*
12 *who is an Indian.”.*

13 (2) *CONFORMING AMENDMENT.*—*Section*
14 *1916A(b)(3) of such Act (42 U.S.C. 1396o–1(b)(3)) is*
15 *amended—*

16 (A) *in subparagraph (A), by adding at the*
17 *end the following new clause:*

18 “(vi) *An Indian who is furnished an*
19 *item or service directly by the Indian*
20 *Health Service, an Indian Tribe, Tribal Or-*
21 *ganization or Urban Indian Organization*
22 *or through referral under contract health*
23 *services.”; and*

24 (B) *in subparagraph (B), by adding at the*
25 *end the following new clause:*

1 “(ix) *Items and services furnished to*
2 *an Indian directly by the Indian Health*
3 *Service, an Indian Tribe, Tribal Organiza-*
4 *tion or Urban Indian Organization or*
5 *through referral under contract health serv-*
6 *ices.*”.

7 (b) *TREATMENT OF CERTAIN PROPERTY FROM RE-*
8 *SOURCES FOR MEDICAID AND CHIP ELIGIBILITY.*—

9 (1) *MEDICAID.*—*Section 1902 of the Social Secu-*
10 *rity Act (42 U.S.C. 1396a) is amended by adding at*
11 *the end the following new subsection:*

12 “(dd) *Notwithstanding any other requirement of this*
13 *title or any other provision of Federal or State law, a State*
14 *shall disregard the following property from resources for*
15 *purposes of determining the eligibility of an individual who*
16 *is an Indian for medical assistance under this title:*

17 “(1) *Property, including real property and im-*
18 *provements, that is held in trust, subject to Federal*
19 *restrictions, or otherwise under the supervision of the*
20 *Secretary of the Interior, located on a reservation, in-*
21 *cluding any federally recognized Indian Tribe’s res-*
22 *ervation, pueblo, or colony, including former reserva-*
23 *tions in Oklahoma, Alaska Native regions established*
24 *by the Alaska Native Claims Settlement Act, and In-*
25 *dian allotments on or near a reservation as des-*

1 *ignated and approved by the Bureau of Indian Af-*
2 *fairs of the Department of the Interior.*

3 *“(2) For any federally recognized Tribe not de-*
4 *scribed in paragraph (1), property located within the*
5 *most recent boundaries of a prior Federal reservation.*

6 *“(3) Ownership interests in rents, leases, royal-*
7 *ties, or usage rights related to natural resources (in-*
8 *cluding extraction of natural resources or harvesting*
9 *of timber, other plants and plant products, animals,*
10 *fish, and shellfish) resulting from the exercise of feder-*
11 *ally protected rights.*

12 *“(4) Ownership interests in or usage rights to*
13 *items not covered by paragraphs (1) through (3) that*
14 *have unique religious, spiritual, traditional, or cul-*
15 *tural significance or rights that support subsistence or*
16 *a traditional lifestyle according to applicable tribal*
17 *law or custom.”.*

18 *(2) APPLICATION TO CHIP.—Section 2107(e)(1)*
19 *of such Act (42 U.S.C. 1397gg(e)(1)) is amended—*

20 *(A) by redesignating subparagraphs (B)*
21 *through (E), as subparagraphs (C) through (F),*
22 *respectively; and*

23 *(B) by inserting after subparagraph (A),*
24 *the following new subparagraph:*

1 “(B) Section 1902(dd) (relating to dis-
2 regard of certain property for purposes of mak-
3 ing eligibility determinations).”.

4 (c) CONTINUATION OF CURRENT LAW PROTECTIONS OF
5 CERTAIN INDIAN PROPERTY FROM MEDICAID ESTATE RE-
6 COVERY.—Section 1917(b)(3) of the Social Security Act (42
7 U.S.C. 1396p(b)(3)) is amended—

8 (1) by inserting “(A)” after “(3)”; and
9 (2) by adding at the end the following new sub-
10 paragraph:

11 “(B) The standards specified by the Sec-
12 retary under subparagraph (A) shall require that
13 the procedures established by the State agency
14 under subparagraph (A) exempt income, re-
15 sources, and property that are exempt from the
16 application of this subsection as of April 1,
17 2003, under manual instructions issued to carry
18 out this subsection (as in effect on such date) be-
19 cause of the Federal responsibility for Indian
20 Tribes and Alaska Native Villages. Nothing in
21 this subparagraph shall be construed as pre-
22 venting the Secretary from providing additional
23 estate recovery exemptions under this title for In-
24 dians.”.

1 **SEC. 3302. RULES APPLICABLE UNDER MEDICAID AND CHIP**
2 **TO MANAGED CARE ENTITIES WITH RESPECT**
3 **TO INDIAN ENROLLEES AND INDIAN HEALTH**
4 **CARE PROVIDERS AND INDIAN MANAGED**
5 **CARE ENTITIES.**

6 (a) *IN GENERAL.*—Section 1932 of the Social Security
7 Act (42 U.S.C. 1396u–2) is amended by adding at the end
8 the following new subsection:

9 “(h) *SPECIAL RULES WITH RESPECT TO INDIAN EN-*
10 *ROLLEES, INDIAN HEALTH CARE PROVIDERS, AND INDIAN*
11 *MANAGED CARE ENTITIES.*—

12 “(1) *ENROLLEE OPTION TO SELECT AN INDIAN*
13 *HEALTH CARE PROVIDER AS PRIMARY CARE PRO-*
14 *VIDER.*—*In the case of a non-Indian Medicaid man-*
15 *aged care entity that—*

16 “(A) *has an Indian enrolled with the entity;*
17 *and*

18 “(B) *has an Indian health care provider*
19 *that is participating as a primary care provider*
20 *within the network of the entity,*

21 *insofar as the Indian is otherwise eligible to receive*
22 *services from such Indian health care provider and*
23 *the Indian health care provider has the capacity to*
24 *provide primary care services to such Indian, the con-*
25 *tract with the entity under section 1903(m) or under*
26 *section 1905(t)(3) shall require, as a condition of re-*

1 *ceiving payment under such contract, that the Indian*
2 *shall be allowed to choose such Indian health care*
3 *provider as the Indian’s primary care provider under*
4 *the entity.*

5 “(2) *ASSURANCE OF PAYMENT TO INDIAN*
6 *HEALTH CARE PROVIDERS FOR PROVISION OF COV-*
7 *ERED SERVICES.—Each contract with a managed*
8 *care entity under section 1903(m) or under section*
9 *1905(t)(3) shall require any such entity, as a condi-*
10 *tion of receiving payment under such contract, to sat-*
11 *isfy the following requirements:*

12 “(A) *DEMONSTRATION OF ACCESS TO IN-*
13 *DIAN HEALTH CARE PROVIDERS AND APPLICA-*
14 *TION OF ALTERNATIVE PAYMENT ARRANGE-*
15 *MENTS.—Subject to subparagraph (C), to—*

16 “(i) *demonstrate that the number of*
17 *Indian health care providers that are par-*
18 *ticipating providers with respect to such en-*
19 *tity are sufficient to ensure timely access to*
20 *covered Medicaid managed care services for*
21 *those Indian enrollees who are eligible to re-*
22 *ceive services from such providers; and*

23 “(ii) *agree to pay Indian health care*
24 *providers, whether such providers are par-*
25 *ticipating or nonparticipating providers*

1 with respect to the entity, for covered Med-
2 icaid managed care services provided to
3 those Indian enrollees who are eligible to re-
4 ceive services from such providers at a rate
5 equal to the rate negotiated between such
6 entity and the provider involved or, if such
7 a rate has not been negotiated, at a rate
8 that is not less than the level and amount
9 of payment which the entity would make for
10 the services if the services were furnished by
11 a participating provider which is not an
12 Indian health care provider.

13 “(B) *PROMPT PAYMENT.*—To agree to make
14 prompt payment (consistent with rule for
15 prompt payment of providers under section
16 1932(f)) to Indian health care providers that are
17 participating providers with respect to such enti-
18 ty or, in the case of an entity to which subpara-
19 graph (A)(ii) or (C) applies, that the entity is
20 required to pay in accordance with that sub-
21 paragraph.

22 “(C) *APPLICATION OF SPECIAL PAYMENT*
23 *REQUIREMENTS FOR FEDERALLY-QUALIFIED*
24 *HEALTH CENTERS AND FOR SERVICES PROVIDED*
25 *BY CERTAIN INDIAN HEALTH CARE PROVIDERS.*—

1 “(i) *FEDERALLY-QUALIFIED HEALTH*
2 *CENTERS.—*

3 “(I) *MANAGED CARE ENTITY PAY-*
4 *MENT REQUIREMENT.—To agree to pay*
5 *any Indian health care provider that*
6 *is a federally-qualified health center*
7 *under this title but not a participating*
8 *provider with respect to the entity, for*
9 *the provision of covered Medicaid man-*
10 *aged care services by such provider to*
11 *an Indian enrollee of the entity at a*
12 *rate equal to the amount of payment*
13 *that the entity would pay a federally-*
14 *qualified health center that is a par-*
15 *ticipating provider with respect to the*
16 *entity but is not an Indian health care*
17 *provider for such services.*

18 “(II) *CONTINUED APPLICATION OF*
19 *STATE REQUIREMENT TO MAKE SUP-*
20 *PLEMENTAL PAYMENT.—Nothing in*
21 *subclause (I) or subparagraph (A) or*
22 *(B) shall be construed as waiving the*
23 *application of section 1902(bb)(5) re-*
24 *garding the State plan requirement to*
25 *make any supplemental payment due*

1 *under such section to a federally-quali-*
2 *fied health center for services furnished*
3 *by such center to an enrollee of a man-*
4 *aged care entity (regardless of whether*
5 *the federally-qualified health center is*
6 *or is not a participating provider with*
7 *the entity).*

8 *“(ii) PAYMENT RATE FOR SERVICES*
9 *PROVIDED BY CERTAIN INDIAN HEALTH*
10 *CARE PROVIDERS.—If the amount paid by a*
11 *managed care entity to an Indian health*
12 *care provider that is not a federally-quali-*
13 *fied health center for services provided by*
14 *the provider to an Indian enrollee with the*
15 *managed care entity is less than the rate*
16 *that applies to the provision of such services*
17 *by the provider under the State plan, the*
18 *plan shall provide for payment to the In-*
19 *dian health care provider, whether the pro-*
20 *vider is a participating or nonparticipating*
21 *provider with respect to the entity, of the*
22 *difference between such applicable rate and*
23 *the amount paid by the managed care enti-*
24 *ty to the provider for such services.*

1 “(D) *CONSTRUCTION.*—*Nothing in this*
2 *paragraph shall be construed as waiving the ap-*
3 *plication of section 1902(a)(30)(A) (relating to*
4 *application of standards to assure that payments*
5 *are consistent with efficiency, economy, and*
6 *quality of care).*

7 “(3) *SPECIAL RULE FOR ENROLLMENT FOR IN-*
8 *DIAN MANAGED CARE ENTITIES.*—*Regarding the ap-*
9 *plication of a Medicaid managed care program to In-*
10 *Indian Medicaid managed care entities, an Indian*
11 *Medicaid managed care entity may restrict enroll-*
12 *ment under such program to Indians and to members*
13 *of specific Tribes in the same manner as Indian*
14 *Health Programs may restrict the delivery of services*
15 *to such Indians and tribal members.*

16 “(4) *DEFINITIONS.*—*For purposes of this sub-*
17 *section:*

18 “(A) *INDIAN HEALTH CARE PROVIDER.*—
19 *The term ‘Indian health care provider’ means an*
20 *Indian Health Program or an Urban Indian Or-*
21 *ganization.*

22 “(B) *INDIAN MEDICAID MANAGED CARE EN-*
23 *TITY.*—*The term ‘Indian Medicaid managed care*
24 *entity’ means a managed care entity that is con-*
25 *trolled (within the meaning of the last sentence*

1 *of section 1903(m)(1)(C)) by the Indian Health*
2 *Service, a Tribe, Tribal Organization, or Urban*
3 *Indian Organization, or a consortium, which*
4 *may be composed of 1 or more Tribes, Tribal Or-*
5 *ganizations, or Urban Indian Organizations,*
6 *and which also may include the Service.*

7 “(C) *NON-INDIAN MEDICAID MANAGED CARE*
8 *ENTITY.—The term ‘non-Indian Medicaid man-*
9 *aged care entity’ means a managed care entity*
10 *that is not an Indian Medicaid managed care*
11 *entity.*

12 “(D) *COVERED MEDICAID MANAGED CARE*
13 *SERVICES.—The term ‘covered Medicaid man-*
14 *aged care services’ means, with respect to an in-*
15 *dividual enrolled with a managed care entity,*
16 *items and services for which benefits are avail-*
17 *able with respect to the individual under the con-*
18 *tract between the entity and the State involved.*

19 “(E) *MEDICAID MANAGED CARE PRO-*
20 *GRAM.—The term ‘Medicaid managed care pro-*
21 *gram’ means a program under sections 1903(m),*
22 *1905(t), and 1932 and includes a managed care*
23 *program operating under a waiver under section*
24 *1915(b) or 1115 or otherwise.”.*

1 (b) *APPLICATION TO CHIP.*—Subject to section
2 *__013(d)*, section 2107(e)(1) of such Act (42 U.S.C.
3 *1397gg(1)*) is amended by adding at the end the following
4 *new subparagraph:*

5 “(E) Subsections (a)(2)(C) and (h) of sec-
6 tion 1932.”.

7 **SEC. 3303. CONSULTATION ON MEDICAID, CHIP, AND OTHER**
8 **HEALTH CARE PROGRAMS FUNDED UNDER**
9 **THE SOCIAL SECURITY ACT INVOLVING IN-**
10 **DIAN HEALTH PROGRAMS AND URBAN IN-**
11 **DIAN ORGANIZATIONS.**

12 (a) *CONSULTATION WITH TRIBAL TECHNICAL ADVI-*
13 *SORY GROUP (TTAG).*—The Secretary of Health and
14 *Human Services shall maintain within the Centers for*
15 *Medicaid & Medicare Services (CMS) a Tribal Technical*
16 *Advisory Group (TTAG), which was first established in ac-*
17 *cordance with requirements of the charter dated September*
18 *30, 2003, and the Secretary of Health and Human Services*
19 *shall include in such Group a representative of a national*
20 *urban Indian health organization and a representative of*
21 *the Indian Health Service. The inclusion of a representative*
22 *of a national urban Indian health organization in such*
23 *Group shall not affect the nonapplication of the Federal Ad-*
24 *visory Committee Act (5 U.S.C. App.) to such Group.*

1 (b) *SOLICITATION OF ADVICE UNDER MEDICAID AND*
2 *CHIP.*—

3 (1) *MEDICAID STATE PLAN AMENDMENT.*—Sub-
4 *ject to subsection (d), section 1902(a) of the Social Se-*
5 *curity Act (42 U.S.C. 1396a(a)) is amended—*

6 (A) *in paragraph (70), by striking “and”*
7 *at the end;*

8 (B) *in paragraph (71), by striking the pe-*
9 *riod at the end and inserting “; and”; and*

10 (C) *by inserting after paragraph (71), the*
11 *following new paragraph:*

12 “(72) *in the case of any State in which 1 or*
13 *more Indian Health Programs or Urban Indian Or-*
14 *ganizations furnishes health care services, provide for*
15 *a process under which the State seeks advice on a reg-*
16 *ular, ongoing basis from designees of such Indian*
17 *Health Programs and Urban Indian Organizations*
18 *on matters relating to the application of this title*
19 *that are likely to have a direct effect on such Indian*
20 *Health Programs and Urban Indian Organizations*
21 *and that—*

22 “(A) *shall include solicitation of advice*
23 *prior to submission of any plan amendments,*
24 *waiver requests, and proposals for demonstration*
25 *projects likely to have a direct effect on Indians,*

1 *Indian Health Programs, or Urban Indian Or-*
2 *ganizations; and*

3 “(B) may include appointment of an advi-
4 sory committee and of a designee of such Indian
5 Health Programs and Urban Indian Organiza-
6 tions to the medical care advisory committee ad-
7 vising the State on its State plan under this
8 title.”.

9 (2) *APPLICATION TO CHIP.*—Subject to subsection
10 (d), section 2107(e)(1) of such Act (42 U.S.C.
11 1397gg(e)(1)), as amended by section 3302(b)(2), is
12 amended—

13 (A) by redesignating subparagraphs (B)
14 through (E) as subparagraphs (C) through (F),
15 respectively; and

16 (B) by inserting after subparagraph (A),
17 the following new subparagraph:

18 “(B) Section 1902(a)(72) (relating to re-
19 quiring certain States to seek advice from des-
20 ignees of Indian Health Programs and Urban
21 Indian Organizations).”.

22 (c) *RULE OF CONSTRUCTION.*—Nothing in the amend-
23 ments made by this section shall be construed as super-
24 seding existing advisory committees, working groups, guid-
25 ance, or other advisory procedures established by the Sec-

1 *retary of Health and Human Services or by any State with*
2 *respect to the provision of health care to Indians.*

3 *(d) CONTINGENCY RULE.—If the Children’s Health In-*
4 *surance Program Reauthorization Act of 2009 (in this sub-*
5 *section referred to as “CHIPRA”) has been enacted as of*
6 *the date of enactment of this Act, the following shall apply:*

7 *(1) Subparagraph (I) of section 2107(e) of the*
8 *Social Security Act (as redesignated by CHIPRA) is*
9 *redesignated as subparagraph (K) and the subpara-*
10 *graph (E) added to section 2107(e) of the Social Secu-*
11 *rity Act by section 3302(b) is redesignated as sub-*
12 *paragraph (J).*

13 *(2) Subparagraphs (D) through (H) of section*
14 *2107(e) of the Social Security Act (as added and re-*
15 *designated by CHIPRA) are redesignated as subpara-*
16 *graphs (E) through (I), respectively and the subpara-*
17 *graph (B) of section 2107(e) of the Social Security*
18 *Act added by subsection (b)(2) of this section is red-*
19 *esignated as subparagraph (D) and amended by strik-*
20 *ing “1902(a)(72)” and inserting “1902(a)(73)”.*

21 *(3) Section 1902(a) of the Social Security Act*
22 *(as amended by CHIPRA) is amended by striking*
23 *“and” at the end of paragraph (71), by striking the*
24 *period at the end of the paragraph (72) added by*
25 *CHIPRA and inserting “; and” and by redesignated*

*Subtitle A—Medicare Program**Sec. 4201. Incentives for eligible professionals.**Sec. 4202. Incentives for hospitals.**Sec. 4203. Premium hold harmless and implementation funding.**Sec. 4204. Non-application of phased-out indirect medical education (IME) adjustment factor for fiscal year 2009.**Sec. 4205. Study on application of EHR payment incentives for providers not receiving other incentive payments.**Sec. 4206. Study on availability of open source health information technology systems.**Subtitle B—Medicaid Funding**Sec. 4211. Medicaid provider EHR adoption and operation payments; implementation funding.*1 ***Subtitle A—Medicare Program***2 ***SEC. 4201. INCENTIVES FOR ELIGIBLE PROFESSIONALS.***

3 *(a) INCENTIVE PAYMENTS.—Section 1848 of the Social*
4 *Security Act (42 U.S.C. 1395w–4) is amended by adding*
5 *at the end the following new subsection:*

6 “*(o) INCENTIVES FOR ADOPTION AND MEANINGFUL*
7 *USE OF CERTIFIED EHR TECHNOLOGY.—*

8 “*(1) INCENTIVE PAYMENTS.—*

9 “*(A) IN GENERAL.—*

10 “*(i) IN GENERAL.—Subject to clause*
11 *(ii) and the succeeding subparagraphs of*
12 *this paragraph, with respect to covered pro-*
13 *fessional services furnished by an eligible*
14 *professional during a payment year (as de-*
15 *defined in subparagraph (E)), if the eligible*
16 *professional is a meaningful EHR user (as*
17 *determined under paragraph (2)) for the re-*
18 *porting period with respect to such year, in*

1 *addition to the amount otherwise paid*
2 *under this part, there also shall be paid to*
3 *the eligible professional (or to an employer*
4 *or facility in the cases described in clause*
5 *(A) of section 1842(b)(6)), from the Federal*
6 *Supplementary Medical Insurance Trust*
7 *Fund established under section 1841 an*
8 *amount equal to 75 percent of the Sec-*
9 *retary's estimate (based on claims submitted*
10 *not later than 2 months after the end of the*
11 *payment year) of the allowed charges under*
12 *this part for all such covered professional*
13 *services furnished by the eligible profes-*
14 *sional during such year.*

15 “(ii) *NO INCENTIVE PAYMENTS WITH*
16 *RESPECT TO YEARS AFTER 2015.—No incen-*
17 *tive payments may be made under this sub-*
18 *section with respect to a year after 2015.*

19 “(B) *LIMITATIONS ON AMOUNTS OF INCEN-*
20 *TIVE PAYMENTS.—*

21 “(i) *IN GENERAL.—In no case shall the*
22 *amount of the incentive payment provided*
23 *under this paragraph for an eligible profes-*
24 *sional for a payment year exceed the appli-*
25 *cable amount specified under this subpara-*

1 *graph with respect to such eligible profes-*
2 *sional and such year.*

3 “(ii) *AMOUNT.*—*Subject to clauses (iii)*
4 *through (v), the applicable amount specified*
5 *in this subparagraph for an eligible profes-*
6 *sional is as follows:*

7 “(I) *For the first payment year*
8 *for such professional, \$15,000 (or, if*
9 *the first payment year for such eligible*
10 *professional is 2011 or 2012, \$18,000).*

11 “(II) *For the second payment*
12 *year for such professional, \$12,000.*

13 “(III) *For the third payment year*
14 *for such professional, \$8,000.*

15 “(IV) *For the fourth payment*
16 *year for such professional, \$4,000.*

17 “(V) *For the fifth payment year*
18 *for such professional, \$2,000.*

19 “(VI) *For any succeeding pay-*
20 *ment year for such professional, \$0.*

21 “(iii) *PHASE DOWN FOR ELIGIBLE*
22 *PROFESSIONALS FIRST ADOPTING EHR IN*
23 *2014.*—*If the first payment year for an eli-*
24 *gible professional is 2014, then the amount*
25 *specified in this subparagraph for a pay-*

1 *ment year for such professional is the same*
2 *as the amount specified in clause (ii) for*
3 *such payment year for an eligible profes-*
4 *sional whose first payment year is 2013.*

5 *“(iv) INCREASE FOR CERTAIN RURAL*
6 *ELIGIBLE PROFESSIONALS.—In the case of*
7 *an eligible professional who predominantly*
8 *furnishes services under this part in a rural*
9 *area that is designated by the Secretary*
10 *(under section 332(a)(1)(A) of the Public*
11 *Health Service Act) as a health professional*
12 *shortage area, the amount that would other-*
13 *wise apply for a payment year for such*
14 *professional under subclauses (I) through*
15 *(V) of clause (ii) shall be increased by 25*
16 *percent. In implementing the preceding sen-*
17 *tence, the Secretary may, as determined ap-*
18 *propriate, apply provisions of subsections*
19 *(m) and (u) of section 1833 in a similar*
20 *manner as such provisions apply under*
21 *such subsection.*

22 *“(v) NO INCENTIVE PAYMENT IF FIRST*
23 *ADOPTING AFTER 2014.—If the first pay-*
24 *ment year for an eligible professional is*
25 *after 2014 then the applicable amount spec-*

1 *ified in this subparagraph for such profes-*
2 *sional for such year and any subsequent*
3 *year shall be \$0.*

4 “(C) *NON-APPLICATION TO HOSPITAL-BASED*
5 *ELIGIBLE PROFESSIONALS.—*

6 “(i) *IN GENERAL.—No incentive pay-*
7 *ment may be made under this paragraph in*
8 *the case of a hospital-based eligible profes-*
9 *sional.*

10 “(ii) *HOSPITAL-BASED ELIGIBLE PRO-*
11 *FESSIONAL.—For purposes of clause (i), the*
12 *term ‘hospital-based eligible professional’*
13 *means, with respect to covered professional*
14 *services furnished by an eligible professional*
15 *during the reporting period for a payment*
16 *year, an eligible professional, such as a pa-*
17 *thologist, anesthesiologist, or emergency*
18 *physician, who furnishes substantially all of*
19 *such services in a hospital setting (whether*
20 *inpatient or outpatient) and through the*
21 *use of the facilities and equipment, includ-*
22 *ing qualified electronic health records, of the*
23 *hospital.*

24 “(D) *PAYMENT.—*

1 “(i) *FORM OF PAYMENT.*—*The pay-*
2 *ment under this paragraph may be in the*
3 *form of a single consolidated payment or in*
4 *the form of such periodic installments as the*
5 *Secretary may specify.*

6 “(ii) *COORDINATION OF APPLICATION*
7 *OF LIMITATION FOR PROFESSIONALS IN DIF-*
8 *FERENT PRACTICES.*—*In the case of an eli-*
9 *gible professional furnishing covered profes-*
10 *sional services in more than one practice*
11 *(as specified by the Secretary), the Sec-*
12 *retary shall establish rules to coordinate the*
13 *incentive payments, including the applica-*
14 *tion of the limitation on amounts of such*
15 *incentive payments under this paragraph,*
16 *among such practices.*

17 “(iii) *COORDINATION WITH MED-*
18 *ICAID.*—*The Secretary shall seek, to the*
19 *maximum extent practicable, to avoid du-*
20 *plicative requirements from Federal and*
21 *State Governments to demonstrate meaning-*
22 *ful use of certified EHR technology under*
23 *this title and title XIX. In doing so, the*
24 *Secretary may deem satisfaction of State*
25 *requirements for such meaningful use for a*

1 *payment year under title XIX to be suffi-*
2 *cient to qualify as meaningful use under*
3 *this subsection and subsection (a)(7) and*
4 *vice versa. The Secretary may also adjust*
5 *the reporting periods under such title and*
6 *such subsections in order to carry out this*
7 *clause.*

8 “(E) *PAYMENT YEAR DEFINED.*—

9 “(i) *IN GENERAL.*—*For purposes of*
10 *this subsection, the term ‘payment year’*
11 *means a year beginning with 2011.*

12 “(ii) *FIRST, SECOND, ETC. PAYMENT*
13 *YEAR.*—*The term ‘first payment year’*
14 *means, with respect to covered professional*
15 *services furnished by an eligible profes-*
16 *sional, the first year for which an incentive*
17 *payment is made for such services under*
18 *this subsection. The terms ‘second payment*
19 *year’, ‘third payment year’, ‘fourth pay-*
20 *ment year’, and ‘fifth payment year’ mean,*
21 *with respect to covered professional services*
22 *furnished by such eligible professional, each*
23 *successive year immediately following the*
24 *first payment year for such professional.*

25 “(2) *MEANINGFUL EHR USER.*—

1 “(A) *IN GENERAL.*—For purposes of para-
2 graph (1), an eligible professional shall be treat-
3 ed as a meaningful EHR user for a reporting
4 period for a payment year (or, for purposes of
5 subsection (a)(7), for a reporting period under
6 such subsection for a year) if each of the fol-
7 lowing requirements is met:

8 “(i) *MEANINGFUL USE OF CERTIFIED*
9 *EHR TECHNOLOGY.*—The eligible profes-
10 sional demonstrates to the satisfaction of the
11 Secretary, in accordance with subparagraph
12 (C)(i), that during such period the profes-
13 sional is using certified EHR technology in
14 a meaningful manner, which shall include
15 the use of electronic prescribing as deter-
16 mined to be appropriate by the Secretary.

17 “(ii) *INFORMATION EXCHANGE.*—The
18 eligible professional demonstrates to the sat-
19 isfaction of the Secretary, in accordance
20 with subparagraph (C)(i), that during such
21 period such certified EHR technology is
22 connected in a manner that provides, in ac-
23 cordance with law and standards applicable
24 to the exchange of information, for the elec-
25 tronic exchange of health information to im-

1 *prove the quality of health care, such as*
2 *promoting care coordination.*

3 “(iii) *REPORTING ON MEASURES USING*
4 *EHR.—Subject to subparagraph (B)(ii) and*
5 *using such certified EHR technology, the el-*
6 *igible professional submits information for*
7 *such period, in a form and manner speci-*
8 *fied by the Secretary, on such clinical qual-*
9 *ity measures and such other measures as se-*
10 *lected by the Secretary under subparagraph*
11 *(B)(i).*

12 *The Secretary may provide for the use of alter-*
13 *native means for meeting the requirements of*
14 *clauses (i), (ii), and (iii) in the case of an eligi-*
15 *ble professional furnishing covered professional*
16 *services in a group practice (as defined by the*
17 *Secretary). The Secretary shall seek to improve*
18 *the use of electronic health records and health*
19 *care quality over time by requiring more strin-*
20 *gent measures of meaningful use selected under*
21 *this paragraph.*

22 “(B) *REPORTING ON MEASURES.—*

23 “(i) *SELECTION.—The Secretary shall*
24 *select measures for purposes of subpara-*

1 *graph (A)(iii) but only consistent with the*
2 *following:*

3 *“(I) The Secretary shall provide*
4 *preference to clinical quality measures*
5 *that have been endorsed by the entity*
6 *with a contract with the Secretary*
7 *under section 1890(a).*

8 *“(II) Prior to any measure being*
9 *selected under this subparagraph, the*
10 *Secretary shall publish in the Federal*
11 *Register such measure and provide for*
12 *a period of public comment on such*
13 *measure.*

14 *“(ii) LIMITATION.—The Secretary may*
15 *not require the electronic reporting of infor-*
16 *mation on clinical quality measures under*
17 *subparagraph (A)(iii) unless the Secretary*
18 *has the capacity to accept the information*
19 *electronically, which may be on a pilot*
20 *basis.*

21 *“(iii) COORDINATION OF REPORTING*
22 *OF INFORMATION.—In selecting such meas-*
23 *ures, and in establishing the form and man-*
24 *ner for reporting measures under subpara-*
25 *graph (A)(iii), the Secretary shall seek to*

1 *avoid redundant or duplicative reporting*
2 *otherwise required, including reporting*
3 *under subsection (k)(2)(C).*

4 “(C) *DEMONSTRATION OF MEANINGFUL USE*
5 *OF CERTIFIED EHR TECHNOLOGY AND INFORMA-*
6 *TION EXCHANGE.—*

7 “(i) *IN GENERAL.—A professional may*
8 *satisfy the demonstration requirement of*
9 *clauses (i) and (ii) of subparagraph (A)*
10 *through means specified by the Secretary,*
11 *which may include—*

12 “(I) *an attestation;*

13 “(II) *the submission of claims*
14 *with appropriate coding (such as a*
15 *code indicating that a patient encoun-*
16 *ter was documented using certified*
17 *EHR technology);*

18 “(III) *a survey response;*

19 “(IV) *reporting under subpara-*
20 *graph (A)(iii); and*

21 “(V) *other means specified by the*
22 *Secretary.*

23 “(ii) *USE OF PART D DATA.—Notwith-*
24 *standing sections 1860D–15(d)(2)(B) and*
25 *1860D–15(f)(2), the Secretary may use data*

1 *regarding drug claims submitted for pur-*
2 *poses of section 1860D–15 that are nec-*
3 *essary for purposes of subparagraph (A).*

4 “(3) *APPLICATION.—*

5 “(A) *PHYSICIAN REPORTING SYSTEM*
6 *RULES.—Paragraphs (5), (6), and (8) of sub-*
7 *section (k) shall apply for purposes of this sub-*
8 *section in the same manner as they apply for*
9 *purposes of such subsection.*

10 “(B) *COORDINATION WITH OTHER PAY-*
11 *MENTS.—The provisions of this subsection shall*
12 *not be taken into account in applying the provi-*
13 *sions of subsection (m) of this section and of sec-*
14 *tion 1833(m) and any payment under such pro-*
15 *visions shall not be taken into account in com-*
16 *puting allowable charges under this subsection.*

17 “(C) *LIMITATIONS ON REVIEW.—There shall*
18 *be no administrative or judicial review under*
19 *section 1869, section 1878, or otherwise of the de-*
20 *termination of any incentive payment under this*
21 *subsection and the payment adjustment under*
22 *subsection (a)(7), including the determination of*
23 *a meaningful EHR user under paragraph (2), a*
24 *limitation under paragraph (1)(B), and the ex-*
25 *ception under subsection (a)(7)(B).*

1 “(D) *POSTING ON WEBSITE.*—*The Secretary*
2 *shall post on the Internet website of the Centers*
3 *for Medicare & Medicaid Services, in an easily*
4 *understandable format, a list of the names, busi-*
5 *ness addresses, and business phone numbers of*
6 *the eligible professionals who are meaningful*
7 *EHR users and, as determined appropriate by*
8 *the Secretary, of group practices receiving incen-*
9 *tive payments under paragraph (1).*

10 “(4) *CERTIFIED EHR TECHNOLOGY DEFINED.*—
11 *For purposes of this section, the term ‘certified EHR*
12 *technology’ means a qualified electronic health record*
13 *(as defined in 3000(13) of the Public Health Service*
14 *Act) that is certified pursuant to section 3001(c)(5) of*
15 *such Act as meeting standards adopted under section*
16 *3004 of such Act that are applicable to the type of*
17 *record involved (as determined by the Secretary, such*
18 *as an ambulatory electronic health record for office-*
19 *based physicians or an inpatient hospital electronic*
20 *health record for hospitals).*

21 “(5) *DEFINITIONS.*—*For purposes of this sub-*
22 *section:*

23 “(A) *COVERED PROFESSIONAL SERVICES.*—
24 *The term ‘covered professional services’ has the*
25 *meaning given such term in subsection (k)(3).*

1 “(B) *ELIGIBLE PROFESSIONAL*.—The term
2 ‘eligible professional’ means a physician, as de-
3 fined in section 1861(r).

4 “(C) *REPORTING PERIOD*.—The term ‘re-
5 porting period’ means any period (or periods),
6 with respect to a payment year, as specified by
7 the Secretary.”.

8 (b) *INCENTIVE PAYMENT ADJUSTMENT*.—Section
9 1848(a) of the Social Security Act (42 U.S.C. 1395w-4(a))
10 is amended by adding at the end the following new para-
11 graph:

12 “(7) *INCENTIVES FOR MEANINGFUL USE OF CER-*
13 *TIFIED EHR TECHNOLOGY*.—

14 “(A) *ADJUSTMENT*.—

15 “(i) *IN GENERAL*.—Subject to subpara-
16 graphs (B) and (D), with respect to covered
17 professional services furnished by an eligible
18 professional during 2015 or any subsequent
19 payment year, if the eligible professional is
20 not a meaningful EHR user (as determined
21 under subsection (o)(2)) for a reporting pe-
22 riod for the year, the fee schedule amount
23 for such services furnished by such profes-
24 sional during the year (including the fee
25 schedule amount for purposes of deter-

1 *mining a payment based on such amount)*
2 *shall be equal to the applicable percent of*
3 *the fee schedule amount that would other-*
4 *wise apply to such services under this sub-*
5 *section (determined after application of*
6 *paragraph (3) but without regard to this*
7 *paragraph).*

8 “(ii) *APPLICABLE PERCENT.*—*Subject*
9 *to clause (iii), for purposes of clause (i), the*
10 *term ‘applicable percent’ means—*

11 “(I) *for 2015, 99 percent (or, in*
12 *the case of an eligible professional who*
13 *was subject to the application of the*
14 *payment adjustment under section*
15 *1848(a)(5) for 2014, 98 percent);*

16 “(II) *for 2016, 98 percent; and*

17 “(III) *for 2017 and each subse-*
18 *quent year, 97 percent.*

19 “(iii) *AUTHORITY TO DECREASE AP-*
20 *PLICABLE PERCENTAGE FOR 2018 AND SUB-*
21 *SEQUENT YEARS.*—*For 2018 and each sub-*
22 *sequent year, if the Secretary finds that the*
23 *proportion of eligible professionals who are*
24 *meaningful EHR users (as determined*
25 *under subsection (o)(2)) is less than 75 per-*

1 *cent, the applicable percent shall be de-*
2 *creased by 1 percentage point from the ap-*
3 *plicable percent in the preceding year, but*
4 *in no case shall the applicable percent be*
5 *less than 95 percent.*

6 “(B) *SIGNIFICANT HARDSHIP EXCEPTION.*—
7 *The Secretary may, on a case-by-case basis, ex-*
8 *empt an eligible professional from the applica-*
9 *tion of the payment adjustment under subpara-*
10 *graph (A) if the Secretary determines, subject to*
11 *annual renewal, that compliance with the re-*
12 *quirement for being a meaningful EHR user*
13 *would result in a significant hardship, such as*
14 *in the case of an eligible professional who prac-*
15 *tices in a rural area without sufficient Internet*
16 *access. In no case may an eligible professional be*
17 *granted an exemption under this subparagraph*
18 *for more than 5 years.*

19 “(C) *APPLICATION OF PHYSICIAN REPORT-*
20 *ING SYSTEM RULES.*—*Paragraphs (5), (6), and*
21 *(8) of subsection (k) shall apply for purposes of*
22 *this paragraph in the same manner as they*
23 *apply for purposes of such subsection.*

24 “(D) *NON-APPLICATION TO HOSPITAL-*
25 *BASED ELIGIBLE PROFESSIONALS.*—*No payment*

1 *adjustment may be made under subparagraph*
 2 *(A) in the case of hospital-based eligible profes-*
 3 *sionals (as defined in subsection (o)(1)(C)(ii)).*

4 “(E) *DEFINITIONS.*—*For purposes of this*
 5 *paragraph:*

6 “(i) *COVERED PROFESSIONAL SERV-*
 7 *ICES.*—*The term ‘covered professional serv-*
 8 *ices’ has the meaning given such term in*
 9 *subsection (k)(3).*

10 “(ii) *ELIGIBLE PROFESSIONAL.*—*The*
 11 *term ‘eligible professional’ means a physi-*
 12 *cian, as defined in section 1861(r).*

13 “(iii) *REPORTING PERIOD.*—*The term*
 14 *‘reporting period’ means, with respect to a*
 15 *year, a period specified by the Secretary.”.*

16 (c) *APPLICATION TO CERTAIN MA-AFFILIATED ELIGI-*
 17 *BLE PROFESSIONALS.*—*Section 1853 of the Social Security*
 18 *Act (42 U.S.C. 1395w-23) is amended by adding at the*
 19 *end the following new subsection:*

20 “(l) *APPLICATION OF ELIGIBLE PROFESSIONAL INCEN-*
 21 *TIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION*
 22 *AND MEANINGFUL USE OF CERTIFIED EHR TECH-*
 23 *NOLOGY.*—

24 “(1) *IN GENERAL.*—*Subject to paragraphs (3)*
 25 *and (4), in the case of a qualifying MA organization,*

1 *the provisions of sections 1848(o) and 1848(a)(7)*
2 *shall apply with respect to eligible professionals de-*
3 *scribed in paragraph (2) of the organization who the*
4 *organization attests under paragraph (6) to be mean-*
5 *ingful EHR users in a similar manner as they apply*
6 *to eligible professionals under such sections. Incentive*
7 *payments under paragraph (3) shall be made to and*
8 *payment adjustments under paragraph (4) shall*
9 *apply to such qualifying organizations.*

10 *“(2) ELIGIBLE PROFESSIONAL DESCRIBED.—*
11 *With respect to a qualifying MA organization, an eli-*
12 *gible professional described in this paragraph is an*
13 *eligible professional (as defined for purposes of section*
14 *1848(o)) who—*

15 *“(A)(i) is employed by the organization; or*

16 *“(ii)(I) is employed by, or is a partner of,*
17 *an entity that through contract with the organi-*
18 *zation furnishes at least 80 percent of the enti-*
19 *ty’s patient care services to enrollees of such or-*
20 *ganization; and*

21 *“(II) furnishes at least 75 percent of the*
22 *professional services of the eligible professional to*
23 *enrollees of the organization; and*

24 *“(B) furnishes, on average, at least 20 hours*
25 *per week of patient care services.*

1 “(3) *ELIGIBLE PROFESSIONAL INCENTIVE PAY-*
2 *MENTS.—*

3 “(A) *IN GENERAL.—In applying section*
4 *1848(o) under paragraph (1), instead of the ad-*
5 *ditional payment amount under section*
6 *1848(o)(1)(A) and subject to subparagraph (B),*
7 *the Secretary may substitute an amount deter-*
8 *mined by the Secretary to the extent feasible and*
9 *practical to be similar to the estimated amount*
10 *in the aggregate that would be payable if pay-*
11 *ment for services furnished by such professionals*
12 *was payable under part B instead of this part.*

13 “(B) *AVOIDING DUPLICATION OF PAY-*
14 *MENTS.—*

15 “(i) *IN GENERAL.—If an eligible pro-*
16 *fessional described in paragraph (2) is eligi-*
17 *ble for the maximum incentive payment*
18 *under section 1848(o)(1)(A) for the same*
19 *payment period, the payment incentive*
20 *shall be made only under such section and*
21 *not under this subsection.*

22 “(ii) *METHODS.—In the case of an eli-*
23 *gible professional described in paragraph*
24 *(2) who is eligible for an incentive payment*
25 *under section 1848(o)(1)(A) but is not de-*

1 scribed in clause (i) for the same payment
2 period, the Secretary shall develop a proc-
3 ess—

4 “(I) to ensure that duplicate pay-
5 ments are not made with respect to an
6 eligible professional both under this
7 subsection and under section
8 1848(o)(1)(A); and

9 “(II) to collect data from Medi-
10 care Advantage organizations to ensure
11 against such duplicate payments.

12 “(C) *FIXED SCHEDULE FOR APPLICATION*
13 *OF LIMITATION ON INCENTIVE PAYMENTS FOR*
14 *ALL ELIGIBLE PROFESSIONALS.—In applying*
15 *section 1848(o)(1)(B)(ii) under subparagraph*
16 *(A), in accordance with rules specified by the*
17 *Secretary, a qualifying MA organization shall*
18 *specify a year (not earlier than 2011) that shall*
19 *be treated as the first payment year for all eligi-*
20 *ble professionals with respect to such organiza-*
21 *tion.*

22 “(D) *CAP FOR ECONOMIES OF SCALE.—In*
23 *no case may an incentive payment be made*
24 *under this subsection, including under subpara-*
25 *graph (A), to a qualifying MA organization with*

1 *respect to more than 5,000 eligible professionals*
2 *of the organization.*

3 “(4) *PAYMENT ADJUSTMENT.*—

4 “(A) *IN GENERAL.*—*In applying section*
5 *1848(a)(7) under paragraph (1), instead of the*
6 *payment adjustment being an applicable percent*
7 *of the fee schedule amount for a year under such*
8 *section, subject to subparagraph (D), the pay-*
9 *ment adjustment under paragraph (1) shall be*
10 *equal to the percent specified in subparagraph*
11 *(B) for such year of the payment amount other-*
12 *wise provided under this section for such year.*

13 “(B) *SPECIFIED PERCENT.*—*The percent*
14 *specified under this subparagraph for a year is*
15 *100 percent minus a number of percentage*
16 *points equal to the product of—*

17 “(i) *a percentage equal to 100 percent*
18 *reduced by the applicable percent (under*
19 *section 1848(a)(7)(A)(ii)) for the year; and*

20 “(ii) *a percentage equal to the Sec-*
21 *retary’s estimate of the proportion for the*
22 *year, of the expenditures under parts A and*
23 *B that are not attributable to this part, that*
24 *are attributable to expenditures for physi-*
25 *cians’ services.*

1 “(C) *APPLICATION OF PAYMENT ADJUST-*
2 *MENT.—In the case that a qualifying MA orga-*
3 *nization attests that not all eligible professionals*
4 *of the organization are meaningful EHR users*
5 *with respect to a year, the Secretary shall apply*
6 *the payment adjustment under this paragraph*
7 *based on the proportion of all eligible profes-*
8 *sionals of the organization that are not meaning-*
9 *ful EHR users for such year. If the number of*
10 *eligible professionals of the organization that are*
11 *not meaningful EHR users for such year exceeds*
12 *5,000, such number shall be reduced to 5,000 for*
13 *purposes of determining the proportion under the*
14 *preceding sentence.*

15 “(5) *QUALIFYING MA ORGANIZATION DEFINED.—*
16 *In this subsection and subsection (m), the term ‘quali-*
17 *fying MA organization’ means a Medicare Advantage*
18 *organization that is organized as a health mainte-*
19 *nance organization (as defined in section 2791(b)(3)*
20 *of the Public Health Service Act).*

21 “(6) *MEANINGFUL EHR USER ATTESTATION.—*
22 *For purposes of this subsection and subsection (m), a*
23 *qualifying MA organization shall submit an attesta-*
24 *tion, in a form and manner specified by the Secretary*
25 *which may include the submission of such attestation*

1 as part of submission of the initial bid under section
2 1854(a)(1)(A)(iv), identifying—

3 “(A) whether each eligible professional de-
4 scribed in paragraph (2), with respect to such
5 organization is a meaningful EHR user (as de-
6 fined in section 1848(o)(2)) for a year specified
7 by the Secretary; and

8 “(B) whether each eligible hospital described
9 in subsection (m)(1), with respect to such organi-
10 zation, is a meaningful EHR user (as defined in
11 section 1886(n)(3)) for an applicable period
12 specified by the Secretary.

13 “(7) POSTING ON WEBSITE.—The Secretary shall
14 post on the Internet website of the Centers for Medi-
15 care & Medicaid Services, in an easily understand-
16 able format, a list of the names, business addresses,
17 and business phone numbers of—

18 “(A) each qualifying MA organization re-
19 ceiving an incentive payment under this sub-
20 section for eligible professionals of the organiza-
21 tion; and

22 “(B) the eligible professionals of such orga-
23 nization for which such incentive payment is
24 based.”.

1 (d) *CONFORMING AMENDMENTS.*—Section 1853 of the
2 *Social Security Act (42 U.S.C. 1395w–23)* is amended—

3 (1) in subsection (a)(1)(A), by striking “and (i)”
4 and inserting “(i), and (l)”;

5 (2) in subsection (c)—

6 (A) in paragraph (1)(D)(i), by striking
7 “section 1886(h)” and inserting “sections
8 1848(o) and 1886(h)”;

9 (B) in paragraph (6)(A), by inserting after
10 “under part B,” the following: “excluding ex-
11 penditures attributable to subsections (a)(7) and
12 (o) of section 1848,”; and

13 (3) in subsection (f), by inserting “and for pay-
14 ments under subsection (l)” after “with the organiza-
15 tion”.

16 (e) *CONFORMING AMENDMENTS TO E-PRESCRIBING.*—

17 (1) Section 1848(a)(5)(A) of the *Social Security*
18 *Act (42 U.S.C. 1395w–4(a)(5)(A))* is amended—

19 (A) in clause (i), by striking “or any subse-
20 quent year” and inserting “, 2013, or 2014”;
21 and

22 (B) in clause (ii), by striking “and each
23 subsequent year”.

24 (2) Section 1848(m)(2) of such *Act (42 U.S.C.*
25 *1395w–4(m)(2))* is amended—

1 (A) in subparagraph (A), by striking “For
2 2009” and inserting “Subject to subparagraph
3 (D), for 2009”; and

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

6 “(D) *LIMITATION WITH RESPECT TO EHR*
7 *INCENTIVE PAYMENTS.—The provisions of this*
8 *paragraph shall not apply to an eligible profes-*
9 *sional (or, in the case of a group practice under*
10 *paragraph (3)(C), to the group practice) if, for*
11 *the reporting period the eligible professional (or*
12 *group practice) receives an incentive payment*
13 *under subsection (o)(1)(A) with respect to a cer-*
14 *tified EHR technology (as defined in subsection*
15 *(o)(4)) that has the capability of electronic pre-*
16 *scribing.”.*

17 (f) *PROVIDING ASSISTANCE TO ELIGIBLE PROFES-*
18 *SIONALS AND CERTAIN HOSPITALS.—*

19 (1) *IN GENERAL.—The Secretary of Health and*
20 *Human Services shall provide assistance to eligible*
21 *professionals (as defined in section 1848(o)(5), as*
22 *added by subsection (a)), Medicaid providers (as de-*
23 *fined in section 1903(t)(2) of such Act, as added by*
24 *section 4211(a)), and eligible hospitals (as defined in*
25 *section 1886(n)(6)(A) of such Act, as added by section*

1 4202(a)) located in rural or other medically under-
2 served areas to successfully choose, implement, and
3 use certified EHR technology (as defined in section
4 1848(o)(4) of the Social Security Act, as added by
5 section 4201(a)).

6 (2) *USE OF ENTITIES WITH EXPERTISE.*—To the
7 extent practicable, the Secretary shall provide such
8 assistance through entities that have expertise in the
9 choice, implementation, and use of such certified
10 EHR technology.

11 **SEC. 4202. INCENTIVES FOR HOSPITALS.**

12 (a) *INCENTIVE PAYMENT.*—Section 1886 of the Social
13 Security Act (42 U.S.C. 1395ww) is amended by adding
14 at the end the following new subsection:

15 “(n) *INCENTIVES FOR ADOPTION AND MEANINGFUL*
16 *USE OF CERTIFIED EHR TECHNOLOGY.*—

17 “(1) *IN GENERAL.*—Subject to the succeeding
18 provisions of this subsection, with respect to inpatient
19 hospital services furnished by an eligible hospital dur-
20 ing a payment year (as defined in paragraph
21 (2)(G)), if the eligible hospital is a meaningful EHR
22 user (as determined under paragraph (3)) for the re-
23 porting period with respect to such year, in addition
24 to the amount otherwise paid under this section, there
25 also shall be paid to the eligible hospital, from the

1 *Federal Hospital Insurance Trust Fund established*
2 *under section 1817, an amount equal to the applica-*
3 *ble amount specified in paragraph (2)(A) for the hos-*
4 *pital for such payment year.*

5 “(2) *PAYMENT AMOUNT.*—

6 “(A) *IN GENERAL.*—Subject to the suc-
7 *ceeding subparagraphs of this paragraph, the ap-*
8 *plicable amount specified in this subparagraph*
9 *for an eligible hospital for a payment year is*
10 *equal to the product of the following:*

11 “(i) *INITIAL AMOUNT.*—The sum of—

12 “(I) *the base amount specified in*
13 *subparagraph (B); plus*

14 “(II) *the discharge related amount*
15 *specified in subparagraph (C) for a 12-*
16 *month period selected by the Secretary*
17 *with respect to such payment year.*

18 “(ii) *MEDICARE SHARE.*—The Medi-
19 *care share as specified in subparagraph (D)*
20 *for the hospital for a period selected by the*
21 *Secretary with respect to such payment*
22 *year.*

23 “(iii) *TRANSITION FACTOR.*—The tran-
24 *sition factor specified in subparagraph (E)*
25 *for the hospital for the payment year.*

1 “(B) *BASE AMOUNT.*—*The base amount*
2 *specified in this subparagraph is \$2,000,000.*

3 “(C) *DISCHARGE RELATED AMOUNT.*—*The*
4 *discharge related amount specified in this sub-*
5 *paragraph for a 12-month period selected by the*
6 *Secretary shall be determined as the sum of the*
7 *amount, based upon total discharges (regardless*
8 *of any source of payment) for the period, for*
9 *each discharge up to the 23,000th discharge as*
10 *follows:*

11 “(i) *For the 1,150th through the*
12 *9,200nd discharge, \$200.*

13 “(ii) *For the 9,201st through the*
14 *13,800th discharge, 50 percent of the*
15 *amount specified in clause (i).*

16 “(iii) *For the 13,801st through the*
17 *23,000th discharge, 30 percent of the*
18 *amount specified in clause (i).*

19 “(D) *MEDICARE SHARE.*—*The Medicare*
20 *share specified under this subparagraph for a*
21 *hospital for a period selected by the Secretary for*
22 *a payment year is equal to the fraction—*

23 “(i) *the numerator of which is the sum*
24 *(for such period and with respect to the hos-*
25 *pital) of—*

1 “(I) the number of inpatient-bed-
2 days (as established by the Secretary)
3 which are attributable to individuals
4 with respect to whom payment may be
5 made under part A; and

6 “(II) the number of inpatient-bed-
7 days (as so established) which are at-
8 tributable to individuals who are en-
9 rolled with a Medicare Advantage or-
10 ganization under part C; and

11 “(ii) the denominator of which is the
12 product of—

13 “(I) the total number of inpa-
14 tient-bed-days with respect to the hos-
15 pital during such period; and

16 “(II) the total amount of the hos-
17 pital’s charges during such period, not
18 including any charges that are attrib-
19 utable to charity care (as such term is
20 used for purposes of hospital cost re-
21 porting under this title), divided by the
22 total amount of the hospital’s charges
23 during such period.

24 Insofar as the Secretary determines that data are
25 not available on charity care necessary to cal-

1 *culate the portion of the formula specified in*
2 *clause (i)(II), the Secretary shall use data on*
3 *uncompensated care and may adjust such data*
4 *so as to be an appropriate proxy for charity care*
5 *including a downward adjustment to eliminate*
6 *bad debt data from uncompensated care data. In*
7 *the absence of the data necessary, with respect to*
8 *a hospital, for the Secretary to compute the*
9 *amount described in clause (ii)(II), the amount*
10 *under such clause shall be deemed to be 1. In the*
11 *absence of data, with respect to a hospital, nec-*
12 *essary to compute the amount described in clause*
13 *(i)(II), the amount under such clause shall be*
14 *deemed to be 0.*

15 *“(E) TRANSITION FACTOR SPECIFIED.—*

16 *“(i) IN GENERAL.—Subject to clause*
17 *(ii), the transition factor specified in this*
18 *subparagraph for an eligible hospital for a*
19 *payment year is as follows:*

20 *“(I) For the first payment year*
21 *for such hospital, 1.*

22 *“(II) For the second payment*
23 *year for such hospital, $\frac{3}{4}$.*

24 *“(III) For the third payment year*
25 *for such hospital, $\frac{1}{2}$.*

1 “(IV) *For the fourth payment*
2 *year for such hospital, $\frac{1}{4}$.*

3 “(V) *For any succeeding payment*
4 *year for such hospital, 0.*

5 “(ii) *PHASE DOWN FOR ELIGIBLE HOS-*
6 *PITALS FIRST ADOPTING EHR AFTER 2013.—*
7 *If the first payment year for an eligible hos-*
8 *pital is after 2013, then the transition fac-*
9 *tor specified in this subparagraph for a*
10 *payment year for such hospital is the same*
11 *as the amount specified in clause (i) for*
12 *such payment year for an eligible hospital*
13 *for which the first payment year is 2013. If*
14 *the first payment year for an eligible hos-*
15 *pital is after 2015 then the transition factor*
16 *specified in this subparagraph for such hos-*
17 *pital and for such year and any subsequent*
18 *year shall be 0.*

19 “(F) *FORM OF PAYMENT.—The payment*
20 *under this subsection for a payment year may be*
21 *in the form of a single consolidated payment or*
22 *in the form of such periodic installments as the*
23 *Secretary may specify.*

24 “(G) *PAYMENT YEAR DEFINED.—*

1 “(i) *IN GENERAL.*—For purposes of
2 this subsection, the term ‘payment year’
3 means a fiscal year beginning with fiscal
4 year 2011.

5 “(ii) *FIRST, SECOND, ETC. PAYMENT*
6 *YEAR.*—The term ‘first payment year’
7 means, with respect to inpatient hospital
8 services furnished by an eligible hospital,
9 the first fiscal year for which an incentive
10 payment is made for such services under
11 this subsection. The terms ‘second payment
12 year’, ‘third payment year’, and ‘fourth
13 payment year’ mean, with respect to an eli-
14 gible hospital, each successive year imme-
15 diately following the first payment year for
16 that hospital.

17 “(H) *LIMITATION FOR CRITICAL ACCESS*
18 *HOSPITALS.*—In no case shall the total amount
19 of payments made under this subsection to a
20 critical access hospital for all payment years ex-
21 ceed \$1,500,000.

22 “(3) *MEANINGFUL EHR USER.*—

23 “(A) *IN GENERAL.*—For purposes of para-
24 graph (1), an eligible hospital shall be treated as
25 a meaningful EHR user for a reporting period

1 for a payment year (or, for purposes of sub-
2 section (b)(3)(B)(ix), for a reporting period
3 under such subsection for a fiscal year) if each
4 of the following requirements are met:

5 “(i) *MEANINGFUL USE OF CERTIFIED*
6 *EHR TECHNOLOGY.*—The eligible hospital
7 demonstrates to the satisfaction of the Sec-
8 retary, in accordance with subparagraph
9 (C)(i), that during such period the hospital
10 is using certified EHR technology in a
11 meaningful manner.

12 “(ii) *INFORMATION EXCHANGE.*—The
13 eligible hospital demonstrates to the satis-
14 faction of the Secretary, in accordance with
15 subparagraph (C)(i), that during such pe-
16 riod such certified EHR technology is con-
17 nected in a manner that provides, in ac-
18 cordance with law and standards applicable
19 to the exchange of information, for the elec-
20 tronic exchange of health information to im-
21 prove the quality of health care, such as
22 promoting care coordination.

23 “(iii) *REPORTING ON MEASURES USING*
24 *EHR.*—Subject to subparagraph (B)(ii) and
25 using such certified EHR technology, the el-

1 *igible hospital submits information for such*
2 *period, in a form and manner specified by*
3 *the Secretary, on such clinical quality*
4 *measures and such other measures as se-*
5 *lected by the Secretary under subparagraph*
6 *(B)(i).*

7 *The Secretary shall seek to improve the use of*
8 *electronic health records and health care quality*
9 *over time by requiring more stringent measures*
10 *of meaningful use selected under this paragraph.*

11 *“(B) REPORTING ON MEASURES.—*

12 *“(i) SELECTION.—The Secretary shall*
13 *select measures for purposes of subpara-*
14 *graph (A)(iii) but only consistent with the*
15 *following:*

16 *“(I) The Secretary shall provide*
17 *preference to clinical quality measures*
18 *that have been selected for purposes of*
19 *applying subsection (b)(3)(B)(viii) or*
20 *that have been endorsed by the entity*
21 *with a contract with the Secretary*
22 *under section 1890(a).*

23 *“(II) Prior to any measure (other*
24 *than a clinical quality measure that*
25 *has been selected for purposes of apply-*

1 *ing subsection (b)(3)(B)(viii) being se-*
2 *lected under this subparagraph, the*
3 *Secretary shall publish in the Federal*
4 *Register such measure and provide for*
5 *a period of public comment on such*
6 *measure.*

7 “(ii) *LIMITATIONS.—The Secretary*
8 *may not require the electronic reporting of*
9 *information on clinical quality measures*
10 *under subparagraph (A)(iii) unless the Sec-*
11 *retary has the capacity to accept the infor-*
12 *mation electronically, which may be on a*
13 *pilot basis.*

14 “(iii) *COORDINATION OF REPORTING*
15 *OF INFORMATION.—In selecting such meas-*
16 *ures, and in establishing the form and man-*
17 *ner for reporting measures under subpara-*
18 *graph (A)(iii), the Secretary shall seek to*
19 *avoid redundant or duplicative reporting*
20 *with reporting otherwise required, including*
21 *reporting under subsection (b)(3)(B)(viii).*

22 “(C) *DEMONSTRATION OF MEANINGFUL USE*
23 *OF CERTIFIED EHR TECHNOLOGY AND INFORMA-*
24 *TION EXCHANGE.—*

1 “(i) *IN GENERAL.*—A hospital may
2 satisfy the demonstration requirement of
3 clauses (i) and (ii) of subparagraph (A)
4 through means specified by the Secretary,
5 which may include—

6 “(I) an attestation;

7 “(II) the submission of claims
8 with appropriate coding (such as a
9 code indicating that inpatient care
10 was documented using certified EHR
11 technology);

12 “(III) a survey response;

13 “(IV) reporting under subpara-
14 graph (A)(iii); and

15 “(V) other means specified by the
16 Secretary.

17 “(ii) *USE OF PART D DATA.*—Notwith-
18 standing sections 1860D–15(d)(2)(B) and
19 1860D–15(f)(2), the Secretary may use data
20 regarding drug claims submitted for pur-
21 poses of section 1860D–15 that are nec-
22 essary for purposes of subparagraph (A).

23 “(4) *APPLICATION.*—

24 “(A) *LIMITATIONS ON REVIEW.*—There shall
25 be no administrative or judicial review under

1 *section 1869, section 1878, or otherwise of the de-*
2 *termination of any incentive payment under this*
3 *subsection and the payment adjustment under*
4 *subsection (b)(3)(B)(ix), including the deter-*
5 *mination of a meaningful EHR user under*
6 *paragraph (3), determination of measures appli-*
7 *cable to services furnished by eligible hospitals*
8 *under this subsection, and the exception under*
9 *subsection (b)(3)(B)(ix)(II).*

10 “(B) *POSTING ON WEBSITE.*—*The Secretary*
11 *shall post on the Internet website of the Centers*
12 *for Medicare & Medicaid Services, in an easily*
13 *understandable format, a list of the names of the*
14 *eligible hospitals that are meaningful EHR users*
15 *under this subsection or subsection (b)(3)(B)(ix)*
16 *and other relevant data as determined appro-*
17 *priate by the Secretary. The Secretary shall en-*
18 *sure that a hospital has the opportunity to re-*
19 *view the other relevant data that are to be made*
20 *public with respect to the hospital prior to such*
21 *data being made public.*

22 “(5) *CERTIFIED EHR TECHNOLOGY DEFINED.*—
23 *The term ‘certified EHR technology’ has the meaning*
24 *given such term in section 1848(o)(4).*

1 “(6) *DEFINITIONS.*—*For purposes of this sub-*
2 *section:*

3 “(A) *ELIGIBLE HOSPITAL.*—*The term ‘eligi-*
4 *ble hospital’ means—*

5 “(i) *a subsection (d) hospital; and*

6 “(ii) *a critical access hospital (as de-*
7 *defined in section 1861(mm)(1)).*

8 “(B) *REPORTING PERIOD.*—*The term ‘re-*
9 *porting period’ means any period (or periods),*
10 *with respect to a payment year, as specified by*
11 *the Secretary.’”.*

12 (b) *INCENTIVE MARKET BASKET ADJUSTMENT.*—

13 (1) *IN GENERAL.*—*Section 1886(b)(3)(B) of the*
14 *Social Security Act (42 U.S.C. 1395ww(b)(3)(B)) is*
15 *amended—*

16 (A) *in clause (viii)(I), by inserting “(or, be-*
17 *ginning with fiscal year 2016, by one-quarter)”*
18 *after “2.0 percentage points”; and*

19 (B) *by adding at the end the following new*
20 *clause:*

21 “(ix)(I) *For purposes of clause (i) for fiscal year 2015*
22 *and each subsequent fiscal year, in the case of an eligible*
23 *hospital (as defined in subsection (n)(6)(A)) that is not a*
24 *meaningful EHR user (as defined in subsection (n)(3)) for*
25 *the reporting period for such fiscal year, three-quarters of*

1 *the applicable percentage increase otherwise applicable*
2 *under clause (i) for such fiscal year shall be reduced by*
3 *33¹/₃ percent for fiscal year 2015, 66²/₃ percent for fiscal*
4 *year 2016, and 100 percent for fiscal year 2017 and each*
5 *subsequent fiscal year. Such reduction shall apply only with*
6 *respect to the fiscal year involved and the Secretary shall*
7 *not take into account such reduction in computing the ap-*
8 *plicable percentage increase under clause (i) for a subse-*
9 *quent fiscal year.*

10 *“(II) The Secretary may, on a case-by-case basis, ex-*
11 *empt a subsection (d) hospital from the application of sub-*
12 *clause (I) with respect to a fiscal year if the Secretary deter-*
13 *mines, subject to annual renewal, that requiring such hos-*
14 *pital to be a meaningful EHR user during such fiscal year*
15 *would result in a significant hardship, such as in the case*
16 *of a hospital in a rural area without sufficient Internet ac-*
17 *cess. In no case may a hospital be granted an exemption*
18 *under this subclause for more than 5 years.*

19 *“(III) For fiscal year 2015 and each subsequent fiscal*
20 *year, a State in which hospitals are paid for services under*
21 *section 1814(b)(3) shall adjust the payments to each sub-*
22 *section (d) hospital in the State that is not a meaningful*
23 *EHR user (as defined in subsection (n)(3)) in a manner*
24 *that is designed to result in an aggregate reduction in pay-*
25 *ments to hospitals in the State that is equivalent to the ag-*

1 *gregate reduction that would have occurred if payments had*
2 *been reduced to each subsection (d) hospital in the State*
3 *in a manner comparable to the reduction under the pre-*
4 *vious provisions of this clause. The State shall report to*
5 *the Secretary the methodology it will use to make the pay-*
6 *ment adjustment under the previous sentence.*

7 *“(IV) For purposes of this clause, the term ‘reporting*
8 *period’ means, with respect to a fiscal year, any period (or*
9 *periods), with respect to the fiscal year, as specified by the*
10 *Secretary.”*

11 (2) *CRITICAL ACCESS HOSPITALS.—Section*
12 *1814(l) of the Social Security Act (42 U.S.C.*
13 *1395f(l)) is amended—*

14 (A) *in subparagraph (1), by striking “para-*
15 *graph (2)” and inserting “paragraphs (2) and*
16 *(3)”*; and

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

19 *“(3)(A) Subject to subparagraph (B), for fiscal year*
20 *2015 and each subsequent fiscal year, in the case of a crit-*
21 *ical access hospital that is not a meaningful EHR user (as*
22 *defined in section 1886(n)(3)) for the reporting period for*
23 *such fiscal year, paragraph (1) shall be applied by sub-*
24 *stituting the applicable percent under subparagraph (C) for*
25 *the percent described in such paragraph (1).*

1 “(B) *The Secretary may, on a case-by-case basis, ex-*
2 *empt a critical access hospital from the application of sub-*
3 *paragraph (A) with respect to a fiscal year if the Secretary*
4 *determines, subject to annual renewal, that requiring such*
5 *hospital to be a meaningful EHR user during such fiscal*
6 *year would result in a significant hardship, such as in the*
7 *case of a hospital in a rural area without sufficient Internet*
8 *access. In no case may a hospital be granted an exemption*
9 *under this subparagraph for more than 5 years.*

10 “(C) *The percent described in this subparagraph is—*
11 *“(i) for fiscal year 2015, 100.66 percent;*
12 *“(ii) for fiscal year 2016, 100.33 percent; and*
13 *“(iii) for fiscal year 2017 and each subsequent*
14 *fiscal year, 100 percent.”.*

15 (c) *APPLICATION TO CERTAIN MA-AFFILIATED ELIGI-*
16 *BLE HOSPITALS.—Section 1853 of the Social Security Act*
17 *(42 U.S.C. 1395w–23), as amended by section 4201(c), is*
18 *further amended by adding at the end the following new*
19 *subsection:*

20 “(m) *APPLICATION OF ELIGIBLE HOSPITAL INCEN-*
21 *TIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION*
22 *AND MEANINGFUL USE OF CERTIFIED EHR TECH-*
23 *NOLOGY.—*

24 “(1) *APPLICATION.—Subject to paragraphs (3)*
25 *and (4), in the case of a qualifying MA organization,*

1 *the provisions of sections 1814(l)(3), 1886(n), and*
2 *1886(b)(3)(B)(ix) shall apply with respect to eligible*
3 *hospitals described in paragraph (2) of the organiza-*
4 *tion which the organization attests under subsection*
5 *(l)(6) to be meaningful EHR users in a similar man-*
6 *ner as they apply to eligible hospitals under such sec-*
7 *tions. Incentive payments under paragraph (3) shall*
8 *be made to and payment adjustments under para-*
9 *graph (4) shall apply to such qualifying organiza-*
10 *tions.*

11 “(2) *ELIGIBLE HOSPITAL DESCRIBED.*—*With re-*
12 *spect to a qualifying MA organization, an eligible*
13 *hospital described in this paragraph is an eligible*
14 *hospital (as defined in section 1886(n)(6)(A)) that is*
15 *under common corporate governance with such orga-*
16 *nization and serves individuals enrolled under an MA*
17 *plan offered by such organization.*

18 “(3) *ELIGIBLE HOSPITAL INCENTIVE PAY-*
19 *MENTS.*—

20 “(A) *IN GENERAL.*—*In applying section*
21 *1886(n)(2) under paragraph (1), instead of the*
22 *additional payment amount under section*
23 *1886(n)(2), there shall be substituted an amount*
24 *determined by the Secretary to be similar to the*
25 *estimated amount in the aggregate that would be*

1 *payable if payment for services furnished by*
2 *such hospitals was payable under part A instead*
3 *of this part. In implementing the previous sen-*
4 *tence, the Secretary—*

5 *“(i) shall, insofar as data to determine*
6 *the discharge related amount under section*
7 *1886(n)(2)(C) for an eligible hospital are*
8 *not available to the Secretary, use such al-*
9 *ternative data and methodology to estimate*
10 *such discharge related amount as the Sec-*
11 *retary determines appropriate; and*

12 *“(ii) shall, insofar as data to deter-*
13 *mine the medicare share described in sec-*
14 *tion 1886(n)(2)(D) for an eligible hospital*
15 *are not available to the Secretary, use such*
16 *alternative data and methodology to esti-*
17 *mate such share, which data and method-*
18 *ology may include use of the inpatient bed*
19 *days (or discharges) with respect to an eli-*
20 *gible hospital during the appropriate period*
21 *which are attributable to both individuals*
22 *for whom payment may be made under*
23 *part A or individuals enrolled in an MA*
24 *plan under a Medicare Advantage organiza-*
25 *tion under this part as a proportion of the*

1 total number of patient-bed-days (or dis-
2 charges) with respect to such hospital dur-
3 ing such period.

4 “(B) AVOIDING DUPLICATION OF PAY-
5 MENTS.—

6 “(i) IN GENERAL.—In the case of a
7 hospital that for a payment year is an eli-
8 gible hospital described in paragraph (2)
9 and for which at least one-third of their dis-
10 charges (or bed-days) of Medicare patients
11 for the year are covered under part A, pay-
12 ment for the payment year shall be made
13 only under section 1886(n) and not under
14 this subsection.

15 “(ii) METHODS.—In the case of a hos-
16 pital that is an eligible hospital described
17 in paragraph (2) and also is eligible for an
18 incentive payment under section 1886(n)
19 but is not described in clause (i) for the
20 same payment period, the Secretary shall
21 develop a process—

22 “(I) to ensure that duplicate pay-
23 ments are not made with respect to an
24 eligible hospital both under this sub-
25 section and under section 1886(n); and

1 “(II) to collect data from Medi-
2 care Advantage organizations to ensure
3 against such duplicate payments.

4 “(4) PAYMENT ADJUSTMENT.—

5 “(A) Subject to paragraph (3), in the case
6 of a qualifying MA organization (as defined in
7 section 1853(l)(5)), if, according to the attesta-
8 tion of the organization submitted under sub-
9 section (l)(6) for an applicable period, one or
10 more eligible hospitals (as defined in section
11 1886(n)(6)(A)) that are under common corporate
12 governance with such organization and that
13 serve individuals enrolled under a plan offered
14 by such organization are not meaningful EHR
15 users (as defined in section 1886(n)(3)) with re-
16 spect to a period, the payment amount payable
17 under this section for such organization for such
18 period shall be the percent specified in subpara-
19 graph (B) for such period of the payment
20 amount otherwise provided under this section for
21 such period.

22 “(B) SPECIFIED PERCENT.—The percent
23 specified under this subparagraph for a year is
24 100 percent minus a number of percentage
25 points equal to the product of—

1 “(i) the number of the percentage point
2 reduction effected under section
3 1886(b)(3)(B)(ix)(I) for the period; and

4 “(ii) the Medicare hospital expenditure
5 proportion specified in subparagraph (C)
6 for the year.

7 “(C) *MEDICARE HOSPITAL EXPENDITURE*
8 *PROPORTION.*—The Medicare hospital expendi-
9 ture proportion under this subparagraph for a
10 year is the Secretary’s estimate of the propor-
11 tion, of the expenditures under parts A and B
12 that are not attributable to this part, that are
13 attributable to expenditures for inpatient hos-
14 pital services.

15 “(D) *APPLICATION OF PAYMENT ADJUST-*
16 *MENT.*—In the case that a qualifying MA orga-
17 nization attests that not all eligible hospitals are
18 meaningful EHR users with respect to an appli-
19 cable period, the Secretary shall apply the pay-
20 ment adjustment under this paragraph based on
21 a methodology specified by the Secretary, taking
22 into account the proportion of such eligible hos-
23 pitals, or discharges from such hospitals, that are
24 not meaningful EHR users for such period.

1 “(5) *POSTING ON WEBSITE.*—*The Secretary shall*
2 *post on the Internet website of the Centers for Medi-*
3 *care & Medicaid Services, in an easily understand-*
4 *able format—*

5 “(A) *a list of the names, business addresses,*
6 *and business phone numbers of each qualifying*
7 *MA organization receiving an incentive payment*
8 *under this subsection for eligible hospitals de-*
9 *scribed in paragraph (2); and*

10 “(B) *a list of the names of the eligible hos-*
11 *pitals for which such incentive payment is*
12 *based.”.*

13 (d) *CONFORMING AMENDMENTS.*—

14 (1) *Section 1814(b) of the Social Security Act*
15 *(42 U.S.C. 1395f(b)) is amended—*

16 (A) *in paragraph (3), in the matter pre-*
17 *ceding subparagraph (A), by inserting “, subject*
18 *to section 1886(d)(3)(B)(ix)(III),” after “then”;*
19 *and*

20 (B) *by adding at the end the following:*
21 *“For purposes of applying paragraph (3), there*
22 *shall be taken into account incentive payments,*
23 *and payment adjustments under subsection*
24 *(b)(3)(B)(ix) or (n) of section 1886.”.*

1 (2) *Section 1851(i)(1) of the Social Security Act*
 2 (42 U.S.C. 1395w–21(i)(1)) *is amended by striking*
 3 “*and 1886(h)(3)(D)*” *and inserting “1886(h)(3)(D),*
 4 *and 1853(m)”.*

5 (3) *Section 1853 of the Social Security Act (42*
 6 *U.S.C. 1395w–23), as amended by section 4311(d)(1),*
 7 *is amended—*

8 (A) *in subsection (c)—*

9 (i) *in paragraph (1)(D)(i), by striking*
 10 “*1848(o)*” *and inserting “, 1848(o), and*
 11 *1886(n)”;* *and*

12 (ii) *in paragraph (6)(A), by inserting*
 13 “*and subsections (b)(3)(B)(ix) and (n) of*
 14 *section 1886” after “section 1848”; and*

15 (B) *in subsection (f), by inserting “and sub-*
 16 *section (m)” after “under subsection (l)”.*

17 **SEC. 4203. PREMIUM HOLD HARMLESS AND IMPLEMENTA-**
 18 **TION FUNDING.**

19 (a) *PREMIUM HOLD HARMLESS.—*

20 (1) *IN GENERAL.—Section 1839(a)(1) of the So-*
 21 *cial Security Act (42 U.S.C. 1395r(a)(1)) is amended*
 22 *by adding at the end the following: “In applying this*
 23 *paragraph there shall not be taken into account addi-*
 24 *tional payments under section 1848(o) and section*

1 1853(l)(3) and the Government contribution under
2 section 1844(a)(3).”.

3 (2) *PAYMENT.*—Section 1844(a) of such Act (42
4 U.S.C. 1395w(a)) is amended—

5 (A) in paragraph (2), by striking the period
6 at the end and inserting “; plus”; and

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

9 “(3) a Government contribution equal to the
10 amount of payment incentives payable under sections
11 1848(o) and 1853(l)(3).”.

12 (b) *IMPLEMENTATION FUNDING.*—In addition to funds
13 otherwise available, out of any funds in the Treasury not
14 otherwise appropriated, there are appropriated to the Sec-
15 retary of Health and Human Services for the Center for
16 Medicare & Medicaid Services Program Management Ac-
17 count, \$100,000,000 for each of fiscal years 2009 through
18 2015 and \$45,000,000 for each succeeding fiscal year
19 through fiscal year 2018, which shall be available for pur-
20 poses of carrying out the provisions of (and amendments
21 made by) this part. Amounts appropriated under this sub-
22 section for a fiscal year shall be available until expended.

1 **SEC. 4204. NON-APPLICATION OF PHASED-OUT INDIRECT**
2 **MEDICAL EDUCATION (IME) ADJUSTMENT**
3 **FACTOR FOR FISCAL YEAR 2009.**

4 (a) *IN GENERAL.*—Section 412.322 of title 42, Code
5 of Federal Regulations, shall be applied without regard to
6 paragraph (c) of such section, and the Secretary of Health
7 and Human Services shall recompute payments for dis-
8 charges occurring on or after October 1, 2008, as if such
9 paragraph had never been in effect.

10 (b) *NO EFFECT ON SUBSEQUENT YEARS.*—Nothing in
11 subsection (a) shall be construed as having any effect on
12 the application of paragraph (d) of section 412.322 of title
13 42, Code of Federal Regulations.

14 **SEC. 4205. STUDY ON APPLICATION OF EHR PAYMENT IN-**
15 **CENTIVES FOR PROVIDERS NOT RECEIVING**
16 **OTHER INCENTIVE PAYMENTS.**

17 (a) *STUDY.*—

18 (1) *IN GENERAL.*—The Secretary of Health and
19 Human Services shall conduct a study to determine
20 the extent to which and manner in which payment
21 incentives (such as under title XVIII or XIX of the
22 Social Security Act) and other funding for purposes
23 of implementing and using certified EHR technology
24 (as defined in section 1848(o)(4) of the Social Secu-
25 rity Act, as added by section 4311(a)) should be made
26 available to health care providers who are receiving

1 *minimal or no payment incentives or other funding*
2 *under this Act, under title XVIII or XIX of such Act,*
3 *or otherwise, for such purposes.*

4 (2) *DETAILS OF STUDY.—Such study shall in-*
5 *clude an examination of—*

6 (A) *the adoption rates of certified EHR*
7 *technology (as so defined) by such health care*
8 *providers;*

9 (B) *the clinical utility of such technology by*
10 *such health care providers;*

11 (C) *whether the services furnished by such*
12 *health care providers are appropriate for or*
13 *would benefit from the use of such technology;*

14 (D) *the extent to which such health care*
15 *providers work in settings that might otherwise*
16 *receive an incentive payment or other funding*
17 *under this Act, title XVIII or XIX of the Social*
18 *Security Act, or otherwise;*

19 (E) *the potential costs and the potential*
20 *benefits of making payment incentives and other*
21 *funding available to such health care providers;*
22 *and*

23 (F) *any other issues the Secretary deems to*
24 *be appropriate.*

1 (b) *REPORT.*—Not later than June 30, 2010, the Sec-
2 retary shall submit to Congress a report on the findings
3 and conclusions of the study conducted under subsection (a).

4 **SEC. 4206. STUDY ON AVAILABILITY OF OPEN SOURCE**
5 **HEALTH INFORMATION TECHNOLOGY SYS-**
6 **TEMS.**

7 (a) *IN GENERAL.*—

8 (1) *STUDY.*—The Secretary of Health and
9 Human Services shall, in consultation with the
10 Under Secretary for Health of the Veterans Health
11 Administration, the Director of the Indian Health
12 Service, the Secretary of Defense, the Director of the
13 Agency for Healthcare Research and Quality, the Ad-
14 ministrator of the Health Resources and Services Ad-
15 ministration, and the Chairman of the Federal Com-
16 munications Commission, conduct a study on—

17 (A) the current availability of open source
18 health information technology systems to Federal
19 safety net providers (including small, rural pro-
20 viders);

21 (B) the total cost of ownership of such sys-
22 tems in comparison to the cost of proprietary
23 commercial products available;

24 (C) the ability of such systems to respond to
25 the needs of, and be applied to, various popu-

1 *lations (including children and disabled individ-*
2 *uals); and*

3 *(D) the capacity of such systems to facili-*
4 *tate interoperability.*

5 *(2) CONSIDERATIONS.—In conducting the study*
6 *under paragraph (1), the Secretary of Health and*
7 *Human Services shall take into account the cir-*
8 *cumstances of smaller health care providers, health*
9 *care providers located in rural or other medically un-*
10 *derserved areas, and safety net providers that deliver*
11 *a significant level of health care to uninsured individ-*
12 *uals, Medicaid beneficiaries, SCHIP beneficiaries,*
13 *and other vulnerable individuals.*

14 *(b) REPORT.—Not later than October 1, 2010, the Sec-*
15 *retary of Health and Human Services shall submit to Con-*
16 *gress a report on the findings and the conclusions of the*
17 *study conducted under subsection (a), together with rec-*
18 *ommendations for such legislation and administrative ac-*
19 *tion as the Secretary determines appropriate.*

20 ***Subtitle B—Medicaid Funding***

21 ***SEC. 4211. MEDICAID PROVIDER EHR ADOPTION AND OPER-*** 22 ***ATION PAYMENTS; IMPLEMENTATION FUND-*** 23 ***ING.***

24 *(a) IN GENERAL.—Section 1903 of the Social Security*
25 *Act (42 U.S.C. 1396b) is amended—*

1 (1) *in subsection (a)(3)—*

2 (A) *by striking “and” at the end of sub-*
3 *paragraph (D);*

4 (B) *by striking “plus” at the end of sub-*
5 *paragraph (E) and inserting “and”; and*

6 (C) *by adding at the end the following new*
7 *subparagraph:*

8 “(F)(i) *100 percent of so much of the sums*
9 *expended during such quarter as are attributable*
10 *to payments for certified EHR technology (and*
11 *support services including maintenance and*
12 *training that is for, or is necessary for the adop-*
13 *tion and operation of, such technology) by Med-*
14 *icaid providers described in subsection (t)(1);*
15 *and*

16 “(ii) *90 percent of so much of the sums ex-*
17 *pended during such quarter as are attributable*
18 *to payments for reasonable administrative ex-*
19 *penses related to the administration of payments*
20 *described in clause (i) if the State meets the con-*
21 *dition described in subsection (t)(9); plus”; and*

22 (2) *by inserting after subsection (s) the following*
23 *new subsection:*

24 “(t)(1)(A) *For purposes of subsection (a)(3)(F), the*
25 *payments for certified EHR technology (and support serv-*

1 *ices including maintenance that is for, or is necessary for*
2 *the operation of, such technology) by Medicaid providers de-*
3 *scribed in this paragraph are payments made by the State*
4 *in accordance with this subsection of the applicable percent*
5 *of the net allowable costs of Medicaid providers (as defined*
6 *in paragraph (2)) for such technology (and support serv-*
7 *ices).*

8 “(B) For purposes of subparagraph (A), the term ‘ap-
9 *plicable percent’ means—*

10 “(i) in the case of a Medicaid provider described
11 *in paragraph (2)(A), 85 percent;*

12 “(ii) in the case of a Medicaid provider described
13 *in clause (i) or (ii) of paragraph (2)(B), 100 percent;*
14 *and*

15 “(iii) in the case of a Medicaid provider de-
16 *scribed in clause (iii) of paragraph (2)(B), a percent*
17 *specified by the Secretary, but not less than 85 per-*
18 *cent.*

19 “(2) In this subsection and subsection (a)(3)(F), the
20 *term ‘Medicaid provider’ means—*

21 “(A) an eligible professional (as defined in para-
22 *graph (3)(B)) who is not hospital-based and has at*
23 *least 30 percent of the professional’s patient volume*
24 *(as estimated in accordance with standards estab-*
25 *lished by the Secretary) attributable to individuals*

1 *who are receiving medical assistance under this title;*
2 *and*

3 “(B)(i) *a children’s hospital, (ii) an acute-care*
4 *hospital that is not described in clause (i) and that*
5 *has at least 10 percent of the hospital’s patient vol-*
6 *ume (as estimated in accordance with standards es-*
7 *tablished by the Secretary) attributable to individuals*
8 *who are receiving medical assistance under this title,*
9 *or (iii) a Federally-qualified health center or rural*
10 *health clinic that has at least 30 percent of the cen-*
11 *ter’s or clinic’s patient volume (as estimated in ac-*
12 *cordance with standards established by the Secretary)*
13 *attributable to individuals who are receiving medical*
14 *assistance under this title.*

15 *An eligible professional shall not qualify as a Medicaid pro-*
16 *vider under this subsection unless the professional has*
17 *waived, in a manner specified by the Secretary, any right*
18 *to payment under section 1848(o) with respect to the adop-*
19 *tion or support of certified EHR technology by the eligible*
20 *professional. In applying clauses (ii) and (iii) of subpara-*
21 *graph (B), the standards established by the Secretary for*
22 *patient volume shall include individuals enrolled in a Med-*
23 *icaid managed care plan (under section 1903(m) or section*
24 *1932).*

25 “(3) *In this subsection and subsection (a)(3)(F):*

1 “(A) *The term ‘certified EHR technology’ means*
2 *a qualified electronic health record (as defined in*
3 *3000(13) of the Public Health Service Act) that is cer-*
4 *tified pursuant to section 3001(c)(5) of such Act as*
5 *meeting standards adopted under section 3004 of such*
6 *Act that are applicable to the type of record involved*
7 *(as determined by the Secretary, such as an ambula-*
8 *tory electronic health record for office-based physi-*
9 *cians or an inpatient hospital electronic health record*
10 *for hospitals).*

11 “(B) *The term ‘eligible professional’ means a*
12 *physician as defined in paragraphs (1) and (2) of*
13 *section 1861(r), and includes a nurse mid-wife and a*
14 *nurse practitioner.*

15 “(C) *The term ‘hospital-based’ means, with re-*
16 *spect to an eligible professional, a professional (such*
17 *as a pathologist, anesthesiologist, or emergency physi-*
18 *cian) who furnishes substantially all of the individ-*
19 *ual’s professional services in a hospital setting*
20 *(whether inpatient or outpatient) and through the use*
21 *of the facilities and equipment, including qualified*
22 *electronic health records, of the hospital.*

23 “(4)(A) *The term ‘allowable costs’ means, with respect*
24 *to certified EHR technology of a Medicaid provider, costs*
25 *of such technology (and support services including mainte-*

1 nance and training that is for, or is necessary for the adop-
2 tion and operation of, such technology) as determined by
3 the Secretary to be reasonable.

4 “(B) The term ‘net allowable costs’ means allowable
5 costs reduced by any payment that is made to the Medicaid
6 provider involved from any other source that is directly at-
7 tributable to payment for certified EHR technology or serv-
8 ices described in subparagraph (A).

9 “(C) In no case shall—

10 “(i) the aggregate allowable costs under this sub-
11 section (covering one or more years) with respect to
12 a Medicaid provider described in paragraph (2)(A)
13 for purchase and initial implementation of certified
14 EHR technology (and services described in subpara-
15 graph (A)) exceed \$25,000 or include costs over a pe-
16 riod of longer than 5 years;

17 “(ii) for costs not described in clause (i) relating
18 to the operation, maintenance, or use of certified
19 EHR technology, the annual allowable costs under
20 this subsection with respect to such a Medicaid pro-
21 vider for costs not described in clause (i) for any year
22 exceed \$10,000;

23 “(iii) payment described in paragraph (1) for
24 costs described in clause (ii) be made with respect to

1 *such a Medicaid provider over a period of more than*
2 *5 years;*

3 “(iv) *the aggregate allowable costs under this*
4 *subsection with respect to such a Medicaid provider*
5 *for all costs exceed \$75,000; or*

6 “(v) *the allowable costs, whether for purchase*
7 *and initial implementation, maintenance, or other-*
8 *wise, for a Medicaid provider described in paragraph*
9 *(2)(B)(iii) exceed such aggregate or annual limitation*
10 *as the Secretary shall establish, based on an amount*
11 *determined by the Secretary as being adequate to*
12 *adopt and maintain certified EHR technology, con-*
13 *sistent with paragraph (6).*

14 “(5) *Payments described in paragraph (1) are not in*
15 *accordance with this subsection unless the following require-*
16 *ments are met:*

17 “(A) *The State provides assurances satisfactory*
18 *to the Secretary that amounts received under sub-*
19 *section (a)(3)(F) with respect to costs of a Medicaid*
20 *provider are paid directly to such provider without*
21 *any deduction or rebate.*

22 “(B) *Such Medicaid provider is responsible for*
23 *payment of the costs described in such paragraph that*
24 *are not provided under this title.*

1 “(C) *With respect to payments to such Medicaid*
2 *provider for costs other than costs related to the ini-*
3 *tial adoption of certified EHR technology, the Med-*
4 *icaid provider demonstrates meaningful use of cer-*
5 *tified EHR technology through a means that is ap-*
6 *proved by the State and acceptable to the Secretary,*
7 *and that may be based upon the methodologies ap-*
8 *plied under section 1848(o) or 1886(n). In estab-*
9 *lishing such means, which may include the reporting*
10 *of clinical quality measures to the State, the State*
11 *shall ensure that populations with unique needs, such*
12 *as children, are appropriately addressed.*

13 “(D) *To the extent specified by the Secretary, the*
14 *certified EHR technology is compatible with State or*
15 *Federal administrative management systems.*

16 “(6)(A) *In no case shall the payments described in*
17 *paragraph (1), with respect to a hospital, exceed in the ag-*
18 *gregate the product of—*

19 “(i) *the overall hospital EHR amount for the*
20 *hospital computed under subparagraph (B); and*

21 “(ii) *the Medicaid share for such hospital com-*
22 *puted under subparagraph (C).*

23 “(B) *For purposes of this paragraph, the overall hos-*
24 *pital EHR amount, with respect to a hospital, is the sum*
25 *of the applicable amounts specified in section 1886(n)(2)(A)*

1 *for such hospital for the first 4 payment years (as estimated*
2 *by the Secretary) determined as if the Medicare share speci-*
3 *fied in clause (ii) of such section were 1. The Secretary shall*
4 *publish in the Federal Register the overall hospital EHR*
5 *amount for each hospital eligible for payments under this*
6 *subsection. In computing amounts under clause (ii) for*
7 *payment years after the first payment year, the Secretary*
8 *shall assume that in subsequent payment years discharges*
9 *increase at the average annual rate of growth of the most*
10 *recent three years for which discharge data are available.*

11 “(C) *The Medicaid share computed under this sub-*
12 *paragraph, for a hospital for a period specified by the Sec-*
13 *retary, shall be calculated in the same manner as the Medi-*
14 *care share under section 1886(n)(2)(D) for such a hospital*
15 *and period, except that there shall be substituted for the nu-*
16 *merator under clause (i) of such section the amount that*
17 *is equal to the number of inpatient-bed-days (as established*
18 *by the Secretary) which are attributable to individuals who*
19 *are receiving medical assistance under this title and who*
20 *are not described in section 1886(n)(2)(D)(i). In computing*
21 *inpatient-bed-days under the previous sentence, the Sec-*
22 *retary shall take into account inpatient-bed-days attrib-*
23 *utable to inpatient-bed-days that are paid for individuals*
24 *enrolled in a Medicaid managed care plan (under section*
25 *1903(m) or section 1932).*

1 “(7) *With respect to health care providers other than*
2 *hospitals, the Secretary shall establish and implement a de-*
3 *tailed process to ensure coordination of the different pro-*
4 *grams for payment of such health care providers for adop-*
5 *tion or use of health information technology (including cer-*
6 *tified EHR technology), as well as payments for such health*
7 *care providers provided under this title or title XVIII, to*
8 *assure no duplication of funding. The Secretary shall pro-*
9 *mulgate regulations to carry out the preceding sentence.*

10 “(8) *In carrying out paragraph (5)(C), the State and*
11 *Secretary shall seek, to the maximum extent practicable, to*
12 *avoid duplicative requirements from Federal and State*
13 *Governments to demonstrate meaningful use of certified*
14 *EHR technology under this title and title XVIII. In doing*
15 *so, the Secretary may deem satisfaction of requirements for*
16 *such meaningful use for a payment year under title XVIII*
17 *to be sufficient to qualify as meaningful use under this sub-*
18 *section. The Secretary may also specify the reporting peri-*
19 *ods under this subsection in order to carry out this para-*
20 *graph.*

21 “(9) *In order to be provided Federal financial partici-*
22 *pation under subsection (a)(3)(F)(ii), a State must dem-*
23 *onstrate to the satisfaction of the Secretary, that the State—*

24 “(A) *is using the funds provided for the purposes*
25 *of administering payments under this subsection, in-*

1 *cluding tracking of meaningful use by Medicaid pro-*
2 *viders;*

3 *“(B) is conducting adequate oversight of the pro-*
4 *gram under this subsection, including routine track-*
5 *ing of meaningful use attestations and reporting*
6 *mechanisms; and*

7 *“(C) is pursuing initiatives to encourage the*
8 *adoption of certified EHR technology to promote*
9 *health care quality and the exchange of health care*
10 *information under this title, subject to applicable*
11 *laws and regulations governing such exchange.*

12 *“(10) The Secretary shall periodically submit reports*
13 *to the Committee on Energy and Commerce of the House*
14 *of Representatives and the Committee on Finance of the*
15 *Senate on status, progress, and oversight of payments under*
16 *paragraph (1).”.*

17 *(b) IMPLEMENTATION FUNDING.—In addition to funds*
18 *otherwise available, out of any funds in the Treasury not*
19 *otherwise appropriated, there are appropriated to the Sec-*
20 *retary of Health and Human Services for the Center for*
21 *Medicare & Medicaid Services Program Management Ac-*
22 *count, \$40,000,000 for each of fiscal years 2009 through*
23 *2015 and \$20,000,000 for each succeeding fiscal year*
24 *through fiscal year 2018, which shall be available for pur-*
25 *poses of carrying out the provisions of (and the amendments*

1 *made by) this part. Amounts appropriated under this sub-*
2 *section for a fiscal year shall be available until expended.*

3 *(c) HHS REPORT ON IMPLEMENTATION OF DETAILED*
4 *PROCESS TO ASSURE NO DUPLICATION OF FUNDING.—Not*
5 *later than July 1, 2012, the Secretary of Health and*
6 *Human Services shall submit to Congress a report on the*
7 *establishment and implementation of the detailed process*
8 *under section 1903(t)(7) of the Social Security Act, as*
9 *added by subsection (a), together with recommendations for*
10 *such legislation and administrative action as the Secretary*
11 *determines appropriate.*

12 **TITLE V—STATE FISCAL RELIEF**

13 **SEC. 5000. PURPOSES; TABLE OF CONTENTS.**

14 *(a) PURPOSES.—The purposes of this title are as fol-*
15 *lows:*

16 *(1) To provide fiscal relief to States in a period*
17 *of economic downturn.*

18 *(2) To protect and maintain State Medicaid*
19 *programs during a period of economic downturn, in-*
20 *cluding by helping to avert cuts to provider payment*
21 *rates and benefits or services, and to prevent constrict-*
22 *tions of income eligibility requirements for such pro-*
23 *grams, but not to promote increases in such require-*
24 *ments.*

1 (b) *TABLE OF CONTENTS.*—*The table of contents for*
2 *this title is as follows:*

TITLE V—STATE FISCAL RELIEF

Sec. 5000. Purposes; table of contents.

Sec. 5001. Temporary increase of Medicaid FMAP.

Sec. 5002. Extension and update of special rule for increase of Medicaid DSH allotments for low DSH States.

Sec. 5003. Payment of Medicare liability to States as a result of the Special Disability Workload Project.

Sec. 5004. Funding for the Department of Health and Human Services Office of the Inspector General.

Sec. 5005. GAO study and report regarding State needs during periods of national economic downturn.

3 **SEC. 5001. TEMPORARY INCREASE OF MEDICAID FMAP.**

4 (a) *PERMITTING MAINTENANCE OF FMAP.*—*Subject to*
5 *subsections (e), (f), and (g), if the FMAP determined with-*
6 *out regard to this section for a State for—*

7 (1) *fiscal year 2009 is less than the FMAP as so*
8 *determined for fiscal year 2008, the FMAP for the*
9 *State for fiscal year 2008 shall be substituted for the*
10 *State’s FMAP for fiscal year 2009, before the applica-*
11 *tion of this section;*

12 (2) *fiscal year 2010 is less than the FMAP as so*
13 *determined for fiscal year 2008 or fiscal year 2009*
14 *(after the application of paragraph (1)), the greater*
15 *of such FMAP for the State for fiscal year 2008 or*
16 *fiscal year 2009 shall be substituted for the State’s*
17 *FMAP for fiscal year 2010, before the application of*
18 *this section; and*

19 (3) *fiscal year 2011 is less than the FMAP as so*
20 *determined for fiscal year 2008, fiscal year 2009*

1 *(after the application of paragraph (1)), or fiscal*
2 *year 2010 (after the application of paragraph (2)),*
3 *the greatest of such FMAP for the State for fiscal year*
4 *2008, fiscal year 2009, or fiscal year 2010 shall be*
5 *substituted for the State's FMAP for fiscal year 2011,*
6 *before the application of this section, but only for the*
7 *first calendar quarter in fiscal year 2011.*

8 *(b) GENERAL 7.6 PERCENTAGE POINT INCREASE.—*
9 *Subject to subsections (e), (f), and (g), for each State for*
10 *calendar quarters during the recession adjustment period*
11 *(as defined in subsection (h)(2)) , the FMAP (after the ap-*
12 *plication of subsection (a)) shall be increased (without re-*
13 *gard to any limitation otherwise specified in section*
14 *1905(b) of the Social Security Act) by 7.6 percentage*
15 *points.*

16 *(c) ADDITIONAL RELIEF BASED ON INCREASE IN UN-*
17 *EMPLOYMENT.—*

18 *(1) IN GENERAL.—Subject to subsections (e), (f),*
19 *and (g), if a State is a qualifying State under para-*
20 *graph (2) for a calendar quarter occurring during the*
21 *recession adjustment period, the FMAP for the State*
22 *shall be further increased by the number of percentage*
23 *points equal to the product of the State percentage*
24 *applicable for the State under section 1905(b) of the*
25 *Social Security Act (42 U.S.C. 1396d(b)) after the*

1 *application of subsections (a) and (b) and the appli-*
2 *cable percent determined in paragraph (3) for the cal-*
3 *endar quarter (or, if greater, for a previous such cal-*
4 *endar quarter, subject to paragraph (4)) .*

5 (2) *QUALIFYING CRITERIA.—*

6 (A) *IN GENERAL.—For purposes of para-*
7 *graph (1), a State qualifies for additional relief*
8 *under this subsection for a calendar quarter oc-*
9 *curring during the recession adjustment period if*
10 *the State is 1 of the 50 States or the District of*
11 *Columbia and the State satisfies any of the fol-*
12 *lowing criteria for the quarter:*

13 (i) *An increase of at least 1.5 percent-*
14 *age points, but less than 2.5 percentage*
15 *points, in the average monthly unemploy-*
16 *ment rate, seasonally adjusted, for the State*
17 *or District, as determined by comparing*
18 *months in the most recent previous 3-con-*
19 *secutive month period for which data are*
20 *available for the State or District to the*
21 *lowest average monthly unemployment rate,*
22 *seasonally adjusted, for the State or District*
23 *for any 3-consecutive-month period pre-*
24 *ceding that period and beginning on or*
25 *after January 1, 2006 (based on the most*

1 *recently available monthly publications of*
2 *the Bureau of Labor Statistics of the De-*
3 *partment of Labor).*

4 *(ii) An increase of at least 2.5 percent-*
5 *age points, but less than 3.5 percentage*
6 *points, in the average monthly unemploy-*
7 *ment rate, seasonally adjusted, for the State*
8 *or District (as so determined).*

9 *(iii) An increase of at least 3.5 per-*
10 *centage points for the State or District, in*
11 *the average monthly unemployment rate,*
12 *seasonally adjusted, for the State or District*
13 *(as so determined).*

14 *(B) MAINTENANCE OF STATUS.—If a State*
15 *qualifies for additional relief under this sub-*
16 *section for a calendar quarter, it shall be deemed*
17 *to have qualified for such relief for each subse-*
18 *quent calendar quarter ending before July 1,*
19 *2010.*

20 *(3) APPLICABLE PERCENT.—For purposes of*
21 *paragraph (1), the applicable percent is—*

22 *(A) 2.5 percent, if the State satisfies the cri-*
23 *teria described in paragraph (2)(A)(i) for the*
24 *calendar quarter;*

1 (B) 4.5 percent if the State satisfies the cri-
2 teria described in paragraph (2)(A)(ii) for the
3 calendar quarter; and

4 (C) 6.5 percent if the State satisfies the cri-
5 teria described in paragraph (2)(A)(iii) for the
6 calendar quarter.

7 (4) MAINTENANCE OF HIGHER PERCENTAGE RE-
8 DUCTION FOR PERIOD AFTER LOWER PERCENTAGE
9 DEDUCTION WOULD OTHERWISE TAKE EFFECT.—

10 (A) HOLD HARMLESS PERIOD.—If the per-
11 centage reduction applied to a State under para-
12 graph (3) for any calendar quarter in the reces-
13 sion adjustment period beginning on or after
14 January 1, 2009, and ending before July 1,
15 2010, (determined without regard to this para-
16 graph) is less than the percentage reduction ap-
17 plied for the preceding quarter (as so deter-
18 mined), the higher percentage reduction shall
19 continue in effect for each subsequent calendar
20 quarter ending before July 1, 2010.

21 (B) NOTICE OF DECREASE IN PERCENTAGE
22 REDUCTION.—The Secretary shall notify a State
23 at least 3 months prior to applying any lower
24 percentage reduction to the State under para-
25 graph (3).

1 (d) *INCREASE IN CAP ON MEDICAID PAYMENTS TO*
2 *TERRITORIES.*—*Subject to subsections (f) and (g), with re-*
3 *spect to entire fiscal years occurring during the recession*
4 *adjustment period and with respect to fiscal years only a*
5 *portion of which occurs during such period (and in propor-*
6 *tion to the portion of the fiscal year that occurs during such*
7 *period), the amounts otherwise determined for Puerto Rico,*
8 *the Virgin Islands, Guam, the Northern Mariana Islands,*
9 *and American Samoa under subsections (f) and (g) of sec-*
10 *tion 1108 of the Social Security Act (42 6 U.S.C. 1308)*
11 *shall each be increased by 15.2 percent.*

12 (e) *SCOPE OF APPLICATION.*—*The increases in the*
13 *FMAP for a State under this section shall apply for pur-*
14 *poses of title XIX of the Social Security Act and shall not*
15 *apply with respect to—*

16 (1) *disproportionate share hospital payments de-*
17 *scribed in section 1923 of such Act (42 U.S.C. 1396r-*
18 *4);*

19 (2) *payments under title IV of such Act (42*
20 *U.S.C. 601 et seq.) (except that the increases under*
21 *subsections (a) and (b) shall apply to payments under*
22 *part E of title IV of such Act (42 U.S.C. 670 et seq.));*

23 (3) *payments under title XXI of such Act (42*
24 *U.S.C. 1397aa et seq.);*

1 (4) any payments under title XIX of such Act
2 that are based on the enhanced FMAP described in
3 section 2105(b) of such Act (42 U.S.C. 1397ee(b)); or

4 (5) any payments under title XIX of such Act
5 that are attributable to expenditures for medical as-
6 sistance provided to individuals made eligible under
7 a State plan under title XIX of the Social Security
8 Act (including under any waiver under such title or
9 under section 1115 of such Act (42 U.S.C. 1315)) be-
10 cause of income standards (expressed as a percentage
11 of the poverty line) for eligibility for medical assist-
12 ance that are higher than the income standards (as
13 so expressed) for such eligibility as in effect on July
14 1, 2008.

15 (f) STATE INELIGIBILITY.—

16 (1) MAINTENANCE OF ELIGIBILITY REQUIRE-
17 MENTS.—

18 (A) IN GENERAL.—Subject to subpara-
19 graphs (B) and (C), a State is not eligible for
20 an increase in its FMAP under subsection (a),
21 (b), or (c), or an increase in a cap amount
22 under subsection (d), if eligibility standards,
23 methodologies, or procedures under its State plan
24 under title XIX of the Social Security Act (in-
25 cluding any waiver under such title or under

1 *section 1115 of such Act (42 U.S.C. 1315)) are*
2 *more restrictive than the eligibility standards,*
3 *methodologies, or procedures, respectively, under*
4 *such plan (or waiver) as in effect on July 1,*
5 *2008.*

6 *(B) STATE REINSTATEMENT OF ELIGIBILITY*
7 *PERMITTED.—Subject to subparagraph (C), a*
8 *State that has restricted eligibility standards,*
9 *methodologies, or procedures under its State plan*
10 *under title XIX of the Social Security Act (in-*
11 *cluding any waiver under such title or under*
12 *section 1115 of such Act (42 U.S.C. 1315)) after*
13 *July 1, 2008, is no longer ineligible under sub-*
14 *paragraph (A) beginning with the first calendar*
15 *quarter in which the State has reinstated eligi-*
16 *bility standards, methodologies, or procedures*
17 *that are no more restrictive than the eligibility*
18 *standards, methodologies, or procedures, respec-*
19 *tively, under such plan (or waiver) as in effect*
20 *on July 1, 2008.*

21 *(C) SPECIAL RULES.—A State shall not be*
22 *ineligible under subparagraph (A)—*

23 *(i) for the calendar quarters before*
24 *July 1, 2009, on the basis of a restriction*
25 *that was applied after July 1, 2008, and be-*

1 *fore the date of the enactment of this Act, if*
2 *the State prior to July 1, 2009, has rein-*
3 *stated eligibility standards, methodologies,*
4 *or procedures that are no more restrictive*
5 *than the eligibility standards, methodolo-*
6 *gies, or procedures, respectively, under such*
7 *plan (or waiver) as in effect on July 1,*
8 *2008; or*

9 *(ii) on the basis of a restriction that*
10 *was directed to be made under State law as*
11 *of July 1, 2008, and would have been in ef-*
12 *fect as of such date, but for a delay in the*
13 *request for, and approval of, a waiver under*
14 *section 1115 of such Act with respect to*
15 *such restriction.*

16 (2) *COMPLIANCE WITH PROMPT PAY REQUIRE-*
17 *MENTS.—No State shall be eligible for an increased*
18 *FMAP rate as provided under this section for any*
19 *claim submitted by a provider subject to the terms of*
20 *section 1902(a)(37)(A) of the Social Security Act (42*
21 *U.S.C. 1396a(a)(37)(A)) during any period in which*
22 *that State has failed to pay claims in accordance*
23 *with section 1902(a)(37)(A) of such Act. Each State*
24 *shall report to the Secretary, no later than 30 days*
25 *following the 1st day of the month, its compliance*

1 *with the requirements of section 1902(a)(37)(A) of the*
2 *Social Security Act as they pertain to claims made*
3 *for covered services during the preceding month.*

4 (3) *NO WAIVER AUTHORITY.—The Secretary may*
5 *not waive the application of this subsection or sub-*
6 *section (g) under section 1115 of the Social Security*
7 *Act or otherwise.*

8 (g) *REQUIREMENTS.—*

9 (1) *IN GENERAL.—A State may not deposit or*
10 *credit the additional Federal funds paid to the State*
11 *as a result of this section to any reserve or rainy day*
12 *fund maintained by the State.*

13 (2) *STATE REPORTS.—Each State that is paid*
14 *additional Federal funds as a result of this section*
15 *shall, not later than September 30, 2011, submit a re-*
16 *port to the Secretary, in such form and such manner*
17 *as the Secretary shall determine, regarding how the*
18 *additional Federal funds were expended.*

19 (3) *ADDITIONAL REQUIREMENT FOR CERTAIN*
20 *STATES.—In the case of a State that requires political*
21 *subdivisions within the State to contribute toward the*
22 *non-Federal share of expenditures under the State*
23 *Medicaid plan required under section 1902(a)(2) of*
24 *the Social Security Act (42 U.S.C. 1396a(a)(2)), the*
25 *State is not eligible for an increase in its FMAP*

1 *under subsection (b) or (c), or an increase in a cap*
2 *amount under subsection (d), if it requires that such*
3 *political subdivisions pay for quarters during the re-*
4 *cession adjustment period a greater percentage of the*
5 *non-Federal share of such expenditures, or a greater*
6 *percentage of the non-Federal share of payments*
7 *under section 1923, than the respective percentage*
8 *that would have been required by the State under*
9 *such plan on September 30, 2008, prior to applica-*
10 *tion of this section.*

11 *(h) DEFINITIONS.—In this section, except as otherwise*
12 *provided:*

13 *(1) FMAP.—The term “FMAP” means the Fed-*
14 *eral medical assistance percentage, as defined in sec-*
15 *tion 1905(b) of the Social Security Act (42 U.S.C.*
16 *1396d(b)), as determined without regard to this sec-*
17 *tion except as otherwise specified.*

18 *(2) POVERTY LINE.—The term “poverty line”*
19 *has the meaning given such term in section 673(2) of*
20 *the Community Services Block Grant Act (42 U.S.C.*
21 *9902(2)), including any revision required by such sec-*
22 *tion.*

23 *(3) RECESSION ADJUSTMENT PERIOD.—The term*
24 *“recession adjustment period” means the period be-*

1 (2) *by adding at the end the following subpara-*
2 *graph:*

3 “(C) *FOR FISCAL YEAR 2009 AND SUBSE-*
4 *QUENT FISCAL YEARS.—In the case of a State in*
5 *which the total expenditures under the State*
6 *plan (including Federal and State shares) for*
7 *disproportionate share hospital adjustments*
8 *under this section for fiscal year 2006, as re-*
9 *ported to the Administrator of the Centers for*
10 *Medicare & Medicaid Services as of August 31,*
11 *2009, is greater than 0 but less than 3 percent*
12 *of the State’s total amount of expenditures under*
13 *the State plan for medical assistance during the*
14 *fiscal year, the DSH allotment for the State with*
15 *respect to—*

16 “(i) *fiscal year 2009, shall be the DSH*
17 *allotment for the State for fiscal year 2008*
18 *increased by 16 percent;*

19 “(ii) *fiscal year 2010, shall be the*
20 *DSH allotment for the State for fiscal year*
21 *2009 increased by 16 percent;*

22 “(iii) *fiscal year 2011 for the period*
23 *ending on December 31, 2010, shall be $\frac{1}{4}$ of*
24 *the DSH allotment for the State for fiscal*
25 *year 2010 increased by 16 percent;*

1 “(iv) *fiscal year 2011 for the period be-*
2 *ginning on January 1, 2011, and ending on*
3 *September 30, 2011, shall be $\frac{3}{4}$ of the DSH*
4 *allotment that would have been determined*
5 *under this subsection for the State for fiscal*
6 *year 2011 if this subparagraph had not*
7 *been enacted;*

8 “(v) *fiscal year 2012, shall be the DSH*
9 *allotment that would have been determined*
10 *under this subsection for the State for fiscal*
11 *year 2012 if this subparagraph had not*
12 *been enacted; and*

13 “(vi) *fiscal year 2013 and any subse-*
14 *quent fiscal year, shall be the DSH allot-*
15 *ment for the State for the previous fiscal*
16 *year subject to an increase for inflation as*
17 *provided in paragraph (3)(A).”.*

18 **SEC. 5003. PAYMENT OF MEDICARE LIABILITY TO STATES**
19 **AS A RESULT OF THE SPECIAL DISABILITY**
20 **WORKLOAD PROJECT.**

21 *(a) IN GENERAL.—The Secretary, in consultation with*
22 *the Commissioner, shall work with each State to reach an*
23 *agreement, not later than 3 months after the date of enact-*
24 *ment of this Act, on the amount of a payment for the State*
25 *related to the Medicare program liability as a result of the*

1 *Special Disability Workload project, subject to the require-*
2 *ments of subsection (c).*

3 (b) *PAYMENTS.*—

4 (1) *DEADLINE FOR MAKING PAYMENTS.*—*Not*
5 *later than 30 days after reaching an agreement with*
6 *a State under subsection (a), the Secretary shall pay*
7 *the State, from the amounts appropriated under*
8 *paragraph (2), the payment agreed to for the State.*

9 (2) *APPROPRIATION.*—*Out of any money in the*
10 *Treasury not otherwise appropriated, there is appro-*
11 *priated \$3,000,000,000 for fiscal year 2009 for mak-*
12 *ing payments to States under paragraph (1).*

13 (3) *LIMITATIONS.*—*In no case may—*

14 (A) *the aggregate amount of payments made*
15 *by the Secretary to States under paragraph (1)*
16 *exceed \$3,000,000,000; or*

17 (B) *any payments be provided by the Sec-*
18 *retary under this section after the first day of the*
19 *first month that begins 4 months after the date*
20 *of enactment of this Act.*

21 (c) *REQUIREMENTS.*—*The requirements of this sub-*
22 *section are the following:*

23 (1) *FEDERAL DATA USED TO DETERMINE*
24 *AMOUNT OF PAYMENTS.*—*The amount of the payment*
25 *under subsection (a) for each State is determined on*

1 *the basis of the most recent Federal data available,*
2 *including the use of proxies and reasonable estimates*
3 *as necessary, for determining expeditiously the*
4 *amount of the payment that shall be made to each*
5 *State that enters into an agreement under this sec-*
6 *tion. The payment methodology shall consider the fol-*
7 *lowing factors:*

8 *(A) The number of SDW cases found to*
9 *have been eligible for benefits under the Medicare*
10 *program and the month of the initial Medicare*
11 *program eligibility for such cases.*

12 *(B) The applicable non-Federal share of ex-*
13 *penditures made by a State under the Medicaid*
14 *program during the time period for SDW cases.*

15 *(C) Such other factors as the Secretary and*
16 *the Commissioner, in consultation with the*
17 *States, determine appropriate.*

18 *(2) CONDITIONS FOR PAYMENTS.—A State shall*
19 *not receive a payment under this section unless the*
20 *State—*

21 *(A) waives the right to file a civil action (or*
22 *to be a party to any action) in any Federal or*
23 *State court in which the relief sought includes a*
24 *payment from the United States to the State re-*
25 *lated to the Medicare liability under title XVIII*

1 *of the Social Security Act (42 U.S.C. 1395 et*
2 *seq.) as a result of the Special Disability Work-*
3 *load project; and*

4 *(B) releases the United States from any fur-*
5 *ther claims for reimbursement of State expendi-*
6 *tures as a result of the Special Disability Work-*
7 *load project.*

8 (3) *NO INDIVIDUAL STATE CLAIMS DATA RE-*
9 *QUIRED.—No State shall be required to submit indi-*
10 *vidual claims evidencing payment under the Med-*
11 *icaid program as a condition for receiving a payment*
12 *under this section.*

13 (4) *INELIGIBLE STATES.—No State that is a*
14 *party to a civil action in any Federal or State court*
15 *in which the relief sought includes a payment from*
16 *the United States to the State related to the Medicare*
17 *liability under title XVIII of the Social Security Act*
18 *(42 U.S.C. 1395 et seq.) as a result of the Special*
19 *Disability Workload project shall be eligible to receive*
20 *a payment under this section while such an action is*
21 *pending or if such an action is resolved in favor of*
22 *the State.*

23 (d) *DEFINITIONS.—In this section:*

24 (1) *COMMISSIONER.—The term “Commissioner”*
25 *means the Commissioner of Social Security.*

1 (2) *MEDICAID PROGRAM.*—*The term “Medicaid*
2 *program” means the program of medical assistance*
3 *established under title XIX of the Social Security Act*
4 *(42 U.S.C. 1396a et seq.) and includes medical assist-*
5 *ance provided under any waiver of that program ap-*
6 *proved under section 1115 or 1915 of such Act (42*
7 *U.S.C. 1315, 1396n) or otherwise.*

8 (3) *MEDICARE PROGRAM.*—*The term “Medicare*
9 *program” means the program established under title*
10 *XVIII of the Social Security Act (42 U.S.C. 1395 et*
11 *seq.).*

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

14 (5) *SDW CASE.*—*The term “SDW case” means*
15 *a case in the Special Disability Workload project in-*
16 *volving an individual determined by the Commis-*
17 *sioner to have been eligible for benefits under title II*
18 *of the Social Security Act (42 U.S.C. 401 et seq.) for*
19 *a period during which such benefits were not provided*
20 *to the individual and who was, during all or part of*
21 *such period, enrolled in a State Medicaid program.*

22 (6) *SPECIAL DISABILITY WORKLOAD PROJECT.*—
23 *The term “Special Disability Workload project”*
24 *means the project described in the 2008 Annual Re-*
25 *port of the Board of Trustees of the Federal Old-Age*

1 *and Survivors Insurance and Federal Disability In-*
2 *urance Trust Funds, H.R. Doc. No. 110–104, 110th*
3 *Cong. (2008).*

4 (7) *STATE.*—*The term “State” means each of the*
5 *50 States and the District of Columbia.*

6 **SEC. 5004. FUNDING FOR THE DEPARTMENT OF HEALTH**
7 **AND HUMAN SERVICES OFFICE OF THE IN-**
8 **SPECTOR GENERAL.**

9 *For purposes of ensuring the proper expenditure of*
10 *Federal funds under title XIX of the Social Security Act*
11 *(42 U.S.C. 1396 et seq.), there is appropriated to the Office*
12 *of the Inspector General of the Department of Health and*
13 *Human Services, out of any money in the Treasury not*
14 *otherwise appropriated and without further appropriation,*
15 *\$31,250,000 for the recession adjustment period (as defined*
16 *in section 5001(h)(3)). Amounts appropriated under this*
17 *section shall remain available for expenditure until Sep-*
18 *tember 30, 2012, and shall be in addition to any other*
19 *amounts appropriated or made available to such Office for*
20 *such purposes.*

21 **SEC. 5005. GAO STUDY AND REPORT REGARDING STATE**
22 **NEEDS DURING PERIODS OF NATIONAL ECO-**
23 **NOMIC DOWNTURN.**

24 (a) *IN GENERAL.*—*The Comptroller General of the*
25 *United States shall study the period of national economic*

1 *downturn in effect on the date of enactment of this Act,*
2 *as well as previous periods of national economic downturn*
3 *since 1974, for the purpose of developing recommendations*
4 *for addressing the needs of States during such periods. As*
5 *part of such analysis, the Comptroller General shall study*
6 *the past and projected effects of temporary increases in the*
7 *Federal medical assistance percentage under the Medicaid*
8 *program with respect to such periods.*

9 **(b) REPORT.**—*Not later than April 1, 2011, the Comp-*
10 *troller General of the United States shall submit a report*
11 *to the appropriate committees of Congress on the results of*
12 *the study conducted under paragraph (1). Such report shall*
13 *include the following:*

14 **(1)** *Such recommendations as the Comptroller*
15 *General determines appropriate for modifying the na-*
16 *tional economic downturn assistance formula for tem-*
17 *porary adjustment of the Federal medical assistance*
18 *percentage under Medicaid (also referred to as a*
19 *“countercyclical FMAP”) described in GAO report*
20 *number GAO–07–97 to improve the effectiveness of the*
21 *application of such percentage in addressing the needs*
22 *of States during periods of national economic down-*
23 *turn, including recommendations for—*

1 (A) improvements to the factors that would
2 begin and end the application of such percent-
3 age;

4 (B) how the determination of the amount of
5 such percentage could be adjusted to address
6 State and regional economic variations during
7 such periods; and

8 (C) how the determination of the amount of
9 such percentage could be adjusted to be more re-
10 sponsive to actual Medicaid costs incurred by
11 States during such periods.

12 (2) An analysis of the impact on States during
13 such periods of—

14 (A) declines in private health benefits cov-
15 erage;

16 (B) declines in State revenues; and

17 (C) caseload maintenance and growth under
18 Medicaid, the State Children's Health Insurance
19 Program, or any other publicly-funded programs
20 to provide health benefits coverage for State resi-
21 dents.

22 (3) Identification of, and recommendations for
23 addressing, the effects on States of any other specific
24 economic indicators that the Comptroller General de-
25 termines appropriate.

1 **TITLE VI—EXECUTIVE**
2 **COMPENSATION**

3 **SUBTITLE A—OVERSIGHT**

TITLE VI—EXECUTIVE COMPENSATION OVERSIGHT

- Sec. 6001. Definitions.*
Sec. 6002. Executive compensation and corporate governance.
Sec. 6003. Board Compensation Committee.
Sec. 6004. Limitation on luxury expenditures.
Sec. 6005. Shareholder approval of executive compensation.
Sec. 6006. Review of prior payments to executives.

4 **SEC. 6001. DEFINITIONS.**

5 *For purposes of this title, the following definitions*
6 *shall apply:*

7 (1) *SENIOR EXECUTIVE OFFICER.*—*The term*
8 *“senior executive officer” means an individual who is*
9 *1 of the top 5 most highly paid executives of a public*
10 *company, whose compensation is required to be dis-*
11 *closed pursuant to the Securities Exchange Act of*
12 *1934, and any regulations issued thereunder, and*
13 *non-public company counterparts.*

14 (2) *GOLDEN PARACHUTE PAYMENT.*—*The term*
15 *“golden parachute payment” means any payment to*
16 *a senior executive officer for departure from a com-*
17 *pany for any reason, except for payments for services*
18 *performed or benefits accrued.*

19 (3) *TARP.*—*The term “TARP” means the Trou-*
20 *bled Asset Relief Program established under the*

1 *Emergency Economic Stabilization Act of 2008 (Pub-*
2 *lic Law 110–343, 12 U.S.C. 5201 et seq.).*

3 (4) *TARP RECIPIENT.*—*The term “TARP recipi-*
4 *ent” means any entity that has received or will re-*
5 *ceive financial assistance under the financial assist-*
6 *ance provided under the TARP.*

7 (5) *SECRETARY.*—*The term “Secretary” means*
8 *the Secretary of the Treasury.*

9 (6) *COMMISSION.*—*The term “Commission”*
10 *means the Securities and Exchange Commission.*

11 **SEC. 6002. EXECUTIVE COMPENSATION AND CORPORATE**
12 **GOVERNANCE.**

13 (a) *IN GENERAL.*—*During the period in which any*
14 *obligation arising from financial assistance provided under*
15 *the TARP remains outstanding, each TARP recipient shall*
16 *be subject to—*

17 (1) *the standards established by the Secretary*
18 *under this title; and*

19 (2) *the provisions of section 162(m)(5) of the In-*
20 *ternal Revenue Code of 1986, as applicable.*

21 (b) *STANDARDS REQUIRED.*—*The Secretary shall re-*
22 *quire each TARP recipient to meet appropriate standards*
23 *for executive compensation and corporate governance.*

24 (c) *SPECIFIC REQUIREMENTS.*—*The standards estab-*
25 *lished under subsection (b) shall include—*

1 (1) *limits on compensation that exclude incen-*
2 *tives for senior executive officers of the TARP recipi-*
3 *ent to take unnecessary and excessive risks that*
4 *threaten the value of such recipient during the period*
5 *that any obligation arising from TARP assistance is*
6 *outstanding;*

7 (2) *a provision for the recovery by such TARP*
8 *recipient of any bonus, retention award, or incentive*
9 *compensation paid to a senior executive officer and*
10 *any of the next 20 most highly-compensated employees*
11 *of the TARP recipient based on statements of earn-*
12 *ings, revenues, gains, or other criteria that are later*
13 *found to be materially inaccurate;*

14 (3) *a prohibition on such TARP recipient mak-*
15 *ing any golden parachute payment to a senior execu-*
16 *tive officer or any of the next 5 most highly-com-*
17 *pensated employees of the TARP recipient during the*
18 *period that any obligation arising from TARP assist-*
19 *ance is outstanding;*

20 (4) *a prohibition on such TARP recipient pay-*
21 *ing or accruing any bonus, retention award, or incen-*
22 *tive compensation during the period that the obliga-*
23 *tion is outstanding to at least the 25 most highly-*
24 *compensated employees, or such higher number as the*

1 *Secretary may determine is in the public interest*
2 *with respect to any TARP recipient;*

3 *(5) a prohibition on any compensation plan that*
4 *would encourage manipulation of the reported earn-*
5 *ings of such TARP recipient to enhance the com-*
6 *penetration of any of its employees; and*

7 *(6) a requirement for the establishment of a*
8 *Board Compensation Committee that meets the re-*
9 *quirements of section 6003.*

10 *(d) CERTIFICATION OF COMPLIANCE.—The chief execu-*
11 *tive officer and chief financial officer (or the equivalents*
12 *thereof) of each TARP recipient shall provide a written cer-*
13 *tification of compliance by the TARP recipient with the*
14 *requirements of this title—*

15 *(1) in the case of a TARP recipient, the securi-*
16 *ties of which are publicly traded, to the Securities*
17 *and Exchange Commission, together with annual fil-*
18 *ings required under the securities laws; and*

19 *(2) in the case of a TARP recipient that is not*
20 *a publicly traded company, to the Secretary.*

21 **SEC. 6003. BOARD COMPENSATION COMMITTEE.**

22 *(a) ESTABLISHMENT OF BOARD REQUIRED.—Each*
23 *TARP recipient shall establish a Board Compensation*
24 *Committee, comprised entirely of independent directors, for*
25 *the purpose of reviewing employee compensation plans.*

1 (b) *MEETINGS.*—*The Board Compensation Committee*
2 *of each TARP recipient shall meet at least semiannually*
3 *to discuss and evaluate employee compensation plans in*
4 *light of an assessment of any risk posed to the TARP recipi-*
5 *ent from such plans.*

6 **SEC. 6004. LIMITATION ON LUXURY EXPENDITURES.**

7 (a) *POLICY REQUIRED.*—*The board of directors of any*
8 *TARP recipient shall have in place a company-wide policy*
9 *regarding excessive or luxury expenditures, as identified by*
10 *the Secretary, which may include excessive expenditures*
11 *on—*

- 12 (1) *entertainment or events;*
13 (2) *office and facility renovations;*
14 (3) *aviation or other transportation services; or*
15 (4) *other activities or events that are not reason-*
16 *able expenditures for conferences, staff development,*
17 *reasonable performance incentives, or other similar*
18 *measures conducted in the normal course of the busi-*
19 *ness operations of the TARP recipient.*

20 **SEC. 6005. SHAREHOLDER APPROVAL OF EXECUTIVE COM-**
21 **PENSATION.**

22 (a) *ANNUAL SHAREHOLDER APPROVAL OF EXECUTIVE*
23 *COMPENSATION.*—*Any proxy or consent or authorization*
24 *for an annual or other meeting of the shareholders of any*
25 *TARP recipient during the period in which any obligation*

1 arising from financial assistance provided under the TARP
2 remains outstanding shall permit a separate shareholder
3 vote to approve the compensation of executives, as disclosed
4 pursuant to the compensation disclosure rules of the Com-
5 mission (which disclosure shall include the compensation
6 discussion and analysis, the compensation tables, and any
7 related material).

8 (b) *NONBINDING VOTE.*—A shareholder vote described
9 in subsection (a) shall not be binding on the board of direc-
10 tors of a TARP recipient, and may not be construed as over-
11 ruling a decision by such board, nor to create or imply any
12 additional fiduciary duty by such board, nor shall such vote
13 be construed to restrict or limit the ability of shareholders
14 to make proposals for inclusion in proxy materials related
15 to executive compensation.

16 (c) *DEADLINE FOR RULEMAKING.*—Not later than 1
17 year after the date of enactment of this Act, the Commission
18 shall issue any final rules and regulations required by this
19 section.

20 **SEC. 6006. REVIEW OF PRIOR PAYMENTS TO EXECUTIVES.**

21 (a) *IN GENERAL.*—The Secretary shall review bonuses,
22 retention awards, and other compensation paid to employ-
23 ees of each entity receiving TARP assistance before the date
24 of enactment of this Act to determine whether any such pay-
25 ments were excessive, inconsistent with the purposes of this

1 *Act or the TARP, or otherwise contrary to the public inter-*
2 *est.*

3 (b) *NEGOTIATIONS FOR REIMBURSEMENT.*—*If the Sec-*
4 *retary makes a determination described in subsection (a),*
5 *the Secretary shall seek to negotiate with the TARP recipi-*
6 *ent and the subject employee for appropriate reimburse-*
7 *ments to the Federal Government with respect to compensa-*
8 *tion or bonuses.*

9 ***Subtitle B—Limits on Executive***
10 ***Compensation***

11 ***SEC. 6011. SHORT TITLE.***

12 *This subtitle may be cited as the “Cap Executive Offi-*
13 *cer Pay Act of 2009”.*

14 ***SEC. 6012. LIMIT ON EXECUTIVE COMPENSATION.***

15 (a) *IN GENERAL.*—*Notwithstanding any other provi-*
16 *sion of law or agreement to the contrary, no person who*
17 *is an officer, director, executive, or other employee of a fi-*
18 *nancial institution or other entity that receives or has re-*
19 *ceived funds under the Troubled Asset Relief Program (or*
20 *“TARP”), established under section 101 of the Emergency*
21 *Economic Stabilization Act of 2008, may receive annual*
22 *compensation in excess of the amount of compensation paid*
23 *to the President of the United States.*

24 (b) *DURATION.*—*The limitation in subsection (a) shall*
25 *be a condition of the receipt of assistance under the TARP,*

1 *and of any modification to such assistance that was re-*
2 *ceived on or before the date of enactment of this Act, and*
3 *shall remain in effect with respect to each financial institu-*
4 *tion or other entity that receives such assistance or modi-*
5 *fication for the duration of the assistance or obligation pro-*
6 *vided under the TARP.*

7 **SEC. 6013. RULEMAKING AUTHORITY.**

8 *The Secretary shall expeditiously issue such rules as*
9 *are necessary to carry out this subtitle, including with re-*
10 *spect to reimbursement of compensation amounts, as appro-*
11 *priate.*

12 **SEC. 6014. COMPENSATION.**

13 *As used in this subtitle, the term “compensation” in-*
14 *cludes wages, salary, deferred compensation, retirement*
15 *contributions, options, bonuses, property, and any other*
16 *form of compensation or bonus that the Secretary of the*
17 *Treasury determines is appropriate.*

18 ***Subtitle C—Excessive Bonuses***

19 **SEC. 6021. TREATMENT OF EXCESSIVE BONUSES BY TARP**
20 **RECIPIENTS.**

21 *(a) IN GENERAL.—If, before the date of enactment of*
22 *this Act, the preferred stock of a financial institution was*
23 *purchased by the Government using funds provided under*
24 *the Troubled Asset Relief Program established pursuant to*
25 *the Emergency Economic Stabilization Act of 2008, then,*

1 *notwithstanding any otherwise applicable restriction on the*
2 *redeemability of such preferred stock, such financial institu-*
3 *tion shall redeem an amount of such preferred stock equal*
4 *to the aggregate amount of all excessive bonuses paid or*
5 *payable to all covered individuals.*

6 (b) *TIMING.*—*Each financial institution described in*
7 *subsection (a) shall comply with the requirements of sub-*
8 *section (a)—*

9 (1) *not later than 120 days after the date of en-*
10 *actment of this Act, with respect to excessive bonuses*
11 *(or portions thereof) paid before the date of enactment*
12 *of this Act; and*

13 (2) *not later than the day before an excessive*
14 *bonus (or portion thereof) is paid, with respect to any*
15 *excessive bonus (or portion thereof) paid on or after*
16 *the date of enactment of this Act.*

17 (c) *DEFINITIONS.*—*As used in this section, the fol-*
18 *lowing definitions shall apply:*

19 (1) *EXCESSIVE BONUS.*—

20 (A) *IN GENERAL.*—*The term “excessive*
21 *bonus” means the portion of the applicable bonus*
22 *payments made to a covered individual in excess*
23 *of \$100,000.*

24 (B) *APPLICABLE BONUS PAYMENTS.*—

1 (i) *IN GENERAL.*—The term “applica-
2 ble bonus payment” means any bonus pay-
3 ment to a covered individual—

4 (I) which is paid or payable by
5 reason of services performed by such
6 individual in a taxable year of the fi-
7 nancial institution (or any member of
8 a controlled group described in sub-
9 paragraph (D)) ending in 2008, and

10 (II) the amount of which was first
11 communicated to such individual dur-
12 ing the period beginning on January
13 1, 2008, and ending January 31, 2009,
14 or was based on a resolution of the
15 board of directors of such institution
16 that was adopted before the end of such
17 taxable year.

18 (ii) *CERTAIN PAYMENTS AND CONDI-*
19 *TIONS DISREGARDED.*—In determining
20 whether a bonus payment is described in
21 clause (i)(I)—

22 (I) a bonus payment that relates
23 to services performed in any taxable
24 year before the taxable year described
25 in such clause and that is wholly or

1 *partially contingent on the perform-*
2 *ance of services in the taxable year so*
3 *described shall be disregarded, and*

4 (II) *any condition on a bonus*
5 *payment for services performed in the*
6 *taxable year so described that the em-*
7 *ployee perform services in taxable*
8 *years after the taxable year so de-*
9 *scribed shall be disregarded.*

10 (C) *BONUS PAYMENT.—The term “bonus*
11 *payment” means any payment which—*

12 (i) *is a discretionary payment to a*
13 *covered individual by a financial institu-*
14 *tion (or any member of a controlled group*
15 *described in subparagraph (D)) for services*
16 *rendered,*

17 (ii) *is in addition to any amount pay-*
18 *able to such individual for services per-*
19 *formed by such individual at a regular*
20 *hourly, daily, weekly, monthly, or similar*
21 *periodic rate, and*

22 (iii) *is paid or payable in cash or*
23 *other property other than—*

24 (I) *stock in such institution or*
25 *member, or*

1 (II) *an interest in a troubled asset*
2 *(within the meaning of the Emergency*
3 *Economic Stabilization Act of 2008)*
4 *held directly or indirectly by such in-*
5 *stitution or member.*

6 *Such term does not include payments to an em-*
7 *ployee as commissions, welfare and fringe bene-*
8 *fits, or expense reimbursements.*

9 (D) *COVERED INDIVIDUAL.*—*The term “cov-*
10 *ered individual” means, with respect to any fi-*
11 *nancial institution, any director or officer or*
12 *other employee of such financial institution or of*
13 *any member of a controlled group of corpora-*
14 *tions (within the meaning of section 52(a) of the*
15 *Internal Revenue Code of 1986) that includes*
16 *such financial institution.*

17 (2) *FINANCIAL INSTITUTION.*—*The term “finan-*
18 *cial institution” has the same meaning as in section*
19 *3 of the Emergency Economic Stabilization Act of*
20 *2008 (12 U.S.C. 5252).*

21 (d) *EXCISE TAX ON TARP COMPANIES THAT FAIL TO*
22 *REDEEM CERTAIN SECURITIES FROM UNITED STATES.*—

23 (1) *IN GENERAL.*—*Chapter 46 of the Internal*
24 *Revenue Code of 1986 (relating to excise tax on gold-*

1 “(2) *EXTENSION OF TIME.*—*The due date for*
 2 *payment of tax imposed by this section shall in no*
 3 *event be earlier than the 150th day following the date*
 4 *of the enactment of this section.*”.

5 (2) *CONFORMING AMENDMENTS.*—

6 (A) *The heading for chapter 46 of such Code*
 7 *are amended to read as follows:*

 “*CHAPTER 46—TAXES ON CERTAIN EXCESSIVE REMUNERATION*

 “*Sec. 4999. Golden parachute payments.*

 “*Sec. 4999A. Failure to redeem certain securities from United States.*”.

8 (B) *The item relating to chapter 46 in the*
 9 *table of chapters for subtitle D of such Code is*
 10 *amended to read as follows:*

 “*Chapter 46. Taxes on excessive remuneration.*”.

11 (3) *EFFECTIVE DATE.*—*The amendments made*
 12 *by this subsection shall apply to failures described in*
 13 *section 4999A(a)(2) of the Internal Revenue Code of*
 14 *1986 occurring after the date of the enactment of this*
 15 *Act.*

16 **TITLE VII—FORECLOSURE**
 17 **PREVENTION**

TITLE VII—FORECLOSURE PREVENTION

Sec. 7001. Mandatory loan modifications.

18 **SEC. 7001. MANDATORY LOAN MODIFICATIONS.**

19 *Section 109(a) of the Emergency Economic Stabiliza-*
 20 *tion Act of 2008 (12 U.S.C. 5219) is amended—*

1 (1) *by striking the last sentence;*

2 (2) *by striking “To the extent” and inserting the*
3 *following:*

4 “(1) *IN GENERAL.—To the extent*”; and

5 (3) *by adding at the end the following:*

6 “(2) *LOAN MODIFICATIONS REQUIRED.—*

7 “(A) *IN GENERAL.—In addition to actions*
8 *required under paragraph (1), the Secretary*
9 *shall, not later than 15 days after the date of en-*
10 *actment of this paragraph, develop and imple-*
11 *ment a plan to facilitate loan modifications to*
12 *prevent avoidable mortgage loan foreclosures.*

13 “(B) *FUNDING.—Of amounts made avail-*
14 *able under section 115 and not otherwise obli-*
15 *gated, not less than \$50,000,000,000, shall be*
16 *made available to the Secretary for purposes of*
17 *carrying out the mortgage loan modification*
18 *plan required to be developed and implemented*
19 *under this paragraph.*

20 “(C) *CRITERIA.—The loan modification*
21 *plan required by this paragraph may incor-*
22 *porate the use of—*

23 “(i) *loan guarantees and credit en-*
24 *hancements;*

1 “(ii) the reduction of loan principal
2 amounts and interest rates;

3 “(iii) extension of mortgage loan terms;
4 and

5 “(iv) any other similar mechanisms or
6 combinations thereof, as determined appro-
7 priate by the Secretary.

8 “(D) DESIGNATION AUTHORITY.—

9 “(i) FDIC.—The Secretary may des-
10 ignate the Corporation, on a reimbursable
11 basis, to carry out the loan modification
12 plan developed under this paragraph.

13 “(ii) CONTRACTING AUTHORITY.—If
14 designated under clause (i), the Corporation
15 may use its contracting authority under
16 section 9 of the Federal Deposit Insurance
17 Act.

18 “(E) CONSULTATION REQUIRED.—In devel-
19 oping the loan modification plan under this
20 paragraph, the Secretary shall consult with the
21 Chairperson of the Board of Directors of the Cor-
22 poration, the Board, and the Secretary of Hous-
23 ing and Urban Development.

24 “(F) REPORTS TO CONGRESS.—The Sec-
25 retary shall provide to the Committee on Bank-

1 *ing, Housing, and Urban Affairs of the Senate*
 2 *and the Committee on Financial Services of the*
 3 *House of Representatives—*

4 *“(i) upon development of the plan re-*
 5 *quired by this paragraph, a report describ-*
 6 *ing such plan; and*

7 *“(ii) a monthly report on the number*
 8 *and types of loan modifications occurring*
 9 *during the reporting period, and the per-*
 10 *formance of the loan modification plan*
 11 *overall.”.*

12 **TITLE VIII—FORECLOSURE**
 13 **MITIGATION**

TITLE VIII—FORECLOSURE MITIGATION

Sec. 8001. Short Title.

Sec. 8002. Definitions.

Sec. 8003. Payments to eligible servicers authorized.

Sec. 8004. Authorization of appropriations.

Sec. 8005. Sunset of authority.

14 **SEC. 8001. SHORT TITLE.**

15 *This title may be cited as the “Help Families Keep*
 16 *Their Homes Act of 2009”.*

17 **SEC. 8002. DEFINITIONS.**

18 *For purposes of this title—*

19 *(1) the term “securitized mortgages” means resi-*
 20 *dential mortgages that have been pooled by a*
 21 *securitization vehicle;*

1 (2) the term “securitization vehicle” means a
2 trust, corporation, partnership, limited liability enti-
3 ty, special purpose entity, or other structure that—

4 (A) is the issuer, or is created by the issuer,
5 of mortgage pass-through certificates, participa-
6 tion certificates, mortgage-backed securities, or
7 other similar securities backed by a pool of assets
8 that includes residential mortgage loans;

9 (B) holds all of the mortgage loans which
10 are the basis for any vehicle described in sub-
11 paragraph (A); and

12 (C) has not issued securities that are guar-
13 anteed by the Federal National Mortgage Asso-
14 ciation, the Federal Home Loan Mortgage Cor-
15 poration, or the Government National Mortgage
16 Association;

17 (3) the term “servicer” means a servicer of
18 securitized mortgages;

19 (4) the term “eligible servicer” means a servicer
20 of pooled and securitized residential mortgages;

21 (5) the term “eligible mortgage” means a resi-
22 dential mortgage, the principal amount of which did
23 not exceed the conforming loan size limit that was in
24 existence at the time of origination for a comparable

1 *dwelling, as established by the Federal National Mort-*
2 *gage Association;*

3 (6) *the term “Secretary” means the Secretary of*
4 *the Treasury;*

5 (7) *the term “effective term of the Act” means the*
6 *period beginning on the effective date of this title and*
7 *ending on December 31, 2011;*

8 (8) *the term “incentive fee” means the monthly*
9 *payment to eligible servicers, as determined under*
10 *section 7003; and*

11 (9) *the term “prepayment fee” means the pay-*
12 *ment to eligible servicers, as determined under section*
13 *7003(b).*

14 **SEC. 8003. PAYMENTS TO ELIGIBLE SERVICERS AUTHOR-**
15 **IZED.**

16 (a) *AUTHORITY.—The Secretary is authorized to make*
17 *payments to eligible servicers, subject to the terms and con-*
18 *ditions established under this title.*

19 (b) *FEES PAID TO ELIGIBLE SERVICERS.—*

20 (1) *IN GENERAL.—An eligible servicer may col-*
21 *lect reasonable incentive fee payments, as established*
22 *by the Secretary, not to exceed \$2,000 per loan.*

23 (2) *CONSULTATION.—The fees permitted under*
24 *this section shall be subject to standards established*
25 *by the Secretary, in consultation with the Secretary*

1 *of Housing and Urban Development and the Chair-*
2 *man of the Board of Directors of the Federal Deposit*
3 *Insurance Corporation, which standards shall—*

4 *(A) include an evaluation of whether an eli-*
5 *gible mortgage is affordable for the remainder of*
6 *its term; and*

7 *(B) identify a reasonable fee to be paid to*
8 *the servicer in the event that an eligible mortgage*
9 *is prepaid.*

10 *(3) FORM OF PAYMENT.—Fees permitted under*
11 *this section may be paid in a lump sum or on a*
12 *monthly basis. If paid on a monthly basis, the fee*
13 *may only be remitted as long as the loan performs.*

14 *(c) SAFE HARBOR.—Notwithstanding any other provi-*
15 *sion of law, and notwithstanding any investment contract*
16 *between a servicer and a securitization vehicle, a servicer—*

17 *(1) owes any duty to maximize the net present*
18 *value of the pooled mortgages in the securitization ve-*
19 *hicle to all investors and parties having a direct or*
20 *indirect interest in such vehicle, and not to any indi-*
21 *vidual party or group of parties; and*

22 *(2) shall be deemed to act in the best interests of*
23 *all such investors and parties if the servicer agrees to*
24 *or implements a modification, workout, or other loss*
25 *mitigation plan for a residential mortgage or a class*

1 of residential mortgages that constitutes a part or all
2 of the pooled mortgages in such securitization vehicle,
3 if—

4 (A) default on the payment of such mort-
5 gage has occurred or is reasonably foreseeable;

6 (B) the property securing such mortgage is
7 occupied by the mortgagor of such mortgage or
8 the homeowner; and

9 (C) the servicer reasonably and in good
10 faith believes that the anticipated recovery on the
11 principal outstanding obligation of the mortgage
12 under the modification or workout plan exceeds,
13 on a net present value basis, the anticipated re-
14 covery on the principal outstanding obligation of
15 the mortgage through foreclosure;

16 (3) shall not be obligated to repurchase loans
17 from, or otherwise make payments to, the
18 securitization vehicle on account of a modification,
19 workout, or other loss mitigation plan that satisfies
20 the conditions of paragraph (2); and

21 (4) if it acts in a manner consistent with the du-
22 ties set forth in paragraphs (1) and (2), shall not be
23 liable for entering into a modification or workout
24 plan to any person—

1 (A) based on ownership by that person of a
2 residential mortgage loan or any interest in a
3 pool of residential mortgage loans, or in securi-
4 ties that distribute payments out of the prin-
5 cipal, interest, and other payments in loans in
6 the pool;

7 (B) who is obligated pursuant to a deriva-
8 tive instrument to make payments determined in
9 reference to any loan or any interest referred to
10 in subparagraph (A); or

11 (C) that insures any loan or any interest
12 referred to in subparagraph (A) under any pro-
13 vision of law or regulation of the United States
14 or any State or political subdivision thereof.

15 (d) *REPORTING REQUIREMENTS.*—

16 (1) *IN GENERAL.*—Each servicer shall report reg-
17 ularly, not less frequently than monthly, to the Sec-
18 retary on the extent and scope of the loss mitigation
19 activities of the mortgage owner.

20 (2) *CONTENT.*—Each report required by this sub-
21 section shall include—

22 (A) the number and percent of residential
23 mortgage loans receiving loss mitigation that
24 have become performing loans;

1 (B) the number and percent of residential
2 mortgage loans receiving loss mitigation that
3 have proceeded to foreclosure;

4 (C) the total number of foreclosures initi-
5 ated during the reporting period;

6 (D) data on loss mitigation activities, in-
7 cluding the performance of mitigated loans,
8 disaggregated for each form of loss mitigation,
9 which forms may include—

10 (i) a waiver of any late payment
11 charge, penalty interest, or any other fees or
12 charges, or any combination thereof;

13 (ii) the establishment of a repayment
14 plan under which the homeowner resumes
15 regularly scheduled payments and pays ad-
16 ditional amounts at scheduled intervals to
17 cure the delinquency;

18 (iii) forbearance under the loan that
19 provides for a temporary reduction in or
20 cessation of monthly payments, followed by
21 a reamortization of the amounts due under
22 the loan, including arrearage, and a new
23 schedule of repayment amounts;

24 (iv) waiver, modification, or variation
25 of any material term of the loan, including

1 *short-term, long-term, or life-of-loan modi-*
2 *fications that change the interest rate, for-*
3 *give or forbear with respect to the payment*
4 *of principal or interest, or extend the final*
5 *maturity date of the loan;*

6 (i) *short refinancing of the loan con-*
7 *sisting of acceptance of payment from or on*
8 *behalf of the homeowner of an amount less*
9 *than the amount alleged to be due and*
10 *owing under the loan, including principal,*
11 *interest, and fees, in full satisfaction of the*
12 *obligation under such loan and as part of*
13 *a refinance transaction in which the prop-*
14 *erty is intended to remain the principal*
15 *residence of the homeowner;*

16 (ii) *acquisition of the property by the*
17 *owner or servicer by deed in lieu of fore-*
18 *closure;*

19 (iii) *short sale of the principal resi-*
20 *dence that is subject to the lien securing the*
21 *loan;*

22 (iv) *assumption of the obligation of*
23 *the homeowner under the loan by a third*
24 *party;*

