

110TH CONGRESS  
2D SESSION

# H. R. 7202

To amend the Internal Revenue Code of 1986 to extend certain expiring provisions, to provide individual income tax relief, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 28, 2008

Mr. RANGEL introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Agriculture, Natural Resources, Energy and Commerce, and Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Internal Revenue Code of 1986 to extend certain expiring provisions, to provide individual income tax relief, 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, ETC.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Temporary Tax Relief Act of 2008”.

6 (b) **REFERENCE.**—Except as otherwise expressly pro-  
7 vided, whenever in this Act an amendment or repeal is  
8 expressed in terms of an amendment to, or repeal of, a

1 section or other provision, the reference shall be consid-  
 2 ered to be made to a section or other provision of the In-  
 3 ternal Revenue Code of 1986.

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

Sec. 1. Short title, etc.

#### TITLE I—EXTENSION OF TEMPORARY PROVISIONS

##### Subtitle A—Extensions Primarily Affecting Individuals

- Sec. 101. Deduction for State and local sales taxes.
- Sec. 102. Deduction of qualified tuition and related expenses.
- Sec. 103. Treatment of certain dividends of regulated investment companies.
- Sec. 104. Tax-free distributions from individual retirement plans for charitable purposes.
- Sec. 105. Deduction for certain expenses of elementary and secondary school teachers.
- Sec. 106. Stock in RIC for purposes of determining estates of nonresidents not citizens.
- Sec. 107. Qualified investment entities.
- Sec. 108. Real property tax standard deduction.

##### Subtitle B—Extensions Primarily Affecting Businesses

- Sec. 121. Research credit.
- Sec. 122. Indian employment credit.
- Sec. 123. New markets tax credit.
- Sec. 124. Railroad track maintenance.
- Sec. 125. Fifteen-year straight-line cost recovery for qualified leasehold improvements and qualified restaurant property.
- Sec. 126. Seven-year cost recovery period for motorsports racing track facility.
- Sec. 127. Accelerated depreciation for business property on Indian reservation.
- Sec. 128. Expensing of environmental remediation costs.
- Sec. 129. Deduction allowable with respect to income attributable to domestic production activities in Puerto Rico.
- Sec. 130. Modification of tax treatment of certain payments to controlling exempt organizations.
- Sec. 131. Qualified zone academy bonds.
- Sec. 132. Tax incentives for investment in the District of Columbia.
- Sec. 133. Economic development credit for American Samoa.
- Sec. 134. Enhanced charitable deduction for contributions of food inventory.
- Sec. 135. Enhanced charitable deduction for contributions of book inventory to public schools.
- Sec. 136. Enhanced deduction for qualified computer contributions.
- Sec. 137. Basis adjustment to stock of S corporations making charitable contributions of property.
- Sec. 138. Work opportunity tax credit for Hurricane Katrina employees.
- Sec. 139. Subpart F exception for active financing income.
- Sec. 140. Look-thru rule for related controlled foreign corporations.

Sec. 141. Expensing for certain qualified film and television productions.

Subtitle C—Other Extensions

Sec. 151. Authority to disclose information related to terrorist activities made permanent.

Sec. 152. Authority for undercover operations made permanent.

Sec. 153. Increase in limit on cover over of rum excise tax to Puerto Rico and the Virgin Islands.

TITLE II—ADDITIONAL TAX RELIEF AND OTHER PROVISIONS

Sec. 201. Refundable child credit.

Sec. 202. Provisions related to film and television productions.

Sec. 203. Exemption from excise tax for certain arrows designed for use by children.

Sec. 204. Modification of penalty on understatement of taxpayer's liability by tax return preparer.

TITLE III—SECURE RURAL SCHOOLS

Sec. 301. Secure rural schools and community self-determination program.

TITLE IV—PAUL WELLSTONE AND PETE DOMENICI MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT OF 2008

Sec. 401. Short title.

Sec. 402. Mental health parity.

TITLE V—REVENUE PROVISIONS

Sec. 501. 0.2 percent FUTA surtax.

Sec. 502. Nonqualified deferred compensation from certain tax indifferent parties.

Sec. 503. Increase and extension of Oil Spill Liability Trust Fund tax.

Sec. 504. Delay in application of worldwide allocation of interest.

Sec. 505. Time for payment of corporate estimated taxes.

1                   **TITLE I—EXTENSION OF**  
 2                   **TEMPORARY PROVISIONS**  
 3                   **Subtitle A—Extensions Primarily**  
 4                   **Affecting Individuals**

5                   **SEC. 101. DEDUCTION FOR STATE AND LOCAL SALES**  
 6                   **TAXES.**

7                   (a) IN GENERAL.—Subparagraph (I) of section  
 8 164(b)(5) is amended by striking “January 1, 2008” and  
 9 inserting “January 1, 2010”.

1 (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall apply to taxable years beginning after  
3 December 31, 2007.

4 **SEC. 102. DEDUCTION OF QUALIFIED TUITION AND RE-**  
5 **LATED EXPENSES.**

6 (a) IN GENERAL.—Subsection (e) of section 222 is  
7 amended by striking “December 31, 2007” and inserting  
8 “December 31, 2009”.

9 (b) EFFECTIVE DATE.—The amendment made by  
10 this section shall apply to taxable years beginning after  
11 December 31, 2007.

12 (c) TEMPORARY COORDINATION WITH HOPE AND  
13 LIFETIME LEARNING CREDIT.—In the case of any tax-  
14 payer for any taxable year beginning in 2008 or 2009,  
15 no deduction shall be allowed under section 222 of the In-  
16 ternal Revenue Code of 1986 if—

17 (1) the taxpayer’s net Federal income tax re-  
18 duction which would be attributable to such deduc-  
19 tion for such taxable year, is less than

20 (2) the credit which would be allowed to the  
21 taxpayer for such taxable year under section 25A of  
22 such Code (determined without regard to sections  
23 25A(e) and 26 of such Code).

1 **SEC. 103. TREATMENT OF CERTAIN DIVIDENDS OF REGU-**  
2 **LATED INVESTMENT COMPANIES.**

3 (a) INTEREST-RELATED DIVIDENDS.—Subpara-  
4 graph (C) of section 871(k)(1) (defining interest-related  
5 dividend) is amended by striking “December 31, 2007”  
6 and inserting “December 31, 2009”.

7 (b) SHORT-TERM CAPITAL GAIN DIVIDENDS.—Sub-  
8 paragraph (C) of section 871(k)(2) (defining short-term  
9 capital gain dividend) is amended by striking “December  
10 31, 2007” and inserting “December 31, 2009”.

11 (c) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to dividends with respect to taxable  
13 years of regulated investment companies beginning after  
14 December 31, 2007.

15 **SEC. 104. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RE-**  
16 **TIREMENT PLANS FOR CHARITABLE PUR-**  
17 **POSES.**

18 (a) IN GENERAL.—Subparagraph (F) of section  
19 408(d)(8) is amended by striking “December 31, 2007”  
20 and inserting “December 31, 2009”.

21 (b) EFFECTIVE DATE.—The amendment made by  
22 this section shall apply to distributions made in taxable  
23 years beginning after December 31, 2007.

1 **SEC. 105. DEDUCTION FOR CERTAIN EXPENSES OF ELE-**  
2 **MENTARY AND SECONDARY SCHOOL TEACH-**  
3 **ERS.**

4 (a) IN GENERAL.—Subparagraph (D) of section  
5 62(a)(2) is amended by striking “or 2007” and inserting  
6 “2007, 2008, or 2009”.

7 (b) EFFECTIVE DATE.—The amendment made by  
8 subsection (a) shall apply to taxable years beginning after  
9 December 31, 2007.

10 **SEC. 106. STOCK IN RIC FOR PURPOSES OF DETERMINING**  
11 **ESTATES OF NONRESIDENTS NOT CITIZENS.**

12 (a) IN GENERAL.—Paragraph (3) of section 2105(d)  
13 is amended by striking “December 31, 2007” and insert-  
14 ing “December 31, 2009”.

15 (b) EFFECTIVE DATE.—The amendment made by  
16 this section shall apply to decedents dying after December  
17 31, 2007.

18 **SEC. 107. QUALIFIED INVESTMENT ENTITIES.**

19 (a) IN GENERAL.—Clause (ii) of section  
20 897(h)(4)(A) is amended by striking “December 31,  
21 2007” and inserting “December 31, 2009”.

22 (b) EFFECTIVE DATE.—The amendment made by  
23 subsection (a) shall take effect on January 1, 2008, except  
24 that such amendment shall not apply to the application  
25 of withholding requirements with respect to any payment  
26 made on or before the date of the enactment of this Act.

1 **SEC. 108. REAL PROPERTY TAX STANDARD DEDUCTION.**

2 (a) IN GENERAL.—Subparagraph (C) of section  
3 63(c)(1) is amended by inserting “or 2009” after “2008”.

4 (b) EFFECTIVE DATE.—The amendment made by  
5 this section shall apply to taxable years beginning after  
6 December 31, 2008.

7 **Subtitle B—Extensions Primarily**  
8 **Affecting Businesses**

9 **SEC. 121. RESEARCH CREDIT.**

10 (a) IN GENERAL.—Subparagraph (B) of section  
11 41(h)(1) is amended by striking “December 31, 2007”  
12 and inserting “December 31, 2009”.

13 (b) COMPUTATION OF CREDIT FOR TAXABLE YEAR  
14 IN WHICH CREDIT TERMINATES.—Paragraph (2) of sec-  
15 tion 41(h) is amended to read as follows:

16 “(2) COMPUTATION OF CREDIT FOR TAXABLE  
17 YEAR IN WHICH CREDIT TERMINATES.—

18 “(A) IN GENERAL.—In the case of any  
19 taxable year with respect to which this section  
20 applies to a number of days which is less than  
21 the total number of days in such taxable year,  
22 the applicable base amount with respect to such  
23 taxable year shall be the amount which bears  
24 the same ratio to such applicable amount (de-  
25 termined without regard to this paragraph) as  
26 the number of days in such taxable year to

1 which this section applies bears to the total  
2 number of days in such taxable year.

3 “(B) APPLICABLE BASE AMOUNT.—For  
4 purposes of subparagraph (A), the term ‘appli-  
5 cable base amount’ means, with respect to any  
6 taxable year—

7 “(i) except as otherwise provided in  
8 this subparagraph, the base amount for  
9 the taxable year,

10 “(ii) in the case of a taxable year with  
11 respect to which an election under sub-  
12 section (c)(4) (relating to election of alter-  
13 native incremental credit) is in effect, the  
14 average described in subsection (c)(1)(B)  
15 for the taxable year, and

16 “(iii) in the case of a taxable year  
17 with respect to which an election under  
18 subsection (c)(5) (relating to election of al-  
19 ternative simplified credit) is in effect, the  
20 average qualified research expenses for the  
21 3 taxable years preceding the taxable  
22 year.”.

23 (c) CONFORMING AMENDMENT.—Subparagraph (D)  
24 of section 45C(b)(1) is amended by striking “December  
25 31, 2007” and inserting “December 31, 2009”.



1 (d) EFFECTIVE DATE.—

2 (1) IN GENERAL.—Except as provided in para-  
3 graph (2), the amendments made by this section  
4 shall apply to amounts paid or incurred after De-  
5 cember 31, 2007.

6 (2) COMPUTATION OF CREDIT FOR TAXABLE  
7 YEAR IN WHICH CREDIT BEGINS.—The amendment  
8 made by subsection (b) shall apply to taxable years  
9 beginning after December 31, 2007.

10 **SEC. 122. INDIAN EMPLOYMENT CREDIT.**

11 (a) IN GENERAL.—Subsection (f) of section 45A is  
12 amended by striking “December 31, 2007” and inserting  
13 “December 31, 2009”.

14 (b) EFFECTIVE DATE.—The amendment made by  
15 this section shall apply to taxable years beginning after  
16 December 31, 2007.

17 **SEC. 123. NEW MARKETS TAX CREDIT.**

18 Subparagraph (D) of section 45D(f)(1) is amended  
19 by striking “and 2008” and inserting “2008, and 2009”.

20 **SEC. 124. RAILROAD TRACK MAINTENANCE.**

21 (a) IN GENERAL.—Subsection (f) of section 45G is  
22 amended by striking “January 1, 2008” and inserting  
23 “January 1, 2010”.

1 (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall apply to expenditures paid or incurred  
3 during taxable years beginning after December 31, 2007.

4 **SEC. 125. FIFTEEN-YEAR STRAIGHT-LINE COST RECOVERY**  
5 **FOR QUALIFIED LEASEHOLD IMPROVEMENTS**  
6 **AND QUALIFIED RESTAURANT PROPERTY.**

7 (a) IN GENERAL.—Clauses (iv) and (v) of section  
8 168(e)(3)(E) are each amended by striking “January 1,  
9 2008” and inserting “January 1, 2010”.

10 (b) EFFECTIVE DATE.—The amendments made by  
11 this section shall apply to property placed in service after  
12 December 31, 2007.

13 **SEC. 126. SEVEN-YEAR COST RECOVERY PERIOD FOR MO-**  
14 **TOSPORTS RACING TRACK FACILITY.**

15 (a) IN GENERAL.—Subparagraph (D) of section  
16 168(i)(15) is amended by striking “December 31, 2007”  
17 and inserting “December 31, 2009”.

18 (b) EFFECTIVE DATE.—The amendment made by  
19 this section shall apply to property placed in service after  
20 December 31, 2007.

21 **SEC. 127. ACCELERATED DEPRECIATION FOR BUSINESS**  
22 **PROPERTY ON INDIAN RESERVATION.**

23 (a) IN GENERAL.—Paragraph (8) of section 168(j)  
24 is amended by striking “December 31, 2007” and insert-  
25 ing “December 31, 2009”.

1 (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall apply to property placed in service after  
3 December 31, 2007.

4 **SEC. 128. EXPENSING OF ENVIRONMENTAL REMEDIATION**  
5 **COSTS.**

6 (a) IN GENERAL.—Subsection (h) of section 198 is  
7 amended by striking “December 31, 2007” and inserting  
8 “December 31, 2009”.

9 (b) EFFECTIVE DATE.—The amendment made by  
10 this section shall apply to expenditures paid or incurred  
11 after December 31, 2007.

12 **SEC. 129. DEDUCTION ALLOWABLE WITH RESPECT TO IN-**  
13 **COME ATTRIBUTABLE TO DOMESTIC PRO-**  
14 **DUCTION ACTIVITIES IN PUERTO RICO.**

15 (a) IN GENERAL.—Subparagraph (C) of section  
16 199(d)(8) is amended—

17 (1) by striking “first 2 taxable years” and in-  
18 serting “first 4 taxable years”, and

19 (2) by striking “January 1, 2008” and insert-  
20 ing “January 1, 2010”.

21 (b) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to taxable years beginning after  
23 December 31, 2007.

1 **SEC. 130. MODIFICATION OF TAX TREATMENT OF CERTAIN**  
2 **PAYMENTS TO CONTROLLING EXEMPT ORGA-**  
3 **NIZATIONS.**

4 (a) IN GENERAL.—Clause (iv) of section  
5 512(b)(13)(E) is amended by striking “December 31,  
6 2007” and inserting “December 31, 2009”.

7 (b) EFFECTIVE DATE.—The amendment made by  
8 this section shall apply to payments received or accrued  
9 after December 31, 2007.

10 **SEC. 131. QUALIFIED ZONE ACADEMY BONDS.**

11 (a) IN GENERAL.—Subpart I of part IV of sub-  
12 chapter A of chapter 1 is amended by adding at the end  
13 the following new section:

14 **“SEC. 54C. QUALIFIED ZONE ACADEMY BONDS.**

15 “(a) QUALIFIED ZONE ACADEMY BONDS.—For pur-  
16 poses of this subchapter, the term ‘qualified zone academy  
17 bond’ means any bond issued as part of an issue if—

18 “(1) 100 percent of the available project pro-  
19 ceeds of such issue are to be used for a qualified  
20 purpose with respect to a qualified zone academy es-  
21 tablished by an eligible local education agency,

22 “(2) the bond is issued by a State or local gov-  
23 ernment within the jurisdiction of which such acad-  
24 emy is located, and

25 “(3) the issuer—

1           “(A) designates such bond for purposes of  
2 this section,

3           “(B) certifies that it has written assur-  
4 ances that the private business contribution re-  
5 quirement of subsection (b) will be met with re-  
6 spect to such academy, and

7           “(C) certifies that it has the written ap-  
8 proval of the eligible local education agency for  
9 such bond issuance.

10       “(b) PRIVATE BUSINESS CONTRIBUTION REQUIRE-  
11 MENT.—For purposes of subsection (a), the private busi-  
12 ness contribution requirement of this subsection is met  
13 with respect to any issue if the eligible local education  
14 agency that established the qualified zone academy has  
15 written commitments from private entities to make quali-  
16 fied contributions having a present value (as of the date  
17 of issuance of the issue) of not less than 10 percent of  
18 the proceeds of the issue.

19       “(c) LIMITATION ON AMOUNT OF BONDS DES-  
20 IGNATED.—

21           “(1) NATIONAL LIMITATION.—There is a na-  
22 tional zone academy bond limitation for each cal-  
23 endar year. Such limitation is \$400,000,000 for  
24 2008 and 2009, and, except as provided in para-  
25 graph (4), zero thereafter.

1           “(2) ALLOCATION OF LIMITATION.—The na-  
2           tional zone academy bond limitation for a calendar  
3           year shall be allocated by the Secretary among the  
4           States on the basis of their respective populations of  
5           individuals below the poverty line (as defined by the  
6           Office of Management and Budget). The limitation  
7           amount allocated to a State under the preceding  
8           sentence shall be allocated by the State education  
9           agency to qualified zone academies within such  
10          State.

11          “(3) DESIGNATION SUBJECT TO LIMITATION  
12          AMOUNT.—The maximum aggregate face amount of  
13          bonds issued during any calendar year which may be  
14          designated under subsection (a) with respect to any  
15          qualified zone academy shall not exceed the limita-  
16          tion amount allocated to such academy under para-  
17          graph (2) for such calendar year.

18          “(4) CARRYOVER OF UNUSED LIMITATION.—

19                 “(A) IN GENERAL.—If for any calendar  
20                 year—

21                         “(i) the limitation amount for any  
22                         State, exceeds

23                         “(ii) the amount of bonds issued dur-  
24                         ing such year which are designated under

1 subsection (a) with respect to qualified  
2 zone academies within such State,  
3 the limitation amount for such State for the fol-  
4 lowing calendar year shall be increased by the  
5 amount of such excess.

6 “(B) LIMITATION ON CARRYOVER.—Any  
7 carryforward of a limitation amount may be  
8 carried only to the first 2 years following the  
9 unused limitation year. For purposes of the pre-  
10 ceeding sentence, a limitation amount shall be  
11 treated as used on a first-in first-out basis.

12 “(C) COORDINATION WITH SECTION  
13 1397E.—Any carryover determined under sec-  
14 tion 1397E(e)(4) (relating to carryover of un-  
15 used limitation) with respect to any State to  
16 calendar year 2008 shall be treated for pur-  
17 poses of this section as a carryover with respect  
18 to such State for such calendar year under sub-  
19 paragraph (A), and the limitation of subpara-  
20 graph (B) shall apply to such carryover taking  
21 into account the calendar years to which such  
22 carryover relates.

23 “(d) DEFINITIONS.—For purposes of this section—

24 “(1) QUALIFIED ZONE ACADEMY.—The term  
25 ‘qualified zone academy’ means any public school (or

1 academic program within a public school) which is  
2 established by and operated under the supervision of  
3 an eligible local education agency to provide edu-  
4 cation or training below the postsecondary level if—

5 “(A) such public school or program (as the  
6 case may be) is designed in cooperation with  
7 business to enhance the academic curriculum,  
8 increase graduation and employment rates, and  
9 better prepare students for the rigors of college  
10 and the increasingly complex workforce,

11 “(B) students in such public school or pro-  
12 gram (as the case may be) will be subject to the  
13 same academic standards and assessments as  
14 other students educated by the eligible local  
15 education agency,

16 “(C) the comprehensive education plan of  
17 such public school or program is approved by  
18 the eligible local education agency, and

19 “(D)(i) such public school is located in an  
20 empowerment zone or enterprise community  
21 (including any such zone or community des-  
22 ignated after the date of the enactment of this  
23 section), or

24 “(ii) there is a reasonable expectation (as  
25 of the date of issuance of the bonds) that at



1           least 35 percent of the students attending such  
2           school or participating in such program (as the  
3           case may be) will be eligible for free or reduced-  
4           cost lunches under the school lunch program es-  
5           tablished under the National School Lunch Act.

6           “(2) ELIGIBLE LOCAL EDUCATION AGENCY.—  
7           For purposes of this section, the term ‘eligible local  
8           education agency’ means any local educational agen-  
9           cy as defined in section 9101 of the Elementary and  
10          Secondary Education Act of 1965.

11          “(3) QUALIFIED PURPOSE.—The term ‘quali-  
12          fied purpose’ means, with respect to any qualified  
13          zone academy—

14                 “(A) rehabilitating or repairing the public  
15                 school facility in which the academy is estab-  
16                 lished,

17                 “(B) providing equipment for use at such  
18                 academy,

19                 “(C) developing course materials for edu-  
20                 cation to be provided at such academy, and

21                 “(D) training teachers and other school  
22                 personnel in such academy.

23          “(4) QUALIFIED CONTRIBUTIONS.—The term  
24          ‘qualified contribution’ means any contribution (of a

1 type and quality acceptable to the eligible local edu-  
2 cation agency) of—

3 “(A) equipment for use in the qualified  
4 zone academy (including state-of-the-art tech-  
5 nology and vocational equipment),

6 “(B) technical assistance in developing  
7 curriculum or in training teachers in order to  
8 promote appropriate market driven technology  
9 in the classroom,

10 “(C) services of employees as volunteer  
11 mentors,

12 “(D) internships, field trips, or other edu-  
13 cational opportunities outside the academy for  
14 students, or

15 “(E) any other property or service speci-  
16 fied by the eligible local education agency.”.

17 (b) CONFORMING AMENDMENTS.—

18 (1) Paragraph (1) of section 54A(d) is amended  
19 to read as follows:

20 “(1) QUALIFIED TAX CREDIT BOND.—The term  
21 ‘qualified tax credit bond’ means—

22 “(A) a qualified forestry conservation  
23 bond, or

24 “(B) a qualified zone academy bond,

1 which is part of an issue that meets the require-  
2 ments of paragraphs (2), (3), (4), (5), and (6).”.

3 (2) Subparagraph (C) of section 54A(d)(2) is  
4 amended to read as follows:

5 “(C) QUALIFIED PURPOSE.—For purposes  
6 of this paragraph, the term ‘qualified purpose’  
7 means—

8 “(i) in the case of a qualified forestry  
9 conservation bond, a purpose specified in  
10 section 54B(e), and

11 “(ii) in the case of a qualified zone  
12 academy bond, a purpose specified in sec-  
13 tion 54C(a)(1).”.

14 (3) Section 1397E is amended by adding at the  
15 end the following new subsection:

16 “(m) TERMINATION.—This section shall not apply to  
17 any obligation issued after the date of the enactment of  
18 this subsection.”.

19 (4) 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. 54C. Qualified zone academy bonds.”.

22 (c) EFFECTIVE DATE.—The amendments made by  
23 this section shall apply to obligations issued after the date  
24 of the enactment of this Act.

1 **SEC. 132. TAX INCENTIVES FOR INVESTMENT IN THE DIS-**  
2 **TRICT OF COLUMBIA.**

3 (a) DESIGNATION OF ZONE.—

4 (1) IN GENERAL.—Subsection (f) of section  
5 1400 is amended by striking “2007” both places it  
6 appears and inserting “2009”.

7 (2) EFFECTIVE DATE.—The amendments made  
8 by this subsection shall apply to periods beginning  
9 after December 31, 2007.

10 (b) TAX-EXEMPT ECONOMIC DEVELOPMENT  
11 BONDS.—

12 (1) IN GENERAL.—Subsection (b) of section  
13 1400A is amended by striking “2007” and inserting  
14 “2009”.

15 (2) EFFECTIVE DATE.—The amendment made  
16 by this subsection shall apply to bonds issued after  
17 December 31, 2007.

18 (c) ZERO PERCENT CAPITAL GAINS RATE.—

19 (1) IN GENERAL.—Subsection (b) of section  
20 1400B is amended by striking “2008” each place it  
21 appears and inserting “2010”.

22 (2) CONFORMING AMENDMENTS.—

23 (A) Section 1400B(e)(2) is amended—

24 (i) by striking “2012” and inserting  
25 “2014”, and

1 (ii) by striking “2012” in the heading  
2 thereof and inserting “2014”.

3 (B) Section 1400B(g)(2) is amended by  
4 striking “2012” and inserting “2014”.

5 (C) Section 1400F(d) is amended by strik-  
6 ing “2012” and inserting “2014”.

7 (3) EFFECTIVE DATES.—

8 (A) EXTENSION.—The amendments made  
9 by paragraph (1) shall apply to acquisitions  
10 after December 31, 2007.

11 (B) CONFORMING AMENDMENTS.—The  
12 amendments made by paragraph (2) shall take  
13 effect on the date of the enactment of this Act.

14 (d) FIRST-TIME HOMEBUYER CREDIT.—

15 (1) IN GENERAL.—Subsection (i) of section  
16 1400C is amended by striking “2008” and inserting  
17 “2010”.

18 (2) EFFECTIVE DATE.—The amendment made  
19 by this subsection shall apply to property purchased  
20 after December 31, 2007.

21 **SEC. 133. ECONOMIC DEVELOPMENT CREDIT FOR AMER-**  
22 **ICAN SAMOA.**

23 (a) IN GENERAL.—Subsection (d) of section 119 of  
24 division A of the Tax Relief and Health Care Act of 2006  
25 is amended—

1 (1) by striking “first two taxable years” and in-  
2 sserting “first 4 taxable years”, and

3 (2) by striking “January 1, 2008” and insert-  
4 ing “January 1, 2010”.

5 (b) EFFECTIVE DATE.—The amendment made by  
6 this section shall apply to taxable years beginning after  
7 December 31, 2007.

8 **SEC. 134. ENHANCED CHARITABLE DEDUCTION FOR CON-**  
9 **TRIBUTIONS OF FOOD INVENTORY.**

10 (a) IN GENERAL.—Clause (iv) of section  
11 170(e)(3)(C) is amended by striking “December 31,  
12 2007” and inserting “December 31, 2009”.

13 (b) EFFECTIVE DATE.—The amendment made by  
14 this section shall apply to contributions made after De-  
15 cember 31, 2007.

16 **SEC. 135. ENHANCED CHARITABLE DEDUCTION FOR CON-**  
17 **TRIBUTIONS OF BOOK INVENTORY TO PUB-**  
18 **LIC SCHOOLS.**

19 (a) IN GENERAL.—Clause (iv) of section  
20 170(e)(3)(D) is amended by striking “December 31,  
21 2007” and inserting “December 31, 2009”.

22 (b) EFFECTIVE DATE.—The amendment made by  
23 this section shall apply to contributions made after De-  
24 cember 31, 2007.

1 **SEC. 136. ENHANCED DEDUCTION FOR QUALIFIED COM-**  
2 **PUTER CONTRIBUTIONS.**

3 (a) IN GENERAL.—Subparagraph (G) of section  
4 170(e)(6) is amended by striking “December 31, 2007”  
5 and inserting “December 31, 2009”.

6 (b) EFFECTIVE DATE.—The amendment made by  
7 this section shall apply to contributions made during tax-  
8 able years beginning after December 31, 2007.

9 **SEC. 137. BASIS ADJUSTMENT TO STOCK OF S CORPORA-**  
10 **TIONS MAKING CHARITABLE CONTRIBU-**  
11 **TIONS OF PROPERTY.**

12 (a) IN GENERAL.—The last sentence of section  
13 1367(a)(2) is amended by striking “December 31, 2007”  
14 and inserting “December 31, 2009”.

15 (b) EFFECTIVE DATE.—The amendment made by  
16 this section shall apply to contributions made in taxable  
17 years beginning after December 31, 2007.

18 **SEC. 138. WORK OPPORTUNITY TAX CREDIT FOR HURRI-**  
19 **CANE KATRINA EMPLOYEES.**

20 (a) IN GENERAL.—Paragraph (1) of section 201(b)  
21 of the Katrina Emergency Tax Relief Act of 2005 is  
22 amended by striking “2-year” and inserting “4-year”.

23 (b) EFFECTIVE DATE.—The amendment made by  
24 subsection (a) shall apply to individuals hired after August  
25 27, 2007.

1 **SEC. 139. SUBPART F EXCEPTION FOR ACTIVE FINANCING**  
2 **INCOME.**

3 (a) EXEMPT INSURANCE INCOME.—Paragraph (10)  
4 of section 953(e) (relating to application) is amended—

5 (1) by striking “January 1, 2009” and insert-  
6 ing “January 1, 2010”, and

7 (2) by striking “December 31, 2008” and in-  
8 serting “December 31, 2009”.

9 (b) EXCEPTION TO TREATMENT AS FOREIGN PER-  
10 SONAL HOLDING COMPANY INCOME.—Paragraph (9) of  
11 section 954(h) (relating to application) is amended by  
12 striking “January 1, 2009” and inserting “January 1,  
13 2010”.

14 **SEC. 140. LOOK-THRU RULE FOR RELATED CONTROLLED**  
15 **FOREIGN CORPORATIONS.**

16 (a) IN GENERAL.—Subparagraph (C) of section  
17 954(e)(6) (relating to application) is amended by striking  
18 “January 1, 2009” and inserting “January 1, 2010”.

19 (b) EFFECTIVE DATE.—The amendment made by  
20 this section shall apply to taxable years of foreign corpora-  
21 tions beginning after December 31, 2008, and to taxable  
22 years of United States shareholders with or within which  
23 such taxable years of foreign corporations end.



1 **SEC. 141. EXPENSING FOR CERTAIN QUALIFIED FILM AND**  
2 **TELEVISION PRODUCTIONS.**

3 (a) IN GENERAL.—Subsection (f) of section 181 is  
4 amended by striking “December 31, 2008” and inserting  
5 “December 31, 2009”.

6 (b) EFFECTIVE DATE.—The amendment made by  
7 this section shall apply to productions commencing after  
8 December 31, 2008.

9 **Subtitle C—Other Extensions**

10 **SEC. 151. AUTHORITY TO DISCLOSE INFORMATION RE-**  
11 **LATED TO TERRORIST ACTIVITIES MADE**  
12 **PERMANENT.**

13 (a) IN GENERAL.—Subparagraph (C) of section  
14 6103(i)(3) is amended by striking clause (iv).

15 (b) DISCLOSURE ON REQUEST.—Paragraph (7) of  
16 section 6103(i) is amended by striking subparagraph (E).

17 (c) EFFECTIVE DATE.—The amendments made by  
18 this section shall apply to disclosures after the date of the  
19 enactment of this Act.

20 **SEC. 152. AUTHORITY FOR UNDERCOVER OPERATIONS**  
21 **MADE PERMANENT.**

22 (a) IN GENERAL.—Subsection (c) of section 7608 is  
23 amended by striking paragraph (6).

24 (b) EFFECTIVE DATE.—The amendment made by  
25 this section shall take effect on January 1, 2008.

1 **SEC. 153. INCREASE IN LIMIT ON COVER OVER OF RUM EX-**  
2 **CISE TAX TO PUERTO RICO AND THE VIRGIN**  
3 **ISLANDS.**

4 (a) **IN GENERAL.**—Paragraph (1) of section 7652(f)  
5 is amended by striking “January 1, 2008” and inserting  
6 “January 1, 2010”.

7 (b) **EFFECTIVE DATE.**—The amendment made by  
8 this section shall apply to distilled spirits brought into the  
9 United States after December 31, 2007.

10 **TITLE II—ADDITIONAL TAX RE-**  
11 **LIEF AND OTHER PROVI-**  
12 **SIONS**

13 **SEC. 201. REFUNDABLE CHILD CREDIT.**

14 (a) **MODIFICATION OF THRESHOLD AMOUNT.**—  
15 Clause (i) of section 24(d)(1)(B) is amended by inserting  
16 “(\$8,500 in the case of taxable years beginning in 2009)”  
17 after “\$10,000”.

18 (b) **EFFECTIVE DATE.**—The amendment made by  
19 subsection (a) shall apply to taxable years beginning after  
20 December 31, 2008.

21 **SEC. 202. PROVISIONS RELATED TO FILM AND TELEVISION**  
22 **PRODUCTIONS.**

23 (a) **MODIFICATION OF LIMITATION ON EXPENS-**  
24 **ING.**—Subparagraph (A) of section 181(a)(2) is amended  
25 to read as follows:

1           “(A) IN GENERAL.—Paragraph (1) shall  
2           not apply to so much of the aggregate cost of  
3           any qualified film or television production as ex-  
4           ceeds \$15,000,000.”.

5           (b) MODIFICATIONS TO DEDUCTION FOR DOMESTIC  
6   ACTIVITIES.—

7           (1) DETERMINATION OF W-2 WAGES.—Para-  
8           graph (2) of section 199(b) is amended by adding at  
9           the end the following new subparagraph:

10           “(D) SPECIAL RULE FOR QUALIFIED  
11           FILM.—In the case of a qualified film, such  
12           term shall include compensation for services  
13           performed in the United States by actors, pro-  
14           duction personnel, directors, and producers.”.

15           (2) DEFINITION OF QUALIFIED FILM.—Para-  
16           graph (6) of section 199(e) is amended by adding at  
17           the end the following: “A qualified film shall include  
18           any copyrights, trademarks, or other intangibles  
19           with respect to such film. The methods and means  
20           of distributing a qualified film shall not affect the  
21           availability of the deduction under this section.”.

22           (3) PARTNERSHIPS.—Subparagraph (A) of sec-  
23           tion 199(d)(1) is amended by striking “and” at the  
24           end of clause (ii), by striking the period at the end

1 of clause (iii) and inserting “, and”, and by adding  
2 at the end the following new clause:

3 “(iv) in the case of each partner of a  
4 partnership, or shareholder of an S cor-  
5 poration, who owns (directly or indirectly)  
6 at least 20 percent of the capital interests  
7 in such partnership or of the stock of such  
8 S corporation—

9 “(I) such partner or shareholder  
10 shall be treated as having engaged di-  
11 rectly in any film produced by such  
12 partnership or S corporation, and

13 “(II) such partnership or S cor-  
14 poration shall be treated as having en-  
15 gaged directly in any film produced by  
16 such partner or shareholder.”.

17 (c) CONFORMING AMENDMENT.—Section  
18 181(d)(3)(A) is amended by striking “actors” and all that  
19 follows and inserting “actors, production personnel, direc-  
20 tors, and producers.”.

21 (d) EFFECTIVE DATE.—

22 (1) IN GENERAL.—Except as otherwise pro-  
23 vided in this subsection, the amendments made by  
24 this section shall apply to taxable years beginning  
25 after December 31, 2007.

1           (2) EXPENSING.—The amendments made by  
2           subsection (a) shall apply to qualified film and tele-  
3           vision productions commencing after December 31,  
4           2007.

5 **SEC. 203. EXEMPTION FROM EXCISE TAX FOR CERTAIN AR-**  
6 **ROWS DESIGNED FOR USE BY CHILDREN.**

7           (a) IN GENERAL.—Paragraph (2) of section 4161(b)  
8           (relating to arrows) is amended by redesignating subpara-  
9           graph (B) as subparagraph (C) and by inserting after sub-  
10          paragraph (A) the following new subparagraph:

11                   “(B) EXEMPTION FOR CERTAIN ARROW  
12                   SHAFTS.—Subparagraph (A) shall not apply to  
13                   any shaft measuring  $\frac{5}{16}$  of an inch or less in  
14                   diameter and consisting of either—

15                           “(i) all fiberglass and hollow, or

16                           “(ii) all natural wood,

17                   with no laminations or artificial means of en-  
18                   hancing the spine of such shaft (whether sold  
19                   separately or incorporated as part of a finished  
20                   or unfinished product) of a type used in the  
21                   manufacture of any arrow which after its as-  
22                   sembly is not suitable for use with a bow de-  
23                   scribed in paragraph (1)(A).”.

1 (b) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to shafts first sold after the date  
3 of enactment of this Act.

4 **SEC. 204. MODIFICATION OF PENALTY ON UNDERSTATE-**  
5 **MENT OF TAXPAYER'S LIABILITY BY TAX RE-**  
6 **TURN PREPARER.**

7 (a) IN GENERAL.—Subsection (a) of section 6694  
8 (relating to understatement due to unreasonable positions)  
9 is amended to read as follows:

10 “(a) UNDERSTATEMENT DUE TO UNREASONABLE  
11 POSITIONS.—

12 “(1) IN GENERAL.—If a tax return preparer—

13 “(A) prepares any return or claim of re-  
14 fund with respect to which any part of an un-  
15 derstatement of liability is due to a position de-  
16 scribed in paragraph (2), and

17 “(B) knew (or reasonably should have  
18 known) of the position,

19 such tax return preparer shall pay a penalty with re-  
20 spect to each such return or claim in an amount  
21 equal to the greater of \$1,000 or 50 percent of the  
22 income derived (or to be derived) by the tax return  
23 preparer with respect to the return or claim.

24 “(2) UNREASONABLE POSITION.—

1           “(A) IN GENERAL.—Except as otherwise  
2           provided in this paragraph, a position is de-  
3           scribed in this paragraph unless there is or was  
4           substantial authority for the position.

5           “(B) DISCLOSED POSITIONS.—If the posi-  
6           tion was disclosed as provided in section  
7           6662(d)(2)(B)(ii)(I) and is not a position to  
8           which subparagraph (C) applies, the position is  
9           described in this paragraph unless there is a  
10          reasonable basis for the position.

11          “(C) REPORTABLE TRANSACTIONS.—If the  
12          position is with respect to a reportable trans-  
13          action to which section 6662A applies, the posi-  
14          tion is described in this paragraph unless it is  
15          reasonable to believe that the position would  
16          more likely than not be sustained on its merits.

17          “(3) REASONABLE CAUSE EXCEPTION.—No  
18          penalty shall be imposed under this subsection if it  
19          is shown that there is reasonable cause for the un-  
20          derstatement and the tax return preparer acted in  
21          good faith.”.

22          (b) EFFECTIVE DATE.—The amendment made by  
23          this section shall apply—

24                  (1) in the case of a position other than a posi-  
25                  tion described in subparagraph (C) of section

1 6694(a)(2) of the Internal Revenue Code of 1986  
2 (as amended by this section), to returns prepared  
3 after May 25, 2007, and

4 (2) in the case of a position described in such  
5 subparagraph (C), to returns prepared for taxable  
6 years beginning after the date of the enactment of  
7 this Act.

## 8 **TITLE III—SECURE RURAL** 9 **SCHOOLS**

### 10 **SEC. 301. SECURE RURAL SCHOOLS AND COMMUNITY SELF-** 11 **DETERMINATION PROGRAM.**

12 (a) REAUTHORIZATION OF THE SECURE RURAL  
13 SCHOOLS AND COMMUNITY SELF-DETERMINATION ACT  
14 OF 2000.—The Secure Rural Schools and Community  
15 Self-Determination Act of 2000 (16 U.S.C. 500 note; Pub-  
16 lic Law 106–393) is amended by striking sections 1  
17 through 403 and inserting the following:

#### 18 **“SECTION 1. SHORT TITLE.**

19 “This Act may be cited as the ‘Secure Rural Schools  
20 and Community Self-Determination Act of 2000’.

#### 21 **“SEC. 2. PURPOSES.**

22 “The purposes of this Act are—

23 “(1) to stabilize and transition payments to  
24 counties to provide funding for schools and roads  
25 that supplements other available funds;



1           “(2) to make additional investments in, and  
2           create additional employment opportunities through,  
3           projects that—

4                   “(A)(i) improve the maintenance of exist-  
5                   ing infrastructure;

6                   “(ii) implement stewardship objectives that  
7                   enhance forest ecosystems; and

8                   “(iii) restore and improve land health and  
9                   water quality;

10                  “(B) enjoy broad-based support; and

11                  “(C) have objectives that may include—

12                          “(i) road, trail, and infrastructure  
13                          maintenance or obliteration;

14                          “(ii) soil productivity improvement;

15                          “(iii) improvements in forest eco-  
16                          system health;

17                          “(iv) watershed restoration and main-  
18                          tenance;

19                          “(v) the restoration, maintenance, and  
20                          improvement of wildlife and fish habitat;

21                          “(vi) the control of noxious and exotic  
22                          weeds; and

23                          “(vii) the reestablishment of native  
24                          species; and

1           “(3) to improve cooperative relationships  
2 among—

3           “(A) the people that use and care for Fed-  
4 eral land; and

5           “(B) the agencies that manage the Federal  
6 land.

7 **“SEC. 3. DEFINITIONS.**

8           “In this Act:

9           “(1) ADJUSTED SHARE.—The term ‘adjusted  
10 share’ means the number equal to the quotient ob-  
11 tained by dividing—

12           “(A) the number equal to the quotient ob-  
13 tained by dividing—

14           “(i) the base share for the eligible  
15 county; by

16           “(ii) the income adjustment for the el-  
17 igible county; by

18           “(B) the number equal to the sum of the  
19 quotients obtained under subparagraph (A) and  
20 paragraph (8)(A) for all eligible counties.

21           “(2) BASE SHARE.—The term ‘base share’  
22 means the number equal to the average of—

23           “(A) the quotient obtained by dividing—

1           “(i) the number of acres of Federal  
2           land described in paragraph (7)(A) in each  
3           eligible county; by

4           “(ii) the total number acres of Fed-  
5           eral land in all eligible counties in all eligi-  
6           ble States; and

7           “(B) the quotient obtained by dividing—

8           “(i) the amount equal to the average  
9           of the 3 highest 25-percent payments and  
10          safety net payments made to each eligible  
11          State for each eligible county during the  
12          eligibility period; by

13          “(ii) the amount equal to the sum of  
14          the amounts calculated under clause (i)  
15          and paragraph (9)(B)(i) for all eligible  
16          counties in all eligible States during the  
17          eligibility period.

18          “(3) COUNTY PAYMENT.—The term ‘county  
19          payment’ means the payment for an eligible county  
20          calculated under section 101(b).

21          “(4) ELIGIBLE COUNTY.—The term ‘eligible  
22          county’ means any county that—

23                 “(A) contains Federal land (as defined in  
24                 paragraph (7)); and

1           “(B) elects to receive a share of the State  
2           payment or the county payment under section  
3           102(b).

4           “(5) ELIGIBILITY PERIOD.—The term ‘eligi-  
5           bility period’ means fiscal year 1986 through fiscal  
6           year 1999.

7           “(6) ELIGIBLE STATE.—The term ‘eligible  
8           State’ means a State or territory of the United  
9           States that received a 25-percent payment for 1 or  
10          more fiscal years of the eligibility period.

11          “(7) FEDERAL LAND.—The term ‘Federal land’  
12          means—

13                 “(A) land within the National Forest Sys-  
14                 tem, as defined in section 11(a) of the Forest  
15                 and Rangeland Renewable Resources Planning  
16                 Act of 1974 (16 U.S.C. 1609(a)) exclusive of  
17                 the National Grasslands and land utilization  
18                 projects designated as National Grasslands ad-  
19                 ministered pursuant to the Act of July 22,  
20                 1937 (7 U.S.C. 1010–1012); and

21                 “(B) such portions of the revested Oregon  
22                 and California Railroad and reconveyed Coos  
23                 Bay Wagon Road grant land as are or may  
24                 hereafter come under the jurisdiction of the De-  
25                 partment of the Interior, which have heretofore

1 or may hereafter be classified as timberlands,  
2 and power-site land valuable for timber, that  
3 shall be managed, except as provided in the  
4 former section 3 of the Act of August 28, 1937  
5 (50 Stat. 875; 43 U.S.C. 1181c), for permanent  
6 forest production.

7 “(8) 50-PERCENT ADJUSTED SHARE.—The  
8 term ‘50-percent adjusted share’ means the number  
9 equal to the quotient obtained by dividing—

10 “(A) the number equal to the quotient ob-  
11 tained by dividing—

12 “(i) the 50-percent base share for the  
13 eligible county; by

14 “(ii) the income adjustment for the el-  
15 igible county; by

16 “(B) the number equal to the sum of the  
17 quotients obtained under subparagraph (A) and  
18 paragraph (1)(A) for all eligible counties.

19 “(9) 50-PERCENT BASE SHARE.—The term ‘50-  
20 percent base share’ means the number equal to the  
21 average of—

22 “(A) the quotient obtained by dividing—

23 “(i) the number of acres of Federal  
24 land described in paragraph (7)(B) in each  
25 eligible county; by

1           “(ii) the total number acres of Fed-  
2           eral land in all eligible counties in all eligi-  
3           ble States; and

4           “(B) the quotient obtained by dividing—

5           “(i) the amount equal to the average  
6           of the 3 highest 50-percent payments made  
7           to each eligible county during the eligibility  
8           period; by

9           “(ii) the amount equal to the sum of  
10          the amounts calculated under clause (i)  
11          and paragraph (2)(B)(i) for all eligible  
12          counties in all eligible States during the  
13          eligibility period.

14          “(10) 50-PERCENT PAYMENT.—The term ‘50-  
15          percent payment’ means the payment that is the  
16          sum of the 50-percent share otherwise paid to a  
17          county pursuant to title II of the Act of August 28,  
18          1937 (chapter 876; 50 Stat. 875; 43 U.S.C. 1181f),  
19          and the payment made to a county pursuant to the  
20          Act of May 24, 1939 (chapter 144; 53 Stat. 753; 43  
21          U.S.C. 1181f–1 et seq.).

22          “(11) FULL FUNDING AMOUNT.—The term ‘full  
23          funding amount’ means \$500,000,000 for fiscal year  
24          2008.

1           “(12) INCOME ADJUSTMENT.—The term ‘in-  
2           come adjustment’ means the square of the quotient  
3           obtained by dividing—

4                   “(A) the per capita personal income for  
5                   each eligible county; by

6                   “(B) the median per capita personal in-  
7                   come of all eligible counties.

8           “(13) PER CAPITA PERSONAL INCOME.—The  
9           term ‘per capita personal income’ means the most  
10          recent per capita personal income data, as deter-  
11          mined by the Bureau of Economic Analysis.

12          “(14) SAFETY NET PAYMENTS.—The term  
13          ‘safety net payments’ means the special payment  
14          amounts paid to States and counties required by  
15          section 13982 or 13983 of the Omnibus Budget  
16          Reconciliation Act of 1993 (Public Law 103–66; 16  
17          U.S.C. 500 note; 43 U.S.C. 1181f note).

18          “(15) SECRETARY CONCERNED.—The term  
19          ‘Secretary concerned’ means—

20                   “(A) the Secretary of Agriculture or the  
21                   designee of the Secretary of Agriculture with  
22                   respect to the Federal land described in para-  
23                   graph (7)(A); and

24                   “(B) the Secretary of the Interior or the  
25                   designee of the Secretary of the Interior with

1           respect to the Federal land described in para-  
2           graph (7)(B).

3           “(16) STATE PAYMENT.—The term ‘State pay-  
4           ment’ means the payment for an eligible State cal-  
5           culated under section 101(a).

6           “(17) 25-PERCENT PAYMENT.—The term ‘25-  
7           percent payment’ means the payment to States re-  
8           quired by the sixth paragraph under the heading of  
9           ‘FOREST SERVICE’ in the Act of May 23, 1908  
10          (35 Stat. 260; 16 U.S.C. 500), and section 13 of the  
11          Act of March 1, 1911 (36 Stat. 963; 16 U.S.C.  
12          500).

13       **“TITLE I—SECURE PAYMENTS**  
14       **FOR STATES AND COUNTIES**  
15       **CONTAINING FEDERAL LAND**

16       **“SEC. 101. SECURE PAYMENTS FOR STATES CONTAINING**  
17       **FEDERAL LAND.**

18       “(a) STATE PAYMENT.—For fiscal year 2008, the  
19       Secretary of Agriculture shall calculate for each eligible  
20       State an amount equal to the sum of the products ob-  
21       tained by multiplying—

22               “(1) the adjusted share for each eligible county  
23               within the eligible State; by

24               “(2) the full funding amount for the fiscal year.



1       “(b) COUNTY PAYMENT.—For fiscal year 2008, the  
2 Secretary of the Interior shall calculate for each eligible  
3 county that received a 50-percent payment during the eli-  
4 gibility period an amount equal to the product obtained  
5 by multiplying—

6               “(1) the 50-percent adjusted share for the eligi-  
7 ble county; by

8               “(2) the full funding amount for the fiscal year.

9 **“SEC. 102. PAYMENTS TO STATES AND COUNTIES.**

10       “(a) PAYMENT AMOUNTS.—Except as provided in  
11 section 103, the Secretary of the Treasury shall pay to—

12               “(1) a State or territory of the United States  
13 an amount equal to the sum of the amounts elected  
14 under subsection (b) by each county within the State  
15 or territory for—

16                       “(A) if the county is eligible for the 25-  
17 percent payment, the share of the 25-percent  
18 payment; or

19                       “(B) the share of the State payment of the  
20 eligible county; and

21               “(2) a county an amount equal to the amount  
22 elected under subsection (b) by each county for—

23                       “(A) if the county is eligible for the 50-  
24 percent payment, the 50-percent payment; or

1           “(B) the county payment for the eligible  
2           county.

3           “(b) ELECTION TO RECEIVE PAYMENT AMOUNT.—

4           “(1) ELECTION; SUBMISSION OF RESULTS.—

5           “(A) IN GENERAL.—The election to receive  
6           a share of the State payment, the county pay-  
7           ment, a share of the State payment and the  
8           county payment, a share of the 25-percent pay-  
9           ment, the 50-percent payment, or a share of the  
10          25-percent payment and the 50-percent pay-  
11          ment, as applicable, shall be made at the discre-  
12          tion of each affected county by August 1, 2008  
13          (or as soon thereafter as the Secretary con-  
14          cerned determines is practicable) and trans-  
15          mitted to the Secretary concerned by the Gov-  
16          ernor of each eligible State.

17          “(B) FAILURE TO TRANSMIT.—If an elec-  
18          tion for an affected county is not transmitted to  
19          the Secretary concerned by the date specified  
20          under subparagraph (A), the affected county  
21          shall be considered to have elected to receive a  
22          share of the State payment, the county pay-  
23          ment, or a share of the State payment and the  
24          county payment, as applicable.

1           “(2) SOURCE OF PAYMENT AMOUNTS.—The  
2           payment to an eligible State or eligible county under  
3           this section for a fiscal year shall be derived from—

4                   “(A) any amounts that are appropriated to  
5           carry out this Act;

6                   “(B) any revenues, fees, penalties, or mis-  
7           cellaneous receipts, exclusive of deposits to any  
8           relevant trust fund, special account, or perma-  
9           nent operating funds, received by the Federal  
10          Government from activities by the Bureau of  
11          Land Management or the Forest Service on the  
12          applicable Federal land; and

13                   “(C) to the extent of any shortfall, out of  
14          any amounts in the Treasury of the United  
15          States not otherwise appropriated.

16          “(c) DISTRIBUTION AND EXPENDITURE OF PAY-  
17          MENTS.—

18                   “(1) DISTRIBUTION METHOD.—A State that re-  
19          ceives a payment under subsection (a) for Federal  
20          land described in section 3(7)(A) shall distribute the  
21          appropriate payment amount among the appropriate  
22          counties in the State in accordance with—

23                   “(A) the Act of May 23, 1908 (16 U.S.C.  
24          500); and

1           “(B) section 13 of the Act of March 1,  
2           1911 (36 Stat. 963; 16 U.S.C. 500).

3           “(2) EXPENDITURE PURPOSES.—Subject to  
4           subsection (d), payments received by a State under  
5           subsection (a) and distributed to counties in accord-  
6           ance with paragraph (1) shall be expended as re-  
7           quired by the laws referred to in paragraph (1).

8           “(d) EXPENDITURE RULES FOR ELIGIBLE COUN-  
9           TIES.—

10           “(1) ALLOCATIONS.—

11           “(A) USE OF PORTION IN SAME MANNER  
12           AS 25-PERCENT PAYMENT OR 50-PERCENT PAY-  
13           MENT, AS APPLICABLE.—Except as provided in  
14           paragraph (3)(B), if an eligible county elects to  
15           receive its share of the State payment or the  
16           county payment, not less than 80 percent, but  
17           not more than 85 percent, of the funds shall be  
18           expended in the same manner in which the 25-  
19           percent payments or 50-percent payment, as  
20           applicable, are required to be expended.

21           “(B) ELECTION AS TO USE OF BAL-  
22           ANCE.—Except as provided in subparagraph  
23           (C), an eligible county shall elect to do 1 or  
24           more of the following with the balance of any

1 funds not expended pursuant to subparagraph  
2 (A):

3 “(i) Reserve any portion of the bal-  
4 ance for projects in accordance with title  
5 II.

6 “(ii) Reserve not more than 7 percent  
7 of the total share for the eligible county of  
8 the State payment or the county payment  
9 for projects in accordance with title III.

10 “(iii) Return the portion of the bal-  
11 ance not reserved under clauses (i) and (ii)  
12 to the Treasury of the United States.

13 “(C) COUNTIES WITH MODEST DISTRIBUTIONS.—In the case of each eligible county to  
14 which more than \$100,000, but less than  
15 \$350,000, is distributed for any fiscal year pur-  
16 suant to either or both of paragraphs (1)(B)  
17 and (2)(B) of subsection (a), the eligible coun-  
18 ty, with respect to the balance of any funds not  
19 expended pursuant to subparagraph (A) for  
20 that fiscal year, shall—

21 “(i) reserve any portion of the balance  
22 for—

23 “(I) carrying out projects under  
24 title II;  
25

1                   “(II) carrying out projects under  
2                   title III; or

3                   “(III) a combination of the pur-  
4                   poses described in subclauses (I) and  
5                   (II); or

6                   “(ii) return the portion of the balance  
7                   not reserved under clause (i) to the Treas-  
8                   ury of the United States.

9                   “(2) DISTRIBUTION OF FUNDS.—

10                   “(A) IN GENERAL.—Funds reserved by an  
11                   eligible county under subparagraph (B)(i) or  
12                   (C)(i) of paragraph (1) for carrying out  
13                   projects under title II shall be deposited in a  
14                   special account in the Treasury of the United  
15                   States.

16                   “(B) AVAILABILITY.—Amounts deposited  
17                   under subparagraph (A) shall—

18                   “(i) be available for expenditure by  
19                   the Secretary concerned, without further  
20                   appropriation; and

21                   “(ii) remain available until expended  
22                   in accordance with title II.

23                   “(3) ELECTION.—

24                   “(A) NOTIFICATION.—

1           “(i) IN GENERAL.—An eligible county  
2           shall notify the Secretary concerned of an  
3           election by the eligible county under this  
4           subsection not later than September 30,  
5           2008 (or as soon thereafter as the Sec-  
6           retary concerned determines is prac-  
7           ticable).

8           “(ii) FAILURE TO ELECT.—Except as  
9           provided in subparagraph (B), if the eligi-  
10          ble county fails to make an election by the  
11          date specified in clause (i), the eligible  
12          county shall—

13                   “(I) be considered to have elected  
14                   to expend 85 percent of the funds in  
15                   accordance with paragraph (1)(A);  
16                   and

17                   “(II) return the balance to the  
18                   Treasury of the United States.

19          “(B) COUNTIES WITH MINOR DISTRIBUTIONS.—In the case of each eligible county to  
20          which less than \$100,000 is distributed for any  
21          fiscal year pursuant to either or both of para-  
22          graphs (1)(B) and (2)(B) of subsection (a), the  
23          eligible county may elect to expend all the funds  
24          in the same manner in which the 25-percent  
25

1           payments or 50-percent payments, as applica-  
2           ble, are required to be expended.

3           “(e) TIME FOR PAYMENT.—The payments required  
4 under this section for a fiscal year shall be made as soon  
5 as practicable after the end of that fiscal year.

6 **“SEC. 103. TRANSITION PAYMENTS TO STATES.**

7           “(a) DEFINITIONS.—In this section:

8           “(1) ADJUSTED AMOUNT.—The term ‘adjusted  
9 amount’ means, with respect to a covered State for  
10 fiscal year 2008, 90 percent of—

11                   “(A) the sum of the amounts paid for fis-  
12 cal year 2006 under section 102(a)(2) (as in ef-  
13 fect on September 29, 2006) for the eligible  
14 counties in the covered State that have elected  
15 under section 102(b) to receive a share of the  
16 State payment for fiscal year 2008; and

17                   “(B) the sum of the amounts paid for fis-  
18 cal year 2006 under section 103(a)(2) (as in ef-  
19 fect on September 29, 2006) for the eligible  
20 counties in the State of Oregon that have elect-  
21 ed under section 102(b) to receive the county  
22 payment for fiscal year 2008.

23           “(2) COVERED STATE.—The term ‘covered  
24 State’ means each of the States of California, Lou-



1 isiana, Oregon, Pennsylvania, South Carolina, South  
2 Dakota, Texas, and Washington.

3 “(b) TRANSITION PAYMENTS.—For fiscal year 2008,  
4 in lieu of the payment amounts that otherwise would have  
5 been made under paragraphs (1)(B) and (2)(B) of section  
6 102(a), the Secretary of the Treasury shall pay the ad-  
7 justed amount to each covered State and the eligible coun-  
8 ties within the covered State, as applicable.

9 “(c) DISTRIBUTION OF ADJUSTED AMOUNT.—Ex-  
10 cept as provided in subsection (d), it is the intent of Con-  
11 gress that the method of distributing the payments under  
12 subsection (b) among the counties in the covered States  
13 for fiscal year 2008 be in the same proportion that the  
14 payments were distributed to the eligible counties in fiscal  
15 year 2006.

16 “(d) DISTRIBUTION OF PAYMENTS IN CALI-  
17 FORNIA.—The following payments shall be distributed  
18 among the eligible counties in the State of California in  
19 the same proportion that payments under section  
20 102(a)(2) (as in effect on September 29, 2006) were dis-  
21 tributed to the eligible counties for fiscal year 2006:

22 “(1) Payments to the State of California under  
23 subsection (b).

1           “(2) The shares of the eligible counties of the  
2           State payment for California under section 102 for  
3           fiscal year 2011.

4           “(e) TREATMENT OF PAYMENTS.—For purposes of  
5           this Act, any payment made under subsection (b) shall be  
6           considered to be a payment made under section 102(a).

7           **“TITLE II—SPECIAL PROJECTS**  
8                                   **ON FEDERAL LAND**

9           **“SEC. 201. DEFINITIONS.**

10          “In this title:

11               “(1) PARTICIPATING COUNTY.—The term ‘par-  
12               ticipating county’ means an eligible county that  
13               elects under section 102(d) to expend a portion of  
14               the Federal funds received under section 102 in ac-  
15               cordance with this title.

16               “(2) PROJECT FUNDS.—The term ‘project  
17               funds’ means all funds an eligible county elects  
18               under section 102(d) to reserve for expenditure in  
19               accordance with this title.

20               “(3) RESOURCE ADVISORY COMMITTEE.—The  
21               term ‘resource advisory committee’ means—

22                       “(A) an advisory committee established by  
23                       the Secretary concerned under section 205; or

1           “(B) an advisory committee determined by  
2           the Secretary concerned to meet the require-  
3           ments of section 205.

4           “(4) RESOURCE MANAGEMENT PLAN.—The  
5           term ‘resource management plan’ means—

6                   “(A) a land use plan prepared by the Bu-  
7                   reau of Land Management for units of the Fed-  
8                   eral land described in section 3(7)(B) pursuant  
9                   to section 202 of the Federal Land Policy and  
10                  Management Act of 1976 (43 U.S.C. 1712); or

11                   “(B) a land and resource management  
12                  plan prepared by the Forest Service for units of  
13                  the National Forest System pursuant to section  
14                  6 of the Forest and Rangeland Renewable Re-  
15                  sources Planning Act of 1974 (16 U.S.C.  
16                  1604).

17 **“SEC. 202. GENERAL LIMITATION ON USE OF PROJECT**  
18 **FUNDS.**

19           “(a) LIMITATION.—Project funds shall be expended  
20 solely on projects that meet the requirements of this title.

21           “(b) AUTHORIZED USES.—Project funds may be  
22 used by the Secretary concerned for the purpose of enter-  
23 ing into and implementing cooperative agreements with  
24 willing Federal agencies, State and local governments, pri-  
25 vate and nonprofit entities, and landowners for protection,

1 restoration, and enhancement of fish and wildlife habitat,  
2 and other resource objectives consistent with the purposes  
3 of this Act on Federal land and on non-Federal land where  
4 projects would benefit the resources on Federal land.

5 **“SEC. 203. SUBMISSION OF PROJECT PROPOSALS.**

6 “(a) SUBMISSION OF PROJECT PROPOSALS TO SEC-  
7 RETARY CONCERNED.—

8 “(1) PROJECTS FUNDED USING PROJECT  
9 FUNDS.—Not later than September 30 for fiscal  
10 year 2008 (or as soon thereafter as the Secretary  
11 concerned determines is practicable) each resource  
12 advisory committee shall submit to the Secretary  
13 concerned a description of any projects that the re-  
14 source advisory committee proposes the Secretary  
15 undertake using any project funds reserved by eligi-  
16 ble counties in the area in which the resource advi-  
17 sory committee has geographic jurisdiction.

18 “(2) PROJECTS FUNDED USING OTHER  
19 FUNDS.—A resource advisory committee may submit  
20 to the Secretary concerned a description of any  
21 projects that the committee proposes the Secretary  
22 undertake using funds from State or local govern-  
23 ments, or from the private sector, other than project  
24 funds and funds appropriated and otherwise avail-  
25 able to do similar work.

1           “(3) JOINT PROJECTS.—Participating counties  
2           or other persons may propose to pool project funds  
3           or other funds, described in paragraph (2), and  
4           jointly propose a project or group of projects to a re-  
5           source advisory committee established under section  
6           205.

7           “(b) REQUIRED DESCRIPTION OF PROJECTS.—In  
8           submitting proposed projects to the Secretary concerned  
9           under subsection (a), a resource advisory committee shall  
10          include in the description of each proposed project the fol-  
11          lowing information:

12           “(1) The purpose of the project and a descrip-  
13           tion of how the project will meet the purposes of this  
14           title.

15           “(2) The anticipated duration of the project.

16           “(3) The anticipated cost of the project.

17           “(4) The proposed source of funding for the  
18           project, whether project funds or other funds.

19           “(5)(A) Expected outcomes, including how the  
20           project will meet or exceed desired ecological condi-  
21           tions, maintenance objectives, or stewardship objec-  
22           tives.

23           “(B) An estimate of the amount of any timber,  
24           forage, and other commodities and other economic

1 activity, including jobs generated, if any, anticipated  
2 as part of the project.

3 “(6) A detailed monitoring plan, including  
4 funding needs and sources, that—

5 “(A) tracks and identifies the positive or  
6 negative impacts of the project, implementation,  
7 and provides for validation monitoring; and

8 “(B) includes an assessment of the fol-  
9 lowing:

10 “(i) Whether or not the project met or  
11 exceeded desired ecological conditions; cre-  
12 ated local employment or training opportu-  
13 nities, including summer youth jobs pro-  
14 grams such as the Youth Conservation  
15 Corps where appropriate.

16 “(ii) Whether the project improved  
17 the use of, or added value to, any products  
18 removed from land consistent with the pur-  
19 poses of this title.

20 “(7) An assessment that the project is to be in  
21 the public interest.

22 “(c) AUTHORIZED PROJECTS.—Projects proposed  
23 under subsection (a) shall be consistent with section 2.

1 **“SEC. 204. EVALUATION AND APPROVAL OF PROJECTS BY**  
2 **SECRETARY CONCERNED.**

3 “(a) **CONDITIONS FOR APPROVAL OF PROPOSED**  
4 **PROJECT.**—The Secretary concerned may make a decision  
5 to approve a project submitted by a resource advisory com-  
6 mittee under section 203 only if the proposed project satis-  
7 fies each of the following conditions:

8 “(1) The project complies with all applicable  
9 Federal laws (including regulations).

10 “(2) The project is consistent with the applica-  
11 ble resource management plan and with any water-  
12 shed or subsequent plan developed pursuant to the  
13 resource management plan and approved by the Sec-  
14 retary concerned.

15 “(3) The project has been approved by the re-  
16 source advisory committee in accordance with sec-  
17 tion 205, including the procedures issued under sub-  
18 section (e) of that section.

19 “(4) A project description has been submitted  
20 by the resource advisory committee to the Secretary  
21 concerned in accordance with section 203.

22 “(5) The project will improve the maintenance  
23 of existing infrastructure, implement stewardship ob-  
24 jectives that enhance forest ecosystems, and restore  
25 and improve land health and water quality.

26 “(b) **ENVIRONMENTAL REVIEWS.**—

1           “(1) REQUEST FOR PAYMENT BY COUNTY.—

2           The Secretary concerned may request the resource  
3           advisory committee submitting a proposed project to  
4           agree to the use of project funds to pay for any envi-  
5           ronmental review, consultation, or compliance with  
6           applicable environmental laws required in connection  
7           with the project.

8           “(2) CONDUCT OF ENVIRONMENTAL REVIEW.—

9           If a payment is requested under paragraph (1) and  
10          the resource advisory committee agrees to the ex-  
11          penditure of funds for this purpose, the Secretary  
12          concerned shall conduct environmental review, con-  
13          sultation, or other compliance responsibilities in ac-  
14          cordance with Federal laws (including regulations).

15          “(3) EFFECT OF REFUSAL TO PAY.—

16                 “(A) IN GENERAL.—If a resource advisory  
17                 committee does not agree to the expenditure of  
18                 funds under paragraph (1), the project shall be  
19                 deemed withdrawn from further consideration  
20                 by the Secretary concerned pursuant to this  
21                 title.

22                 “(B) EFFECT OF WITHDRAWAL.—A with-  
23                 drawal under subparagraph (A) shall be deemed  
24                 to be a rejection of the project for purposes of  
25                 section 207(c).



1 “(c) DECISIONS OF SECRETARY CONCERNED.—

2 “(1) REJECTION OF PROJECTS.—

3 “(A) IN GENERAL.—A decision by the Sec-  
4 retary concerned to reject a proposed project  
5 shall be at the sole discretion of the Secretary  
6 concerned.

7 “(B) NO ADMINISTRATIVE APPEAL OR JU-  
8 DICIAL REVIEW.—Notwithstanding any other  
9 provision of law, a decision by the Secretary  
10 concerned to reject a proposed project shall not  
11 be subject to administrative appeal or judicial  
12 review.

13 “(C) NOTICE OF REJECTION.—Not later  
14 than 30 days after the date on which the Sec-  
15 retary concerned makes the rejection decision,  
16 the Secretary concerned shall notify in writing  
17 the resource advisory committee that submitted  
18 the proposed project of the rejection and the  
19 reasons for rejection.

20 “(2) NOTICE OF PROJECT APPROVAL.—The  
21 Secretary concerned shall publish in the Federal  
22 Register notice of each project approved under sub-  
23 section (a) if the notice would be required had the  
24 project originated with the Secretary.

1       “(d) SOURCE AND CONDUCT OF PROJECT.—Once the  
2 Secretary concerned accepts a project for review under  
3 section 203, the acceptance shall be deemed a Federal ac-  
4 tion for all purposes.

5       “(e) IMPLEMENTATION OF APPROVED PROJECTS.—

6           “(1) COOPERATION.—Notwithstanding chapter  
7 63 of title 31, United States Code, using project  
8 funds the Secretary concerned may enter into con-  
9 tracts, grants, and cooperative agreements with  
10 States and local governments, private and nonprofit  
11 entities, and landowners and other persons to assist  
12 the Secretary in carrying out an approved project.

13           “(2) BEST VALUE CONTRACTING.—

14           “(A) IN GENERAL.—For any project in-  
15 volving a contract authorized by paragraph (1)  
16 the Secretary concerned may elect a source for  
17 performance of the contract on a best value  
18 basis.

19           “(B) FACTORS.—The Secretary concerned  
20 shall determine best value based on such factors  
21 as—

22           “(i) the technical demands and com-  
23 plexity of the work to be done;

24           “(ii)(I) the ecological objectives of the  
25 project; and

1                   “(II) the sensitivity of the resources  
2                   being treated;

3                   “(iii) the past experience by the con-  
4                   tractor with the type of work being done,  
5                   using the type of equipment proposed for  
6                   the project, and meeting or exceeding de-  
7                   sired ecological conditions; and

8                   “(iv) the commitment of the con-  
9                   tractor to hiring highly qualified workers  
10                  and local residents.

11                  “(3) MERCHANTABLE TIMBER CONTRACTING  
12                  PILOT PROGRAM.—

13                  “(A) ESTABLISHMENT.—The Secretary  
14                  concerned shall establish a pilot program to im-  
15                  plement a certain percentage of approved  
16                  projects involving the sale of merchantable tim-  
17                  ber using separate contracts for—

18                  “(i) the harvesting or collection of  
19                  merchantable timber; and

20                  “(ii) the sale of the timber.

21                  “(B) ANNUAL PERCENTAGES.—Under the  
22                  pilot program, the Secretary concerned shall en-  
23                  sure that, on a nationwide basis, not less than  
24                  35 percent of all approved projects involving the

1 sale of merchantable timber are implemented  
2 using separate contracts.

3 “(C) INCLUSION IN PILOT PROGRAM.—The  
4 decision whether to use separate contracts to  
5 implement a project involving the sale of mer-  
6 chantable timber shall be made by the Sec-  
7 retary concerned after the approval of the  
8 project under this title.

9 “(D) ASSISTANCE.—

10 “(i) IN GENERAL.—The Secretary  
11 concerned may use funds from any appro-  
12 priated account available to the Secretary  
13 for the Federal land to assist in the ad-  
14 ministration of projects conducted under  
15 the pilot program.

16 “(ii) MAXIMUM AMOUNT OF ASSIST-  
17 ANCE.—The total amount obligated under  
18 this subparagraph may not exceed  
19 \$1,000,000 for any fiscal year during  
20 which the pilot program is in effect.

21 “(E) REVIEW AND REPORT.—

22 “(i) INITIAL REPORT.—Not later than  
23 September 30, 2010, the Comptroller Gen-  
24 eral shall submit to the Committees on Ag-  
25 riculture, Nutrition, and Forestry and En-

1           ergy and Natural Resources of the Senate  
2           and the Committees on Agriculture and  
3           Natural Resources of the House of Rep-  
4           resentatives a report assessing the pilot  
5           program.

6           “(ii) ANNUAL REPORT.—The Sec-  
7           retary concerned shall submit to the Com-  
8           mittees on Agriculture, Nutrition, and For-  
9           estry and Energy and Natural Resources  
10          of the Senate and the Committees on Agri-  
11          culture and Natural Resources of the  
12          House of Representatives an annual report  
13          describing the results of the pilot program.

14          “(f) REQUIREMENTS FOR PROJECT FUNDS.—The  
15          Secretary shall ensure that at least 50 percent of all  
16          project funds be used for projects that are primarily dedi-  
17          cated—

18                 “(1) to road maintenance, decommissioning, or  
19                 obliteration; or

20                 “(2) to restoration of streams and watersheds.

21          **“SEC. 205. RESOURCE ADVISORY COMMITTEES.**

22                 “(a) ESTABLISHMENT AND PURPOSE OF RESOURCE  
23          ADVISORY COMMITTEES.—

24                 “(1) ESTABLISHMENT.—The Secretary con-  
25          cerned shall establish and maintain resource advi-

1 sory committees to perform the duties in subsection  
2 (b), except as provided in paragraph (4).

3 “(2) PURPOSE.—The purpose of a resource ad-  
4 visory committee shall be—

5 “(A) to improve collaborative relationships;  
6 and

7 “(B) to provide advice and recommenda-  
8 tions to the land management agencies con-  
9 sistent with the purposes of this title.

10 “(3) ACCESS TO RESOURCE ADVISORY COMMIT-  
11 TEES.—To ensure that each unit of Federal land  
12 has access to a resource advisory committee, and  
13 that there is sufficient interest in participation on a  
14 committee to ensure that membership can be bal-  
15 anced in terms of the points of view represented and  
16 the functions to be performed, the Secretary con-  
17 cerned may, establish resource advisory committees  
18 for part of, or 1 or more, units of Federal land.

19 “(4) EXISTING ADVISORY COMMITTEES.—

20 “(A) IN GENERAL.—An advisory com-  
21 mittee that meets the requirements of this sec-  
22 tion, a resource advisory committee established  
23 before September 29, 2006, or an advisory com-  
24 mittee determined by the Secretary concerned  
25 before September 29, 2006, to meet the re-

1           quirements of this section may be deemed by  
2           the Secretary concerned to be a resource advi-  
3           sory committee for the purposes of this title.

4           “(B) CHARTER.—A charter for a com-  
5           mittee described in subparagraph (A) that was  
6           filed on or before September 29, 2006, shall be  
7           considered to be filed for purposes of this Act.

8           “(C) BUREAU OF LAND MANAGEMENT AD-  
9           VISORY COMMITTEES.—The Secretary of the In-  
10          terior may deem a resource advisory committee  
11          meeting the requirements of subpart 1784 of  
12          part 1780 of title 43, Code of Federal Regula-  
13          tions, as a resource advisory committee for the  
14          purposes of this title.

15          “(b) DUTIES.—A resource advisory committee  
16 shall—

17               “(1) review projects proposed under this title by  
18               participating counties and other persons;

19               “(2) propose projects and funding to the Sec-  
20               retary concerned under section 203;

21               “(3) provide early and continuous coordination  
22               with appropriate land management agency officials  
23               in recommending projects consistent with purposes  
24               of this Act under this title;

1           “(4) provide frequent opportunities for citizens,  
2 organizations, tribes, land management agencies,  
3 and other interested parties to participate openly  
4 and meaningfully, beginning at the early stages of  
5 the project development process under this title;

6           “(5)(A) monitor projects that have been ap-  
7 proved under section 204; and

8           “(B) advise the designated Federal official on  
9 the progress of the monitoring efforts under sub-  
10 paragraph (A); and

11           “(6) make recommendations to the Secretary  
12 concerned for any appropriate changes or adjust-  
13 ments to the projects being monitored by the re-  
14 source advisory committee.

15           “(c) APPOINTMENT BY THE SECRETARY.—

16           “(1) APPOINTMENT AND TERM.—

17           “(A) IN GENERAL.—The Secretary con-  
18 cerned, shall appoint the members of resource  
19 advisory committees for a term of 4 years be-  
20 ginning on the date of appointment.

21           “(B) REAPPOINTMENT.—The Secretary  
22 concerned may reappoint members to subse-  
23 quent 4-year terms.

24           “(2) BASIC REQUIREMENTS.—The Secretary  
25 concerned shall ensure that each resource advisory



1 committee established meets the requirements of  
2 subsection (d).

3 “(3) INITIAL APPOINTMENT.—Not later than  
4 180 days after the date of the enactment of this Act,  
5 the Secretary concerned shall make initial appoint-  
6 ments to the resource advisory committees.

7 “(4) VACANCIES.—The Secretary concerned  
8 shall make appointments to fill vacancies on any re-  
9 source advisory committee as soon as practicable  
10 after the vacancy has occurred.

11 “(5) COMPENSATION.—Members of the re-  
12 source advisory committees shall not receive any  
13 compensation.

14 “(d) COMPOSITION OF ADVISORY COMMITTEE.—

15 “(1) NUMBER.—Each resource advisory com-  
16 mittee shall be comprised of 15 members.

17 “(2) COMMUNITY INTERESTS REPRESENTED.—  
18 Committee members shall be representative of the  
19 interests of the following 3 categories:

20 “(A) 5 persons that—

21 “(i) represent organized labor or non-  
22 timber forest product harvester groups;

23 “(ii) represent developed outdoor  
24 recreation, off highway vehicle users, or  
25 commercial recreation activities;

- 1 “(iii) represent—
- 2 “(I) energy and mineral develop-
- 3 ment interests; or
- 4 “(II) commercial or recreational
- 5 fishing interests;
- 6 “(iv) represent the commercial timber
- 7 industry; or
- 8 “(v) hold Federal grazing or other
- 9 land use permits, or represent nonindus-
- 10 trial private forest land owners, within the
- 11 area for which the committee is organized.
- 12 “(B) 5 persons that represent—
- 13 “(i) nationally recognized environ-
- 14 mental organizations;
- 15 “(ii) regionally or locally recognized
- 16 environmental organizations;
- 17 “(iii) dispersed recreational activities;
- 18 “(iv) archaeological and historical in-
- 19 terests; or
- 20 “(v) nationally or regionally recog-
- 21 nized wild horse and burro interest groups,
- 22 wildlife or hunting organizations, or water-
- 23 shed associations.
- 24 “(C) 5 persons that—

1                   “(i) hold State elected office (or a  
2                   designee);

3                   “(ii) hold county or local elected of-  
4                   fice;

5                   “(iii) represent American Indian  
6                   tribes within or adjacent to the area for  
7                   which the committee is organized;

8                   “(iv) are school officials or teachers;  
9                   or

10                   “(v) represent the affected public at  
11                   large.

12                   “(3) BALANCED REPRESENTATION.—In ap-  
13                   pointing committee members from the 3 categories  
14                   in paragraph (2), the Secretary concerned shall pro-  
15                   vide for balanced and broad representation from  
16                   within each category.

17                   “(4) GEOGRAPHIC DISTRIBUTION.—The mem-  
18                   bers of a resource advisory committee shall reside  
19                   within the State in which the committee has juris-  
20                   diction and, to extent practicable, the Secretary con-  
21                   cerned shall ensure local representation in each cat-  
22                   egory in paragraph (2).

23                   “(5) CHAIRPERSON.—A majority on each re-  
24                   source advisory committee shall select the chair-  
25                   person of the committee.

1 “(e) APPROVAL PROCEDURES.—

2 “(1) IN GENERAL.—Subject to paragraph (3),  
3 each resource advisory committee shall establish pro-  
4 cedures for proposing projects to the Secretary con-  
5 cerned under this title.

6 “(2) QUORUM.—A quorum must be present to  
7 constitute an official meeting of the committee.

8 “(3) APPROVAL BY MAJORITY OF MEMBERS.—  
9 A project may be proposed by a resource advisory  
10 committee to the Secretary concerned under section  
11 203(a), if the project has been approved by a major-  
12 ity of members of the committee from each of the  
13 3 categories in subsection (d)(2).

14 “(f) OTHER COMMITTEE AUTHORITIES AND RE-  
15 QUIREMENTS.—

16 “(1) STAFF ASSISTANCE.—A resource advisory  
17 committee may submit to the Secretary concerned a  
18 request for periodic staff assistance from Federal  
19 employees under the jurisdiction of the Secretary.

20 “(2) MEETINGS.—All meetings of a resource  
21 advisory committee shall be announced at least 1  
22 week in advance in a local newspaper of record and  
23 shall be open to the public.

24 “(3) RECORDS.—A resource advisory committee  
25 shall maintain records of the meetings of the com-

1       mittee and make the records available for public in-  
2       spection.

3       **“SEC. 206. USE OF PROJECT FUNDS.**

4       “(a) AGREEMENT REGARDING SCHEDULE AND COST  
5       OF PROJECT.—

6               “(1) AGREEMENT BETWEEN PARTIES.—The  
7       Secretary concerned may carry out a project sub-  
8       mitted by a resource advisory committee under sec-  
9       tion 203(a) using project funds or other funds de-  
10      scribed in section 203(a)(2), if, as soon as prac-  
11      ticable after the issuance of a decision document for  
12      the project and the exhaustion of all administrative  
13      appeals and judicial review of the project decision,  
14      the Secretary concerned and the resource advisory  
15      committee enter into an agreement addressing, at a  
16      minimum, the following:

17               “(A) The schedule for completing the  
18      project.

19               “(B) The total cost of the project, includ-  
20      ing the level of agency overhead to be assessed  
21      against the project.

22               “(C) For a multiyear project, the esti-  
23      mated cost of the project for each of the fiscal  
24      years in which it will be carried out.

1           “(D) The remedies for failure of the Sec-  
2           retary concerned to comply with the terms of  
3           the agreement consistent with current Federal  
4           law.

5           “(2) LIMITED USE OF FEDERAL FUNDS.—The  
6           Secretary concerned may decide, at the sole discre-  
7           tion of the Secretary concerned, to cover the costs  
8           of a portion of an approved project using Federal  
9           funds appropriated or otherwise available to the Sec-  
10          retary for the same purposes as the project.

11          “(b) TRANSFER OF PROJECT FUNDS.—

12           “(1) INITIAL TRANSFER REQUIRED.—As soon  
13          as practicable after the agreement is reached under  
14          subsection (a) with regard to a project to be funded  
15          in whole or in part using project funds, or other  
16          funds described in section 203(a)(2), the Secretary  
17          concerned shall transfer to the applicable unit of Na-  
18          tional Forest System land or Bureau of Land Man-  
19          agement District an amount of project funds equal  
20          to—

21           “(A) in the case of a project to be com-  
22          pleted in a single fiscal year, the total amount  
23          specified in the agreement to be paid using  
24          project funds, or other funds described in sec-  
25          tion 203(a)(2); or

1           “(B) in the case of a multiyear project, the  
2           amount specified in the agreement to be paid  
3           using project funds, or other funds described in  
4           section 203(a)(2) for the first fiscal year.

5           “(2) CONDITION ON PROJECT COMMENCE-  
6           MENT.—The unit of National Forest System land or  
7           Bureau of Land Management District concerned,  
8           shall not commence a project until the project funds,  
9           or other funds described in section 203(a)(2) re-  
10          quired to be transferred under paragraph (1) for the  
11          project, have been made available by the Secretary  
12          concerned.

13          “(3) SUBSEQUENT TRANSFERS FOR MULTIYEAR  
14          PROJECTS.—

15                 “(A) IN GENERAL.—For the second and  
16                 subsequent fiscal years of a multiyear project to  
17                 be funded in whole or in part using project  
18                 funds, the unit of National Forest System land  
19                 or Bureau of Land Management District con-  
20                 cerned shall use the amount of project funds re-  
21                 quired to continue the project in that fiscal year  
22                 according to the agreement entered into under  
23                 subsection (a).

24                 “(B) SUSPENSION OF WORK.—The Sec-  
25                 retary concerned shall suspend work on the

1 project if the project funds required by the  
2 agreement in the second and subsequent fiscal  
3 years are not available.

4 **“SEC. 207. AVAILABILITY OF PROJECT FUNDS.**

5 “(a) SUBMISSION OF PROPOSED PROJECTS TO OBLI-  
6 GATE FUNDS.—By September 30, 2008 (or as soon there-  
7 after as the Secretary concerned determines is practicable)  
8 a resource advisory committee shall submit to the Sec-  
9 retary concerned pursuant to section 203(a)(1) a suffi-  
10 cient number of project proposals that, if approved, would  
11 result in the obligation of at least the full amount of the  
12 project funds reserved by the participating county in the  
13 preceding fiscal year.

14 “(b) USE OR TRANSFER OF UNOBLIGATED  
15 FUNDS.—Subject to section 208, if a resource advisory  
16 committee fails to comply with subsection (a) for a fiscal  
17 year, any project funds reserved by the participating coun-  
18 ty in the preceding fiscal year and remaining unobligated  
19 shall be available for use as part of the project submissions  
20 in the next fiscal year.

21 “(c) EFFECT OF REJECTION OF PROJECTS.—Subject  
22 to section 208, any project funds reserved by a partici-  
23 pating county in the preceding fiscal year that are unobli-  
24 gated at the end of a fiscal year because the Secretary  
25 concerned has rejected one or more proposed projects shall



1 be available for use as part of the project submissions in  
2 the next fiscal year.

3 “(d) EFFECT OF COURT ORDERS.—

4 “(1) IN GENERAL.—If an approved project  
5 under this Act is enjoined or prohibited by a Federal  
6 court, the Secretary concerned shall return the un-  
7 obligated project funds related to the project to the  
8 participating county or counties that reserved the  
9 funds.

10 “(2) EXPENDITURE OF FUNDS.—The returned  
11 funds shall be available for the county to expend in  
12 the same manner as the funds reserved by the coun-  
13 ty under subparagraph (B) or (C)(i) of section  
14 102(d)(1).

15 **“SEC. 208. TERMINATION OF AUTHORITY.**

16 “(a) IN GENERAL.—The authority to initiate projects  
17 under this title shall terminate on September 30, 2011.

18 “(b) DEPOSITS IN TREASURY.—Any project funds  
19 not obligated by September 30, 2012, shall be deposited  
20 in the Treasury of the United States.

## 21 **“TITLE III—COUNTY FUNDS**

22 **“SEC. 301. DEFINITIONS.**

23 “In this title:

24 “(1) COUNTY FUNDS.—The term ‘county funds’  
25 means all funds an eligible county elects under sec-

1       tion 102(d) to reserve for expenditure in accordance  
2       with this title.

3               “(2) PARTICIPATING COUNTY.—The term ‘par-  
4       ticipating county’ means an eligible county that  
5       elects under section 102(d) to expend a portion of  
6       the Federal funds received under section 102 in ac-  
7       cordance with this title.

8       **“SEC. 302. USE.**

9               “(a) AUTHORIZED USES.—A participating county,  
10       including any applicable agencies of the participating  
11       county, shall use county funds, in accordance with this  
12       title, only—

13               “(1) to carry out activities under the Firewise  
14       Communities program to provide to homeowners in  
15       fire-sensitive ecosystems education on, and assist-  
16       ance with implementing, techniques in home siting,  
17       home construction, and home landscaping that can  
18       increase the protection of people and property from  
19       wildfires;

20               “(2) to reimburse the participating county for  
21       search and rescue and other emergency services, in-  
22       cluding firefighting, that are—

23               “(A) performed on Federal land after the  
24       date on which the use was approved under sub-  
25       section (b);

1                   “(B) paid for by the participating county;

2                   and

3                   “(3) to develop community wildfire protection  
4                   plans in coordination with the appropriate Secretary  
5                   concerned.

6                   “(b) PROPOSALS.—A participating county shall use  
7                   county funds for a use described in subsection (a) only  
8                   after a 45-day public comment period, at the beginning  
9                   of which the participating county shall—

10                   “(1) publish in any publications of local record  
11                   a proposal that describes the proposed use of the  
12                   county funds; and

13                   “(2) submit the proposal to any resource advi-  
14                   sory committee established under section 205 for the  
15                   participating county.

16                   **“SEC. 303. CERTIFICATION.**

17                   “(a) IN GENERAL.—Not later than February 1 of the  
18                   year after the year in which any county funds were ex-  
19                   pended by a participating county, the appropriate official  
20                   of the participating county shall submit to the Secretary  
21                   concerned a certification that the county funds expended  
22                   in the applicable year have been used for the uses author-  
23                   ized under section 302(a), including a description of the  
24                   amounts expended and the uses for which the amounts  
25                   were expended.

1       “(b) REVIEW.—The Secretary concerned shall review  
2 the certifications submitted under subsection (a) as the  
3 Secretary concerned determines to be appropriate.

4       **“SEC. 304. TERMINATION OF AUTHORITY.**

5       “(a) IN GENERAL.—The authority to initiate projects  
6 under this title terminates on September 30, 2011.

7       “(b) AVAILABILITY.—Any county funds not obligated  
8 by September 30, 2012, shall be returned to the Treasury  
9 of the United States.

10       **“TITLE IV—MISCELLANEOUS**  
11                                   **PROVISIONS**

12       **“SEC. 401. REGULATIONS.**

13       “The Secretary of Agriculture and the Secretary of  
14 the Interior shall issue regulations to carry out the pur-  
15 poses of this Act.

16       **“SEC. 402. AUTHORIZATION OF APPROPRIATIONS.**

17       “There are authorized to be appropriated such sums  
18 as are necessary to carry out this Act for each of fiscal  
19 years 2008 and 2009.

20       **“SEC. 403. TREATMENT OF FUNDS AND REVENUES.**

21       “(a) RELATION TO OTHER APPROPRIATIONS.—  
22 Funds made available under section 402 and funds made  
23 available to a Secretary concerned under section 206 shall  
24 be in addition to any other annual appropriations for the  
25 Forest Service and the Bureau of Land Management.

1       “(b) DEPOSIT OF REVENUES AND OTHER FUNDS.—  
2 All revenues generated from projects pursuant to title II,  
3 including any interest accrued from the revenues, shall be  
4 deposited in the Treasury of the United States.”.

5       (b) FOREST RECEIPT PAYMENTS TO ELIGIBLE  
6 STATES AND COUNTIES.—

7           (1) ACT OF MAY 23, 1908.—The sixth paragraph  
8 under the heading “FOREST SERVICE” in the Act  
9 of May 23, 1908 (16 U.S.C. 500) is amended in the  
10 first sentence by striking “twenty-five percentum”  
11 and all that follows through “shall be paid” and in-  
12 serting the following: “an amount equal to the an-  
13 nual average of 25 percent of all amounts received  
14 for the applicable fiscal year and each of the pre-  
15 ceding 6 fiscal years from each national forest shall  
16 be paid”.

17           (2) WEEKS LAW.—Section 13 of the Act of  
18 March 1, 1911 (commonly known as the “Weeks  
19 Law”) (16 U.S.C. 500) is amended in the first sen-  
20 tence by striking “twenty-five percentum” and all  
21 that follows through “shall be paid” and inserting  
22 the following: “an amount equal to the annual aver-  
23 age of 25 percent of all amounts received for the ap-  
24 plicable fiscal year and each of the preceding 6 fiscal  
25 years from each national forest shall be paid”.

1 (c) PAYMENTS IN LIEU OF TAXES.—

2 (1) IN GENERAL.—Section 6906 of title 31,  
3 United States Code, is amended to read as follows:

4 **“§ 6906. Funding**

5 “For each of fiscal years 2008 and 2009—

6 “(1) each county or other eligible unit of local  
7 government shall be entitled to payment under this  
8 chapter; and

9 “(2) sums shall be made available to the Sec-  
10 retary of the Interior for obligation or expenditure in  
11 accordance with this chapter.”.

12 (2) CONFORMING AMENDMENT.—The table of  
13 sections for chapter 69 of title 31, United States  
14 Code, is amended by striking the item relating to  
15 section 6906 and inserting the following:

“6906. Funding.”.

16 **TITLE IV—PAUL WELLSTONE**  
17 **AND PETE DOMENICI MENTAL**  
18 **HEALTH PARITY AND ADDIC-**  
19 **TION EQUITY ACT OF 2008**

20 **SEC. 401. SHORT TITLE.**

21 This title may be cited as the “Paul Wellstone and  
22 Pete Domenici Mental Health Parity and Addiction Eq-  
23 uity Act of 2008”.

1 **SEC. 402. MENTAL HEALTH PARITY.**

2 (a) AMENDMENTS TO ERISA.—Section 712 of the  
3 Employee Retirement Income Security Act of 1974 (29  
4 U.S.C. 1185a) is amended—

5 (1) in subsection (a), by adding at the end the  
6 following:

7 “(3) FINANCIAL REQUIREMENTS AND TREAT-  
8 MENT LIMITATIONS.—

9 “(A) IN GENERAL.—In the case of a group  
10 health plan (or health insurance coverage of-  
11 fered in connection with such a plan) that pro-  
12 vides both medical and surgical benefits and  
13 mental health or substance use disorder bene-  
14 fits, such plan or coverage shall ensure that—

15 “(i) the financial requirements appli-  
16 cable to such mental health or substance  
17 use disorder benefits are no more restric-  
18 tive than the predominant financial re-  
19 quirements applied to substantially all  
20 medical and surgical benefits covered by  
21 the plan (or coverage), and there are no  
22 separate cost sharing requirements that  
23 are applicable only with respect to mental  
24 health or substance use disorder benefits;  
25 and

1           “(ii) the treatment limitations applica-  
2           ble to such mental health or substance use  
3           disorder benefits are no more restrictive  
4           than the predominant treatment limita-  
5           tions applied to substantially all medical  
6           and surgical benefits covered by the plan  
7           (or coverage) and there are no separate  
8           treatment limitations that are applicable  
9           only with respect to mental health or sub-  
10          stance use disorder benefits.

11          “(B) DEFINITIONS.—In this paragraph:

12           “(i) FINANCIAL REQUIREMENT.—The  
13           term ‘financial requirement’ includes  
14           deductibles, copayments, coinsurance, and  
15           out-of-pocket expenses, but excludes an ag-  
16           gregate lifetime limit and an annual limit  
17           subject to paragraphs (1) and (2).

18           “(ii) PREDOMINANT.—A financial re-  
19           quirement or treatment limit is considered  
20           to be predominant if it is the most com-  
21           mon or frequent of such type of limit or  
22           requirement.

23           “(iii) TREATMENT LIMITATION.—The  
24           term ‘treatment limitation’ includes limits  
25           on the frequency of treatment, number of



1 visits, days of coverage, or other similar  
2 limits on the scope or duration of treat-  
3 ment.

4 “(4) AVAILABILITY OF PLAN INFORMATION.—  
5 The criteria for medical necessity determinations  
6 made under the plan with respect to mental health  
7 or substance use disorder benefits (or the health in-  
8 surance coverage offered in connection with the plan  
9 with respect to such benefits) shall be made avail-  
10 able by the plan administrator (or the health insur-  
11 ance issuer offering such coverage) in accordance  
12 with regulations to any current or potential partici-  
13 pant, beneficiary, or contracting provider upon re-  
14 quest. The reason for any denial under the plan (or  
15 coverage) of reimbursement or payment for services  
16 with respect to mental health or substance use dis-  
17 order benefits in the case of any participant or bene-  
18 ficiary shall, on request or as otherwise required, be  
19 made available by the plan administrator (or the  
20 health insurance issuer offering such coverage) to  
21 the participant or beneficiary in accordance with  
22 regulations.

23 “(5) OUT-OF-NETWORK PROVIDERS.—In the  
24 case of a plan or coverage that provides both med-  
25 ical and surgical benefits and mental health or sub-

1       stance use disorder benefits, if the plan or coverage  
2       provides coverage for medical or surgical benefits  
3       provided by out-of-network providers, the plan or  
4       coverage shall provide coverage for mental health or  
5       substance use disorder benefits provided by out-of-  
6       network providers in a manner that is consistent  
7       with the requirements of this section.”;

8               (2) in subsection (b), by amending paragraph  
9       (2) to read as follows:

10              “(2) in the case of a group health plan (or  
11       health insurance coverage offered in connection with  
12       such a plan) that provides mental health or sub-  
13       stance use disorder benefits, as affecting the terms  
14       and conditions of the plan or coverage relating to  
15       such benefits under the plan or coverage, except as  
16       provided in subsection (a).”;

17              (3) in subsection (c)—

18                      (A) in paragraph (1)(B)—

19                              (i) by inserting “(or 1 in the case of  
20                              an employer residing in a State that per-  
21                              mits small groups to include a single indi-  
22                              vidual)” after “at least 2” the first place  
23                              that such appears; and

1 (ii) by striking “and who employs at  
2 least 2 employees on the first day of the  
3 plan year”; and

4 (B) by striking paragraph (2) and insert-  
5 ing the following:

6 “(2) COST EXEMPTION.—

7 “(A) IN GENERAL.—With respect to a  
8 group health plan (or health insurance coverage  
9 offered in connection with such a plan), if the  
10 application of this section to such plan (or cov-  
11 erage) results in an increase for the plan year  
12 involved of the actual total costs of coverage  
13 with respect to medical and surgical benefits  
14 and mental health and substance use disorder  
15 benefits under the plan (as determined and cer-  
16 tified under subparagraph (C)) by an amount  
17 that exceeds the applicable percentage described  
18 in subparagraph (B) of the actual total plan  
19 costs, the provisions of this section shall not  
20 apply to such plan (or coverage) during the fol-  
21 lowing plan year, and such exemption shall  
22 apply to the plan (or coverage) for 1 plan year.  
23 An employer may elect to continue to apply  
24 mental health and substance use disorder parity  
25 pursuant to this section with respect to the

1 group health plan (or coverage) involved regard-  
2 less of any increase in total costs.

3 “(B) APPLICABLE PERCENTAGE.—With re-  
4 spect to a plan (or coverage), the applicable  
5 percentage described in this subparagraph shall  
6 be—

7 “(i) 2 percent in the case of the first  
8 plan year in which this section is applied;  
9 and

10 “(ii) 1 percent in the case of each  
11 subsequent plan year.

12 “(C) DETERMINATIONS BY ACTUARIES.—  
13 Determinations as to increases in actual costs  
14 under a plan (or coverage) for purposes of this  
15 section shall be made and certified by a quali-  
16 fied and licensed actuary who is a member in  
17 good standing of the American Academy of Ac-  
18 tuaries. All such determinations shall be in a  
19 written report prepared by the actuary. The re-  
20 port, and all underlying documentation relied  
21 upon by the actuary, shall be maintained by the  
22 group health plan or health insurance issuer for  
23 a period of 6 years following the notification  
24 made under subparagraph (E).

1           “(D) 6-MONTH DETERMINATIONS.—If a  
2 group health plan (or a health insurance issuer  
3 offering coverage in connection with a group  
4 health plan) seeks an exemption under this  
5 paragraph, determinations under subparagraph  
6 (A) shall be made after such plan (or coverage)  
7 has complied with this section for the first 6  
8 months of the plan year involved.

9           “(E) NOTIFICATION.—

10           “(i) IN GENERAL.—A group health  
11 plan (or a health insurance issuer offering  
12 coverage in connection with a group health  
13 plan) that, based upon a certification de-  
14 scribed under subparagraph (C), qualifies  
15 for an exemption under this paragraph,  
16 and elects to implement the exemption,  
17 shall promptly notify the Secretary, the ap-  
18 propriate State agencies, and participants  
19 and beneficiaries in the plan of such elec-  
20 tion.

21           “(ii) REQUIREMENT.—A notification  
22 to the Secretary under clause (i) shall in-  
23 clude—

24                   “(I) a description of the number  
25                   of covered lives under the plan (or

1 coverage) involved at the time of the  
2 notification, and as applicable, at the  
3 time of any prior election of the cost-  
4 exemption under this paragraph by  
5 such plan (or coverage);

6 “(II) for both the plan year upon  
7 which a cost exemption is sought and  
8 the year prior, a description of the ac-  
9 tual total costs of coverage with re-  
10 spect to medical and surgical benefits  
11 and mental health and substance use  
12 disorder benefits under the plan; and

13 “(III) for both the plan year  
14 upon which a cost exemption is sought  
15 and the year prior, the actual total  
16 costs of coverage with respect to men-  
17 tal health and substance use disorder  
18 benefits under the plan.

19 “(iii) CONFIDENTIALITY.—A notifica-  
20 tion to the Secretary under clause (i) shall  
21 be confidential. The Secretary shall make  
22 available, upon request and on not more  
23 than an annual basis, an anonymous  
24 itemization of such notifications, that in-  
25 cludes—

1                   “(I) a breakdown of States by  
2                   the size and type of employers submit-  
3                   ting such notification; and

4                   “(II) a summary of the data re-  
5                   ceived under clause (ii).

6                   “(F) AUDITS BY APPROPRIATE AGEN-  
7                   CIES.—To determine compliance with this para-  
8                   graph, the Secretary may audit the books and  
9                   records of a group health plan or health insur-  
10                  ance issuer relating to an exemption, including  
11                  any actuarial reports prepared pursuant to sub-  
12                  paragraph (C), during the 6-year period fol-  
13                  lowing the notification of such exemption under  
14                  subparagraph (E). A State agency receiving a  
15                  notification under subparagraph (E) may also  
16                  conduct such an audit with respect to an ex-  
17                  emption covered by such notification.”;

18                  (4) in subsection (e), by striking paragraph (4)  
19                  and inserting the following:

20                  “(4) MENTAL HEALTH BENEFITS.—The term  
21                  ‘mental health benefits’ means benefits with respect  
22                  to services for mental health conditions, as defined  
23                  under the terms of the plan and in accordance with  
24                  applicable Federal and State law.

1           “(5) SUBSTANCE USE DISORDER BENEFITS.—  
2           The term ‘substance use disorder benefits’ means  
3           benefits with respect to services for substance use  
4           disorders, as defined under the terms of the plan  
5           and in accordance with applicable Federal and State  
6           law.”;

7           (5) by striking subsection (f);

8           (6) by inserting after subsection (e) the fol-  
9           lowing:

10          “(f) SECRETARY REPORT.—The Secretary shall, by  
11          January 1, 2012, and every two years thereafter, submit  
12          to the appropriate committees of Congress a report on  
13          compliance of group health plans (and health insurance  
14          coverage offered in connection with such plans) with the  
15          requirements of this section. Such report shall include the  
16          results of any surveys or audits on compliance of group  
17          health plans (and health insurance coverage offered in  
18          connection with such plans) with such requirements and  
19          an analysis of the reasons for any failures to comply.

20          “(g) NOTICE AND ASSISTANCE.—The Secretary, in  
21          cooperation with the Secretaries of Health and Human  
22          Services and Treasury, as appropriate, shall publish and  
23          widely disseminate guidance and information for group  
24          health plans, participants and beneficiaries, applicable  
25          State and local regulatory bodies, and the National Asso-



1 ciation of Insurance Commissioners concerning the re-  
2 quirements of this section and shall provide assistance  
3 concerning such requirements and the continued operation  
4 of applicable State law. Such guidance and information  
5 shall inform participants and beneficiaries of how they  
6 may obtain assistance under this section, including, where  
7 appropriate, assistance from State consumer and insur-  
8 ance agencies.”;

9           (7) by striking “mental health benefits” and in-  
10       serting “mental health and substance use disorder  
11       benefits” each place it appears in subsections  
12       (a)(1)(B)(i), (a)(1)(C), (a)(2)(B)(i), and (a)(2)(C);  
13       and

14           (8) by striking “mental health benefits” and in-  
15       serting “mental health or substance use disorder  
16       benefits” each place it appears (other than in any  
17       provision amended by the previous paragraph).

18       (b) AMENDMENTS TO PUBLIC HEALTH SERVICE  
19 ACT.—Section 2705 of the Public Health Service Act (42  
20 U.S.C. 300gg–5) is amended—

21           (1) in subsection (a), by adding at the end the  
22       following:

23           “(3) FINANCIAL REQUIREMENTS AND TREAT-  
24       MENT LIMITATIONS.—

1           “(A) IN GENERAL.—In the case of a group  
2 health plan (or health insurance coverage of-  
3 fered in connection with such a plan) that pro-  
4 vides both medical and surgical benefits and  
5 mental health or substance use disorder bene-  
6 fits, such plan or coverage shall ensure that—

7           “(i) the financial requirements appli-  
8 cable to such mental health or substance  
9 use disorder benefits are no more restric-  
10 tive than the predominant financial re-  
11 quirements applied to substantially all  
12 medical and surgical benefits covered by  
13 the plan (or coverage), and there are no  
14 separate cost sharing requirements that  
15 are applicable only with respect to mental  
16 health or substance use disorder benefits;  
17 and

18           “(ii) the treatment limitations applica-  
19 ble to such mental health or substance use  
20 disorder benefits are no more restrictive  
21 than the predominant treatment limita-  
22 tions applied to substantially all medical  
23 and surgical benefits covered by the plan  
24 (or coverage) and there are no separate  
25 treatment limitations that are applicable

1 only with respect to mental health or sub-  
2 stance use disorder benefits.

3 “(B) DEFINITIONS.—In this paragraph:

4 “(i) FINANCIAL REQUIREMENT.—The  
5 term ‘financial requirement’ includes  
6 deductibles, copayments, coinsurance, and  
7 out-of-pocket expenses, but excludes an ag-  
8 gregate lifetime limit and an annual limit  
9 subject to paragraphs (1) and (2),

10 “(ii) PREDOMINANT.—A financial re-  
11 quirement or treatment limit is considered  
12 to be predominant if it is the most com-  
13 mon or frequent of such type of limit or  
14 requirement.

15 “(iii) TREATMENT LIMITATION.—The  
16 term ‘treatment limitation’ includes limits  
17 on the frequency of treatment, number of  
18 visits, days of coverage, or other similar  
19 limits on the scope or duration of treat-  
20 ment.

21 “(4) AVAILABILITY OF PLAN INFORMATION.—

22 The criteria for medical necessity determinations  
23 made under the plan with respect to mental health  
24 or substance use disorder benefits (or the health in-  
25 surance coverage offered in connection with the plan

1 with respect to such benefits) shall be made avail-  
2 able by the plan administrator (or the health insur-  
3 ance issuer offering such coverage) in accordance  
4 with regulations to any current or potential partici-  
5 pant, beneficiary, or contracting provider upon re-  
6 quest. The reason for any denial under the plan (or  
7 coverage) of reimbursement or payment for services  
8 with respect to mental health or substance use dis-  
9 order benefits in the case of any participant or bene-  
10 ficiary shall, on request or as otherwise required, be  
11 made available by the plan administrator (or the  
12 health insurance issuer offering such coverage) to  
13 the participant or beneficiary in accordance with  
14 regulations.

15 “(5) OUT-OF-NETWORK PROVIDERS.—In the  
16 case of a plan or coverage that provides both med-  
17 ical and surgical benefits and mental health or sub-  
18 stance use disorder benefits, if the plan or coverage  
19 provides coverage for medical or surgical benefits  
20 provided by out-of-network providers, the plan or  
21 coverage shall provide coverage for mental health or  
22 substance use disorder benefits provided by out-of-  
23 network providers in a manner that is consistent  
24 with the requirements of this section.”;

1           (2) in subsection (b), by amending paragraph  
2           (2) to read as follows:

3           “(2) in the case of a group health plan (or  
4           health insurance coverage offered in connection with  
5           such a plan) that provides mental health or sub-  
6           stance use disorder benefits, as affecting the terms  
7           and conditions of the plan or coverage relating to  
8           such benefits under the plan or coverage, except as  
9           provided in subsection (a).”;

10          (3) in subsection (c)—

11                 (A) in paragraph (1), by inserting before  
12                 the period the following: “(as defined in section  
13                 2791(e)(4), except that for purposes of this  
14                 paragraph such term shall include employers  
15                 with 1 employee in the case of an employer re-  
16                 siding in a State that permits small groups to  
17                 include a single individual)”;

18                 (B) by striking paragraph (2) and insert-  
19                 ing the following:

20                 “(2) COST EXEMPTION.—

21                         “(A) IN GENERAL.—With respect to a  
22                         group health plan (or health insurance coverage  
23                         offered in connection with such a plan), if the  
24                         application of this section to such plan (or cov-  
25                         erage) results in an increase for the plan year

1 involved of the actual total costs of coverage  
2 with respect to medical and surgical benefits  
3 and mental health and substance use disorder  
4 benefits under the plan (as determined and cer-  
5 tified under subparagraph (C)) by an amount  
6 that exceeds the applicable percentage described  
7 in subparagraph (B) of the actual total plan  
8 costs, the provisions of this section shall not  
9 apply to such plan (or coverage) during the fol-  
10 lowing plan year, and such exemption shall  
11 apply to the plan (or coverage) for 1 plan year.  
12 An employer may elect to continue to apply  
13 mental health and substance use disorder parity  
14 pursuant to this section with respect to the  
15 group health plan (or coverage) involved regard-  
16 less of any increase in total costs.

17 “(B) APPLICABLE PERCENTAGE.—With re-  
18 spect to a plan (or coverage), the applicable  
19 percentage described in this subparagraph shall  
20 be—

21 “(i) 2 percent in the case of the first  
22 plan year in which this section is applied;  
23 and

24 “(ii) 1 percent in the case of each  
25 subsequent plan year.

1           “(C) DETERMINATIONS BY ACTUARIES.—  
2           Determinations as to increases in actual costs  
3           under a plan (or coverage) for purposes of this  
4           section shall be made and certified by a quali-  
5           fied and licensed actuary who is a member in  
6           good standing of the American Academy of Ac-  
7           tuaries. All such determinations shall be in a  
8           written report prepared by the actuary. The re-  
9           port, and all underlying documentation relied  
10          upon by the actuary, shall be maintained by the  
11          group health plan or health insurance issuer for  
12          a period of 6 years following the notification  
13          made under subparagraph (E).

14          “(D) 6-MONTH DETERMINATIONS.—If a  
15          group health plan (or a health insurance issuer  
16          offering coverage in connection with a group  
17          health plan) seeks an exemption under this  
18          paragraph, determinations under subparagraph  
19          (A) shall be made after such plan (or coverage)  
20          has complied with this section for the first 6  
21          months of the plan year involved.

22          “(E) NOTIFICATION.—

23                  “(i) IN GENERAL.—A group health  
24                  plan (or a health insurance issuer offering  
25                  coverage in connection with a group health

1 plan) that, based upon a certification de-  
2 scribed under subparagraph (C), qualifies  
3 for an exemption under this paragraph,  
4 and elects to implement the exemption,  
5 shall promptly notify the Secretary, the ap-  
6 propriate State agencies, and participants  
7 and beneficiaries in the plan of such elec-  
8 tion.

9 “(ii) REQUIREMENT.—A notification  
10 to the Secretary under clause (i) shall in-  
11 clude—

12 “(I) a description of the number  
13 of covered lives under the plan (or  
14 coverage) involved at the time of the  
15 notification, and as applicable, at the  
16 time of any prior election of the cost-  
17 exemption under this paragraph by  
18 such plan (or coverage);

19 “(II) for both the plan year upon  
20 which a cost exemption is sought and  
21 the year prior, a description of the ac-  
22 tual total costs of coverage with re-  
23 spect to medical and surgical benefits  
24 and mental health and substance use  
25 disorder benefits under the plan; and



1                   “(III) for both the plan year  
2                   upon which a cost exemption is sought  
3                   and the year prior, the actual total  
4                   costs of coverage with respect to men-  
5                   tal health and substance use disorder  
6                   benefits under the plan.

7                   “(iii) CONFIDENTIALITY.—A notifica-  
8                   tion to the Secretary under clause (i) shall  
9                   be confidential. The Secretary shall make  
10                  available, upon request and on not more  
11                  than an annual basis, an anonymous  
12                  itemization of such notifications, that in-  
13                  cludes—

14                   “(I) a breakdown of States by  
15                   the size and type of employers submit-  
16                   ting such notification; and

17                   “(II) a summary of the data re-  
18                   ceived under clause (ii).

19                   “(F) AUDITS BY APPROPRIATE AGEN-  
20                   CIES.—To determine compliance with this para-  
21                   graph, the Secretary may audit the books and  
22                   records of a group health plan or health insur-  
23                   ance issuer relating to an exemption, including  
24                   any actuarial reports prepared pursuant to sub-  
25                   paragraph (C), during the 6-year period fol-

1           lowing the notification of such exemption under  
2           subparagraph (E). A State agency receiving a  
3           notification under subparagraph (E) may also  
4           conduct such an audit with respect to an ex-  
5           emption covered by such notification.”;

6           (4) in subsection (e), by striking paragraph (4)  
7           and inserting the following:

8           “(4) MENTAL HEALTH BENEFITS.—The term  
9           ‘mental health benefits’ means benefits with respect  
10          to services for mental health conditions, as defined  
11          under the terms of the plan and in accordance with  
12          applicable Federal and State law.

13          “(5) SUBSTANCE USE DISORDER BENEFITS.—  
14          The term ‘substance use disorder benefits’ means  
15          benefits with respect to services for substance use  
16          disorders, as defined under the terms of the plan  
17          and in accordance with applicable Federal and State  
18          law.”;

19          (5) by striking subsection (f);

20          (6) by striking “mental health benefits” and in-  
21          serting “mental health and substance use disorder  
22          benefits” each place it appears in subsections  
23          (a)(1)(B)(i), (a)(1)(C), (a)(2)(B)(i), and (a)(2)(C);  
24          and

1           (7) by striking “mental health benefits” and in-  
2           serting “mental health or substance use disorder  
3           benefits” each place it appears (other than in any  
4           provision amended by the previous paragraph).

5           (c) AMENDMENTS TO INTERNAL REVENUE CODE.—  
6           Section 9812 of the Internal Revenue Code of 1986 is  
7           amended—

8           (1) in subsection (a), by adding at the end the  
9           following:

10           “(3) FINANCIAL REQUIREMENTS AND TREAT-  
11           MENT LIMITATIONS.—

12           “(A) IN GENERAL.—In the case of a group  
13           health plan that provides both medical and sur-  
14           gical benefits and mental health or substance  
15           use disorder benefits, such plan shall ensure  
16           that—

17           “(i) the financial requirements appli-  
18           cable to such mental health or substance  
19           use disorder benefits are no more restric-  
20           tive than the predominant financial re-  
21           quirements applied to substantially all  
22           medical and surgical benefits covered by  
23           the plan, and there are no separate cost  
24           sharing requirements that are applicable

1 only with respect to mental health or sub-  
2 stance use disorder benefits; and

3 “(ii) the treatment limitations applica-  
4 ble to such mental health or substance use  
5 disorder benefits are no more restrictive  
6 than the predominant treatment limita-  
7 tions applied to substantially all medical  
8 and surgical benefits covered by the plan  
9 and there are no separate treatment limi-  
10 tations that are applicable only with re-  
11 spect to mental health or substance use  
12 disorder benefits.

13 “(B) DEFINITIONS.—In this paragraph:

14 “(i) FINANCIAL REQUIREMENT.—The  
15 term ‘financial requirement’ includes  
16 deductibles, copayments, coinsurance, and  
17 out-of-pocket expenses, but excludes an ag-  
18 gregate lifetime limit and an annual limit  
19 subject to paragraphs (1) and (2),

20 “(ii) PREDOMINANT.—A financial re-  
21 quirement or treatment limit is considered  
22 to be predominant if it is the most com-  
23 mon or frequent of such type of limit or  
24 requirement.

1                   “(iii) TREATMENT LIMITATION.—The  
2                   term ‘treatment limitation’ includes limits  
3                   on the frequency of treatment, number of  
4                   visits, days of coverage, or other similar  
5                   limits on the scope or duration of treat-  
6                   ment.

7                   “(4) AVAILABILITY OF PLAN INFORMATION.—  
8                   The criteria for medical necessity determinations  
9                   made under the plan with respect to mental health  
10                  or substance use disorder benefits shall be made  
11                  available by the plan administrator in accordance  
12                  with regulations to any current or potential partici-  
13                  pant, beneficiary, or contracting provider upon re-  
14                  quest. The reason for any denial under the plan of  
15                  reimbursement or payment for services with respect  
16                  to mental health or substance use disorder benefits  
17                  in the case of any participant or beneficiary shall, on  
18                  request or as otherwise required, be made available  
19                  by the plan administrator to the participant or bene-  
20                  ficiary in accordance with regulations.

21                  “(5) OUT-OF-NETWORK PROVIDERS.—In the  
22                  case of a plan that provides both medical and sur-  
23                  gical benefits and mental health or substance use  
24                  disorder benefits, if the plan provides coverage for  
25                  medical or surgical benefits provided by out-of-net-

1 work providers, the plan shall provide coverage for  
2 mental health or substance use disorder benefits pro-  
3 vided by out-of-network providers in a manner that  
4 is consistent with the requirements of this section.”;

5 (2) in subsection (b), by amending paragraph  
6 (2) to read as follows:

7 “(2) in the case of a group health plan that  
8 provides mental health or substance use disorder  
9 benefits, as affecting the terms and conditions of the  
10 plan relating to such benefits under the plan, except  
11 as provided in subsection (a).”;

12 (3) in subsection (c)—

13 (A) by amending paragraph (1) to read as  
14 follows:

15 “(1) SMALL EMPLOYER EXEMPTION.—

16 “(A) IN GENERAL.—This section shall not  
17 apply to any group health plan for any plan  
18 year of a small employer.

19 “(B) SMALL EMPLOYER.—For purposes of  
20 subparagraph (A), the term ‘small employer’  
21 means, with respect to a calendar year and a  
22 plan year, an employer who employed an aver-  
23 age of at least 2 (or 1 in the case of an em-  
24 ployer residing in a State that permits small  
25 groups to include a single individual) but not

1 more than 50 employees on business days dur-  
2 ing the preceding calendar year. For purposes  
3 of the preceding sentence, all persons treated as  
4 a single employer under subsection (b), (c),  
5 (m), or (o) of section 414 shall be treated as 1  
6 employer and rules similar to rules of subpara-  
7 graphs (B) and (C) of section 4980D(d)(2)  
8 shall apply.”; and

9 (B) by striking paragraph (2) and insert-  
10 ing the following:

11 “(2) COST EXEMPTION.—

12 “(A) IN GENERAL.—With respect to a  
13 group health plan, if the application of this sec-  
14 tion to such plan results in an increase for the  
15 plan year involved of the actual total costs of  
16 coverage with respect to medical and surgical  
17 benefits and mental health and substance use  
18 disorder benefits under the plan (as determined  
19 and certified under subparagraph (C)) by an  
20 amount that exceeds the applicable percentage  
21 described in subparagraph (B) of the actual  
22 total plan costs, the provisions of this section  
23 shall not apply to such plan during the fol-  
24 lowing plan year, and such exemption shall  
25 apply to the plan for 1 plan year. An employer

1 may elect to continue to apply mental health  
2 and substance use disorder parity pursuant to  
3 this section with respect to the group health  
4 plan involved regardless of any increase in total  
5 costs.

6 “(B) APPLICABLE PERCENTAGE.—With re-  
7 spect to a plan, the applicable percentage de-  
8 scribed in this subparagraph shall be—

9 “(i) 2 percent in the case of the first  
10 plan year in which this section is applied;  
11 and

12 “(ii) 1 percent in the case of each  
13 subsequent plan year.

14 “(C) DETERMINATIONS BY ACTUARIES.—  
15 Determinations as to increases in actual costs  
16 under a plan for purposes of this section shall  
17 be made and certified by a qualified and li-  
18 censed actuary who is a member in good stand-  
19 ing of the American Academy of Actuaries. All  
20 such determinations shall be in a written report  
21 prepared by the actuary. The report, and all  
22 underlying documentation relied upon by the  
23 actuary, shall be maintained by the group  
24 health plan for a period of 6 years following the  
25 notification made under subparagraph (E).



1           “(D) 6-MONTH DETERMINATIONS.—If a  
2 group health plan seeks an exemption under  
3 this paragraph, determinations under subpara-  
4 graph (A) shall be made after such plan has  
5 complied with this section for the first 6  
6 months of the plan year involved.

7           “(E) NOTIFICATION.—

8           “(i) IN GENERAL.—A group health  
9 plan that, based upon a certification de-  
10 scribed under subparagraph (C), qualifies  
11 for an exemption under this paragraph,  
12 and elects to implement the exemption,  
13 shall promptly notify the Secretary, the ap-  
14 propriate State agencies, and participants  
15 and beneficiaries in the plan of such elec-  
16 tion.

17           “(ii) REQUIREMENT.—A notification  
18 to the Secretary under clause (i) shall in-  
19 clude—

20           “(I) a description of the number  
21 of covered lives under the plan in-  
22 volved at the time of the notification,  
23 and as applicable, at the time of any  
24 prior election of the cost-exemption  
25 under this paragraph by such plan;

1           “(II) for both the plan year upon  
2           which a cost exemption is sought and  
3           the year prior, a description of the ac-  
4           tual total costs of coverage with re-  
5           spect to medical and surgical benefits  
6           and mental health and substance use  
7           disorder benefits under the plan; and

8           “(III) for both the plan year  
9           upon which a cost exemption is sought  
10          and the year prior, the actual total  
11          costs of coverage with respect to men-  
12          tal health and substance use disorder  
13          benefits under the plan.

14          “(iii) CONFIDENTIALITY.—A notifica-  
15          tion to the Secretary under clause (i) shall  
16          be confidential. The Secretary shall make  
17          available, upon request and on not more  
18          than an annual basis, an anonymous  
19          itemization of such notifications, that in-  
20          cludes—

21                 “(I) a breakdown of States by  
22                 the size and type of employers submit-  
23                 ting such notification; and

24                 “(II) a summary of the data re-  
25                 ceived under clause (ii).

1           “(F) AUDITS BY APPROPRIATE AGEN-  
2           CIES.—To determine compliance with this para-  
3           graph, the Secretary may audit the books and  
4           records of a group health plan relating to an  
5           exemption, including any actuarial reports pre-  
6           pared pursuant to subparagraph (C), during  
7           the 6-year period following the notification of  
8           such exemption under subparagraph (E). A  
9           State agency receiving a notification under sub-  
10          paragraph (E) may also conduct such an audit  
11          with respect to an exemption covered by such  
12          notification.”;

13          (4) in subsection (e), by striking paragraph (4)  
14          and inserting the following:

15          “(4) MENTAL HEALTH BENEFITS.—The term  
16          ‘mental health benefits’ means benefits with respect  
17          to services for mental health conditions, as defined  
18          under the terms of the plan and in accordance with  
19          applicable Federal and State law.

20          “(5) SUBSTANCE USE DISORDER BENEFITS.—  
21          The term ‘substance use disorder benefits’ means  
22          benefits with respect to services for substance use  
23          disorders, as defined under the terms of the plan  
24          and in accordance with applicable Federal and State  
25          law.”;

1 (5) by striking subsection (f);

2 (6) by striking “mental health benefits” and in-  
3 serting “mental health and substance use disorder  
4 benefits” each place it appears in subsections  
5 (a)(1)(B)(i), (a)(1)(C), (a)(2)(B)(i), and (a)(2)(C);  
6 and

7 (7) by striking “mental health benefits” and in-  
8 serting “mental health or substance use disorder  
9 benefits” each place it appears (other than in any  
10 provision amended by the previous paragraph).

11 (d) REGULATIONS.—Not later than 1 year after the  
12 date of enactment of this Act, the Secretaries of Labor,  
13 Health and Human Services, and the Treasury shall issue  
14 regulations to carry out the amendments made by sub-  
15 sections (a), (b), and (c), respectively.

16 (e) EFFECTIVE DATE.—

17 (1) IN GENERAL.—The amendments made by  
18 this section shall apply with respect to group health  
19 plans for plan years beginning after the date that is  
20 1 year after the date of enactment of this Act, re-  
21 gardless of whether regulations have been issued to  
22 carry out such amendments by such effective date,  
23 except that the amendments made by subsections  
24 (a)(5), (b)(5), and (c)(5), relating to striking of cer-

1       tain sunset provisions, shall take effect on January  
2       1, 2009.

3               (2) SPECIAL RULE FOR COLLECTIVE BAR-  
4       GAINING AGREEMENTS.—In the case of a group  
5       health plan maintained pursuant to one or more col-  
6       lective bargaining agreements between employee rep-  
7       resentatives and one or more employers ratified be-  
8       fore the date of the enactment of this Act, the  
9       amendments made by this section shall not apply to  
10      plan years beginning before the later of—

11               (A) the date on which the last of the col-  
12      lective bargaining agreements relating to the  
13      plan terminates (determined without regard to  
14      any extension thereof agreed to after the date  
15      of the enactment of this Act), or

16               (B) January 1, 2009.

17      For purposes of subparagraph (A), any plan amend-  
18      ment made pursuant to a collective bargaining  
19      agreement relating to the plan which amends the  
20      plan solely to conform to any requirement added by  
21      this section shall not be treated as a termination of  
22      such collective bargaining agreement.

23      (f) ASSURING COORDINATION.—The Secretary of  
24      Health and Human Services, the Secretary of Labor, and  
25      the Secretary of the Treasury may ensure, through the

1 execution or revision of an interagency memorandum of  
2 understanding among such Secretaries, that—

3 (1) regulations, rulings, and interpretations  
4 issued by such Secretaries relating to the same mat-  
5 ter over which two or more such Secretaries have re-  
6 sponsibility under this section (and the amendments  
7 made by this section) are administered so as to have  
8 the same effect at all times; and

9 (2) coordination of policies relating to enforcing  
10 the same requirements through such Secretaries in  
11 order to have a coordinated enforcement strategy  
12 that avoids duplication of enforcement efforts and  
13 assigns priorities in enforcement.

14 (g) CONFORMING CLERICAL AMENDMENTS.—

15 (1) ERISA HEADING.—

16 (A) IN GENERAL.—The heading of section  
17 712 of the Employee Retirement Income Secu-  
18 rity Act of 1974 is amended to read as follows:

19 **“SEC. 712. PARITY IN MENTAL HEALTH AND SUBSTANCE**  
20 **USE DISORDER BENEFITS.”.**

21 (B) CLERICAL AMENDMENT.—The table of  
22 contents in section 1 of such Act is amended by  
23 striking the item relating to section 712 and in-  
24 serting the following new item:

“Sec. 712. Parity in mental health and substance use disorder benefits.”.

1           (2) PHSA HEADING.—The heading of section  
2           2705 of the Public Health Service Act is amended  
3           to read as follows:

4           **“SEC. 2705. PARITY IN MENTAL HEALTH AND SUBSTANCE**  
5           **USE DISORDER BENEFITS.”.**

6           (3) IRC HEADING.—

7           (A) IN GENERAL.—The heading of section  
8           9812 of the Internal Revenue Code of 1986 is  
9           amended to read as follows:

10          **“SEC. 9812. PARITY IN MENTAL HEALTH AND SUBSTANCE**  
11          **USE DISORDER BENEFITS.”.**

12          (B) CLERICAL AMENDMENT.—The table of  
13          sections for subchapter B of chapter 100 of  
14          such Code is amended by striking the item re-  
15          lating to section 9812 and inserting the fol-  
16          lowing new item:

          “Sec. 9812. Parity in mental health and substance use disorder benefits.”.

17          (h) GAO STUDY ON COVERAGE AND EXCLUSION OF  
18          MENTAL HEALTH AND SUBSTANCE USE DISORDER DIAG-  
19          NOSES.—

20          (1) IN GENERAL.—The Comptroller General of  
21          the United States shall conduct a study that ana-  
22          lyzes the specific rates, patterns, and trends in cov-  
23          erage and exclusion of specific mental health and  
24          substance use disorder diagnoses by health plans

1 and health insurance. The study shall include an  
2 analysis of—

3 (A) specific coverage rates for all mental  
4 health conditions and substance use disorders;

5 (B) which diagnoses are most commonly  
6 covered or excluded;

7 (C) whether implementation of this Act  
8 has affected trends in coverage or exclusion of  
9 such diagnoses; and

10 (D) the impact of covering or excluding  
11 specific diagnoses on participants' and enroll-  
12 ees' health, their health care coverage, and the  
13 costs of delivering health care.

14 (2) REPORTS.—Not later than 3 years after the  
15 date of the enactment of this Act, and 2 years after  
16 the date of submission the first report under this  
17 paragraph, the Comptroller General shall submit to  
18 Congress a report on the results of the study con-  
19 ducted under paragraph (1).

## 20 **TITLE V—REVENUE PROVISIONS**

### 21 **SEC. 501. 0.2 PERCENT FUTA SURTAX.**

22 (a) IN GENERAL.—Section 3301 (relating to rate of  
23 tax) is amended—

24 (1) by striking “through 2008” in paragraph

25 (1) and inserting “through 2009”, and



1           (2) by striking “calendar year 2009” in para-  
2           graph (2) and inserting “calendar year 2010”.

3           (b) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to wages paid after December 31,  
5 2008.

6 **SEC. 502. NONQUALIFIED DEFERRED COMPENSATION**  
7 **FROM CERTAIN TAX INDIFFERENT PARTIES.**

8           (a) IN GENERAL.—Subpart B of part II of sub-  
9 chapter E of chapter 1 is amended by inserting after sec-  
10 tion 457 the following new section:

11 **“SEC. 457A. NONQUALIFIED DEFERRED COMPENSATION**  
12 **FROM CERTAIN TAX INDIFFERENT PARTIES.**

13           “(a) IN GENERAL.—Any compensation of a service  
14 provider which is deferred under a nonqualified deferred  
15 compensation plan of a nonqualified entity shall be includ-  
16 ible in gross income when there is no substantial risk of  
17 forfeiture of the rights to such compensation.

18           “(b) NONQUALIFIED ENTITY.—For purposes of this  
19 section, the term ‘nonqualified entity’ means—

20                   “(1) any foreign corporation unless substan-  
21 tially all of its income is—

22                           “(A) effectively connected with the conduct  
23 of a trade or business in the United States, or

24                           “(B) subject to a comprehensive foreign in-  
25 come tax, and

1           “(2) any partnership unless substantially all of  
2 its income is, directly or indirectly, allocated to—

3                   “(A) United States persons (other than  
4 persons exempt from tax under this title),

5                   “(B) foreign persons with respect to whom  
6 such income is subject to a comprehensive for-  
7 eign income tax,

8                   “(C) foreign persons with respect to  
9 whom—

10                           “(i) such income is effectively con-  
11 nected with the conduct of a trade or busi-  
12 ness within the United States, and

13                           “(ii) a withholding tax is paid under  
14 section 1446 with respect to such income,  
15 or

16                   “(D) organizations which are exempt from  
17 tax under this title if such income is unrelated  
18 business taxable income (as defined in section  
19 512) with respect to such organization.

20           “(c) DETERMINABILITY OF AMOUNTS OF COMPENSA-  
21 TION.—

22                   “(1) IN GENERAL.—If the amount of any com-  
23 pensation is not determinable at the time that such  
24 compensation is otherwise includible in gross income  
25 under subsection (a)—

1           “(A) such amount shall be so includible in  
2 gross income when determinable, and

3           “(B) the tax imposed under this chapter  
4 for the taxable year in which such compensation  
5 is includible in gross income shall be increased  
6 by the sum of—

7                   “(i) the amount of interest determined  
8 under paragraph (2), and

9                   “(ii) an amount equal to 20 percent of  
10 the amount of such compensation.

11           “(2) INTEREST.—For purposes of paragraph  
12 (1)(B)(i), the interest determined under this para-  
13 graph for any taxable year is the amount of interest  
14 at the underpayment rate under section 6621 plus  
15 1 percentage point on the underpayments that would  
16 have occurred had the deferred compensation been  
17 includible in gross income for the taxable year in  
18 which first deferred or, if later, the first taxable year  
19 in which such deferred compensation is not subject  
20 to a substantial risk of forfeiture.

21           “(d) OTHER DEFINITIONS AND SPECIAL RULES.—

22 For purposes of this section—

23                   “(1) SUBSTANTIAL RISK OF FORFEITURE.—

24                           “(A) IN GENERAL.—The rights of a person  
25 to compensation shall be treated as subject to

1 a substantial risk of forfeiture only if such per-  
2 son's rights to such compensation are condi-  
3 tioned upon the future performance of substan-  
4 tial services by any individual.

5 “(B) EXCEPTION FOR COMPENSATION  
6 BASED ON GAIN RECOGNIZED ON AN INVEST-  
7 MENT ASSET.—

8 “(i) IN GENERAL.—To the extent pro-  
9 vided in regulations prescribed by the Sec-  
10 retary, if compensation of a service pro-  
11 vider is determined solely by reference to  
12 the amount of gain recognized on the dis-  
13 position of an investment asset, such com-  
14 pensation shall be treated as subject to a  
15 substantial risk of forfeiture until the date  
16 of such disposition.

17 “(ii) INVESTMENT ASSET.—For pur-  
18 poses of clause (i), the term ‘investment  
19 asset’ means any single asset (other than  
20 an investment fund or similar entity)—

21 “(I) acquired directly by an in-  
22 vestment fund or similar entity,

23 “(II) with respect to which such  
24 entity does not (nor does any person  
25 related to such entity) participate in

1 the active management of such asset  
2 (or if such asset is an interest in an  
3 entity, in the active management of  
4 the activities of such entity), and

5 “(III) substantially all of any  
6 gain on the disposition of which (other  
7 than such deferred compensation) is  
8 allocated to investors in such entity.

9 “(iii) COORDINATION WITH SPECIAL  
10 RULE.—Paragraph (3)(B) shall not apply  
11 to any compensation to which clause (i)  
12 applies.

13 “(2) COMPREHENSIVE FOREIGN INCOME TAX.—  
14 The term ‘comprehensive foreign income tax’ means,  
15 with respect to any foreign person, the income tax  
16 of a foreign country if—

17 “(A) such person is eligible for the benefits  
18 of a comprehensive income tax treaty between  
19 such foreign country and the United States, or

20 “(B) such person demonstrates to the sat-  
21 isfaction of the Secretary that such foreign  
22 country has a comprehensive income tax.

23 “(3) NONQUALIFIED DEFERRED COMPENSA-  
24 TION PLAN.—

1           “(A) IN GENERAL.—The term ‘non-  
2           qualified deferred compensation plan’ has the  
3           meaning given such term under section  
4           409A(d), except that such term shall include  
5           any plan that provides a right to compensation  
6           based on the appreciation in value of a specified  
7           number of equity units of the service recipient.

8           “(B) EXCEPTION.—Compensation shall  
9           not be treated as deferred for purposes of this  
10          section if the service provider receives payment  
11          of such compensation not later than 12 months  
12          after the end of the taxable year of the service  
13          recipient during which the right to the payment  
14          of such compensation is no longer subject to a  
15          substantial risk of forfeiture.

16          “(4) SERVICE PROVIDER.—The term ‘service  
17          provider’ has the meaning given such term in the  
18          regulations under section 409A, determined without  
19          regard to method of accounting.

20          “(5) EXCEPTION FOR CERTAIN COMPENSATION  
21          WITH RESPECT TO EFFECTIVELY CONNECTED IN-  
22          COME.—In the case of a foreign corporation with in-  
23          come which is taxable under section 882, this section  
24          shall not apply to compensation payable by such for-  
25          eign corporation which, had such compensation been

1       paid in cash on the date that such compensation  
2       ceased to be subject to a substantial risk of for-  
3       feiture, would have been deductible by such foreign  
4       corporation against such income.

5               “(6) EXCEPTION WITH RESPECT TO EMPLOY-  
6       EES OF CERTAIN SUBSIDIARIES.—This section shall  
7       not apply to compensation deferred under a non-  
8       qualified deferred compensation plan of a non-  
9       qualified entity if—

10               “(A) such compensation is payable to an  
11       employee of a domestic subsidiary of such enti-  
12       ty, and

13               “(B) such compensation is reasonably ex-  
14       pected to be deductible by such subsidiary  
15       under section 404(a)(5) when such compensa-  
16       tion is includible in income by such employee.

17               “(7) APPLICATION OF RULES.—Rules similar to  
18       the rules of paragraphs (5) and (6) of section  
19       409A(d) shall apply.

20               “(e) REGULATIONS.—The Secretary shall prescribe  
21       such regulations as may be necessary or appropriate to  
22       carry out the purposes of this section, including regula-  
23       tions—

1           “(1) disregarding a substantial risk of for-  
2           feiture in cases where necessary to carry out the  
3           purposes of this section, and

4           “(2) providing appropriate treatment where an  
5           individual who was employed by an employer which  
6           is not a nonqualified entity is temporarily employed  
7           by a nonqualified entity which is related to such em-  
8           ployer.”.

9           (b) CONFORMING AMENDMENT.—Section 26(b)(2) is  
10           amended by striking “and” at the end of subparagraph  
11           (V), by striking the period at the end of subparagraph  
12           (W) and inserting “, and”, and by adding at the end the  
13           following new subparagraph:

14                           “(X) section 457A(c)(1)(B) (relating to de-  
15                           terminability of amounts of compensation).”.

16           (c) CLERICAL AMENDMENT.—The table of sections  
17           of subpart B of part II of subchapter E of chapter 1 is  
18           amended by inserting after the item relating to section  
19           457 the following new item:

                          “Sec. 457A. Nonqualified deferred compensation from certain tax indifferent  
                          parties.”.

20           (d) EFFECTIVE DATE.—

21                   (1) IN GENERAL.—Except as otherwise pro-  
22                   vided in this subsection, the amendments made by  
23                   this section shall apply to amounts deferred which



1 are attributable to services performed after Decem-  
2 ber 31, 2008.

3 (2) APPLICATION TO EXISTING DEFERRALS.—

4 In the case of any amount deferred to which the  
5 amendments made by this section do not apply solely  
6 by reason of the fact that the amount is attributable  
7 to services performed before January 1, 2009, to the  
8 extent such amount is not includible in gross income  
9 in a taxable year beginning before 2018, such  
10 amounts shall be includible in gross income in the  
11 later of—

12 (A) the last taxable year beginning before  
13 2018, or

14 (B) the taxable year in which there is no  
15 substantial risk of forfeiture of the rights to  
16 such compensation (determined in the same  
17 manner as determined for purposes of section  
18 457A of the Internal Revenue Code of 1986, as  
19 added by this section).

20 (3) ACCELERATED PAYMENTS.—No later than  
21 120 days after the date of the enactment of this Act,  
22 the Secretary shall issue guidance providing a lim-  
23 ited period of time during which a nonqualified de-  
24 ferred compensation arrangement attributable to  
25 services performed on or before December 31, 2008,

1 may, without violating the requirements of section  
2 409A(a) of the Internal Revenue Code of 1986, be  
3 amended to conform the date of distribution to the  
4 date the amounts are required to be included in in-  
5 come.

6 (4) CERTAIN BACK-TO-BACK ARRANGEMENTS.—  
7 If the taxpayer is also a service recipient and main-  
8 tains one or more nonqualified deferred compensa-  
9 tion arrangements for its service providers under  
10 which any amount is attributable to services per-  
11 formed on or before December 31, 2008, the guid-  
12 ance issued under paragraph (4) shall permit such  
13 arrangements to be amended to conform the dates of  
14 distribution under such arrangement to the date  
15 amounts are required to be included in the income  
16 of such taxpayer under this subsection.

17 (5) ACCELERATED PAYMENT NOT TREATED AS  
18 MATERIAL MODIFICATION.—Any amendment to a  
19 nonqualified deferred compensation arrangement  
20 made pursuant to paragraph (4) or (5) shall not be  
21 treated as a material modification of the arrange-  
22 ment for purposes of section 409A of the Internal  
23 Revenue Code of 1986.

24 (6) CERTAIN PREEXISTING ARRANGEMENTS.—  
25 If, pursuant to a written binding contract entered

1 into on or before December 31, 2007, any portion of  
2 compensation payable under such contract for a pe-  
3 riod is determined as a portion of the amount of  
4 gain recognized on the disposition during such pe-  
5 riod of a specified asset, the amendments made by  
6 this section shall not apply to the portion of com-  
7 pensation attributable to such disposition notwith-  
8 standing the fact that such portion of compensation  
9 may be reduced by realized losses or depreciation in  
10 the value of other assets during such period or a  
11 prior period or be attributable in part to services  
12 performed after December 31, 2008, but only if—

13 (A) payment of such portion of compensa-  
14 tion is received by the service provider and in-  
15 cluded in its gross income no later than the ear-  
16 lier of—

17 (i) 12 months after the end of the  
18 taxable year of the service recipient during  
19 which the disposition of the specified asset  
20 occurs, or

21 (ii) the last taxable year of the service  
22 provider beginning before January 1,  
23 2018; and

1 (B) the specified asset is held by the serv-  
2 ice recipient on the date of the enactment of  
3 this section.

4 **SEC. 503. INCREASE AND EXTENSION OF OIL SPILL LIABIL-**  
5 **ITY TRUST FUND TAX.**

6 (a) INCREASE IN RATE.—

7 (1) INCREASE IN RATE.—Section 4611(c) is  
8 amended by adding at the end the following new  
9 paragraph:

10 “(3) INCREASE IN OIL SPILL LIABILITY TRUST  
11 FUND FINANCING RATE.—For purposes of this sub-  
12 section, the Oil Spill Liability Trust Fund financing  
13 rate is increased (in addition to any other increase  
14 under this subsection) by—

15 “(A) in the case of crude oil received or pe-  
16 troleum products entered before October 1,  
17 2014, 4 cents a barrel, and

18 “(B) in the case of crude oil received or  
19 petroleum products entered after September 30,  
20 2014, 5 cents a barrel.”.

21 (2) EFFECTIVE DATE.—The amendment made  
22 by this subsection shall apply on and after the first  
23 day of the first calendar quarter beginning more  
24 than 60 days after the date of the enactment of this  
25 Act.

1 (b) EXTENSION.—

2 (1) IN GENERAL.—Section 4611(f) (relating to  
3 application of Oil Spill Liability Trust Fund financ-  
4 ing rate) is amended by striking paragraphs (2) and  
5 (3) and inserting the following new paragraph:

6 “(2) TERMINATION.—The Oil Spill Liability  
7 Trust Fund financing rate shall not apply after De-  
8 cember 31, 2017.”.

9 (2) CONFORMING AMENDMENT.—Section  
10 4611(f)(1) is amended by striking “paragraphs (2)  
11 and (3)” and inserting “paragraph (2)”.

12 (3) EFFECTIVE DATE.—The amendments made  
13 by this subsection shall take effect on the date of the  
14 enactment of this Act.

15 **SEC. 504. DELAY IN APPLICATION OF WORLDWIDE ALLOCA-**  
16 **TION OF INTEREST.**

17 (a) IN GENERAL.—Paragraphs (5)(D) and (6) of sec-  
18 tion 864(f) are each amended by striking “December 31,  
19 2010” and inserting “December 31, 2018”.

20 (b) TRANSITION.—Subsection (f) of section 864 is  
21 amended by striking paragraph (7).

22 **SEC. 505. TIME FOR PAYMENT OF CORPORATE ESTIMATED**  
23 **TAXES.**

24 The percentage under subparagraph (C) of section  
25 401(1) of the Tax Increase Prevention and Reconciliation

- 1 Act of 2005 in effect on the date of the enactment of this
- 2 Act is increased by 49 percentage points.

○