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Calendar No. **19**

AMENDMENT NO. **98**

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—111th Cong., 1st Sess.

H.R. 1

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

January 30, 2009

Ordered to lie on the table and to be printed

Intended to be proposed by Mr. INOUYE (for himself and Mr. BAUCUS)

Viz:

1 Strike out all after the enacting clause and insert the
2 following:

3 **SECTION 1. SHORT TITLE.**

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

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

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

DIVISION A—APPROPRIATIONS PROVISIONS

TITLE I—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES
TITLE II—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES

TITLE III—DEPARTMENT OF DEFENSE
TITLE IV—ENERGY AND WATER DEVELOPMENT
TITLE V—FINANCIAL SERVICES AND GENERAL GOVERNMENT
TITLE VI—DEPARTMENT OF HOMELAND SECURITY
TITLE VII—INTERIOR, ENVIRONMENT, AND RELATED AGENCIES
TITLE VIII—DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES
TITLE IX—LEGISLATIVE BRANCH
TITLE X—MILITARY CONSTRUCTION AND VETERANS AFFAIRS AND RELATED AGENCIES
TITLE XI—STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS
TITLE XII—TRANSPORTATION, HOUSING AND URBAN DEVELOPMENT, AND RELATED AGENCIES
TITLE XIII—HEALTH INFORMATION TECHNOLOGY
TITLE XIV—STATE FISCAL STABILIZATION
TITLE XV—RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD AND RECOVERY INDEPENDENT ADVISORY PANEL
TITLE XVI—GENERAL PROVISIONS—THIS ACT

DIVISION B—TAX, UNEMPLOYMENT, HEALTH, STATE FISCAL RELIEF, AND OTHER PROVISIONS

TITLE I—TAX PROVISIONS
TITLE II—ASSISTANCE FOR UNEMPLOYED WORKERS AND STRUGGLING FAMILIES
TITLE III—HEALTH INSURANCE ASSISTANCE
TITLE IV—HEALTH INFORMATION TECHNOLOGY
TITLE V—STATE FISCAL RELIEF

SEC. 3. REFERENCES.

Except as expressly provided otherwise, any reference to ''this Act'' contained in any division of this Act shall be treated as referring only to the provisions of that division.

DIVISION A—APPROPRIATIONS PROVISIONS

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2009, and for other purposes, namely:

TITLE I—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES

DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY

(INCLUDING TRANSFERS OF FUNDS)

For an additional amount for the ''Office of the Secretary'', $300,000,000, to remain available until September 30, 2010: *Provided,* That the Secretary may transfer these funds to agencies of the Department, other than the Forest Service, for necessary replacement, modernization, or upgrades of laboratories or other facilities to improve workplace safety and mission-area efficiencies as deemed appropriate by the Secretary: *Provided further,* that the Secretary shall provide to the Committees on Appropriations of the House and Senate a plan on the allocation of these funds no later than 60 days after the date of enactment of this Act.

OFFICE OF INSPECTOR GENERAL

For an additional amount for ''Office of Inspector General'', $5,000,000, to remain available until September 30, 2010, for oversight and audit of programs, grants, and activities funded under this title.

COOPERATIVE STATE RESEARCH, EDUCATION AND ECONOMIC SERVICE

RESEARCH AND EDUCATION ACTIVITIES

For an additional amount for competitive grants authorized at 7 U.S.C. 450(i)(b), $100,000,000, to remain available until September 30, 2010.

FARM SERVICE AGENCY

SALARIES AND EXPENSES

For an additional amount for ''Farm Service Agency, Salaries and Expenses'', $171,000,000, to remain available until September 30, 2010.

AGRICULTURAL CREDIT INSURANCE FUND PROGARM ACCOUNT

For an additional amount for gross obligations for the principal amount of direct and guaranteed farm ownership (7 U.S.C 1922 et seq.) and operating (7 U.S.C. 1941 et seq.) loans, to be available from funds in the Agricultural Credit Insurance Fund Program Account, as follows: farm ownership loans, $400,000,000 of which $100,000,000 shall be for unsubsidized guaranteed loans and $300,000,000 shall be for direct loans; and operating loans, $250,000,000 of which $50,000,000 shall be for unsubsidized guaranteed loans and $200,000,000 shall be for direct loans.

For an additional amount for the cost of direct and guaranteed loans, including the cost of modifying loans,

as defined in section 502 of the Congressional Budget Act of 1974, to remain available until September 30, 2010, as follows: farm ownership loans, $17,530,000 of which $330,000 shall be for unsubsidized guaranteed loans and $17,200,000 shall be for direct loans; and operating loans, $24,900,000 of which $1,300,000 shall be for unsubsidized guaranteed loans and $23,600,000 shall be for direct loans.

Funds appropriated by this Act to the Agricultural Credit Insurance Fund Program Account for farm ownership, operating, and emergency direct loans and unsubsidized guaranteed loans may be transferred among these programs: *Provided,* That the Committees on Appropriations of both Houses of Congress are notified at least 15 days in advance of any transfer.

NATURAL RESOURCES CONSERVATION SERVICE

WATERSHED AND FLOOD PREVENTION OPERATIONS

For an additional amount for ''Watershed and Flood Prevention Operations'', $275,000,000, to remain available until September 30, 2010.

WATERSHED REHABILITATION PROGRAM

For an additional amount for the ''Watershed Rehabilitation Program'', $120,000,000, to remain available until September 30, 2010.

RURAL DEVELOPMENT SALARIES AND EXPENSES

For an additional amount for ''Rural Development, Salaries and Expenses'', $110,000,000, to remain available until September 30, 2010.

RURAL HOUSING SERVICE

RURAL HOUSING INSURANCE PROGRAM ACCOUNT

For an additional amount for gross obligations for the principal amount of direct and guaranteed loans as authorized by title V of the Housing Act of 1949, to be available from funds in the Rural Housing Insurance Fund Program Account, as follows: $1,000,000,000 for section 502 direct loans; and $10,472,000,000 for section 502 unsubsidized guaranteed loans.

For an additional amount for the cost of direct and guaranteed loans, including the cost of modifying loans, as defined in section 502 of the Congressional Budget Act of 1974, to remain available until September 30, 2010, as follows: $67,000,000 for section 502 direct loans; and $133,000,000 for section 502 unsubsidized guaranteed loans.

RURAL COMMUNITY FACILITIES PROGRAM ACCOUNT

For an additional amount for the cost of direct loans, loan guarantees, and grants for rural community facilities programs as authorized by section 306 and described in section 381E(d)(1) of the Consolidated Farm and Rural

Development Act, $127,000,000, to remain available until September 30, 2010.

RURAL BUSINESS—COOPERATIVE SERVICE

RURAL BUSINESS PROGRAM ACCOUNT

For an additional amount for the cost of guaranteed loans and grants as authorized by sections 310B(a)(2)(A) and 310B(c) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932), $150,000,000, to remain available until September 30, 2010.

BIOREFINERY ASSISTANCE

For the cost of loan guarantees and grants, as authorized by section 9003 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8103), $200,000,000, to remain available until September 30, 2010.

RURAL ENERGY FOR AMERICA PROGRAM

For an additional amount for the cost of loan guarantees and grants, as authorized by section 9007 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8107), $50,000,000, to remain available until September 30, 2010: *Provided,* That these funds may be used by tribes, local units of government, and schools in rural areas, as defined in section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)).

RURAL UTILITIES SERVICE

RURAL WATER AND WASTE DISPOSAL PROGRAM ACCOUNT

For an additional amount for the cost of direct loans, loan guarantees, and grants for the rural water, waste water, waste disposal, and solid waste management programs authorized by sections 306, 306A, 306C, 306D, and 310B and described in sections 306C(a)(2), 306D, and 381E(d)(2) of the Consolidated Farm and Rural Development Act, $1,375,000,000, to remain available until September 30, 2010.

DISTANCE LEARNING, TELEMEDICINE, AND BROADBAND PROGRAM ACCOUNT

For an additional amount for direct loans and grants for distance learning and telemedicine services in rural areas, as authorized by 7 U.S.C. 950aaa, et seq., $200,000,000, to remain available until September 30, 2010.

FOOD AND NUTRITION SERVICE

CHILD NUTRITION PROGRAMS

For additional amount for the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et. seq.), except section 21, and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et. seq.), except sections 17 and 21, $198,000,000, to remain available until September 30, 2010, to carry out a grant program for National School Lunch Program equipment assistance: *Provided,* That

such funds shall be provided to States administering a school lunch program through a formula based on the ratio that the total number of lunches served in the Program during the second preceding fiscal year bears to the total number of such lunches served in all States in such second preceding fiscal year: *Provided further,* That of such funds, the Secretary may approve the reserve by States of up to $20,000,000 for necessary enhancements to the State Distributing Agency's commodity ordering and management system to achieve compatibility with the Department's web-based supply chain management system: *Provided further,* That of the funds remaining, the State shall provide competitive grants to school food authorities based upon the need for equipment assistance in participating schools with priority given to schools in which not less than 50 percent of the students are eligible for free or reduced price meals under the Richard B. Russell National School Lunch Act and priority given to schools purchasing equipment for the purpose of offering more healthful foods and meals, in accordance with standards established by the Secretary.

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

For an additional amount for the special supplemental nutrition program as authorized by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), to re-

main available until September 30, 2010, $500,000,000, of which $380,000,000 shall be placed in reserve to be allocated as the Secretary deems necessary, notwithstanding section 17(i) of such Act, to support participation should cost or participation exceed budget estimates, and of which $120,000,000 shall be for the purposes specified in section 17(h)(10)(B)(ii): *Provided,* That up to one percent of the funding provided for the purposes specified in section 17(h)(10)(B)(ii) may be reserved by the Secretary for Federal administrative activities in support of those purposes.

COMMODITY ASSISTANCE PROGRAM

For an additional amount for the ''Commodity Assistance Program'', to remain available until September 30, 2010, $150,000,000, which the Secretary shall use to purchase a variety of commodities as authorized by the Commodity Credit Corporation or under section 32 of the Act entitled ''An Act to amend the Agricultural Adjustment Act, and for other purposes'', approved August 24, 1935 (7 U.S.C. 612c): *Provided,* That the Secretary shall distribute the commodities to States for distribution in accordance with section 214 of the Emergency Food Assistance Act of 1983 (Public Law 98–8; 7 U.S.C. 612c note): *Provided further,* That of the funds made available, the Secretary may use up to $50,000,000 for costs associated with the distribution of commodities.

GENERAL PROVISIONS—THIS TITLE

SEC. 101. Funds appropriated by this Act and made available to the United States Department of Agriculture for broadband direct loans and loan guarantees, as authorized under title VI of the Rural Electrification Act of 1936 (7 U.S.C. 950bb) and for grants, shall be available for broadband infrastructure in any area of the United States notwithstanding title VI of the Rural Electrification Act of 1936: *Provided,* That at least 75 percent of the area served by the projects receiving funds from such grants, loans, or loan guarantees is in a rural area without sufficient access to high speed broadband service to facilitate rural economic development, as determined by the Secretary: *Provided further,* That priority for awarding funds made available under this paragraph shall be given to projects that provide service to the highest proportion of rural residents that do not have sufficient access to broadband service: *Provided further,* That priority for awarding such funds shall be given to project applications that demonstrate that, if the application is approved, all project elements will be fully funded: *Provided further,* That priority for awarding such funds shall be given to activities that can commence promptly following approval: *Provided further,* That the Department shall submit a report on planned spending and actual obligations describ-

ing the use of these funds not later than 90 days after the date of enactment of this Act, and quarterly thereafter until all funds are obligated, to the Committees on Appropriations of the House of Representatives and the Senate.

SEC. 102. NUTRITION FOR ECONOMIC RECOVERY. (a) MAXIMUM BENEFIT INCREASES.—

(1) ECONOMIC RECOVERY 1-MONTH BEGINNING STIMULUS PAYMENT.—For the first month that begins not less than 25 days after the date of enactment of this Act, the Secretary of Agriculture (referred to in this section as the ''Secretary'') shall increase the cost of the thrifty food plan for purposes of section 8(a) of the Food and Nutrition Act of 2008 (7 U.S.C. 2017(a)) by 85 percent.

(2) REMAINDER OF FISCAL YEAR 2009.—Beginning with the second month that begins not less than 25 days after the date of enactment of this Act, and for each subsequent month through the month ending September 30, 2009, the Secretary shall increase the cost of the thrifty food plan for purposes of section 8(a) of the Food and Nutrition Act of 2008 (7 U.S.C. 2017(a)) by 12 percent.

(3) SUBSEQUENT INCREASE FOR FISCAL YEAR 2010.—Beginning on October 1, 2009, and for each subsequent month through the month ending Sep-

tember 30, 2010, the Secretary shall increase the cost of the thrifty food plan for purposes of section 8(a) of the Food and Nutrition Act of 2008 (7 U.S.C. 2017(a)) by an amount equal to 12 percent, less the percentage by which the Secretary determines the thrifty food plan would otherwise be adjusted on October 1, 2009, as required under section 3(u) of that Act (7 U.S.C. 2012(u)), if the percentage is less than 12 percent.

(4) SUBSEQUENT INCREASE FOR FISCAL YEAR 2011.—Beginning on October 1, 2010, and for each subsequent month through the month ending September 30, 2011, the Secretary shall increase the cost of the thrifty food plan for purposes of section 8(a) of the Food and Nutrition Act of 2008 (7 U.S.C. 2017(a)) by an amount equal to 12 percent, less the sum of the percentages by which the Secretary determines the thrifty food plan would otherwise be adjusted on October 1, 2009 and October 1, 2010, as required under section 3(u) of that Act (7 U.S.C. 2012(u)), if the sum of such percentages is less than 12 percent.

(5) TERMINATION OF EFFECTIVENESS.—Effective beginning October 1, 2011, the authority pro-

vided by this subsection terminates and has no effect.

(b) ADMINISTRATION.—In carrying out this section, the Secretary shall—

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

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

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

(4) disregard the additional amount of benefits that a household receives as a result of this section in determining the amount of overissuances under section 13 of the Food and Nutrition Act of 2008 (7 U.S.C. 2022) and the hours of participation in a program under section 6(d), 20, or 26 of that Act (7 U.S.C. 2015(d), 2029, 2035); and

(5) set the tolerance level for excluding small errors for the purposes of section 16(c) of the Food and Nutrition Act of 2008 (7 U.S.C. 2025(c)) at $50 for the period that the benefit increase under subsection (a) is in effect.

(c) ADMINISTRATIVE EXPENSES.—

(1) IN GENERAL.—For the costs of State administrative expenses associated with carrying out this section and administering the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.) (referred to in this section as the ''supplemental nutrition assistance program'') during a period of rising program caseloads, and for the expenses of the Secretary under paragraph (6), the Secretary shall make available $150,000,000 for each of fiscal years 2009 and 2010, to remain available through September 30, 2010.

(2) TIMING FOR FISCAL YEAR 2009.—Not later than 60 days after the date of enactment of this Act, the Secretary shall make available to States amounts for fiscal year 2009 under paragraph (1).

(3) ALLOCATION OF FUNDS.—Except as provided in paragraph (6), funds described in paragraph (1) shall be made available to States that meet the requirements of paragraph (5) as grants to State agencies for each fiscal year as follows:

(A) 75 percent of the amounts available for each fiscal year shall be allocated to States based on the share of each State of households

that participate in the supplemental nutrition assistance program as reported to the Department of Agriculture for the most recent 12-month period for which data are available, adjusted by the Secretary (in the discretion of the Secretary) for participation in disaster programs under section 5(h) of the Food and Nutrition Act of 2008 (7 U.S.C. 2014(h)); and

(B) 25 percent of the amounts available for each fiscal year shall be allocated to States based on the increase in the number of households that participate in the supplemental nutrition assistance program as reported to the Department of Agriculture over the most recent 12-month period for which data are available, adjusted by the Secretary (in the discretion of the Secretary) for participation in disaster programs under section 5(h) of the Food and Nutrition Act of 2008 (7 U.S.C. 2014(h)).

(4) REDISTRIBUTION.—The Secretary shall determine an appropriate procedure for redistribution of amounts allocated to States that would otherwise be provided allocations under paragraph (3) for a fiscal year but that do not meet the requirements of paragraph (5).

(5) MAINTENANCE OF EFFORT.—

(A) DEFINITION OF SPECIFIED STATE ADMINISTRATIVE COSTS.—In this paragraph:

(i) IN GENERAL.—The term ''specified State administrative costs'' includes all State administrative costs under the supplemental nutrition assistance program.

(ii) EXCLUSIONS.—The term ''specified State administrative costs'' does not include—

(I) the costs of employment and training programs under section 6(d), 20, or 26 of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d), 2029, 2035);

(II) the costs of nutrition education under section 11(f) of that Act (7 U.S.C. 2020(f)); and

(III) any other costs the Secretary determines should be excluded.

(B) REQUIREMENT.—The Secretary shall make funds under this subsection available only to States that, as determined by the Secretary, maintain State expenditures on specified State administrative costs.

(6) MONITORING AND EVALUATION.—Of the amounts made available under paragraph (1), the Secretary may retain up to $5,000,000 for the costs incurred by the Secretary in monitoring the integrity and evaluating the effects of the payments made under this section.

(d) FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS.—For the costs of administrative expenses associated with the food distribution program on Indian reservations established under section 4(b) of the Food and Nutrition Act of 2008 (7 U.S.C. 2013(b)), the Secretary shall make available $5,000,000, to remain available until September 30, 2010.

(e) CONSOLIDATED BLOCK GRANTS FOR PUERTO RICO AND AMERICAN SAMOA.—

(1) FISCAL YEAR 2009.—

(A) IN GENERAL.—For fiscal year 2009, the Secretary shall increase by 12 percent the amount available for nutrition assistance for eligible households under the consolidated block grants for the Commonwealth of Puerto Rico and American Samoa under section 19 of the Food and Nutrition Act of 2008 (7 U.S.C. 2028).

(B) AVAILABILITY OF FUNDS.—Funds made available under subparagraph (A) shall remain available through September 30, 2010.

(2) FISCAL YEAR 2010.—For fiscal year 2010, the Secretary shall increase the amount available for nutrition assistance for eligible households under the consolidated block grants for the Commonwealth of Puerto Rico and American Samoa under section 19 of the Food and Nutrition Act of 2008 (7 U.S.C. 2028) by 12 percent, less the percentage by which the Secretary determines the consolidated block grants would otherwise be adjusted on October 1, 2009, as required by section 19(a)(2)(A)(ii) of that Act (7 U.S.C. 2028(a)(2)(A)(ii)), if the percentage is less than 12 percent.

(3) FISCAL YEAR 2011.—For fiscal year 2011, the Secretary shall increase the amount available for nutrition assistance for eligible households under the consolidated block grants for the Commonwealth of Puerto Rico and American Samoa under section 19 of the Food and Nutrition Act of 2008 (7 U.S.C. 2028) by 12 percent, less the sum of the percentages by which the Secretary determines the consolidated block grants would otherwise be adjusted on October 1, 2009, and October 1, 2010, as required by section

19(a)(2)(A)(ii) of that Act (7 U.S.C. 2028(a)(2)(A)(ii)), if the sum of the percentages is less than 12 percent.

(f) TREATMENT OF JOBLESS WORKERS.—

(1) REMAINDER OF FISCAL YEAR 2009 THROUGH FISCAL YEAR 2011.—Beginning with the first month that begins not less than 25 days after the date of enactment of this Act and for each subsequent month through September 30, 2011, eligibility for supplemental nutrition assistance program benefits shall not be limited under section 6(o)(2) of the Food and Nutrition Act of 2008 unless an individual does not comply with the requirements of a program offered by the State agency that meets the standards of subparagraphs (B) or (C) of that paragraph.

(2) FISCAL YEAR 2012 AND THEREAFTER.—Beginning on October 1, 2011, for the purposes of section 6(o) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o)), a State agency shall disregard any period during which an individual received benefits under the supplemental nutrition assistance program prior to October 1, 2011.

(g) FUNDING.—There are appropriated to the Secretary out of funds of the Treasury not otherwise appro-

priated such sums as are necessary to carry out this section.

SEC. 103. AGRICULTURAL DISASTER ASSISTANCE TRANSITION. (a) FEDERAL CROP INSURANCE ACT.—Section 531(g) of the Federal Crop Insurance Act (7 U.S.C. 1531(g)) is amended by adding at the end the following:

"(7) 2008 TRANSITION ASSISTANCE.—

"(A) IN GENERAL.—Eligible producers on a farm described in subparagraph (A) of paragraph (4) that failed to timely pay the appropriate fee described in that subparagraph shall be eligible for assistance under this section in accordance with subparagraph (B) if the eligible producers on the farm—

"(i) pay the appropriate fee described in paragraph (4)(A) not later than 90 days after the date of enactment of this paragraph; and

"(ii)(I) in the case of each insurable commodity of the eligible producers on the farm, excluding grazing land, agree to obtain a policy or plan of insurance under subtitle A (excluding a crop insurance pilot program under that subtitle) for the next insurance year for which crop insurance is

available to the eligible producers on the farm at a level of coverage equal to 70 percent or more of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage; and

"(II) in the case of each noninsurable commodity of the eligible producers on the farm, agree to file the required paperwork, and pay the administrative fee by the applicable State filing deadline, for the noninsured crop assistance program for the 2009 crop year.

"(B) AMOUNT OF ASSISTANCE.—Eligible producers on a farm that meet the requirements of subparagraph (A) shall be eligible to receive assistance under this section as if the eligible producers on the farm—

"(i) in the case of each insurable commodity of the eligible producers on the farm, had obtained a policy or plan of insurance for the 2008 crop year at a level of coverage not to exceed 70 percent or more of the recorded or appraised average yield indemnified at 100 percent of the ex-

pected market price, or an equivalent coverage; and

"(ii) in the case of each noninsurable commodity of the eligible producers on the farm, had filed the required paperwork, and paid the administrative fee by the applicable State filing deadline, for the noninsured crop assistance program for the 2008 crop year, except that in determining yield under that program, the Secretary shall use a percentage that is 70 percent.

"(C) EQUITABLE RELIEF.—Except as provided in subparagraph (D), eligible producers on a farm that met the requirements of paragraph (1) before the deadline described in paragraph (4)(A) and received, or are eligible to receive, a disaster assistance payment under this section for a production loss during the 2008 crop year shall be eligible to receive an additional amount equal to the greater of—

"(i) the amount that would have been calculated under subparagraph (B) if the eligible producers on the farm had paid the appropriate fee under that subparagraph; or

"(ii) the amount that would have been calculated under subparagraph (A) of subsection (b)(3) if—

"(I) in clause (i) of that subparagraph, '120 percent' is substituted for '115 percent'; and

"(II) in clause (ii) of that subparagraph, '125' is substituted for '120 percent'.

"(D) LIMITATION.—For amounts made available under this paragraph, the Secretary may make such adjustments as are necessary to ensure that no producer receives a payment under this paragraph for an amount in excess of the assistance received by a similarly situated producer that had purchased the same or higher level of crop insurance prior to the date of enactment of this paragraph.

"(E) AUTHORITY OF THE SECRETARY.—The Secretary may provide such additional assistance as the Secretary considers appropriate to provide equitable treatment for eligible producers on a farm that suffered production losses in the 2008 crop year that result in

multiyear production losses, as determined by the Secretary.

"(F) LACK OF ACCESS.—Notwithstanding any other provision of this section, the Secretary may provide assistance under this section to eligible producers on a farm that—

"(i) suffered a production loss due to a natural cause during the 2008 crop year; and

"(ii) as determined by the Secretary—

"(I)(aa) except as provided in item (bb), lack access to a policy or plan of insurance under subtitle A; or

"(bb) do not qualify for a written agreement because 1 or more farming practices, which the Secretary has determined are good farming practices, of the eligible producers on the farm differ significantly from the farming practices used by producers of the same crop in other regions of the United States; and

"(II) are not eligible for the noninsured crop disaster assistance program established by section 196 of the

Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333).''.

(b) TRADE ACT OF 1974.—Section 901(g) of the Trade Act of 1974 (19 U.S.C. 2497(g)) is amended by adding at the end the following:

''(7) 2008 TRANSITION ASSISTANCE.—

''(A) IN GENERAL.—Eligible producers on a farm described in subparagraph (A) of paragraph (4) that failed to timely pay the appropriate fee described in that subparagraph shall be eligible for assistance under this section in accordance with subparagraph (B) if the eligible producers on the farm—

''(i) pay the appropriate fee described in paragraph (4)(A) not later than 90 days after the date of enactment of this paragraph; and

''(ii)(I) in the case of each insurable commodity of the eligible producers on the farm, excluding grazing land, agree to obtain a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) (excluding a crop insurance pilot program under that Act) for the next

insurance year for which crop insurance is available to the eligible producers on the farm at a level of coverage equal to 70 percent or more of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage; and

"(II) in the case of each noninsurable commodity of the eligible producers on the farm, agree to file the required paperwork, and pay the administrative fee by the applicable State filing deadline, for the noninsured crop assistance program for the 2009 crop year.

"(B) AMOUNT OF ASSISTANCE.—Eligible producers on a farm that meet the requirements of subparagraph (A) shall be eligible to receive assistance under this section as if the eligible producers on the farm—

"(i) in the case of each insurable commodity of the eligible producers on the farm, had obtained a policy or plan of insurance for the 2008 crop year at a level of coverage not to exceed 70 percent or more of the recorded or appraised average

yield indemnified at 100 percent of the expected market price, or an equivalent coverage; and

"(ii) in the case of each noninsurable commodity of the eligible producers on the farm, had filed the required paperwork, and paid the administrative fee by the applicable State filing deadline, for the noninsured crop assistance program for the 2008 crop year, except that in determining yield under that program, the Secretary shall use a percentage that is 70 percent.

"(C) EQUITABLE RELIEF.—Except as provided in subparagraph (D), eligible producers on a farm that met the requirements of paragraph (1) before the deadline described in paragraph (4)(A) and received, or are eligible to receive, a disaster assistance payment under this section for a production loss during the 2008 crop year shall be eligible to receive an additional amount equal to the greater of—

"(i) the amount that would have been calculated under subparagraph (B) if the eligible producers on the farm had paid the

appropriate fee under that subparagraph; or

"(ii) the amount that would have been calculated under subparagraph (A) of subsection (b)(3) if—

"(I) in clause (i) of that subparagraph, '120 percent' is substituted for '115 percent'; and

"(II) in clause (ii) of that subparagraph, '125' is substituted for '120 percent'.

"(D) LIMITATION.—For amounts made available under this paragraph, the Secretary may make such adjustments as are necessary to ensure that no producer receives a payment under this paragraph for an amount in excess of the assistance received by a similarly situated producer that had purchased the same or higher level of crop insurance prior to the date of enactment of this paragraph.

"(E) AUTHORITY OF THE SECRETARY.—The Secretary may provide such additional assistance as the Secretary considers appropriate to provide equitable treatment for eligible producers on a farm that suffered production

losses in the 2008 crop year that result in multiyear production losses, as determined by the Secretary.

"(F) LACK OF ACCESS.—Notwithstanding any other provision of this section, the Secretary may provide assistance under this section to eligible producers on a farm that—

"(i) suffered a production loss due to a natural cause during the 2008 crop year; and

"(ii) as determined by the Secretary—

"(I)(aa) except as provided in item (bb), lack access to a policy or plan of insurance under subtitle A; or

"(bb) do not qualify for a written agreement because 1 or more farming practices, which the Secretary has determined are good farming practices, of the eligible producers on the farm differ significantly from the farming practices used by producers of the same crop in other regions of the United States; and

"(II) are not eligible for the noninsured crop disaster assistance pro-

gram established by section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333).''.

(c) EMERGENCY LOANS.—

(1) IN GENERAL.—For the principal amount of direct emergency loans under section 321 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961), $200,000,000.

(2) DIRECT EMERGENCY LOANS.—For the cost of direct emergency loans, including the cost of modifying loans, as defined in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661a), $28,440,000, to remain available until September 30, 2010.

(d) 2008 AQUACULTURE ASSISTANCE.—

(1) DEFINITIONS.—In this subsection:

(A) ELIGIBLE AQUACULTURE PRODUCER.—The term ''eligible aquaculture producer'' means an aquaculture producer that during the 2008 calendar year, as determined by the Secretary—

(i) produced an aquaculture species for which feed costs represented a substan-

tial percentage of the input costs of the aquaculture operation; and

(ii) experienced a substantial price increase of feed costs above the previous 5-year average.

(B) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

(2) GRANT PROGRAM.—

(A) IN GENERAL.—Of the funds of the Commodity Credit Corporation, the Secretary shall use not more than $100,000,000, to remain available until September 30, 2010, to carry out a program of grants to States to assist eligible aquaculture producers for losses associated with high feed input costs during the 2008 calendar year.

(B) NOTIFICATION.—Not later than 60 days after the date of enactment of this Act, the Secretary shall notify the State department of agriculture (or similar entity) in each State of the availability of funds to assist eligible aquaculture producers, including such terms as determined by the Secretary to be necessary for the equitable treatment of eligible aquaculture producers.

(C) PROVISION OF GRANTS.—

(i) IN GENERAL.—The Secretary shall make grants to States under this subsection on a pro rata basis based on the amount of aquaculture feed used in each State during the 2007 calendar year, as determined by the Secretary.

(ii) TIMING.—Not later than 120 days after the date of enactment of this Act, the Secretary shall make grants to States to provide assistance under this subsection.

(D) REQUIREMENTS.—The Secretary shall make grants under this subsection only to States that demonstrate to the satisfaction of the Secretary that the State will—

(i) use grant funds to assist eligible aquaculture producers;

(ii) provide assistance to eligible aquaculture producers not later than 60 days after the date on which the State receives grant funds; and

(iii) not later than 30 days after the date on which the State provides assistance to eligible aquaculture producers, submit to the Secretary a report that describes—

(I) the manner in which the State provided assistance;

(II) the amounts of assistance provided per species of aquaculture; and

(III) the process by which the State determined the levels of assistance to eligible aquaculture producers.

(3) REDUCTION IN PAYMENTS.—An eligible aquaculture producer that receives assistance under this subsection shall not be eligible to receive any other assistance under the supplemental agricultural disaster assistance program established under section 531 of the Federal Crop Insurance Act (7 U.S.C. 1531) and section 901 of the Trade Act of 1974 (19 U.S.C. 2497) for any losses in 2008 relating to the same species of aquaculture.

(4) REPORT TO CONGRESS.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit to the appropriate committees of Congress a report that—

(A) describes in detail the manner in which this subsection has been carried out; and

(B) includes the information reported to the Secretary under paragraph (2)(D)(iii).

SEC. 104. (a) Hereafter, in this section, the term "nonambulatory disabled cattle" means cattle, other than cattle that are less than 5 months old or weigh less than 500 pounds, subject to inspection under section 3(b) of the Federal Meat Inspection Act (21 U.S.C. 603(b)) that cannot rise from a recumbent position or walk, including cattle with a broken appendage, severed tendon or ligament, nerve paralysis, fractured vertebral column, or a metabolic condition.

(b) Hereafter, none of the funds made available under this or any other Act may be used to pay the salaries or expenses of any personnel of the Food Safety and Inspection Service to pass through inspection any nonambulatory disabled cattle for use as human food, regardless of the reason for the nonambulatory status of the cattle or the time at which the cattle became nonambulatory.

SEC. 105. STATE AND LOCAL GOVERNMENTS. Section 1001(f)(6)(A) of the Food Security Act of 1985 (7 U.S.C. 1308(f)(6)(A)) is amended by inserting "(other than the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of this Act)" before the period at the end.

SEC. 106. Except for title I of the Food, Conservation, and Energy Act of 2008 (Public Law 110–246), Commodity Credit Corporation funds provided in that Act

shall be available for administrative expenses, including technical assistance, without regard to the limitation in 15 U.S.C. 714i.

TITLE II—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES

DEPARTMENT OF COMMERCE

BUREAU OF INDUSTRY AND SECURITY

OPERATIONS AND ADMINISTRATION

For an additional amount for ''Operations and Administration'', $20,000,000, to remain available until September 30, 2010.

ECONOMIC DEVELOPMENT ADMINISTRATION

ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS

For an additional amount for ''Economic Development Assistance Programs'', $150,000,000, to remain available until September 30, 2010: *Provided,* That $50,000,000 shall be for economic adjustment assistance as authorized by section 209 of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3149): *Provided further,* That in allocating the funds provided in the previous proviso, the Secretary of Commerce shall give priority consideration to areas of the Nation that have experienced sudden and severe economic dislocation and job loss due to corporate restructuring.

BUREAU OF THE CENSUS

PERIODIC CENSUSES AND PROGRAMS

For an additional amount for ''Periodic Censuses and Programs'', $1,000,000,000, to remain available until September 30, 2010.

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM

For an amount for ''Broadband Technology Opportunities Program'', $9,000,000,000, to remain available until September 30, 2010: *Provided,* That of the funds provided under this heading, $8,650,000,000 shall be expended pursuant to section 201 of this Act, of which: not less than $200,000,000 shall be available for competitive grants for expanding public computer center capacity, including at community colleges and public libraries; not less than $250,000,000 shall be available for competitive grants for innovative programs to encourage sustainable adoption of broadband service; and $10,000,000 shall be transferred to ''Department of Commerce, Office of Inspector General'' for the purposes of audits and oversight of funds provided under this heading and such funds shall remain available until expended: *Provided further,* That 50 percent of the funds provided in the previous proviso shall be used to support projects in rural communities, which

in part may be transferred to the Department of Agriculture for administration through the Rural Utilities Service if deemed necessary and appropriate by the Secretary of Commerce, in consultation with the Secretary of Agriculture, and only if the Committees on Appropriations of the House and the Senate are notified not less than 15 days in advance of the transfer of such funds: *Provided further,* That of the funds provided under this heading, up to $350,000,000 may be expended pursuant to Public Law 110–385 (47 U.S.C. 1301 note) and for the purposes of developing and maintaining a broadband inventory map pursuant to section 201 of this Act: *Provided further,* That of the funds provided under this heading, amounts deemed necessary and appropriate by the Secretary of Commerce, in consultation with the Federal Communications Commission (FCC), may be transferred to the FCC for the purposes of developing a national broadband plan or for carrying out any other FCC responsibilities pursuant to section 201 of this Act, and only if the Committees on Appropriations of the House and the Senate are notified not less than 15 days in advance of the transfer of such funds: *Provided further,* That not more than 3 percent of funds provided under this heading may be used for administrative costs, and this limitation shall apply to funds

which may be transferred to the Department of Agriculture and the FCC.

DIGITAL-TO-ANALOG CONVERTER BOX PROGRAM

For an amount for ''Digital-to-Analog Converter Box Program'', $650,000,000, for additional coupons and related activities under the program implemented under section 3005 of the Digital Television Transition and Public Safety Act of 2005, to remain available until September 30, 2010: *Provided,* That of the amounts provided under this heading, $90,000,000 may be for education and outreach, including grants to organizations for programs to educate vulnerable populations, including senior citizens, minority communities, people with disabilities, low-income individuals, and people living in rural areas, about the transition and to provide one-on-one assistance to vulnerable populations, including help with converter box installation: *Provided further,* That the amounts provided in the previous proviso may be transferred to the Federal Communications Commission (Commission) if deemed necessary and appropriate by the Secretary of Commerce in consultation with the Commission, and only if the Committees on Appropriations of the House and the Senate are notified not less than 5 days in advance of transfer of such funds: *Provided further,* That $2,000,000 of funds provided under this heading shall be transferred to ''De-

partment of Commerce, Office of Inspector General'' for audits and oversight of funds provided under this heading.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

SCIENTIFIC AND TECHNICAL RESEARCH AND SERVICES

For an additional amount for ''Scientific and Technical Research and Services'', $218,000,000, to remain available until September 30, 2010.

CONSTRUCTION OF RESEARCH FACILITIES

For an additional amount for ''Construction of Research Facilities'', $357,000,000, to remain available until September 30, 2010.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

OPERATIONS, RESEARCH, AND FACILITIES

For an additional amount for ''Operations, Research, and Facilities'', $427,000,000, to remain available until September 30, 2010.

PROCUREMENT, ACQUISITION AND CONSTRUCTION

For an additional amount for ''Procurement, Acquisition and Construction'', $795,000,000, to remain available until September 30, 2010.

DEPARTMENTAL MANAGEMENT

For an additional amount for ''Departmental Management'', $34,000,000, to remain available until September 30, 2010.

1 OFFICE OF INSPECTOR GENERAL

2 For an additional amount for ''Office of Inspector
3 General'', $6,000,000, to remain available until September
4 30, 2010.

5 DEPARTMENT OF JUSTICE

6 GENERAL ADMINISTRATION

7 TACTICAL LAW ENFORCEMENT WIRELESS
8 COMMUNICATIONS

9 For an additional amount for ''Tactical Law Enforce-
10 ment Wireless Communications'', $200,000,000 for the
11 costs of developing and implementing a nationwide Inte-
12 grated Wireless network supporting Federal law enforce-
13 ment, to remain available until September 30, 2010.

14 DETENTION TRUSTEE

15 For an additional amount for ''Detention Trustee'',
16 $150,000,000, to remain available until September 30,
17 2010.

18 OFFICE OF INSPECTOR GENERAL

19 For an additional amount for ''Office of Inspector
20 General'', $2,000,000, to remain available until September
21 30, 2010.

UNITED STATES MARSHALS SERVICE

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'', $50,000,000, to remain available until September 30, 2010.

CONSTRUCTION

For an additional amount for ''Construction'', $125,000,000, to remain available until September 30, 2010.

FEDERAL BUREAU OF INVESTIGATION

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'', $75,000,000, to remain available until September 30, 2010.

CONSTRUCTION

For an additional amount for ''Construction'', $400,000,000, to remain available until September 30, 2010.

FEDERAL PRISON SYSTEM

BUILDINGS AND FACILITIES

For an additional amount for ''Federal Prison System, Buildings and Facilities'', $1,000,000,000, to remain available until September 30, 2010.

STATE AND LOCAL LAW ENFORCEMENT ACTIVITIES

OFFICE ON VIOLENCE AGAINST WOMEN

VIOLENCE AGAINST WOMEN PREVENTION AND PROSECUTION PROGRAMS

For an additional amount for ''Violence Against Women Prevention and Prosecution Programs'', $300,000,000 for grants to combat violence against women, as authorized by part T of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.): *Provided,* That, $50,000,000 shall be transitional housing assistance grants for victims of domestic violence, stalking or sexual assault as authorized by section 40299 of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322).

OFFICE OF JUSTICE PROGRAMS

STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE

For an additional amount for ''State and Local Law Enforcement Assistance'', $1,500,000,000 for the Edward Byrne Memorial Justice Assistance Grant program as authorized by subpart 1 of part E of title I of the Omnibus Crime Control and Safe Street Act of 1968 (''1968 Act''), (except that section 1001(c), and the special rules for Puerto Rico under section 505(g), of the 1968 Act, shall not apply for purposes of this Act), to remain available until September 30, 2010.

For an additional amount for ''State and Local Law Enforcement Assistance'', $440,000,000 for competitive grants to improve the functioning of the criminal justice system, to assist victims of crime (other than compensation), and youth mentoring grants, to remain available until September 30, 2010.

For an additional amount for ''State and Local Law Enforcement Assistance'', $100,000,000, to remain available until September 30, 2010, for competitive grants to provide assistance and equipment to local law enforcement along the Southern border and in High-Intensity Drug Trafficking Areas to combat criminal narcotics activity stemming from the Southern border, of which $10,000,000 shall be transferred to ''Bureau of Alcohol, Tobacco, Firearms and Explosives, Salaries and Expenses'' for the ATF Project Gunrunner.

For an additional amount for ''State and Local Law Enforcement Assistance'', $300,000,000, to remain available until September 30, 2010, for assistance to Indian tribes, notwithstanding Public Law 108–199, division B, title I, section 112(a)(1) (118 Stat. 62), of which—

(1) $250,000,000 shall be available for grants under section 20109 of subtitle A of title II of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322);

(2) $25,000,000 shall be available for the Tribal Courts Initiative; and

(3) $25,000,000 shall be available for tribal alcohol and substance abuse drug reduction assistance grants.

For an additional amount for ''State and Local Law Enforcement Assistance'', $100,000,000, to remain available until September 30, 2010, to be distributed by the Office for Victims of Crime in accordance with section 1402(d)(4) of the Victims of Crime Act of 1984 (Public Law 98–473).

For an additional amount for ''State and Local Law Enforcement Assistance'', $150,000,000, to remain available until September 30, 2010, for assistance to law enforcement in rural areas, to prevent and combat crime, especially drug-related crime.

For an additional amount for ''State and Local Law Enforcement Assistance'', $50,000,000, to remain available until September 30, 2010, for Internet Crimes Against Children (ICAC) initiatives.

COMMUNITY ORIENTED POLICING SERVICES

For an additional amount for ''Community Oriented Policing Services'', for grants under section 1701 of title I of the 1968 Omnibus Crime Control and Safe Streets Act (42 U.S.C. 3796dd) for hiring and rehiring of addi-

tional career law enforcement officers under part Q of such title, and civilian public safety personnel, notwithstanding subsection (i) of such section and notwithstanding 42 U.S.C. 3796dd–3(c), $1,000,000,000, to remain available until September 30, 2010.

SALARIES AND EXPENSES

For an additional amount, not elsewhere specified in this title, for management and administration and oversight of programs within the Office on Violence Against Women, the Office of Justice Programs, and the Community Oriented Policing Services Office, $10,000,000, to remain available until September 30, 2010.

SCIENCE

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

SCIENCE

For an additional amount for ''Science'', $500,000,000, to remain available until September 30, 2010.

AERONAUTICS

For an additional amount for ''Aeronautics'', $250,000,000, to remain available until September 30, 2010.

EXPLORATION

For an additional amount for ''Exploration'', $500,000,000, to remain available until September 30, 2010.

CROSS AGENCY SUPPORT

For an additional amount for ''Cross Agency Support'', $250,000,000, to remain available until September 30, 2010.

OFFICE OF INSPECTOR GENERAL

For an additional amount for ''Office of Inspector General'', $2,000,000, to remain available until September 30, 2010.

NATIONAL SCIENCE FOUNDATION

RESEARCH AND RELATED ACTIVITIES

For an additional amount for ''Research and Related Activities'', $1,200,000,000, to remain available until September 30, 2010.

MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION

For an additional amount for ''Major Research Equipment and Facilities Construction'', $150,000,000, to remain available until September 30, 2010.

EDUCATION AND HUMAN RESOURCES

For an additional amount for ''Education and Human Resources'', $50,000,000, to remain available until September 30, 2010.

OFFICE OF INSPECTOR GENERAL

For an additional amount for ''Office of Inspector General'', $2,000,000, to remain available until September 30, 2010.

GENERAL PROVISIONS—THIS TITLE

SEC. 201. The Assistant Secretary of Commerce for Communications and Information (Assistant Secretary), in consultation with the Federal Communications Commission (Commission) (and, with respect to rural areas, the Secretary of Agriculture), shall establish a national broadband service development and expansion program in conjunction with the technology opportunities program, which shall be referred to the Broadband Technology Opportunities Program. The Assistant Secretary shall ensure that the program complements and enhances and does not conflict with other Federal broadband initiatives and programs.

(1) The purposes of the program are to—

(A) provide access to broadband service to citizens residing in unserved areas of the United States;

(B) provide improved access to broadband service to citizens residing in underserved areas of the United States;

(C) provide broadband education, awareness, training, access, equipment, and support to—

(i) schools, libraries, medical and healthcare providers, community colleges

and other institutions of higher education, and other community support organizations and entities to facilitate greater use of broadband service by or through these organizations;

(ii) organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of broadband service by low-income, unemployed, aged, and otherwise vulnerable populations; and

(iii) job-creating strategic facilities located within a State-designated economic zone, Economic Development District designated by the Department of Commerce, Renewal Community or Empowerment Zone designated by the Department of Housing and Urban Development, or Enterprise Community designated by the Department of Agriculture.

(D) improve access to, and use of, broadband service by public safety agencies; and

(E) stimulate the demand for broadband, economic growth, and job creation.

(2) The Assistant Secretary may consult with the chief executive officer of any State with respect to—

(A) the identification of areas described in subsection (1)(A) or (B) located in that State; and

(B) the allocation of grant funds within that State for projects in or affecting the State.

(3) The Assistant Secretary shall—

(A) establish and implement the grant program as expeditiously as practicable;

(B) ensure that all awards are made before the end of fiscal year 2010;

(C) seek such assurances as may be necessary or appropriate from grantees under the program that they will substantially complete projects supported by the program in accordance with project timelines, not to exceed 2 years following an award; and

(D) report on the status of the program to the Committees on Appropriations of the House and the Senate, the Committee on Energy and Commerce of the House, and the Committee on Commerce, Science, and Transportation of the Senate, every 90 days.

(4) To be eligible for a grant under the program an applicant shall—

(A) be a State or political subdivision thereof, a nonprofit foundation, corporation, institution or association, Indian tribe, Native Hawaiian organization, or other non-governmental entity in partnership with a State or political subdivision thereof, Indian tribe, or Native Hawaiian organization if the Assistant Secretary determines the partnership consistent with the purposes this section;

(B) submit an application, at such time, in such form, and containing such information as the Assistant Secretary may require;

(C) provide a detailed explanation of how any amount received under the program will be used to carry out the purposes of this section in an efficient and expeditious manner, including a demonstration that the project would not have been implemented during the grant period without Federal grant assistance;

(D) demonstrate, to the satisfaction of the Assistant Secretary, that it is capable of carrying out the project or function to which the application relates in a competent manner in

compliance with all applicable Federal, State, and local laws;

(E) demonstrate, to the satisfaction of the Assistant Secretary, that it will appropriate (if the applicant is a State or local government agency) or otherwise unconditionally obligate, from non-Federal sources, funds required to meet the requirements of paragraph (5);

(F) disclose to the Assistant Secretary the source and amount of other Federal or State funding sources from which the applicant receives, or has applied for, funding for activities or projects to which the application relates; and

(G) provide such assurances and procedures as the Assistant Secretary may require to ensure that grant funds are used and accounted for in an appropriate manner.

(5) The Federal share of any project may not exceed 80 percent, except that the Assistant Secretary may increase the Federal share of a project above 80 percent if—

(A) the applicant petitions the Assistant Secretary for a waiver; and

(B) the Assistant Secretary determines that the petition demonstrates financial need.

(6) The Assistant Secretary may make competitive grants under the program to—

(A) acquire equipment, instrumentation, networking capability, hardware and software, digital network technology, and infrastructure for broadband services;

(B) construct and deploy broadband service related infrastructure;

(C) ensure access to broadband service by community anchor institutions;

(D) facilitate access to broadband service by low-income, unemployed, aged, and otherwise vulnerable populations in order to provide educational and employment opportunities to members of such populations;

(E) construct and deploy broadband facilities that improve public safety broadband communications services; and

(F) undertake such other projects and activities as the Assistant Secretary finds to be consistent with the purposes for which the program is established.

(7) The Assistant Secretary—

(A) shall require any entity receiving a grant pursuant to this section to report quar-

terly, in a format specified by the Assistant Secretary, on such entity's use of the assistance and progress fulfilling the objectives for which such funds were granted, and the Assistant Secretary shall make these reports available to the public;

(B) may establish additional reporting and information requirements for any recipient of any assistance made available pursuant to this section;

(C) shall establish appropriate mechanisms to ensure appropriate use and compliance with all terms of any use of funds made available pursuant to this section;

(D) may, in addition to other authority under applicable law, deobligate awards to grantees that demonstrate an insufficient level of performance, or wasteful or fraudulent spending, as defined in advance by the Assistant Secretary, and award these funds competitively to new or existing applicants consistent with this section; and

(E) shall create and maintain a fully searchable database, accessible on the Internet at no cost to the public, that contains at least

the name of each entity receiving funds made available pursuant to this section, the purpose for which such entity is receiving such funds, each quarterly report submitted by the entity pursuant to this section, and such other information sufficient to allow the public to understand and monitor grants awarded under the program.

(8) Concurrent with the issuance of the Request for Proposal for grant applications pursuant to this section, the Assistant Secretary shall, in coordination with the Federal Communications Commission, publish the non-discrimination and network interconnection obligations that shall be contractual conditions of grants awarded under this section.

(9) Within 1 year after the date of enactment of this Act, the Commission shall complete a rulemaking to develop a national broadband plan. In developing the plan, the Commission shall—

(A) consider the most effective and efficient national strategy for ensuring that all Americans have access to, and take advantage of, advanced broadband services;

(B) have access to data provided to other Government agencies under the Broadband Data Improvement Act (47 U.S.C. 1301 note);

(C) evaluate the status of deployments of broadband service, including the progress of projects supported by the grants made pursuant to this section; and

(D) develop recommendations for achieving the goal of nationally available broadband service for the United States and for promoting broadband adoption nationwide.

(10) The Assistant Secretary shall develop and maintain a comprehensive nationwide inventory map of existing broadband service capability and availability in the United States that entities and depicts the geographic extent to which broadband service capability is deployed and available from a commercial provider or public provider throughout each State: *Provided,* That not later than 2 years after the date of the enactment of the Act, the Assistant Secretary shall make the broadband inventory map developed and maintained pursuant to this section accessible to the public.

SEC. 202. The Assistant Secretary of Commerce for Communications and Information may reissue any coupon

issued under section 3005(a) of the Digital Television Transition and Public Safety Act of 2005 that has expired before use, and shall cancel any unredeemed coupon reported as lost and may issue a replacement coupon for the lost coupon.

TITLE III—DEPARTMENT OF DEFENSE

OPERATION AND MAINTENANCE

OPERATION AND MAINTENANCE, ARMY

For an additional amount for ''Operation and Maintenance, Army'', $1,169,291,000, to remain available for obligation until September 30, 2010.

OPERATION AND MAINTENANCE, NAVY

For an additional amount for ''Operation and Maintenance, Navy'', $571,843,000, to remain available for obligation until September 30, 2010.

OPERATION AND MAINTENANCE, MARINE CORPS

For an additional amount for ''Operation and Maintenance, Marine Corps'', $112,167,000, to remain available for obligation until September 30, 2010.

OPERATION AND MAINTENANCE, AIR FORCE

For an additional amount for ''Operation and Maintenance, Air Force'', $927,113,000, to remain available for obligation until September 30, 2010.

OPERATION AND MAINTENANCE, ARMY RESERVE

For an additional amount for ''Operation and Maintenance, Army Reserve'', $79,543,000, to remain available for obligation until September 30, 2010.

OPERATION AND MAINTENANCE, NAVY RESERVE

For an additional amount for ''Operation and Maintenance, Navy Reserve'', $44,586,000, to remain available for obligation until September 30, 2010.

OPERATION AND MAINTENANCE, MARINE CORPS RESERVE

For an additional amount for ''Operation and Maintenance, Marine Corps Reserve'', $32,304,000, to remain available for obligation until September 30, 2010.

OPERATION AND MAINTENANCE, AIR FORCE RESERVE

For an additional amount for ''Operation and Maintenance, Air Force Reserve'', $10,674,000, to remain available for obligation until September 30, 2010.

OPERATION AND MAINTENANCE, ARMY NATIONAL GUARD

For an additional amount for ''Operation and Maintenance, Army National Guard'', $215,557,000, to remain available for obligation until September 30, 2010.

OPERATION AND MAINTENANCE, AIR NATIONAL GUARD

For an additional amount for ''Operation and Maintenance, Air National Guard'', $20,922,000, to remain available for obligation until September 30, 2010.

PROCUREMENT

DEFENSE PRODUCTION ACT PURCHASES

For an additional amount for ''Defense Production Act Purchases'', $100,000,000, to remain available for obligation until September 30, 2010.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE-WIDE

For an additional amount for ''Research, Development, Test and Evaluation, Defense-Wide'', $200,000,000, to remain available for obligation until September 30, 2010.

OTHER DEPARTMENT OF DEFENSE PROGRAMS

DEFENSE HEALTH PROGRAM

For an additional amount for ''Defense Health Program'', $250,000,000 for operation and maintenance, to remain available for obligation until September 30, 2010.

OFFICE OF THE INSPECTOR GENERAL

For an additional amount for ''Office of the Inspector General'', $12,000,000 for operation and maintenance, to remain available for obligation until September 30, 2010.

TITLE IV—ENERGY AND WATER DEVELOPMENT

DEPARTMENT OF DEFENSE—CIVIL

DEPARTMENT OF THE ARMY

CORPS OF ENGINEERS—CIVIL

INVESTIGATIONS

For an additional amount for ''Investigations'' for expenses necessary where authorized by law for the collection and study of basic information pertaining to river and harbor, flood and storm damage reduction, shore protection, aquatic ecosystem restoration, and related needs; for surveys and detailed studies, and plans and specifications of proposed river and harbor, flood and storm damage reduction, shore protection, and aquatic ecosystem restoration projects and related efforts prior to construction; for restudy of authorized projects; and for miscellaneous investigations and, when authorized by law, surveys and detailed studies, and plans and specifications of projects prior to construction, $25,000,000: *Provided,* That funds provided under this heading in this title shall only be used for programs, projects or activities that heretofore or here-

after receive funds provided in Acts making appropriations available for Energy and Water Development: *Provided further,* That funds provided under this heading in this title shall be used for programs, projects or activities or elements of programs, projects or activities that can be completed within the funds made available in that account and that will not require new budget authority to complete: *Provided further,* That for projects that are being completed with funds appropriated in this Act that would otherwise be expired for obligation, expired funds appropriated in this Act may be used to pay the cost of associated supervision, inspection, over engineering and design on those projects and on subsequent claims, if any: *Provided further,* That the Secretary shall have unlimited reprogramming authority for these funds provided under this heading.

CONSTRUCTION

For an additional amount for ''Construction'' for expenses necessary for the construction of river and harbor, flood and storm damage reduction, shore protection, aquatic ecosystem restoration, and related projects authorized by law, $2,000,000,000, of which such sums as are necessary to cover the Federal share of construction costs for facilities under the Dredged Material Disposal Facilities program shall be derived from the Harbor Maintenance Trust Fund as authorized by Public Law 104–

303: *Provided,* That not less than $200,000,000 of the funds provided shall be for water-related environmental infrastructure assistance: *Provided further,* That section 102 of Public Law 109–103 (33 U.S.C. 2221) shall not apply to funds provided in this title: *Provided further,* That notwithstanding any other provision of law, no funds shall be drawn from the Inland Waterways Trust Fund, as authorized in Public Law 99–662: *Provided further,* That funds provided under this heading in this title shall only be used for programs, projects or activities that heretofore or hereafter receive funds provided in Acts making appropriations available for Energy and Water Development: *Provided further,* That funds provided under this heading in this title shall be used for programs, projects or activities or elements of programs, projects or activities that can be completed within the funds made available in that account and that will not require new budget authority to complete: *Provided further,* That the limitation concerning total project costs in section 902 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2280), shall not apply during fiscal year 2009 to any project that received funds provided in this title: *Provided further,* That funds appropriated under this heading may be used by the Secretary of the Army, acting through the Chief of Engineers, to undertake work authorized to be

carried out in accordance with section 14 of the Flood Control Act of 1946 (33 U.S.C. 701r); section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s); section 206 of the Water Resources Development Act of 1996 (33 U.S.C. 2330); or section 1135 of the Water Resources Development Act of 1986 (33 U.S.C. 2309a), notwithstanding the program cost limitations set forth in those sections: *Provided further,* That for projects that are being completed with funds appropriated in this Act that would otherwise be expired for obligation, expired funds appropriated in this Act may be used to pay the cost of associated supervision, inspection, over engineering and design on those projects and on subsequent claims, if any: *Provided further,* That the Secretary shall have unlimited reprogramming authority for these funds provided under this heading.

MISSISSIPPI RIVER AND TRIBUTARIES

For an additional amount for ''Mississippi River and Tributaries'' for expenses necessary for flood damage reduction projects and related efforts as authorized by law, $500,000,000, of which such sums as are necessary to cover the Federal share of operation and maintenance costs for inland harbors shall be derived from the Harbor Maintenance Trust Fund, pursuant to Public Law 99–662: *Provided,* That funds provided under this heading in this title shall only be used for programs, projects or ac-

tivities that heretofore or hereafter receive funds provided in Acts making appropriations available for Energy and Water Development: *Provided further,* That funds provided under this heading in this title shall be used for programs, projects or activities or elements of programs, projects or activities that can be completed within the funds made available in that account and that will not require new budget authority to complete: *Provided further,* That the limitation concerning total project costs in section 902 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2280), shall not apply during fiscal year 2009 to any project that received funds provided in this title: *Provided further,* That for projects that are being completed with funds appropriated in this Act that would otherwise be expired for obligation, expired funds appropriated in this Act may be used to pay the cost of associated supervision, inspection, over engineering and design on those projects and on subsequent claims, if any: *Provided further,* That the Secretary shall have unlimited reprogramming authority for these funds provided under this heading.

OPERATION AND MAINTENANCE

For an additional amount for ''Operation and Maintenance'' for expenses necessary for the operation, maintenance, and care of existing river and harbor, flood and storm damage reduction, aquatic ecosystem restoration,

and related projects authorized by law, and for surveys and charting of northern and northwestern lakes and connecting waters, clearing and straightening channels, and removal of obstructions to navigation, $1,900,000,000, of which such sums as are necessary to cover the Federal share of operation and maintenance costs for coastal harbors and channels, and inland harbors shall be derived from the Harbor Maintenance Trust Fund, pursuant to Public Law 99–662; and of which such sums as become available under section 217 of the Water Resources Development Act of 1996, Public Law 104–303, shall be used to cover the cost of operation and maintenance of the dredged material disposal facilities for which fees have been collected: *Provided,* That funds provided under this heading in this title shall only be used for programs, projects or activities that heretofore or hereafter receive funds provided in Acts making appropriations available for Energy and Water Development: *Provided further,* That funds provided under this heading in this title shall be used for programs, projects or activities or elements of programs, projects or activities that can be completed within the funds made available in that account and that will not require new budget authority to complete: *Provided further,* That $90,000,000 of the funds provided under this heading shall be used for activities described

in section 9004 of Public Law 110–114: *Provided further,* That section 9006 of Public Law 110–114 shall not apply to funds provided in this title: *Provided further,* That for projects that are being completed with funds appropriated in this Act that would otherwise be expired for obligation, expired funds appropriated in this Act may be used to pay the cost of associated supervision, inspection, over engineering and design on those projects and on subsequent claims, if any: *Provided further,* That the Secretary shall have unlimited reprogramming authority for these funds provided under this heading.

REGULATORY PROGRAM

For an additional amount for ''Regulatory Program'' for expenses necessary for administration of laws pertaining to regulation of navigable waters and wetlands, $25,000,000 is provided.

FORMERLY UTILIZED SITES REMEDIAL ACTION PROGRAM

For an additional amount for ''Formerly Utilized Sites Remedial Action Program'' for expenses necessary to clean up contamination from sites in the United States resulting from work performed as part of the Nation's early atomic energy program, $100,000,000: *Provided further,* That funds provided under this heading in this title shall be used for programs, projects or activities or elements of programs, projects or activities that can be completed within the funds made available in that account and

that will not require new budget authority to complete: *Provided further,* That for projects that are being completed with funds appropriated in this Act that would otherwise be expired for obligation, expired funds appropriated in this Act may be used to pay the cost of associated supervision, inspection, over engineering and design on those projects and on subsequent claims, if any: *Provided further,* That the Secretary shall have unlimited reprogramming authority for these funds provided under this heading.

FLOOD CONTROL AND COASTAL EMERGENCIES

For an additional amount for ''Flood Control and Coastal Emergencies'' for expenses necessary for preplacement of materials and equipment, advance measures and other activities authorized by law, $50,000,000 is provided.

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

WATER AND RELATED RESOURCES

For an additional amount for management, development, and restoration of water and related natural resources and for related activities, including the operation, maintenance, and rehabilitation of reclamation and other facilities, participation in fulfilling related Federal responsibilities to Native Americans, and related grants to, and cooperative and other agreements with, State and local

1 governments, federally recognized Indian tribes, and oth-
2 ers, $1,400,000,000; of which such amounts as may be
3 necessary may be advanced to the Colorado River Dam
4 Fund: *Provided,* That of the total appropriated, the
5 amount for program activities that can be financed by the
6 Reclamation Fund or the Bureau of Reclamation special
7 fee account established by 16 U.S.C. 460l–6a(i) shall be
8 derived from that Fund or account: *Provided further,* That
9 funds contributed under 43 U.S.C. 395 are available until
10 expended for the purposes for which contributed: *Provided*
11 *further,* That funds advanced under 43 U.S.C. 397a shall
12 be credited to this account and are available until ex-
13 pended for the same purposes as the sums appropriated
14 under this heading: *Provided further,* That funds provided
15 under this heading in this title shall only be used for pro-
16 grams, projects or activities that heretofore or hereafter
17 receive funds provided in Acts making appropriations
18 available for Energy and Water Development: *Provided*
19 *further,* That funds provided in this Act shall be used for
20 elements of projects, programs or activities that can be
21 completed within these funding amounts and not create
22 budgetary obligations in future fiscal years: *Provided fur-*
23 *ther,* That $50,000,000 of the funds provided under this
24 heading may be transferred to the Department of the Inte-
25 rior for programs, projects and activities authorized by the

Central Utah Project Completion Act (titles II–V of Public Law 102–575): *Provided further,* That $50,000,000 of the funds provided under this heading may be used for programs, projects, and activities authorized by the California Bay-Delta Restoration Act (Public Law 108–361): *Provided further,* That not less than $60,000,000 of the funds provided under this heading shall be used for rural water projects and shall be expended primarily on water intake and treatment facilities of such projects: *Provided further,* That not less than $10,000,000 of the funds provided under this heading shall be used for a bureau-wide inspection of canals program in urbanized areas: *Provided further,* That not less than $110,000,000 of the funds provided under this heading shall be used for water reclamation and reuse projects (title 16 of Public Law 102–575): *Provided further,* That the costs of reimbursable activities, other than for maintenance and rehabilitation, carried out with funds provided in this Act shall be repaid pursuant to existing authorities and agreements: *Provided further,* That the costs of maintenance and rehabilitation activities carried out with funds provided in this Act shall be repaid pursuant to existing authority, except the length of repayment period shall be determined on needs-based criteria to be established and adopted by the Commissioner, but in no case shall the repayment period exceed 25 years:

Provided further, That for projects that are being completed with funds appropriated in this Act that would otherwise be expired for obligation, expired funds appropriated in this Act may be used to pay the cost of associated supervision, inspection, over engineering and design on those projects and on subsequent claims, if any: *Provided further,* That the Secretary shall have unlimited reprogramming authority for these funds provided under this heading.

DEPARTMENT OF ENERGY

ENERGY PROGRAMS

ENERGY EFFICIENCY AND RENEWABLE ENERGY

For an additional amount for ''Energy Efficiency and Renewable Energy'', $14,398,000,000, for necessary expenses, to remain available until September 30, 2010: *Provided,* That $4,200,000,000 shall be available for Energy Efficiency and Conservation Block Grants for implementation of programs authorized under subtitle E of title V of the Energy Independence and Security Act of 2007 (42 U.S.C. 17151 et seq.), of which $2,100,000,000 is available through the formula in subtitle E: *Provided further,* That the remaining $2,100,000,000 shall be awarded on a competitive basis only to competitive grant applicants from States in which the Governor certifies to the Secretary of Energy that the applicable State regulatory au-

1 thority will implement the integrated resource planning
2 and rate design modifications standards required to be
3 considered under paragraphs (16) and (17) of section
4 111(d) of the Public Utility Regulatory Policies Act of
5 1978 (16 U.S.C. 2621(d)(16) and (17)); and the Governor
6 will take all actions within his or her authority to ensure
7 that the State, or the applicable units of local government
8 that have authority to adopt building codes, will imple-
9 ment—

10 (A) building energy codes for residential build-
11 ings that the Secretary determines are likely to meet
12 or exceed the 2009 International Energy Conserva-
13 tion Code;

14 (B) building energy codes for commercial build-
15 ings that the Secretary determines are likely to meet
16 or exceed the ANSI/ASHRAE/IESNA Standard
17 90.1–2007; and

18 (C) a plan for implementing and enforcing the
19 building energy codes described in subparagraphs
20 (A) and (B) that is likely to ensure that at least 90
21 percent of the new and renovated residential and
22 commercial building space will meet the standards
23 within 8 years after the date of enactment of this
24 Act:

Provided further, That $2,000,000,000 shall be available for grants for the manufacturing of advanced batteries and components and the Secretary shall provide facility funding awards under this section to manufacturers of advanced battery systems and vehicle batteries that are produced in the United States, including advanced lithium ion batteries, hybrid electrical systems, component manufacturers, and software designers: *Provided further,* That notwithstanding section 3304 of title 5, United States Code, and without regard to the provisions of sections 3309 through 3318 of such title 5, the Secretary of Energy, upon a determination that there is a severe shortage of candidates or a critical hiring need for particular positions, may from within the funds provided, recruit and directly appoint highly qualified individuals into the competitive service: *Provided further,* That such authority shall not apply to positions in the Excepted Service or the Senior Executive Service: *Provided further,* That any action authorized herein shall be consistent with the merit principles of section 2301 of such title 5, and the Department shall comply with the public notice requirements of section 3327 of such title 5.

ELECTRICITY DELIVERY AND ENERGY RELIABILITY

For an additional amount for ''Electricity Delivery and Energy Reliability'', $4,500,000,000, for necessary

1 expenses, to remain available until September 30, 2010:
2 *Provided,* That $100,000,000 shall be available for worker
3 training activities: *Provided further,* That notwithstanding
4 section 3304 of title 5, United States Code, and without
5 regard to the provisions of sections 3309 through 3318
6 of such title 5, the Secretary of Energy, upon a determina-
7 tion that there is a severe shortage of candidates or a crit-
8 ical hiring need for particular positions, may from within
9 the funds provided, recruit and directly appoint highly
10 qualified individuals into the competitive service: *Provided*
11 *further,* That such authority shall not apply to positions
12 in the Excepted Service or the Senior Executive Service:
13 *Provided further,* That any action authorized herein shall
14 be consistent with the merit principles of section 2301 of
15 such title 5, and the Department shall comply with the
16 public notice requirements of section 3327 of such title
17 5: *Provided,* That for the purpose of facilitating the devel-
18 opment of regional transmission plans, the Office of Elec-
19 tricity Delivery and Energy Reliability within the Depart-
20 ment of Energy is provided $80,000,000 within the avail-
21 able funds to conduct a resource assessment and an anal-
22 ysis of future demand and transmission requirements:
23 *Provided further,* That the Office of Electricity Delivery
24 and Energy Reliability will provide technical assistance to
25 the North American Electric Reliability Corporation, the

regional reliability entities, the States, and other transmission owners and operators for the formation of interconnection-based transmission plans for the Eastern and Western Interconnections and ERCOT: *Provided further,* That such assistance may include modeling, support to regions and States for the development of coordinated State electricity policies, programs, laws, and regulations: *Provided further,* That $10,000,000 is provided to implement section 1305 of Public Law 110–140.

FOSSIL ENERGY RESEARCH AND DEVELOPMENT

For an additional amount for ''Fossil Energy Research and Development'', $4,600,000,000, to remain available until September 30, 2010: *Provided,* That $2,000,000,000 is available for one or more near zero emissions powerplant(s): *Provided further,* $1,000,000,000 is available for selections under the Department's Clean Coal Power Initiative Round III Funding Opportunity Announcement; notwithstanding the mandatory eligibility requirements of the Funding Opportunity Announcement, the Department shall consider applications that utilize petroleum coke for some or all of the project's fuel input: *Provided further,* $1,520,000,000 is available for a competitive solicitation pursuant to section 703 of Public Law 110–140 for projects that demonstrate carbon capture from industrial sources: *Provided further,* That awards for

such projects may include plant efficiency improvements for integration with carbon capture technology.

NON-DEFENSE ENVIRONMENTAL CLEANUP

For an additional amount for ''Non-Defense Environmental Cleanup'', $483,000,000, to remain available until September 30, 2010.

URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING FUND

For an additional amount for ''Uranium Enrichment Decontamination and Decommissioning Fund'', $390,000,000, to remain available until September 30, 2010, of which $70,000,000 shall be available in accordance with title X, subtitle A of the Energy Policy Act of 1992.

SCIENCE

For an additional amount for ''Science'', $430,000,000, to remain available until September 30, 2010.

TITLE 17—INNOVATIVE TECHNOLOGY LOAN GUARANTEE PROGRAM

Subject to section 502 of the Congressional Budget Act of 1974, commitments to guarantee loans under section 1702(b)(2) of the Energy Policy Act of 2005, shall not exceed a total principal amount of $50,000,000,000 for eligible projects, to remain available until committed:

1 *Provided,* That these amounts are in addition to any au-
2 thority provided elsewhere in this Act and this and pre-
3 vious fiscal years: *Provided further,* That such sums as are
4 derived from amounts received from borrowers pursuant
5 to section 1702(b)(2) of the Energy Policy Act of 2005
6 under this heading in this and prior Acts, shall be collected
7 in accordance with section 502(7) of the Congressional
8 Budget Act of 1974: *Provided further,* That the source of
9 such payment received from borrowers is not a loan or
10 other debt obligation that is guaranteed by the Federal
11 Government: *Provided further,* That pursuant to section
12 1702(b)(2) of the Energy Policy Act of 2005, no appro-
13 priations are available to pay the subsidy cost of such
14 guarantees: *Provided further,* That none of the loan guar-
15 antee authority made available in this Act shall be avail-
16 able for commitments to guarantee loans under section
17 1702(b)(2) of the Energy Policy Act of 2005 for any
18 projects where funds, personnel, or property (tangible or
19 intangible) of any Federal agency, instrumentality, per-
20 sonnel or affiliated entity are expected to be used (directly
21 or indirectly) through acquisitions, contracts, demonstra-
22 tions, exchanges, grants, incentives, leases, procurements,
23 sales, other transaction authority, or other arrangements,
24 to support the project or to obtain goods or services from
25 the project: *Provided further,* That none of the loan guar-

antee authority made available in this Act shall be available under section 1702(b)(2) of the Energy Policy Act of 2005 for any project unless the Director of the Office of Management and Budget has certified in advance in writing that the loan guarantee and the project comply with the provisions under this title: *Provided further,* That for an additional amount for the cost of guaranteed loans authorized by section 1702(b)(1) and section 1705 of the Energy Policy Act of 2005, $9,500,000,000, available until expended, to pay the costs of guarantees made under this section: *Provided further,* That of the amount provided for Title XVII, $15,000,000 shall be used for administrative expenses in carrying out the guaranteed loan program.

OFFICE OF THE INSPECTOR GENERAL

For necessary expenses of the Office of the Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $5,000,000, to remain available until expended.

ATOMIC ENERGY DEFENSE ACTIVITIES

NATIONAL NUCLEAR SECURITY ADMINISTRATION

WEAPONS ACTIVITIES

For an additional amount for weapons activities, $1,000,000,000, to remain available until September 30, 2010.

ENVIRONMENTAL AND OTHER DEFENSE ACTIVITIES

DEFENSE ENVIRONMENTAL CLEANUP

For an additional amount for ''Defense Environmental Cleanup'', $5,527,000,000, to remain available until September 30, 2010.

CONSTRUCTION, REHABILITATION, OPERATION, AND MAINTENANCE, WESTERN AREA POWER ADMINISTRATION

For carrying out the functions authorized by title III, section 302(a)(1)(E) of the Act of August 4, 1977 (42 U.S.C. 7152), and other related activities including conservation and renewable resources programs as authorized, $10,000,000, to remain available until expended: *Provided,* That the Administrator shall establish such personnel staffing levels as he deems necessary to economically and efficiently complete the activities pursued under the authority granted by section 402 of this Act: *Provided further,* That this appropriation is non-reimbursable.

GENERAL PROVISIONS—THIS TITLE

SEC. 401. BONNEVILLE POWER ADMINISTRATION BORROWING AUTHORITY. For the purposes of providing funds to assist in financing the construction, acquisition, and replacement of the transmission system of the Bonneville Power Administration and to implement the authority of the Administrator of the Bonneville Power Administra-

tion under the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839 et seq.), an additional $3,250,000,000 in borrowing authority is made available under the Federal Columbia River Transmission System Act (16 U.S.C. 838 et seq.), to remain outstanding at any time.

SEC. 402. WESTERN AREA POWER ADMINISTRATION BORROWING AUTHORITY. The Hoover Power Plant Act of 1984 (Public Law 98–381) is amended by adding at the end the following:

"TITLE III—BORROWING AUTHORITY

"SEC. 301. WESTERN AREA POWER ADMINISTRATION BORROWING AUTHORITY.

''(a) DEFINITIONS.—In this section:

''(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Western Area Power Administration.

''(2) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

''(b) AUTHORITY.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, subject to paragraphs (2) through (5)—

"(A) the Western Area Power Administration may borrow funds from the Treasury; and

"(B) the Secretary shall, without further appropriation and without fiscal year limitation, loan to the Western Area Power Administration, on such terms as may be fixed by the Administrator and the Secretary, such sums (not to exceed, in the aggregate (including deferred interest), $3,250,000,000 in outstanding repayable balances at any one time) as, in the judgment of the Administrator, are from time to time required for the purpose of—

"(i) constructing, financing, facilitating, planning, operating, maintaining, or studying construction of new or upgraded electric power transmission lines and related facilities with at least one terminus within the area served by the Western Area Power Administration; and

"(ii) delivering or facilitating the delivery of power generated by renewable energy resources constructed or reasonably expected to be constructed after the date of enactment of this section.

"(2) INTEREST.—The rate of interest to be charged in connection with any loan made pursuant to this subsection shall be fixed by the Secretary, taking into consideration market yields on outstanding marketable obligations of the United States of comparable maturities as of the date of the loan.

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

"(4) PARTICIPATION.—The Administrator may permit other entities to participate in the financing, construction and ownership projects financed under this section.

"(5) CONGRESSIONAL REVIEW OF DISBURSEMENT.—Effective upon the date of enactment of this section, the Administrator shall have the authority to have utilized $1,750,000,000 at any one time. If the Administrator seeks to borrow funds above $1,750,000,000, the funds will be disbursed unless there is enacted, within 90 calendar days of the first such request, a joint resolution that rescinds the remainder of the balance of the borrowing authority provided in this section.

"(c) TRANSMISSION LINE AND RELATED FACILITY PROJECTS.—

"(1) IN GENERAL.—For repayment purposes, each transmission line and related facility project in which the Western Area Power Administration participates pursuant to this section shall be treated as separate and distinct from—

"(A) each other such project; and

"(B) all other Western Area Power Administration power and transmission facilities.

"(2) PROCEEDS.—The Western Area Power Administration shall apply the proceeds from the use of the transmission capacity from an individual project under this section to the repayment of the principal and interest of the loan from the Treasury attributable to that project, after reserving such funds as the Western Area Power Administration determines are necessary—

"(A) to pay for any ancillary services that are provided; and

"(B) to meet the costs of operating and maintaining the new project from which the revenues are derived.

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

"(A) repayment of the associated loan for the project; and

"(B) payment of expenses for ancillary services and operation and maintenance.

"(4) LIMITATION ON AUTHORITY.—Nothing in this section confers on the Administrator any additional authority or obligation to provide ancillary services to users of transmission facilities developed under this section.

"(5) TREATMENT OF CERTAIN REVENUES.—Revenue from ancillary services provided by existing Federal power systems to users of transmission projects funded pursuant to this section shall be treated as revenue to the existing power system that provided the ancillary services.

"(d) CERTIFICATION.—

"(1) IN GENERAL.—For each project in which the Western Area Power Administration participates pursuant to this section, the Administrator shall certify, prior to committing funds for any such project, that—

"(A) the project is in the public interest;

"(B) the project will not adversely impact system reliability or operations, or other statutory obligations; and

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

"(2) FORGIVENESS OF BALANCES.—

"(A) IN GENERAL.—If, at the end of the useful life of a project, there is a remaining balance owed to the Treasury under this section, the balance shall be forgiven.

"(B) UNCONSTRUCTED PROJECTS.—Funds expended to study projects that are considered pursuant to this section but that are not constructed shall be forgiven.

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

"(e) PUBLIC PROCESSES.—

"(1) POLICIES AND PRACTICES.—Prior to requesting any loans under this section, the Administrator shall use a public process to develop practices and policies that implement the authority granted by this section.

"(2) REQUESTS FOR INTEREST.—In the course of selecting potential projects to be funded under this section, the Administrator shall seek Requests For Interest from entities interested in identifying

potential projects through one or more notices published in the Federal Register.''

SEC. 403. TECHNICAL CORRECTIONS TO THE ENERGY INDEPENDENCE AND SECURITY ACT OF 2007. Title XIII of the Energy Independence and Security Act of 2007 (15 U.S.C. 17381 and following) is amended as follows:

(1) By amending subparagraph (A) of section 1304(b)(3) to read as follows:

''(A) IN GENERAL.—In carrying out the initiative, the Secretary shall provide financial support to smart grid demonstration projects including those in rural areas and/or areas where the majority of generation and transmission assets are controlled by a tax-exempt entity.''.

(2) By amending subparagraph (C) of section 1304(b)(3) to read as follows:

''(C) FEDERAL SHARE OF COST OF TECHNOLOGY INVESTMENTS.—The Secretary shall provide to an electric utility described in subparagraph (B) or to other parties financial assistance for use in paying an amount equal to not more than 50 percent of the cost of qualifying advanced grid technology investments

made by the electric utility or other party to carry out a demonstration project. ".

(3) By inserting a new subparagraph (E) after 1304(b)(3)(D) as follows:

"(E) AVAILABILITY OF DATA.—The Secretary shall establish and maintain a smart grid information clearinghouse in a timely manner which will make data from smart grid demonstration projects and other sources available to the public. As a condition of receiving financial assistance under this subsection, a utility or other participant in a smart grid demonstration project shall provide such information as the Secretary may require to become available through the smart grid information clearinghouse in the form and within the timeframes as directed by the Secretary. The Secretary shall assure that business proprietary information and individual customer information is not included in the information made available through the clearinghouse.".

(4) By amending paragraph (2) of section 1304(c) to read as follows:

"(2) to carry out subsection (b), such sums as may be necessary.".

(5) By amending subsection (a) of section 1306 by striking "reimbursement of one-fifth (20 percent)" and inserting "grants of up to one-half (50 percent)".

(6) By striking the last sentence of subsection (b)(9) of section 1306.

(7) By striking "are eligible for" in subsection (c)(1) of section 1306 and inserting "utilize".

(8) By amending subsection (e) of section 1306 to read as follows:

"(e) The Secretary shall—

"(1) establish within 60 days after the enactment of the American Recovery and Reinvestment Act of 2009 procedures by which applicants can obtain grants of not more than one-half of their documented costs;

"(2) establish procedures to ensure that there is no duplication or multiple payment for the same investment or costs, that the grant goes to the party making the actual expenditures for Qualifying Smart Grid Investments, and that the grants made have significant effect in encouraging and facilitating the development of a smart grid;

"(3) maintain public records of grants made, recipients, and qualifying Smart Grid investments which have received grants;

"(4) establish procedures to provide advance payment of moneys up to the full amount of the grant award; and

"(5) have and exercise the discretion to deny grants for investments that do not qualify in the reasonable judgment of the Secretary.".

SEC. 404. TEMPORARY STIMULUS LOAN GUARANTEE PROGRAM. (a) AMENDMENT.—Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511 et seq.) is amended by adding the following at the end:

"SEC. 1705. TEMPORARY PROGRAM FOR RAPID DEPLOYMENT OF RENEWABLE ENERGY AND ELECTRIC POWER TRANSMISSION PROJECTS.

"(a) IN GENERAL.—Notwithstanding section 1703, the Secretary may make guarantees under this section only for commercial technology projects under subsection (b) that will reach financial close not later than September 30, 2012.

"(b) CATEGORIES.—Projects from only the following categories shall be eligible for support under this section:

"(1) Renewable energy systems.

"(2) Electric power transmission systems.

"(c) AUTHORIZATION LIMIT.—There are authorized to be appropriated $10,000,000,000 to the Secretary for fiscal years 2009 through 2012 to provide the cost of guarantees made under section.

"(d) SUNSET.—The authority to enter into guarantees under this section shall expire on September 30, 2012.".

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents for the Energy Policy Act of 2005 is amended by inserting after the item relating to section 1704 the following new item:

"Sec. 1705. Temporary program for rapid deployment of renewable energy and electric power transmission projects.".

SEC. 405. WEATHERIZATION PROGRAM AMENDMENTS. (a) INCOME LEVEL.—Section 412(7) of the Energy Conservation and Production Act (42 U.S.C. 6862(7)) is amended by striking "150 percent" both places it appears and inserting "200 percent".

(b) ASSISTANCE LEVEL PER DWELLING UNIT.—Section 415(c)(1) of the Energy Conservation and Production Act (42 U.S.C. 6865(c)(1)) is amended by striking "$2,500" and inserting "$5,000".

(c) TRAINING AND TECHNICAL ASSISTANCE.—Section 416 of the Energy Conservation and Production Act (42 U.S.C. 6866) is amended by striking "10 percent" and inserting "up to 20 percent".

SEC. 406. TECHNICAL CORRECTIONS TO PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978. (a) Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by redesignating paragraph (16) relating to consideration of smart grid investments (added by section 1307(a) of Public Law 110–140) as paragraph (18) and by redesignating paragraph (17) relating to smart grid information (added by section 1308(a) of Public Law 110–140) as paragraph (19).

(b) Subsections (b) and (d) of section 112 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622) are each amended by striking ''(17) through (18)'' in each place it appears and inserting ''(16) through (19)''.

TITLE V—FINANCIAL SERVICES AND GENERAL GOVERNMENT

DEPARTMENT OF THE TREASURY

COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND PROGRAM ACCOUNT

For an additional amount for ''Community Development Financial Institutions Fund Program Account'', $250,000,000, to remain available until September 30, 2010, for qualified applicants under the fiscal year 2008 and 2009 funding rounds of the Community Development Financial Institutions Program, of which up to

$20,000,000 may be for financial assistance, technical assistance, training and outreach programs, including up to $5,000 for subsistence expenses, designed to benefit Native American, Native Hawaiian, and Alaskan Native communities and provided primarily through qualified community development lender organizations with experience and expertise in community development banking and lending in Indian country, Native American organizations, tribes and tribal organizations and other suitable providers and up to $5,000,000 may be used for administrative expenses: *Provided,* That for purposes of the fiscal year 2008 and 2009 funding rounds, the following statutory provisions are hereby waived: 12 U.S.C. 4707(e) and 12 U.S.C. 4707(d): *Provided further,* That no awardee, together with its subsidiaries and affiliates, may be awarded more than 15 percent of the aggregate funds available during each of fiscal years 2008 and 2009 from the Community Development Financial Institutions Program: *Provided further,* That no later than 60 days after the date of enactment of this Act, the Department of the Treasury shall submit to the Committees on Appropriations of the House of Representatives and the Senate a detailed expenditure plan for funds provided under this heading.

1 DISTRICT OF COLUMBIA

2 FEDERAL PAYMENTS

3 FEDERAL PAYMENT TO THE DISTRICT OF COLUMBIA

4 WATER AND SEWER AUTHORITY

5 For a Federal payment to the District of Columbia
6 Water and Sewer Authority, $125,000,000, to remain
7 available until September 30, 2010, to continue implemen-
8 tation of the Combined Sewer Overflow Long-Term Con-
9 trol Plan: *Provided,* That the District of Columbia Water
10 and Sewer Authority provide a 100 percent match for this
11 payment: *Provided further,* That no later than 60 days
12 after the date of enactment of this Act, the District of
13 Columbia Water and Sewer Authority shall submit to the
14 Committees on Appropriations of the House of Represent-
15 atives and the Senate a detailed expenditure plan for
16 funds provided under this heading: *Provided further,* That
17 such expenditure plan shall include a description of each
18 specific project, how specific projects will further the ob-
19 jectives of the Long-Term Control Plan, and all funding
20 sources for each project.

1 GENERAL SERVICES ADMINISTRATION

2 REAL PROPERTY ACTIVITIES

3 FEDERAL BUILDINGS FUND

4 LIMITATIONS ON AVAILABILITY OF REVENUE

5 (INCLUDING TRANSFER OF FUNDS)

6 For an additional amount to be deposited in the Fed-
7 eral Buildings Fund, $9,048,000,000, to carry out the
8 purposes of the Fund, of which not less than
9 $1,400,000,000 shall be available for Federal buildings
10 and United States courthouses, not less than
11 $1,200,000,000 shall be available for border stations, and
12 not less than $6,000,000,000 shall be available for meas-
13 ures necessary to convert GSA facilities to High-Perform-
14 ance Green Buildings, as defined in section 401 of Public
15 Law 110–140: *Provided,* That not to exceed $108,000,000
16 of the amounts provided under this heading may be ex-
17 pended for rental of space, related to leasing of temporary
18 space in connection with projects funded under this head-
19 ing: *Provided further,* That not to exceed $206,000,000
20 of the amounts provided under this heading may be ex-
21 pended for building operations, for the administrative
22 costs of completing projects funded under this heading:
23 *Provided further,* That (1) not less than $7,000,000,000
24 of the funds provided under this heading shall be obligated
25 by September 30, 2010, and (2) $1,600,000,000 shall be
26 available until September 30, 2011: *Provided further,* That

the Administrator of General Services is authorized to initiate design, construction, repair, alteration, and other projects through existing authorities of the Administrator: *Provided further,* That the General Services Administration shall submit a detailed plan, by project, regarding the use of funds made available in this Act to the Committees on Appropriations of the House of Representatives and the Senate within 60 days of enactment of this Act: *Provided further,* That of the amounts provided for converting GSA facilities to High-Performance Green Buildings, $4,000,000 shall be transferred to and merged with ''Government-Wide Policy'', for carrying out the provisions of section 436 of the Energy Independence and Security Act of 2007 (Public Law 110–140), establishing an Office of Federal High-Performance Green Buildings, to remain available until September 30, 2010: *Provided further,* That within the overall amount to be deposited into the Fund, $448,000,000 shall remain available until September 30, 2011, for the development and construction of the headquarters for the Department of Homeland Security, except that none of the preceding provisos shall apply to amounts made available under this proviso.

ENERGY-EFFICIENT FEDERAL MOTOR VEHICLE FLEET PROCUREMENT

For capital expenditures and necessary expenses of acquiring motor vehicles with higher fuel economy, including: hybrid vehicles; neighborhood electric vehicles; electric vehicles; and commercially-available, plug-in hybrid vehicles, $600,000,000, to remain available until September 30, 2011.

OFFICE OF INSPECTOR GENERAL

For an additional amount for the Office of the Inspector General, to remain available until September 30, 2011, $2,000,000.

RECOVERY ACT ACCOUNTABILITY AND TRANSPARENCY BOARD

For necessary expenses of the Recovery Act Accountability and Transparency Board to carry out the provisions of title XV of this Act, $7,000,000, to remain available until September 30, 2010.

SMALL BUSINESS ADMINISTRATION

SALARIES AND EXPENSES

For an additional amount, to remain available until September 30, 2010, $84,000,000, of which $24,000,000 is for marketing, management, and technical assistance under section 7(m) of the Small Business Act (15 U.S.C. 636(m)(4)) by intermediaries that make microloans under

the microloan program, of which $15,000,000 is for lender oversight activities as authorized in section 501(c) of this title, and of which $20,000,000 is for improving, streamlining, and automating information technology systems related to lender processes and lender oversight: *Provided,* That no later than 60 days after the date of enactment of this Act, the Small Business Administration shall submit to the Committees on Appropriations of the House of Representatives and the Senate a detailed expenditure plan for funds provided under the heading ''Small Business Administration'' in this Act.

OFFICE OF INSPECTOR GENERAL

For an additional amount for the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, $10,000,000, to remain available until September 30, 2011.

SURETY BOND GUARANTEES REVOLVING FUND

For additional capital for the Surety Bond Guarantees Revolving Fund, authorized by the Small Business Investment Act of 1958, $15,000,000, to remain available until expended.

BUSINESS LOANS PROGRAM ACCOUNT

For an additional amount for the cost of direct loans, $6,000,000, to remain available until September 30, 2010, and for an additional amount for the cost of guaranteed

1 loans, $615,000,000, to remain available until September
2 30, 2010: *Provided,* That of the amount for the cost of
3 guaranteed loans, $515,000,000 shall be for loan subsidies
4 and loan modifications for loans to small business con-
5 cerns authorized in section 501(a) of this title; and
6 $100,000,000 shall be for loan subsidies and loan modi-
7 fications for loans to small business concerns authorized
8 in section 501(b) of this title: *Provided further,* That such
9 costs, including the cost of modifying such loans, shall be
10 as defined in section 502 of the Congressional Budget Act
11 of 1974.

12 ADMINISTRATIVE PROVISIONS—SMALL BUSINESS
13 ADMINISTRATION

14 SEC. 501. ECONOMIC STIMULUS FOR SMALL BUSI-
15 NESS CONCERNS. (a) TEMPORARY FEE ELIMINATION FOR
16 THE 7(a) LOAN PROGRAM.—Until September 30, 2010,
17 and to the extent that the cost of such elimination of fees
18 is offset by appropriations, with respect to each loan guar-
19 anteed under section 7(a) of the Small Business Act (15
20 U.S.C. 636(a)) for which the application is approved on
21 or after the date of enactment of this Act, the Adminis-
22 trator shall—

23 (1) in lieu of the fee otherwise applicable under
24 section 7(a)(23)(A) of the Small Business Act (15
25 U.S.C. 636(a)(23)(A)), collect no fee; and

(2) in lieu of the fee otherwise applicable under section 7(a)(18)(A) of the Small Business Act (15 U.S.C. 636(a)(18)(A)), collect no fee.

(b) TEMPORARY FEE ELIMINATION FOR THE 504 LOAN PROGRAM.—

(1) IN GENERAL.—Until September 30, 2010, and to the extent the cost of such elimination in fees is offset by appropriations, with respect to each project or loan guaranteed by the Administrator under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.) for which an application is approved or pending approval on or after the date of enactment of this Act—

(A) the Administrator shall, in lieu of the fee otherwise applicable under section 503(d)(2) of the Small Business Investment Act of 1958 (15 U.S.C. 697(d)(2)), collect no fee;

(B) a development company shall, in lieu of the processing fee under section 120.971(a)(1) of title 13, Code of Federal Regulations (relating to fees paid by borrowers), or any successor thereto, collect no fee.

(2) REIMBURSEMENT FOR WAIVED FEES.—

(A) IN GENERAL.—To the extent that the cost of such payments is offset by appropria-

tions, the Administrator shall reimburse each development company that does not collect a processing fee pursuant to paragraph (1)(B).

(B) AMOUNT.—The payment to a development company under subparagraph (A) shall be in an amount equal to 1.5 percent of the net debenture proceeds for which the development company does not collect a processing fee pursuant to paragraph (1)(B).

(c) TEMPORARY FEE ELIMINATION OF LENDER OVERSIGHT FEES.—Until September 30, 2010, and to the extent the cost of such elimination in fees is offset by appropriations, the Administrator shall, in lieu of the fee otherwise applicable under section 5(b)(14) of the Small Business Act (15 U.S.C. 634(b)(14)), collect no fee.

(d) APPLICATION OF FEE ELIMINATIONS.—The Administrator shall eliminate fees under subsections (a), (b), and (c) until the amount provided for such purposes, as applicable, under the headings ''Salaries and Expenses'' and ''Business Loans Program Account'' under the heading ''Small Business Administration'' under this Act are expended.

SEC. 502. FINANCIAL ASSISTANCE PROGRAM IMPROVEMENTS. (a) 7(a) LOAN MAXIMUM AMOUNT.—Section 7(a)(3)(A) of the Small Business Act (15 U.S.C.

636(a)(3)(A)) is amended by striking "$1,500,000 (or if the gross loan amount would exceed $2,000,000)" and inserting "$2,250,000 (or if the gross loan amount would exceed $3,000,000)".

(b) SMALL BUSINESS INVESTMENT COMPANIES.—

(1) MAXIMUM LEVERAGE.—Section 303(b) of the Small Business Investment Act of 1958 (15 U.S.C. 683(b)) is amended—

(A) in paragraph (2), by striking subparagraphs (A), (B), and (C) and inserting the following:

"(A) IN GENERAL.—The maximum amount of outstanding leverage made available to any 1 company licensed under section 301(c) may not exceed the lesser of—

"(i) 300 percent of the private capital of the company; or

"(ii) $150,000,000.

"(B) MULTIPLE LICENSES UNDER COMMON CONTROL.—The maximum amount of outstanding leverage made available to 2 or more companies licensed under section 301(c) that are commonly controlled (as determined by the Administrator) may not exceed $225,000,000.

"(C) INVESTMENTS IN LOW–INCOME GEOGRAPHIC AREAS.—

"(i) IN GENERAL.—The maximum amount of outstanding leverage made available to—

"(I) any 1 company described in clause (ii) may not exceed the lesser of—

"(aa) 300 percent of private capital of the company; or

"(bb) $175,000,000; and

"(II) 2 or more companies described in clause (ii) that are commonly controlled (as determined by the Administrator) may not exceed $250,000,000.

"(ii) APPLICABILITY.—A company described in this clause is a company licensed under section 301(c) that certifies in writing that not less than 50 percent of the dollar amount of investments of that company shall be made in companies that are located in a low-income geographic area (as that term is defined in section 351).";

and

(B) by striking paragraph (4).

(2) INVESTMENTS IN SMALLER ENTERPRISES.—Section 303(d) of the Small Business Investment Act of 1958 (15 U.S.C. 683(d)) is amended to read as follows:

"(d) INVESTMENTS IN SMALLER ENTERPRISES.—The Administrator shall require each licensee, as a condition of approval of an application for leverage, to certify in writing that not less than 25 percent of the aggregate dollar amount of financings of that licensee shall be provided to smaller enterprises.".

(3) MAXIMUM INVESTMENT IN A COMPANY.—Section 306(a) of the Small Business Investment Act of 1958 (15 U.S.C. 686(a)) is amended by striking "20 per centum" and inserting "30 percent".

(c) MAXIMUM 504 LOAN SIZE.—Section 502(2)(A) of the Small Business Investment Act of 1958 (15 U.S.C. 696(2)(A)) is amended—

(1) in clause (i), by striking "$1,500,000" and inserting "$3,000,000";

(2) in clause (ii), by striking "$2,000,000" and inserting "$3,500,000"; and

(3) in clause (iii), by striking "$4,000,000" and inserting "$5,500,000".

1 SEC. 503. LOW-INTEREST REFINANCING. Section
2 502 of the Small Business Investment Act of 1958 (15
3 U.S.C. 696) is amended by adding at the end the fol-
4 lowing:

5 "(7) PERMISSIBLE DEBT FINANCING.—A fi-
6 nancing under this title may include refinancing of
7 existing indebtedness, in an amount not to exceed 50
8 percent of the projected cost of the project financed
9 under this title, if—

10 "(A) the project financed under this title
11 involves the expansion of a small business con-
12 cern;

13 "(B) the existing indebtedness is
14 collateralized by fixed assets;

15 "(C) the existing indebtedness was in-
16 curred for the benefit of the small business con-
17 cern;

18 "(D) the proceeds of the existing indebted-
19 ness were used to acquire land (including a
20 building situated thereon), to construct or ex-
21 pand a building thereon, or to purchase equip-
22 ment;

23 "(E) the borrower has been current on all
24 payments due on the existing indebtedness for

not less than 1 year preceding the proposed date of refinancing;

"(F) the financing under this title will provide better terms or a better rate of interest than exists on the existing indebtedness on the proposed date of refinancing;

"(G) the financing under this title is not being used to refinance any debt guaranteed by the Government; and

"(H) the financing under this title will be used only for—

"(i) refinancing existing indebtedness; or

"(ii) costs relating to the project financed under this title.".

SEC. 504. DEFINITIONS. Under the heading "Small Business Administration" in this title—

(1) the terms "Administration" and "Administrator" mean the Small Business Administration and the Administrator thereof, respectively;

(2) the term "development company" has the meaning given the term "development companies" in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662); and

(3) the term ''small business concern'' has the same meaning as in section 3 of the Small Business Act (15 U.S.C. 632).

TITLE VI—DEPARTMENT OF HOMELAND SECURITY

DEPARTMENT OF HOMELAND SECURITY

OFFICE OF THE UNDER SECRETARY FOR MANAGEMENT

For an additional amount for the ''Office of the Under Secretary for Management'', $248,000,000, to remain available until September 30, 2011, solely for planning, design, and construction costs, including site security, information technology infrastructure, furniture, fixtures, and related costs to consolidate the Department of Homeland Security headquarters: *Provided,* That no later than 60 days after the date of enactment of this Act, the Secretary of Homeland Security, in consultation with the Administrator of General Services, shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for the expenditure of these funds.

OFFICE OF INSPECTOR GENERAL

For an additional amount for the ''Office of Inspector General'', $5,000,000, to remain available until September 30, 2010, for oversight and audit of programs, grants, and projects funded under this title.

U.S. Customs and Border Protection

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'', $198,000,000, to remain available until September 30, 2010, of which $100,800,000 shall be for the procurement and deployment of non-intrusive inspection systems to improve port security; and of which $97,200,000 shall be for procurement and deployment of tactical communications equipment and radios: *Provided,* That no later than 45 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for expenditure of these funds.

BORDER SECURITY FENCING, INFRASTRUCTURE, AND TECHNOLOGY

For an additional amount for ''Border Security Fencing, Infrastructure, and Technology'', $200,000,000, to remain available until September 30, 2010, for expedited development and deployment of border security technology on the Southwest border: *Provided,* That no later than 45 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for expenditure of these funds.

CONSTRUCTION

For an additional amount for ''Construction'', $800,000,000, to remain available until expended, solely for planning, management, design, alteration, and construction of U.S. Customs and Border Protection owned land border ports of entry: *Provided,* That no later than 45 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for expenditure of these funds.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

AUTOMATION MODERNIZATION

For an additional amount for ''Automation Modernization'', $27,800,000, to remain available until September 30, 2010, for the procurement and deployment of tactical communications equipment and radios: *Provided,* That no later than 45 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for expenditure of these funds.

TRANSPORTATION SECURITY ADMINISTRATION

AVIATION SECURITY

For an additional amount for ''Aviation Security'', $1,200,000,000, to remain available until September 30,

2010, for procurement and installation of checked baggage explosives detection systems and checkpoint explosives detection equipment: *Provided,* That no later than 45 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for the expenditure of these funds.

COAST GUARD

ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS

For an additional amount for ''Acquisition, Construction, and Improvements'', $572,500,000, to remain available until September 30, 2010, of which $255,000,000 shall be for shortfalls in priority procurements due to materials and labor cost increases; of which $195,000,000 shall be for shore facilities and aids to navigation facilities; of which $87,500,000 shall be for the design of a new polar icebreaker or the renovation of an existing polar icebreaker, and major repair and maintenance of existing polar icebreakers; and of which $35,000,000 shall be for emergency maintenance of the Coast Guard's high endurance cutters: *Provided,* That amounts made available for the activities under this heading shall be available for all necessary expenses related to the oversight and management of such activities: *Provided further,* That no later than 45 days after the date of enactment of this Act, the

Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for the expenditure of these funds.

ALTERATION OF BRIDGES

For an additional amount for ''Alteration of Bridges'', $240,400,000, to remain available until September 30, 2010, for alteration or removal of obstructive bridges, as authorized by section 6 of the Truman-Hobbs Act (33 U.S.C. 516): *Provided,* That no later than 45 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for the expenditure of these funds.

FEDERAL EMERGENCY MANAGEMENT AGENCY

MANAGEMENT AND ADMINISTRATION

For an additional amount for ''Management and Administration'', $6,000,000 for the acquisition of communications response vehicles to be deployed in response to a disaster or a national security event.

STATE AND LOCAL PROGRAMS

For an additional amount for grants, $950,000,000, to be allocated as follows:

(1) $100,000,000, to remain available until September 30, 2010, for Public Transportation Security Assistance, Railroad Security Assistance, and

1 Systemwide Amtrak Security Upgrades under sec-
2 tions 1406, 1513, and 1514 of the Implementing
3 Recommendations of the 9/11 Commission Act of
4 2007 (Public Law 110–53; 6 U.S.C. 1135, 1163,
5 and 1164).

6 (2) $100,000,000, to remain available until
7 September 30, 2010, for Port Security Grants in ac-
8 cordance with 46 U.S.C. 70107, notwithstanding 46
9 U.S.C. 70107(c).

10 (3) $250,000,000, to remain available until
11 September 30, 2010, for upgrading, modifying, or
12 constructing emergency operations centers under
13 section 614 of the Robert T. Stafford Disaster Relief
14 and Emergency Assistance Act, notwithstanding sec-
15 tion 614(c) of that Act or for upgrading, modifying,
16 or constructing State and local fusion centers as de-
17 fined by section 210A(j)(1) of the Homeland Secu-
18 rity Act of 2002 (6 U.S.C. 124h(j)(1)).

19 (4) $500,000,000 for construction to upgrade
20 or modify critical infrastructure, as defined in sec-
21 tion 1016(e) of the USA PATRIOT Act of 2001 (42
22 U.S.C. 5195c(e)), to mitigate consequences related
23 to potential damage from all-hazards: *Provided,*
24 That funds in this paragraph shall remain available
25 until September 30, 2011: *Provided further,* That 5

percent shall be for program administration: *Provided further,* That no later than 60 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for expenditure of these funds.

FIREFIGHTER ASSISTANCE GRANTS

For an additional amount for competitive grants, $500,000,000, to remain available until September 30, 2010, for modifying, upgrading, or constructing State and local fire stations: *Provided,* That up to 5 percent shall be for program administration: *Provided further,* That no grant shall exceed $15,000,000.

DISASTER ASSISTANCE DIRECT LOAN PROGRAM ACCOUNT

Notwithstanding section 417(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, the amount of any such loan issued pursuant to this section for major disasters occurring in calendar year 2008 may exceed $5,000,000, and may be equal to not more than 50 percent of the annual operating budget of the local government in any case in which that local government has suffered a loss of 25 percent or more in tax revenues: *Provided,* That the cost of modifying such loans shall be as defined in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661a).

EMERGENCY FOOD AND SHELTER

For an additional amount to carry out the emergency food and shelter program pursuant to title III of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11331 et seq.), $100,000,000: *Provided,* That total administrative costs shall not exceed 3.5 percent of the total amount made available under this heading.

FEDERAL LAW ENFORCEMENT TRAINING CENTER

ACQUISITION, CONSTRUCTION, IMPROVEMENTS, AND RELATED EXPENSES

For an additional amount for ''Acquisition, Construction, Improvements, and Related Expenses'', $15,000,000, to remain available until September 30, 2010, for security systems and law enforcement upgrades for all Federal Law Enforcement Training Center facilities: *Provided,* That no later than 45 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for the expenditure of these funds.

SCIENCE AND TECHNOLOGY

RESEARCH, DEVELOPMENT, ACQUISITION, AND OPERATIONS

For an additional amount for ''Research, Development, Acquisition, and Operations'', $14,000,000, to re-

1 main available until September 30, 2010, for cyber secu-
2 rity research: *Provided,* That no later than 45 days after
3 the date of enactment of this Act, the Secretary of Home-
4 land Security shall submit to the Committees on Appro-
5 priations of the Senate and the House of Representatives
6 a plan for the expenditure of these funds.

7 GENERAL PROVISIONS—THIS TITLE

8 SEC. 601. Notwithstanding any other provision of
9 law, the President shall establish an arbitration panel
10 under the Federal Emergency Management Agency public
11 assistance program to expedite the recovery efforts from
12 Hurricanes Katrina, Rita, Gustav, and Ike within the Gulf
13 Coast Region. The arbitration panel shall have sufficient
14 authority regarding the award or denial of disputed public
15 assistance applications for covered hurricane damage
16 under section 403, 406, or 407 of the Robert T. Stafford
17 Disaster Relief and Emergency Assistance Act (42 U.S.C.
18 5170b, 5172, or 5173) for a project the total amount of
19 which is more than $500,000.

20 SEC. 602. The Administrator of the Federal Emer-
21 gency Management Agency may not prohibit or restrict
22 the use of funds designated under the hazard mitigation
23 grant program for damage caused by Hurricanes Katrina
24 and Rita if the homeowner who is an applicant for assist-
25 ance under such program commenced work otherwise eligi-

ble for hazard mitigation grant program assistance under section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c) without approval in writing from the Administrator.

TITLE VII—INTERIOR, ENVIRONMENT, AND RELATED AGENCIES

DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

MANAGEMENT OF LANDS AND RESOURCES

For an additional amount for ''Management of Lands and Resources'', $135,000,000, to remain available until September 30, 2010.

CONSTRUCTION

For an additional amount for ''Construction'', $180,000,000, to remain available until September 30, 2010.

WILDLAND FIRE MANAGEMENT

For an additional amount for ''Wildland Fire Management'', $15,000,000, to remain available until September 30, 2010.

UNITED STATES FISH AND WILDLIFE SERVICE

RESOURCE MANAGEMENT

For an additional amount for ''Resource Management'', $190,000,000, to remain available until September 30, 2010.

CONSTRUCTION

For an additional amount for ''Construction'', $110,000,000, to remain available until September 30, 2010.

NATIONAL PARK SERVICE

OPERATION OF THE NATIONAL PARK SYSTEM

For an additional amount for ''Operation of the National Park System'', $158,000,000, to remain available until September 30, 2010.

HISTORIC PRESERVATION FUND

For an additional amount for ''Historic Preservation Fund'', $55,000,000, to remain available until September 30, 2010.

CONSTRUCTION

For an additional amount for ''Construction'', $589,000,000, to remain available until September 30, 2010.

UNITED STATES GEOLOGICAL SURVEY

SURVEYS, INVESTIGATIONS, AND RESEARCH

For an additional amount for ''Surveys, Investigations, and Research'', $135,000,000, to remain available until September 30, 2010.

BUREAU OF INDIAN AFFAIRS

OPERATION OF INDIAN PROGRAMS

For an additional amount for ''Operation of Indian Programs'', $40,000,000, to remain available until Sep-

tember 30, 2010, of which $20,000,000 shall be for the housing improvement program.

CONSTRUCTION

For an additional amount for ''Construction'', $522,000,000, to remain available until September 30, 2010.

INDIAN GUARANTEED LOAN PROGRAM ACCOUNT

For an additional amount for ''Indian Guaranteed Loan Program Account'', $10,000,000, to remain available until September 30, 2010.

DEPARTMENTAL OFFICES

Insular Affairs

ASSISTANCE TO TERRITORIES

For an additional amount for ''Assistance to Territories'', $62,000,000, to remain available until September 30, 2010.

Office of Inspector General

SALARIES AND EXPENSES

For an additional amount for ''Office of Inspector General'', $7,600,000, to remain available until September 30, 2010.

Department-wide Programs

CENTRAL HAZARDOUS MATERIALS FUND

For an additional amount for ''Central Hazardous Materials Fund'', $20,000,000, to remain available until September 30, 2010.

WORKING CAPITAL FUND

For an additional amount for ''Working Capital Fund'', $20,000,000, to remain available until September 30, 2010.

ENVIROMENTAL PROTECTION AGENCY

HAZARDOUS SUBSTANCE SUPERFUND

(INCLUDING TRANSFERS OF FUNDS)

For an additional amount for ''Hazardous Substance Superfund'', $800,000,000, to remain available until September 30, 2010, as a payment from general revenues to the Hazardous Substance Superfund, to carry out remedial actions: *Provided,* That the Administrator may retain up to 2 percent of the funds appropriated herein for Superfund remedial actions for program oversight and support purposes, and may transfer those funds to other accounts as needed.

LEAKING UNDERGROUND STORAGE TANK TRUST FUND PROGRAM

For an additional amount for ''Leaking Underground Storage Tank Trust Fund Program'', $200,000,0000, to remain available until September 30, 2010, for cleanup activities: *Provided,* That none of these funds shall be subject to cost share requirements.

1 STATE AND TRIBAL ASSISTANCE GRANTS

2 (INCLUDING TRANSFERS OF FUNDS)

3 For an additional amount for ''State and Tribal As-
4 sistance Grants'', $6,400,000,000, to remain available
5 until September 30, 2010, of which $4,000,000,000 shall
6 be for making capitalization grants for the Clean Water
7 State Revolving Funds under title VI of the Federal Water
8 Pollution Control Act, as amended; of which
9 $2,000,000,000 shall be for making capitalization grants
10 for the Drinking Water State Revolving Fund under sec-
11 tion 1452 of the Safe Drinking Water Act, as amended;
12 of which $100,000,000 shall be available for Brownfields
13 remediation grants pursuant to section 104(k)(3) of the
14 Comprehensive Environmental Response, Compensation
15 and Liability Act of 1980, as amended; and of which
16 $300,000,000 shall be for Diesel Emission Reduction Act
17 grants pursuant to title VII, subtitle G of the Energy Pol-
18 icy Act of 2005, as amended: *Provided,* That notwith-
19 standing the priority ranking they would otherwise receive
20 under each program, priority for funds appropriated here-
21 in for the Clean Water State Revolving Funds and Drink-
22 ing Water State Revolving Funds (Revolving Funds) shall
23 be allocated to projects that are ready to proceed to con-
24 struction within 180 days of enactment of this Act: *Pro-*
25 *vided further,* That the Administrator of the Environ-

mental Protection Agency (Administrator) may reallocate funds appropriated herein for the Revolving Funds that are not under binding commitments to proceed to construction within 180 days of enactment of this Act: *Provided further,* That notwithstanding any other provision of law, financial assistance provided from funds appropriated herein for the Revolving Funds may include additional subsidization, including forgiveness of principal and negative interest loans: *Provided further,* That not less than 15 percent of the funds appropriated herein for the Revolving Funds shall be designated for green infrastructure, water efficiency improvements or other environmentally innovative projects: *Provided further,* That notwithstanding the limitation on amounts specified in section 518(c) of the Federal Water Pollution Control Act, up to a total of 1.5 percent of the funds appropriated herein for the Clean Water State Revolving Funds may be reserved by the Administrator for tribal grants under section 518(c) of such Act: *Provided further,* That section 1452(k) of the Safe Drinking Water Act shall not apply to amounts appropriated herein for the Drinking Water State Revolving Funds: *Provided further,* That the Administrator may exceed the 30 percent limitation on State grants for funds appropriated herein for Diesel Emission Reduction Act grants if the Administrator determines such action will ex-

pedite allocation of funds: *Provided further,* That none of the funds appropriated herein shall be subject to cost share requirements: *Provided further,* That the Administrator may retain up to 0.25 percent of the funds appropriated herein for the Clean Water State Revolving Funds and Drinking Water State Revolving Funds and up to 1.5 percent of the funds appropriated herein for the Diesel Emission Reduction Act grants program for program oversight and support purposes and may transfer those funds to other accounts as needed.

DEPARTMENT OF AGRICULTURE

FOREST SERVICE

CAPITAL IMPROVEMENT AND MAINTENANCE

For an additional amount for ''Capital Improvement and Maintenance'', $650,000,000, to remain available until September 30, 2010, which shall include remediation of abandoned mine sites and support costs necessary to carry out this work.

WILDLAND FIRE MANAGEMENT

For an additional amount for ''Wildland Fire Management'', $650,000,000, to remain available until September 30, 2010, for hazardous fuels reduction and hazard mitigation activities in areas at high risk of catastrophic wildfire, of which $350,000,000 is available for work on State and private lands using all the authorities available to the Forest Service: *Provided,* That of the

1 funds provided for State and private land fuels reduction
2 activities, up to $50,000,000 may be used to make grants
3 for the purpose of creating incentives for increased use
4 of biomass from national forest lands.

5 DEPARTMENT OF HEALTH AND HUMAN
6 SERVICES

7 INDIAN HEALTH SERVICE

8 INDIAN HEALTH SERVICES

9 For an additional amount for ''Indian Health Serv-
10 ices'', $135,000,000, to remain available until September
11 30, 2010, of which $50,000,000 is for contract health
12 services; and of which $85,000,000 is for health informa-
13 tion technology: *Provided,* That the amount made avail-
14 able for health information technology activities may be
15 used for both telehealth services development and related
16 infrastructure requirements that are typically funded
17 through the ''Indian Health Facilities'' account: *Provided*
18 *further,* That notwithstanding any other provision of law,
19 health information technology funds provided within this
20 title shall be allocated at the discretion of the Director
21 of the Indian Health Service.

22 INDIAN HEALTH FACILITIES

23 For an additional amount for ''Indian Health Facili-
24 ties'', $410,000,000, to remain available until September
25 30, 2010: *Provided,* That for the purposes of this Act,
26 spending caps included within the annual appropriation

for ''Indian Health Facilities'' for the purchase of medical equipment shall not apply.

SMITHSONIAN INSTITUTION

FACILITIES CAPITAL

For an additional amount for ''Facilities Capital'', $150,000,000, to remain available until September 30, 2010.

GENERAL PROVISIONS—THIS TITLE

SEC. 701. (a) Within 30 days of enactment of this Act, each agency receiving funds under this title shall submit a general plan for the expenditure of such funds to the House and Senate Committees on Appropriations.

(b) Within 90 days of enactment of this Act, each agency receiving funds under this title shall submit to the Committees a report containing detailed project level information associated with the general plan submitted pursuant to subsection (a).

SEC. 702. In carrying out the work for which funds in this title are being made available, the Secretary of the Interior and the Secretary of Agriculture may utilize the Public Lands Corps, Youth Conservation Corps, Job Corps and other related partnerships with Federal, State, local, tribal or non-profit groups that serve young adults.

TITLE VIII—DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES

DEPARTMENT OF LABOR

EMPLOYMENT AND TRAINING ADMINISTRATION

TRAINING AND EMPLOYMENT SERVICES

For an additional amount for ''Training and Employment Services'' for activities authorized by the Workforce Investment Act of 1998 (''WIA''), $3,250,000,000, which shall be available on the date of enactment of this Act, as follows:

(1) $500,000,000 for adult employment and training activities, including supportive services and needs-related payments described in section 134(e)(2) and (3) of the WIA: *Provided,* That a priority use of these funds shall be services to individuals described in 134(d)(4)(E) of the WIA;

(2) $1,200,000,000 for grants to the States for youth activities, including summer employment for youth: *Provided,* That no portion of such funds shall be reserved to carry out section 127(b)(1)(A) of the WIA: *Provided further,* That for purposes of section 127(b)(1)(C)(iv) of the WIA, funds available for youth activities shall be allotted as if the total amount available for youth activities in the fiscal

year does not exceed $1,000,000,000: *Provided further,* That, with respect to the youth activities provided with such funds, section 101(13)(A) of the WIA shall be applied by substituting ''age 24'' for ''age 21'': *Provided further,* That the work readiness performance indicator described in section 136(b)(2)(A)(ii)(I) of the WIA shall be the only measure of performance used to assess the effectiveness of youth activities provided with such funds;

(3) $1,000,000,000 for grants to the States for dislocated worker employment and training activities;

(4) $200,000,000 for national emergency grants;

(5) $250,000,000 under the dislocated worker national reserve for a program of competitive grants for worker training in high growth and emerging industry sectors and assistance under 132(b)(2)(A) of the WIA: *Provided,* That the Secretary of Labor shall give priority when awarding such grants to projects that prepare workers for careers in energy efficiency and renewable energy as described in section 171(e)(1)(B) of the WIA and for careers in the health care sector; and

(6) $100,000,000 for YouthBuild activities as described in section 173A of the WIA: *Provided,* That for program years 2008 and 2009, the YouthBuild program may serve an individual who has dropped out of high school and re-enrolled in an alternative school, if that re-enrollment is part of a sequential service strategy:

Provided, That funds made available in this paragraph shall remain available through June 30, 2010: *Provided further,* That a local board may award a contract to an institution of higher education if the local board determines that it would facilitate the training of multiple individuals in high-demand occupations, if such contract does not limit customer choice.

COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS

For an additional amount for ''Community Service Employment for Older Americans'' for carrying out title V of the Older Americans Act of 1965, $120,000,000, which shall be available on the date of enactment of this Act and shall remain available through June 30, 2010: *Provided,* That funds shall be allotted within 30 days of such enactment to current grantees in proportion to their allotment in program year 2008: *Provided further,* That funds made available under this heading in this Act may,

in accordance with section 517(c) of the Older Americans Act of 1965, be recaptured and reobligated.

STATE UNEMPLOYMENT INSURANCE AND EMPLOYMENT SERVICE OPERATIONS

For an additional amount for ''State Unemployment Insurance and Employment Service Operations'' for grants to States in accordance with section 6 of the Wagner-Peyser Act, $400,000,000, which may be expended from the Employment Security Administration account in the Unemployment Trust Fund: *Provided,* That such funds shall be available on the date of enactment of this Act and remain available to the States through September 30, 2010: *Provided further,* That $250,000,000 of such funds shall be used by States for reemployment services for unemployment insurance claimants (including the integrated Employment Service and Unemployment Insurance information technology required to identify and serve the needs of such claimants): *Provided further,* That the Secretary of Labor shall establish planning and reporting procedures necessary to provide oversight of funds used for reemployment services.

DEPARTMENTAL MANAGEMENT

OFFICE OF JOB CORPS

For an additional amount for ''Office of Job Corps'' for construction, alteration and repairs of buildings and other facilities, $160,000,000, which shall remain avail-

able through June 30, 2010: *Provided,* That the Secretary of Labor may transfer up to 15 percent of such funds to meet the operational needs of Job Corps Centers, which may include training for careers in the energy efficiency, renewable energy, and environmental protection industries: *Provided further,* That not later than 90 days after the date of enactment of this Act, the Secretary shall provide to the Committee on Appropriations of the House of Representatives and the Senate an operating plan describing the planned uses of funds available in this paragraph.

OFFICE OF INSPECTOR GENERAL

For an additional amount for the ''Office of Inspector General'', $3,000,000, which shall remain available through September 30, 2010, for salaries and expenses necessary for oversight and audit of programs, grants, and projects funded in this Act and administered by the Department of Labor.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HEALTH RESOURCES AND SERVICES ADMINISTRATION

HEALTH RESOURCES AND SERVICES

For an additional amount for ''Health Resources and Services'', $1,088,000,000, which shall remain available through September 30, 2010, of which $88,000,000 shall be for necessary expenses related to leasing and renovating a headquarters building for Public Health Service agencies

1 and other components of the Department of Health and
2 Human Services, including renovation and fit-out costs,
3 and of which $1,000,000,000 shall be for grants for con-
4 struction, renovation and equipment for health centers re-
5 ceiving operating grants under section 330 of the Public
6 Health Service Act, notwithstanding the limitation in sec-
7 tion 330(e)(3).

8 CENTERS FOR DISEASE CONTROL AND PREVENTION

9 DISEASE CONTROL, RESEARCH, AND TRAINING

10 For an additional amount for ''Disease Control, Re-
11 search, and Training'' for acquisition of real property,
12 equipment, construction, and renovation of facilities, in-
13 cluding necessary repairs and improvements to leased lab-
14 oratories, $412,000,000, which shall remain available
15 through September 30, 2010: *Provided,* That notwith-
16 standing any other provision of law, the Centers for Dis-
17 ease Control and Prevention may award a single contract
18 or related contracts for development and construction of
19 facilities that collectively include the full scope of the
20 project: *Provided further,* That the solicitation and con-
21 tract shall contain the clause ''availability of funds'' found
22 at 48 CFR 52.232–18.

NATIONAL INSTITUTES OF HEALTH

NATIONAL CENTER FOR RESEARCH RESOURCES

For an additional amount for ''National Center for Research Resources'', $300,000,000, which shall be available through September 30, 2010, for shared instrumentation and other capital research equipment.

OFFICE OF THE DIRECTOR

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''Office of the Director'', $2,700,000,000, which shall be available through September 30, 2010: *Provided,* That $1,350,000,000 shall be transferred to the Institutes and Centers of the National Institutes of Health and to the Common Fund established under section 402A(c)(1) of the Public Health Service Act in proportion to the appropriations otherwise made to such Institutes, Centers, and Common Fund for fiscal year 2009: *Provided further,* That these funds shall be used to support additional scientific research and shall be merged with and be available for the same purposes as the appropriation or fund to which transferred: *Provided further,* That this transfer authority is in addition to any other transfer authority available to the National Institutes of Health: *Provided further,* That none of these funds may be transferred to ''National Institutes of Health—Buildings and Facilities'', the Center for Scientific Review, the Center for Information Technology, the

1 Clinical Center, the Global Fund for HIV/AIDS, Tuber-
2 culosis and Malaria, or the Office of the Director (except
3 for the transfer to the Common Fund).

4 BUILDINGS AND FACILITIES

5 For an additional amount for ''Buildings and Facili-
6 ties'', $500,000,000, which shall be available through Sep-
7 tember 30, 2010, to fund high-priority repair, construction
8 and improvement projects for National Institutes of
9 Health facilities on the Bethesda, Maryland campus and
10 other agency locations.

11 AGENCY FOR HEALTHCARE RESEARCH AND QUALITY

12 HEALTHCARE RESEARCH AND QUALITY

13 (INCLUDING TRANSFER OF FUNDS)

14 For an additional amount for ''Healthcare Research
15 and Quality'' to carry out titles III and IX of the Public
16 Health Service Act, part A of title XI of the Social Secu-
17 rity Act, and section 1013 of the Medicare Prescription
18 Drug, Improvement, and Modernization Act of 2003,
19 $700,000,000 for comparative clinical effectiveness re-
20 search, which shall remain available through September
21 30, 2010: *Provided,* That of the amount appropriated in
22 this paragraph, $400,000,000 shall be transferred to the
23 Office of the Director of the National Institutes of Health
24 (''Office of the Director'') to conduct or support compara-
25 tive clinical effectiveness research under section 301 and
26 title IV of the Public Health Service Act: *Provided further,*

1 That funds transferred to the Office of the Director may
2 be transferred to the Institutes and Centers of the Na-
3 tional Institutes of Health and to the Common Fund es-
4 tablished under section 402A(c)(1) of the Public Health
5 Service Act: *Provided further,* That this transfer authority
6 is in addition to any other transfer authority available to
7 the National Institutes of Health: *Provided further,* That
8 within the amount available in this paragraph for the
9 Agency for Healthcare Research and Quality, not more
10 than 1 percent shall be made available for additional full-
11 time equivalents.

12 In addition, $400,000,000 shall be available for com-
13 parative clinical effectiveness research to be allocated at
14 the discretion of the Secretary of Health and Human
15 Services (''Secretary'') and shall remain available through
16 September 30, 2010: *Provided,* That the funding appro-
17 priated in this paragraph shall be used to accelerate the
18 development and dissemination of research assessing the
19 comparative clinical effectiveness of health care treat-
20 ments and strategies, including through efforts that: (1)
21 conduct, support, or synthesize research that compares the
22 clinical outcomes, effectiveness, and appropriateness of
23 items, services, and procedures that are used to prevent,
24 diagnose, or treat diseases, disorders, and other health
25 conditions and (2) encourage the development and use of

1 clinical registries, clinical data networks, and other forms
2 of electronic health data that can be used to generate or
3 obtain outcomes data: *Provided further,* That the Sec-
4 retary shall enter into a contract with the Institute of
5 Medicine, for which no more than $1,500,000 shall be
6 made available from funds provided in this paragraph, to
7 produce and submit a report to the Congress and the Sec-
8 retary by not later than June 30, 2009 that includes rec-
9 ommendations on the national priorities for comparative
10 clinical effectiveness research to be conducted or sup-
11 ported with the funds provided in this paragraph and that
12 considers input from stakeholders: *Provided further,* That
13 the Secretary shall consider any recommendations of the
14 Federal Coordinating Council for Comparative Clinical Ef-
15 fectiveness Research established by section 802 of this Act
16 and any recommendations included in the Institute of
17 Medicine report pursuant to the preceding proviso in des-
18 ignating activities to receive funds provided in this para-
19 graph and may make grants and contracts with appro-
20 priate entities, which may include agencies within the De-
21 partment of Health and Human Services and other gov-
22 ernmental agencies, as well as private sector entities, that
23 have demonstrated experience and capacity to achieve the
24 goals of comparative clinical effectiveness research: *Pro-*
25 *vided further,* That the Secretary shall publish information

on grants and contracts awarded with the funds provided under this heading within a reasonable time of the obligation of funds for such grants and contracts and shall disseminate research findings from such grants and contracts to clinicians, patients, and the general public, as appropriate: *Provided further,* That, to the extent feasible, the Secretary shall ensure that the recipients of the funds provided by this paragraph offer an opportunity for public comment on the research: *Provided further,* That the Secretary shall provide the Committees on Appropriations of the House of Representatives and the Senate, the Committee on Energy and Commerce and the Committee on Ways and Means of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate with an annual report on the research conducted or supported through the funds provided under this heading.

ADMINISTRATION FOR CHILDREN AND FAMILIES

PAYMENTS TO STATES FOR THE CHILD CARE AND DEVELOPMENT BLOCK GRANT

For an additional amount for ''Payments to States for the Child Care and Development Block Grant'' for carrying out the Child Care and Development Block Grant Act of 1990, $2,000,000,000, which shall remain available through September 30, 2010: *Provided,* That funds pro-

vided under this heading shall be used to supplement, not supplant State general revenue funds for child care assistance for low-income families: *Provided further,* That, in addition to the amounts required to be reserved by the States under section 658G of such Act, $255,186,000 shall be reserved by the States for activities authorized under section 658G, of which $93,587,000 shall be for activities that improve the quality of infant and toddler care.

SOCIAL SERVICES BLOCK GRANT

For an additional amount for ''Social Services Block Grant,'' $400,000,000: *Provided,* That notwithstanding section 2003 of the Social Security Act, funds shall be allocated to States on the basis of unemployment: *Provided further,* That these funds shall be obligated to States within 60 calendar days from the date they become available for obligation.

CHILDREN AND FAMILIES SERVICES PROGRAMS

For an additional amount for ''Children and Families Services Programs'' for carrying out activities under the Head Start Act, $1,000,000,000, which shall remain available through September 30, 2010. In addition, $1,100,000,000, which shall remain available through September 30, 2010, is hereby appropriated for expansion of Early Head Start programs, as described in section 645A of such Act: *Provided,* That of the funds provided in this sentence, up to 10 percent shall be available for

the provision of training and technical assistance to such programs consistent with section 645A(g)(2) of such Act, and up to 3 percent shall be available for monitoring the operation of such programs consistent with section 641A of such Act.

For an additional amount for ''Children and Families Services Programs'' for carrying out activities under sections 674 through 679 of the Community Services Block Grant Act, $200,000,000, which shall remain available through September 30, 2010: *Provided,* That of the funds provided under this paragraph, no part shall be subject to paragraph (3) of section 674(b) of such Act: *Provided further,* That not less than 5 percent of the funds allotted to a State from the appropriation under this paragraph shall be used under section 675C(b)(1) for benefits enrollment coordination activities relating to the identification and enrollment of eligible individuals and families in Federal, State and local benefit programs.

ADMINISTRATION ON AGING

AGING SERVICES PROGRAMS

For an additional amount for ''Aging Services Programs,'' $100,000,000, of which $67,000,000 shall be for Congregate Nutrition Services and $33,000,000 shall be for Home-Delivered Nutrition Services: *Provided,* That

these funds shall remain available through September 30, 2010.

OFFICE OF THE SECRETARY

OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''Office of the National Coordinator for Health Information Technology'', $5,000,000,000, to carry out title XIII of this Act which shall be available until expended: *Provided,* That of this amount, the Secretary of Health and Human Services shall transfer $20,000,000 to the Director of the National Institute of Standards and Technology in the Department of Commerce for continued work on advancing health care information enterprise integration through activities such as technical standards analysis and establishment of conformance testing infrastructure so long as such activities are coordinated with the Office of the National Coordinator for Health Information Technology: *Provided further,* That funds available under this heading shall become available for obligation only upon submission of an annual operating plan by the Secretary to the Committees on Appropriations of the House of Representatives and the Senate: *Provided further,* That the Secretary shall provide to the Committees on Appropriations of the House of Representatives and the Senate a report on the actual obliga-

tions, expenditures, and unobligated balances for each major set of activities not later than November 1, 2009 and every 6 months thereafter as long as funding under this heading is available for obligation or expenditure.

OFFICE OF THE INSPECTOR GENERAL

For an additional amount for the Office of the Inspector General, $4,000,000 which shall remain available until September 30, 2011.

PUBLIC HEALTH AND SOCIAL SERVICES EMERGENCY FUND

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for the ''Public Health and Social Services Emergency Fund'' to carry out a program of grants, contracts, and cooperative agreements to fund projects and activities to reduce the incidence or severity of preventable disabilities, diseases and conditions and to invest in health workforce training, $5,800,000,000, to remain available through September 30, 2011: *Provided,* That the amount made available in this paragraph may be transferred to another appropriation account of the Department of Health and Human Services (''HHS''), as determined by the Secretary of Health and Human Services to be appropriate and upon notification of the Committees on Appropriations of the House of Representatives and the Senate, to be used for the purposes specified in this paragraph, and the provisos of this paragraph shall apply to

1 any funds so transferred: *Provided further,* That of the
2 amount provided in this paragraph, not less than
3 $1,000,000,000 shall be transferred to the Centers for
4 Disease Control and Prevention (''CDC'') as an additional
5 amount for screening activities related to preventable dis-
6 abilities and chronic diseases and conditions, including
7 counseling to prevent and mitigate the precursors of those
8 disorders: *Provided further,* That of the amount provided
9 in this paragraph, not less than $750,000,000 shall be
10 transferred to the CDC as an additional amount to carry
11 out the immunization program authorized by section
12 317(a), (j), and (k)(1) of the Public Health Service Act
13 (''PHS Act''): *Provided further,* That of the amount pro-
14 vided in this paragraph, not less than $600,000,000 shall
15 be transferred to the Health Resources and Services Ad-
16 ministration as an additional amount to address health
17 professions workforce shortages through scholarships, loan
18 repayment, grants to training programs for equipment
19 and activities to foster cross-state licensure agreements,
20 authorized under sections 330 through 338, 737, 738, and
21 846 of the PHS Act, of which $200,000,000 shall be avail-
22 able until expended for extending service contracts and the
23 recapture and reallocation of funds in the event that a
24 participant fails to fulfill their term of service: *Provided*
25 *further,* That of the amount provided in this paragraph,

1 $400,000,000 shall be transferred to the CDC as an addi-
2 tional amount for the Healthy Communities program,
3 which shall be used for multi-year awards: *Provided fur-*
4 *ther,* That of the amount provided in this paragraph, not
5 less than $60,000,000 shall be made available for addi-
6 tional research, data collection and surveys relating to pre-
7 vention science and the current state of health, including
8 equipment: *Provided further,* That of the amount provided
9 in this paragraph, $40,000,000 shall be transferred to the
10 CDC for information technology improvements to vital
11 statistics record systems, including grants to State health
12 departments for equipment: *Provided further,* That of the
13 amount provided in this paragraph, $15,000,000 shall be
14 made available for grants to States for equipment and
15 maintenance related to newborn screening: *Provided fur-*
16 *ther,* That not less than 1 percent of the amount provided
17 in this paragraph shall be available for evaluation of the
18 activities supported by the amounts provided in this para-
19 graph: *Provided further,* That up to 1 percent of amounts
20 made available in this paragraph may be used for adminis-
21 trative expenses in the office or division of HHS admin-
22 istering the funds: *Provided further,* That the transfers re-
23 quired by this paragraph shall be completed within 30
24 days of enactment of this Act: *Provided further,* That the
25 Secretary shall submit reports to the Committees on Ap-

1 propriations of the House of Representatives and the Sen-
2 ate detailing the following information on the amounts ap-
3 propriated in this paragraph: (1) an operating plan detail-
4 ing activities to be supported and timelines for expendi-
5 ture, to be submitted no later than 120 days after the
6 enactment of this Act; (2) 15 day prior notification of any
7 funds to be obligated prior to the submission of the oper-
8 ating plan; (3) an obligation and expenditure report to be
9 submitted quarterly until all funds are fully expended; (4)
10 a briefing 15 days prior to any new grant solicitation; (5)
11 an evaluation plan that details the manner in which the
12 Secretary intends to evaluate the outcomes of activities
13 supported, to be submitted 120 days after enactment of
14 this Act; (6) an outcomes report on all activities sup-
15 ported, to be submitted 1 year after enactment and every
16 6 months thereafter until all funds have been expended;
17 and (7) a report on best practices to be submitted 18
18 months after enactment and every 6 months thereafter
19 until all funds have been expended.

20 For an additional amount for the ''Public Health and
21 Social Services Emergency Fund'' to prepare for and re-
22 spond to an influenza pandemic, $870,000,000, for activi-
23 ties including the development and purchase of vaccine,
24 antivirals, necessary medical supplies, diagnostics, and
25 other surveillance tools which shall be available until ex-

pended: *Provided,* That products purchased with these funds may, at the discretion of the Secretary, be deposited in the Strategic National Stockpile: *Provided further,* That notwithstanding section 496(b) of the Public Health Service Act, funds may be used for the construction or renovation of privately owned facilities for the production of pandemic influenza vaccines and other biologics, where the Secretary finds such a contract necessary to secure sufficient supplies of such vaccines or biologics: *Provided further,* That funds appropriated herein may be transferred to other appropriation accounts of the Department of Health and Human Services, as determined by the Secretary to be appropriate, to be used for the purposes specified in this sentence.

DEPARTMENT OF EDUCATION

EDUCATION FOR THE DISADVANTAGED

For an additional amount for carrying out title I of the Elementary and Secondary Education Act of 1965, $13,000,000,000, which shall be available through September 30, 2010: *Provided,* That $5,500,000,000 shall be for targeted grants under section 1125, $5,500,000,000 shall be for education finance incentive grants under section 1125A, and $2,000,000,000 shall be for school improvement grants under section 1003(g): *Provided further*, That each local educational agency receiving funds avail-

able under this paragraph for sections 1125 and 1125A shall use not less than 15 percent of such funds for activities serving children who are eligible pursuant to section 1115(b)(1)(A)(ii) and programs in section 1112(b)(1)(K): *Provided further*, That each local educational agency receiving funds available under this paragraph shall be required to file with the State educational agency, no later than December 1, 2009, a school-by-school listing of per-pupil educational expenditures from State and local sources during the 2008–2009 academic year.

SCHOOL IMPROVEMENT PROGRAMS

For an additional amount for ''School Improvement Programs,'' $17,070,000,000, which shall be available through September 30, 2010, for carrying out activities authorized by part D of title II of the Elementary and Secondary Education Act of 1965, subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (''McKinney-Vento''), and section 804 of this Act: *Provided,* That the Secretary shall allot $70,000,000 for grants under McKinney-Vento to each State in proportion to the number of homeless students identified by the State during the 2007–2008 school year relative to the number of such children identified nationally during that school year: *Provided further,* That State educational agencies shall subgrant the McKinney-Vento funds to local edu-

cational agencies on a competitive basis or according to a formula based on the number of homeless students identified by the local educational agencies in the State: *Provided further,* That the Secretary shall distribute the McKinney-Vento funds to the States not later than 60 days after the date of the enactment of this Act: *Provided further,* That each State shall subgrant the McKinney-Vento funds to local educational agencies not later than 120 days after receiving its grant from the Secretary.

SPECIAL EDUCATION

For an additional amount for ''Special Education'' for carrying out parts B and C of the Individuals with Disabilities Education Act (''IDEA''), $13,500,000,000, which shall remain available through September 30, 2010: *Provided,* That if every State, as defined by section 602(31) of the IDEA, reaches its maximum allocation under section 611(d)(3)(B)(iii) of the IDEA, and there are remaining funds, such funds shall be proportionally allocated to each State subject to the maximum amounts contained in section 611(a)(2) of the IDEA: *Provided further,* That by July 1, 2009, the Secretary of Education shall reserve the amount needed for grants under section 643(e) of the IDEA, with any remaining funds to be allocated in accordance with section 643(c) of the IDEA: *Provided further,* That the amount for section 611(b)(2) of

1 the IDEA shall be equal to the lesser of the amount avail-
2 able for that activity during fiscal year 2008, increased
3 by the amount of inflation as specified in section
4 619(d)(2)(B), or the percentage increase in the funds ap-
5 propriated under section 611(i): *Provided further*, That
6 each local educational agency receiving funds available
7 under this paragraph for part B shall use not less than
8 15 percent for special education and related services to
9 children described in section 619(a) of the IDEA.

10 REHABILITATION SERVICES AND DISABILITY RESEARCH

11 For an additional amount for ''Rehabilitation Serv-
12 ices and Disability Research'' for providing grants to
13 States to carry out the Vocational Rehabilitation Services
14 program under part B of title I and parts B and C of
15 chapter 1 and chapter 2 of title VII of the Rehabilitation
16 Act of 1973, $610,000,000, which shall remain available
17 through September 30, 2010: *Provided,* That
18 $500,000,000 shall be available for part B of title I of
19 the Rehabilitation Act: *Provided further,* That funds pro-
20 vided herein shall not be considered in determining the
21 amount required to be appropriated under section
22 100(b)(1) of the Rehabilitation Act of 1973 in any fiscal
23 year: *Provided further,* That, notwithstanding section
24 7(14)(A), the Federal share of the costs of vocational re-

1 habilitation services provided with the funds provided
2 herein shall be 100 percent.

3 STUDENT FINANCIAL ASSISTANCE

4 For an additional amount for ''Student Financial As-
5 sistance'' to carry out subpart 1 of part A of title IV of
6 the Higher Education Act of 1965, $13,869,000,000: *Pro-*
7 *vided,* That such funds shall be used to increase the max-
8 imum Pell Grant by $281 for award year 2009–2010, to
9 increase the maximum Pell Grant by $400 for the award
10 year 2010–2011, and to reduce or eliminate the Pell Grant
11 shortfall: *Provided further,* That these funds shall remain
12 available through September 30, 2011.

13 For an additional amount for ''Student Financial As-
14 sistance'' to carry out part E of title IV of the Higher
15 Education Act of 1965, $61,000,000: *Provided,* That
16 these funds shall remain available through September 30,
17 2010.

18 HIGHER EDUCATION

19 For an additional amount for ''Higher Education''
20 for carrying out activities under part A of title II of the
21 Higher Education Act of 1965, $100,000,000: *Provided,*
22 That these funds shall remain available through Sep-
23 tember 30, 2010.

HIGHER EDUCATION FACILITIES

For carrying out activities authorized under section 803 of this Act, $3,500,000,000: *Provided,* That these funds shall remain available through September 30, 2010.

DEPARTMENTAL MANAGEMENT

OFFICE OF THE INSPECTOR GENERAL

For an additional amount for the ''Office of the Inspector General'', $4,000,000, which shall remain available through September 30, 2012, for salaries and expenses necessary for oversight and audit of programs, grants, and projects funded in this Act and administered by the Department of Education.

RELATED AGENCIES

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

OPERATING EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''Operating Expenses'' to carry out the Domestic Volunteer Service Act of 1973 (''1973 Act'') and the National and Community Service Act of 1990 (''1990 Act''), $160,000,000, to remain available through September 30, 2010: *Provided,* That funds made available in this paragraph may be used to provide adjustments to awards under subtitle C of title I of the 1990 Act made prior to September 30, 2010 for which

1 the Chief Executive Officer of the Corporation for Na-
2 tional and Community Service (''CEO'') determines that
3 a waiver of the Federal share limitation is warranted
4 under section 2521.70 of title 45 of the Code of Federal
5 Regulations: *Provided further,* That of the amount made
6 available in this paragraph, not less than $6,000,000 shall
7 be transferred to ''Salaries and Expenses'' for necessary
8 expenses relating to information technology upgrades:
9 *Provided further,* That of the amount provided in this
10 paragraph, $10,000,000 shall be available for additional
11 members in the Civilian Community Corps authorized
12 under subtitle E of title I of the 1990 Act: *Provided fur-*
13 *ther,* That of the amount provided in this paragraph,
14 $1,000,000 shall be made available for a one-time supple-
15 ment grant to State commissions on national and commu-
16 nity service under section 126(a) of the 1990 Act without
17 regard to the limitation on Federal share under section
18 126(a)(2) of the 1990 Act: *Provided further,* That of the
19 amount made available in this paragraph, not less than
20 $13,000,000 shall be for research activities authorized
21 under subtitle H of title I of the 1990 Act: *Provided fur-*
22 *ther,* That of the amount made available in this paragraph,
23 not less than $65,000,000 shall be for programs under
24 title I, part A of the 1973 Act: *Provided further,* That
25 funds provided in the previous proviso shall not be made

1 available in connection with cost-share agreements author-
2 ized under section 192A(g)(10) of the 1990 Act: *Provided*
3 *further*, That of the funds available under this heading,
4 up to 20 percent of funds allocated to grants authorized
5 under section 124(b) of title I, subtitle C of the 1990 Act
6 may be used to administer, reimburse, or support any na-
7 tional service program under section 129(d)(2) of the
8 1990 Act: *Provided further,* That, except as provided here-
9 in and in addition to requirements identified herein, funds
10 provided in this paragraph shall be subject to the terms
11 and conditions under which funds were appropriated in
12 fiscal year 2008: *Provided further,* That the CEO shall
13 provide the Committees on Appropriations of the House
14 of Representatives and the Senate a fiscal year 2009 oper-
15 ating plan for the funds appropriated in this paragraph
16 prior to making any Federal obligations of such funds in
17 fiscal year 2009, but not later than 90 days after the date
18 of enactment of this Act, and a fiscal year 2010 operating
19 plan for such funds prior to making any Federal obliga-
20 tions of such funds in fiscal year 2010, but not later than
21 November 1, 2009, that detail the allocation of resources
22 and the increased number of members supported by the
23 AmeriCorps programs: *Provided further,* That the CEO
24 shall provide to the Committees on Appropriations of the
25 House of Representatives and the Senate a report on the

actual obligations, expenditures, and unobligated balances for each activity funded under this heading not later than November 1, 2009, and every 6 months thereafter as long as funding provided under this heading is available for obligation or expenditure.

NATIONAL SERVICE TRUST

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''National Service Trust'' established under subtitle D of title I of the National and Community Service Act of 1990 (''1990 Act''), $40,000,000, which shall remain available until expended: *Provided,* That the Corporation for National and Community Service may transfer additional funds from the amount provided within ''Operating Expenses'' for grants made under subtitle C of title I of the 1990 Act to this appropriation upon determination that such transfer is necessary to support the activities of national service participants and after notice is transmitted to the Committees on Appropriations of the House of Representatives and the Senate: *Provided further,* That the amount appropriated for or transferred to the National Service Trust may be invested under section 145(b) of the 1990 Act without regard to the requirement to apportion funds under 31 U.S.C. 1513(b).

1 SOCIAL SECURITY ADMINISTRATION

2 LIMITATION ON ADMINISTRATIVE EXPENSES

3 (INCLUDING TRANSFER OF FUNDS)

4 For an additional amount for ''Limitation on Admin-
5 istrative Expenses'', $890,000,000 shall be available as
6 follows:

7 (1) $750,000,000 shall remain available until
8 expended for necessary expenses of the replacement
9 of the National Computer Center and the informa-
10 tion technology costs associated with such Center:
11 *Provided,* That the Commissioner of Social Security
12 shall notify the Committees on Appropriations of the
13 House of Representatives and the Senate not later
14 than 10 days prior to each public notice soliciting
15 bids related to site selection and construction: *Pro-*
16 *vided further,* That unobligated balances of funds
17 not needed for this purpose may be used as de-
18 scribed in subparagraph (2); and

19 (2) $140,000,000 shall be available through
20 September 30, 2010 for information technology ac-
21 quisitions and research, which may include research
22 and activities to facilitate the adoption of electronic
23 medical records in disability claims and the transfer
24 of funds to ''Supplemental Security Income'' to
25 carry out activities under section 1110 of the Social

Security Act: *Provided further,* That not later than 10 days prior to the obligation of such funds, the Commissioner shall provide to the Committees on Appropriations of the House of Representatives and the Senate an operating plan describing the planned uses of such funds.

OFFICE OF INSPECTOR GENERAL

For an additional amount for the ''Office of Inspector General'', $3,000,000, which shall remain available through September 30, 2012, for salaries and expenses necessary for oversight and audit of programs, projects, and activities funded in this Act and administered by the Social Security Administration.

GENERAL PROVISIONS—THIS TITLE

SEC. 801. REPORT ON THE IMPACT OF PAST AND FUTURE MINIMUM WAGE INCREASES. (a) IN GENERAL.—Section 8104 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Public Law 110–28; 121 Stat. 189) is amended to read as follows:

''SEC. 8104. REPORT ON THE IMPACT OF PAST AND FUTURE MINIMUM WAGE INCREASES.

''(a) STUDY.—Beginning on the date that is 60 days after the date of enactment of this Act, and every year thereafter until the minimum wage in the respective terri-

1 tory is $7.25 per hour, the Government Accountability Of-
2 fice shall conduct a study to—
3 "(1) assess the impact of the minimum wage
4 increases that occurred in American Samoa and the
5 Commonwealth of the Northern Mariana Islands in
6 2007 and 2008, as required under Public Law 110–
7 28, on the rates of employment and the living stand-
8 ards of workers, with full consideration of the other
9 factors that impact rates of employment and the liv-
10 ing standards of workers such as inflation in the
11 cost of food, energy, and other commodities; and
12 "(2) estimate the impact of any further wage
13 increases on rates of employment and the living
14 standards of workers in American Samoa and the
15 Commonwealth of the Northern Mariana Islands,
16 with full consideration of the other factors that may
17 impact the rates of employment and the living
18 standards of workers, including assessing how the
19 profitability of major private sector firms may be
20 impacted by wage increases in comparison to other
21 factors such as energy costs and the value of tax
22 benefits.
23 "(b) REPORT.—No earlier than March 15, 2009, and
24 not later than April 15, 2009, the Government Account-
25 ability Office shall transmit its first report to Congress

concerning the findings of the study required under subsection (a). The Government Accountability Office shall transmit any subsequent reports to Congress concerning the findings of a study required by subsection (a) between March 15 and April 15 of each year.

"(c) ECONOMIC INFORMATION.—To provide sufficient economic data for the conduct of the study under subsection (a)—

"(1) the Department of Labor shall include and separately report on American Samoa and the Commonwealth of the Northern Mariana Islands in its household surveys and establishment surveys;

"(2) the Bureau of Economic Analysis of the Department of Commerce shall include and separately report on American Samoa and the Commonwealth of the Northern Mariana Islands in its gross domestic product data; and

"(3) the Bureau of the Census of the Department of Commerce shall include and separately report on American Samoa and the Commonwealth of the Northern Mariana Islands in its population estimates and demographic profiles from the American Community Survey,

with the same regularity and to the same extent as the Department or each Bureau collects and reports such data

for the 50 States. In the event that the inclusion of American Samoa and the Commonwealth of the Northern Mariana Islands in such surveys and data compilations requires time to structure and implement, the Department of Labor, the Bureau of Economic Analysis, and the Bureau of the Census (as the case may be) shall in the interim annually report the best available data that can feasibly be secured with respect to such territories. Such interim reports shall describe the steps the Department or the respective Bureau will take to improve future data collection in the territories to achieve comparability with the data collected in the United States. The Department of Labor, the Bureau of Economic Analysis, and the Bureau of the Census, together with the Department of the Interior, shall coordinate their efforts to achieve such improvements.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of enactment of this Act.

SEC. 802. FEDERAL COORDINATING COUNCIL FOR COMPARATIVE CLINICAL EFFECTIVENESS RESEARCH. (a) ESTABLISHMENT.—There is hereby established a Federal Coordinating Council for Comparative Clinical Effectiveness Research (in this section referred to as the ''Council'').

1 (b) PURPOSE; DUTIES.—The Council shall—
2 (1) assist the offices and agencies of the Fed-
3 eral Government, including the Departments of
4 Health and Human Services, Veterans Affairs, and
5 Defense, and other Federal departments or agencies,
6 to coordinate the conduct or support of comparative
7 clinical effectiveness and related health services re-
8 search; and
9 (2) advise the President and Congress on—
10 (A) strategies with respect to the infra-
11 structure needs of comparative clinical effective-
12 ness research within the Federal Government;
13 (B) appropriate organizational expendi-
14 tures for comparative clinical effectiveness re-
15 search by relevant Federal departments and
16 agencies; and
17 (C) opportunities to assure optimum co-
18 ordination of comparative clinical effectiveness
19 and related health services research conducted
20 or supported by relevant Federal departments
21 and agencies, with the goal of reducing duplica-
22 tive efforts and encouraging coordinated and
23 complementary use of resources.
24 (c) MEMBERSHIP.—

1 (1) NUMBER AND APPOINTMENT.—The Council
2 shall be composed of not more than 15 members, all
3 of whom are senior Federal officers or employees
4 with responsibility for health-related programs, ap-
5 pointed by the President, acting through the Sec-
6 retary of Health and Human Services (in this sec-
7 tion referred to as the ''Secretary''). Members shall
8 first be appointed to the Council not later than 30
9 days after the date of the enactment of this Act.
10 (2) MEMBERS.—
11 (A) IN GENERAL.—The members of the
12 Council shall include one senior officer or em-
13 ployee from each of the following agencies:
14 (i) The Agency for Healthcare Re-
15 search and Quality.
16 (ii) The Centers for Medicare and
17 Medicaid Services.
18 (iii) The National Institutes of
19 Health.
20 (iv) The Office of the National Coor-
21 dinator for Health Information Tech-
22 nology.
23 (v) The Food and Drug Administra-
24 tion.

(vi) The Veterans Health Administration within the Department of Veterans Affairs.

(vii) The office within the Department of Defense responsible for management of the Department of Defense Military Health Care System.

(B) QUALIFICATIONS.—At least half of the members of the Council shall be physicians or other experts with clinical expertise.

(3) CHAIRMAN; VICE CHAIRMAN.—The Secretary shall serve as Chairman of the Council and shall designate a member to serve as Vice Chairman.

(d) REPORTS.—

(1) INITIAL REPORT.—Not later than June 30, 2009, the Council shall submit to the President and the Congress a report containing information describing Federal activities on comparative clinical effectiveness research and recommendations for additional investments in such research conducted or supported from funds made available for allotment by the Secretary for comparative clinical effectiveness research in this Act.

(2) ANNUAL REPORT.—The Council shall submit to the President and Congress an annual report

1 regarding its activities and recommendations con-
2 cerning the infrastructure needs, appropriate organi-
3 zational expenditures and opportunities for better
4 coordination of comparative clinical effectiveness re-
5 search by relevant Federal departments and agen-
6 cies.

7 (e) STAFFING; SUPPORT.—From funds made avail-
8 able for allotment by the Secretary for comparative clinical
9 effectiveness research in this Act, the Secretary shall make
10 available not more than 1 percent to the Council for staff
11 and administrative support.

12 SEC. 803. HIGHER EDUCATION MODERNIZATION,
13 RENOVATION, AND REPAIR. (a) PURPOSE.—Grants
14 awarded under this section shall be for the purpose of
15 modernizing, renovating, and repairing institution of high-
16 er education facilities that are primarily used for instruc-
17 tion and research.

18 Funds may also be used for leasing, purchasing or
19 upgrading equipment, designed to strengthen and support
20 academic and technical skill achievement.

21 (b) GRANTS TO STATE HIGHER EDUCATION AGEN-
22 CIES.—

23 (1) FORMULA.—From the amounts appro-
24 priated to carry out this section, the Secretary of
25 Education shall allocate funds to State higher edu-

cation agencies based on the number of students attending institutions of higher education, with the State higher education agency in each State receiving an amount that is in proportion to the number of full-time equivalent undergraduate students attending institutions of higher education in such State for the most recent fiscal year for which there are data available, relative to the total number of full-time equivalent undergraduate students attending institutions of higher education in all States for such fiscal year.

(2) APPLICATION.—To be eligible to receive an allocation from the Secretary under paragraph (1), a State higher education agency shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require.

(3) REALLOCATION.—Amounts allocated to a State higher education agency under this section that are not obligated by such agency within 12 months of the date the agency receives such amounts shall be returned to the Secretary, and the Secretary shall reallocate such amounts to State higher education agencies in other States on the same basis as the original allocations under paragraph (1).

(4) ADMINISTRATION AND OVERSIGHT EXPENSES.—From the amounts appropriated to carry out this section, not more than $3,000,000 shall be available to the Secretary for administrative and oversight expenses related to carrying out this section.

(c) USE OF GRANTS BY STATE HIGHER EDUCATION AGENCIES.—

(1) SUBGRANTS TO INSTITUTIONS OF HIGHER EDUCATION.—

(A) IN GENERAL.—Except as provided in paragraph (2), each State higher education agency receiving an allocation under subsection (b)(1) shall use the amount allocated to award subgrants to institutions of higher education within the State to carry out projects in accordance with subsection (d)(1).

(B) SUBGRANT AWARD ALLOCATION.—A State higher education agency shall award subgrants to institutions of higher education under this section based on the demonstrated need of each institution for facility modernization, renovation, repair, and equipment.

(C) COMMUNITY COLLEGES.—Notwithstanding, subparagraph (B), the percentage of

1 funds allocated to community colleges in each
2 State shall be no less than the percentage of
3 full-time equivalent students attending commu-
4 nity colleges relative to the total number of full-
5 time equivalent undergraduate students attend-
6 ing public institutions of higher education in
7 the State.

8 (D) PRIORITY CONSIDERATIONS.—In
9 awarding subgrants under this section, each
10 State higher education agency shall give pri-
11 ority consideration to institutions of higher edu-
12 cation with any of the following characteristics:

13 (i) The institution is eligible for Fed-
14 eral assistance under title III or title V of
15 the Higher Education Act of 1965.

16 (ii) The institution was impacted by a
17 major disaster or emergency declared by
18 the President (as defined in section 102(2)
19 of the Robert T. Stafford Disaster Relief
20 and Emergency Assistance Act (42 U.S.C.
21 5122(2))), including an institution affected
22 by a Gulf hurricane disaster, as such term
23 is defined in section 824(g)(1) of the High-
24 er Education Act of 1965 (20 U.S.C.
25 11611–3(g)(1)).

(iii) The institution demonstrates that the proposed project or projects to be carried out with a subgrant under this section will increase the energy efficiency of the institution's facilities and comply with the LEED Green Building Rating System.

(2) ADMINISTRATIVE AND OVERSIGHT EXPENSES.—Of the allocation amount received under subsection (b)(1), a State higher education agency may reserve not more than 5 percent of such amount, or $500,000, whichever is less, for administrative and oversight expenses related to carrying out this section.

(d) USE OF SUBGRANTS BY INSTITUTIONS OF HIGHER EDUCATION.—

(1) PERMISSIBLE USES OF FUNDS.—An institution of higher education receiving a subgrant under this section shall use such subgrant to modernize, renovate, or repair facilities of the institution that are primarily used for instruction, research, or student housing, which may include any of the following:

(A) Repair, replacement, or installation of roofs, electrical wiring, plumbing systems, sewage systems, or lighting systems.

(B) Repair, replacement, or installation of heating, ventilation, or air conditioning systems (including insulation).

(C) Compliance with fire and safety codes, including—

(i) professional installation of fire or life safety alarms; and

(ii) modernizations, renovations, and repairs that ensure that the institution's facilities are prepared for emergencies, such as improving building infrastructure to accommodate security measures.

(D) Retrofitting necessary to increase the energy efficiency of the institution's facilities.

(E) Renovations to the institution's facilities necessary to comply with accessibility requirements in the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(F) Abatement or removal of asbestos from the institution's facilities.

(G) Modernization, renovation, and repair relating to improving science and engineering

laboratories, libraries, and instructional facilities.

(H) Upgrading or installation of educational technology infrastructure.

(I) Installation or upgrading of renewable energy generation and heating systems, including solar, photovoltaic, wind, biomass (including wood pellet), or geothermal systems, or components of such systems.

(J) Other modernization, renovation, or repair projects or purchase of equipment that are primarily for instruction or research.

(2) PROHIBITED USES OF FUNDS.—No funds awarded under this section may be used for—

(A) the maintenance of systems, equipment, or facilities, including maintenance associated with any permissible uses of funds described in paragraph (1);

(B) modernization, renovation, or repair of stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public;

(C) modernization, renovation, or repair of facilities—

(i) used for sectarian instruction, religious worship, or a school or department of divinity; or

(ii) in which a substantial portion of the functions of the facilities are subsumed in a religious mission; or

(D) construction of new facilities.

(e) APPLICATION OF GEPA.—The grant program authorized in this section is an applicable program (as that term is defined in section 400 of the General Education Provisions Act (20 U.S.C. 1221)) subject to section 439 of such Act (20 U.S.C. 1232b). The Secretary shall, notwithstanding section 437 of such Act (20 U.S.C. 1232) and section 553 of title 5, United States Code, establish such program rules as may be necessary to implement such grant program by notice in the Federal Register.

(f) REPORTING.—

(1) REPORTS BY INSTITUTIONS.—Not later than September 30, 2011, each institution of higher education receiving a subgrant under this section shall submit to the State higher education agency awarding such subgrant a report describing the projects for which such subgrant was received, including—

(A) a description of each project carried out, or planned to be carried out, with such subgrant, including the types of modernization, renovation, and repair to be completed by each such project;

(B) the total amount of funds received by the institution under this section and the amount of such funds expended, as of the date of the report, on the such projects;

(C) the actual or planned cost of each such project and any demonstrable or expected academic, energy, or environmental benefits resulting from such project; and

(D) the total number of contracts, and amount of funding for such contracts, awarded by the institution to carry out such projects, as of the date of such report, including the number of contracts, and amount of funding for such contracts, awarded to local, small, minority-owned, women-owned, and veteran-owned businesses, as such terms are defined by the Small Business Act.

(2) REPORTS BY STATES.—Not later than December 31, 2011, each State higher education agency receiving a grant under this section shall submit

to the Secretary a report containing a compilation of all of the reports under paragraph (1) submitted to the agency by institutions of higher education.

(3) REPORTS BY THE SECRETARY.—Not later than March 31, 2012, the Secretary shall submit to the Committee on Education and Labor in the House of Representatives and the Committee on Health, Education, Labor, and Pensions in the Senate and Committees on Appropriations of the House of Representatives and the Senate a report on grants and subgrants made under this section, including the information described in paragraph (1).

(g) DEFINITIONS.—In this section:

(1) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given such term in section 101 of the Higher Education Act of 1965.

(2) LEED GREEN BUILDING RATING SYSTEM.—The term ''LEED Green Building Rating System'' means the United States Green Building Council Leadership in Energy and Environmental Design green building rating standard referred to as the LEED Green Building Rating System.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

1 (4) STATE.—The term ''State'' has the mean-
2 ing given such term in section 103 of the Higher
3 Education Act of 1965 (20 U.S.C. 1003).
4 (5) STATE HIGHER EDUCATION AGENCY.—The
5 term ''State higher education agency'' has the mean-
6 ing given such term in section 103 of the Higher
7 Education Act of 1965 (20 U.S.C. 1003).
8 (6) COMMUNITY COLLEGE.—The term ''Com-
9 munity College'' means a public non-profit institu-
10 tion of higher education as defined in section 101(a)
11 of the Higher Education Act, whose highest degree
12 offered is predominantly the associate degree.
13 SEC. 804. GRANTS FOR SCHOOL RENOVATION, RE-
14 PAIR, AND CONSTRUCTION. (a) ALLOCATION OF FUNDS.—
15 (1) RESERVATIONS.—
16 (A) OUTLYING AREAS AND BUREAU OF IN-
17 DIAN EDUCATION.—From the funds appro-
18 priated to carry out this section, the Secretary
19 shall reserve 1 percent to provide assistance
20 under this section to the outlying areas and for
21 payments to the Secretary of the Interior to
22 provide assistance consistent with this section
23 to schools funded by the Bureau of Indian Edu-
24 cation. Funds reserved under this subparagraph
25 shall be distributed by the Secretary among the

1 outlying areas and the Secretary of the Interior
2 on the basis of relative need, as determined by
3 the Secretary, in accordance with the purposes
4 of this section.
5 (B) IMPACT AID SCHOOLS.—
6 (i) IN GENERAL.—From the funds ap-
7 propriated to carry out this section, the
8 Secretary shall reserve 2 percent to make
9 payments and award grants to local edu-
10 cational agencies under section 8007 of the
11 Elementary and Secondary Education Act
12 of 1965 (20 U.S.C. 7707).
13 (ii) CONSTRUCTION PAYMENTS AU-
14 THORIZED.—
15 (I) IN GENERAL.—From 40 per-
16 cent of the amount reserved under
17 clause (i), the Secretary shall make
18 payments in accordance with section
19 8007(a) of the Elementary and Sec-
20 ondary Education Act of 1965 (20
21 U.S.C. 7707(a)), except that the
22 amount of such payments shall be de-
23 termined in accordance with subclause
24 (II).

1 (II) AMOUNT OF PAYMENTS.—
2 The Secretary shall make a payment
3 to each local educational agency eligi-
4 ble for a payment under section
5 8007(a) of the Elementary and Sec-
6 ondary Education Act of 1965 (20
7 U.S.C. 7707(a)) in an amount that
8 bears the same relationship to the
9 funds made available under subclause
10 (I) as the number of children deter-
11 mined under subparagraphs (B), (C),
12 and (D)(i) of section 8003(a)(1) of
13 the Elementary and Secondary Edu-
14 cation Act of 1965 (20 U.S.C.
15 7703(a)(1)(B), (C), and (D)(i)) who
16 were in average daily attendance in
17 the local educational agency for the
18 most recent year for which such infor-
19 mation is available bears to the num-
20 ber of such children in all the local
21 educational agencies eligible for a pay-
22 ment under section 8007(a) of the El-
23 ementary and Secondary Education
24 Act of 1965 (20 U.S.C. 7707(a)).

1 (iii) SCHOOL FACILITY EMERGENCY
2 AND MODERNIZATION GRANTS AUTHOR-
3 IZED.—
4 (I) IN GENERAL.—From 60 per-
5 cent of the amount reserved under
6 clause (i), the Secretary—
7 (aa) shall award emergency
8 grants in accordance with section
9 8007(b) of the Elementary and
10 Secondary Education Act of
11 1965 (20 U.S.C. 7703(b)) to eli-
12 gible local educational agencies to
13 enable the agencies to carry out
14 emergency repairs of school fa-
15 cilities; and
16 (bb) may award moderniza-
17 tion grants in accordance with
18 section 8007(b) of the Elemen-
19 tary and Secondary Education
20 Act of 1965 (20 U.S.C. 7703(b))
21 to eligible local educational agen-
22 cies to enable the agencies to
23 carry out the modernization of
24 school facilities.

(II) PROVISIONS NOT TO APPLY.—Paragraphs (2), (3), (4), (5)(A)(i), and (5)(A)(vi) of section 8007(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(b)(2), (3), (4), (5)(A)(i), and (5)(A)(vi)) shall not apply to grants made under this clause.

(III) ELIGIBILITY.—A local educational agency is eligible to receive a grant under this clause if the local educational agency—

(aa) is eligible to receive a payment under section 8002 or 8003 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7702 and 7703) for fiscal year 2008; and

(bb) has—

(AA) a total taxable assessed value of real property that may be taxed for school purposes of less than $100,000,000; or

1 (BB) an assessed value
2 of real property per student
3 that may be taxed for school
4 purposes that is less than
5 the average of the assessed
6 value of real property per
7 student that may be taxed
8 for school purposes in the
9 State in which the local edu-
10 cational agency is located.
11 (IV) CRITERIA FOR GRANTS.—In
12 awarding grants under this clause, the
13 Secretary shall consider the following
14 criteria:
15 (aa) Whether the facility
16 poses a health or safety threat to
17 students and school personnel,
18 including noncompliance with
19 building codes and inaccessibility
20 for persons with disabilities, or
21 whether the existing building ca-
22 pacity meets the needs of the
23 current enrollment and supports
24 the provision of comprehensive
25 educational services to meet cur-

rent standards in the State in which the local educational agency is located.

(bb) The extent to which the new design and proposed construction utilize energy efficient and recyclable materials.

(cc) The extent to which the new design and proposed construction utilizes non-traditional or alternative building methods to expedite construction and project completion and maximize cost efficiency.

(dd) The feasibility of project completion within 24 months from award.

(ee) The availability of other resources for the proposed project.

(C) ADMINISTRATION AND OVERSIGHT.—The Secretary may, in addition, reserve up to $5,000,000 of the amount appropriated to carry out this section for administration and oversight of this section.

1 (2) ALLOCATION TO STATE EDUCATIONAL
2 AGENCIES.—
3 (A) IN GENERAL.—Except as provided in
4 subparagraph (B), after making the reserva-
5 tions described in paragraph (1), from the re-
6 mainder of the appropriated funds described in
7 paragraph (1), the Secretary shall allocate to
8 each State educational agency serving a State
9 an amount that bears the same relation to the
10 remainder as the amount the State received
11 under part A of title I of the Elementary and
12 Secondary Education Act of 1965 (20 U.S.C.
13 6311 et seq.) for fiscal year 2008 bears to the
14 amount all States received under such part for
15 fiscal year 2008.
16 (B) MINIMUM AMOUNT.—No State edu-
17 cational agency shall receive less than 0.5 per-
18 cent of the amount allocated under this para-
19 graph.
20 (3) SPECIAL RULE.—The Secretary shall make
21 and distribute the reservations and allocations de-
22 scribed in paragraphs (1) and (2) not later than 60
23 days after the date of enactment of this Act.
24 (b) WITHIN-STATE ALLOTMENTS.—
25 (1) ADMINISTRATIVE COSTS.—

(A) STATE EDUCATIONAL AGENCY ADMINISTRATION.—Except as provided in subparagraph (C), each State educational agency may reserve not more than 1 percent of its allocation under subsection (a)(2) or $2,000,000, whichever is less, for the purpose of administering the distribution of grants under this subsection.

(B) REQUIRED USES.—Each State educational agency shall use a portion of the reserved funds under subparagraph (A) to establish or support a State-level database of public school facility inventory, condition, design, and utilization.

(C) STATE ENTITY ADMINISTRATION.—If a State educational agency transfers funds to a State entity described in paragraph (3)(A)(ii), the State educational agency shall transfer to such entity 0.75 percent of the amount reserved under subparagraph (A) for the purpose of administering the distribution of grants under this subsection.

(2) ALLOTMENTS TO THE LOCAL EDUCATIONAL AGENCIES WITH THE MOST POOR CHILDREN.—

(A) IN GENERAL.—

1 (i) ELIGIBLE LOCAL EDUCATIONAL
2 AGENCY.—In this subparagraph, the term
3 ''eligible local educational agency'' means a
4 local educational agency that is 1 of the
5 100 local educational agencies in the
6 United States that serve the most students
7 who are poor children.
8 (ii) ALLOTMENT.—Not later than 60
9 days after the date a State educational
10 agency receives an allocation from the Sec-
11 retary under this section, the State edu-
12 cational agency shall allot to each eligible
13 local educational agency in the State an
14 amount determined under clause (iii) to be
15 used consistent with subsection (c) for
16 school repair, renovation, and construction.
17 (iii) DETERMINATION OF AMOUNT.—
18 An allotment under this subparagraph to
19 an eligible local educational agency shall be
20 in an amount that bears the same relation
21 to the amount allocated to the State under
22 this section and not reserved under para-
23 graph (1), as the amount of funds under
24 part A of title I of the Elementary and
25 Secondary Education Act of 1965 (20

U.S.C. 6311 et seq.) that the eligible local educational agency received from the State for the most recent fiscal year for which data is available bears to the total amount of such funds received by all local educational agencies in the State under such part for the most recent fiscal year for which data is available.

(B) NO ELIGIBILITY FOR COMPETITIVE GRANTS.—No local educational agency receiving funding under subparagraph (A) shall be eligible for funding under paragraph (3).

(C) PRIORITY IN FUNDING GREEN PROJECTS.—A local educational agency that receives funding under subparagraph (A) shall give priority to funding school repair, renovation, or construction projects that are certified, verified, or consistent with any applicable provisions of—

(i) the LEED Green Building Rating System;

(ii) Energy Star;

(iii) the CHPS Criteria;

(iv) Green Globes; or

(v) an equivalent program adopted by the State or another jurisdiction with authority over the local educational agency.

(3) RESERVATION FOR COMPETITIVE SCHOOL RENOVATION, REPAIR, AND CONSTRUCTION GRANTS TO LOCAL EDUCATIONAL AGENCIES.—

(A) IN GENERAL.—After making the reservation described in paragraph (1), from the remainder of the funds allocated to a State educational agency under this section, the State educational agency shall—

(i) award grants to local educational agencies to be used, consistent with subsection (c), for school renovation, repair, and construction; or

(ii) if such State educational agency is not responsible for the financing of education facilities, transfer such funds to the State entity responsible for the financing of education facilities (referred to in this section as the ''State entity'') to award grants to local educational agencies to be used as described in clause (i).

(B) COMPETITIVE GRANTS TO LOCAL EDUCATIONAL AGENCIES.—The State educational

1 agency or State entity shall carry out a pro-
2 gram awarding grants, on a competitive basis,
3 to local educational agencies for the purpose de-
4 scribed in subparagraph (A). Of the total
5 amount allocated to the State under this section
6 and not reserved under paragraph (1), the
7 State educational agency or State entity, shall
8 carry out the following:
9 (i) Award to high-need local edu-
10 cational agencies, in the aggregate, not less
11 than an amount which bears the same re-
12 lationship to such total amount as the ag-
13 gregate amount such high-need local edu-
14 cational agencies received under part A of
15 title I of the Elementary and Secondary
16 Education Act of 1965 (20 U.S.C. 6311 et
17 seq.) for fiscal year 2008 bears to the ag-
18 gregate amount received for such fiscal
19 year under such part by all local edu-
20 cational agencies in the State, reduced by
21 the total amount the State educational
22 agency has allotted under paragraph (2).
23 (ii) Award to rural local educational
24 agencies, in the aggregate, not less than an
25 amount which bears the same relationship

to such total amount as the aggregate amount such rural local educational agencies received under such part for fiscal year 2008 bears to the aggregate amount received for such fiscal year under such part by all local educational agencies in the State.

(iii) Award the remaining funds to local educational agencies not receiving an award under clause (i) or (ii), including high-need local educational agencies and rural local educational agencies that did not receive such an award.

(C) CRITERIA FOR AWARDING COMPETITIVE GRANTS.—In awarding competitive grants under this paragraph, a State educational agency or State entity shall take into account the following criteria:

(i) PERCENTAGE OF POOR CHILDREN.—The percentage of poor children in a local educational agency.

(ii) NEED FOR SCHOOL RENOVATION, REPAIR, AND CONSTRUCTION.—The need of a local educational agency for school renovation, repair, and construction, as

1 demonstrated by the condition of the pub-
2 lic school facilities of the local educational
3 agency.
4 (iii) GREEN SCHOOLS.—The extent to
5 which the local educational agency will
6 make use of green practices that are cer-
7 tified, verified, or consistent with any ap-
8 plicable provisions of—
9 (I) the LEED Green Building
10 Rating System;
11 (II) Energy Star;
12 (III) the CHPS Criteria;
13 (IV) Green Globes; or
14 (V) an equivalent program adopt-
15 ed by the State or another jurisdiction
16 with authority over the local edu-
17 cational agency.
18 (iv) CAPABILITY TO IMPLEMENT
19 PROJECTS EXPEDITIOUSLY.—The capa-
20 bility of the local educational agency to im-
21 plement school renovation, repair, or con-
22 struction projects expeditiously.
23 (v) FISCAL CAPACITY.—The fiscal ca-
24 pacity of a local educational agency to
25 meet the needs of the local educational

1 agency for renovation, repair, and con-
2 struction of public school facilities without
3 assistance under this section, including the
4 ability of the local educational agency to
5 raise funds through the use of local bond-
6 ing capacity and otherwise.

7 (vi) LIKELIHOOD OF MAINTAINING
8 THE FACILITY.—The likelihood that the
9 local educational agency will maintain, in
10 good condition, any facility whose renova-
11 tion, repair, or construction is assisted
12 under this section.

13 (vii) CHARTER SCHOOL ACCESS TO
14 FUNDING.—In the case of a local edu-
15 cational agency that proposes to fund a
16 renovation, repair, or construction project
17 for a charter school, the extent to which
18 the school has access to funding for the
19 project through the financing methods
20 available to other public schools or local
21 educational agencies in the State.

22 (D) POSSIBLE MATCHING REQUIRE-
23 MENT.—

24 (i) IN GENERAL.—A State educational
25 agency or State entity may require local

educational agencies to match competitive grant funds awarded under this section.

(ii) MATCH AMOUNT.—The amount of a match described in clause (i) may be established by using a sliding scale that takes into account the relative poverty of the population served by the local educational agency.

(c) RULES APPLICABLE TO SCHOOL RENOVATION, REPAIR, AND CONSTRUCTION.—With respect to funds made available under this section that are used for school renovation, repair, and construction, the following rules shall apply:

(1) PERMISSIBLE USES OF FUNDS.—School renovation, repair, and construction shall be limited to 1 or more of the following:

(A) Upgrade, repair, construct, or replace existing or planned public school building systems and components to improve the quality of education and ensure the health and safety of students and staff, including—

(i) repairing, replacing, or constructing early learning facilities (including renovation of existing facilities to serve children under 5 years of age);

(ii) repairing, replacing, or installing roofs, windows, doors, electrical wiring, plumbing systems, or sewage systems;

(iii) repairing, replacing, or installing heating, ventilation, or air conditioning systems (including insulation); and

(iv) bringing public schools into compliance with fire and safety codes.

(B) Modifications necessary to reduce the consumption of electricity, natural gas, oil, water, coal, or land.

(C) Modifications necessary to make public school facilities accessible to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(D) Improve environmental conditions of school sites, including asbestos abatement or removal, and the reduction or elimination of human exposure to lead-based paint, mold, or mildew.

(E) Upgrade or install educational technology infrastructure to ensure that students have access to up-to-date educational technology.

(F) Broaden or improve the use of school buildings and grounds to the community to improve educational outcomes.

(2) IMPERMISSIBLE USES OF FUNDS.—No funds received under this section may be used for—

(A) payment of maintenance costs in connection with any projects constructed in whole or part with Federal funds provided under this section;

(B) purchase or upgrade of vehicles;

(C) stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public;

(D) improvement or construction of standalone facilities whose purpose is not the education of children, including central office administration or operations or logistical support facilities; or

(E) purchase of information technology hardware, including computers, monitors, or printers.

(3) SUPPLEMENT, NOT SUPPLANT.—

(A) IN GENERAL.—Except as provided in subparagraph (B) and excluding the uses de-

scribed in paragraph (1)(C), a local educational agency shall use Federal funds received under this section only to supplement the amount of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for school renovation, repair, and construction.

(B) EXCEPTION.—A local educational agency that is located in a State that is under a court order to finance school facilities shall not be subject to the requirement under subparagraph (A).

(d) QUALIFIED BIDDERS; COMPETITION.—Each local educational agency that receives funds under this section shall ensure that, if the local educational agency carries out renovation, repair, or construction through a contract, any such contract process ensures the maximum number of qualified bidders, including small, minority, and women-owned businesses, through full and open competition.

(e) REPORTING.—

(1) LOCAL REPORTING.—Each local educational agency receiving funds made available under this section shall submit a report to the State educational agency, at such time as the State educational agency may require describing the use of

such funds for school renovation, repair, and construction, including the following:

(A) Type and description of work completed.

(B) The source of any non-federal funds used to complete the project.

(C) Person hours needed at various wage levels to complete the project.

(D) Anticipated energy or natural resource savings.

(2) STATE REPORTING.—Each State educational agency receiving funds made available under this section shall submit to the Secretary, not later than December 31, 2010, a report on the use of funds received under subsection (a)(2) and made available to local educational agencies for school renovation, repair, and construction.

(f) ADMINISTRATIVE COSTS.—Each local educational agency that receives funds under this section may reserve not more than 1 percent of the funds or $750,000, whichever amount is less, for the purpose of—

(1) administering school renovation, repair, and construction projects; and

(2) reporting under subsection (e).

(g) REALLOCATION.—If a State educational agency does not apply for an allocation of funds under subsection (a)(2), or does not use its entire allocation, then the Secretary may reallocate the amount of the State educational agency's allocation (or the remainder thereof, as the case may be) to the remaining State educational agencies in accordance with subsection (a)(2).

(h) APPLICATION OF GEPA.—The grant program under this section is an applicable program (as that term is defined in section 400 of the General Education Provisions Act (20 U.S.C. 1221)) subject to section 439 of such Act (20 U.S.C. 1232b).

(i) DEFINITIONS.—In this section:

(1) IN GENERAL.—The terms ''local educational agency'', ''Secretary'', and ''State educational agency'' have the meanings given the terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(2) CHARTER SCHOOL.—The term ''charter school'' has the meaning given the term in section 5210 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7221i).

(3) CHPS CRITERIA.—The term ''CHPS Criteria'' means the green building rating program de-

1 veloped by the Collaborative for High Performance
2 Schools.
3 (4) ENERGY STAR.—The term ''Energy Star''
4 means the Energy Star program of the Department
5 of Energy and the Environmental Protection Agen-
6 cy.
7 (5) GREEN GLOBES.—The term ''Green
8 Globes'' means the Green Building Initiative envi-
9 ronmental design and rating system.
10 (6) HIGH-NEED LOCAL EDUCATIONAL AGEN-
11 CY.—The term ''high-need local educational agency''
12 has the meaning given the term in section
13 2102(3)(A) of the Elementary and Secondary Edu-
14 cation Act of 1965 (20 U.S.C. 6602(3)(A)).
15 (7) LEED GREEN BUILDING RATING SYSTEM.—
16 The term ''LEED Green Building Rating System''
17 means the United States Green Building Council
18 Leadership in Energy and Environmental Design
19 green building rating standard.
20 (8) OUTLYING AREA.—The term ''outlying
21 area'' has the meaning given the term in section
22 1121(c) of the Elementary and Secondary Education
23 Act of 1965 (20 U.S.C. 6331(c)).
24 (9) POOR CHILDREN.—The term ''poor chil-
25 dren'' refers to children 5 to 17 years of age, inclu-

sive, who are from families with incomes below the poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) applicable to a family of the size involved for the most recent fiscal year for which data satisfactory to the Secretary are available.

(10) RURAL LOCAL EDUCATIONAL AGENCY.—The term ''rural local educational agency'' means a local educational agency that the State determines is located in a rural area using objective data and a commonly employed definition of the term ''rural''.

(11) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(TRANSFER OF FUNDS)

SEC. 805. (a) Not more than 1 percent of the funds made available to the Department of Labor in this title may be transferred by the Secretary of Labor to ''Employment and Training Administration—Program Administration'', ''Employment Standards Administration—Salaries and Expenses'', ''Occupational Safety and Health Administration—Salaries and Expenses'' and ''Departmental Management—Salaries and Expenses'' for expenses necessary to administer and coordinate funds made available

1 to the Department of Labor in this title; oversee and
2 evaluate the use of such funds; and enforce applicable laws
3 and regulations governing worker rights and protections
4 associated with the funds made available in this Act.

5 (b) Not later than 10 days prior to obligating any
6 funds proposed to be transferred under subsection (a), the
7 Secretary shall provide to the Committees on Appropria-
8 tions of the House of Representatives and the Senate an
9 operating plan describing the planned uses of each amount
10 proposed to be transferred.

11 (c) Funds transferred under this section may be
12 available for obligation through September 30, 2010.

13 SEC. 806. ELIGIBLE EMPLOYEES IN THE REC-
14 REATIONAL MARINE INDUSTRY. Section 2(3)(F) of the
15 Longshore and Harbor Workers' Compensation Act (33
16 U.S.C. 902(3)(F)) is amended—

17 (1) by striking '', repair or dismantle''; and

18 (2) by striking the semicolon and inserting '', or
19 individuals employed to repair any recreational ves-
20 sel, or to dismantle any part of a recreational vessel
21 in connection with the repair of such vessel;''.

1 TITLE IX—LEGISLATIVE BRANCH

2 GOVERNMENT ACCOUNTABLIITY OFFICE

3 SALARIES AND EXPENSES

4 For an additional amount for ''Salaries and Ex-
5 penses'' of the Government Accountability Office,
6 $20,000,000, to remain available until September 30,
7 2010.

8 GENERAL PROVISIONS—THIS TITLE

9 SEC. 901. GOVERNMENT ACCOUNTABILITY OFFICE
10 REVIEWS AND REPORTS. (a) REVIEWS AND REPORTS.—

11 (1) IN GENERAL.—The Comptroller General
12 shall conduct bimonthly reviews and prepare reports
13 on such reviews on the use by selected State and lo-
14 calities of funds made available in this Act. Such re-
15 ports, along with any audits conducted by the Comp-
16 troller General of such funds, shall be posted on the
17 Internet and linked to the website established under
18 this Act by the Recovery Accountability and Trans-
19 parency Board.

20 (2) REDACTIONS.—Any portion of a report or
21 audit under this subsection may be redacted when
22 made publicly available, if that portion would dis-
23 close information that is not subject to disclosure
24 under section 552 of title 5, United States Code

(commonly known as the Freedom of Information Act).

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

SEC. 902. ACCESS OF GOVERNMENT ACCOUNTABILITY OFFICE. Each contract awarded using funds made available in this Act shall provide that the Comptroller General and his representatives are authorized—

(1) to examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and

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

TITLE X—MILITARY CONSTRUCTION AND VETERANS AFFAIRS, AND RELATED AGENCIES

DEPARTMENT OF DEFENSE

MILITARY CONSTRUCTION, ARMY

For an additional amount for ''Military Construction, Army'', $637,875,000, to remain available until September 30, 2013, of which $84,100,000 shall be for child development centers; $481,000,000 shall be for warrior transition complexes; and $42,400,000 shall be for health

and dental clinics (including acquisition, construction, installation, and equipment): *Provided,* That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: *Provided further,* That of the funds provided under this heading, not to exceed $30,375,000 shall be available for study, planning, design, and architect and engineer services: *Provided further,* That within 30 days of enactment of this Act the Secretary of the Army shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading prior to obligation.

MILITARY CONSTRUCTION, NAVY AND MARINE CORPS

For an additional amount for ''Military Construction, Navy and Marine Corps'', $990,092,000, to remain available until September 30, 2013, of which $172,820,000 shall be for child development centers; $174,304,000 shall be for barracks; $125,000,000 shall be for health clinic replacement, and $494,362,000 shall be for energy conservation and alternative energy projects (including acquisition, construction, installation, and equipment): *Provided,* That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in

the United States not otherwise authorized by law: *Provided further,* That of the funds provided under this heading, not to exceed $23,606,000 shall be available for study, planning, design, and architect and engineer services: *Provided further,* That within 30 days of enactment of this Act the Secretary of the Navy shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading prior to obligation.

MILITARY CONSTRUCTION, AIR FORCE

For an additional amount for ''Military Construction, Air Force'', $871,332,000, to remain available until September 30, 2013, of which $80,100,000 shall be for child development centers; $612,246,000 shall be for dormitories; and $138,100,000 shall be for health clinics (including acquisition, construction, installation, and equipment): *Provided,* That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: *Provided further,* That of the funds provided under this heading, not to exceed $40,886,000 shall be available for study, planning, design, and architect and engineer services: *Provided further,* That within 30 days of enactment of this Act the Secretary of the Air Force shall sub-

mit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading prior to obligation.

MILITARY CONSTRUCTION, DEFENSE-WIDE

For an additional amount for ''Military Construction, Defense-Wide'', $118,560,000 for the Energy Conservation Investment Program, to remain available until September 30, 2010: *Provided,* That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: *Provided further,* That within 30 days of enactment of this Act the Secretary of Defense shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading prior to obligation.

MILITARY CONSTRUCTION, ARMY NATIONAL GUARD

For an additional amount for ''Military Construction, Army National Guard'', $150,000,000 for readiness centers (including construction, acquisition, expansion, rehabilitation, and conversion), to remain available until September 30, 2013: *Provided,* That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise

authorized by law: *Provided further,* That within 30 days of enactment of this Act the Director of the Army National Guard shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading prior to obligation.

MILITARY CONSTRUCTION, AIR NATIONAL GUARD

For an additional amount for ''Military Construction, Air National Guard'', $110,000,000, to remain available until September 30, 2013: *Provided,* That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: *Provided further,* That within 30 days of enactment of this Act the Director of the Air National Guard shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading prior to obligation.

FAMILY HOUSING CONSTRUCTION, ARMY

For an additional amount for ''Family Housing Construction, Army'', $34,570,000, to remain available until September 30, 2013: *Provided,* That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: *Provided further,* That within 30 days

of enactment of this Act the Secretary of the Army shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading prior to obligation.

FAMILY HOUSING OPERATION AND MAINTENANCE, ARMY

For an additional amount for ''Family Housing Operation and Maintenance, Army'', $3,932,000: *Provided,* That notwithstanding any other provision of law, such funds may be obligated and expended for operation and maintenance and minor construction projects in the United States not otherwise authorized by law.

FAMILY HOUSING CONSTRUCTION, AIR FORCE

For an additional amount for ''Family Housing Construction, Air Force'', $80,100,000, to remain available until September 30, 2013: *Provided,* That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: *Provided further,* That within 30 days of enactment of this Act the Secretary of the Air Force shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading prior to obligation.

FAMILY HOUSING OPERATION AND MAINTENANCE, AIR FORCE

For an additional amount for ''Family Housing Operation and Maintenance, Air Force'', $16,461,000: *Provided,* That notwithstanding any other provision of law, such funds may be obligated and expended for operation and maintenance and minor construction projects in the United States not otherwise authorized by law.

HOMEOWNERS ASSISTANCE FUND

For an additional amount for ''Homeowners Assistance Fund'', established by section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 U.S.C. 3374), $410,973,000, to remain available until expended.

ADMINISTRATIVE PROVISION

SEC. 1001. (a) TEMPORARY EXPANSION OF HOMEOWNERS ASSISTANCE PLAN TO RESPOND TO MORTGAGE FORECLOSURE AND CREDIT CRISIS.—Section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374) is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (1), (2), and (3) as clauses (i), (ii), and (iii), respectively, and indenting such subparagraphs, as so redesignated, 6 ems from the left margin;

(B) by striking ''Notwithstanding any other provision of law'' and inserting the following:

''(1) ACQUISITION OF PROPERTY AT OR NEAR MILITARY INSTALLATIONS THAT HAVE BEEN ORDERED TO BE CLOSED.—Notwithstanding any other provision of law'';

(C) by striking ''if he determines'' and inserting ''if—

''(A) the Secretary determines—'';

(D) in clause (iii), as redesignated by subparagraph (A), by striking the period at the end and inserting ''; or''; and

(E) by adding at the end the following:

''(B) the Secretary determines—

''(i) that the conditions in clauses (i) and (ii) of subparagraph (A) have been met;

''(ii) that the closing or realignment of the base or installation resulted from a realignment or closure carried out under the 2005 round of defense base closure and realignment under the Defense Base Closure and Realignment Act of 1990

(part XXIX of Public Law 101–510; 10 U.S.C. 2687 note);

"(iii) that the property was purchased by the owner before July 1, 2006;

"(iv) that the property was sold by the owner between July 1, 2006, and September 30, 2012, or an earlier end date designated by the Secretary;

"(v) that the property is the primary residence of the owner; and

"(vi) that the owner has not previously received benefit payments authorized under this subsection.

"(2) HOMEOWNER ASSISTANCE FOR WOUNDED MEMBERS OF THE ARMED FORCES, DEPARTMENT OF DEFENSE AND UNITED STATES COAST GUARD CIVILIAN EMPLOYEES, AND THEIR SPOUSES.—Notwithstanding any other provision of law, the Secretary of Defense is authorized to acquire title to, hold, manage, and dispose of, or, in lieu thereof, to reimburse for certain losses upon private sale of, or foreclosure against, any property improved with a one- or two-family dwelling which was at the time of the relevant wound, injury, or illness, the primary residence of—

1 "(A) any member of the Armed Forces in
2 medical transition who—
3 "(i) incurred a wound, injury, or ill-
4 ness in the line of duty during a deploy-
5 ment in support of the Armed Forces;
6 "(ii) is disabled to a degree of 30 per-
7 cent or more as a result of such wound, in-
8 jury, or illness, as determined by the Sec-
9 retary of Defense or the Secretary of Vet-
10 erans Affairs; and
11 "(iii) is reassigned in furtherance of
12 medical treatment or rehabilitation, or due
13 to medical retirement in connection with
14 such disability;
15 "(B) any civilian employee of the Depart-
16 ment of Defense or the United States Coast
17 Guard who—
18 "(i) was wounded, injured, or became
19 ill in the line of duty during a forward de-
20 ployment in support of the Armed Forces;
21 and
22 "(ii) is reassigned in furtherance of
23 medical treatment, rehabilitation, or due to
24 medical retirement resulting from the sus-
25 tained disability; or

"(C) the spouse of a member of the Armed Forces or a civilian employee of the Department of Defense or the United States Coast Guard if—

"(i) the member or employee was killed in the line of duty during a deployment in support of the Armed Forces or died from a wound, injury, or illness incurred in the line of duty during such a deployment; and

"(ii) the spouse relocates from such residence within 2 years after the death of such member or employee.

"(3) TEMPORARY HOMEOWNER ASSISTANCE FOR MEMBERS OF THE ARMED FORCES PERMANENTLY REASSIGNED DURING SPECIFIED MORTGAGE CRISIS.—Notwithstanding any other provision of law, the Secretary of Defense is authorized to acquire title to, hold, manage, and dispose of, or, in lieu thereof, to reimburse for certain losses upon private sale of, or foreclosure against, any property improved with a one- or two-family dwelling situated at or near a military base or installation, if the Secretary determines—

"(A) that the owner is a member of the Armed Forces serving on permanent assignment;

"(B) that the owner is permanently reassigned by order of the United States Government to a duty station or home port outside a 50-mile radius of the base or installation;

"(C) that the reassignment was ordered between February 1, 2006, and September 30, 2012, or an earlier end date designated by the Secretary;

"(D) that the property was purchased by the owner before July 1, 2006;

"(E) that the property was sold by the owner between July 1, 2006, and September 30, 2012, or an earlier end date designated by the Secretary;

"(F) that the property is the primary residence of the owner; and

"(G) that the owner has not previously received benefit payments authorized under this subsection.";

(2) in subsection (b), by striking "this section" each place it appears and inserting "subsection (a)(1)";

(3) in subsection (c)—

(A) by striking ''Such persons'' and inserting the following:

''(1) HOMEOWNER ASSISTANCE RELATED TO CLOSED MILITARY INSTALLATIONS.—

''(A) IN GENERAL.—Such persons'';

(B) by striking ''set forth above shall elect either (1) to receive'' and inserting the following: ''set forth in subsection (a)(1) shall elect either—

''(i) to receive'';

(C) by striking ''difference between (A) 95 per centum'' and all that follows through ''(B) the fair market value'' and inserting the following: ''difference between—

''(I) 95 per centum of the fair market value of their property (as such value is determined by the Secretary of Defense) prior to public announcement of intention to close all or part of the military base or installation; and

''(II) the fair market value'';

(D) by striking ''time of the sale, or (2) to receive'' and inserting the following: ''time of the sale; or

''(ii) to receive'';

(E) by striking ''outstanding mortgages. The Secretary may also pay a person who elects to receive a cash payment under clause (1) of the preceding sentence an amount'' and inserting ''outstanding mortgages.

''(B) REIMBURSEMENT OF EXPENSES.—The Secretary may also pay a person who elects to receive a cash payment under subparagraph (A) an amount''; and

(F) by striking ''best interest of the Federal Government. Cash payment'' and inserting the following: ''best interest of the United States.

''(2) HOMEOWNER ASSISTANCE FOR WOUNDED INDIVIDUALS AND THEIR SPOUSES.—

''(A) IN GENERAL.—Persons eligible under the criteria set forth in subsection (a)(2) may elect either—

''(i) to receive a cash payment as compensation for losses which may be or have been sustained in a private sale, in an

amount not to exceed the difference between—

"(I) 95 per centum of prior fair market value of their property (as such value is determined by the Secretary of Defense); and

"(II) the fair market value of such property (as such value is so determined) at the time of the wound, injury, or illness qualifying the individual for benefits under subsection (a)(2); or

"(ii) to receive, as purchase price for their property an amount not to exceed 90 per centum of prior fair market value as such value is determined by the Secretary of Defense, or the amount of the outstanding mortgages.

"(B) DETERMINATION OF BENEFITS.—The Secretary may also pay a person who elects to receive a cash payment under subparagraph (A) an amount that the Secretary determines appropriate to reimburse the person for the costs incurred by the person in the sale of the property if the Secretary determines that such

payment will benefit the person and is in the best interest of the United States.

"(3) HOMEOWNER ASSISTANCE FOR PERMANENTLY REASSIGNED INDIVIDUALS.—

"(A) IN GENERAL.—Persons eligible under the criteria set forth in subsection (a)(3) may elect either—

"(i) to receive a cash payment as compensation for losses which may be or have been sustained in a private sale, in an amount not to exceed the difference between—

"(I) 95 per centum of prior fair market value of their property (as such value is determined by the Secretary of Defense); and

"(II) the fair market value of such property (as such value is so determined) at the time the person received change of permanent station orders; or

"(ii) to receive, as purchase price for their property an amount not to exceed 90 per centum of prior fair market value as such value is determined by the Secretary

of Defense, or the amount of the outstanding mortgages.

"(B) DETERMINATION OF BENEFITS.—The Secretary may also pay a person who elects to receive a cash payment under subparagraph (A) an amount that the Secretary determines appropriate to reimburse the person for the costs incurred by the person in the sale of the property if the Secretary determines that such payment will benefit the person and is in the best interest of the United States.

"(4) COMPENSATION AND LIMITATIONS RELATED TO FORECLOSURES AND ENCUMBRANCES.—Cash payment";

(4) by striking subsection (g);

(5) in subsection (l), by striking "(a)(2)" and inserting "(a)(1)(A)(ii)";

(6) in subsection (m), by striking "this section" and inserting "subsection (a)(1)";

(7) in subsection (n)—

(A) in paragraph (1), by striking "this section" and inserting "subsection (a)(1)"; and

(B) in paragraph (2), by striking "this section" and inserting "subsection (a)(1)";

(8) in subsection (o)—

(A) in paragraph (1), by striking ''this section'' and inserting ''subsection (a)(1)'';

(B) in paragraph (2), by striking ''this section'' and inserting ''subsection (a)(1)''; and

(C) by striking paragraph (4); and

(9) by adding at the end the following new subsection:

''(p) DEFINITIONS.—In this section:

''(1) the term 'Armed Forces' has the meaning given the term 'armed forces' in section 101(a) of title 10, United States Code;

''(2) the term 'civilian employee' has the meaning given the term 'employee' in section 2105(a) of title 5, United States Code;

''(3) the term 'medical transition', in the case of a member of the Armed Forces, means a member who—

''(A) is in Medical Holdover status;

''(B) is in Active Duty Medical Extension status;

''(C) is in Medical Hold status;

''(D) is in a status pending an evaluation by a medical evaluation board;

''(E) has a complex medical need requiring six or more months of medical treatment; or

"(F) is assigned or attached to an Army Warrior Transition Unit, an Air Force Patient Squadron, a Navy Patient Multidisciplinary Care Team, or a Marine Patient Affairs Team/Wounded Warrior Regiment; and

"(4) the term 'nonappropriated fund instrumentality employee' means a civilian employee who—

"(A) is a citizen of the United States; and

"(B) is paid from nonappropriated funds of Army and Air Force Exchange Service, Navy Resale and Services Support Office, Marine Corps exchanges, or any other instrumentality of the United States under the jurisdiction of the Armed Forces which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.".

(b) CLERICAL AMENDMENT.—Such section is further amended in the section heading by inserting "and certain property owned by members of the armed forces, department of defense and united states coast guard civilian employees, and surviving spouses" after "ordered to be closed".

(c) AUTHORITY TO USE APPROPRIATED FUNDS.—Notwithstanding subsection (i) of such section, amounts

appropriated or otherwise made available by this title under the heading ''Homeowners Assistance Fund'' may be used for the Homeowners Assistance Fund established under such section.

DEPARTMENT OF VETERANS AFFAIRS

VETERANS HEALTH ADMINISTRATION

MEDICAL SUPPORT AND COMPLIANCE

For an additional amount for ''Medical Support and Compliance'', $5,000,000, to remain available until September 30, 2010, to support contract administration and energy initiative execution at the Veterans Health Administration.

MEDICAL FACILITIES

For an additional amount for ''Medical Facilities'', $1,370,459,000, to remain available until September 30, 2010, of which $1,047,313,000 shall be for facility condition assessment deficiencies and non-recurring maintenance at existing medical facilities; and $323,146,000 shall be for energy efficiency initiatives.

NATIONAL CEMETERY ADMINISTRATION

For an additional amount for ''National Cemetery Administration'', $64,961,000, to remain available until September 30, 2010, of which $59,476,000 shall be for capital infrastructure and memorial and monument repairs; and $5,485,000 shall be for energy efficiency initiatives.

DEPARTMENTAL ADMINISTRATION

GENERAL OPERATING EXPENSES

For an additional amount for ''General Operating Expenses'', $1,125,000, to remain available until September 30, 2010, for additional Full Time Equivalent salary and expenses for major construction project administration and execution and energy initiative execution.

INFORMATION TECHNOLOGY SYSTEMS

For an additional amount for ''Information Technology Systems'', $195,000,000, to remain available until September 30, 2010, of which $145,000,000 shall be for the Veterans Benefits Administration's development of paperless claims processing; and $50,000,000 shall be for the development of systems required to implement chapter 33 of title 38, United States Code.

OFFICE OF INSPECTOR GENERAL

For an additional amount for ''Office of Inspector General'', $4,400,000, to remain available until September 30, 2010, for oversight and audit of programs, grants and projects funded under this title.

CONSTRUCTION, MAJOR PROJECTS

For an additional amount for ''Construction, Major Projects'', $1,105,333,000, to remain available until September 30, 2013, which shall be for acceleration and construction of ongoing and planned construction, including physical security construction, of major medical facilities

and National Cemeteries consistent with the Department of Veterans Affairs' Five Year Capital Plan: *Provided,* That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and major medical facility construction not otherwise authorized by law: *Provided further,* That within 30 days of enactment of this Act the Secretary of Veterans Affairs shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading prior to obligation.

CONSTRUCTION, MINOR PROJECTS

For an additional amount for ''Construction, Minor Projects'', $939,836,000, to remain available until September 30, 2010, of which $860,742,000 shall be for Veterans Health Administration minor construction; $20,300,000 shall be for Veterans Benefits Administration minor construction, including $300,000 for energy efficiency initiatives; and $29,012,000 shall be for National Cemetery Administration minor construction.

GRANTS FOR CONSTRUCTION OF STATE EXTENDED CARE FACILITIES

For an additional amount for ''Grants for Construction of State Extended Care Facilities'', $257,986,000, to remain available until September 30, 2010, for grants to assist States to acquire or construct State nursing home

and domiciliary facilities and to remodel, modify, or alter existing hospital, nursing home, and domiciliary facilities in State homes, for furnishing care to veterans as authorized by sections 8131 through 8137 of title 38, United States Code.

ADMINISTRATIVE PROVISION

SEC. 1002. PAYMENTS TO ELIGIBLE PERSONS WHO SERVED IN THE UNITED STATES ARMED FORCES IN THE FAR EAST DURING WORLD WAR II. (a) FINDINGS.—Congress makes the following findings:

(1) The Philippine islands became a United States possession in 1898 when they were ceded from Spain following the Spanish-American War.

(2) During World War II, Filipinos served in a variety of units, some of which came under the direct control of the United States Armed Forces.

(3) The regular Philippine Scouts, the new Philippine Scouts, the Guerilla Services, and more than 100,000 members of the Philippine Commonwealth Army were called into the service of the United States Armed Forces of the Far East on July 26, 1941, by an executive order of President Franklin D. Roosevelt.

(4) Even after hostilities had ceased, wartime service of the new Philippine Scouts continued as a

matter of law until the end of 1946, and the force gradually disbanded and was disestablished in 1950.

(5) Filipino veterans who were granted benefits prior to the enactment of the so-called Rescissions Acts of 1946 (Public Laws 79–301 and 79–391) currently receive full benefits under laws administered by the Secretary of Veterans Affairs, but under section 107 of title 38, United States Code, the service of certain other Filipino veterans is deemed not to be active service for purposes of such laws.

(6) These other Filipino veterans only receive certain benefits under title 38, United States Code, and, depending on where they legally reside, are paid such benefit amounts at reduced rates.

(7) The benefits such veterans receive include service-connected compensation benefits paid under chapter 11 of title 38, United States Code, dependency indemnity compensation survivor benefits paid under chapter 13 of title 38, United States Code, and burial benefits under chapters 23 and 24 of title 38, United States Code, and such benefits are paid to beneficiaries at the rate of $0.50 per dollar authorized, unless they lawfully reside in the United States.

(8) Dependents' educational assistance under chapter 35 of title 38, United States Code, is also payable for the dependents of such veterans at the rate of $0.50 per dollar authorized, regardless of the veterans' residency.

(b) COMPENSATION FUND.—

(1) IN GENERAL.—There is in the general fund of the Treasury a fund to be known as the ''Filipino Veterans Equity Compensation Fund'' (in this section referred to as the ''compensation fund'').

(2) AVAILABILITY OF FUNDS.—Subject to the availability of appropriations for such purpose, amounts in the fund shall be available to the Secretary of Veterans Affairs without fiscal year limitation to make payments to eligible persons in accordance with this section.

(c) PAYMENTS.—

(1) IN GENERAL.—The Secretary may make a payment from the compensation fund to an eligible person who, during the one-year period beginning on the date of the enactment of this Act, submits to the Secretary a claim for benefits under this section. The application for the claim shall contain such information and evidence as the Secretary may require.

(2) PAYMENT TO SURVIVING SPOUSE.—If an eligible person who has filed a claim for benefits under this section dies before payment is made under this section, the payment under this section shall be made instead to the surviving spouse, if any, of the eligible person.

(d) ELIGIBLE PERSONS.—An eligible person is any person who—

(1) served—

(A) before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the Armed Forces of the United States pursuant to the military order of the President dated July 26, 1941, including among such military forces organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States; or

(B) in the Philippine Scouts under section 14 of the Armed Forces Voluntary Recruitment Act of 1945 (59 Stat. 538); and

(2) was discharged or released from service described in paragraph (1) under conditions other than dishonorable.

(e) PAYMENT AMOUNTS.—Each payment under this section shall be—

(1) in the case of an eligible person who is not a citizen of the United States, in the amount of $9,000; and

(2) in the case of an eligible person who is a citizen of the United States, in the amount of $15,000.

(f) LIMITATION.—The Secretary may not make more than one payment under this section for each eligible person described in subsection (d).

(g) CLARIFICATION OF TREATMENT OF PAYMENTS UNDER CERTAIN LAWS.—Amounts paid to a person under this section—

(1) shall be treated for purposes of the internal revenue laws of the United States as damages for human suffering; and

(2) shall not be included in income or resources for purposes of determining—

(A) eligibility of an individual to receive benefits described in section 3803(c)(2)(C) of

1 title 31, United States Code, or the amount of
2 such benefits;
3 (B) eligibility of an individual to receive
4 benefits under title VIII of the Social Security
5 Act, or the amount of such benefits; or
6 (C) eligibility of an individual for, or the
7 amount of benefits under, any other Federal or
8 federally assisted program.
9 (h) RELEASE.—
10 (1) IN GENERAL.—Except as provided in para-
11 graph (2), the acceptance by an eligible person or
12 surviving spouse, as applicable, of a payment under
13 this section shall be final, and shall constitute a
14 complete release of any claim against the United
15 States by reason of any service described in sub-
16 section (d).
17 (2) PAYMENT OF PRIOR ELIGIBILITY STATUS.—
18 Nothing in this section shall prohibit a person from
19 receiving any benefit (including health care, survivor,
20 or burial benefits) which the person would have been
21 eligible to receive based on laws in effect as of the
22 day before the date of the enactment of this Act.
23 (i) RECOGNITION OF SERVICE.—The service of a per-
24 son as described in subsection (d) is hereby recognized as

active military service in the Armed Forces for purposes of, and to the extent provided in, this section.

(j) ADMINISTRATION.—

(1) The Secretary shall promptly issue application forms and instructions to ensure the prompt and efficient administration of the provisions of this section.

(2) The Secretary shall administer the provisions of this section in a manner consistent with applicable provisions of title 38, United States Code, and other provisions of law, and shall apply the definitions in section 101 of such title in the administration of such provisions, except to the extent otherwise provided in this section.

(k) REPORTS.—The Secretary shall include, in documents submitted to Congress by the Secretary in support of the President's budget for each fiscal year, detailed information on the operation of the compensation fund, including the number of applicants, the number of eligible persons receiving benefits, the amounts paid out of the compensation fund, and the administration of the compensation fund for the most recent fiscal year for which such data is available.

(l) AUTHORIZATION OF APPROPRIATION.—There is authorized to be appropriated to the compensation fund

$198,000,000, to remain available until expended, to make payments under this section.

RELATED AGENCY

DEPARTMENT OF DEFENSE—CIVIL

CEMETERIAL EXPENSES, ARMY

SALARY AND EXPENSES

For an additional amount for ''Cemeterial Expenses, Army'', $60,300,000, to remain available until September 30, 2010, for land development, columbarium construction, and relocation of utilities at Arlington National Cemetery.

TITLE XI—STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS

DEPARTMENT OF STATE

ADMINISTRATION OF FOREIGN AFFAIRS

DIPLOMATIC AND CONSULAR PROGRAMS

For an additional amount for ''Diplomatic and Consular Programs'' for urgent domestic facilities requirements, $180,500,000, to remain available until September 30, 2010, of which up to $45,000,000 shall be available for passport and visa facilities and systems, and up to $75,000,000 shall be available for a consolidated security training facility in the United States: *Provided,* That the Secretary of State shall submit to the Committees on Appropriations within 90 days of enactment of this Act a

detailed spending plan for funds appropriated under this heading: *Provided further,* That with respect to the funds made available for passport facilities and systems, such plan shall be developed in consultation with the Department of Homeland Security and the General Services Administration and shall coordinate and co-locate, to the extent feasible, the construction of passport agencies with other Federal facilities.

CAPITAL INVESTMENT FUND

For an additional amount for ''Capital Investment Fund'', $524,000,000, to remain available until September 30, 2010, of which up to $120,000,000 shall be available for the design and construction of a backup information management facility in the United States to support continuity of critical mission operations and programs, and up to $98,527,000 shall be available to carry out the Department of State's responsibilities under the Comprehensive National Cybersecurity Initiative: *Provided,* That the Secretary of State and the Administrator of the United States Agency for International Development shall coordinate information technology systems, where appropriate, to increase efficiencies and eliminate redundancies, to include co-location of backup information management facilities: *Provided further,* That the Secretary of State shall submit to the Committees on Appropriations within 90 days of enactment of this Act a de-

tailed spending plan for funds appropriated under this heading.

OFFICE OF INSPECTOR GENERAL

For an additional amount for ''Office of Inspector General'' for oversight requirements, $2,000,000, to remain available until September 30, 2010.

INTERNATIONAL COMMISSIONS

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

CONSTRUCTION

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''Construction'' for the water quantity program to meet immediate repair and rehabilitation requirements, $224,000,000, to remain available until September 30, 2010: *Provided,* That up to $2,000,000 may be transferred to, and merged with, funds available under the heading ''International Boundary and Water Commission, United States and Mexico—Salaries and Expenses'': *Provided,* That the Secretary of State shall submit to the Committees on Appropriations within 90 days of enactment of this Act a detailed spending plan for funds appropriated under this heading.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

FUNDS APPROPRIATED TO THE PRESIDENT

CAPITAL INVESTMENT FUND

For an additional amount for ''Capital Investment Fund'', $100,000,000, to remain available until September 30, 2010, of which $34,000,000 shall be available for information technology modernization programs and of which up to $35,000,000 shall be available for implementation of the Global Acquisition System: *Provided,* That the Administrator of the United States Agency for International Development shall submit to the Committees on Appropriations within 90 days of enactment of this Act a detailed spending plan for funds appropriated under this heading.

OPERATING EXPENSES OF THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT OFFICE OF INSPECTOR GENERAL

For an additional amount for ''Operating Expenses of the United States Agency for International Development Office of Inspector General'' for oversight requirements, $500,000, to remain available until September 30, 2010.

TITLE XII—TRANSPORTATION AND HOUSING AND URBAN DEVELOPMENT, AND RELATED AGENCIES

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

SUPPLEMENTAL DISCRETIONARY GRANTS FOR A NATIONAL SURFACE TRANSPORTATION SYSTEM

For an additional amount for capital investments in surface transportation infrastructure, $5,500,000,000, to remain available until September 30, 2011: *Provided,* That the Secretary of Transportation shall distribute funds provided under this heading as discretionary grants to be awarded to State and local governments on a competitive basis for projects that will have a significant impact on the Nation, a metropolitan area, or a region: *Provided further,* That projects eligible for funding provided under this heading shall include, but not be limited to, highway or bridge projects eligible under title 23, United States Code, including interstate rehabilitation, improvements to the rural collector road system, the reconstruction of overpasses and interchanges, bridge replacements, seismic retrofit projects for bridges, and road realignments; public transportation projects eligible under chapter 53 of title 49, United States Code, including investments in projects participating in the New Starts or Small

Starts programs that will expedite the completion of those projects and their entry into revenue service; passenger and freight rail transportation projects; and port infrastructure investments, including projects that connect ports to other modes of transportation and improve the efficiency of freight movement: *Provided further,* That of the amount made available under this paragraph, the Secretary may use an amount not to exceed $200,000,000 for the purpose of paying the subsidy costs of projects eligible for federal credit assistance under chapter 6 of title 23, United States Code, if the Secretary finds that such use of the funds would advance the purposes of this paragraph: *Provided further,* That in distributing funds provided under this heading, the Secretary shall take such measures so as to ensure an equitable geographic distribution of funds and an appropriate balance in addressing the needs of urban and rural communities: *Provided further,* That a grant funded under this heading shall be not less than $20,000,000 and not greater than $500,000,000: *Provided further,* That the Federal share of the costs for which an expenditure is made under this heading may be up to 100 percent: *Provided further,* That the Secretary shall give priority to projects that require an additional share of Federal funds in order to complete an overall financing package, and to projects that are ex-

pected to be completed within 3 years of enactment of this Act: *Provided further,* That the Secretary shall publish criteria on which to base the competition for any grants awarded under this heading not later than 75 days after enactment of this Act: *Provided further,* That the Secretary shall require applications for funding provided under this heading to be submitted not later than 180 days after enactment of this Act, and announce all projects selected to be funded from such funds not later than 1 year after enactment of this Act: *Provided further,* That the Secretary shall require all additional applications to be submitted not later than 1 year after enactment of this Act, and announce not later than 180 days following such 1-year period all additional projects selected to be funded with funds withdrawn from States and grantees and transferred from ''Supplemental Grants for Highway Investments'' and ''Supplemental Grants for Public Transit Investment'': *Provided further,* That projects conducted using funds provided under this heading must comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code: *Provided further,* That the Secretary may retain up to $5,000,000 of the funds provided under this heading, and may transfer portions of those funds to the Administrators of the Federal Highway Administration, the Federal Transit Administration, the

Federal Railroad Administration and the Maritime Administration, to fund the award and oversight of grants made under this heading.

FEDERAL AVIATION ADMINISTRATION

SUPPLEMENTAL FUNDING FOR FACILITIES AND EQUIPMENT

For an additional amount for necessary investments in Federal Aviation Administration infrastructure, $200,000,000: *Provided,* That funding provided under this heading shall be used to make improvements to power systems, air route traffic control centers, air traffic control towers, terminal radar approach control facilities, and navigation and landing equipment: *Provided further,* That priority be given to such projects or activities that will be completed within 2 years of enactment of this Act: *Provided further,* That amounts made available under this heading may be provided through grants in addition to the other instruments authorized under section 106(l)(6) of title 49, United States Code: *Provided further,* That the Federal share of the costs for which an expenditure is made under this heading shall be 100 percent: *Provided further,* That amounts provided under this heading may be used for expenses the agency incurs in administering this program: *Provided further,* That not more than 60 days after enactment of this Act, the Administrator shall

establish a process for applying, reviewing and awarding grants and cooperative and other transaction agreements, including the form and content of an application, and requirements for the maintenance of records that are necessary to facilitate an effective audit of the use of the funding provided: *Provided further,* That section 50101 of title 49, United States Code, shall apply to funds provided under this heading.

SUPPLEMENTAL DISCRETIONARY GRANTS FOR AIRPORT INVESTMENT

For an additional amount for capital expenditures authorized under sections 47102(3) and 47504(c) of title 49, United States Code, and for the procurement, installation and commissioning of runway incursion prevention devices and systems at airports of such title, $1,100,000,000: *Provided,* That the Secretary of Transportation shall distribute funds provided under this heading as discretionary grants to airports, with priority given to those projects that demonstrate to his or her satisfaction their ability to be completed within 2 years of enactment of this Act, and serve to supplement and not supplant planned expenditures from airport-generated revenues or from other State and local sources on such activities: *Provided further,* That the Federal share payable of the costs for which a grant is made under this heading shall be 100 percent: *Provided further,* That the amount

made available under this heading shall not be subject to any limitation on obligations for the Grants-in-Aid for Airports program set forth in any Act: *Provided further,* That section 50101 of title 49, United States Code, shall apply to funds provided under this heading: *Provided further,* That projects conducted using funds provided under this heading must comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code: *Provided further,* That the Administrator of the Federal Aviation Administration may retain and transfer to ''Federal Aviation Administration, Operations'' up to one-quarter of 1 percent of the funds provided under this heading to fund the award and oversight by the Administrator of grants made under this heading.

FEDERAL HIGHWAY ADMINISTRATION

SUPPLEMENTAL GRANTS FOR HIGHWAY INVESTMENT

For an additional amount for restoration, repair, construction and other activities eligible under paragraph (b) of section 133 of title 23, United States Code, $27,060,000,000: *Provided,* That funds provided under this heading shall be apportioned to States using the formula set forth in section 104(b)(3) of such title: *Provided further,* That 180 days following the date of such apportionment, the Secretary of Transportation shall withdraw from each State an amount equal to 50 percent of the

1 funds awarded to that grantee less the amount of funding
2 obligated, and the Secretary shall redistribute such
3 amounts to other States that have had no funds with-
4 drawn under this proviso in the manner described in sec-
5 tion 120(c) of division K of Public Law 110–161: *Provided*
6 *further,* That 1 year following the date of such apportion-
7 ment, the Secretary shall withdraw from each recipient of
8 funds apportioned under this heading any unobligated
9 funds and transfer such funds to ''Supplemental Discre-
10 tionary Grants for a National Surface Transportation Sys-
11 tem'': *Provided further,* That at the request of a State,
12 the Secretary of Transportation may provide an extension
13 of such 1-year period only to the extent that he or she
14 feels satisfied that the State has encountered extreme con-
15 ditions that create an unworkable bidding environment or
16 other extenuating circumstances: *Provided further,* That
17 before granting a such an extension, the Secretary shall
18 send a letter to the House and Senate Committees on Ap-
19 propriations that provides a thorough justification for the
20 extension: *Provided further,* That the provisions of sub-
21 sections 133(d)(3) and 133(d)(4) of title 23, United
22 States Code, shall apply to funds apportioned under this
23 heading, except that the percentage of funds to be allo-
24 cated to local jurisdictions shall be 40 percent and such
25 allocation, notwithstanding any other provision of law,

shall be conducted in all states within the United States: *Provided further,* That funds allocated to such urbanized areas and other areas shall not be subject to the redistribution of amounts required 180 days following the date of apportionment of funds provided under this heading: *Provided further,* That funds apportioned under this heading may be used for, but not be limited to, projects that address stormwater runoff, investments in passenger and freight rail transportation, and investments in port infrastructure: *Provided further,* that each State shall use not less than 5 percent of funds apportioned to it for activities eligible under subsections 149(b) and (c) of title 23, United States Code: *Provided further,* That of the funds provided under this heading, $60,000,000 shall be for capital expenditures eligible under section 147 of title 23, United States Code: *Provided further,* That the Secretary of Transportation shall distribute such $60,000,000 as competitive discretionary grants to States, with priority given to those projects that demonstrate to his or her satisfaction their ability to be completed within 2 years of enactment of this Act: *Provided further,* That of the funds provided under this heading, $500,000,000 shall be for investments in transportation at Indian reservations and Federal lands, and administered in accordance with chapter 2 of title 23, United States Code: *Provided further,*

1 That of the funds identified in the preceding proviso,
2 $320,000,000 shall be for the Indian Reservation Roads
3 program, $100,000,000 shall be for the Park Roads and
4 Parkways program, $70,000,000 shall be for the Forest
5 Highway Program, and $10,000,000 shall be for the Ref-
6 uge Roads program: *Provided further,* That for invest-
7 ments at Indian reservations and Federal lands, priority
8 shall be given to capital investments, and to projects and
9 activities that can be completed within 2 years of enact-
10 ment of this Act: *Provided further,* That 1 year following
11 the enactment of this Act, to ensure the prompt use of
12 the $500,000,000 provided for investments at Indian res-
13 ervations and Federal lands, the Secretary shall have the
14 authority to redistribute unobligated funds within the re-
15 spective program for which the funds were appropriated:
16 *Provided further,* That up to 4 percent of the funding pro-
17 vided for Indian Reservation Roads may be used by the
18 Secretary of the Interior for program management and
19 oversight and project-related administrative expenses: *Pro-*
20 *vided further,* That section 134(f)(3)(C)(ii)(II) of title 23,
21 United States Code, shall not apply to funds provided
22 under this heading: *Provided further,* That the Federal
23 share payable on account of any project or activity carried
24 out with funds made available under this heading shall
25 be at the option of the recipient, and may be up to 100

1 percent of the total cost thereof: *Provided further,* That
2 funding provided under this heading shall be in addition
3 to any and all funds provided for fiscal years 2008 and
4 2009 in any other Act for ''Federal-aid Highways'' and
5 shall not affect the distribution of funds provided for
6 ''Federal-aid Highways'' in any other Act: *Provided fur-*
7 *ther,* That the amount made available under this heading
8 shall not be subject to any limitation on obligations for
9 Federal-aid highways or highway safety construction pro-
10 grams set forth in any Act: *Provided further,* That projects
11 conducted using funds provided under this heading must
12 comply with the requirements of subchapter IV of chapter
13 31 of title 40, United States Code: *Provided further,* That
14 section 313 of title 23, United States Code, shall apply
15 to funds provided under this heading: *Provided further,*
16 That section 1101(b) of Public Law 109–59 shall apply
17 to funds apportioned under this heading: *Provided further,*
18 That for the purposes of the definition of States for this
19 paragraph, sections 101(a)(32) of title 23, United States
20 Code, shall apply: *Provided further,* That the Adminis-
21 trator of the Federal Highway Administration may retain
22 up to $12,000,000 of the funds provided under this head-
23 ing to carry out the function of the ''Federal Highway Ad-
24 ministration, Limitation on Administrative Expenses'' and
25 to fund the oversight by the Administrator of projects and

activities carried out with funds made available to the Federal Highway Administration in this Act.

FEDERAL RAILROAD ADMINISTRATION

SUPPLEMENTAL GRANTS TO STATES FOR INTERCITY PASSENGER RAIL SERVICE

For an additional amount for discretionary grants to States to pay for the cost of projects described in paragraphs (2)(A) and (2)(B) of section 24401 of title 49, United States Code, and subsection (b) of section 24105 of such title, $250,000,000: *Provided,* That to be eligible for assistance under this paragraph, the specific project must be on a Statewide Transportation Improvement Plan at the time of the application to qualify: *Provided further,* That the Secretary of Transportation shall give priority to projects that demonstrate an ability to be completed within 2 years of enactment of this Act, and to projects that improve the safety and reliability of intercity passenger trains: *Provided further,* That the Federal share payable of the costs for which a grant is made under this heading shall be 100 percent: *Provided further,* That projects conducted using funds provided under this heading must comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code: *Provided further,* That section 24405(a) of title 49, United States Code, shall apply to funds provided under this heading:

Provided further, That the Administrator of the Federal Railroad Administration may retain and transfer to ''Federal Railroad Administration, Safety and Operations'' up to one-quarter of 1 percent of the funds provided under this heading to fund the award and oversight by the Administrator of grants made under this heading.

SUPPLEMENTAL CAPITAL GRANTS TO THE NATIONAL RAILROAD PASSENGER CORPORATION

For an additional amount for the immediate investment in capital projects necessary to maintain and improve national intercity passenger rail service, including the rehabilitation of rolling stock, $850,000,000: *Provided,* That funds made available under this heading shall be allocated directly to the National Railroad Passenger Corporation: *Provided further,* That the Board of Directors of the corporation shall take measures to ensure that priority is given to capital projects that expand passenger rail capacity: *Provided further,* That the Board of Directors shall take measures to ensure that projects funded under this heading shall be completed within 2 years of enactment of this Act, and shall serve to supplement and not supplant planned expenditures for such activities from other Federal, State, local and corporate sources: *Provided further,* That said Board of Directors shall certify to the House and Senate Committees on Appropriations in writing their compliance with the preceding proviso: *Provided*

further, That section 24305(f) of title 49, United States Code, shall apply to funds provided under this heading: *Provided further,* That not more than 50 percent of the funds provided under this heading may be used for capital projects along the Northeast Corridor.

HIGH-SPEED RAIL CORRIDOR PROGRAM

To make grants for high-speed rail projects under the provisions of section 26106 of title 49, United States Code, $2,000,000,000, to remain available until September 30, 2011: *Provided,* That the Federal share payable of the costs for which a grant is made under this heading shall be 100 percent: *Provided further,* That the Administrator of the Federal Railroad Administration may retain and transfer to ''Federal Railroad Administration, Safety and Operations'' up to one-quarter of 1 percent of the funds provided under this heading to fund the award and oversight by the Administrator of grants made under this paragraph.

FEDERAL TRANSIT ADMINISTRATION

SUPPLEMENTAL GRANTS FOR PUBLIC TRANSIT INVESTMENT

For an additional amount for capital expenditures authorized under section 5302(a)(1) of title 49, United States Code, $8,400,000,000: *Provided,* That the Secretary of Transportation shall apportion 71 percent of the funds apportioned under this heading using the formula

set forth in subsections (a) through (c) of section 5336 of title 49, United States Code, 19 percent of the funds apportioned under this heading using the formula set forth in section 5340 of such title, and 10 percent of the funding apportioned under this heading using the formula set forth in subsection 5311(c) of such title: *Provided further,* That 180 days following the date of such apportionment, the Secretary shall withdraw from each grantee an amount equal to 50 percent of the funds awarded to that grantee less the amount of funding obligated, and the Secretary shall redistribute such amounts to other grantees that have had no funds withdrawn under this proviso utilizing whatever method he or she deems appropriate to ensure that all funds provided under this paragraph shall be utilized promptly: *Provided further,* That 1 year following the date of such apportionment, the Secretary shall withdraw from each grantee any unobligated funds and transfer such funds to ''Supplemental Discretionary Grants for a National Surface Transportation System'': *Provided further,* That at the request of a grantee, the Secretary of Transportation may provide an extension of such 1-year periods if he or she feels satisfied that the grantee has encountered an unworkable bidding environment or other extenuating circumstances: *Provided further,* That before granting such an extension, the Sec-

retary shall send a letter to the House and Senate Committees on Appropriations that provides a thorough justification for the extension: *Provided further,* That of the funds apportioned using the formula set forth in subsection 5311(c) of title 49, United States Code, 2 percent shall be made available for section 5311(c)(1): *Provided further,* That of the funding provided under this heading, $200,000,000 shall be distributed as discretionary grants to public transit agencies for capital investments that will assist in reducing the energy consumption or greenhouse gas emissions of their public transportation systems: *Provided further,* That for such grants on energy-related investments, priority shall be given to projects based on the total energy savings that are projected to result from the investment, and projected energy savings as a percentage of the total energy usage of the public transit agency: *Provided further,* That the Federal share of the costs for which any grant is made under this heading shall be at the option of the recipient, and may be up to 100 percent: *Provided further,* That the amount made available under this heading shall not be subject to any limitation on obligations for transit programs set forth in any Act: *Provided further,* That section 1101(b) of Public Law 109–59 shall apply to funds apportioned under this heading: *Provided further,* That the funds appropriated under this heading

shall be subject to subsection 5323(j) and section 5333 of title 49, United States Code as well as sections 5304 and 5305 of said title, as appropriate, but shall not be comingled with funds available under the Formula and Bus Grants account: *Provided further,* That the Administrator of the Federal Transit Administration may retain up to $3,000,000 of the funds provided under this heading to carry out the function of ''Federal Transit Administration, Administrative Expenses'' and to fund the oversight of grants made under this heading by the Administrator.

MARITIME ADMINISTRATION

SUPPLEMENTAL GRANTS FOR ASSISTANCE TO SMALL SHIPYARDS

To make grants to qualified shipyards as authorized under section 3506 of Public Law 109–163 or section 54101 of title 46, United States Code, $100,000,000: *Provided,* That the Secretary of Transportation shall institute measures to ensure that funds provided under this heading shall be obligated within 180 days of the date of their distribution: *Provided further,* That the Maritime Administrator may retain and transfer to ''Maritime Administration, Operations and Training'' up to 2 percent of the funds provided under this heading to fund the award and oversight by the Administrator of grants made under this heading.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

For an additional amount for necessary expenses of the Office of Inspector General to carry out the provisions of the Inspector General Act of 1978, as amended, $7,750,000, to remain available until September 30, 2011: *Provided,* That the funding made available under this heading shall be used for conducting audits and investigations of projects and activities carried out with funds made available in this Act to the Department of Transportation and to the National Railroad Passenger Corporation: *Provided further,* That the Inspector General shall have all necessary authority, in carrying out the duties specified in the Inspector General Act, as amended (5 U.S.C. App. 3), to investigate allegations of fraud, including false statements to the Government (18 U.S.C. 1001), by any person or entity that is subject to regulation by the Department.

GENERAL PROVISION—DEPARTMENT OF TRANSPORTATION

SEC. 1201. Section 5309(g)(4)(A) of title 49, United States Code, is amended by striking ''or an amount equivalent to the last 3 fiscal years of funding allocated under subsections (m)(1)(A) and (m)(2)(A)(ii)'' and inserting ''or the sum of the funds available for the next 3 fiscal

1 years beyond the current fiscal year, assuming an annual
2 growth of the program of 10 percent''.

3 DEPARTMENT OF HOUSING AND URBAN
4 DEVELOPMENT

5 NATIVE AMERICAN HOUSING BLOCK GRANTS

6 For an additional amount for ''Native American
7 Housing Block Grants'', as authorized under title I of the
8 Native American Housing Assistance and Self-Determina-
9 tion Act of 1996 (''NAHASDA'') (25 U.S.C. 4111 et
10 seq.), $510,000,000, to remain available until September
11 30, 2011: *Provided,* That $255,000,000 of the amount
12 provided under this heading shall be distributed according
13 to the same funding formula used in fiscal year 2008: *Pro-*
14 *vided further,* That in selecting projects to be funded, re-
15 cipients shall give priority to projects that can award con-
16 tracts based on bids within 180 days from the date that
17 funds are available to recipients: *Provided further,* That
18 the Secretary shall obligate $255,000,000 of the amount
19 provided under this heading for competitive grants to eligi-
20 ble entities that apply for funds authorized under
21 NAHASDA: *Provided further,* That in awarding competi-
22 tive funds, the Secretary shall give priority to projects that
23 will spur construction and rehabilitation and will create
24 employment opportunities for low-income and unemployed
25 persons: *Provided further,* That recipients of funds under

this heading shall obligate 100 percent of such funds within 1 year of the date of enactment of this Act, expend at least 50 percent of such funds within 2 years of the date on which funds become available to such jurisdictions for obligation, and expend 100 percent of such funds within 3 years of such date: *Provided further,* That if a recipient fails to comply with either the 1-year obligation requirement or the 2-year expenditure requirement, the Secretary shall recapture all remaining funds awarded to the recipient and reallocate such funds to recipients that are in compliance with those requirements: *Provided further,* That if a recipient fails to comply with the 3-year expenditure requirement, the Secretary shall recapture the balance of the funds awarded to the recipient: *Provided further,* That, notwithstanding any other provision of this paragraph, the Secretary may institute measures to ensure participation in the formula and competitive allocation of funds provided under this paragraph by any housing entity eligible to receive funding under title VIII of NAHASDA (25 U.S.C. 4221 et seq.): *Provided further,* That in administering funds provided in this heading, the Secretary may waive any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds except for requirements imposed by this

heading and requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a finding that such waiver is required to facilitate the timely use of such funds and would not be inconsistent with the overall purpose of the statute or regulation: *Provided further,* That, of the funds made available under this heading, up to 1 percent shall be available for staffing, training, technical assistance, technology, monitoring, research and evaluation activities: *Provided further,* That any funds made available under this heading used by the Secretary for personnel expenses shall be transferred to and merged with funding provided to ''Personnel Compensation and Benefits, Office of Public and Indian Housing'': *Provided further,* That any funds made available under this heading used by the Secretary for training or other administrative expenses shall be transferred to and merged with funding provided to ''Administration, Operations, and Management'', for non-personnel expenses of the Department of Housing and Urban Development: *Provided further,* That any funds made available under this heading used by the Secretary for technology shall be transferred to and merged with the funding provided to ''Working Capital Fund''.

1 PUBLIC HOUSING CAPITAL FUND

2 For an additional amount for the ''Public Housing
3 Capital Fund'' to carry out capital and management ac-
4 tivities for public housing agencies, as authorized under
5 section 9 of the United States Housing Act of 1937 (42
6 U.S.C. 1437g) (the ''Act''), $5,000,000,000, to remain
7 available until September 30, 2011: *Provided,* That the
8 Secretary of Housing and Urban Development shall allo-
9 cate $3,000,000,000 of this amount by the formula au-
10 thorized under section 9(d)(2) of the Act, except that the
11 Secretary may determine not to allocate funding to public
12 housing agencies currently designated as troubled or to
13 public housing agencies that elect not to accept such fund-
14 ing: *Provided further,* That the Secretary shall make avail-
15 able $2,000,000,000 by competition for priority invest-
16 ments, including investments that leverage private sector
17 funding or financing for renovations and energy conserva-
18 tion retrofit investments: *Provided further,* That public
19 housing agencies shall prioritize capital projects that are
20 already underway or included in the 5-year capital fund
21 plans required by the Act (42 U.S.C. 1437c–1(a)): *Pro-*
22 *vided further,* That in allocating competitive grants under
23 this heading, the Secretary shall give priority consider-
24 ation to the rehabilitation of vacant rental units: *Provided*
25 *further,* That notwithstanding any other provision of law,

(1) funding provided herein may not be used for operating or rental assistance activities, and (2) any restriction of funding to replacement housing uses shall be inapplicable: *Provided further,* That notwithstanding any other provision of law, the Secretary shall institute measures to ensure that funds provided under this heading shall serve to supplement and not supplant expenditures from other Federal, State, or local sources or funds independently generated by the grantee: *Provided further,* That notwithstanding section 9(j), public housing agencies shall obligate 100 percent of the funds within 1 year of the date of enactment of this Act, shall expend at least 60 percent of funds within 2 years of the date on which funds become available to the agency for obligation, and shall expend 100 percent of the funds within 3 years of such date: *Provided further,* That if a public housing agency fails to comply with either the 1-year obligation requirement or the 2-year expenditure requirement, the Secretary shall recapture all remaining funds awarded to the public housing agency and reallocate such funds to agencies that are in compliance with those requirements: *Provided further,* That if a public housing agency fails to comply with the 3-year expenditure requirement, the Secretary shall recapture the balance of the funds awarded to the public housing agency: *Provided further,* That in administering funds

provided in this heading, the Secretary may waive any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds except for requirements imposed by this heading and requirements related to conditions on use of funds for development and modernization, fair housing, non-discrimination, labor standards, and the environment, upon a finding that such waiver is required to facilitate the timely use of such funds and would not be inconsistent with the overall purpose of the statute or regulation: *Provided further,* That of the funds made available under this heading, up to 1 percent shall be available for staffing, training, technical assistance, technology, monitoring, research and evaluation activities: *Provided further,* That any funds made available under this heading used by the Secretary for personnel expenses shall be transferred to and merged with funding provided to ''Personnel Compensation and Benefits, Office of Public and Indian Housing'': *Provided further,* That any funds made available under this heading used by the Secretary for training or other administrative expenses shall be transferred to and merged with funding provided to ''Administration, Operations, and Management'', for non-personnel expenses of the Department of Housing and Urban Development: *Provided further,* That

any funds made available under this heading used by the Secretary for technology shall be transferred to and merged with the funding provided to ''Working Capital Fund''.

NEIGHBORHOOD STABILIZATION PROGRAM

For the provision of emergency assistance for the redevelopment of abandoned and foreclosed homes, as authorized by title III of division B of the Housing and Economic Recovery Act of 2008 (the ''Act'') (42 U.S.C. 5301 note), $2,250,000,000, to remain available until September 30, 2011: *Provided,* That funding shall be allocated by a competition for which eligible entities shall be States, units of general local government, and nonprofit entities or consortia of nonprofit entities, which may submit proposals in partnership with for-profit entities: *Provided further,* That in selecting grantees the Secretary shall ensure that the grantee can expend funding within the period allowed under this heading: *Provided further,* That additional award criteria for such competition shall include demonstrated grantee capacity to execute projects, leveraging potential, targeted impact of foreclosure prevention, neighborhood stabilization, and any additional factors determined by the Secretary of Housing and Urban Development: *Provided further,* That the Secretary may establish a minimum grant size: *Provided further,*

1 That the Secretary shall publish criteria on which to base
2 the competition for any grants awarded under this heading
3 not later than 75 days after the enactment of this Act
4 and applications shall be due not later than 180 days after
5 the enactment of this Act: *Provided further,* That the Sec-
6 retary shall award all funding within 1 year of enactment
7 of this Act: *Provided further,* That grantees shall expend
8 at least 75 percent of allocated funds within 2 years of
9 the date funds become available to the grantees for obliga-
10 tion and 100 percent of such funds within 3 years of such
11 date: *Provided further,* That funding used for section
12 2301(c)(3)(E) of the Act shall be available only for the
13 redevelopment of demolished or vacant properties as hous-
14 ing: *Provided further,* That in addition to the eligible uses
15 in section 2301, the Secretary may also use up to 10 per-
16 cent of the funds provided under this heading for grantees
17 for the provision of capacity building of and support for
18 local communities receiving funding under section 2301 of
19 the Act or under this heading: *Provided further,* That the
20 construction or rehabilitation of early childhood and devel-
21 opment centers serving households that qualify as low in-
22 come shall also be an eligible use of funding: *Provided fur-*
23 *ther,* That in addition to the allowable uses of revenues
24 provided in section 2301 of the Act, any revenues gen-
25 erated in the first 5 years using the funds provided under

this heading may be used by the State or applicable unit of general local government for maintenance associated with property acquisition and holding and with land banking activities: *Provided further,* That of the funds provided under this heading, up to 1.5 percent shall be available for staffing, training, technical assistance, technology, monitoring, research and evaluation activities: *Provided further,* That any funds made available under this heading used by the Secretary for personnel expense shall be transferred to and merged with funding provided to ''Community Planning and Development Personnel Compensation and Benefits'': *Provided further,* That any funds made available under this heading used by the Secretary for training or other administrative expenses shall be transferred to and merged with funding provided to ''Administration, Operations, and Management'' for non-personnel expenses of the Department of Housing and Urban Development: *Provided further,* That any funding made available under this heading used by the Secretary for technology shall be transferred to and merged with the funding provided to ''Working Capital Fund.''

HOME INVESTMENT PARTNERSHIPS PROGRAM

For an additional amount for the ''HOME Investment Partnerships Program'' as authorized under title II of the Cranston-Gonzalez National Affordable Housing

1 Act (the ''Act''), $2,250,000,000, to remain available until
2 September 30, 2011: *Provided,* That except as specifically
3 provided herein, funds provided under this heading shall
4 be distributed pursuant to the formula authorized by sec-
5 tion 217 of the Act: *Provided further,* That the Secretary
6 may establish a minimum grant size: *Provided further,*
7 That participating jurisdictions shall obligate 100 percent
8 of the funds within 1 year of the date of enactment of
9 this Act, shall expend at least 60 percent of funds within
10 2 years of the date on which funds become available to
11 the participating jurisdiction for obligation and shall ex-
12 pend 100 percent of the funds within 3 years of such date:
13 *Provided further,* That if a participating jurisdiction fails
14 to comply with either the 1-year obligation requirement
15 or the 2-year expenditure requirement, the Secretary shall
16 recapture all remaining funds awarded to the participating
17 jurisdiction and reallocate such funds to participating ju-
18 risdictions that are in compliance with those requirements:
19 *Provided further,* That if a participating jurisdiction fails
20 to comply with the 3-year expenditure requirement, the
21 Secretary shall recapture the balance of the funds awarded
22 to the participating jurisdiction: *Provided further,* That in
23 administering funds under this heading, the Secretary
24 may waive any provision of any statute or regulation that
25 the Secretary administers in connection with the obliga-

tion by the Secretary or the use by the recipient of these funds except for requirements imposed by this heading and requirements related to fair housing, non-discrimination, labor standards and the environment, upon a finding that such waiver is required to facilitate the timely use of such funds and would not be inconsistent with the overall purpose of the statute or regulation: *Provided further,* That the Secretary may use funds provided under this heading to provide incentives to grantees to use funding for investments in energy efficiency and green building technology: *Provided further,* That such incentives may include allocation of up to 20 percent of funds made available under this heading other than pursuant to the formula authorized by section 217 of the Act: *Provided further,* That, of the funds made available under this heading, up to 1 percent shall be available for staffing, training, technical assistance, technology, monitoring, research and evaluation activities: *Provided further,* That any funds made available under this heading used by the Secretary for personnel expenses shall be transferred to and merged with funding provided to ''Personnel Compensation and Benefits, Office of Community Planning and Development'': *Provided further,* That any funds made available under this heading used by the Secretary for training or other administrative expenses shall be transferred to and

merged with funding provided to ''Administration, Operations, and Management'', for non-personnel expenses of the Department of Housing and Urban Development: *Provided further,* That any funds made available under this heading used by the Secretary for technology shall be transferred to and merged with the funding provided to ''Working Capital Fund''.

HOMELESSNESS PREVENTION FUND

For homelessness prevention activities, $1,500,000,000, to remain available until September 30, 2011: *Provided,* That funds provided under this heading shall be used for the provision of short-term or medium-term rental assistance; housing relocation and stabilization services including housing search, mediation or outreach to property owners, credit repair, security or utility deposits, utility payments, rental assistance for a final month at a location, and moving cost assistance; or other appropriate homelessness prevention activities: *Provided further,* That grantees receiving such assistance shall collect data on the use of the funds awarded and persons served with this assistance in the Homeless Management Information System (HMIS) or other comparable database: *Provided further,* That grantees may use up to 5 percent of any grant for administrative costs: *Provided further,* That funding made available under this heading shall

be allocated to eligible grantees (as defined and designated in sections 411 and 412 of subtitle B of title IV of the McKinney-Vento Homeless Assistance Act, (the ''Act'')) pursuant to the formula authorized by section 413 of the Act: *Provided further,* That the Secretary may establish a minimum grant size: *Provided further,* That grantees shall expend at least 75 percent of funds within 2 years of the date that funds became available to them for obligation, and 100 percent of funds within 3 years of such date, and the Secretary may recapture unexpended funds in violation of the 2-year expenditure requirement and reallocate such funds to grantees in compliance with that requirement: *Provided further,* That the Secretary may waive statutory or regulatory provisions (except provisions for fair housing, nondiscrimination, labor standards, and the environment) necessary to facilitate the timely expenditure of funds: *Provided further,* That the Secretary shall publish a notice to establish such requirements as may be necessary to carry out the provisions of this section within 30 days of enactment of the Act and that this notice shall take effect upon issuance: *Provided further,* That of the funds provided under this heading, up to 1.5 percent shall be available for staffing, training, technical assistance, technology, monitoring, research and evaluation activities: *Provided further,* That any funds made available under

this heading used by the Secretary for personnel expense shall be transferred to and merged with funding provided to ''Community Planning and Development Personnel Compensation and Benefits'': *Provided further,* That any funds made available under this heading used by the Secretary for training or other administrative expenses shall be transferred to and merged with funding provided to ''Administration, Operations, and Management'' for non-personnel expenses of the Department of Housing and Urban Development: *Provided further,* That any funding made available under this heading used by the Secretary for technology shall be transferred to and merged with the funding provided to ''Working Capital Fund.''

ASSISTED HOUSING STABILITY AND ENERGY AND GREEN RETROFIT INVESTMENTS

For assistance to owners of properties receiving project-based assistance pursuant to section 202 of the Housing Act of 1959 (12 U.S.C. 17012), section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013), or section 8 of the United States Housing Act of 1937 as amended (42 U.S.C. 1437f), $3,500,000,000, of which $2,132,000,000 shall be for an additional amount for paragraph (1) under the heading ''Project-Based Rental Assistance'' in Public Law 110–161 for payments to owners for 12-month periods, and

of which $1,368,000,000 shall be for grants or loans for energy retrofit and green investments in such assisted housing: *Provided,* That projects funded with grants or loans provided under this heading must comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code: *Provided further,* That such grants or loans shall be provided through the existing policies, procedures, contracts, and transactional infrastructure of the authorized programs administered by the Office of Affordable Housing Preservation of the Department of Housing and Urban Development, on such terms and conditions as the Secretary of Housing and Urban Development deems appropriate to ensure the maintenance and preservation of the property, the continued operation and maintenance of energy efficiency technologies, and the timely expenditure of funds: *Provided further,* That the Secretary may provide incentives to owners to undertake energy or green retrofits as a part of such grant or loan terms, including, but not limited to, investment fees to cover oversight and implementation costs incurred by said owner, or to encourage job creation for low-income or very low-income individuals: *Provided further,* That the grants or loans shall include a financial assessment and physical inspection of such property: *Provided further,* That eligible owners must have at least a satisfactory management re-

1 view rating, be in substantial compliance with applicable
2 performance standards and legal requirements, and com-
3 mit to an additional period of affordability determined by
4 the Secretary, but of not fewer than 15 years: *Provided*
5 *further,* That the Secretary shall undertake appropriate
6 underwriting and oversight with respect to grant and loan
7 transactions and may set aside up to 5 percent of the
8 funds made available under this heading for grants or
9 loans for such purpose: *Provided further,* That the Sec-
10 retary shall take steps necessary to ensure that owners
11 receiving funding for energy and green retrofit invest-
12 ments under this heading shall expend such funding with-
13 in 2 years of the date they received the funding: *Provided*
14 *further,* That the Secretary may waive or modify statutory
15 or regulatory requirements with respect to any existing
16 grant, loan, or insurance mechanism authorized to be used
17 by the Secretary to enable or facilitate the accomplishment
18 of investments supported with funds made available under
19 this heading for grants or loans: *Provided further,* That
20 of the funds provided under this heading, up to 1.5 per-
21 cent shall be available for staffing, training, technical as-
22 sistance, technology, monitoring, research and evaluation
23 activities: *Provided further,* That funding made available
24 under this heading and used by the Secretary for per-
25 sonnel expenses shall be transferred to and merged with

1 funding provided to ''Housing Compensation and Bene-
2 fits'': *Provided further,* That any funding made available
3 under this heading used by the Secretary for training and
4 other administrative expenses shall be transferred to and
5 merged with funding provided to ''Administration, Oper-
6 ations and Management'' for non-personnel expenses of
7 the Department of Housing and Urban Development: *Pro-*
8 *vided further,* That any funding made available under this
9 heading used by the Secretary for technology shall be
10 transferred to and merged with funding provided to
11 ''Working Capital Fund.''

12 OFFICE OF HEALTHY HOMES AND LEAD HAZARD
13 CONTROL

14 For an additional amount for the ''Lead Hazard Re-
15 duction'', as authorized by section 1011 of the Residential
16 Lead-Based Paint Hazard Reduction Act of 1992,
17 $100,000,000, to remain available until September 30,
18 2011: *Provided,* That funds shall be awarded first to appli-
19 cant jurisdictions which had applied under the Lead-
20 Based Paint Hazard Control Grant Program Notice of
21 Funding Availability for fiscal year 2008, and were found
22 in the application review to be qualified for award, but
23 were not awarded because of funding limitations, and that
24 any funds which remain after reservation of funds for such
25 grants shall be added to the amount of funds to be award-

1 ed under the Lead-Based Paint Hazard Control Grant
2 Program Notice of Funding Availability for fiscal year
3 2009: *Provided further,* That each applicant jurisdiction
4 for the Lead-Based Paint Hazard control Grant Program
5 Notice of Funding Availability for fiscal year 2009 shall
6 submit a detailed plan and strategy that demonstrates
7 adequate capacity that is acceptable to the Secretary to
8 carry out the proposed use of funds: *Provided further,*
9 That recipients of funds under this heading shall obligate
10 100 percent of such funds within 1 year of the date of
11 enactment of this Act, expend at least 75 percent of such
12 funds within 2 years of the date on which funds become
13 available to such jurisdictions for obligation, and expend
14 100 percent of such funds within 3 years of such date:
15 *Provided further,* That if a recipient fails to comply with
16 either the 1-year obligation requirement or the 2-year ex-
17 penditure requirement, the Secretary shall recapture all
18 remaining funds awarded to the recipient and reallocate
19 such funds to recipients that are in compliance with those
20 requirements: *Provided further,* That if a recipient fails to
21 comply with the 3-year expenditure requirement, the Sec-
22 retary shall recapture the balance of the funds awarded
23 to the recipient: *Provided further,* That in administering
24 funds provided in this heading, the Secretary may waive
25 any provision of any statute or regulation that the Sec-

retary administers in connection with the obligation by the Secretary or the use by the recipient of these funds except for requirements imposed by this heading and requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a finding that such waiver is required to facilitate the timely use of such funds and would not be inconsistent with the overall purpose of the statute or regulation: *Provided further,* That, of the funds made available under this heading, up to 1 percent shall be available for staffing, training, technical assistance, technology, monitoring, research and evaluation activities: *Provided further,* That any funds made available under this heading used by the Secretary for personnel expenses shall be transferred to and merged with funding provided to ''Personnel Compensation and Benefits, Office of Healthy Homes and Lead Hazard Control'': *Provided further,* That any funds made available under this heading used by the Secretary for training or other administrative expenses shall be transferred to and merged with funding provided to ''Administration, Operations, and Management'', for non-personnel expenses of the Department of Housing and Urban Development: *Provided further,* That any funds made available under this heading used by the Secretary for technology shall be transferred to and

merged with the funding provided to ''Working Capital Fund''.

OFFICE OF INSPECTOR GENERAL

For an additional amount for the necessary salaries and expenses of the Office of Inspector General in carrying out the Inspector General Act of 1978, as amended, $2,750,000, to remain available until September 30, 2011: *Provided,* That the Inspector General shall have independent authority over all personnel issues within this office.

TITLE XIII—HEALTH INFORMATION TECHNOLOGY

SEC. 1301. SHORT TITLE.

This title may be cited as the ''Health Information Technology for Economic and Clinical Health Act'' or the ''HITECH Act''.

Subtitle A—Promotion of Health Information Technology

PART I—IMPROVING HEALTH CARE QUALITY, SAFETY, AND EFFICIENCY

SEC. 13101. ONCHIT; STANDARDS DEVELOPMENT AND ADOPTION.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by adding at the end the following:

"TITLE XXX—HEALTH INFORMATION TECHNOLOGY AND QUALITY

"SEC. 3000. DEFINITIONS.

''In this title:

''(1) CERTIFIED EHR TECHNOLOGY.—The term 'certified EHR technology' means a qualified electronic health record and that is certified pursuant to section 3001(c)(5) as meeting standards adopted under section 3004 that are applicable to the type of record involved (as determined by the Secretary, such as an ambulatory electronic health record for office-based physicians or an inpatient hospital electronic health record for hospitals).

''(2) ENTERPRISE INTEGRATION.—The term 'enterprise integration' means the electronic linkage of health care providers, health plans, the government, and other interested parties, to enable the electronic exchange and use of health information among all the components in the health care infrastructure in accordance with applicable law, and such term includes related application protocols and other related standards.

''(3) HEALTH CARE PROVIDER.—The term 'health care provider' means a hospital, skilled nurs-

ing facility, nursing facility, home health entity, or other long-term care facility, health care clinic, emergency medical services provider, Federally qualified health center, group practice (as defined in section 1877(h)(4) of the Social Security Act), a pharmacist, a pharmacy, a laboratory, a physician (as defined in section 1861(r) of the Social Security Act), a practitioner (as described in section 1842(b)(18)(C) of the Social Security Act), a provider operated by, or under contract with, the Indian Health Service or by an Indian tribe (as defined in the Indian Self-Determination and Education Assistance Act), tribal organization, or urban Indian organization (as defined in section 4 of the Indian Health Care Improvement Act), a rural health clinic, a covered entity under section 340B, and any other category of facility or clinician determined appropriate by the Secretary.

"(4) HEALTH INFORMATION.—The term 'health information' has the meaning given such term in section 1171(4) of the Social Security Act.

"(5) HEALTH INFORMATION TECHNOLOGY.—The term 'health information technology' means hardware, software, integrated technologies and related licenses, intellectual property, upgrades, and

1 packaged solutions sold as services for use by health
2 care entities for the electronic creation, maintenance,
3 or exchange of health information.

4 "(6) HEALTH PLAN.—The term 'health plan'
5 has the meaning given such term in section 1171(5)
6 of the Social Security Act.

7 "(7) HIT POLICY COMMITTEE.—The term 'HIT
8 Policy Committee' means such Committee estab-
9 lished under section 3002(a).

10 "(8) HIT STANDARDS COMMITTEE.—The term
11 'HIT Standards Committee' means such Committee
12 established under section 3003(a).

13 "(9) INDIVIDUALLY IDENTIFIABLE HEALTH IN-
14 FORMATION.—The term 'individually identifiable
15 health information' has the meaning given such term
16 in section 1171(6) of the Social Security Act.

17 "(10) LABORATORY.—The term 'laboratory'
18 has the meaning given such term in section 353(a).

19 "(11) NATIONAL COORDINATOR.—The term
20 'National Coordinator' means the head of the Office
21 of the National Coordinator for Health Information
22 Technology established under section 3001(a).

23 "(12) PHARMACIST.—The term 'pharmacist'
24 has the meaning given such term in section 804(2)
25 of the Federal Food, Drug, and Cosmetic Act.

1 "(13) QUALIFIED ELECTRONIC HEALTH
2 RECORD.—The term 'qualified electronic health
3 record' means an electronic record of health-related
4 information on an individual that—
5 "(A) includes patient demographic and
6 clinical health information, such as medical his-
7 tory and problem lists; and
8 "(B) has the capacity—
9 "(i) to provide clinical decision sup-
10 port;
11 "(ii) to support physician order entry;
12 "(iii) to capture and query informa-
13 tion relevant to health care quality; and
14 "(iv) to exchange electronic health in-
15 formation with, and integrate such infor-
16 mation from other sources.
17 "(14) STATE.—The term 'State' means each of
18 the several States, the District of Columbia, Puerto
19 Rico, the Virgin Islands, Guam, American Samoa,
20 and the Northern Mariana Islands.

"Subtitle A—Promotion of Health Information Technology

"SEC. 3001. OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY.

''(a) ESTABLISHMENT.—There is established within the Department of Health and Human Services an Office of the National Coordinator for Health Information Technology (referred to in this section as the 'Office'). The Office shall be headed by a National Coordinator who shall be appointed by the Secretary and shall report directly to the Secretary.

''(b) PURPOSE.—The National Coordinator shall perform the duties under subsection (c) in a manner consistent with the development of a nationwide health information technology infrastructure that allows for the electronic use and exchange of information and that—

''(1) ensures that each patient's health information is secure and protected, in accordance with applicable law;

''(2) improves health care quality, reduces medical errors, and advances the delivery of patient-centered medical care;

''(3) reduces health care costs resulting from inefficiency, medical errors, inappropriate care, duplicative care, and incomplete information;

1 ''(4) provides appropriate information to help
2 guide medical decisions at the time and place of
3 care;
4 ''(5) ensures the inclusion of meaningful public
5 input in such development of such infrastructure;
6 ''(6) improves the coordination of care and in-
7 formation among hospitals, laboratories, physician
8 offices, and other entities through an effective infra-
9 structure for the secure and authorized exchange of
10 health care information;
11 ''(7) improves public health activities and facili-
12 tates the early identification and rapid response to
13 public health threats and emergencies, including bio-
14 terror events and infectious disease outbreaks;
15 ''(8) facilitates health and clinical research and
16 health care quality;
17 ''(9) promotes early detection, prevention, and
18 management of chronic diseases;
19 ''(10) promotes a more effective marketplace,
20 greater competition, greater systems analysis, in-
21 creased consumer choice, and improved outcomes in
22 health care services; and
23 ''(11) improves efforts to reduce health dispari-
24 ties.
25 ''(c) DUTIES OF THE NATIONAL COORDINATOR.—

1 "(1) STANDARDS.—The National Coordinator
2 shall review and determine whether to endorse each
3 standard, implementation specification, and certifi-
4 cation criterion for the electronic exchange and use
5 of health information that is recommended by the
6 HIT Standards Committee under section 3003 for
7 purposes of adoption under section 3004. The Coor-
8 dinator shall make such determination, and report to
9 the Secretary such determination, not later than 45
10 days after the date the recommendation is received
11 by the Coordinator.
12 "(2) HIT POLICY COORDINATION.—
13 "(A) IN GENERAL.—The National Coordi-
14 nator shall coordinate health information tech-
15 nology policy and programs of the Department
16 with those of other relevant executive branch
17 agencies with a goal of avoiding duplication of
18 efforts and of helping to ensure that each agen-
19 cy undertakes health information technology ac-
20 tivities primarily within the areas of its greatest
21 expertise and technical capability and in a man-
22 ner towards a coordinated national goal.
23 "(B) HIT POLICY AND STANDARDS COM-
24 MITTEES.—The National Coordinator shall be a
25 leading member in the establishment and oper-

1 ations of the HIT Policy Committee and the
2 HIT Standards Committee and shall serve as a
3 liaison among those two Committees and the
4 Federal Government.
5 "(3) STRATEGIC PLAN.—
6 "(A) IN GENERAL.—The National Coordi-
7 nator shall, in consultation with other appro-
8 priate Federal agencies (including the National
9 Institute of Standards and Technology), update
10 the Federal Health IT Strategic Plan (devel-
11 oped as of June 3, 2008) to include specific ob-
12 jectives, milestones, and metrics with respect to
13 the following:
14 "(i) The electronic exchange and use
15 of health information and the enterprise
16 integration of such information.
17 "(ii) The utilization of an electronic
18 health record for each person in the United
19 States by 2014.
20 "(iii) The incorporation of privacy and
21 security protections for the electronic ex-
22 change of an individual's individually iden-
23 tifiable health information.
24 "(iv) Ensuring security methods to
25 ensure appropriate authorization and elec-

1 tronic authentication of health information
2 and specifying technologies or methodolo-
3 gies for rendering health information unus-
4 able, unreadable, or indecipherable.
5 ''(v) Specifying a framework for co-
6 ordination and flow of recommendations
7 and policies under this subtitle among the
8 Secretary, the National Coordinator, the
9 HIT Policy Committee, the HIT Standards
10 Committee, and other health information
11 exchanges and other relevant entities.
12 ''(vi) Methods to foster the public un-
13 derstanding of health information tech-
14 nology.
15 ''(vii) Strategies to enhance the use of
16 health information technology in improving
17 the quality of health care, reducing medical
18 errors, reducing health disparities, improv-
19 ing public health, increasing prevention
20 and coordination with community re-
21 sources, and improving the continuity of
22 care among health care settings.
23 ''(viii) Specific plans for ensuring that
24 populations with unique needs, such as
25 children, are appropriately addressed in

the technology design, as appropriate, which may include technology that automates enrollment and retention for eligible individuals.

"(B) COLLABORATION.—The strategic plan shall be updated through collaboration of public and private entities.

"(C) MEASURABLE OUTCOME GOALS.—The strategic plan update shall include measurable outcome goals.

"(D) PUBLICATION.—The National Coordinator shall republish the strategic plan, including all updates.

"(4) WEBSITE.—The National Coordinator shall maintain and frequently update an Internet website on which there is posted information on the work, schedules, reports, recommendations, and other information to ensure transparency in promotion of a nationwide health information technology infrastructure.

"(5) CERTIFICATION.—

"(A) IN GENERAL.—The National Coordinator, in consultation with the Director of the National Institute of Standards and Technology, shall develop a program (either directly

1 or by contract) for the voluntary certification of
2 health information technology as being in com-
3 pliance with applicable certification criteria
4 adopted under this subtitle. Such program shall
5 include testing of the technology in accordance
6 with section 14201(b) of the Health Informa-
7 tion Technology for Economic and Clinical
8 Health Act.

9 ''(B) CERTIFICATION CRITERIA DE-
10 SCRIBED.—In this title, the term 'certification
11 criteria' means, with respect to standards and
12 implementation specifications for health infor-
13 mation technology, criteria to establish that the
14 technology meets such standards and implemen-
15 tation specifications.

16 ''(6) REPORTS AND PUBLICATIONS.—

17 ''(A) REPORT ON ADDITIONAL FUNDING
18 OR AUTHORITY NEEDED.—Not later than 12
19 months after the date of the enactment of this
20 title, the National Coordinator shall submit to
21 the appropriate committees of jurisdiction of
22 the House of Representatives and the Senate a
23 report on any additional funding or authority
24 the Coordinator or the HIT Policy Committee
25 or HIT Standards Committee requires to evalu-

1 ate and develop standards, implementation
2 specifications, and certification criteria, or to
3 achieve full participation of stakeholders in the
4 adoption of a nationwide health information
5 technology infrastructure that allows for the
6 electronic use and exchange of health informa-
7 tion.

8 "(B) IMPLEMENTATION REPORT.—The
9 National Coordinator shall prepare a report
10 that identifies lessons learned from major pub-
11 lic and private health care systems in their im-
12 plementation of health information technology,
13 including information on whether the tech-
14 nologies and practices developed by such sys-
15 tems may be applicable to and usable in whole
16 or in part by other health care providers.

17 "(C) ASSESSMENT OF IMPACT OF HIT ON
18 COMMUNITIES WITH HEALTH DISPARITIES AND
19 UNINSURED, UNDERINSURED, AND MEDICALLY
20 UNDERSERVED AREAS.—The National Coordi-
21 nator shall assess and publish the impact of
22 health information technology in communities
23 with health disparities and in areas with a high
24 proportion of individuals who are uninsured,
25 underinsured, and medically underserved indi-

1 viduals (including urban and rural areas) and
2 identify practices to increase the adoption of
3 such technology by health care providers in
4 such communities, and the use of health infor-
5 mation technology to reduce and better manage
6 chronic diseases.

7 "(D) EVALUATION OF BENEFITS AND
8 COSTS OF THE ELECTRONIC USE AND EX-
9 CHANGE OF HEALTH INFORMATION.—The Na-
10 tional Coordinator shall evaluate and publish
11 evidence on the benefits and costs of the elec-
12 tronic use and exchange of health information
13 and assess to whom these benefits and costs ac-
14 crue.

15 "(E) RESOURCE REQUIREMENTS.—The
16 National Coordinator shall estimate and publish
17 resources required annually to reach the goal of
18 utilization of an electronic health record for
19 each person in the United States by 2014, in-
20 cluding the required level of Federal funding,
21 expectations for regional, State, and private in-
22 vestment, and the expected contributions by vol-
23 unteers to activities for the utilization of such
24 records.

1 "(7) ASSISTANCE.—The National Coordinator
2 may provide financial assistance to consumer advo-
3 cacy groups and not-for-profit entities that work in
4 the public interest for purposes of defraying the cost
5 to such groups and entities to participate under,
6 whether in whole or in part, the National Tech-
7 nology Transfer Act of 1995 (15 U.S.C. 272 note).
8 "(8) GOVERNANCE FOR NATIONWIDE HEALTH
9 INFORMATION NETWORK.—The National Coordi-
10 nator shall establish a governance mechanism for the
11 nationwide health information network.
12 "(d) DETAIL OF FEDERAL EMPLOYEES.—
13 "(1) IN GENERAL.—Upon the request of the
14 National Coordinator, the head of any Federal agen-
15 cy is authorized to detail, with or without reimburse-
16 ment from the Office, any of the personnel of such
17 agency to the Office to assist it in carrying out its
18 duties under this section.
19 "(2) EFFECT OF DETAIL.—Any detail of per-
20 sonnel under paragraph (1) shall—
21 "(A) not interrupt or otherwise affect the
22 civil service status or privileges of the Federal
23 employee; and

"(B) be in addition to any other staff of the Department employed by the National Coordinator.

"(3) ACCEPTANCE OF DETAILEES.—Notwithstanding any other provision of law, the Office may accept detailed personnel from other Federal agencies without regard to whether the agency described under paragraph (1) is reimbursed.

"(e) CHIEF PRIVACY OFFICER OF THE OFFICE OF THE NATIONAL COORDINATOR.—Not later than 12 months after the date of the enactment of this title, the Secretary shall appoint a Chief Privacy Officer of the Office of the National Coordinator, whose duty it shall be to advise the National Coordinator on privacy, security, and data stewardship of electronic health information and to coordinate with other Federal agencies (and similar privacy officers in such agencies), with State and regional efforts, and with foreign countries with regard to the privacy, security, and data stewardship of electronic individually identifiable health information.

"SEC. 3002. HIT POLICY COMMITTEE.

"(a) ESTABLISHMENT.—There is established a HIT Policy Committee to make policy recommendations to the National Coordinator relating to the implementation of a nationwide health information technology infrastructure,

1 including implementation of the strategic plan described
2 in section 3001(c)(3).
3 "(b) DUTIES.—
4 "(1) RECOMMENDATIONS ON HEALTH INFOR-
5 MATION TECHNOLOGY INFRASTRUCTURE.—The HIT
6 Policy Committee shall recommend a policy frame-
7 work for the development and adoption of a nation-
8 wide health information technology infrastructure
9 that permits the electronic exchange and use of
10 health information as is consistent with the strategic
11 plan under section 3001(c)(3) and that includes the
12 recommendations under paragraph (2). The Com-
13 mittee shall update such recommendations and make
14 new recommendations as appropriate.
15 "(2) SPECIFIC AREAS OF STANDARD DEVELOP-
16 MENT.—
17 "(A) IN GENERAL.—The HIT Policy Com-
18 mittee shall recommend the areas in which
19 standards, implementation specifications, and
20 certification criteria are needed for the elec-
21 tronic exchange and use of health information
22 for purposes of adoption under section 3004
23 and shall recommend an order of priority for
24 the development, harmonization, and recogni-
25 tion of such standards, specifications, and cer-

1 tification criteria among the areas so rec-
2 ommended. Such standards and implementation
3 specifications shall include named standards,
4 architectures, and software schemes for the au-
5 thentication and security of individually identifi-
6 able health information and other information
7 as needed to ensure the reproducible develop-
8 ment of common solutions across disparate en-
9 tities.

10 ''(B) AREAS REQUIRED FOR CONSIDER-
11 ATION.—For purposes of subparagraph (A), the
12 HIT Policy Committee shall make recommenda-
13 tions for at least the following areas:

14 ''(i) Technologies that protect the pri-
15 vacy of health information and promote se-
16 curity in a qualified electronic health
17 record, including for the segmentation and
18 protection from disclosure of specific and
19 sensitive individually identifiable health in-
20 formation with the goal of minimizing the
21 reluctance of patients to seek care (or dis-
22 close information about a condition) be-
23 cause of privacy concerns, in accordance
24 with applicable law, and for the use and

1 disclosure of limited data sets of such in-
2 formation.
3 ''(ii) A nationwide health information
4 technology infrastructure that allows for
5 the electronic use and accurate exchange of
6 health information.
7 ''(iii) The utilization of a certified
8 electronic health record for each person in
9 the United States by 2014.
10 ''(iv) Technologies that as a part of a
11 qualified electronic health record allow for
12 an accounting of disclosures made by a
13 covered entity (as defined for purposes of
14 regulations promulgated under section
15 264(c) of the Health Insurance Portability
16 and Accountability Act of 1996) for pur-
17 poses of treatment, payment, and health
18 care operations (as such terms are defined
19 for purposes of such regulations).
20 ''(v) The use of certified electronic
21 health records to improve the quality of
22 health care, such as by promoting the co-
23 ordination of health care and improving
24 continuity of health care among health
25 care providers, by reducing medical errors,

1 by improving population health, reducing
2 chronic disease, and by advancing research
3 and education.
4 "(C) OTHER AREAS FOR CONSIDER-
5 ATION.—In making recommendations under
6 subparagraph (A), the HIT Policy Committee
7 may consider the following additional areas:
8 "(i) The appropriate uses of a nation-
9 wide health information infrastructure, in-
10 cluding for purposes of—
11 "(I) the collection of quality data
12 and public reporting;
13 "(II) biosurveillance and public
14 health;
15 "(III) medical and clinical re-
16 search; and
17 "(IV) drug safety.
18 "(ii) Self-service technologies that fa-
19 cilitate the use and exchange of patient in-
20 formation and reduce wait times.
21 "(iii) Telemedicine technologies, in
22 order to reduce travel requirements for pa-
23 tients in remote areas.

1 "(iv) Technologies that facilitate home
2 health care and the monitoring of patients
3 recuperating at home.
4 "(v) Technologies that help reduce
5 medical errors.
6 "(vi) Technologies that facilitate the
7 continuity of care among health settings.
8 "(vii) Technologies that meet the
9 needs of diverse populations.
10 "(viii) Technologies and design fea-
11 tures that address the needs of children
12 and other vulnerable populations.
13 "(ix) Any other technology that the
14 HIT Policy Committee finds to be among
15 the technologies with the greatest potential
16 to improve the quality and efficiency of
17 health care.
18 "(3) FORUM.—The HIT Policy Committee shall
19 serve as a forum for broad stakeholder input with
20 specific expertise in policies relating to the matters
21 described in paragraphs (1) and (2).
22 "(c) MEMBERSHIP AND OPERATIONS.—
23 "(1) IN GENERAL.—The National Coordinator
24 shall provide leadership in the establishment and op-
25 erations of the HIT Policy Committee.

1 "(2) MEMBERSHIP.—The membership of the
2 HIT Policy Committee shall at least reflect pro-
3 viders, ancillary healthcare workers, consumers, pur-
4 chasers, health plans, technology vendors, research-
5 ers, relevant Federal agencies, and individuals with
6 technical expertise on health care quality, privacy
7 and security, and on the electronic exchange and use
8 of health information.

9 "(3) CONSIDERATION.—The National Coordi-
10 nator shall ensure that the relevant recommenda-
11 tions and comments from the National Committee
12 on Vital and Health Statistics are considered in the
13 development of policies.

14 "(d) APPLICATION OF FACA.—The Federal Advisory
15 Committee Act (5 U.S.C. App.), other than section 14 of
16 such Act, shall apply to the HIT Policy Committee.

17 "(e) PUBLICATION.—The Secretary shall provide for
18 publication in the Federal Register and the posting on the
19 Internet website of the Office of the National Coordinator
20 for Health Information Technology of all policy rec-
21 ommendations made by the HIT Policy Committee under
22 this section.

23 **"SEC. 3003. HIT STANDARDS COMMITTEE.**

24 "(a) ESTABLISHMENT.—There is established a com-
25 mittee to be known as the HIT Standards Committee to

1 recommend to the National Coordinator standards, imple-
2 mentation specifications, and certification criteria for the
3 electronic exchange and use of health information for pur-
4 poses of adoption under section 3004, consistent with the
5 implementation of the strategic plan described in section
6 3001(c)(3) and beginning with the areas listed in section
7 3002(b)(2)(B) in accordance with policies developed by
8 the HIT Policy Committee.

9 "(b) DUTIES.—

10 "(1) STANDARD DEVELOPMENT.—

11 "(A) IN GENERAL.—The HIT Standards
12 Committee shall recommend to the National
13 Coordinator standards, implementation speci-
14 fications, and certification criteria described in
15 subsection (a) that have been developed, har-
16 monized, or recognized by the HIT Standards
17 Committee. The HIT Standards Committee
18 shall update such recommendations and make
19 new recommendations as appropriate, including
20 in response to a notification sent under section
21 3004(b)(2). Such recommendations shall be
22 consistent with the latest recommendations
23 made by the HIT Policy Committee.

24 "(B) PILOT TESTING OF STANDARDS AND
25 IMPLEMENTATION SPECIFICATIONS.—In the de-

velopment, harmonization, or recognition of standards and implementation specifications, the HIT Standards Committee shall, as appropriate, provide for the testing of such standards and specifications by the National Institute for Standards and Technology under section 14201 of the Health Information Technology for Economic and Clinical Health Act.

"(C) CONSISTENCY.—The standards, implementation specifications, and certification criteria recommended under this subsection shall be consistent with the standards for information transactions and data elements adopted pursuant to section 1173 of the Social Security Act.

"(2) FORUM.—The HIT Standards Committee shall serve as a forum for the participation of a broad range of stakeholders to provide input on the development, harmonization, and recognition of standards, implementation specifications, and certification criteria necessary for the development and adoption of a nationwide health information technology infrastructure that allows for the electronic use and exchange of health information.

1 "(3) SCHEDULE.—Not later than 90 days after
2 the date of the enactment of this title, the HIT
3 Standards Committee shall develop a schedule for
4 the assessment of policy recommendations developed
5 by the HIT Policy Committee under section 3002.
6 The HIT Standards Committee shall update such
7 schedule annually. The Secretary shall publish such
8 schedule in the Federal Register.
9 "(4) PUBLIC INPUT.—The HIT Standards
10 Committee shall conduct open public meetings and
11 develop a process to allow for public comment on the
12 schedule described in paragraph (3) and rec-
13 ommendations described in this subsection. Under
14 such process comments shall be submitted in a time-
15 ly manner after the date of publication of a rec-
16 ommendation under this subsection.
17 "(c) MEMBERSHIP AND OPERATIONS.—
18 "(1) IN GENERAL.—The National Coordinator
19 shall provide leadership in the establishment and op-
20 erations of the HIT Standards Committee.
21 "(2) MEMBERSHIP.—The membership of the
22 HIT Standards Committee shall at least reflect pro-
23 viders, ancillary healthcare workers, consumers, pur-
24 chasers, health plans, technology vendors, research-
25 ers, relevant Federal agencies, and individuals with

technical expertise on health care quality, privacy and security, and on the electronic exchange and use of health information.

"(3) CONSIDERATION.—The National Coordinator shall ensure that the relevant recommendations and comments from the National Committee on Vital and Health Statistics are considered in the development of standards.

"(4) ASSISTANCE.—For the purposes of carrying out this section, the Secretary may provide or ensure that financial assistance is provided by the HIT Standards Committee to defray in whole or in part any membership fees or dues charged by such Committee to those consumer advocacy groups and not for profit entities that work in the public interest as a part of their mission.

"(d) APPLICATION OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.), other than section 14, shall apply to the HIT Standards Committee.

"(e) PUBLICATION.—The Secretary shall provide for publication in the Federal Register and the posting on the Internet website of the Office of the National Coordinator for Health Information Technology of all recommendations made by the HIT Standards Committee under this section.

"SEC. 3004. PROCESS FOR ADOPTION OF ENDORSED RECOMMENDATIONS; ADOPTION OF INITIAL SET OF STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.

"(a) PROCESS FOR ADOPTION OF ENDORSED RECOMMENDATIONS.—

"(1) REVIEW OF ENDORSED STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.—Not later than 90 days after the date of receipt of standards, implementation specifications, or certification criteria endorsed under section 3001(c), the Secretary, in consultation with representatives of other relevant Federal agencies, shall jointly review such standards, implementation specifications, or certification criteria and shall determine whether or not to propose adoption of such standards, implementation specifications, or certification criteria.

"(2) DETERMINATION TO ADOPT STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.—If the Secretary determines—

"(A) to propose adoption of any grouping of such standards, implementation specifications, or certification criteria, the Secretary shall, by regulation, determine whether or not

to adopt such grouping of standards, implementation specifications, or certification criteria; or

"(B) not to propose adoption of any grouping of standards, implementation specifications, or certification criteria, the Secretary shall notify the National Coordinator and the HIT Standards Committee in writing of such determination and the reasons for not proposing the adoption of such recommendation.

"(3) PUBLICATION.—The Secretary shall provide for publication in the Federal Register of all determinations made by the Secretary under paragraph (1).

"(b) ADOPTION OF INITIAL SET OF STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.—

"(1) IN GENERAL.—Not later than December 31, 2009, the Secretary shall, through the rulemaking process described in section 3003, adopt an initial set of standards, implementation specifications, and certification criteria for the areas required for consideration under section 3002(b)(2)(B).

"(2) APPLICATION OF CURRENT STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.—The standards, implementation

1 specifications, and certification criteria adopted be-
2 fore the date of the enactment of this title through
3 the process existing through the Office of the Na-
4 tional Coordinator for Health Information Tech-
5 nology may be applied towards meeting the require-
6 ment of paragraph (1).

7 **"SEC. 3005. APPLICATION AND USE OF ADOPTED STAND-**
8 **ARDS AND IMPLEMENTATION SPECIFICA-**
9 **TIONS BY FEDERAL AGENCIES.**

10 ''For requirements relating to the application and use
11 by Federal agencies of the standards and implementation
12 specifications adopted under section 3004, see section
13 13111 of the Health Information Technology for Eco-
14 nomic and Clinical Health Act.

15 **"SEC. 3006. VOLUNTARY APPLICATION AND USE OF ADOPT-**
16 **ED STANDARDS AND IMPLEMENTATION**
17 **SPECIFICATIONS BY PRIVATE ENTITIES.**

18 ''(a) IN GENERAL.—Except as provided under section
19 13112 of the Health Information Technology for Eco-
20 nomic and Clinical Health Act, any standard or implemen-
21 tation specification adopted under section 3004 shall be
22 voluntary with respect to private entities.

23 ''(b) RULE OF CONSTRUCTION.—Nothing in this sub-
24 title shall be construed to require that a private entity that
25 enters into a contract with the Federal Government apply

1 or use the standards and implementation specifications
2 adopted under section 3004 with respect to activities not
3 related to the contract.

4 **"SEC. 3007. FEDERAL HEALTH INFORMATION TECH-**
5 **NOLOGY.**

6 "(a) IN GENERAL.—The National Coordinator shall
7 support the development, routine updating and provision
8 of qualified EHR technology (as defined in section 3000)
9 consistent with subsections (b) and (c) unless the Sec-
10 retary determines that the needs and demands of pro-
11 viders are being substantially and adequately met through
12 the marketplace.

13 "(b) CERTIFICATION.—In making such EHR tech-
14 nology publicly available, the National Coordinator shall
15 ensure that the qualified EHR technology described in
16 subsection (a) is certified under the program developed
17 under section 3001(c)(3) to be in compliance with applica-
18 ble standards adopted under section 3003(a).

19 "(c) AUTHORIZATION TO CHARGE A NOMINAL
20 FEE.—The National Coordinator may impose a nominal
21 fee for the adoption by a health care provider of the health
22 information technology system developed or approved
23 under subsection (a) and (b). Such fee shall take into ac-
24 count the financial circumstances of smaller providers, low

1 income providers, and providers located in rural or other
2 medically underserved areas.

3 "(d) RULE OF CONSTRUCTION.—Nothing in this sec-
4 tion shall be construed to require that a private or govern-
5 ment entity adopt or use the technology provided under
6 this section.

7 **"SEC. 3008. TRANSITIONS.**

8 "(a) ONCHIT.—To the extent consistent with sec-
9 tion 3001, all functions, personnel, assets, liabilities, and
10 administrative actions applicable to the National Coordi-
11 nator for Health Information Technology appointed under
12 Executive Order 13335 or the Office of such National Co-
13 ordinator on the date before the date of the enactment
14 of this title shall be transferred to the National Coordi-
15 nator appointed under section 3001(a) and the Office of
16 such National Coordinator as of the date of the enactment
17 of this title.

18 "(b) AHIC.—

19 "(1) To the extent consistent with sections
20 3002 and 3003, all functions, personnel, assets, and
21 liabilities applicable to the AHIC Successor, Inc.
22 doing business as the National eHealth Collaborative
23 as of the day before the date of the enactment of
24 this title shall be transferred to the HIT Policy
25 Committee or the HIT Standards Committee, estab-

1 lished under section 3002(a) or 3003(a), as appro-
2 priate, as of the date of the enactment of this title.
3 "(2) In carrying out section 3003(b)(1)(A),
4 until recommendations are made by the HIT Policy
5 Committee, recommendations of the HIT Standards
6 Committee shall be consistent with the most recent
7 recommendations made by such AHIC Successor,
8 Inc.
9 "(c) RULES OF CONSTRUCTION.—
10 "(1) ONCHIT.—Nothing in section 3001 or
11 subsection (a) shall be construed as requiring the
12 creation of a new entity to the extent that the Office
13 of the National Coordinator for Health Information
14 Technology established pursuant to Executive Order
15 13335 is consistent with the provisions of section
16 3001.
17 "(2) AHIC.—Nothing in sections 3002 or 3003
18 or subsection (b) shall be construed as prohibiting
19 the AHIC Successor, Inc. doing business as the Na-
20 tional eHealth Collaborative from modifying its char-
21 ter, duties, membership, and any other structure or
22 function required to be consistent with section 3002
23 and 3003 in a manner that would permit the Sec-
24 retary to choose to recognize such AHIC Successor,

1 Inc. as the HIT Policy Committee or the HIT
2 Standards Committee.

3 **"SEC. 3009. RELATION TO HIPAA PRIVACY AND SECURITY**
4 **LAW.**

5 "(a) IN GENERAL.—With respect to the relation of
6 this title to HIPAA privacy and security law:

7 "(1) This title may not be construed as having
8 any effect on the authorities of the Secretary under
9 HIPAA privacy and security law.

10 "(2) The purposes of this title include ensuring
11 that the health information technology standards
12 and implementation specifications adopted under
13 section 3004 take into account the requirements of
14 HIPAA privacy and security law.

15 "(b) DEFINITION.—For purposes of this section, the
16 term 'HIPAA privacy and security law' means—

17 "(1) the provisions of part C of title XI of the
18 Social Security Act, section 264 of the Health Insur-
19 ance Portability and Accountability Act of 1996, and
20 subtitle D of the Health Information Technology for
21 Economic and Clinical Health Act; and

22 "(2) regulations under such provisions.".

SEC. 13102. TECHNICAL AMENDMENT.

Section 1171(5) of the Social Security Act (42 U.S.C. 1320d) is amended by striking ''or C'' and inserting ''C, or D''.

PART II—APPLICATION AND USE OF ADOPTED HEALTH INFORMATION TECHNOLOGY STANDARDS; REPORTS

SEC. 13111. COORDINATION OF FEDERAL ACTIVITIES WITH ADOPTED STANDARDS AND IMPLEMENTATION SPECIFICATIONS.

(a) SPENDING ON HEALTH INFORMATION TECHNOLOGY SYSTEMS.—As each agency (as defined in the Executive Order issued on August 22, 2006, relating to promoting quality and efficient health care in Federal government administered or sponsored health care programs) implements, acquires, or upgrades health information technology systems used for the direct exchange of individually identifiable health information between agencies and with non-Federal entities, it shall utilize, where available, health information technology systems and products that meet standards and implementation specifications adopted under section 3004(b) of the Public Health Service Act, as added by section 13101.

(b) FEDERAL INFORMATION COLLECTION ACTIVITIES.—With respect to a standard or implementation specification adopted under section 3004(b) of the Public

1 Health Service Act, as added by section 13101, the Presi-
2 dent shall take measures to ensure that Federal activities
3 involving the broad collection and submission of health in-
4 formation are consistent with such standard or implemen-
5 tation specification, respectively, within three years after
6 the date of such adoption.

7 (c) APPLICATION OF DEFINITIONS.—The definitions
8 contained in section 3000 of the Public Health Service
9 Act, as added by section 13101, shall apply for purposes
10 of this part.

11 **SEC. 13112. APPLICATION TO PRIVATE ENTITIES.**

12 Each agency (as defined in such Executive Order
13 issued on August 22, 2006, relating to promoting quality
14 and efficient health care in Federal government adminis-
15 tered or sponsored health care programs) shall require in
16 contracts or agreements with health care providers, health
17 plans, or health insurance issuers that as each provider,
18 plan, or issuer implements, acquires, or upgrades health
19 information technology systems, it shall utilize, where
20 available, health information technology systems and prod-
21 ucts that meet standards and implementation specifica-
22 tions adopted under section 3004(b) of the Public Health
23 Service Act, as added by section 13101.

SEC. 13113. STUDY AND REPORTS.

(a) REPORT ON ADOPTION OF NATIONWIDE SYSTEM.—Not later than 2 years after the date of the enactment of this Act and annually thereafter, the Secretary of Health and Human Services shall submit to the appropriate committees of jurisdiction of the House of Representatives and the Senate a report that—

(1) describes the specific actions that have been taken by the Federal Government and private entities to facilitate the adoption of a nationwide system for the electronic use and exchange of health information;

(2) describes barriers to the adoption of such a nationwide system; and

(3) contains recommendations to achieve full implementation of such a nationwide system.

(b) REIMBURSEMENT INCENTIVE STUDY AND REPORT.—

(1) STUDY.—The Secretary of Health and Human Services shall carry out, or contract with a private entity to carry out, a study that examines methods to create efficient reimbursement incentives for improving health care quality in Federally qualified health centers, rural health clinics, and free clinics.

1 (2) REPORT.—Not later than 2 years after the
2 date of the enactment of this Act, the Secretary of
3 Health and Human Services shall submit to the ap-
4 propriate committees of jurisdiction of the House of
5 Representatives and the Senate a report on the
6 study carried out under paragraph (1).
7 (c) AGING SERVICES TECHNOLOGY STUDY AND RE-
8 PORT.—
9 (1) IN GENERAL.—The Secretary of Health and
10 Human Services shall carry out, or contract with a
11 private entity to carry out, a study of matters relat-
12 ing to the potential use of new aging services tech-
13 nology to assist seniors, individuals with disabilities,
14 and their caregivers throughout the aging process.
15 (2) MATTERS TO BE STUDIED.—The study
16 under paragraph (1) shall include—
17 (A) an evaluation of—
18 (i) methods for identifying current,
19 emerging, and future health technology
20 that can be used to meet the needs of sen-
21 iors and individuals with disabilities and
22 their caregivers across all aging services
23 settings, as specified by the Secretary;
24 (ii) methods for fostering scientific in-
25 novation with respect to aging services

technology within the business and academic communities; and

(iii) developments in aging services technology in other countries that may be applied in the United States; and

(B) identification of—

(i) barriers to innovation in aging services technology and devising strategies for removing such barriers; and

(ii) barriers to the adoption of aging services technology by health care providers and consumers and devising strategies to removing such barriers.

(3) REPORT.—Not later than 24 months after the date of the enactment of this Act, the Secretary shall submit to the appropriate committees of jurisdiction of the House of Representatives and of the Senate a report on the study carried out under paragraph (1).

(4) DEFINITIONS.—For purposes of this subsection:

(A) AGING SERVICES TECHNOLOGY.—The term ''aging services technology'' means health technology that meets the health care needs of

1 seniors, individuals with disabilities, and the
2 caregivers of such seniors and individuals.
3 (B) SENIOR.—The term ''senior'' has such
4 meaning as specified by the Secretary.

5 Subtitle B—Testing of Health
6 Information Technology

7 SEC. 13201. NATIONAL INSTITUTE FOR STANDARDS AND
8 TECHNOLOGY TESTING.

9 (a) PILOT TESTING OF STANDARDS AND IMPLEMEN-
10 TATION SPECIFICATIONS.—In coordination with the HIT
11 Standards Committee established under section 3003 of
12 the Public Health Service Act, as added by section 13101,
13 with respect to the development of standards and imple-
14 mentation specifications under such section, the Director
15 of the National Institute for Standards and Technology
16 shall test such standards and implementation specifica-
17 tions, as appropriate, in order to assure the efficient im-
18 plementation and use of such standards and implementa-
19 tion specifications.
20 (b) VOLUNTARY TESTING PROGRAM.—In coordina-
21 tion with the HIT Standards Committee established under
22 section 3003 of the Public Health Service Act, as added
23 by section 13101, with respect to the development of
24 standards and implementation specifications under such
25 section, the Director of the National Institute of Stand-

1 ards and Technology shall support the establishment of
2 a conformance testing infrastructure, including the devel-
3 opment of technical test beds. The development of this
4 conformance testing infrastructure may include a program
5 to accredit independent, non-Federal laboratories to per-
6 form testing.

7 **SEC. 13202. RESEARCH AND DEVELOPMENT PROGRAMS.**

8 (a) HEALTH CARE INFORMATION ENTERPRISE INTE-
9 GRATION RESEARCH CENTERS.—

10 (1) IN GENERAL.—The Director of the National
11 Institute of Standards and Technology, in consulta-
12 tion with the Director of the National Science Foun-
13 dation and other appropriate Federal agencies, shall
14 establish a program of assistance to institutions of
15 higher education (or consortia thereof which may in-
16 clude nonprofit entities and Federal Government
17 laboratories) to establish multidisciplinary Centers
18 for Health Care Information Enterprise Integration.

19 (2) REVIEW; COMPETITION.—Grants shall be
20 awarded under this subsection on a merit-reviewed,
21 competitive basis.

22 (3) PURPOSE.—The purposes of the Centers de-
23 scribed in paragraph (1) shall be—

24 (A) to generate innovative approaches to
25 health care information enterprise integration

1 by conducting cutting-edge, multidisciplinary
2 research on the systems challenges to health
3 care delivery; and
4 (B) the development and use of health in-
5 formation technologies and other complemen-
6 tary fields.
7 (4) RESEARCH AREAS.—Research areas may in-
8 clude—
9 (A) interfaces between human information
10 and communications technology systems;
11 (B) voice-recognition systems;
12 (C) software that improves interoperability
13 and connectivity among health information sys-
14 tems;
15 (D) software dependability in systems crit-
16 ical to health care delivery;
17 (E) measurement of the impact of informa-
18 tion technologies on the quality and productivity
19 of health care;
20 (F) health information enterprise manage-
21 ment;
22 (G) health information technology security
23 and integrity; and
24 (H) relevant health information technology
25 to reduce medical errors.

(5) APPLICATIONS.—An institution of higher education (or a consortium thereof) seeking funding under this subsection shall submit an application to the Director of the National Institute of Standards and Technology at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum, a description of—

(A) the research projects that will be undertaken by the Center established pursuant to assistance under paragraph (1) and the respective contributions of the participating entities;

(B) how the Center will promote active collaboration among scientists and engineers from different disciplines, such as information technology, biologic sciences, management, social sciences, and other appropriate disciplines;

(C) technology transfer activities to demonstrate and diffuse the research results, technologies, and knowledge; and

(D) how the Center will contribute to the education and training of researchers and other professionals in fields relevant to health information enterprise integration.

1 (b) NATIONAL INFORMATION TECHNOLOGY RE-
2 SEARCH AND DEVELOPMENT PROGRAM.—The National
3 High-Performance Computing Program established by
4 section 101 of the High-Performance Computing Act of
5 1991 (15 U.S.C. 5511) shall coordinate Federal research
6 and development programs related to the development and
7 deployment of health information technology, including ac-
8 tivities related to—
9 (1) computer infrastructure;
10 (2) data security;
11 (3) development of large-scale, distributed, reli-
12 able computing systems;
13 (4) wired, wireless, and hybrid high-speed net-
14 working;
15 (5) development of software and software-inten-
16 sive systems;
17 (6) human-computer interaction and informa-
18 tion management technologies; and
19 (7) the social and economic implications of in-
20 formation technology.

Subtitle C—Incentives for the Use of Health Information Technology

PART I—GRANTS AND LOANS FUNDING

SEC. 13301. GRANT, LOAN, AND DEMONSTRATION PROGRAMS.

Title XXX of the Public Health Service Act, as added by section 13101, is amended by adding at the end the following new subtitle:

"Subtitle B—Incentives for the Use of Health Information Technology

"SEC. 3011. IMMEDIATE FUNDING TO STRENGTHEN THE HEALTH INFORMATION TECHNOLOGY INFRASTRUCTURE.

''(a) IN GENERAL.—The Secretary of Health and Human Services shall, using amounts appropriated under section 3018, invest in the infrastructure necessary to allow for and promote the electronic exchange and use of health information for each individual in the United States consistent with the goals outlined in the strategic plan developed by the National Coordinator (and, as available) under section 3001. To the greatest extent practicable, the Secretary shall ensure that any funds so appropriated shall be used for the acquisition of health information technology that meets standards and certification criteria adopted before the date of the enactment of this title until

1 such date as the standards are adopted under section
2 3004. The Secretary shall invest funds through the dif-
3 ferent agencies with expertise in such goals, such as the
4 Office of the National Coordinator for Health Information
5 Technology, the Health Resources and Services Adminis-
6 tration, the Agency for Healthcare Research and Quality,
7 the Centers of Medicare & Medicaid Services, the Centers
8 for Disease Control and Prevention, and the Indian
9 Health Service to support the following:

10 "(1) Health information technology architecture
11 that will support the nationwide electronic exchange
12 and use of health information in a secure, private,
13 and accurate manner, including connecting health
14 information exchanges, and which may include up-
15 dating and implementing the infrastructure nec-
16 essary within different agencies of the Department
17 of Health and Human Services to support the elec-
18 tronic use and exchange of health information.

19 "(2) Development and adoption of appropriate
20 certified electronic health records for categories of
21 providers not eligible for support under title XVIII
22 or XIX of the Social Security Act for the adoption
23 of such records.

24 "(3) Training on and dissemination of informa-
25 tion on best practices to integrate health information

technology, including electronic health records, into a provider's delivery of care, consistent with best practices learned from the Health Information Technology Research Center developed under section 3012, including community health centers receiving assistance under section 330 of the Public Health Service Act, covered entities under section 340B of such Act, and providers participating in one or more of the programs under titles XVIII, XIX, and XXI of the Social Security Act (relating to Medicare, Medicaid, and the State Children's Health Insurance Program).

''(4) Infrastructure and tools for the promotion of telemedicine, including coordination among Federal agencies in the promotion of telemedicine.

''(5) Promotion of the interoperability of clinical data repositories or registries.

''(6) Promotion of technologies and best practices that enhance the protection of health information by all holders of individually identifiable health information.

''(7) Improve and expand the use of health information technology by public health departments.

1 "(8) Provide $300,000,000 to support regional
2 or sub-national efforts towards health information
3 exchange.
4 "(b) COORDINATION.—The Secretary shall ensure
5 funds under this section are used in a coordinated manner
6 with other health information promotion activities.
7 "(c) ADDITIONAL USE OF FUNDS.—In addition to
8 using funds as provided in subsection (a), the Secretary
9 may use amounts appropriated under section 3018 to
10 carry out activities that are provided for under laws in
11 effect on the date of enactment of this title.

12 **"SEC. 3012. HEALTH INFORMATION TECHNOLOGY IMPLE-**
13 **MENTATION ASSISTANCE.**

14 "(a) HEALTH INFORMATION TECHNOLOGY EXTEN-
15 SION PROGRAM.—To assist health care providers to adopt,
16 implement, and effectively use certified EHR technology
17 that allows for the electronic exchange and use of health
18 information, the Secretary, acting through the Office of
19 the National Coordinator, shall establish a health informa-
20 tion technology extension program to provide health infor-
21 mation technology assistance services to be carried out
22 through the Department of Health and Human Services.
23 The National Coordinator shall consult with other Federal
24 agencies with demonstrated experience and expertise in in-
25 formation technology services, such as the National Insti-

1 tute of Standards and Technology, in developing and im-
2 plementing this program.

3 "(b) HEALTH INFORMATION TECHNOLOGY RE-
4 SEARCH CENTER.—

5 "(1) IN GENERAL.—The Secretary shall create
6 a Health Information Technology Research Center
7 (in this section referred to as the 'Center') to pro-
8 vide technical assistance and develop or recognize
9 best practices to support and accelerate efforts to
10 adopt, implement, and effectively utilize health infor-
11 mation technology that allows for the electronic ex-
12 change and use of information in compliance with
13 standards, implementation specifications, and certifi-
14 cation criteria adopted under section 3004(b).

15 "(2) INPUT.—The Center shall incorporate
16 input from—

17 "(A) other Federal agencies with dem-
18 onstrated experience and expertise in informa-
19 tion technology services such as the National
20 Institute of Standards and Technology;

21 "(B) users of health information tech-
22 nology, such as providers and their support and
23 clerical staff and others involved in the care and
24 care coordination of patients, from the health

1 care and health information technology indus-
2 try; and
3 "(C) others as appropriate.
4 "(3) PURPOSES.—The purposes of the Center
5 are to—
6 "(A) provide a forum for the exchange of
7 knowledge and experience;
8 "(B) accelerate the transfer of lessons
9 learned from existing public and private sector
10 initiatives, including those currently receiving
11 Federal financial support;
12 "(C) assemble, analyze, and widely dis-
13 seminate evidence and experience related to the
14 adoption, implementation, and effective use of
15 health information technology that allows for
16 the electronic exchange and use of information
17 including through the regional centers described
18 in subsection (c);
19 "(D) provide technical assistance for the
20 establishment and evaluation of regional and
21 local health information networks to facilitate
22 the electronic exchange of information across
23 health care settings and improve the quality of
24 health care;

1 "(E) provide technical assistance for the
2 development and dissemination of solutions to
3 barriers to the exchange of electronic health in-
4 formation; and
5 "(F) learn about effective strategies to
6 adopt and utilize health information technology
7 in medically underserved communities.
8 "(c) HEALTH INFORMATION TECHNOLOGY RE-
9 GIONAL EXTENSION CENTERS.—
10 "(1) IN GENERAL.—The Secretary shall provide
11 assistance for the creation and support of regional
12 centers (in this subsection referred to as 'regional
13 centers') to provide technical assistance and dissemi-
14 nate best practices and other information learned
15 from the Center to support and accelerate efforts to
16 adopt, implement, and effectively utilize health infor-
17 mation technology that allows for the electronic ex-
18 change and use of information in compliance with
19 standards, implementation specifications, and certifi-
20 cation criteria adopted under section 3004. Activities
21 conducted under this subsection shall be consistent
22 with the strategic plan developed by the National
23 Coordinator (and, as available) under section 3001.
24 "(2) AFFILIATION.—Regional centers shall be
25 affiliated with any United States-based nonprofit in-

1 stitution or organization, or group thereof, that ap-
2 plies and is awarded financial assistance under this
3 section. Individual awards shall be decided on the
4 basis of merit.

5 ''(3) OBJECTIVE.—The objective of the regional
6 centers is to enhance and promote the adoption of
7 health information technology through—

8 ''(A) assistance with the implementation,
9 effective use, upgrading, and ongoing mainte-
10 nance of health information technology, includ-
11 ing electronic health records, to healthcare pro-
12 viders nationwide;

13 ''(B) broad participation of individuals
14 from industry, universities, and State govern-
15 ments;

16 ''(C) active dissemination of best practices
17 and research on the implementation, effective
18 use, upgrading, and ongoing maintenance of
19 health information technology, including elec-
20 tronic health records, to health care providers
21 in order to improve the quality of healthcare
22 and protect the privacy and security of health
23 information;

24 ''(D) participation, to the extent prac-
25 ticable, in health information exchanges;

1 "(E) utilization, when appropriate, of the
2 expertise and capability that exists in federal
3 agencies other than the Department; and
4 "(F) integration of health information
5 technology, including electronic health records,
6 into the initial and ongoing training of health
7 professionals and others in the healthcare in-
8 dustry that would be instrumental to improving
9 the quality of healthcare through the smooth
10 and accurate electronic use and exchange of
11 health information.
12 "(4) REGIONAL ASSISTANCE.—Each regional
13 center shall aim to provide assistance and education
14 to all providers in a region, but shall prioritize any
15 direct assistance first to the following:
16 "(A) Public or not-for-profit hospitals or
17 critical access hospitals.
18 "(B) Federally qualified health centers (as
19 defined in section 1861(aa)(4) of the Social Se-
20 curity Act).
21 "(C) Entities that are located in rural and
22 other areas that serve uninsured, underinsured,
23 and medically underserved individuals (regard-
24 less of whether such area is urban or rural).

1 "(D) Individual or small group practices
2 (or a consortium thereof) that are primarily fo-
3 cused on primary care.
4 "(5) FINANCIAL SUPPORT.—The Secretary may
5 provide financial support to any regional center cre-
6 ated under this subsection for a period not to exceed
7 four years. The Secretary may not provide more
8 than 50 percent of the capital and annual operating
9 and maintenance funds required to create and main-
10 tain such a center, except in an instance of national
11 economic conditions which would render this cost-
12 share requirement detrimental to the program and
13 upon notification to Congress as to the justification
14 to waive the cost-share requirement.
15 "(6) NOTICE OF PROGRAM DESCRIPTION AND
16 AVAILABILITY OF FUNDS.—The Secretary shall pub-
17 lish in the Federal Register, not later than 90 days
18 after the date of the enactment of this Act, a draft
19 description of the program for establishing regional
20 centers under this subsection. Such description shall
21 include the following:
22 "(A) A detailed explanation of the program
23 and the programs goals.
24 "(B) Procedures to be followed by the ap-
25 plicants.

1 "(C) Criteria for determining qualified ap-
2 plicants.
3 "(D) Maximum support levels expected to
4 be available to centers under the program.
5 "(7) APPLICATION REVIEW.—The Secretary
6 shall subject each application under this subsection
7 to merit review. In making a decision whether to ap-
8 prove such application and provide financial support,
9 the Secretary shall consider at a minimum the mer-
10 its of the application, including those portions of the
11 application regarding—
12 "(A) the ability of the applicant to provide
13 assistance under this subsection and utilization
14 of health information technology appropriate to
15 the needs of particular categories of health care
16 providers;
17 "(B) the types of service to be provided to
18 health care providers;
19 "(C) geographical diversity and extent of
20 service area; and
21 "(D) the percentage of funding and
22 amount of in-kind commitment from other
23 sources.
24 "(8) BIENNIAL EVALUATION.—Each regional
25 center which receives financial assistance under this

subsection shall be evaluated biennially by an evaluation panel appointed by the Secretary. Each evaluation panel shall be composed of private experts, none of whom shall be connected with the center involved, and of Federal officials. Each evaluation panel shall measure the involved center's performance against the objective specified in paragraph (3). The Secretary shall not continue to provide funding to a regional center unless its evaluation is overall positive.

"(9) CONTINUING SUPPORT.—After the second year of assistance under this subsection a regional center may receive additional support under this subsection if it has received positive evaluations and a finding by the Secretary that continuation of Federal funding to the center was in the best interest of provision of health information technology extension services.

"SEC. 3013. STATE GRANTS TO PROMOTE HEALTH INFORMATION TECHNOLOGY.

"(a) IN GENERAL.—The Secretary, acting through the National Coordinator, shall establish a program in accordance with this section to facilitate and expand the electronic movement and use of health information among organizations according to nationally recognized standards.

1 "(b) PLANNING GRANTS.—The Secretary may award
2 a grant to a State or qualified State-designated entity (as
3 described in subsection (d)) that submits an application
4 to the Secretary at such time, in such manner, and con-
5 taining such information as the Secretary may specify, for
6 the purpose of planning activities described in subsection
7 (b).

8 "(c) IMPLEMENTATION GRANTS.—The Secretary
9 may award a grant to a State or qualified State designated
10 entity that—

11 "(1) has submitted, and the Secretary has ap-
12 proved, a plan described in subsection (c) (regardless
13 of whether such plan was prepared using amounts
14 awarded under paragraph (1)); and

15 "(2) submits an application at such time, in
16 such manner, and containing such information as
17 the Secretary may specify.

18 "(d) USE OF FUNDS.—Amounts received under a
19 grant under subsection (a)(3) shall be used to conduct ac-
20 tivities to facilitate and expand the electronic movement
21 and use of health information among organizations ac-
22 cording to nationally recognized standards through activi-
23 ties that include—

1 "(1) enhancing broad and varied participation
2 in the authorized and secure nationwide electronic
3 use and exchange of health information;
4 "(2) identifying State or local resources avail-
5 able towards a nationwide effort to promote health
6 information technology;
7 "(3) complementing other Federal grants, pro-
8 grams, and efforts towards the promotion of health
9 information technology;
10 "(4) providing technical assistance for the de-
11 velopment and dissemination of solutions to barriers
12 to the exchange of electronic health information;
13 "(5) promoting effective strategies to adopt and
14 utilize health information technology in medically
15 underserved communities;
16 "(6) assisting patients in utilizing health infor-
17 mation technology;
18 "(7) encouraging clinicians to work with Health
19 Information Technology Regional Extension Centers
20 as described in section 3012, to the extent they are
21 available and valuable;
22 "(8) supporting public health agencies' author-
23 ized use of and access to electronic health informa-
24 tion;

1 "(9) promoting the use of electronic health
2 records for quality improvement including through
3 quality measures reporting; and
4 "(10) such other activities as the Secretary may
5 specify.
6 "(e) PLAN.—
7 "(1) IN GENERAL.—A plan described in this
8 subsection is a plan that describes the activities to
9 be carried out by a State or by the qualified State-
10 designated entity within such State to facilitate and
11 expand the electronic movement and use of health
12 information among organizations according to na-
13 tionally recognized standards and implementation
14 specifications.
15 "(2) REQUIRED ELEMENTS.—A plan described
16 in paragraph (1) shall—
17 "(A) be pursued in the public interest;
18 "(B) be consistent with the strategic plan
19 developed by the National Coordinator (and, as
20 available) under section 3001;
21 "(C) include a description of the ways the
22 State or qualified State-designated entity will
23 carry out the activities described in subsection
24 (b); and

1 "(D) contain such elements as the Sec-
2 retary may require.
3 "(f) QUALIFIED STATE-DESIGNATED ENTITY.—For
4 purposes of this section, to be a qualified State-designated
5 entity, with respect to a State, an entity shall—
6 "(1) be designated by the State as eligible to
7 receive awards under this section;
8 "(2) be a not-for-profit entity with broad stake-
9 holder representation on its governing board;
10 "(3) demonstrate that one of its principal goals
11 is to use information technology to improve health
12 care quality and efficiency through the authorized
13 and secure electronic exchange and use of health in-
14 formation;
15 "(4) adopt nondiscrimination and conflict of in-
16 terest policies that demonstrate a commitment to
17 open, fair, and nondiscriminatory participation by
18 stakeholders; and
19 "(5) conform to such other requirements as the
20 Secretary may establish.
21 "(g) REQUIRED CONSULTATION.—In carrying out
22 activities described in subsections (a)(2) and (a)(3), a
23 State or qualified State-designated entity shall consult
24 with and consider the recommendations of—

1 "(1) health care providers (including providers
2 that provide services to low income and underserved
3 populations);
4 "(2) health plans;
5 "(3) patient or consumer organizations that
6 represent the population to be served;
7 "(4) health information technology vendors;
8 "(5) health care purchasers and employers;
9 "(6) public health agencies;
10 "(7) health professions schools, universities and
11 colleges;
12 "(8) clinical researchers;
13 "(9) other users of health information tech-
14 nology such as the support and clerical staff of pro-
15 viders and others involved in the care and care co-
16 ordination of patients; and
17 "(10) such other entities, as may be determined
18 appropriate by the Secretary.
19 "(h) CONTINUOUS IMPROVEMENT.—The Secretary
20 shall annually evaluate the activities conducted under this
21 section and shall, in awarding grants under this section,
22 implement the lessons learned from such evaluation in a
23 manner so that awards made subsequent to each such
24 evaluation are made in a manner that, in the determina-
25 tion of the Secretary, will lead towards the greatest im-

1 provement in quality of care, decrease in costs, and the
2 most effective authorized and secure electronic exchange
3 of health information.

4 "(i) REQUIRED MATCH.—

5 "(1) IN GENERAL.—For a fiscal year (begin-
6 ning with fiscal year 2011), the Secretary may not
7 make a grant under subsection (a) to a State unless
8 the State agrees to make available non-Federal con-
9 tributions (which may include in-kind contributions)
10 toward the costs of a grant awarded under sub-
11 section (a)(3) in an amount equal to—

12 "(A) for fiscal year 2011, not less than $1
13 for each $10 of Federal funds provided under
14 the grant;

15 "(B) for fiscal year 2012, not less than $1
16 for each $7 of Federal funds provided under
17 the grant; and

18 "(C) for fiscal year 2013 and each subse-
19 quent fiscal year, not less than $1 for each $3
20 of Federal funds provided under the grant.

21 "(2) AUTHORITY TO REQUIRE STATE MATCH
22 FOR FISCAL YEARS BEFORE FISCAL YEAR 2011.—For
23 any fiscal year during the grant program under this
24 section before fiscal year 2011, the Secretary may
25 determine the extent to which there shall be required

a non-Federal contribution from a State receiving a grant under this section.

"SEC. 3014. COMPETITIVE GRANTS TO STATES AND INDIAN TRIBES FOR THE DEVELOPMENT OF LOAN PROGRAMS TO FACILITATE THE WIDESPREAD ADOPTION OF CERTIFIED EHR TECHNOLOGY.

''(a) IN GENERAL.—The National Coordinator may award competitive grants to eligible entities for the establishment of programs for loans to health care providers to conduct the activities described in subsection (e).

''(b) ELIGIBLE ENTITY DEFINED.—For purposes of this subsection, the term 'eligible entity' means a State or Indian tribe (as defined in the Indian Self-Determination and Education Assistance Act) that—

''(1) submits to the National Coordinator an application at such time, in such manner, and containing such information as the National Coordinator may require;

''(2) submits to the National Coordinator a strategic plan in accordance with subsection (d) and provides to the National Coordinator assurances that the entity will update such plan annually in accordance with such subsection;

1 "(3) provides assurances to the National Coor-
2 dinator that the entity will establish a Loan Fund
3 in accordance with subsection (c);
4 "(4) provides assurances to the National Coor-
5 dinator that the entity will not provide a loan from
6 the Loan Fund to a health care provider unless the
7 provider agrees to—
8 "(A) submit reports on quality measures
9 adopted by the Federal Government (by not
10 later than 90 days after the date on which such
11 measures are adopted), to—
12 "(i) the Director of the Centers for
13 Medicare & Medicaid Services (or his or
14 her designee), in the case of an entity par-
15 ticipating in the Medicare program under
16 title XVIII of the Social Security Act or
17 the Medicaid program under title XIX of
18 such Act; or
19 "(ii) the Secretary in the case of other
20 entities;
21 "(B) demonstrate to the satisfaction of the
22 Secretary (through criteria established by the
23 Secretary) that any certified EHR technology
24 purchased, improved, or otherwise financially
25 supported under a loan under this section is

1 used to exchange health information in a man-
2 ner that, in accordance with law and standards
3 (as adopted under section 3005) applicable to
4 the exchange of information, improves the qual-
5 ity of health care, such as promoting care co-
6 ordination;
7 "(C) comply with such other requirements
8 as the entity or the Secretary may require;
9 "(D) include a plan on how healthcare pro-
10 viders involved intend to maintain and support
11 the certified EHR technology over time; and
12 "(E) include a plan on how the healthcare
13 providers involved intend to maintain and sup-
14 port the certified EHR technology that would
15 be purchased with such loan, including the type
16 of resources expected to be involved and any
17 such other information as the State or Indian
18 tribe, respectively, may require; and
19 "(5) agrees to provide matching funds in ac-
20 cordance with subsection (i).
21 "(c) ESTABLISHMENT OF FUND.—For purposes of
22 subsection (b)(3), an eligible entity shall establish a cer-
23 tified EHR technology loan fund (referred to in this sub-
24 section as a 'Loan Fund') and comply with the other re-
25 quirements contained in this section. A grant to an eligible

1 entity under this section shall be deposited in the Loan
2 Fund established by the eligible entity. No funds author-
3 ized by other provisions of this title to be used for other
4 purposes specified in this title shall be deposited in any
5 Loan Fund.

6 "(d) STRATEGIC PLAN.—

7 "(1) IN GENERAL.—For purposes of subsection
8 (b)(2), a strategic plan of an eligible entity under
9 this subsection shall identify the intended uses of
10 amounts available to the Loan Fund of such entity.

11 "(2) CONTENTS.—A strategic plan under para-
12 graph (1), with respect to a Loan Fund of an eligi-
13 ble entity, shall include for a year the following:

14 "(A) A list of the projects to be assisted
15 through the Loan Fund during such year.

16 "(B) A description of the criteria and
17 methods established for the distribution of
18 funds from the Loan Fund during the year.

19 "(C) A description of the financial status
20 of the Loan Fund as of the date of submission
21 of the plan.

22 "(D) The short-term and long-term goals
23 of the Loan Fund.

24 "(e) USE OF FUNDS.—Amounts deposited in a Loan
25 Fund, including loan repayments and interest earned on

1 such amounts, shall be used only for awarding loans or
2 loan guarantees, making reimbursements described in sub-
3 section (g)(4)(A), or as a source of reserve and security
4 for leveraged loans, the proceeds of which are deposited
5 in the Loan Fund established under subsection (a). Loans
6 under this section may be used by a health care provider
7 to—

8 "(1) facilitate the purchase of certified EHR
9 technology;

10 "(2) enhance the utilization of certified EHR
11 technology (which may include costs associated with
12 upgrading health information technology so that it
13 meets criteria necessary to be a certified EHR tech-
14 nology);

15 "(3) train personnel in the use of such tech-
16 nology; or

17 "(4) improve the secure electronic exchange of
18 health information.

19 "(f) TYPES OF ASSISTANCE.—Except as otherwise
20 limited by applicable State law, amounts deposited into a
21 Loan Fund under this subsection may only be used for
22 the following:

23 "(1) To award loans that comply with the fol-
24 lowing:

"(A) The interest rate for each loan shall not exceed the market interest rate.

"(B) The principal and interest payments on each loan shall commence not later than 1 year after the date the loan was awarded, and each loan shall be fully amortized not later than 10 years after the date of the loan.

"(C) The Loan Fund shall be credited with all payments of principal and interest on each loan awarded from the Loan Fund.

"(2) To guarantee, or purchase insurance for, a local obligation (all of the proceeds of which finance a project eligible for assistance under this subsection) if the guarantee or purchase would improve credit market access or reduce the interest rate applicable to the obligation involved.

"(3) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the eligible entity if the proceeds of the sale of the bonds will be deposited into the Loan Fund.

"(4) To earn interest on the amounts deposited into the Loan Fund.

"(5) To make reimbursements described in subsection (g)(4)(A).

1 "(g) ADMINISTRATION OF LOAN FUNDS.—

2 "(1) COMBINED FINANCIAL ADMINISTRATION.—
3 An eligible entity may (as a convenience and to
4 avoid unnecessary administrative costs) combine, in
5 accordance with applicable State law, the financial
6 administration of a Loan Fund established under
7 this subsection with the financial administration of
8 any other revolving fund established by the entity if
9 otherwise not prohibited by the law under which the
10 Loan Fund was established.

11 "(2) COST OF ADMINISTERING FUND.—Each el-
12 igible entity may annually use not to exceed 4 per-
13 cent of the funds provided to the entity under a
14 grant under this subsection to pay the reasonable
15 costs of the administration of the programs under
16 this section, including the recovery of reasonable
17 costs expended to establish a Loan Fund which are
18 incurred after the date of the enactment of this title.

19 "(3) GUIDANCE AND REGULATIONS.—The Na-
20 tional Coordinator shall publish guidance and pro-
21 mulgate regulations as may be necessary to carry
22 out the provisions of this section, including—

23 "(A) provisions to ensure that each eligible
24 entity commits and expends funds allotted to
25 the entity under this subsection as efficiently as

1 possible in accordance with this title and appli-
2 cable State laws; and
3 "(B) guidance to prevent waste, fraud, and
4 abuse.
5 "(4) PRIVATE SECTOR CONTRIBUTIONS.—
6 "(A) IN GENERAL.—A Loan Fund estab-
7 lished under this subsection may accept con-
8 tributions from private sector entities, except
9 that such entities may not specify the recipient
10 or recipients of any loan issued under this sub-
11 section. An eligible entity may agree to reim-
12 burse a private sector entity for any contribu-
13 tion made under this subparagraph, except that
14 the amount of such reimbursement may not be
15 greater than the principal amount of the con-
16 tribution made.
17 "(B) AVAILABILITY OF INFORMATION.—
18 An eligible entity shall make publicly available
19 the identity of, and amount contributed by, any
20 private sector entity under subparagraph (A)
21 and may issue letters of commendation or make
22 other awards (that have no financial value) to
23 any such entity.
24 "(h) MATCHING REQUIREMENTS.—

1 "(1) IN GENERAL.—The National Coordinator
2 may not make a grant under subsection (a) to an el-
3 igible entity unless the entity agrees to make avail-
4 able (directly or through donations from public or
5 private entities) non-Federal contributions in cash to
6 the costs of carrying out the activities for which the
7 grant is awarded in an amount equal to not less
8 than $1 for each $5 of Federal funds provided under
9 the grant.

10 "(2) DETERMINATION OF AMOUNT OF NON-
11 FEDERAL CONTRIBUTION.—In determining the
12 amount of non-Federal contributions that an eligible
13 entity has provided pursuant to subparagraph (A),
14 the National Coordinator may not include any
15 amounts provided to the entity by the Federal Gov-
16 ernment.

17 "(i) EFFECTIVE DATE.—The Secretary may not
18 make an award under this section prior to January 1,
19 2010.

20 **"SEC. 3015. DEMONSTRATION PROGRAM TO INTEGRATE IN-**
21 **FORMATION TECHNOLOGY INTO CLINICAL**
22 **EDUCATION.**

23 "(a) IN GENERAL.—The Secretary may award grants
24 under this section to carry out demonstration projects to
25 develop academic curricula integrating certified EHR

1 technology in the clinical education of health professionals.
2 Such awards shall be made on a competitive basis and
3 pursuant to peer review.

4 "(b) ELIGIBILITY.—To be eligible to receive a grant
5 under subsection (a), an entity shall—

6 "(1) submit to the Secretary an application at
7 such time, in such manner, and containing such in-
8 formation as the Secretary may require;

9 "(2) submit to the Secretary a strategic plan
10 for integrating certified EHR technology in the clin-
11 ical education of health professionals to reduce med-
12 ical errors, increase access to prevention, reduce
13 chronic diseases, and enhance health care quality;

14 "(3) be—

15 "(A) a school of medicine, osteopathic
16 medicine, dentistry, or pharmacy, a graduate
17 program in behavioral or mental health, or any
18 other graduate health professions school;

19 "(B) a graduate school of nursing or phy-
20 sician assistant studies;

21 "(C) a consortium of two or more schools
22 described in subparagraph (A) or (B); or

23 "(D) an institution with a graduate med-
24 ical education program in medicine, osteopathic

1 medicine, dentistry, pharmacy, nursing, or phy-
2 sician assistance studies.
3 ''(4) provide for the collection of data regarding
4 the effectiveness of the demonstration project to be
5 funded under the grant in improving the safety of
6 patients, the efficiency of health care delivery, and
7 in increasing the likelihood that graduates of the
8 grantee will adopt and incorporate certified EHR
9 technology, in the delivery of health care services;
10 and
11 ''(5) provide matching funds in accordance with
12 subsection (d).
13 ''(c) USE OF FUNDS.—
14 ''(1) IN GENERAL.—With respect to a grant
15 under subsection (a), an eligible entity shall—
16 ''(A) use grant funds in collaboration with
17 2 or more disciplines; and
18 ''(B) use grant funds to integrate certified
19 EHR technology into community-based clinical
20 education.
21 ''(2) LIMITATION.—An eligible entity shall not
22 use amounts received under a grant under sub-
23 section (a) to purchase hardware, software, or serv-
24 ices.

1 "(d) FINANCIAL SUPPORT.—The Secretary may not
2 provide more than 50 percent of the costs of any activity
3 for which assistance is provided under subsection (a), ex-
4 cept in an instance of national economic conditions which
5 would render the cost-share requirement under this sub-
6 section detrimental to the program and upon notification
7 to Congress as to the justification to waive the cost-share
8 requirement.

9 "(e) EVALUATION.—The Secretary shall take such
10 action as may be necessary to evaluate the projects funded
11 under this section and publish, make available, and dis-
12 seminate the results of such evaluations on as wide a basis
13 as is practicable.

14 "(f) REPORTS.—Not later than 1 year after the date
15 of enactment of this title, and annually thereafter, the Sec-
16 retary shall submit to the Committee on Health, Edu-
17 cation, Labor, and Pensions and the Committee on Fi-
18 nance of the Senate, and the Committee on Energy and
19 Commerce of the House of Representatives a report
20 that—

21 "(1) describes the specific projects established
22 under this section; and

23 "(2) contains recommendations for Congress
24 based on the evaluation conducted under subsection
25 (e).

1 **"SEC. 3016. INFORMATION TECHNOLOGY PROFESSIONALS**
2 **ON HEALTH CARE.**

3 "(a) IN GENERAL.—The Secretary, in consultation
4 with the Director of the National Science Foundation,
5 shall provide assistance to institutions of higher education
6 (or consortia thereof) to establish or expand medical
7 health informatics education programs, including certifi-
8 cation, undergraduate, and masters degree programs, for
9 both health care and information technology students to
10 ensure the rapid and effective utilization and development
11 of health information technologies (in the United States
12 health care infrastructure).

13 "(b) ACTIVITIES.—Activities for which assistance
14 may be provided under subsection (a) may include the fol-
15 lowing:

16 "(1) Developing and revising curricula in med-
17 ical health informatics and related disciplines.

18 "(2) Recruiting and retaining students to the
19 program involved.

20 "(3) Acquiring equipment necessary for student
21 instruction in these programs, including the installa-
22 tion of testbed networks for student use.

23 "(4) Establishing or enhancing bridge programs
24 in the health informatics fields between community
25 colleges and universities.

1 "(c) PRIORITY.—In providing assistance under sub-
2 section (a), the Secretary shall give preference to the fol-
3 lowing:
4 "(1) Existing education and training programs.
5 "(2) Programs designed to be completed in less
6 than six months.
7 "(d) FINANCIAL SUPPORT.—The Secretary may not
8 provide more than 50 percent of the costs of any activity
9 for which assistance is provided under subsection (a), ex-
10 cept in an instance of national economic conditions which
11 would render the cost-share requirement under this sub-
12 section detrimental to the program and upon notification
13 to Congress as to the justification to waive the cost-share
14 requirement.

15 **"SEC. 3017. GENERAL GRANT AND LOAN PROVISIONS.**

16 "(a) REPORTS.—The Secretary may require that an
17 entity receiving assistance under this title shall submit to
18 the Secretary, not later than the date that is 1 year after
19 the date of receipt of such assistance, a report that in-
20 cludes—
21 "(1) an analysis of the effectiveness of such ac-
22 tivities for which the entity receives such assistance,
23 as compared to the goals for such activities; and
24 "(2) an analysis of the impact of the project on
25 healthcare quality and safety.

1 ''(b) REQUIREMENT TO IMPROVE QUALITY OF CARE
2 AND DECREASE IN COSTS.—The National Coordinator
3 shall annually evaluate the activities conducted under this
4 title and shall, in awarding grants, implement the lessons
5 learned from such evaluation in a manner so that awards
6 made subsequent to each such evaluation are made in a
7 manner that, in the determination of the National Coordi-
8 nator, will result in the greatest improvement in the qual-
9 ity and efficiency of health care.

10 **''SEC. 3018. AUTHORIZATION FOR APPROPRIATIONS.**

11 ''For the purposes of carrying out this subtitle, there
12 is authorized to be appropriated such sums as may be nec-
13 essary for each of the fiscal years 2009 through 2013.
14 Amounts so appropriated shall remain available until ex-
15 pended.''.

16 # Subtitle D—Privacy

17 **SEC. 13400. DEFINITIONS.**

18 In this subtitle, except as specified otherwise:

19 (1) BREACH.—The term ''breach'' means the
20 unauthorized acquisition, access, use, or disclosure
21 of protected health information which compromises
22 the security, privacy, or integrity of protected health
23 information maintained by or on behalf of a person.
24 Such term does not include any unintentional acqui-
25 sition, access, use, or disclosure of such information

by an employee or agent of the covered entity or business associate involved if such acquisition, access, use, or disclosure, respectively, was made in good faith and within the course and scope of the employment or other contractual relationship of such employee or agent, respectively, with the covered entity or business associate and if such information is not further acquired, accessed, used, or disclosed by such employee or agent.

(2) BUSINESS ASSOCIATE.—The term ''business associate'' has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(3) COVERED ENTITY.—The term ''covered entity'' has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(4) DISCLOSE.—The terms ''disclose'' and ''disclosure'' have the meaning given the term ''disclosure'' in section 160.103 of title 45, Code of Federal Regulations.

(5) ELECTRONIC HEALTH RECORD.—The term ''electronic health record'' means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

1 (6) HEALTH CARE OPERATIONS.—The term
2 ''health care operation'' has the meaning given such
3 term in section 164.501 of title 45, Code of Federal
4 Regulations.
5 (7) HEALTH CARE PROVIDER.—The term
6 ''health care provider'' has the meaning given such
7 term in section 160.103 of title 45, Code of Federal
8 Regulations.
9 (8) HEALTH PLAN.—The term ''health plan''
10 has the meaning given such term in section 1171(5)
11 of the Social Security Act.
12 (9) NATIONAL COORDINATOR.—The term ''Na-
13 tional Coordinator'' means the head of the Office of
14 the National Coordinator for Health Information
15 Technology established under section 3001(a) of the
16 Public Health Service Act, as added by section
17 13101.
18 (10) PAYMENT.—The term ''payment'' has the
19 meaning given such term in section 164.501 of title
20 45, Code of Federal Regulations.
21 (11) PERSONAL HEALTH RECORD.—The term
22 ''personal health record'' means an electronic record
23 of individually identifiable health information on an
24 individual that can be drawn from multiple sources

1 and that is managed, shared, and controlled by or
2 for the individual.
3 (12) PROTECTED HEALTH INFORMATION.—The
4 term ''protected health information'' has the mean-
5 ing given such term in section 160.103 of title 45,
6 Code of Federal Regulations.
7 (13) SECRETARY.—The term ''Secretary''
8 means the Secretary of Health and Human Services.
9 (14) SECURITY.—The term ''security'' has the
10 meaning given such term in section 164.304 of title
11 45, Code of Federal Regulations.
12 (15) STATE.—The term ''State'' means each of
13 the several States, the District of Columbia, Puerto
14 Rico, the Virgin Islands, Guam, American Samoa,
15 and the Northern Mariana Islands.
16 (16) TREATMENT.—The term ''treatment'' has
17 the meaning given such term in section 164.501 of
18 title 45, Code of Federal Regulations.
19 (17) USE.—The term ''use'' has the meaning
20 given such term in section 160.103 of title 45, Code
21 of Federal Regulations.
22 (18) VENDOR OF PERSONAL HEALTH
23 RECORDS.—The term ''vendor of personal health
24 records'' means an entity, other than a covered enti-

ty (as defined in paragraph (3)), that offers or maintains a personal health record.

PART I—IMPROVED PRIVACY PROVISIONS AND SECURITY PROVISIONS

SEC. 13401. APPLICATION OF SECURITY PROVISIONS AND PENALTIES TO BUSINESS ASSOCIATES OF COVERED ENTITIES; ANNUAL GUIDANCE ON SECURITY PROVISIONS.

(a) APPLICATION OF SECURITY PROVISIONS.—Sections 164.308, 164.310, 164.312, and 164.316 of title 45, Code of Federal Regulations, shall apply to a business associate of a covered entity in the same manner that such sections apply to the covered entity. The additional requirements of this title that relate to security and that are made applicable with respect to covered entities shall also be applicable to such a business associate and shall be incorporated into the business associate agreement between the business associate and the covered entity.

(b) APPLICATION OF CIVIL AND CRIMINAL PENALTIES.—In the case of a business associate that violates any security provision specified in subsection (a), sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d-5, 1320d-6) shall apply to the business associate with respect to such violation in the same manner such

1 sections apply to a covered entity that violates such secu-
2 rity provision.

3 (c) ANNUAL GUIDANCE.—For the first year begin-
4 ning after the date of the enactment of this Act and annu-
5 ally thereafter, the Secretary of Health and Human Serv-
6 ices shall, in consultation with industry stakeholders, an-
7 nually issue guidance on the most effective and appro-
8 priate technical safeguards for use in carrying out the sec-
9 tions referred to in subsection (a) and the security stand-
10 ards in subpart C of part 164 of title 45, Code of Federal
11 Regulations, as such provisions are in effect as of the date
12 before the enactment of this Act.

13 **SEC. 13402. NOTIFICATION IN THE CASE OF BREACH.**

14 (a) IN GENERAL.—A covered entity that accesses,
15 maintains, retains, modifies, records, stores, destroys, or
16 otherwise holds, uses, or discloses unsecured protected
17 health information (as defined in subsection (h)(1)) shall,
18 in the case of a breach of such information that is discov-
19 ered by the covered entity, notify each individual whose
20 unsecured protected health information has been, or is
21 reasonably believed by the covered entity to have been,
22 accessed, acquired, or disclosed as a result of such breach.

23 (b) NOTIFICATION OF COVERED ENTITY BY BUSI-
24 NESS ASSOCIATE.—A business associate of a covered enti-
25 ty that accesses, maintains, retains, modifies, records,

1 stores, destroys, or otherwise holds, uses, or discloses un-
2 secured protected health information shall, following the
3 discovery of a breach of such information, notify the cov-
4 ered entity of such breach. Such notice shall include the
5 identification of each individual whose unsecured protected
6 health information has been, or is reasonably believed by
7 the business associate to have been, accessed, acquired,
8 or disclosed during such breach.

9 (c) BREACHES TREATED AS DISCOVERED.—For pur-
10 poses of this section, a breach shall be treated as discov-
11 ered by a covered entity or by a business associate as of
12 the first day on which such breach is known to such entity
13 or associate, respectively, (including any person, other
14 than the individual committing the breach, that is an em-
15 ployee, officer, or other agent of such entity or associate,
16 respectively) or should reasonably have been known to
17 such entity or associate (or person) to have occurred.

18 (d) TIMELINESS OF NOTIFICATION.—

19 (1) IN GENERAL.—Subject to subsection (g), all
20 notifications required under this section shall be
21 made without unreasonable delay and in no case
22 later than 60 calendar days after the discovery of a
23 breach by the covered entity involved (or business
24 associate involved in the case of a notification re-
25 quired under subsection (b)).

1 (2) BURDEN OF PROOF.—The covered entity in-
2 volved (or business associate involved in the case of
3 a notification required under subsection (b)), shall
4 have the burden of demonstrating that all notifica-
5 tions were made as required under this part, includ-
6 ing evidence demonstrating the necessity of any
7 delay.
8 (e) METHODS OF NOTICE.—
9 (1) INDIVIDUAL NOTICE.—Notice required
10 under this section to be provided to an individual,
11 with respect to a breach, shall be provided promptly
12 and in the following form:
13 (A) Written notification by first-class mail
14 to the individual (or the next of kin of the indi-
15 vidual if the individual is deceased) at the last
16 known address of the individual or the next of
17 kin, respectively, or, if specified as a preference
18 by the individual, by electronic mail. The notifi-
19 cation may be provided in one or more mailings
20 as information is available.
21 (B) In the case in which there is insuffi-
22 cient, or out-of-date contact information (in-
23 cluding a phone number, email address, or any
24 other form of appropriate communication) that
25 precludes direct written (or, if specified by the

individual under subparagraph (A), electronic) notification to the individual, a substitute form of notice shall be provided, including, in the case that there are 10 or more individuals for which there is insufficient or out-of-date contact information, a conspicuous posting for a period determined by the Secretary on the home page of the Web site of the covered entity involved or notice in major print or broadcast media, including major media in geographic areas where the individuals affected by the breach likely reside. Such a notice in media or web posting will include a toll-free phone number where an individual can learn whether or not the individual's unsecured protected health information is possibly included in the breach.

(C) In any case deemed by the covered entity involved to require urgency because of possible imminent misuse of unsecured protected health information, the covered entity, in addition to notice provided under subparagraph (A), may provide information to individuals by telephone or other means, as appropriate.

(2) MEDIA NOTICE.—Notice shall be provided to prominent media outlets serving a State or juris-

1 diction, following the discovery of a breach described
2 in subsection (a), if the unsecured protected health
3 information of more than 500 residents of such
4 State or jurisdiction is, or is reasonably believed to
5 have been, accessed, acquired, or disclosed during
6 such breach.

7 (3) NOTICE TO SECRETARY.—Notice shall be
8 provided to the Secretary by covered entities of un-
9 secured protected health information that has been
10 acquired or disclosed in a breach. If the breach was
11 with respect to 500 or more individuals than such
12 notice must be provided immediately. If the breach
13 was with respect to less than 500 individuals, the
14 covered entity may maintain a log of any such
15 breach occurring and annually submit such a log to
16 the Secretary documenting such breaches occurring
17 during the year involved.

18 (4) POSTING ON HHS PUBLIC WEBSITE.—The
19 Secretary shall make available to the public on the
20 Internet website of the Department of Health and
21 Human Services a list that identifies each covered
22 entity involved in a breach described in subsection
23 (a) in which the unsecured protected health informa-
24 tion of more than 500 individuals is acquired or dis-
25 closed.

(f) CONTENT OF NOTIFICATION.—Regardless of the method by which notice is provided to individuals under this section, notice of a breach shall include, to the extent possible, the following:

(1) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.

(2) A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).

(3) The steps individuals should take to protect themselves from potential harm resulting from the breach.

(4) A brief description of what the covered entity involved is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.

(5) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

(g) DELAY OF NOTIFICATION AUTHORIZED FOR LAW ENFORCEMENT PURPOSES.—If a law enforcement official

1 determines that a notification, notice, or posting required
2 under this section would impede a criminal investigation
3 or cause damage to national security, such notification,
4 notice, or posting shall be delayed in the same manner
5 as provided under section 164.528(a)(2) of title 45, Code
6 of Federal Regulations, in the case of a disclosure covered
7 under such section.

8 (h) UNSECURED PROTECTED HEALTH INFORMA-
9 TION.—

10 (1) DEFINITION.—

11 (A) IN GENERAL.—Subject to subpara-
12 graph (B), for purposes of this section, the
13 term ''unsecured protected health information''
14 means protected health information that is not
15 secured through the use of a technology or
16 methodology specified by the Secretary in the
17 guidance issued under paragraph (2).

18 (B) EXCEPTION IN CASE TIMELY GUID-
19 ANCE NOT ISSUED.—In the case that the Sec-
20 retary does not issue guidance under paragraph
21 (2) by the date specified in such paragraph, for
22 purposes of this section, the term ''unsecured
23 protected health information'' shall mean pro-
24 tected health information that is not secured by
25 a technology standard that renders protected

1 health information unusable, unreadable, or in-
2 decipherable to unauthorized individuals and is
3 developed or endorsed by a standards devel-
4 oping organization that is accredited by the
5 American National Standards Institute.

6 (2) GUIDANCE.—For purposes of paragraph (1)
7 and section 13407(f)(3), not later than the date that
8 is 60 days after the date of the enactment of this
9 Act, the Secretary shall, after consultation with
10 stakeholders, issue (and annually update) guidance
11 specifying the technologies and methodologies that
12 render protected health information unusable,
13 unreadable, or indecipherable to unauthorized indi-
14 viduals.

15 (i) REPORT TO CONGRESS ON BREACHES.—

16 (1) IN GENERAL.—Not later than 12 months
17 after the date of the enactment of this Act and an-
18 nually thereafter, the Secretary shall prepare and
19 submit to the Committee on Finance and the Com-
20 mittee on Health, Education, Labor, and Pensions
21 of the Senate and the Committee on Ways and
22 Means and the Committee on Energy and Commerce
23 of the House of Representatives a report containing
24 the information described in paragraph (2) regard-

1 ing breaches for which notice was provided to the
2 Secretary under subsection (e)(3).
3 (2) INFORMATION.—The information described
4 in this paragraph regarding breaches specified in
5 paragraph (1) shall include—
6 (A) the number and nature of such
7 breaches; and
8 (B) actions taken in response to such
9 breaches.
10 (j) REGULATIONS; EFFECTIVE DATE.—To carry out
11 this section, the Secretary of Health and Human Services
12 shall promulgate interim final regulations by not later
13 than the date that is 180 days after the date of the enact-
14 ment of this title. The provisions of this section shall apply
15 to breaches that are discovered on or after the date that
16 is 30 days after the date of publication of such interim
17 final regulations.

18 **SEC. 13403. EDUCATION ON HEALTH INFORMATION PRI-**
19 **VACY.**

20 (a) REGIONAL OFFICE PRIVACY ADVISORS.—Not
21 later than 6 months after the date of the enactment of
22 this Act, the Secretary shall designate an individual in
23 each regional office of the Department of Health and
24 Human Services to offer guidance and education to cov-
25 ered entities, business associates, and individuals on their

1 rights and responsibilities related to Federal privacy and
2 security requirements for protected health information.

3 (b) EDUCATION INITIATIVE ON USES OF HEALTH IN-
4 FORMATION.—Not later than 12 months after the date of
5 the enactment of this Act, the Office for Civil Rights with-
6 in the Department of Health and Human Services shall
7 develop and maintain a multi-faceted national education
8 initiative to enhance public transparency regarding the
9 uses of protected health information, including programs
10 to educate individuals about the potential uses of their
11 protected health information, the effects of such uses, and
12 the rights of individuals with respect to such uses. Such
13 programs shall be conducted in a variety of languages and
14 present information in a clear and understandable man-
15 ner.

16 **SEC. 13404. APPLICATION OF PRIVACY PROVISIONS AND**
17 **PENALTIES TO BUSINESS ASSOCIATES OF**
18 **COVERED ENTITIES.**

19 (a) APPLICATION OF CONTRACT REQUIREMENTS.—
20 In the case of a business associate of a covered entity that
21 obtains or creates protected health information pursuant
22 to a written contract (or other written arrangement) de-
23 scribed in section 164.502(e)(2) of title 45, Code of Fed-
24 eral Regulations, with such covered entity, the business
25 associate may use and disclose such protected health infor-

1 mation only if such use or disclosure, respectively, is in
2 compliance with each applicable requirement of section
3 164.504(e) of such title. The additional requirements of
4 this subtitle that relate to privacy and that are made ap-
5 plicable with respect to covered entities shall also be appli-
6 cable to such a business associate and shall be incor-
7 porated into the business associate agreement between the
8 business associate and the covered entity.

9 (b) APPLICATION OF KNOWLEDGE ELEMENTS ASSO-
10 CIATED WITH CONTRACTS.—Section 164.504(e)(1)(ii) of
11 title 45, Code of Federal Regulations, shall apply to a
12 business associate described in subsection (a), with respect
13 to compliance with such subsection, in the same manner
14 that such section applies to a covered entity, with respect
15 to compliance with the standards in sections 164.502(e)
16 and 164.504(e) of such title, except that in applying such
17 section 164.504(e)(1)(ii) each reference to the business as-
18 sociate, with respect to a contract, shall be treated as a
19 reference to the covered entity involved in such contract.

20 (c) APPLICATION OF CIVIL AND CRIMINAL PEN-
21 ALTIES.—In the case of a business associate that violates
22 any provision of subsection (a) or (b), the provisions of
23 sections 1176 and 1177 of the Social Security Act (42
24 U.S.C. 1320d-5, 1320d-6) shall apply to the business as-
25 sociate with respect to such violation in the same manner

as such provisions apply to a person who violates a provision of part C of title XI of such Act.

SEC. 13405. RESTRICTIONS ON CERTAIN DISCLOSURES AND SALES OF HEALTH INFORMATION; ACCOUNTING OF CERTAIN PROTECTED HEALTH INFORMATION DISCLOSURES; ACCESS TO CERTAIN INFORMATION IN ELECTRONIC FORMAT.

(a) REQUESTED RESTRICTIONS ON CERTAIN DISCLOSURES OF HEALTH INFORMATION.—In the case that an individual requests under paragraph (a)(1)(i)(A) of section 164.522 of title 45, Code of Federal Regulations, that a covered entity restrict the disclosure of the protected health information of the individual, notwithstanding paragraph (a)(1)(ii) of such section, the covered entity must comply with the requested restriction if—

(1) except as otherwise required by law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and

(2) the protected health information pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full.

1 (b) DISCLOSURES REQUIRED TO BE LIMITED TO
2 THE LIMITED DATA SET OR THE MINIMUM NEC-
3 ESSARY.—
4 (1) IN GENERAL.—
5 (A) IN GENERAL.—Subject to subpara-
6 graph (B), a covered entity shall be treated as
7 being in compliance with section 164.502(b)(1)
8 of title 45, Code of Federal Regulations, with
9 respect to the use, disclosure, or request of pro-
10 tected health information described in such sec-
11 tion, only if the covered entity limits such pro-
12 tected health information, to the extent prac-
13 ticable, to the limited data set (as defined in
14 section 164.514(e)(2) of such title) or, if needed
15 by such entity, to the minimum necessary to ac-
16 complish the intended purpose of such use, dis-
17 closure, or request, respectively.
18 (B) GUIDANCE.—Not later than 18
19 months after the date of the enactment of this
20 section, the Secretary shall issue guidance on
21 what constitutes ''minimum necessary'' for pur-
22 poses of subpart E of part 164 of title 45, Code
23 of Federal Regulation. In issuing such guidance
24 the Secretary shall take into consideration the
25 guidance under section 13424(c).

1 (C) SUNSET.—Subparagraph (A) shall not
2 apply on and after the effective date on which
3 the Secretary issues the guidance under sub-
4 paragraph (B).
5 (2) DETERMINATION OF MINIMUM NEC-
6 ESSARY.—For purposes of paragraph (1), in the
7 case of the disclosure of protected health informa-
8 tion, the covered entity or business associate dis-
9 closing such information shall determine what con-
10 stitutes the minimum necessary to accomplish the
11 intended purpose of such disclosure.
12 (3) APPLICATION OF EXCEPTIONS.—The excep-
13 tions described in section 164.502(b)(2) of title 45,
14 Code of Federal Regulations, shall apply to the re-
15 quirement under paragraph (1) as of the effective
16 date described in section 13423 in the same manner
17 that such exceptions apply to section 164.502(b)(1)
18 of such title before such date.
19 (4) RULE OF CONSTRUCTION.—Nothing in this
20 subsection shall be construed as affecting the use,
21 disclosure, or request of protected health information
22 that has been de-identified.
23 (c) ACCOUNTING OF CERTAIN PROTECTED HEALTH
24 INFORMATION DISCLOSURES REQUIRED IF COVERED EN-
25 TITY USES ELECTRONIC HEALTH RECORD.—

1 (1) IN GENERAL.—In applying section 164.528
2 of title 45, Code of Federal Regulations, in the case
3 that a covered entity uses or maintains an electronic
4 health record with respect to protected health infor-
5 mation—
6 (A) the exception under paragraph
7 (a)(1)(i) of such section shall not apply to dis-
8 closures through an electronic health record
9 made by such entity of such information; and
10 (B) an individual shall have a right to re-
11 ceive an accounting of disclosures described in
12 such paragraph of such information made by
13 such covered entity during only the three years
14 prior to the date on which the accounting is re-
15 quested.
16 (2) REGULATIONS.—The Secretary shall pro-
17 mulgate regulations on what information shall be
18 collected about each disclosure referred to in para-
19 graph (1)(A) not later than 18 months after the
20 date on which the Secretary adopts standards on ac-
21 counting for disclosure described in the section
22 3002(b)(2)(B)(iv) of the Public Health Service Act,
23 as added by section 13101. Such regulations shall
24 only require such information to be collected through
25 an electronic health record in a manner that takes

1 into account the interests of individuals in learning
2 the circumstances under which their protected health
3 information is being disclosed and takes into account
4 the administrative burden of accounting for such
5 disclosures.

6 (3) CONSTRUCTION.—Nothing in this sub-
7 section shall be construed as—

8 (A) requiring a covered entity to account
9 for disclosures of protected health information
10 that are not made by such covered entity; or

11 (B) requiring a business associate of a cov-
12 ered entity to account for disclosures of pro-
13 tected health information that are not made by
14 such business associate.

15 (4) REASONABLE FEE.—A covered entity may
16 impose a reasonable fee on an individual for an ac-
17 counting performed under paragraph (1)(B). Any
18 such fee shall not be greater than the entity's labor
19 costs in responding to the request.

20 (5) EFFECTIVE DATE.—

21 (A) CURRENT USERS OF ELECTRONIC
22 RECORDS.—In the case of a covered entity inso-
23 far as it acquired an electronic health record as
24 of January 1, 2009, paragraph (1) shall apply
25 to disclosures, with respect to protected health

information, made by the covered entity from such a record on and after January 1, 2014.

(B) OTHERS.—In the case of a covered entity insofar as it acquires an electronic health record after January 1, 2010, paragraph (1) shall apply to disclosures, with respect to protected health information, made by the covered entity from such record on and after the later of the following:

(i) January 1, 2011; or

(ii) the date that it acquires an electronic health record.

(d) REVIEW OF HEALTH CARE OPERATIONS.—Not later than 18 months after the date of the enactment of this title, the Secretary shall promulgate regulations to eliminate from the definition of health care operations under section 164.501 of title 45, Code of Federal Regulations, those activities that can reasonably and efficiently be conducted through the use of information that is de-identified (in accordance with the requirements of section 164.514(b) of such title) or that should require a valid authorization for use or disclosure. In promulgating such regulations, the Secretary may choose to narrow or clarify activities that the Secretary chooses to retain in the definition of health care operations and the Secretary shall take

1 into account the report under section 13424(d). In such
2 regulations the Secretary shall specify the date on which
3 such regulations shall apply to disclosures made by a cov-
4 ered entity, but in no case would such date be sooner than
5 the date that is 24 months after the date of the enactment
6 of this section.

7 (e) PROHIBITION ON SALE OF ELECTRONIC HEALTH
8 RECORDS OR PROTECTED HEALTH INFORMATION OB-
9 TAINED FROM ELECTRONIC HEALTH RECORDS.—

10 (1) IN GENERAL.—Except as provided in para-
11 graph (2), a covered entity or business associate
12 shall not directly or indirectly receive remuneration
13 in exchange for any protected health information of
14 an individual unless the covered entity obtained from
15 the individual, in accordance with section 164.508 of
16 title 45, Code of Federal Regulations, a valid au-
17 thorization that includes, in accordance with such
18 section, a specification of whether the protected
19 health information can be further exchanged for re-
20 muneration by the entity receiving protected health
21 information of that individual.

22 (2) EXCEPTIONS.—Paragraph (1) shall not
23 apply in the following cases:

24 (A) The purpose of the exchange is for re-
25 search or public health activities (as described

1 in sections 164.501, 164.512(i), and 164.512(b)
2 of title 45, Code of Federal Regulations) and
3 the price charged reflects the costs of prepara-
4 tion and transmittal of the data for such pur-
5 pose.
6 (B) The purpose of the exchange is for the
7 treatment of the individual and the price
8 charges reflects not more than the costs of
9 preparation and transmittal of the data for
10 such purpose.
11 (C) The purpose of the exchange is the
12 health care operation specifically described in
13 subparagraph (iv) of paragraph (6) of the defi-
14 nition of healthcare operations in section
15 164.501 of title 45, Code of Federal Regula-
16 tions.
17 (D) The purpose of the exchange is for re-
18 muneration that is provided by a covered entity
19 to a business associate for activities involving
20 the exchange of protected health information
21 that the business associate undertakes on behalf
22 of and at the specific request of the covered en-
23 tity pursuant to a business associate agreement.
24 (E) The purpose of the exchange is to pro-
25 vide an individual with a copy of the individ-

1 ual's protected health information pursuant to
2 section 164.524 of title 45, Code of Federal
3 Regulations.
4 (F) The purpose of the exchange is other-
5 wise determined by the Secretary in regulations
6 to be similarly necessary and appropriate as the
7 exceptions provided in subparagraphs (A)
8 through (E).
9 (3) REGULATIONS.—The Secretary shall pro-
10 mulgate regulations to carry out this subsection, in-
11 cluding exceptions described in paragraph (2), not
12 later than 18 months after the date of the enact-
13 ment of this title.
14 (4) EFFECTIVE DATE.—Paragraph (1) shall
15 apply to exchanges occurring on or after the date
16 that is 6 months after the date of the promulgation
17 of final regulations implementing this subsection.
18 (f) ACCESS TO CERTAIN INFORMATION IN ELEC-
19 TRONIC FORMAT.—In applying section 164.524 of title
20 45, Code of Federal Regulations, in the case that a cov-
21 ered entity uses or maintains an electronic health record
22 with respect to protected health information of an indi-
23 vidual—

(1) the individual shall have a right to obtain from such covered entity a copy of such information in an electronic format; and

(2) notwithstanding paragraph (c)(4) of such section, any fee that the covered entity may impose for providing such individual with a copy of such information (or a summary or explanation of such information) if such copy (or summary or explanation) is in an electronic form shall not be greater than the entity's labor costs in responding to the request for the copy (or summary or explanation).

SEC. 13406. CONDITIONS ON CERTAIN CONTACTS AS PART OF HEALTH CARE OPERATIONS.

(a) MARKETING.—

(1) IN GENERAL.—A communication by a covered entity or business associate that is about a product or service and that encourages recipients of the communication to purchase or use the product or service shall not be considered a health care operation for purposes of subpart E of part 164 of title 45, Code of Federal Regulations, unless the communication is made as described in subparagraph (i), (ii), or (iii) of paragraph (1) of the definition of marketing in section 164.501 of such title.

1 (2) PAYMENT FOR CERTAIN COMMUNICA-
2 TIONS.—A covered entity or business associate may
3 not receive direct or indirect payment in exchange
4 for making any communication described in sub-
5 paragraph (i), (ii), or (iii) of paragraph (1) of the
6 definition of marketing in section 164.501 of title
7 45, Code of Federal Regulations, except—
8 (A) a business associate of a covered entity
9 may receive payment from the covered entity
10 for making any such communication on behalf
11 of the covered entity that is consistent with the
12 written contract (or other written arrangement)
13 described in section 164.502(e)(2) of such title
14 between such business associate and covered en-
15 tity;
16 (B) a covered entity may receive payment
17 in exchange for making any such communica-
18 tion if the entity obtains from the recipient of
19 the communication, in accordance with section
20 164.508 of title 45, Code of Federal Regula-
21 tions, a valid authorization (as described in
22 paragraph (b) of such section) with respect to
23 such communication; and
24 (C) where such communication describes
25 only a health care item or service that has pre-

1 viously been prescribed for or administered to
2 the recipient of the communication, or a family
3 member of such recipient.

4 (b) FUNDRAISING.—Fundraising for the benefit of a
5 covered entity shall not be considered a health care oper-
6 ation for purposes of section 164.501 of title 45, Code of
7 Federal Regulations.

8 (c) EFFECTIVE DATE.—This section shall apply to
9 contracting occurring on or after the effective date speci-
10 fied under section 13423.

11 **SEC. 13407. TEMPORARY BREACH NOTIFICATION REQUIRE-**
12 **MENT FOR VENDORS OF PERSONAL HEALTH**
13 **RECORDS AND OTHER NON-HIPAA COVERED**
14 **ENTITIES.**

15 (a) IN GENERAL.—In accordance with subsection (c),
16 each vendor of personal health records, following the dis-
17 covery of a breach of security of unsecured PHR identifi-
18 able health information that is in a personal health record
19 maintained or offered by such vendor, and each entity de-
20 scribed in clause (ii) or (iii) of section 13424(b)(1)(A), fol-
21 lowing the discovery of a breach of security of such infor-
22 mation that is obtained through a product or service pro-
23 vided by such entity, shall—

24 (1) notify each individual who is a citizen or
25 resident of the United States whose unsecured PHR

1 identifiable health information was acquired by an
2 unauthorized person as a result of such a breach of
3 security; and
4 (2) notify the Federal Trade Commission.
5 (b) NOTIFICATION BY THIRD PARTY SERVICE PRO-
6 VIDERS.—A third party service provider that provides
7 services to a vendor of personal health records or to an
8 entity described in clause (ii) or (iii) of section
9 13424(b)(1)(A) in connection with the offering or mainte-
10 nance of a personal health record or a related product or
11 service and that accesses, maintains, retains, modifies,
12 records, stores, destroys, or otherwise holds, uses, or dis-
13 closes unsecured PHR identifiable health information in
14 such a record as a result of such services shall, following
15 the discovery of a breach of security of such information,
16 notify such vendor or entity, respectively, of such breach.
17 Such notice shall include the identification of each indi-
18 vidual whose unsecured PHR identifiable health informa-
19 tion has been, or is reasonably believed to have been,
20 accessed, acquired, or disclosed during such breach.
21 (c) APPLICATION OF REQUIREMENTS FOR TIMELI-
22 NESS, METHOD, AND CONTENT OF NOTIFICATIONS.—
23 Subsections (c), (d), (e), and (f) of section 13402 shall
24 apply to a notification required under subsection (a) and
25 a vendor of personal health records, an entity described

1 in subsection (a) and a third party service provider de-
2 scribed in subsection (b), with respect to a breach of secu-
3 rity under subsection (a) of unsecured PHR identifiable
4 health information in such records maintained or offered
5 by such vendor, in a manner specified by the Federal
6 Trade Commission.

7 (d) NOTIFICATION OF THE SECRETARY.—Upon re-
8 ceipt of a notification of a breach of security under sub-
9 section (a)(2), the Federal Trade Commission shall notify
10 the Secretary of such breach.

11 (e) ENFORCEMENT.—A violation of subsection (a) or
12 (b) shall be treated as an unfair and deceptive act or prac-
13 tice in violation of a regulation under section 18(a)(1)(B)
14 of the Federal Trade Commission Act (15 U.S.C.
15 57*a*(a)(1)(B)) regarding unfair or deceptive acts or prac-
16 tices.

17 (f) DEFINITIONS.—For purposes of this section:

18 (1) BREACH OF SECURITY.—The term ''breach
19 of security'' means, with respect to unsecured PHR
20 identifiable health information of an individual in a
21 personal health record, acquisition of such informa-
22 tion without the authorization of the individual.

23 (2) PHR IDENTIFIABLE HEALTH INFORMA-
24 TION.—The term ''PHR identifiable health informa-
25 tion'' means individually identifiable health informa-

1 tion, as defined in section 1171(6) of the Social Se-
2 curity Act (42 U.S.C. 1320d(6)), and includes, with
3 respect to an individual, information—
4 (A) that is provided by or on behalf of the
5 individual; and
6 (B) that identifies the individual or with
7 respect to which there is a reasonable basis to
8 believe that the information can be used to
9 identify the individual.
10 (3) UNSECURED PHR IDENTIFIABLE HEALTH
11 INFORMATION.—
12 (A) IN GENERAL.—Subject to subpara-
13 graph (B), the term ''unsecured PHR identifi-
14 able health information'' means PHR identifi-
15 able health information that is not protected
16 through the use of a technology or methodology
17 specified by the Secretary in the guidance
18 issued under section 13402(h)(2).
19 (B) EXCEPTION IN CASE TIMELY GUID-
20 ANCE NOT ISSUED.—In the case that the Sec-
21 retary does not issue guidance under section
22 13402(h)(2) by the date specified in such sec-
23 tion, for purposes of this section, the term ''un-
24 secured PHR identifiable health information''
25 shall mean PHR identifiable health information

that is not secured by a technology standard that renders protected health information unusable, unreadable, or indecipherable to unauthorized individuals and that is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.

(g) REGULATIONS; EFFECTIVE DATE; SUNSET.—

(1) REGULATIONS; EFFECTIVE DATE.—To carry out this section, the Secretary of Health and Human Services shall promulgate interim final regulations by not later than the date that is 180 days after the date of the enactment of this section. The provisions of this section shall apply to breaches of security that are discovered on or after the date that is 30 days after the date of publication of such interim final regulations.

(2) SUNSET.—The provisions of this section shall not apply to breaches of security occurring on or after the earlier of the following the dates:

(A) The date on which a standard relating to requirements for entities that are not covered entities that includes requirements relating to breach notification has been promulgated by the Secretary.

(B) The date on which a standard relating to requirements for entities that are not covered entities that includes requirements relating to breach notification has been promulgated by the Federal Trade Commission and has taken effect.

SEC. 13408. BUSINESS ASSOCIATE CONTRACTS REQUIRED FOR CERTAIN ENTITIES.

Each organization, with respect to a covered entity, that provides data transmission of protected health information to such entity (or its business associate) and that requires access on a routine basis to such protected health information, such as a Health Information Exchange Organization, Regional Health Information Organization, E-prescribing Gateway, or each vendor that contracts with a covered entity to allow that covered entity to offer a personal health record to patients as part of its electronic health record, is required to enter into a written contract (or other written arrangement) described in section 164.502(e)(2) of title 45, Code of Federal Regulations and a written contract (or other arrangement) described in section 164.308(b) of such title, with such entity and shall be treated as a business associate of the covered entity for purposes of the provisions of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regula-

1 tions, as such provisions are in effect as of the date of
2 enactment of this title.

3 **SEC. 13409. CLARIFICATION OF APPLICATION OF WRONG-**
4 **FUL DISCLOSURES CRIMINAL PENALTIES.**

5 Section 1177(a) of the Social Security Act (42 U.S.C.
6 1320d–6(a)) is amended by adding at the end the fol-
7 lowing new sentence: ''For purposes of the previous sen-
8 tence, a person (including an employee or other individual)
9 shall be considered to have obtained or disclosed individ-
10 ually identifiable health information in violation of this
11 part if the information is maintained by a covered entity
12 (as defined in the HIPAA privacy regulation described in
13 section 1180(b)(3)) and the individual obtained or dis-
14 closed such information without authorization.''.

15 **SEC. 13410. IMPROVED ENFORCEMENT.**

16 (a) IN GENERAL.—Section 1176 of the Social Secu-
17 rity Act (42 U.S.C. 1320d-5) is amended—

18 (1) in subsection (b)(1), by striking ''the act
19 constitutes an offense punishable under section
20 1177'' and inserting ''a penalty has been imposed
21 under section 1177 with respect to such act''; and

22 (2) by adding at the end the following new sub-
23 section:

24 ''(c) NONCOMPLIANCE DUE TO WILLFUL NE-
25 GLECT.—

"(1) IN GENERAL.—A violation of a provision of this part due to willful neglect is a violation for which the Secretary is required to impose a penalty under subsection (a)(1).

"(2) REQUIRED INVESTIGATION.—For purposes of paragraph (1), the Secretary shall formally investigate any complaint of a violation of a provision of this part if a preliminary investigation of the facts of the complaint indicate such a possible violation due to willful neglect.".

(b) EFFECTIVE DATE; REGULATIONS.—

(1) The amendments made by subsection (a) shall apply to penalties imposed on or after the date that is 24 months after the date of the enactment of this title.

(2) Not later than 18 months after the date of the enactment of this title, the Secretary of Health and Human Services shall promulgate regulations to implement such amendments.

(c) DISTRIBUTION OF CERTAIN CIVIL MONETARY PENALTIES COLLECTED.—

(1) IN GENERAL.—Subject to the regulation promulgated pursuant to paragraph (3), any civil monetary penalty or monetary settlement collected with respect to an offense punishable under this sub-

1 title or section 1176 of the Social Security Act (42
2 U.S.C. 1320d-5) insofar as such section relates to
3 privacy or security shall be transferred to the Office
4 of Civil Rights of the Department of Health and
5 Human Services to be used for purposes of enforcing
6 the provisions of this subtitle and subparts C and E
7 of part 164 of title 45, Code of Federal Regulations,
8 as such provisions are in effect as of the date of en-
9 actment of this Act.

10 (2) GAO REPORT.—Not later than 18 months
11 after the date of the enactment of this title, the
12 Comptroller General shall submit to the Secretary a
13 report including recommendations for a methodology
14 under which an individual who is harmed by an act
15 that constitutes an offense referred to in paragraph
16 (1) may receive a percentage of any civil monetary
17 penalty or monetary settlement collected with re-
18 spect to such offense.

19 (3) ESTABLISHMENT OF METHODOLOGY TO
20 DISTRIBUTE PERCENTAGE OF CMPS COLLECTED TO
21 HARMED INDIVIDUALS.—Not later than 3 years
22 after the date of the enactment of this title, the Sec-
23 retary shall establish by regulation and based on the
24 recommendations submitted under paragraph (2), a
25 methodology under which an individual who is

harmed by an act that constitutes an offense referred to in paragraph (1) may receive a percentage of any civil monetary penalty or monetary settlement collected with respect to such offense.

(4) APPLICATION OF METHODOLOGY.—The methodology under paragraph (3) shall be applied with respect to civil monetary penalties or monetary settlements imposed on or after the effective date of the regulation.

(d) TIERED INCREASE IN AMOUNT OF CIVIL MONETARY PENALTIES.—

(1) IN GENERAL.—Section 1176(a)(1) of the Social Security Act (42 U.S.C. 1320d-5(a)(1)) is amended by striking ''who violates a provision of this part a penalty of not more than'' and all that follows and inserting the following: ''who violates a provision of this part—

''(A) in the case of a violation of such provision in which it is established that the person did not know (and by exercising reasonable diligence would not have known) that such person violated such provision, a penalty for each such violation of an amount that is at least the amount described in paragraph (3)(A) but not

to exceed the amount described in paragraph (3)(D);

"(B) in the case of a violation of such provision in which it is established that the violation was due to reasonable cause and not to willful neglect, a penalty for each such violation of an amount that is at least the amount described in paragraph (3)(B) but not to exceed the amount described in paragraph (3)(D); and

"(C) in the case of a violation of such provision in which it is established that the violation was due to willful neglect—

"(i) if the violation is corrected as described in subsection (b)(3)(A), a penalty in an amount that is at least the amount described in paragraph (3)(C) but not to exceed the amount described in paragraph (3)(D); and

"(ii) if the violation is not corrected as described in such subsection, a penalty in an amount that is at least the amount described in paragraph (3)(D).

"In determining the amount of a penalty under this section for a violation, the Secretary shall base such determination on the nature and ex-

tent of the violation and the nature and extent of the harm resulting from such violation.''.

(2) TIERS OF PENALTIES DESCRIBED.—Section 1176(a) of such Act (42 U.S.C. 1320d-5(a)) is further amended by adding at the end the following new paragraph:

''(3) TIERS OF PENALTIES DESCRIBED.—For purposes of paragraph (1), with respect to a violation by a person of a provision of this part—

''(A) the amount described in this subparagraph is $100 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $25,000;

''(B) the amount described in this subparagraph is $1,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $100,000;

''(C) the amount described in this subparagraph is $10,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical require-

ment or prohibition during a calendar year may not exceed $250,000; and

"(D) the amount described in this subparagraph is $50,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $1,500,000.".

(3) CONFORMING AMENDMENTS.—Section 1176(b) of such Act (42 U.S.C. 1320d-5(b)) is amended—

(A) by striking paragraph (2) and redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively; and

(B) in paragraph (2), as so redesignated—

(i) in subparagraph (A), by striking "in subparagraph (B), a penalty may not be imposed under subsection (a) if" and all that follows through "the failure to comply is corrected" and inserting "in subparagraph (B) or subsection (a)(1)(C), a penalty may not be imposed under subsection (a) if the failure to comply is corrected"; and

(ii) in subparagraph (B), by striking "(A)(ii)" and inserting "(A)" each place it appears.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to violations occurring after the date of the enactment of this title.

(e) ENFORCEMENT THROUGH STATE ATTORNEYS GENERAL.—

(1) IN GENERAL.—Section 1176 of the Social Security Act (42 U.S.C. 1320d–5) is amended by adding at the end the following new subsection:

"(d) ENFORCEMENT BY STATE ATTORNEYS GENERAL.—

"(1) CIVIL ACTION.—Except as provided in subsection (b), in any case in which the attorney general of a State has reason to believe that an interest of one or more of the residents of that State has been or is threatened or adversely affected by any person who violates a provision of this part, the attorney general of the State, as parens patriae, may bring a civil action on behalf of such residents of the State in a district court of the United States of appropriate jurisdiction—

"(A) to enjoin further such violation by the defendant; or

"(B) to obtain damages on behalf of such residents of the State, in an amount equal to the amount determined under paragraph (2).

"(2) STATUTORY DAMAGES.—

"(A) IN GENERAL.—For purposes of paragraph (1)(B), the amount determined under this paragraph is the amount calculated by multiplying the number of violations by up to $100. For purposes of the preceding sentence, in the case of a continuing violation, the number of violations shall be determined consistent with the HIPAA privacy regulations (as defined in section 1180(b)(3)) for violations of subsection (a).

"(B) LIMITATION.—The total amount of damages imposed on the person for all violations of an identical requirement or prohibition during a calendar year may not exceed $25,000.

"(C) REDUCTION OF DAMAGES.—In assessing damages under subparagraph (A), the court may consider the factors the Secretary may consider in determining the amount of a civil money penalty under subsection (a) under the HIPAA privacy regulations.

"(3) ATTORNEY FEES.—In the case of any successful action under paragraph (1), the court, in its discretion, may award the costs of the action and reasonable attorney fees to the State.

"(4) NOTICE TO SECRETARY.—The State shall serve prior written notice of any action under paragraph (1) upon the Secretary and provide the Secretary with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Secretary shall have the right—

"(A) to intervene in the action;

"(B) upon so intervening, to be heard on all matters arising therein; and

"(C) to file petitions for appeal.

"(5) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this section shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State.

"(6) VENUE; SERVICE OF PROCESS.—

"(A) VENUE.—Any action brought under paragraph (1) may be brought in the district

court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

"(B) SERVICE OF PROCESS.—In an action brought under paragraph (1), process may be served in any district in which the defendant—

"(i) is an inhabitant; or

"(ii) maintains a physical place of business.

"(7) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Secretary has instituted an action against a person under subsection (a) with respect to a specific violation of this part, no State attorney general may bring an action under this subsection against the person with respect to such violation during the pendency of that action.

"(8) APPLICATION OF CMP STATUTE OF LIMITATION.—A civil action may not be instituted with respect to a violation of this part unless an action to impose a civil money penalty may be instituted under subsection (a) with respect to such violation consistent with the second sentence of section 1128A(c)(1).".

(2) CONFORMING AMENDMENTS.—Subsection (b) of such section, as amended by subsection (d)(3), is amended—

(A) in paragraph (1), by striking ''A penalty may not be imposed under subsection (a)'' and inserting ''No penalty may be imposed under subsection (a) and no damages obtained under subsection (d)'';

(B) in paragraph (2)(A)—

(i) after ''subsection (a)(1)(C),'', by striking ''a penalty may not be imposed under subsection (a)'' and inserting ''no penalty may be imposed under subsection (a) and no damages obtained under subsection (d)''; and

(ii) in clause (ii), by inserting ''or damages'' after ''the penalty'';

(C) in paragraph (2)(B)(i), by striking ''The period'' and inserting ''With respect to the imposition of a penalty by the Secretary under subsection (a), the period''; and

(D) in paragraph (3), by inserting ''and any damages under subsection (d)'' after ''any penalty under subsection (a)''.

1 (3) EFFECTIVE DATE.—The amendments made
2 by this subsection shall apply to violations occurring
3 after the date of the enactment of this Act.
4 (f) ALLOWING CONTINUED USE OF CORRECTIVE AC-
5 TION.—Such section is further amended by adding at the
6 end the following new subsection:
7 ''(e) ALLOWING CONTINUED USE OF CORRECTIVE
8 ACTION.—Nothing in this section shall be construed as
9 preventing the Office of Civil Rights of the Department
10 of Health and Human Services from continuing, in its dis-
11 cretion, to use corrective action without a penalty in cases
12 where the person did not know (and by exercising reason-
13 able diligence would not have known) of the violation in-
14 volved.''.
15 **SEC. 13411. AUDITS.**
16 The Secretary shall provide for periodic audits to en-
17 sure that covered entities and business associates that are
18 subject to the requirements of this subtitle and subparts
19 C and E of part 164 of title 45, Code of Federal Regula-
20 tions, as such provisions are in effect as of the date of
21 enactment of this Act, comply with such requirements.

PART II—RELATIONSHIP TO OTHER LAWS; REGULATORY REFERENCES; EFFECTIVE DATE; REPORTS

SEC. 13421. RELATIONSHIP TO OTHER LAWS.

(a) APPLICATION OF HIPAA STATE PREEMPTION.—Section 1178 of the Social Security Act (42 U.S.C. 1320d–7) shall apply to a provision or requirement under this subtitle in the same manner that such section applies to a provision or requirement under part C of title XI of such Act or a standard or implementation specification adopted or established under sections 1172 through 1174 of such Act.

(b) HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT.—The standards governing the privacy and security of individually identifiable health information promulgated by the Secretary under sections 262(a) and 264 of the Health Insurance Portability and Accountability Act of 1996 shall remain in effect to the extent that they are consistent with this subtitle. The Secretary shall by rule amend such Federal regulations as required to make such regulations consistent with this subtitle. In carrying out the preceding sentence, the Secretary shall revise the definition of ''psychotherapy notes'' in section 164.501 of title 45, Code of Federal Regulations, to include test data that is related to direct responses, scores, items, forms, protocols, manuals, or other materials that

are part of a mental health evaluation, as determined by the mental health professional providing treatment or evaluation.

SEC. 13422. REGULATORY REFERENCES.

Each reference in this subtitle to a provision of the Code of Federal Regulations refers to such provision as in effect on the date of the enactment of this title (or to the most recent update of such provision).

SEC. 13423. EFFECTIVE DATE.

Except as otherwise specifically provided, the provisions of part I shall take effect on the date that is 12 months after the date of the enactment of this title.

SEC. 13424. STUDIES, REPORTS, GUIDANCE.

(a) REPORT ON COMPLIANCE.—

(1) IN GENERAL.—For the first year beginning after the date of the enactment of this Act and annually thereafter, the Secretary shall prepare and submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a report concerning complaints of alleged violations of law, including the provisions of this subtitle as well as the provisions of subparts C and E of part 164 of title 45, Code of Federal Regulations, (as

1 such provisions are in effect as of the date of enact-
2 ment of this Act) relating to privacy and security of
3 health information that are received by the Secretary
4 during the year for which the report is being pre-
5 pared. Each such report shall include, with respect
6 to such complaints received during the year—
7 (A) the number of such complaints;
8 (B) the number of such complaints re-
9 solved informally, a summary of the types of
10 such complaints so resolved, and the number of
11 covered entities that received technical assist-
12 ance from the Secretary during such year in
13 order to achieve compliance with such provi-
14 sions and the types of such technical assistance
15 provided;
16 (C) the number of such complaints that
17 have resulted in the imposition of civil monetary
18 penalties or have been resolved through mone-
19 tary settlements, including the nature of the
20 complaints involved and the amount paid in
21 each penalty or settlement;
22 (D) the number of compliance reviews con-
23 ducted and the outcome of each such review;
24 (E) the number of subpoenas or inquiries
25 issued;

(F) the Secretary's plan for improving compliance with and enforcement of such provisions for the following year; and

(G) the number of audits performed and a summary of audit findings pursuant to section 13411.

(2) AVAILABILITY TO PUBLIC.—Each report under paragraph (1) shall be made available to the public on the Internet website of the Department of Health and Human Services.

(b) STUDY AND REPORT ON APPLICATION OF PRIVACY AND SECURITY REQUIREMENTS TO NON-HIPAA COVERED ENTITIES.—

(1) STUDY.—Not later than one year after the date of the enactment of this title, the Secretary, in consultation with the Federal Trade Commission, shall conduct a study, and submit a report under paragraph (2), on privacy and security requirements for entities that are not covered entities or business associates as of the date of the enactment of this title, including—

(A) requirements relating to security, privacy, and notification in the case of a breach of security or privacy (including the applicability of an exemption to notification in the case of

1 individually identifiable health information that
2 has been rendered unusable, unreadable, or in-
3 decipherable through technologies or methodolo-
4 gies recognized by appropriate professional or-
5 ganization or standard setting bodies to provide
6 effective security for the information) that
7 should be applied to—
8 (i) vendors of personal health records;
9 (ii) entities that offer products or
10 services through the website of a vendor of
11 personal health records;
12 (iii) entities that are not covered enti-
13 ties and that offer products or services
14 through the websites of covered entities
15 that offer individuals personal health
16 records;
17 (iv) entities that are not covered enti-
18 ties and that access information in a per-
19 sonal health record or send information to
20 a personal health record; and
21 (v) third party service providers used
22 by a vendor or entity described in clause
23 (i), (ii), (iii), or (iv) to assist in providing
24 personal health record products or services;

(B) a determination of which Federal government agency is best equipped to enforce such requirements recommended to be applied to such vendors, entities, and service providers under subparagraph (A); and

(C) a timeframe for implementing regulations based on such findings.

(2) REPORT.—The Secretary shall submit to the Committee on Finance, the Committee on Health, Education, Labor, and Pensions, and the Committee on Commerce of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a report on the findings of the study under paragraph (1) and shall include in such report recommendations on the privacy and security requirements described in such paragraph.

(c) GUIDANCE ON IMPLEMENTATION SPECIFICATION TO DE-IDENTIFY PROTECTED HEALTH INFORMATION.—Not later than 12 months after the date of the enactment of this title, the Secretary shall, in consultation with stakeholders, issue guidance on how best to implement the requirements for the de-identification of protected health information under section 164.514(b) of title 45, Code of Federal Regulations.

1 (d) GAO REPORT ON TREATMENT DISCLOSURES.—
2 Not later than one year after the date of the enactment
3 of this title, the Comptroller General of the United States
4 shall submit to the Committee on Health, Education,
5 Labor, and Pensions of the Senate and the Committee on
6 Ways and Means and the Committee on Energy and Com-
7 merce of the House of Representatives a report on the
8 best practices related to the disclosure among health care
9 providers of protected health information of an individual
10 for purposes of treatment of such individual. Such report
11 shall include an examination of the best practices imple-
12 mented by States and by other entities, such as health
13 information exchanges and regional health information or-
14 ganizations, an examination of the extent to which such
15 best practices are successful with respect to the quality
16 of the resulting health care provided to the individual and
17 with respect to the ability of the health care provider to
18 manage such best practices, and an examination of the
19 use of electronic informed consent for disclosing protected
20 health information for treatment, payment, and health
21 care operations.

TITLE XIV—STATE FISCAL STABILIZATION

DEPARTMENT OF EDUCATION

STATE FISCAL STABILIZATION FUND

For necessary expenses for a State Fiscal Stabilization Fund, $79,000,000,000, which shall be administered by the Department of Education, and shall be available through September 30, 2010.

GENERAL PROVISIONS—THIS TITLE

SEC. 1401. ALLOCATIONS.

(a) OUTLYING AREAS.—The Secretary of Education shall first allocate one-half of 1 percent to the outlying areas on the basis of their respective needs, as determined by the Secretary, for activities consistent with this title under such terms and conditions as the Secretary may determine.

(b) ADMINISTRATION AND OVERSIGHT.—The Secretary may reserve up to $25,000,000 for administration and oversight of this title, including for program evaluation.

(c) RESERVATION FOR ADDITIONAL PROGRAMS.—After reserving funds under subsections (a) and (b), the Secretary shall reserve $15,000,000,000 for grants under sections 1406 and 1407.

(d) STATE ALLOCATIONS.—After carrying out subsections (a), (b), and (c), the Secretary shall allocate the

remaining funds made available to carry out this title to the States as follows:

(1) 61 percent on the basis of their relative population of individuals aged 5 through 24.

(2) 39 percent on the basis of their relative total population.

(e) STATE GRANTS.—From funds allocated under subsection (d), the Secretary shall make grants to the Governor of each State.

(f) REALLOCATION.—The Governor shall return to the Secretary any funds received under subsection (e) that the Governor does not obligate within 1 year of receiving a grant, and the Secretary shall reallocate such funds to the remaining States in accordance with subsection (d).

SEC. 1402. STATE USES OF FUNDS.

(a) EDUCATION FUND.—

(1) IN GENERAL.—The Governor shall use at least 61 percent of the State's allocation under section 1401 for the support of elementary, secondary, and postsecondary education and, as applicable, early childhood education programs and services.

(2) RESTORING 2008 STATE SUPPORT FOR EDUCATION.—

(A) IN GENERAL.—The Governor shall first use the funds described in paragraph (1)—

(i) to provide the amount of funds, through the State's principal elementary and secondary funding formula, that is needed to restore State support for elementary and secondary education to the fiscal year 2008 level; and where applicable, to allow existing State formula increases for fiscal years 2009, 2010, and 2011 to be implemented and allow funding for phasing in State equity and adequacy adjustments that were enacted prior to July 1, 2008; and

(ii) to provide the amount of funds to public institutions of higher education in the State that is needed to restore State support for postsecondary education to the fiscal year 2008 level.

(B) SHORTFALL.—If the Governor determines that the amount of funds available under paragraph (1) is insufficient to restore State support for education to the levels described in clauses (i) and (ii) of subparagraph (A), the Governor shall allocate those funds between those clauses in proportion to the relative short-

fall in State support for the education sectors described in those clauses.

(3) SUBGRANTS TO IMPROVE BASIC PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES.—After carrying out paragraph (2), the Governor shall use any funds remaining under paragraph (1) to provide local educational agencies in the State with subgrants based on their relative shares of funding under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for the most recent year for which data are available.

(b) OTHER GOVERNMENT SERVICES.—The Governor may use up to 39 percent of the State's allocation under section 1401 for public safety and other government services, which may include assistance for elementary and secondary education and public institutions of higher education.

SEC. 1403. USES OF FUNDS BY LOCAL EDUCATIONAL AGENCIES.

(a) IN GENERAL.—A local educational agency that receives funds under this title may use the funds for any activity authorized by the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) ("ESEA"), the Individuals with Disabilities Education Act (20 U.S.C.

1400 et seq.) (''IDEA''), or the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.) (''the Perkins Act'').

(b) PROHIBITION.—A local educational agency may not use funds received under this title for capital projects unless authorized by ESEA, IDEA, or the Perkins Act.

SEC. 1404. USES OF FUNDS BY INSTITUTIONS OF HIGHER EDUCATION.

(a) IN GENERAL.—A public institution of higher education that receives funds under this title shall use the funds for education and general expenditures, and in such a way as to mitigate the need to raise tuition and fees for in-State students.

(b) PROHIBITION.—An institution of higher education may not use funds received under this title to increase its endowment.

(c) ADDITIONAL PROHIBITION.—An institution of higher education may not use funds received under this title for construction, renovation, or facility repair.

SEC. 1405. STATE APPLICATIONS.

(a) IN GENERAL.—The Governor of a State desiring to receive an allocation under section 1401 shall submit an application at such time, in such manner, and containing such information as the Secretary may reasonably require.

(b) APPLICATION.—The Governor shall—

(1) include the assurances described in subsection (d);

(2) provide baseline data that demonstrates the State's current status in each of the areas described in such assurances; and

(3) describe how the State intends to use its allocation.

(c) INCENTIVE GRANT APPLICATION.—The Governor of a State seeking a grant under section 1406 shall—

(1) submit an application for consideration;

(2) describe the status of the State's progress in each of the areas described in subsection (d);

(3) describe the achievement and graduation rates of public elementary and secondary school students in the State, and the strategies the State is employing to help ensure that all subgroups of students identified in 1111(b)(2) of ESEA in the State continue making progress toward meeting the State's student academic achievement standards;

(4) describe how the State would use its grant funding to improve student academic achievement in the State, including how it will allocate the funds to give priority to high-need schools and local educational agencies; and

(5) include a plan for evaluating its progress in closing achievement gaps.

(d) ASSURANCES.—An application under subsection (b) shall include the following assurances:

(1) MAINTENANCE OF EFFORT.—

(A) ELEMENTARY AND SECONDARY EDUCATION.—The State will, in each of fiscal years 2009 and 2010, maintain State support for elementary and secondary education at least at the level of such support in fiscal year 2006.

(B) HIGHER EDUCATION.—The State will, in each of fiscal years 2009 and 2010, maintain State support for public institutions of higher education (not including support for capital projects or for research and development) at least at the level of such support in fiscal year 2006.

(2) ACHIEVING EQUITY IN TEACHER DISTRIBUTION.—The State will take action, including activities outlined in section 2113(c) of ESEA, to increase the number, and improve the distribution, of effective teachers and principals in high-poverty schools and local educational agencies throughout the State.

(3) IMPROVING COLLECTION AND USE OF DATA.—The State will establish a longitudinal data

1 system that includes the elements described in sec-
2 tion 6401(e)(2)(D) of the America COMPETES Act
3 (20 U.S.C. 9871).

4 (4) STANDARDS AND ASSESSMENTS.—The
5 State—

6 (A) will enhance the quality of academic
7 assessments described in section 1111(b)(3) of
8 ESEA (20 U.S.C. 6311(b)(3)) through activi-
9 ties such as those described in section 6112(a)
10 of such Act (20 U.S.C. 7301a(a));

11 (B) will comply with the requirements of
12 paragraphs (3)(C)(ix) and (6) of section
13 1111(b) of ESEA (20 U.S.C. 6311(b)) and sec-
14 tion 612(a)(16) of IDEA (20 U.S.C.
15 1412(a)(16)) related to the inclusion of children
16 with disabilities and limited English proficient
17 students in State assessments, the development
18 of valid and reliable assessments for those stu-
19 dents, and the provision of accommodations
20 that enable their participation in State assess-
21 ments; and

22 (C) will take steps to improve State aca-
23 demic content standards and student academic
24 achievement standards consistent with

6401(e)(1)(A)(ii) of the America COMPETES Act.

(5) will ensure compliance with the requirements of section 1116(a)(7)(C)(iv) and section 1116(a)(8)(B) with respect to schools identified under such sections.

SEC. 1406. STATE INCENTIVE GRANTS.

(a) IN GENERAL.—From the total amount reserved under section 1401(c) that is not used for section 1407, the Secretary shall, in fiscal year 2010, make grants to States that have made significant progress in meeting the objectives of paragraphs (2), (3), (4), and (5) of section 1405(d).

(b) BASIS FOR GRANTS.—The Secretary shall determine which States receive grants under this section, and the amount of those grants, on the basis of information provided in State applications under section 1405 and such other criteria as the Secretary determines appropriate.

(c) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—Each State receiving a grant under this section shall use at least 50 percent of the grant to provide local educational agencies in the State with subgrants based on their relative shares of funding under part A of title I of ESEA (20 U.S.C. 6311 et seq.) for the most recent year.

SEC. 1407. INNOVATION FUND.

(a) IN GENERAL.—

(1) ELIGIBLE ENTITY.—For the purposes of this section, the term ''eligible entity'' means—

(A) A local educational agency; or

(B) a partnership between a nonprofit organization and—

(i) one or more local educational agencies;

(ii) or a consortium of schools.

(2) PROGRAM ESTABLISHED.—From the total amount reserved under section 1401(c), the Secretary may reserve up to $650,000,000 to establish an Innovation Fund, which shall consist of academic achievement awards that recognize eligible entities that meet the requirements described in subsection (b).

(3) BASIS FOR AWARDS.—The Secretary shall make awards to eligible entities that have made significant gains in closing the achievement gap as described in subsection (b)(1)—

(A) to allow such eligible entities to expand their work and serve as models for best practices;

(B) to allow such eligible entities to work in partnership with the private sector and the philanthropic community; and

(C) to identify and document best practices that can be shared, and taken to scale based on demonstrated success.

(b) ELIGIBILITY.—To be eligible for such an award, an eligible entity shall—

(1) have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of ESEA (20 U.S.C. 6311(b)(2));

(2) have exceeded the State's annual measurable objectives consistent with such section 1111(b)(2) for 2 or more consecutive years or have demonstrated success in significantly increasing student academic achievement for all groups of students described in such section through another measure, such as measures described in section 1111(c)(2) of ESEA;

(3) have made significant improvement in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and school leaders, as demonstrated with meaningful data; and

(4) demonstrate that they have established partnerships with the private sector, which may include philanthropic organizations, and that the private sector will provide matching funds in order to help bring results to scale.

SEC. 1408. STATE REPORTS.

A State receiving funds under this title shall submit a report to the Secretary, at such time and in such manner as the Secretary may require, that describes—

(1) the uses of funds provided under this title within the State;

(2) how the State distributed the funds it received under this title;

(3) the number of jobs that the Governor estimates were saved or created with funds the State received under this title;

(4) tax increases that the Governor estimates were averted because of the availability of funds from this title;

(5) the State's progress in reducing inequities in the distribution of teachers, in implementing a State student longitudinal data system, and in developing and implementing valid and reliable assessments for limited English proficient students and children with disabilities;

(6) the tuition and fee increases for in-State students imposed by public institutions of higher education in the State during the period of availability of funds under this title, and a description of any actions taken by the State to limit those increases; and

(7) the extent to which public institutions of higher education maintained, increased, or decreased enrollment of in-State students, including students eligible for Pell Grants or other need-based financial assistance.

SEC. 1409. EVALUATION.

The Comptroller General of the United States shall conduct evaluations of the programs under sections 1406 and 1407 which shall include, but not be limited to, the criteria used for the awards made, the States selected for awards, award amounts, how each State used the award received, and the impact of this funding on the progress made toward closing achievement gaps.

SEC. 1410. SECRETARY'S REPORT TO CONGRESS.

The Secretary shall submit a report to the Committee on Education and Labor of the House of Representatives, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committees on Appropriations of the House of Representatives and of the Senate,

not less than 6 months following the submission of the State reports, that evaluates the information provided in the State reports under section 1408.

SEC. 1411. PROHIBITION ON PROVISION OF CERTAIN ASSISTANCE.

No recipient of funds under this title shall use such funds to provide financial assistance to students to attend private elementary or secondary schools, unless such funds are used to provide special education and related services to children with disabilities, as authorized by the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

SEC. 1412. DEFINITIONS.

Except as otherwise provided in this title, as used in this title—

(1) the term ''institution of higher education'' has the meaning given such term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001);

(2) the term ''Secretary'' means the Secretary of Education;

(3) the term ''State'' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(4) any other term that is defined in section 9101 of ESEA (20 U.S.C. 7801) shall have the meaning given the term in such section.

SEC. 1413. REGULATORY RELIEF.

(a) WAIVER AUTHORITY.—Subject to subsections (b) and (c), the Secretary of Education may, as applicable, waive or modify, in order to ease fiscal burdens, any requirement relating to the following:

(1) Maintenance of effort.

(2) The use of Federal funds to supplement, not supplant, non-Federal funds.

(b) DURATION.—A waiver under this section shall be for fiscal years 2009 and 2010.

(c) LIMITATIONS.—

(1) RELATION TO IDEA.—Nothing in this section shall be construed to permit the Secretary to waive or modify any provision of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), except as described in a(1) and a(2).

(2) MAINTENANCE OF EFFORT.—If the Secretary grants a waiver or modification under this section waiving or modifying a requirement relating to maintenance of effort for fiscal years 2009 and 2010, the level of effort required for fiscal year 2011

shall not be reduced because of the waiver or modification.

TITLE XV—RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD AND RECOVERY INDEPENDENT ADVISORY PANEL

SEC. 1501. DEFINITIONS.

In this title:

(1) AGENCY.—The term ''agency'' has the meaning given under section 551 of title 5, United States Code.

(2) BOARD.—The term ''Board'' means the Recovery Accountability and Transparency Board established in section 1511.

(3) CHAIRPERSON.—The term ''Chairperson'' means the Chairperson of the Board.

(4) COVERED FUNDS.—The term ''covered funds'' means any funds that are expended or obligated—

(A) from appropriations made under this Act; and

(B) under any other authorities provided under this Act.

(5) PANEL.—The term ''Panel'' means the Recovery Independent Advisory Panel established in section 1531.

Subtitle A—Recovery Accountability and Transparency Board

SEC. 1511. ESTABLISHMENT OF THE RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD.

There is established the Recovery Accountability and Transparency Board to coordinate and conduct oversight of covered funds to prevent fraud, waste, and abuse.

SEC. 1512. COMPOSITION OF BOARD.

(a) CHAIRPERSON.—

(1) DESIGNATION OR APPOINTMENT.—The President shall—

(A) designate the Deputy Director for Management of the Office of Management and Budget to serve as Chairperson of the Board;

(B) designate another Federal officer who was appointed by the President to a position that required the advice and consent of the Senate, to serve as Chairperson of the Board; or

(C) appoint an individual as the Chairperson of the Board, by and with the advice and consent of the Senate.

(2) COMPENSATION.—

(A) DESIGNATION OF FEDERAL OFFICER.—If the President designates a Federal officer under paragraph (1)(A) or (B) to serve as Chairperson, that Federal officer may not receive additional compensation for services performed as Chairperson.

(B) APPOINTMENT OF NON-FEDERAL OFFICER.—If the President appoints an individual as Chairperson under paragraph (1)(C), that individual shall be compensated at the rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(b) MEMBERS.—The members of the Board shall include—

(1) the Inspectors General of the Departments of Agriculture, Commerce, Education, Energy, Health and Human Services, Homeland Security, Justice, Transportation, Treasury, and the Treasury Inspector General for Tax Administration; and

(2) any other Inspector General as designated by the President from any agency that expends or obligates covered funds.

SEC. 1513. FUNCTIONS OF THE BOARD.

(a) FUNCTIONS.—

(1) IN GENERAL.—The Board shall coordinate and conduct oversight of covered funds in order to prevent fraud, waste, and abuse.

(2) SPECIFIC FUNCTIONS.—The functions of the Board shall include—

(A) reviewing whether the reporting of contracts and grants using covered funds meets applicable standards and specifies the purpose of the contract or grant and measures of performance;

(B) reviewing whether competition requirements applicable to contracts and grants using covered funds have been satisfied;

(C) auditing and investigating covered funds to determine whether wasteful spending, poor contract or grant management, or other abuses are occurring;

(D) reviewing whether there are sufficient qualified acquisition and grant personnel overseeing covered funds;

(E) reviewing whether personnel whose duties involve acquisitions or grants made with covered funds receive adequate training; and

(F) reviewing whether there are appropriate mechanisms for interagency collaboration relating to covered funds.

(b) REPORTS.—

(1) QUARTERLY REPORTS.—The Board shall submit quarterly reports to the President and Congress, including the Committees on Appropriations of the Senate and House of Representatives, summarizing the findings of the Board and the findings of inspectors general of agencies. The Board may submit additional reports as appropriate.

(2) ANNUAL REPORTS.—The Board shall submit annual reports to the President and the Committees on Appropriations of the Senate and House of Representatives, consolidating applicable quarterly reports on the use of covered funds.

(3) PUBLIC AVAILABILITY.—

(A) IN GENERAL.—All reports submitted under this subsection shall be made publicly available and posted on a website established by the Board.

(B) REDACTIONS.—Any portion of a report submitted under this subsection may be redacted when made publicly available, if that portion would disclose information that is not

subject to disclosure under section 552 of title 5, United States Code (commonly known as the Freedom of Information Act).

(c) RECOMMENDATIONS.—

(1) IN GENERAL.—The Board shall make recommendations to agencies on measures to prevent fraud, waste, and abuse relating to covered funds.

(2) RESPONSIVE REPORTS.—Not later than 30 days after receipt of a recommendation under paragraph (1), an agency shall submit a report to the President, the congressional committees of jurisdiction, including the Committees on Appropriations of the Senate and House of Representatives, and the Board on—

(A) whether the agency agrees or disagrees with the recommendations; and

(B) any actions the agency will take to implement the recommendations.

SEC. 1514. POWERS OF THE BOARD.

(a) IN GENERAL.—The Board shall conduct, supervise, and coordinate audits and investigations by inspectors general of agencies relating to covered funds.

(b) AUDITS AND INVESTIGATIONS.—The Board may—

(1) conduct its own independent audits and investigations relating to covered funds; and

(2) collaborate on audits and investigations relating to covered funds with any inspector general of an agency.

(c) AUTHORITIES.—

(1) AUDITS AND INVESTIGATIONS.—In conducting audits and investigations, the Board shall have the authorities provided under section 6 of the Inspector General Act of 1978 (5 U.S.C. App.).

(2) STANDARDS AND GUIDELINES.—The Board shall carry out the powers under subsections (a) and (b) in accordance with section 4(b)(1) of the Inspector General Act of 1978 (5 U.S.C. App.).

(d) PUBLIC HEARINGS.—The Board may hold public hearings and Board personnel may conduct investigative depositions. The head of each agency shall make all officers and employees of that agency available to provide testimony to the Board and Board personnel. The Board may issue subpoenas to compel the testimony of persons who are not Federal officers or employees. Any such subpoenas may be enforced as provided under section 6 of the Inspector General Act of 1978 (5 U.S.C. App.).

(e) CONTRACTS.—The Board may enter into contracts to enable the Board to discharge its duties under

this subtitle, including contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and make such payments as may be necessary to carry out the duties of the Board.

(f) TRANSFER OF FUNDS.—The Board may transfer funds appropriated to the Board for expenses to support administrative support services and audits or investigations of covered funds to any office of inspector general, the Office of Management and Budget, the General Services Administration, and the Panel.

SEC. 1515. EMPLOYMENT, PERSONNEL, AND RELATED AUTHORITIES.

(a) EMPLOYMENT AND PERSONNEL AUTHORITIES.—

(1) IN GENERAL.—

(A) AUTHORITIES.—Subject to paragraph (2), the Board may exercise the authorities of subsections (b) through (i) of section 3161 of title 5, United States Code (without regard to subsection (a) of that section).

(B) APPLICATION.—For purposes of exercising the authorities described under subparagraph (A), the term ''Chairperson of the Board'' shall be substituted for the term ''head of a temporary organization''.

(C) CONSULTATION.—In exercising the authorities described under subparagraph (A), the Chairperson shall consult with members of the Board.

(2) EMPLOYMENT AUTHORITIES.—In exercising the employment authorities under subsection (b) of section 3161 of title 5, United States Code, as provided under paragraph (1) of this subsection—

(A) paragraph (2) of subsection (b) of section 3161 of that title (relating to periods of appointments) shall not apply; and

(B) no period of appointment may exceed the date on which the Board terminates under section 1521.

(b) INFORMATION AND ASSISTANCE.—

(1) IN GENERAL.—Upon request of the Board for information or assistance from any agency or other entity of the Federal Government, the head of such entity shall, insofar as is practicable and not in contravention of any existing law, furnish such information or assistance to the Board, or an authorized designee.

(2) REPORT OF REFUSALS.—Whenever information or assistance requested by the Board is, in the judgment of the Board, unreasonably refused or

not provided, the Board shall report the circumstances to the congressional committees of jurisdiction, including the Committees on Appropriations of the Senate and House of Representatives, without delay.

(c) ADMINISTRATIVE SUPPORT.—The General Services Administration shall provide the Board with administrative support services, including the provision of office space and facilities.

SEC. 1516. INDEPENDENCE OF INSPECTORS GENERAL.

(a) INDEPENDENT AUTHORITY.—Nothing in this subtitle shall affect the independent authority of an inspector general to determine whether to conduct an audit or investigation of covered funds.

(b) REQUESTS BY BOARD.—If the Board requests that an inspector general conduct or refrain from conducting an audit or investigation and the inspector general rejects the request in whole or in part, the inspector general shall, not later than 30 days after rejecting the request, submit a report to the Board, the head of the applicable agency, and the congressional committees of jurisdiction, including the Committees on Appropriations of the Senate and House of Representatives. The report shall state the reasons that the inspector general has rejected the request in whole or in part.

SEC. 1517. COORDINATION WITH THE COMPTROLLER GENERAL AND STATE AUDITORS.

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

SEC. 1518. PROTECTING STATE AND LOCAL GOVERNMENT AND CONTRACTOR WHISTLEBLOWERS.

(a) PROHIBITION OF REPRISALS.—An employee of any non-Federal employer receiving covered funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to the Board, an inspector general, the Comptroller General, a member of Congress, or a the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of—

(1) gross mismanagement of an agency contract or grant relating to covered funds;

(2) a gross waste of covered funds;

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

(4) a violation of law related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

(b) INVESTIGATION OF COMPLAINTS.—

(1) IN GENERAL.—A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the appropriate inspector general. Unless the inspector general determines that the complaint is frivolous, the inspector general shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the person's employer, the head of the appropriate agency, and the Board.

(2) TIME LIMITATIONS FOR ACTIONS.—

(A) IN GENERAL.—Except as provided under subparagraph (B), the inspector general shall make a determination that a complaint is frivolous or submit a report under paragraph (1) within 180 days after receiving the complaint.

(B) EXTENSION.—If the inspector general is unable to complete an investigation in time to submit a report within the 180-day period specified under subparagraph (A) and the person submitting the complaint agrees to an extension of time, the inspector general shall submit a report under paragraph (1) within such additional period of time as shall be agreed upon between

the inspector general and the person submitting the complaint.

(c) REMEDY AND ENFORCEMENT AUTHORITY.—

(1) AGENCY ACTION.—Not later than 30 days after receiving an inspector general report under subsection (b), the head of the agency concerned shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the complainant to a reprisal prohibited by subsection (a) and shall either issue an order denying relief or shall take 1 or more of the following actions:

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

(B) Order the employer to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(C) Order the employer to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that

were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the agency.

(2) CIVIL ACTION.—If the head of an agency issues an order denying relief under paragraph (1) or has not issued an order within 210 days after the submission of a complaint under subsection (b), or in the case of an extension of time under subsection (b)(2)(B), not later than 30 days after the expiration of the extension of time, and there is no showing that such delay is due to the bad faith of the complainant, the complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint, and the complainant may bring a de novo action at law or equity against the employer to seek compensatory damages and other relief available under this section in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. Such an action shall, at the request of either party to the action, be tried by the court with a jury.

(3) EVIDENCE.—An inspector general determination and an agency head order denying relief

1 under paragraph (2) shall be admissible in evidence
2 in any de novo action at law or equity brought in ac-
3 cordance with this subsection.

4 (4) JUDICIAL ENFORCEMENT OF ORDER.—
5 Whenever a person fails to comply with an order
6 issued under paragraph (1), the head of the agency
7 shall file an action for enforcement of such order in
8 the United States district court for a district in
9 which the reprisal was found to have occurred. In
10 any action brought under this paragraph, the court
11 may grant appropriate relief, including injunctive re-
12 lief and compensatory and exemplary damages.

13 (5) JUDICIAL REVIEW.—Any person adversely
14 affected or aggrieved by an order issued under para-
15 graph (1) may obtain review of the order's confor-
16 mance with this subsection, and any regulations issued
17 to carry out this section, in the United States court
18 of appeals for a circuit in which the reprisal is al-
19 leged in the order to have occurred. No petition
20 seeking such review may be filed more than 60 days
21 after issuance of the order by the head of the agen-
22 cy. Review shall conform to chapter 7 of title 5,
23 United States Code.

24 (d) RULE OF CONSTRUCTION.—Nothing in this sec-
25 tion may be construed to authorize the discharge of, demo-

tion of, or discrimination against an employee for a disclosure other than a disclosure protected by subsection (a) or to modify or derogate from a right or remedy otherwise available to the employee.

SEC. 1519. BOARD WEBSITE.

(a) ESTABLISHMENT.—The Board shall establish and maintain a user-friendly, public-facing website to foster greater accountability and transparency in the use of covered funds.

(b) PURPOSE.—The website established and maintained under subsection (a) shall be a portal or gateway to key information relating to this Act and provide connections to other Government websites with related information.

(c) CONTENT AND FUNCTION.—In establishing the website established and maintained under subsection (a), the Board shall ensure the following:

(1) The website shall provide materials explaining what this Act means for citizens. The materials shall be easy to understand and regularly updated.

(2) The website shall provide accountability information, including a database of findings from audits, inspectors general, and the Government Accountability Office.

(3) The website shall provide data on relevant economic, financial, grant, and contract information in user-friendly visual presentations to enhance public awareness of the use of covered funds.

(4) The website shall provide detailed data on contracts awarded by the Government that expend covered funds, including information about the competitiveness of the contracting process, notification of solicitations for contracts to be awarded, and information about the process that was used for the award of contracts.

(5) The website shall include printable reports on covered funds obligated by month to each State and congressional district.

(6) The website shall provide a means for the public to give feedback on the performance of contracts that expend covered funds.

(7) The website shall be enhanced and updated as necessary to carry out the purposes of this subtitle.

(d) WAIVER.—The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security.

SEC. 1520. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as necessary to carry out this subtitle.

SEC. 1521. TERMINATION OF THE BOARD.

The Board shall terminate on September 30, 2012.

Subtitle B—Recovery Independent Advisory Panel

SEC. 1531. ESTABLISHMENT OF RECOVERY INDEPENDENT ADVISORY PANEL.

(a) ESTABLISHMENT.—There is established the Recovery Independent Advisory Panel.

(b) MEMBERSHIP.—The Panel shall be composed of 5 members who shall be appointed by the President.

(c) QUALIFICATIONS.—Members shall be appointed on the basis of expertise in economics, public finance, contracting, accounting, or any other relevant field.

(d) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Panel have been appointed, the Panel shall hold its first meeting.

(e) MEETINGS.—The Panel shall meet at the call of the Chairperson of the Panel.

(f) QUORUM.—A majority of the members of the Panel shall constitute a quorum, but a lesser number of members may hold hearings.

(g) CHAIRPERSON AND VICE CHAIRPERSON.—The Panel shall select a Chairperson and Vice Chairperson from among its members.

SEC. 1532. DUTIES OF THE PANEL.

The Panel shall make recommendations to the Board on actions the Board could take to prevent fraud, waste, and abuse relating to covered funds.

SEC. 1533. POWERS OF THE PANEL.

(a) HEARINGS.—The Panel may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Panel considers advisable to carry out this subtitle.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Panel may secure directly from any agency such information as the Panel considers necessary to carry out this subtitle. Upon request of the Chairperson of the Panel, the head of such agency shall furnish such information to the Panel.

(c) POSTAL SERVICES.—The Panel may use the United States mails in the same manner and under the same conditions as agencies of the Federal Government.

(d) GIFTS.—The Panel may accept, use, and dispose of gifts or donations of services or property.

SEC. 1534. PANEL PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Panel who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Panel. All members of the Panel who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(b) TRAVEL EXPENSES.—The members of the Panel shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Panel.

(c) STAFF.—

(1) IN GENERAL.—The Chairperson of the Panel may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Panel to perform its du-

ties. The employment of an executive director shall be subject to confirmation by the Panel.

(2) COMPENSATION.—The Chairperson of the Panel may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(3) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Panel who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, 89A, 89B, and 90 of that title.

(B) MEMBERS OF PANEL.—Subparagraph (A) shall not be construed to apply to members of the Panel.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Panel without reimbursement, and such detail shall be

without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Panel may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(f) ADMINISTRATIVE SUPPORT.—The General Services Administration shall provide the Board with administrative support services, including the provision of office space and facilities.

SEC. 1535. TERMINATION OF THE PANEL.

The Panel shall terminate on September 30, 2012.

SEC. 1536. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as necessary to carry out this subtitle.

Subtitle C—Reports of the Council of Economic Advisers

SEC. 1541. REPORTS OF THE COUNCIL OF ECONOMIC ADVISERS.

(a) IN GENERAL.—In consultation with the Director of the Office of Management and Budget and the Secretary of the Treasury, the Chairperson of the Council of

Economic Advisers shall submit quarterly reports to the Committees on Appropriations of the Senate and House of Representatives that detail the estimated impact of programs funded through covered funds on employment, economic growth, and other key economic indicators.

(b) SUBMISSION.—The first report under subsection (a) shall be submitted not later than 15 days after the end of the first full quarter following the date of enactment of this Act. The last report required to be submitted under subsection (a) shall apply to the quarter in which the Board terminates under section 1521.

TITLE XVI—GENERAL PROVISIONS—THIS ACT

EMERGENCY DESIGNATION

SEC. 1601. Each amount in this Act is designated as an emergency requirement and necessary to meet emergency needs pursuant to section 204(a) of S. Con. Res. 21 (110th Congress) and section 301(b)(2) of S. Con. Res. 70 (110th Congress), the concurrent resolutions on the budget for fiscal years 2008 and 2009.

AVAILABILITY

SEC. 1602. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

RELATIONSHIP TO OTHER APPROPRIATIONS

SEC. 1603. Each amount appropriated or made available in this Act is in addition to amounts otherwise appro-

priated for the fiscal year involved. Enactment of this Act shall have no effect on the availability of amounts under the Continuing Appropriations Resolution, 2009 (division A of Public Law 110–329).

BUY AMERICAN

SEC. 1604. USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS. (a) None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

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

(1) applying subsection (a) would be inconsistent with the public interest;

(2) iron, steel, and the relevant manufactured goods are not produced in the United States if sufficient and reasonably available quantities and of a satisfactory quality; or

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

(c) If the head of a Federal department or agency determines that it is necessary to waive the application of subsection (a) based on a finding under subsection (b), the head of the department or agency shall publish in the Federal Register a detailed written jurisdiction as to why the provision is being waived.

(d) In this section, the terms ''public building'' and ''public work'' have the meanings given such terms in section 1 of the Buy American Act (41 U.S.C. 10c) and include airports, bridges, canals, dams, dikes, pipelines, railroads, multiline mass transit systems, roads, tunnels, harbors, and piers.

CERTIFICATION

SEC. 1605. With respect to funds in titles I though XVI of this Act made available to State, or local government agencies, the Governor, mayor, or other chief executive, as appropriate, shall certify that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. A State or local agency may not receive infrastructure investment funding from funds made available in this Act unless this certification is made.

ECONOMIC STABILIZATION CONTRACTING

SEC. 1606. REFORM OF CONTRACTING PROCEDURES UNDER EESA. Section 107(b) of the Emergency Eco-

nomic Stabilization Act of 2008 (12 U.S.C. 5217(b)) is amended by inserting ''and individuals with disabilities and businesses owned by individuals with disabilities (for purposes of this subsection the term 'individual with disability' has the same meaning as the term 'handicapped individual' as that term is defined in section 3(f) of the Small Business Act (15 U.S.C. 632(f)),'' after ''(12 U.S.C. 1441a(r)(4)),''.

DIVISION B—TAX, UNEMPLOYMENT, HEALTH, STATE FISCAL RELIEF, AND OTHER PROVISIONS

TITLE I—TAX PROVISIONS

SEC. 1000. SHORT TITLE, ETC.

(a) SHORT TITLE.—This title may be cited as the ''American Recovery and Reinvestment Tax Act of 2009''.

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

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

TITLE I—TAX PROVISIONS

Sec. 1000. Short title, etc.

Subtitle A—Tax Relief for Individuals and Families

PART I—General Tax Relief

Sec. 1001. Making work pay credit.
Sec. 1002. Temporary increase in earned income tax credit.
Sec. 1003. Temporary increase of refundable portion of child credit.
Sec. 1004. American opportunity tax credit.
Sec. 1005. Computer technology and equipment allowed as a qualified higher education expense for section 529 accounts in 2009 and 2010.
Sec. 1006. Extension of first-time homebuyer credit; waiver of requirement to repay.
Sec. 1007. Suspension of tax on portion of unemployment compensation.

PART II—Alternative Minimum Tax Relief

Sec. 1011. Extension of alternative minimum tax relief for nonrefundable personal credits.
Sec. 1012. Extension of increased alternative minimum tax exemption amount.

Subtitle B—Energy Incentives

PART I—Renewable Energy Incentives

Sec. 1101. Extension of credit for electricity produced from certain renewable resources.
Sec. 1102. Election of investment credit in lieu of production credit.
Sec. 1103. Repeal of certain limitations on credit for renewable energy property.

PART II—Increased Allocations of New Clean Renewable Energy Bonds and Qualified Energy Conservation Bonds

Sec. 1111. Increased limitation on issuance of new clean renewable energy bonds.
Sec. 1112. Increased limitation on issuance of qualified energy conservation bonds.

PART III—Energy Conservation Incentives

Sec. 1121. Extension and modification of credit for nonbusiness energy property.
Sec. 1122. Modification of credit for residential energy efficient property.
Sec. 1123. Temporary increase in credit for alternative fuel vehicle refueling property.

PART IV—Energy Research Incentives

Sec. 1131. Increased research credit for energy research.

PART V—General Business Credit

Sec. 1141. 5-year carryback of general business credits.
Sec. 1142. Temporary provision allowing general business credits to offset 100 percent of Federal income tax liability.

PART VI—Modification of Credit for Carbon Dioxide Sequestration

Sec. 1151. Application of monitoring requirements to carbon dioxide used as a tertiary injectant.

PART VII—Plug-in Electric Drive Motor Vehicles

Sec. 1161. Modification of credit for qualified plug-in electric motor vehicles.

Subtitle C—Tax Incentives for Business

PART I—Temporary Investment Incentives

Sec. 1201. Special allowance for certain property acquired during 2009.
Sec. 1202. Temporary increase in limitations on expensing of certain depreciable business assets.

PART II—5-Year Carryback of Operating Losses

Sec. 1211. 5-year carryback of operating losses.
Sec. 1212. Exception for TARP recipients.

PART III—Incentives for New Jobs

Sec. 1221. Incentives to hire unemployed veterans and disconnected youth.

PART IV—Cancellation of Indebtedness

Sec. 1231. Deferral and ratable inclusion of income arising from indebtedness discharged by the repurchase of a debt instrument.

PART V—Qualified Small Business Stock

Sec. 1241. Special rules applicable to qualified small business stock for 2009 and 2010.

PART VI—Parity for Transportation Fringe Benefits

Sec. 1251. Increased exclusion amount for commuter transit benefits and transit passes.

PART VII—S Corporations

Sec. 1261. Temporary reduction in recognition period for built-in gains tax.

PART VIII—Broadband Incentives

Sec. 1271. Broadband Internet access tax credit.

PART IX—Clarification of Regulations Related to Limitations on Certain Built-in Losses Following an Ownership Change

Sec. 1281. Clarification of regulations related to limitations on certain built-in losses following an ownership change.

Subtitle D—Manufacturing Recovery Provisions

Sec. 1301. Temporary expansion of availability of industrial development bonds to facilities manufacturing intangible property.
Sec. 1302. Credit for investment in advanced energy facilities.

Subtitle E—Economic Recovery Tools

Sec. 1401. Recovery zone bonds.
Sec. 1402. Tribal economic development bonds.
Sec. 1403. Modifications to new markets tax credit.

Subtitle F—Infrastructure Financing Tools

PART I—Improved Marketability for Tax-Exempt Bonds

Sec. 1501. De minimis safe harbor exception for tax-exempt interest expense of financial institutions.
Sec. 1502. Modification of small issuer exception to tax-exempt interest expense allocation rules for financial institutions.
Sec. 1503. Temporary modification of alternative minimum tax limitations on tax-exempt bonds.
Sec. 1504. Modification to high speed intercity rail facility bonds.

PART II—Delay in Application of Withholding Tax on Government Contractors

Sec. 1511. Delay in application of withholding tax on government contractors.

PART III—Tax Credit Bonds for Schools

Sec. 1521. Qualified school construction bonds.
Sec. 1522. Extension and expansion of qualified zone academy bonds.

PART IV—Build America Bonds

Sec. 1531. Build America bonds.

Subtitle G—Economic Recovery Payments to Certain Individuals

Sec. 1601. Economic recovery payment to recipients of Social Security, supplemental security income, railroad retirement benefits, and veterans disability compensation or pension benefits.

Subtitle H—Trade Adjustment Assistance

Sec. 1701. Temporary extension of Trade Adjustment Assistance program.

Subtitle I—Prohibition on Collection of Certain Payments Made Under the Continued Dumping and Subsidy Offset Act of 2000

Sec. 1801. Prohibition on collection of certain payments made under the Continued Dumping and Subsidy Offset Act of 2000.

Subtitle J—Other Provisions

Sec. 1901. Application of certain labor standards to projects financed with certain tax-favored bonds.
Sec. 1902. Increase in public debt limit.

Subtitle A—Tax Relief for Individuals and Families

PART I—GENERAL TAX RELIEF

SEC. 1001. MAKING WORK PAY CREDIT.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 is amended by inserting after section 36 the following new section:

"SEC. 36A. MAKING WORK PAY CREDIT.

"(a) ALLOWANCE OF CREDIT.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the lesser of—

"(1) 6.2 percent of earned income of the taxpayer, or

"(2) $500 ($1,000 in the case of a joint return).

"(b) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

"(1) IN GENERAL.—The amount allowable as a credit under subsection (a) (determined without regard to this paragraph and subsection (c)) for the taxable year shall be reduced (but not below zero) by 4 percent of so much of the taxpayer's modified adjusted gross income as exceeds $75,000 ($150,000 in the case of a joint return).

1 "(2) MODIFIED ADJUSTED GROSS INCOME.—
2 For purposes of subparagraph (A), the term 'modi-
3 fied adjusted gross income' means the adjusted
4 gross income of the taxpayer for the taxable year in-
5 creased by any amount excluded from gross income
6 under section 911, 931, or 933.
7 "(c) REDUCTION FOR CERTAIN OTHER PAY-
8 MENTS.—The credit allowed under subsection (a) for any
9 taxable year shall be reduced by the amount of any pay-
10 ments received by the taxpayer during such taxable year
11 under section 1601 of the American Recovery and Rein-
12 vestment Tax Act of 2009.
13 "(d) DEFINITIONS.—For purposes of this section—
14 "(1) ELIGIBLE INDIVIDUAL.—The term 'eligible
15 individual' means any individual other than—
16 "(A) any nonresident alien individual,
17 "(B) any individual with respect to whom
18 a deduction under section 151 is allowable to
19 another taxpayer for a taxable year beginning
20 in the calendar year in which the individual's
21 taxable year begins, and
22 "(C) an estate or trust.
23 Such term shall not include any individual unless the
24 requirements of section 32(c)(1)(E) are met with re-
25 spect to such individual.

"(2) EARNED INCOME.—The term 'earned income' has the meaning given such term by section 32(c)(2), except that such term shall not include net earnings from self-employment which are not taken into account in computing taxable income. For purposes of the preceding sentence, any amount excluded from gross income by reason of section 112 shall be treated as earned income which is taken into account in computing taxable income for the taxable year.

"(e) TERMINATION.—This section shall not apply to taxable years beginning after December 31, 2010.".

(b) TREATMENT OF POSSESSIONS.—

(1) PAYMENTS TO POSSESSIONS.—

(A) MIRROR CODE POSSESSION.—The Secretary of the Treasury shall pay to each possession of the United States with a mirror code tax system amounts equal to the loss to that possession by reason of the amendments made by this section with respect to taxable years beginning in 2009 and 2010. Such amounts shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession.

1 (B) OTHER POSSESSIONS.—The Secretary
2 of the Treasury shall pay to each possession of
3 the United States which does not have a mirror
4 code tax system amounts estimated by the Sec-
5 retary of the Treasury as being equal to the ag-
6 gregate benefits that would have been provided
7 to residents of such possession by reason of the
8 amendments made by this section for taxable
9 years beginning in 2009 and 2010 if a mirror
10 code tax system had been in effect in such pos-
11 session. The preceding sentence shall not apply
12 with respect to any possession of the United
13 States unless such possession has a plan, which
14 has been approved by the Secretary of the
15 Treasury, under which such possession will
16 promptly distribute such payments to the resi-
17 dents of such possession.
18 (2) COORDINATION WITH CREDIT ALLOWED
19 AGAINST UNITED STATES INCOME TAXES.—No cred-
20 it shall be allowed against United States income
21 taxes for any taxable year under section 36A of the
22 Internal Revenue Code of 1986 (as added by this
23 section) to any person—
24 (A) to whom a credit is allowed against
25 taxes imposed by the possession by reason of

the amendments made by this section for such taxable year, or

(B) who is eligible for a payment under a plan described in paragraph (1)(B) with respect to such taxable year.

(3) DEFINITIONS AND SPECIAL RULES.—

(A) POSSESSION OF THE UNITED STATES.—For purposes of this subsection, the term ''possession of the United States'' includes the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands.

(B) MIRROR CODE TAX SYSTEM.—For purposes of this subsection, the term ''mirror code tax system'' means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

(C) TREATMENT OF PAYMENTS.—For purposes of section 1324(b)(2) of title 31, United States Code, the payments under this subsection shall be treated in the same manner as

a refund due from the credit allowed under section 36A of the Internal Revenue Code of 1986 (as added by this section).

(c) REFUNDS DISREGARDED IN THE ADMINISTRATION OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PROGRAMS.—Any credit or refund allowed or made to any individual by reason of section 36A of the Internal Revenue Code of 1986 (as added by this section) or by reason of subsection (b) of this section shall not be taken into account as income and shall not be taken into account as resources for the month of receipt and the following 2 months, for purposes of determining the eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.

(d) AUTHORITY RELATING TO CLERICAL ERRORS.—Section 6213(g)(2) is amended by striking ''and'' at the end of subparagraph (L)(ii), by striking the period at the end of subparagraph (M) and inserting '', and'', and by adding at the end the following new subparagraph:

''(N) an omission of the reduction required under section 36A(c) with respect to the credit allowed under section 36A or an omission of the

correct TIN required under section 36A(d)(1).''.

(e) CONFORMING AMENDMENTS.—

(1) Section 6211(b)(4)(A) is amended by inserting ''36A,'' after ''36,''.

(2) Section 1324(b)(2) of title 31, United States Code, is amended by inserting ''36A,'' after ''36,''.

(3) The table of sections for subpart C of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 36 the following new item:

''Sec. 36A. Making work pay credit.''.

(f) EFFECTIVE DATE.—This section, and the amendments made by this section, shall apply to taxable years beginning after December 31, 2008.

SEC. 1002. TEMPORARY INCREASE IN EARNED INCOME TAX CREDIT.

(a) IN GENERAL.—Subsection (b) of section 32 is amended by adding at the end the following new paragraph:

''(3) SPECIAL RULES FOR 2009 AND 2010.—In the case of any taxable year beginning in 2009 or 2010—

''(A) INCREASED CREDIT PERCENTAGE FOR 3 OR MORE QUALIFYING CHILDREN.—In

the case of a taxpayer with 3 or more qualifying children, the credit percentage is 45 percent.

"(B) REDUCTION OF MARRIAGE PENALTY.—

"(i) IN GENERAL.—The dollar amount in effect under paragraph (2)(B) shall be $5,000.

"(ii) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in 2010, the $5,000 amount in clause (i) shall be increased by an amount equal to—

"(I) such dollar amount, multiplied by

"(II) the cost of living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins determined by substituting 'calendar year 2008' for 'calendar year 1992' in subparagraph (B) thereof.

"(iii) ROUNDING.—Subparagraph (A) of subsection (j)(2) shall apply after taking into account any increase under clause (ii).".

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

SEC. 1003. TEMPORARY INCREASE OF REFUNDABLE PORTION OF CHILD CREDIT.

(a) IN GENERAL.—Paragraph (4) of section 24(d) is amended to read as follows:

"(4) SPECIAL RULE FOR 2009 AND 2010.—Notwithstanding paragraph (3), in the case of any taxable year beginning in 2009 or 2010, the dollar amount in effect for such taxable year under paragraph (1)(B)(i) shall be $6,000.".

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

SEC. 1004. AMERICAN OPPORTUNITY TAX CREDIT.

(a) IN GENERAL.—Section 25A (relating to Hope scholarship credit) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) AMERICAN OPPORTUNITY TAX CREDIT.—In the case of any taxable year beginning in 2009 or 2010—

"(1) INCREASE IN CREDIT.—The Hope Scholarship Credit shall be an amount equal to the sum of—

"(A) 100 percent of so much of the qualified tuition and related expenses paid by the taxpayer during the taxable year (for education furnished to the eligible student during any academic period beginning in such taxable year) as does not exceed $2,000, plus

"(B) 25 percent of such expenses so paid as exceeds $2,000 but does not exceed $4,000.

"(2) CREDIT ALLOWED FOR FIRST 4 YEARS OF POST-SECONDARY EDUCATION.—Subparagraphs (A) and (C) of subsection (b)(2) shall be applied by substituting '4' for '2'.

"(3) QUALIFIED TUITION AND RELATED EXPENSES TO INCLUDE REQUIRED COURSE MATERIALS.—Subsection (f)(1)(A) shall be applied by substituting 'tuition, fees, and course materials' for 'tuition and fees'.

"(4) INCREASE IN AGI LIMITS FOR HOPE SCHOLARSHIP CREDIT.—In lieu of applying subsection (d) with respect to the Hope Scholarship Credit, such credit (determined without regard to this paragraph) shall be reduced (but not below zero) by the amount which bears the same ratio to such credit (as so determined) as—

"(A) the excess of—

"(i) the taxpayer's modified adjusted gross income (as defined in subsection (d)(3)) for such taxable year, over

"(ii) $80,000 ($160,000 in the case of a joint return), bears to

"(B) $10,000 ($20,000 in the case of a joint return).

"(5) CREDIT ALLOWED AGAINST ALTERNATIVE MINIMUM TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, so much of the credit allowed under subsection (a) as is attributable to the Hope Scholarship Credit shall not exceed the excess of—

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under this subpart (other than this subsection and sections 23, 25D, and 30D) and section 27 for the taxable year.

Any reference in this section or section 24, 25, 26, 25B, 904, or 1400C to a credit allowable under this subsection shall be treated as a reference to so much of the credit allowable under subsection (a) as is attributable to the Hope Scholarship Credit.

1 "(6) PORTION OF CREDIT MADE REFUND-
2 ABLE.—30 percent of so much of the credit allowed
3 under subsection (a) as is attributable to the Hope
4 Scholarship Credit (determined after application of
5 paragraph (4) and without regard to this paragraph
6 and section 26(a)(2) or paragraph (5), as the case
7 may be) shall be treated as a credit allowable under
8 subpart C (and not allowed under subsection (a)).
9 The preceding sentence shall not apply to any tax-
10 payer for any taxable year if such taxpayer is a child
11 to whom subsection (g) of section 1 applies for such
12 taxable year.
13 "(7) COORDINATION WITH MIDWESTERN DIS-
14 ASTER AREA BENEFITS.—In the case of a taxpayer
15 with respect to whom section 702(a)(1)(B) of the
16 Heartland Disaster Tax Relief Act of 2008 applies
17 for any taxable year, such taxpayer may elect to
18 waive the application of this subsection to such tax-
19 payer for such taxable year.".
20 (b) CONFORMING AMENDMENTS.—
21 (1) Section 24(b)(3)(B) is amended by inserting
22 "25A(i)," after "23,".
23 (2) Section 25(e)(1)(C)(ii) is amended by in-
24 serting "25A(i)," after "24,".

(3) Section 26(a)(1) is amended by inserting "25A(i)," after "24,".

(4) Section 25B(g)(2) is amended by inserting "25A(i)," after "23,".

(5) Section 904(i) is amended by inserting "25A(i)," after "24,".

(6) Section 1400C(d)(2) is amended by inserting "25A(i)," after "24,".

(7) Section 1324(b)(2) of title 31, United States Code, is amended by inserting "25A," before "35".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

(d) APPLICATION OF EGTRRA SUNSET.—The amendment made by subsection (b)(1) shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 in the same manner as the provision of such Act to which such amendment relates.

(e) TREASURY STUDIES REGARDING EDUCATION INCENTIVES.—

(1) STUDY REGARDING COORDINATION WITH NON-TAX EDUCATIONAL INCENTIVES.—The Secretary of the Treasury, or the Secretary's delegate, shall study how to coordinate the credit allowed

under section 25A of the Internal Revenue Code of 1986 with the Federal Pell Grant program under section 401 of the Higher Education Act of 1965.

(2) STUDY REGARDING IMPOSITION OF COMMUNITY SERVICE REQUIREMENTS.—The Secretary of the Treasury, or the Secretary's delegate, shall study the feasibility of requiring students to perform community service as a condition of taking their tuition and related expenses into account under section 25A of the Internal Revenue Code of 1986.

(3) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury, or the Secretary's delegate, shall report to Congress on the results of the studies conducted under this paragraph.

SEC. 1005. COMPUTER TECHNOLOGY AND EQUIPMENT ALLOWED AS A QUALIFIED HIGHER EDUCATION EXPENSE FOR SECTION 529 ACCOUNTS IN 2009 AND 2010.

(a) IN GENERAL.—Section 529(e)(3)(A) is amended by striking ''and'' at the end of clause (i), by striking the period at the end of clause (ii), and by adding at the end the following:

''(iii) expenses paid or incurred in 2009 or 2010 for the purchase of any com-

puter technology or equipment (as defined in section 170(e)(6)(F)(i)) or Internet access and related services, if such technology, equipment, or services are to be used by the beneficiary and the beneficiary's family during any of the years the beneficiary is enrolled at an eligible educational institution.

Clause (iii) shall not include expenses for computer software designed for sports, games, or hobbies unless the software is predominantly educational in nature.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses paid or incurred after December 31, 2008.

SEC. 1006. EXTENSION OF FIRST-TIME HOMEBUYER CREDIT; WAIVER OF REQUIREMENT TO REPAY.

(a) EXTENSION.—

(1) IN GENERAL.—Section 36(h) is amended by striking ''July 1, 2009'' and inserting ''September 1, 2009''.

(2) CONFORMING AMENDMENT.—Section 36(g) is amended by striking ''July 1, 2009'' and inserting ''September 1, 2009''.

(b) WAIVER OF RECAPTURE.—

(1) IN GENERAL.—Paragraph (4) of section 36(f) is amended by adding at the end the following new subparagraph:

"(D) WAIVER OF RECAPTURE FOR PURCHASES IN 2009.—In the case of any credit allowed with respect to the purchase of a principal residence after December 31, 2008, and before September 1, 2009—

"(i) paragraph (1) shall not apply, and

"(ii) paragraph (2) shall apply only if the disposition or cessation described in paragraph (2) with respect to such residence occurs during the 36-month period beginning on the date of the purchase of such residence by the taxpayer.".

(2) CONFORMING AMENDMENT.—Subsection (g) of section 36 is amended by striking "subsection (c)" and inserting "subsections (c) and (f)(4)(D)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to residences purchased after December 31, 2008.

SEC. 1007. SUSPENSION OF TAX ON PORTION OF UNEMPLOYMENT COMPENSATION.

(a) IN GENERAL.—Section 85 of the Internal Revenue Code of 1986 (relating to unemployment compensation) is amended by adding at the end the following new subsection:

''(c) SPECIAL RULE FOR 2009.—In the case of any taxable year beginning in 2009, gross income shall not include so much of the unemployment compensation received by an individual as does not exceed $2,400.''.

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

PART II—ALTERNATIVE MINIMUM TAX RELIEF

SEC. 1011. EXTENSION OF ALTERNATIVE MINIMUM TAX RELIEF FOR NONREFUNDABLE PERSONAL CREDITS.

(a) IN GENERAL.—Paragraph (2) of section 26(a) (relating to special rule for taxable years 2000 through 2008) is amended—

(1) by striking ''or 2008'' and inserting ''2008, or 2009'', and

(2) by striking ''**2008**'' in the heading thereof and inserting ''**2009**''.

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

SEC. 1012. EXTENSION OF INCREASED ALTERNATIVE MINIMUM TAX EXEMPTION AMOUNT.

(a) IN GENERAL.—Paragraph (1) of section 55(d) (relating to exemption amount) is amended—

(1) by striking "($69,950 in the case of taxable years beginning in 2008)" in subparagraph (A) and inserting "($70,950 in the case of taxable years beginning in 2009)", and

(2) by striking "($46,200 in the case of taxable years beginning in 2008)" in subparagraph (B) and inserting "($46,700 in the case of taxable years beginning in 2009)".

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

Subtitle B—Energy Incentives

PART I—RENEWABLE ENERGY INCENTIVES

SEC. 1101. EXTENSION OF CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

(a) IN GENERAL.—Subsection (d) of section 45 is amended—

(1) by striking ''2010'' in paragraph (1) and inserting ''2013'',

(2) by striking ''2011'' each place it appears in paragraphs (2), (3), (4), (6), (7) and (9) and inserting ''2014'', and

(3) by striking ''2012'' in paragraph (11)(B) and inserting ''2014''.

(b) TECHNICAL AMENDMENT.—Paragraph (5) of section 45(d) is amended by striking ''and before'' and all that follows and inserting '' and before October 3, 2008.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsection (a) shall apply to property placed in service after the date of the enactment of this Act.

(2) TECHNICAL AMENDMENT.—The amendment made by subsection (b) shall take effect as if included in section 102 of the Energy Improvement and Extension Act of 2008.

SEC. 1102. ELECTION OF INVESTMENT CREDIT IN LIEU OF PRODUCTION CREDIT.

(a) IN GENERAL.—Subsection (a) of section 48 is amended by adding at the end the following new paragraph:

"(5) ELECTION TO TREAT QUALIFIED FACILITIES AS ENERGY PROPERTY.—

"(A) IN GENERAL.—In the case of any qualified investment credit facility—

"(i) such facility shall be treated as energy property for purposes of this section, and

"(ii) the energy percentage with respect to such property shall be 30 percent.

"(B) DENIAL OF PRODUCTION CREDIT.—No credit shall be allowed under section 45 for any taxable year with respect to any qualified investment credit facility.

"(C) QUALIFIED INVESTMENT CREDIT FACILITY.—For purposes of this paragraph, the term 'qualified investment credit facility' means any of the following facilities if no credit has been allowed under section 45 with respect to such facility and the taxpayer makes an irrevocable election to have this paragraph apply to such facility:

"(i) WIND FACILITIES.—Any facility described in paragraph (1) of section 45(d) if such facility is placed in service in 2009, 2010, 2011, or 2012.

"(ii) OTHER FACILITIES.—Any facility described in paragraph (2), (3), (4), (6), (7), (9), or (11) of section 45(d) if such facility is placed in service in 2009, 2010, 2011, 2012, or 2013.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to facilities placed in service after December 31, 2008.

SEC. 1103. REPEAL OF CERTAIN LIMITATIONS ON CREDIT FOR RENEWABLE ENERGY PROPERTY.

(a) REPEAL OF LIMITATION ON CREDIT FOR QUALIFIED SMALL WIND ENERGY PROPERTY.—Paragraph (4) of section 48(c) is amended by striking subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C).

(b) REPEAL OF LIMITATION ON PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING.—

(1) IN GENERAL.—Section 48(a)(4) is amended by adding at the end the following new subparagraph:

"(D) TERMINATION.—This paragraph shall not apply to periods after December 31, 2008, under rules similar to the rules of section 48(m) (as in effect on the day before the date

of the enactment of the Revenue Reconciliation Act of 1990).''.

(2) CONFORMING AMENDMENTS.—

(A) Section 25C(e)(1) is amended by striking ''(8), and (9)'' and inserting ''and (8)''.

(B) Section 25D(e) is amended by striking paragraph (9).

(C) Section 48A(b)(2) is amended by inserting ''(without regard to subparagraph (D) thereof)'' after ''section 48(a)(4)''.

(D) Section 48B(b)(2) is amended by inserting ''(without regard to subparagraph (D) thereof)'' after ''section 48(a)(4)''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section shall apply to periods after December 31, 2008, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

(2) CONFORMING AMENDMENTS.—The amendments made by subsection (b)(2) shall apply to taxable years beginning after December 31, 2008.

PART II—INCREASED ALLOCATIONS OF NEW CLEAN RENEWABLE ENERGY BONDS AND QUALIFIED ENERGY CONSERVATION BONDS

SEC. 1111. INCREASED LIMITATION ON ISSUANCE OF NEW CLEAN RENEWABLE ENERGY BONDS.

Subsection (c) of section 54C is amended by adding at the end the following new paragraph:

"(4) ADDITIONAL LIMITATION.—The national new clean renewable energy bond limitation shall be increased by $1,600,000,000. Such increase shall be allocated by the Secretary consistent with the rules of paragraphs (2) and (3).".

SEC. 1112. INCREASED LIMITATION ON ISSUANCE OF QUALIFIED ENERGY CONSERVATION BONDS.

Section 54D(d) is amended by striking "800,000,000" and inserting "$3,200,000,000".

PART III—ENERGY CONSERVATION INCENTIVES

SEC. 1121. EXTENSION AND MODIFICATION OF CREDIT FOR NONBUSINESS ENERGY PROPERTY.

(a) IN GENERAL.—Section 25C is amended by striking subsections (a) and (b) and inserting the following new subsections:

"(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 30 percent of the sum of—

"(1) the amount paid or incurred by the taxpayer during such taxable year for qualified energy efficiency improvements, and

"(2) the amount of the residential energy property expenditures paid or incurred by the taxpayer during such taxable year.

"(b) LIMITATION.—The aggregate amount of the credits allowed under this section for taxable years beginning in 2009 and 2010 with respect to any taxpayer shall not exceed $1,500.".

(b) EXTENSION.—Section 25C(g)(2) is amended by striking "December 31, 2009" and inserting "December 31, 2010".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

SEC. 1122. MODIFICATION OF CREDIT FOR RESIDENTIAL ENERGY EFFICIENT PROPERTY.

(a) REMOVAL OF CREDIT LIMITATION FOR PROPERTY PLACED IN SERVICE.—

(1) IN GENERAL.—Paragraph (1) of section 25D(b) is amended to read as follows:

"(1) MAXIMUM CREDIT FOR FUEL CELLS.—In the case of any qualified fuel cell property expenditure, the credit allowed under subsection (a) (deter-

mined without regard to subsection (c)) for any taxable year shall not exceed $500 with respect to each half kilowatt of capacity of the qualified fuel cell property (as defined in section 48(c)(1)) to which such expenditure relates.''.

(2) CONFORMING AMENDMENT.—Paragraph (4) of section 25D(e) is amended—

(A) by striking all that precedes subparagraph (B) and inserting the following:

''(4) FUEL CELL EXPENDITURE LIMITATIONS IN CASE OF JOINT OCCUPANCY.—In the case of any dwelling unit with respect to which qualified fuel cell property expenditures are made and which is jointly occupied and used during any calendar year as a residence by two or more individuals the following rules shall apply:

''(A) MAXIMUM EXPENDITURES FOR FUEL CELLS.—The maximum amount of such expenditures which may be taken into account under subsection (a) by all such individuals with respect to such dwelling unit during such calendar year shall be $1,667 in the case of each half kilowatt of capacity of qualified fuel cell property (as defined in section 48(c)(1))

with respect to which such expenditures relate.'', and

(B) by striking subparagraph (C).

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

SEC. 1123. TEMPORARY INCREASE IN CREDIT FOR ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY.

(a) IN GENERAL.—Section 30C(e) is amended by adding at the end the following new paragraph:

''(6) SPECIAL RULE FOR PROPERTY PLACED IN SERVICE DURING 2009 AND 2010.—In the case of property placed in service in taxable years beginning after December 31, 2008, and before January 1, 2011—

''(A) in the case of any such property which does not relate to hydrogen—

''(i) subsection (a) shall be applied by substituting '50 percent' for '30 percent',

''(ii) subsection (b)(1) shall be applied by substituting '$50,000' for '$30,000', and

"(iii) subsection (b)(2) shall be applied by substituting '$2,000' for '$1,000', and

"(B) in the case of any such property which relates to hydrogen, subsection (b)(1) shall be applied by substituting '$200,000' for '$30,000'.".

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

PART IV—ENERGY RESEARCH INCENTIVES

SEC. 1131. INCREASED RESEARCH CREDIT FOR ENERGY RESEARCH.

(a) IN GENERAL.—Section 41 is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) ENERGY RESEARCH CREDIT.—In the case of any taxable year beginning in 2009 or 2010—

"(1) IN GENERAL.—The credit determined under subsection (a)(1) shall be increased by 20 percent of the qualified energy research expenses for the taxable year.

"(2) QUALIFIED ENERGY RESEARCH EXPENSES.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified energy research expenses' means so much of the taxpayer's qualified research expenses as are related to the fields of fuel cells and battery technology, renewable energy and renewable fuels, energy conservation technology, efficient transmission and distribution of electricity, and carbon capture and sequestration.

"(B) COORDINATION WITH QUALIFYING ADVANCED ENERGY PROJECT CREDIT.—Such term shall not include expenditures taken into account in determining the amount of the credit under section 48 or 48C.

"(3) COORDINATION WITH OTHER RESEARCH CREDITS.—

"(A) IN GENERAL.—The amount of qualified energy research expenses taken into account under subsection (a)(1)(A) shall not exceed the base amount.

"(B) ALTERNATIVE SIMPLIFIED CREDIT.—For purposes of subsection (c)(5), the amount of qualified energy research expenses taken into account for the taxable year for which the credit is being determined shall not exceed—

"(i) in the case of subsection (c)(5)(A), 50 percent of the average qualified research expenses for the 3 taxable years preceding the taxable year for which the credit is being determined, and

"(ii) in the case of subsection (c)(5)(B)(ii), zero.

"(C) BASIC RESEARCH AND ENERGY RESEARCH CONSORTIUM PAYMENTS.—Any amount taken into account under paragraph (1) shall not be taken into account under paragraph (2) or (3) of subsection (a).".

(b) CONFORMING AMENDMENT.—Subparagraph (B) of section 41(i)(1)(B), as redesignated by subsection (a), is amended by inserting "(in the case of the increase in the credit determined under subsection (h), December 31, 2010)" after "December 31, 2009".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

PART V—GENERAL BUSINESS CREDIT

SEC. 1141. 5-YEAR CARRYBACK OF GENERAL BUSINESS CREDITS.

(a) IN GENERAL.—Subsection (a) of section 39 is amended by adding at the end the following new paragraph:

"(4) SPECIAL RULE FOR 2008 AND 2009 BUSINESS CREDITS.—In the case of any current year business credit for a taxable year ending in 2008 or 2009—

"(A) paragraph (1)(A) shall be applied by substituting 'each of the 5 taxable years' for 'the taxable year' in subparagraph (A) thereof, and

"(B) paragraph (2) shall be applied—

"(i) by substituting '25 taxable years' for '21 taxable years', and

"(ii) by substituting '24 taxable years' for '20 taxable years'.".

(b) EFFECTIVE DATE.—The amendment made by this subsection shall apply to taxable years ending after December 31, 2007, and to carrybacks of business credits from such taxable years.

SEC. 1142. TEMPORARY PROVISION ALLOWING GENERAL BUSINESS CREDITS TO OFFSET 100 PERCENT OF FEDERAL INCOME TAX LIABILITY.

(a) IN GENERAL.—Subsection (c) of section 38 is amended by adding at the end the following new paragraph:

"(6) TEMPORARY PROVISION ALLOWING GENERAL BUSINESS CREDITS TO OFFSET 100 PERCENT OF FEDERAL INCOME TAX LIABILITY.—

"(A) IN GENERAL.—In the case of a taxable year ending in 2008 or 2009—

"(i) the limitation under paragraph (1) shall be the net income tax (as defined in paragraph (1)) for purposes of determining the amount of the credit allowed under subsection (a) for such taxable year, and

"(ii) the excess credit for such taxable year shall, solely for purposes of determining the amount of such excess credit which may be carried back to a preceding taxable year, be increased by the amount of business credit carryforwards which are carried to such taxable year and which are not allowed for such taxable year by reason

of the limitation under paragraph (1) (as modified by clause (i)).

"(B) INCREASE IN LIMITATION FOR TAXABLE YEARS TO WHICH EXCESS CREDITS FOR 2008 AND 2009 ARE CARRIED BACK.—

"(i) IN GENERAL.—Solely for purposes of determining the portion of any excess credit described in subparagraph (A)(ii) for which credit will be allowed under subsection (a)(3) for any preceding taxable year, the limitation under paragraph (1) for such preceding taxable year shall be the net income tax (as defined in paragraph (1)).

"(ii) ORDERING RULE.—If the excess credit described in subparagraph (A)(ii) includes business credit carryforwards from preceding taxable years, such excess credit shall be treated as allowed for any preceding taxable year on a first-in first-out basis.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending after December 31, 2007, and to carrybacks of credits from such taxable years.

PART VI—MODIFICATION OF CREDIT FOR CARBON DIOXIDE SEQUESTRATION

SEC. 1151. APPLICATION OF MONITORING REQUIREMENTS TO CARBON DIOXIDE USED AS A TERTIARY INJECTANT.

(a) IN GENERAL.—Section 45Q(a)(2) is amended by striking ''and'' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ',and'', and by adding at the end the following new subparagraph:

''(C) disposed of by the taxpayer in secure geological storage.''.

(b) CONFORMING AMENDMENT.—Section 45Q(d)(2) is amended by striking ''subsection (a)(1)(B)'' and inserting ''paragraph (1)(B) or (2)(C) of subsection (a)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to carbon dioxide captured after the date of the enactment of this Act.

PART VII—PLUG-IN ELECTRIC DRIVE MOTOR VEHICLES

SEC. 1161. MODIFICATION OF CREDIT FOR QUALIFIED PLUG-IN ELECTRIC MOTOR VEHICLES.

(a) INCREASE IN VEHICLES ELIGIBLE FOR CREDIT.—Section 30D(b)(2)(B) is amended by striking ''250,000'' and inserting ''500,000''.

(b) EXCLUSION OF NEIGHBORHOOD ELECTRIC VEHICLES FROM EXISTING CREDIT.—Section 30D(e)(1) is amended to read as follows:

"(1) MOTOR VEHICLE.—The term 'motor vehicle' means a motor vehicle (as defined in section 30(c)(2)), which is treated as a motor vehicle for purposes of title II of the Clean Air Act.".

(c) CREDIT FOR CERTAIN OTHER VEHICLES.—Section 30D is amended—

(1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively, and

(2) by inserting after subsection (e) the following new subsection:

"(f) CREDIT FOR CERTAIN OTHER VEHICLES.—For purposes of this section—

"(1) IN GENERAL.—In the case of a specified vehicle, this section shall be applied with the following modifications:

"(A) For purposes of subsection (a)(1), in lieu of the applicable amount determined under subsection (a)(2), the applicable amount shall be 10 percent of so much of the cost of the specified vehicle as does not exceed $40,000.

"(B) Subsection (b) shall not apply and no specified vehicle shall be taken into account under subsection (b)(2).

"(C) Subsection (c)(3) shall not apply.

"(2) SPECIFIED VEHICLE.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'specified vehicle' means—

"(i) any 2- or 3- wheeled motor vehicle, or

"(ii) any low-speed motor vehicle,

which is placed in service after December 31, 2009, and before January 1, 2012.

"(B) 2- OR 3-WHEELED MOTOR VEHICLE.—The term '2- or 3-wheeled motor vehicle' means any vehicle—

"(i) which would be described in section 30(c)(2) except that it has 2 or 3 wheels,

"(ii) with motive power having a seat or saddle for the use of the rider and designed to travel on not more than 3 wheels in contact with the ground,

"(iii) which has an electric motor that produces in excess of 5-brake horsepower,

"(iv) which draws propulsion from 1 or more traction batteries, and

"(v) which has been certified to the Department of Transportation pursuant to section 567 of title 49, Code of Federal Regulations, as conforming to all applicable Federal motor vehicle safety standards in effect on the date of the manufacture of the vehicle.

"(C) LOW-SPEED MOTOR VEHICLE.—The term 'low-speed motor vehicle' means a motor vehicle (as defined in section 30(c)(2)) which meets the requirements of section 571.500 of title 49, Code of Federal Regulations.".

(d) EFFECTIVE DATES.—

(1) INCREASE IN VEHICLES ELIGIBLE FOR CREDIT.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) OTHER MODIFICATIONS.—The amendments made by subsections (b) and (c) shall apply to property placed in service after December 31, 2009, in taxable years beginning after such date.

Subtitle C—Tax Incentives for Business

PART I—TEMPORARY INVESTMENT INCENTIVES

SEC. 1201. SPECIAL ALLOWANCE FOR CERTAIN PROPERTY ACQUIRED DURING 2009.

(a) EXTENSION OF SPECIAL ALLOWANCE.—

(1) IN GENERAL.—Paragraph (2) of section 168(k) is amended—

(A) by striking ''January 1, 2010'' and inserting ''January 1, 2011'', and

(B) by striking ''January 1, 2009'' each place it appears and inserting ''January 1, 2010''.

(2) CONFORMING AMENDMENTS.—

(A) The heading for subsection (k) of section 168 is amended by striking ''JANUARY 1, 2009'' and inserting ''JANUARY 1, 2010''.

(B) The heading for clause (ii) of section 168(k)(2)(B) is amended by striking ''PRE-JANUARY 1, 2009'' and inserting ''PRE-JANUARY 1, 2010''.

(C) Subparagraph (B) of section 168(l)(5) is amended by striking ''January 1, 2009'' and inserting ''January 1, 2010''.

(D) Subparagraph (C) of section 168(n)(2) is amended by striking ''January 1, 2009'' and inserting ''January 1, 2010''.

(E) Subparagraph (B) of section 1400N(d)(3) is amended by striking ''January 1, 2009'' and inserting ''January 1, 2010''.

(3) TECHNICAL AMENDMENT.—Subparagraph (D) of section 168(k)(4) is amended—

(A) by striking ''and'' at the end of clause (i),

(B) by redesignating clause (ii) as clause (iii), and

(C) by inserting after clause (i) the following new clause:

''(ii) 'April 1, 2008' shall be substituted for 'January 1, 2008' in subparagraph (A)(iii)(I) thereof, and''.

(b) EXTENSION OF ELECTION TO ACCELERATE THE AMT AND RESEARCH CREDITS IN LIEU OF BONUS DEPRECIATION.—Section 168(k)(4) (relating to election to accelerate the AMT and research credits in lieu of bonus depreciation) is amended—

(1) by striking ''2009'' and inserting ''2010''in subparagraph (D)(iii) (as redesignated by subsection (a)(3)), and

(2) by adding at the end the following new subparagraph:

"(H) SPECIAL RULES FOR EXTENSION PROPERTY.—

"(i) TAXPAYERS PREVIOUSLY ELECTING ACCELERATION.—In the case of a taxpayer who made the election under subparagraph (A) for its first taxable year ending after March 31, 2008—

"(I) the taxpayer may elect not to have this paragraph apply to extension property, but

"(II) if the taxpayer does not make the election under subclause (I), in applying this paragraph to the taxpayer a separate bonus depreciation amount, maximum amount, and maximum increase amount shall be computed and applied to eligible qualified property which is extension property and to eligible qualified property which is not extension property.

"(ii) TAXPAYERS NOT PREVIOUSLY ELECTING ACCELERATION.—In the case of a taxpayer who did not make the election

under subparagraph (A) for its first taxable year ending after March 31, 2008—

"(I) the taxpayer may elect to have this paragraph apply to its first taxable year ending after December 31, 2008, and each subsequent taxable year, and

"(II) if the taxpayer makes the election under subclause (I), this paragraph shall only apply to eligible qualified property which is extension property.

"(iii) EXTENSION PROPERTY.—For purposes of this subparagraph, the term 'extension property' means property which is eligible qualified property solely by reason of the extension of the application of the special allowance under paragraph (1) pursuant to the amendments made by section 1201(a) of the American Recovery and Reinvestment Tax Act of 2009 (and the application of such extension to this paragraph pursuant to the amendment made by section 1201(b)(1) of such Act).".

1 (c) INCLUSION OF FILMS OR VIDEOTAPE AS QUALI-
2 FIED PROPERTY.—
3 (1) IN GENERAL.—Section 168(k)(2) is amend-
4 ed by adding at the end the following new subpara-
5 graph:
6 ''(H) CERTAIN FILMS.—The term 'quali-
7 fied property' includes property—
8 ''(i) which is a motion picture film or
9 video tape (within the meaning of sub-
10 section (f)(3)) for which a deduction is al-
11 lowable under section 167(a) without re-
12 gard to this section,
13 ''(ii) the original use of which com-
14 mences with the taxpayer after December
15 31, 2008,
16 ''(iii) which is—
17 ''(I) acquired by the taxpayer
18 after December 31, 2008, and before
19 January 1, 2010, but only if no writ-
20 ten binding contract for the acquisi-
21 tion was in effect before January 1,
22 2009, or
23 ''(II) acquired by the taxpayer
24 pursuant to a written binding contract
25 which was entered into after Decem-

ber 31, 2008, and before January 1, 2010,

"(iv) which is placed in service by the taxpayer before January 1, 2010, or, in the case of property described in subparagraph (B), before January 1, 2011, and

"(v) the production of which is a qualified film or television production (as defined in section 181(d) (determined without regard to paragraph (2)(B)(ii) thereof)) with respect to which an election is not in effect under section 181.".

(2) CONFORMING AMENDMENTS.—

(A) Subclause (I) of section 168(k)(2)(B)(i) is amended by inserting "subparagraph (H) or" after "requirements of".

(B) Subclause (II) of section 168(k)(2)(B)(i) is amended by striking "or is transportation property" and inserting ", is transportation property, or is property described in subparagraph (H)".

(C) Clause (iii) of section 168(k)(2)(D) is amended by adding at the end the following new sentence: "For purposes of the preceding sentence, all property described in subpara-

graph (H) shall be treated as one class of property.''.

(D) Subparagraph (E) of section 168(k)(2) is amended by adding at the end the following new clause:

''(v) APPLICATION TO FILM AND VIDEOTAPE PROPERTY.—In the case of property described in subparagraph (H), clauses (i), (ii), (iii), and (iv) of this subparagraph shall be applied—

''(I) by substituting 'December 31, 2008' for 'December 31, 2007' each place it appears, and

''(II) by treating any reference to a clause of subparagraph (A) as a reference to the corresponding clause of subparagraph (H).''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service after December 31, 2008, in taxable years ending after such date.

(2) TECHNICAL AMENDMENT.—The amendments made by subsection (a)(3) shall apply to taxable years ending after March 31, 2008.

SEC. 1202. TEMPORARY INCREASE IN LIMITATIONS ON EXPENSING OF CERTAIN DEPRECIABLE BUSINESS ASSETS.

(a) IN GENERAL.—Paragraph (7) of section 179(b) is amended—

(1) by striking ''2008'' and inserting ''2008, or 2009'', and

(2) by striking ''2008'' in the heading thereof and inserting ''2008, AND 2009''.

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

PART II—5-YEAR CARRYBACK OF OPERATING LOSSES

SEC. 1211. 5-YEAR CARRYBACK OF OPERATING LOSSES.

(a) IN GENERAL.—Subparagraph (H) of section 172(b)(1) is amended to read as follows:

''(H) CARRYBACK FOR 2008 AND 2009 NET OPERATING LOSSES.—

''(i) IN GENERAL.—In the case of an applicable 2008 or 2009 net operating loss with respect to which the taxpayer has

elected the application of this subparagraph—

"(I) subparagraph (A)(i) shall be applied by substituting any whole number elected by the taxpayer which is more than 2 and less than 6 for '2',

"(II) subparagraph (E)(ii) shall be applied by substituting the whole number which is one less than the whole number substituted under subclause (II) for '2', and

"(III) subparagraph (F) shall not apply.

"(ii) APPLICABLE 2008 OR 2009 NET OPERATING LOSS.—For purposes of this subparagraph, the term 'applicable 2008 or 2009 net operating loss' means—

"(I) the taxpayer's net operating loss for any taxable year ending in 2008 or 2009, or

"(II) if the taxpayer elects to have this subclause apply in lieu of subclause (I), the taxpayer's net operating loss for any taxable year beginning in 2008 or 2009.

"(iii) ELECTION.—Any election under this subparagraph shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extension of time) for filing the taxpayer's return for the taxable year of the net operating loss. Any such election, once made, shall be irrevocable.

"(iv) COORDINATION WITH ALTERNATIVE TAX NET OPERATING LOSS DEDUCTION.—In the case of a taxpayer who elects to have clause (ii)(II) apply, section 56(d)(1)(A)(ii) shall be applied by substituting 'ending during 2001 or 2002 or beginning during 2008 or 2009' for 'ending during 2001, 2002, 2008, or 2009'.".

(b) ALTERNATIVE TAX NET OPERATING LOSS DEDUCTION.—Subclause (I) of section 56(d)(1)(A)(ii) is amended to read as follows:

"(I) the amount of such deduction attributable to the sum of carrybacks of net operating losses from taxable years ending during 2001, 2002, 2008, or 2009 and

carryovers of net operating losses to such taxable years, or''.

(c) LOSS FROM OPERATIONS OF LIFE INSURANCE COMPANIES.—Subsection (b) of section 810 is amended by adding at the end the following new paragraph:

''(4) CARRYBACK FOR 2008 AND 2009 LOSSES.—

''(A) IN GENERAL.—In the case of an applicable 2008 or 2009 loss from operations with respect to which the taxpayer has elected the application of this paragraph, paragraph (1)(A) shall be applied, at the election of the taxpayer, by substituting '5' or '4' for '3'.

''(B) APPLICABLE 2008 OR 2009 LOSS FROM OPERATIONS.—For purposes of this paragraph, the term 'applicable 2008 or 2009 loss from operations' means—

''(i) the taxpayer's loss from operations for any taxable year ending in 2008 or 2009, or

''(ii) if the taxpayer elects to have this clause apply in lieu of clause (i), the taxpayer's loss from operations for any taxable year beginning in 2008 or 2009.

''(C) ELECTION.—Any election under this paragraph shall be made in such manner as

may be prescribed by the Secretary, and shall be made by the due date (including extension of time) for filing the taxpayer's return for the taxable year of the loss from operations. Any such election, once made, shall be irrevocable.

"(D) COORDINATION WITH ALTERNATIVE TAX NET OPERATING LOSS DEDUCTION.—In the case of a taxpayer who elects to have subparagraph (B)(ii) apply, section 56(d)(1)(A)(ii) shall be applied by substituting 'ending during 2001 or 2002 or beginning during 2008 or 2009' for 'ending during 2001, 2002, 2008, or 2009'.".

(d) CONFORMING AMENDMENT.—Section 172 is amended by striking subsection (k) and by redesignating subsection (l) as subsection (k).

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to net operating losses arising in taxable years ending after December 31, 2007.

(2) ALTERNATIVE TAX NET OPERATING LOSS DEDUCTION.—The amendment made by subsection (b) shall apply to taxable years ending after 1997.

(3) LOSS FROM OPERATIONS OF LIFE INSURANCE COMPANIES.—The amendment made by subsection (d) shall apply to losses from operations arising in taxable years ending after December 31, 2007.

(4) TRANSITIONAL RULE.—In the case of a net operating loss (or, in the case of a life insurance company, a loss from operations) for a taxable year ending before the date of the enactment of this Act—

(A) any election made under section 172(b)(3) or 810(b)(3) of the Internal Revenue Code of 1986 with respect to such loss may (notwithstanding such section) be revoked before the applicable date,

(B) any election made under section 172(k) or 810(b)(4) of such Code with respect to such loss shall (notwithstanding such section) be treated as timely made if made before the applicable date, and

(C) any application under section 6411(a) of such Code with respect to such loss shall be treated as timely filed if filed before the applicable date.

1 For purposes of this paragraph, the term ''applica-
2 ble date'' means the date which is 60 days after the
3 date of the enactment of this Act.

4 **SEC. 1212. EXCEPTION FOR TARP RECIPIENTS.**

5 The amendments made by this part shall not apply
6 to—

7 (1) any taxpayer if—

8 (A) the Federal Government acquires, at
9 any time, an equity interest in the taxpayer
10 pursuant to the Emergency Economic Stabiliza-
11 tion Act of 2008, or

12 (B) the Federal Government acquires, at
13 any time, any warrant (or other right) to ac-
14 quire any equity interest with respect to the
15 taxpayer pursuant to such Act,

16 (2) the Federal National Mortgage Association
17 and the Federal Home Loan Mortgage Corporation,
18 and

19 (3) any taxpayer which at any time in 2008 or
20 2009 is a member of the same affiliated group (as
21 defined in section 1504 of the Internal Revenue
22 Code of 1986, determined without regard to sub-
23 section (b) thereof) as a taxpayer described in para-
24 graph (1) or (2).

PART III—INCENTIVES FOR NEW JOBS

SEC. 1221. INCENTIVES TO HIRE UNEMPLOYED VETERANS AND DISCONNECTED YOUTH.

(a) IN GENERAL.—Subsection (d) of section 51 is amended by adding at the end the following new paragraph:

"(14) CREDIT ALLOWED FOR UNEMPLOYED VETERANS AND DISCONNECTED YOUTH HIRED IN 2009 OR 2010.—

"(A) IN GENERAL.—Any unemployed veteran or disconnected youth who begins work for the employer during 2009 or 2010 shall be treated as a member of a targeted group for purposes of this subpart.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) UNEMPLOYED VETERAN.—The term 'unemployed veteran' means any veteran (as defined in paragraph (3)(B), determined without regard to clause (ii) thereof) who is certified by the designated local agency as—

"(I) having been discharged or released from active duty in the Armed Forces during 2008, 2009, or 2010, and

"(II) being in receipt of unemployment compensation under State or Federal law for not less than 4 weeks during the 1-year period ending on the hiring date.

"(ii) DISCONNECTED YOUTH.—The term 'disconnected youth' means any individual who is certified by the designated local agency—

"(I) as having attained age 16 but not age 25 on the hiring date,

"(II) as not regularly attending any secondary, technical, or post-secondary school during the 6-month period preceding the hiring date,

"(III) as not regularly employed during such 6-month period, and

"(IV) as not readily employable by reason of lacking a sufficient number of basic skills.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who begin work for the employer after December 31, 2008.

PART IV—CANCELLATION OF INDEBTEDNESS

SEC. 1231. DEFERRAL AND RATABLE INCLUSION OF INCOME ARISING FROM INDEBTEDNESS DISCHARGED BY THE REPURCHASE OF A DEBT INSTRUMENT.

(a) IN GENERAL.—Section 108 (relating to income from discharge of indebtedness) is amended by adding at the end the following new subsection:

"(i) DEFERRAL AND RATABLE INCLUSION OF INCOME ARISING FROM INDEBTEDNESS DISCHARGED BY THE REPURCHASE OF A DEBT INSTRUMENT.—

"(1) IN GENERAL.—Notwithstanding section 61, income from the discharge of indebtedness in connection with the repurchase of a debt instrument after December 31, 2008, and before January 1, 2011, shall be includible in gross income ratably over the 8-taxable-year period beginning with—

"(A) in the case of a repurchase occurring in 2009, the second taxable year following the taxable year in which the repurchase occurs, and

"(B) in the case of a repurchase occurring in 2010, the taxable year following the taxable year in which the repurchase occurs.

"(2) DEBT INSTRUMENT.—For purposes of this subsection, the term 'debt instrument' means a

bond, debenture, note, certificate, or any other instrument or contractual arrangement constituting indebtedness (within the meaning of section 1275(a)(1)).

"(3) REPURCHASE.—For purposes of this subsection, the term 'repurchase' means, with respect to any debt instrument, a cash purchase of the debt instrument by—

"(A) the debtor which issued the debt instrument, or

"(B) any person related to such debtor.

For purposes of subparagraph (B), the determination of whether a person is related to another person shall be made in the same manner as under subsection (e)(4).

"(4) AUTHORITY TO PRESCRIBE REGULATIONS.—The Secretary may prescribe such regulations as may be necessary or appropriate for purposes of applying this subsection.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges in taxable years ending after December 31, 2008.

PART V—QUALIFIED SMALL BUSINESS STOCK

SEC. 1241. SPECIAL RULES APPLICABLE TO QUALIFIED SMALL BUSINESS STOCK FOR 2009 AND 2010.

(a) IN GENERAL.—Section 1202(a) is amended by adding at the end the following new paragraph:

"(3) SPECIAL RULES FOR 2009 AND 2010.—In the case of qualified small business stock acquired after the date of the enactment of this paragraph and before January 1, 2011—

"(A) paragraph (1) shall be applied by substituting '75 percent' for '50 percent', and

"(B) paragraph (2) shall not apply.".

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

PART VI—PARITY FOR TRANSPORTATION FRINGE BENEFITS

SEC. 1251. INCREASED EXCLUSION AMOUNT FOR COMMUTER TRANSIT BENEFITS AND TRANSIT PASSES.

(a) IN GENERAL.—Paragraph (2) of section 132(f) is amended by adding at the end the following flush sentence:

"In the case of any month beginning on or after the date of the enactment of this sentence and before January 1, 2011, subparagraph (A) shall be applied

as if the dollar amount therein were the same as the dollar amount under subparagraph (B) (as in effect for such month).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to months beginning on or after the date of the enactment of this section.

PART VII—S CORPORATIONS

SEC. 1261. TEMPORARY REDUCTION IN RECOGNITION PERIOD FOR BUILT-IN GAINS TAX.

(a) IN GENERAL.—Paragraph (7) of section 1374(d) (relating to definitions and special rules) is amended to read as follows:

''(7) RECOGNITION PERIOD.—

''(A) IN GENERAL.—The term 'recognition period' means the 10-year period beginning with the 1st day of the 1st taxable year for which the corporation was an S corporation.

''(B) SPECIAL RULE FOR 2009 AND 2010.—In the case of any taxable year beginning in 2009 or 2010, no tax shall be imposed on the net unrecognized built-in gain of an S corporation if the 7th taxable year in the recognition period preceded such taxable year. The preceding sentence shall be applied separately with

respect to any asset to which paragraph (8) applies.

"(C) SPECIAL RULE FOR DISTRIBUTIONS TO SHAREHOLDERS.—For purposes of applying this section to any amount includible in income by reason of distributions to shareholders pursuant to section 593(e)—

"(i) subparagraph (A) shall be applied without regard to the phrase '10-year', and

"(ii) subparagraph (B) shall not apply.".

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

PART VIII—BROADBAND INCENTIVES

SEC. 1271. BROADBAND INTERNET ACCESS TAX CREDIT.

(a) IN GENERAL.—Subpart E of part IV of chapter 1 of the Internal Revenue Code of 1986 (relating to rules for computing investment credit), as amended by this Act, is amended by inserting after section 48C the following new section:

"SEC. 48D. BROADBAND INTERNET ACCESS CREDIT.

"(a) GENERAL RULE.—For purposes of section 46, the broadband credit for any taxable year is the sum of—

1 "(1) the current generation broadband credit,
2 plus
3 "(2) the next generation broadband credit.
4 "(b) CURRENT GENERATION BROADBAND CREDIT;
5 NEXT GENERATION BROADBAND CREDIT.—For purposes
6 of this section—
7 "(1) CURRENT GENERATION BROADBAND
8 CREDIT.—The current generation broadband credit
9 for any taxable year is equal to 10 percent (20 per-
10 cent in the case of qualified subscribers which are
11 unserved subscribers) of the qualified broadband ex-
12 penditures incurred with respect to qualified equip-
13 ment providing current generation broadband serv-
14 ices to qualified subscribers and taken into account
15 with respect to such taxable year.
16 "(2) NEXT GENERATION BROADBAND CRED-
17 IT.—The next generation broadband credit for any
18 taxable year is equal to 20 percent of the qualified
19 broadband expenditures incurred with respect to
20 qualified equipment providing next generation
21 broadband services to qualified subscribers and
22 taken into account with respect to such taxable year.
23 "(c) WHEN EXPENDITURES TAKEN INTO AC-
24 COUNT.—For purposes of this section—

1 "(1) IN GENERAL.—Qualified broadband ex-
2 penditures with respect to qualified equipment shall
3 be taken into account with respect to the first tax-
4 able year in which—
5 "(A) current generation broadband services
6 are provided through such equipment to quali-
7 fied subscribers, or
8 "(B) next generation broadband services
9 are provided through such equipment to quali-
10 fied subscribers.
11 "(2) LIMITATION.—
12 "(A) IN GENERAL.—Qualified broadband
13 expenditures shall be taken into account under
14 paragraph (1) only with respect to qualified
15 equipment—
16 "(i) the original use of which com-
17 mences with the taxpayer, and
18 "(ii) which is placed in service, after
19 December 31, 2008, and before January 1,
20 2011.
21 "(B) SALE-LEASEBACKS.—For purposes of
22 subparagraph (A), if property—
23 "(i) is originally placed in service
24 after December 31, 2008, by any person,
25 and

"(ii) sold and leased back by such person within 3 months after the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback referred to in clause (ii).

"(d) SPECIAL ALLOCATION RULES FOR CURRENT GENERATION BROADBAND SERVICES.—For purposes of determining the current generation broadband credit under subsection (a)(1) with respect to qualified equipment through which current generation broadband services are provided, if the qualified equipment is capable of serving both qualified subscribers and other subscribers, the qualified broadband expenditures shall be multiplied by a fraction—

"(1) the numerator of which is the sum of the number of potential qualified subscribers within the rural areas and the underserved areas and the unserved areas which the equipment is capable of serving with current generation broadband services, and

"(2) the denominator of which is the total potential subscriber population of the area which the

1 equipment is capable of serving with current genera-
2 tion broadband services.
3 "(e) DEFINITIONS.—For purposes of this section—
4 "(1) ANTENNA.—The term 'antenna' means
5 any device used to transmit or receive signals
6 through the electromagnetic spectrum, including sat-
7 ellite equipment.
8 "(2) CABLE OPERATOR.—The term 'cable oper-
9 ator' has the meaning given such term by section
10 602(5) of the Communications Act of 1934 (47
11 U.S.C. 522(5)).
12 "(3) COMMERCIAL MOBILE SERVICE CAR-
13 RIER.—The term 'commercial mobile service carrier'
14 means any person authorized to provide commercial
15 mobile radio service as defined in section 20.3 of
16 title 47, Code of Federal Regulations.
17 "(4) CURRENT GENERATION BROADBAND SERV-
18 ICE.—The term 'current generation broadband serv-
19 ice' means the transmission of signals at a rate of
20 at least 5,000,000 bits per second to the subscriber
21 and at least 1,000,000 bits per second from the sub-
22 scriber (at least 3,000,000 bits per second to the
23 subscriber and at least 768,000 bits per second from
24 the subscriber in the case of service through radio
25 transmission of energy).

"(5) MULTIPLEXING OR DEMULTIPLEXING.—The term 'multiplexing' means the transmission of 2 or more signals over a single channel, and the term 'demultiplexing' means the separation of 2 or more signals previously combined by compatible multiplexing equipment.

"(6) NEXT GENERATION BROADBAND SERVICE.—The term 'next generation broadband service' means the transmission of signals at a rate of at least 100,000,000 bits per second to the subscriber (or its equivalent when the data rate is measured before being compressed for transmission) and at least 20,000,000 bits per second from the subscriber (or its equivalent as so measured).

"(7) NONRESIDENTIAL SUBSCRIBER.—The term 'nonresidential subscriber' means any person who purchases broadband services which are delivered to the permanent place of business of such person.

"(8) OPEN VIDEO SYSTEM OPERATOR.—The term 'open video system operator' means any person authorized to provide service under section 653 of the Communications Act of 1934 (47 U.S.C. 573).

"(9) OTHER WIRELESS CARRIER.—The term 'other wireless carrier' means any person (other than

a telecommunications carrier, commercial mobile service carrier, cable operator, open video system operator, or satellite carrier) providing current generation broadband services or next generation broadband service to subscribers through the radio transmission of energy.

"(10) PACKET SWITCHING.—The term 'packet switching' means controlling or routing the path of a digitized transmission signal which is assembled into packets or cells.

"(11) PROVIDER.—The term 'provider' means, with respect to any qualified equipment any—

"(A) cable operator,

"(B) commercial mobile service carrier,

"(C) open video system operator,

"(D) satellite carrier,

"(E) telecommunications carrier, or

"(F) other wireless carrier,

providing current generation broadband services or next generation broadband services to subscribers through such qualified equipment.

"(12) PROVISION OF SERVICES.—A provider shall be treated as providing services to 1 or more subscribers if—

"(A) such a subscriber has been passed by the provider's equipment and can be connected to such equipment for a standard connection fee,

"(B) the provider is physically able to deliver current generation broadband services or next generation broadband services, as applicable, to such a subscriber without making more than an insignificant investment with respect to such subscriber,

"(C) the provider has made reasonable efforts to make such subscribers aware of the availability of such services,

"(D) such services have been purchased by 1 or more such subscribers, and

"(E) such services are made available to such subscribers at average prices comparable to those at which the provider makes available similar services in any areas in which the provider makes available such services.

"(13) QUALIFIED EQUIPMENT.—

"(A) IN GENERAL.—The term 'qualified equipment' means property with respect to which depreciation (or amortization in lieu of depreciation) is allowable and which provides

current generation broadband services or next generation broadband services—

"(i) at least a majority of the time during periods of maximum demand to each subscriber who is utilizing such services, and

"(ii) in a manner substantially the same as such services are provided by the provider to subscribers through equipment with respect to which no credit is allowed under subsection (a)(1).

"(B) ONLY CERTAIN INVESTMENT TAKEN INTO ACCOUNT.—Except as provided in subparagraph (C) or (D), equipment shall be taken into account under subparagraph (A) only to the extent it—

"(i) extends from the last point of switching to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a telecommunications carrier or broadband-over-powerline operator,

"(ii) extends from the customer side of the mobile telephone switching office to a transmission/receive antenna (including

such antenna) owned or leased by a subscriber in the case of a commercial mobile service carrier,

"(iii) extends from the customer side of the headend to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a cable operator or open video system operator, or

"(iv) extends from a transmission/receive antenna (including such antenna) which transmits and receives signals to or from multiple subscribers, to a transmission/receive antenna (including such antenna) on the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a satellite carrier or other wireless carrier, unless such other wireless carrier is also a telecommunications carrier.

"(C) PACKET SWITCHING EQUIPMENT.—Packet switching equipment, regardless of location, shall be taken into account under subparagraph (A) only if it is deployed in connection with equipment described in subparagraph (B)

and is uniquely designed to perform the function of packet switching for current generation broadband services or next generation broadband services, but only if such packet switching is the last in a series of such functions performed in the transmission of a signal to a subscriber or the first in a series of such functions performed in the transmission of a signal from a subscriber.

"(D) MULTIPLEXING AND DEMULTIPLEXING EQUIPMENT.—Multiplexing and demultiplexing equipment shall be taken into account under subparagraph (A) only to the extent it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of multiplexing and demultiplexing packets or cells of data and making associated application adaptions, but only if such multiplexing or demultiplexing equipment is located between packet switching equipment described in subparagraph (C) and the subscriber's premises.

"(14) QUALIFIED BROADBAND EXPENDITURE.—

"(A) IN GENERAL.—The term 'qualified broadband expenditure' means any amount—

"(i) chargeable to capital account with respect to the purchase and installation of qualified equipment (including any upgrades thereto) for which depreciation is allowable under section 168, and

"(ii) incurred after December 31, 2008, and before January 1, 2011.

"(B) CERTAIN SATELLITE EXPENDITURES EXCLUDED.—Such term shall not include any expenditure with respect to the launching of any satellite equipment.

"(C) LEASED EQUIPMENT.—Such term shall include so much of the purchase price paid by the lessor of equipment subject to a lease described in subsection (c)(2)(B) as is attributable to expenditures incurred by the lessee which would otherwise be described in subparagraph (A).

"(15) QUALIFIED SUBSCRIBER.—The term 'qualified subscriber' means—

"(A) with respect to the provision of current generation broadband services—

"(i) any nonresidential subscriber maintaining a permanent place of business in a rural area, an underserved area, or an unserved area, or

"(ii) any residential subscriber residing in a dwelling located in a rural area, an underserved area, or an unserved area which is not a saturated market, and

"(B) with respect to the provision of next generation broadband services—

"(i) any nonresidential subscriber maintaining a permanent place of business in a rural area, an underserved area, or an unserved area , or

"(ii) any residential subscriber.

"(16) RESIDENTIAL SUBSCRIBER.—The term 'residential subscriber' means any individual who purchases broadband services which are delivered to such individual's dwelling.

"(17) RURAL AREA.—The term 'rural area' means any census tract which—

"(A) is not within 10 miles of any incorporated or census designated place containing more than 25,000 people, and

"(B) is not within a county or county equivalent which has an overall population density of more than 500 people per square mile of land.

"(18) RURAL SUBSCRIBER.—The term 'rural subscriber' means any residential subscriber residing in a dwelling located in a rural area or nonresidential subscriber maintaining a permanent place of business located in a rural area.

"(19) SATELLITE CARRIER.—The term 'satellite carrier' means any person using the facilities of a satellite or satellite service licensed by the Federal Communications Commission and operating in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of such Code to establish and operate a channel of communications for distribution of signals, and owning or leasing a capacity or service on a satellite in order to provide such point-to-multipoint distribution.

"(20) SATURATED MARKET.—The term 'saturated market' means any census tract in which, as of the date of the enactment of this section—

"(A) current generation broadband services have been provided by a single provider to 85 percent or more of the total number of potential residential subscribers residing in dwellings located within such census tract, and

"(B) such services can be utilized—

"(i) at least a majority of the time during periods of maximum demand by each such subscriber who is utilizing such services, and

"(ii) in a manner substantially the same as such services are provided by the provider to subscribers through equipment with respect to which no credit is allowed under subsection (a)(1).

"(21) SUBSCRIBER.—The term 'subscriber' means any person who purchases current generation broadband services or next generation broadband services.

"(22) TELECOMMUNICATIONS CARRIER.—The term 'telecommunications carrier' has the meaning given such term by section 3(44) of the Communications Act of 1934 (47 U.S.C. 153(44)), but—

"(A) includes all members of an affiliated group of which a telecommunications carrier is a member, and

"(B) does not include any commercial mobile service carrier.

"(23) TOTAL POTENTIAL SUBSCRIBER POPULATION.—The term 'total potential subscriber population' means, with respect to any area and based on the most recent census data, the total number of potential residential subscribers residing in dwellings located in such area and potential nonresidential subscribers maintaining permanent places of business located in such area.

"(24) UNDERSERVED AREA.—The term 'underserved area' means any census tract which is located in—

"(A) an empowerment zone or enterprise community designated under section 1391,

"(B) the District of Columbia Enterprise Zone established under section 1400,

"(C) a renewal community designated under section 1400E, or

"(D) a low-income community designated under section 45D.

1 "(25) UNDERSERVED SUBSCRIBER.—The term
2 'underserved subscriber' means any residential sub-
3 scriber residing in a dwelling located in an under-
4 served area or nonresidential subscriber maintaining
5 a permanent place of business located in an under-
6 served area.
7 "(26) UNSERVED AREA.—The term 'unserved
8 area' means any census tract in which no current
9 generation broadband services are provided, as cer-
10 tified by the State in which such tract is located not
11 later than September 30, 2009.
12 "(27) UNSERVED SUBSCRIBER.—The term
13 'unserved subscriber' means any residential sub-
14 scriber residing in a dwelling located in an unserved
15 area or nonresidential subscriber maintaining a per-
16 manent place of business located in an unserved
17 area.".
18 (b) CREDIT TO BE PART OF INVESTMENT CREDIT.—
19 Section 46 (relating to the amount of investment credit),
20 as amended by this Act, is amended by striking "and"
21 at the end of paragraph (4), by striking the period at the
22 end of paragraph (5) and inserting ", and", and by adding
23 at the end the following:
24 "(6) the broadband Internet access credit."

(c) SPECIAL RULE FOR MUTUAL OR COOPERATIVE TELEPHONE COMPANIES.—Section 501(c)(12)(B) (relating to list of exempt organizations) is amended by striking ''or'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', or'', and by adding at the end the following new clause:

''(v) from the sale of property subject to a lease described in section 48D(c)(2)(B), but only to the extent such income does not in any year exceed an amount equal to the credit for qualified broadband expenditures which would be determined under section 48D for such year if the mutual or cooperative telephone company was not exempt from taxation and was treated as the owner of the property subject to such lease.''.

(d) CONFORMING AMENDMENTS.—

(1) Section 49(a)(1)(C), as amended by this Act, is amended by striking ''and'' at the end of clause (iv), by striking the period at the end of clause (v) and inserting '', and'', and by adding after clause (v) the following new clause:

''(vi) the portion of the basis of any qualified equipment attributable to quali-

fied broadband expenditures under section 48D.''.

(2) The table of sections for subpart E of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 48C the following:

''Sec. 48D. Broadband internet access credit''.

(e) DESIGNATION OF CENSUS TRACTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall, not later than 90 days after the date of the enactment of this Act, designate and publish those census tracts meeting the criteria described in paragraphs (17), (23), (24), and (26) of section 48D(e) of the Internal Revenue Code of 1986 (as added by this section). In making such designations, the Secretary of the Treasury shall consult with such other departments and agencies as the Secretary determines appropriate.

(2) SATURATED MARKET.—

(A) IN GENERAL.—For purposes of designating and publishing those census tracts meeting the criteria described in subsection (e)(20) of such section 48D—

(i) the Secretary of the Treasury shall prescribe not later than 30 days after the date of the enactment of this Act the form

upon which any provider which takes the position that it meets such criteria with respect to any census tract shall submit a list of such census tracts (and any other information required by the Secretary) not later than 60 days after the date of the publication of such form, and

(ii) the Secretary of the Treasury shall publish an aggregate list of such census tracts submitted and the applicable providers not later than 30 days after the last date such submissions are allowed under clause (i).

(B) NO SUBSEQUENT LISTS REQUIRED.—The Secretary of the Treasury shall not be required to publish any list of census tracts meeting such criteria subsequent to the list described in subparagraph (A)(ii).

(C) AUTHORITY TO DISREGARD FALSE SUBMISSIONS.—In addition to imposing any other applicable penalties, the Secretary of the Treasury shall have the discretion to disregard any form described in subparagraph (A)(i) on which a provider knowingly submitted false information.

1 (f) OTHER REGULATORY MATTERS.—

2 (1) PROHIBITION.—No Federal or State agency
3 or instrumentality shall adopt regulations or rate-
4 making procedures that would have the effect of
5 eliminating or reducing any credit or portion thereof
6 allowed under section 48D of the Internal Revenue
7 Code of 1986 (as added by this section) or otherwise
8 subverting the purpose of this section.

9 (2) TREASURY REGULATORY AUTHORITY.—It is
10 the intent of Congress in providing the broadband
11 Internet access credit under section 48D of the In-
12 ternal Revenue Code of 1986 (as added by this sec-
13 tion) to provide incentives for the purchase, installa-
14 tion, and connection of equipment and facilities of-
15 fering expanded broadband access to the Internet for
16 users in certain low income and rural areas of the
17 United States, as well as to residential users nation-
18 wide, in a manner that maintains competitive neu-
19 trality among the various classes of providers of
20 broadband services. Accordingly, the Secretary of
21 the Treasury shall prescribe such regulations as may
22 be necessary or appropriate to carry out the pur-
23 poses of section 48D of such Code, including—

24 (A) regulations to determine how and when
25 a taxpayer that incurs qualified broadband ex-

penditures satisfies the requirements of section 48D of such Code to provide broadband services, and

(B) regulations describing the information, records, and data taxpayers are required to provide the Secretary to substantiate compliance with the requirements of section 48D of such Code.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures incurred after December 31, 2008.

PART IX—CLARIFICATION OF REGULATIONS RELATED TO LIMITATIONS ON CERTAIN BUILT-IN LOSSES FOLLOWING AN OWNERSHIP CHANGE

SEC. 1281. CLARIFICATION OF REGULATIONS RELATED TO LIMITATIONS ON CERTAIN BUILT-IN LOSSES FOLLOWING AN OWNERSHIP CHANGE.

(a) FINDINGS.—Congress finds as follows:

(1) The delegation of authority to the Secretary of the Treasury under section 382(m) of the Internal Revenue Code of 1986 does not authorize the Secretary to provide exemptions or special rules that are restricted to particular industries or classes of taxpayers.

(2) Internal Revenue Service Notice 2008–83 is inconsistent with the congressional intent in enacting such section 382(m).

(3) The legal authority to prescribe Internal Revenue Service Notice 2008–83 is doubtful.

(4) However, as taxpayers should generally be able to rely on guidance issued by the Secretary of the Treasury legislation is necessary to clarify the force and effect of Internal Revenue Service Notice 2008–83 and restore the proper application under the Internal Revenue Code of 1986 of the limitation on built-in losses following an ownership change of a bank.

(b) DETERMINATION OF FORCE AND EFFECT OF INTERNAL REVENUE SERVICE NOTICE 2008–83 EXEMPTING BANKS FROM LIMITATION ON CERTAIN BUILT–IN LOSSES FOLLOWING OWNERSHIP CHANGE.—

(1) IN GENERAL.—Internal Revenue Service Notice 2008–83—

(A) shall be deemed to have the force and effect of law with respect to any ownership change (as defined in section 382(g) of the Internal Revenue Code of 1986) occurring on or before January 16, 2009, and

(B) shall have no force or effect with respect to any ownership change after such date.

(2) BINDING CONTRACTS.—Notwithstanding paragraph (1), Internal Revenue Service Notice 2008–83 shall have the force and effect of law with respect to any ownership change (as so defined) which occurs after January 16, 2009, if such change—

(A) is pursuant to a written binding contract entered into on or before such date, or

(B) is pursuant to a written agreement entered into on or before such date and such agreement was described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required by reason of such ownership change.

Subtitle D—Manufacturing Recovery Provisions

SEC. 1301. TEMPORARY EXPANSION OF AVAILABILITY OF INDUSTRIAL DEVELOPMENT BONDS TO FACILITIES MANUFACTURING INTANGIBLE PROPERTY.

(a) IN GENERAL.—Subparagraph (C) of section 144(a)(12) is amended—

(1) by striking ''For purposes of this paragraph, the term'' and inserting ''For purposes of this paragraph—

''(i) IN GENERAL.—The term'', and

(2) by striking the last sentence and inserting the following new clauses:

''(ii) CERTAIN FACILITIES INCLUDED.—Such term includes facilities which are directly related and ancillary to a manufacturing facility (determined without regard to this clause) if—

''(I) such facilities are located on the same site as the manufacturing facility, and

''(II) not more than 25 percent of the net proceeds of the issue are used to provide such facilities.

''(iii) SPECIAL RULES FOR BONDS ISSUED IN 2009 AND 2010.—In the case of any issue made after the date of enactment of this clause and before January 1, 2011, clause (ii) shall not apply and the net proceeds from a bond shall be considered to be used to provide a manufacturing facility if such proceeds are used to provide—

"(I) a facility which is used in the creation or production of intangible property which is described in section 197(d)(1)(C)(iii), or

"(II) a facility which is functionally related and subordinate to a manufacturing facility (determined without regard to this subclause) if such facility is located on the same site as the manufacturing facility.".

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

SEC. 1302. CREDIT FOR INVESTMENT IN ADVANCED ENERGY FACILITIES.

(a) IN GENERAL.—Section 46 (relating to amount of credit) is amended by striking "and" at the end of paragraph (3), by striking the period at the end of paragraph (4), and by adding at the end the following new paragraph:

"(5) the qualifying advanced energy project credit.".

(b) AMOUNT OF CREDIT.—Subpart E of part IV of subchapter A of chapter 1 (relating to rules for computing

1 investment credit) is amended by inserting after section
2 48B the following new section:

3 **"SEC. 48C. QUALIFYING ADVANCED ENERGY PROJECT**
4 **CREDIT.**

5 "(a) IN GENERAL.—For purposes of section 46, the
6 qualifying advanced energy project credit for any taxable
7 year is an amount equal to 30 percent of the qualified
8 investment for such taxable year with respect to any quali-
9 fying advanced energy project of the taxpayer.

10 "(b) QUALIFIED INVESTMENT.—

11 "(1) IN GENERAL.—For purposes of subsection
12 (a), the qualified investment for any taxable year is
13 the basis of eligible property placed in service by the
14 taxpayer during such taxable year which is part of
15 a qualifying advanced energy project—

16 "(A)(i) the construction, reconstruction, or
17 erection of which is completed by the taxpayer
18 after October 31, 2008, or

19 "(ii) which is acquired by the taxpayer if
20 the original use of such eligible property com-
21 mences with the taxpayer after October 31,
22 2008, and

23 "(B) with respect to which depreciation (or
24 amortization in lieu of depreciation) is allow-
25 able.

1 "(2) SPECIAL RULE FOR CERTAIN SUBSIDIZED
2 PROPERTY.—Rules similar to section 48(a)(4) (with-
3 out regard to subparagraph (D) thereof) shall apply
4 for purposes of this section.
5 "(3) CERTAIN QUALIFIED PROGRESS EXPENDI-
6 TURES RULES MADE APPLICABLE.—Rules similar to
7 the rules of subsections (c)(4) and (d) of section 46
8 (as in effect on the day before the enactment of the
9 Revenue Reconciliation Act of 1990) shall apply for
10 purposes of this section.
11 "(4) LIMITATION.—The amount which is treat-
12 ed for all taxable years with respect to any quali-
13 fying advanced energy project shall not exceed the
14 amount designated by the Secretary as eligible for
15 the credit under this section.
16 "(c) DEFINITIONS.—
17 "(1) QUALIFYING ADVANCED ENERGY
18 PROJECT.—
19 "(A) IN GENERAL.—The term 'qualifying
20 advanced energy project' means a project—
21 "(i) which re-equips, expands, or es-
22 tablishes a manufacturing facility for the
23 production of property which is—
24 "(I) designed to be used to
25 produce energy from the sun, wind,

geothermal deposits (within the meaning of section 613(e)(2)), or other renewable resources,

"(II) designed to manufacture fuel cells, microturbines, or an energy storage system for use with electric or hybrid-electric motor vehicles,

"(III) designed to manufacture electric grids to support the transmission of intermittent sources of renewable energy,

"(IV) designed to capture and sequester carbon dioxide emissions, or

"(V) designed to refine or blend renewable fuels or to produce energy conservation technologies (including energy-conserving lighting technologies and smart grid technologies), and

"(ii) any portion of the qualified investment of which is certified by the Secretary under subsection (d) as eligible for a credit under this section.

"(B) EXCEPTION.—Such term shall not include any portion of a project for the produc-

tion of any property which is used in the refining or blending of any transportation fuel (other than renewable fuels).

"(2) ELIGIBLE PROPERTY.—The term 'eligible property' means any property which is part of a qualifying advanced energy project and is necessary for the production of property described in paragraph (1)(A)(i).

"(d) QUALIFYING ADVANCED ENERGY PROJECT PROGRAM.—

"(1) ESTABLISHMENT.—

"(A) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with the Secretary of Energy, shall establish a qualifying advanced energy project program to consider and award certifications for qualified investments eligible for credits under this section to qualifying advanced energy project sponsors.

"(B) LIMITATION.—The total amount of credits that may be allocated under the program shall not exceed $2,000,000,000.

"(2) CERTIFICATION.—

"(A) APPLICATION PERIOD.—Each applicant for certification under this paragraph shall

1 submit an application containing such informa-
2 tion as the Secretary may require during the 3-
3 year period beginning on the date the Secretary
4 establishes the program under paragraph (1).

5 "(B) TIME TO MEET CRITERIA FOR CER-
6 TIFICATION.—Each applicant for certification
7 shall have 2 years from the date of acceptance
8 by the Secretary of the application during
9 which to provide to the Secretary evidence that
10 the requirements of the certification have been
11 met.

12 "(C) PERIOD OF ISSUANCE.—An applicant
13 which receives a certification shall have 5 years
14 from the date of issuance of the certification in
15 order to place the project in service and if such
16 project is not placed in service by that time pe-
17 riod then the certification shall no longer be
18 valid.

19 "(3) SELECTION CRITERIA.—In determining
20 which qualifying advanced energy projects to certify
21 under this section, the Secretary shall take into con-
22 sideration only those projects where there is a rea-
23 sonable expectation of commercial viability.

24 "(4) REVIEW AND REDISTRIBUTION.—

"(A) REVIEW.—Not later than 6 years after the date of enactment of this section, the Secretary shall review the credits allocated under this section as of the date which is 6 years after the date of enactment of this section.

"(B) REDISTRIBUTION.—The Secretary may reallocate credits awarded under this section if the Secretary determines that—

"(i) there is an insufficient quantity of qualifying applications for certification pending at the time of the review, or

"(ii) any certification made pursuant to paragraph (2) has been revoked pursuant to paragraph (2)(B) because the project subject to the certification has been delayed as a result of third party opposition or litigation to the proposed project.

"(C) REALLOCATION.—If the Secretary determines that credits under this section are available for reallocation pursuant to the requirements set forth in paragraph (2), the Secretary is authorized to conduct an additional program for applications for certification.

"(5) DISCLOSURE OF ALLOCATIONS.—The Secretary shall, upon making a certification under this subsection, publicly disclose the identity of the applicant and the amount of the credit with respect to such applicant.

"(e) DENIAL OF DOUBLE BENEFIT.—A credit shall not be allowed under this section for any qualified investment for which a credit is allowed under section 48, 48A, or 48B.".

(c) CONFORMING AMENDMENTS.—

(1) Section 49(a)(1)(C) is amended by striking "and" at the end of clause (iii), by striking the period at the end of clause (iv) and inserting ", and", and by adding after clause (iv) the following new clause:

"(v) the basis of any property which is part of a qualifying advanced energy project under section 48C.".

(2) The table of sections for subpart E of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 48B the following new item:

"48C. Qualifying advanced energy project credit.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to periods after the date of the enactment of this Act, under rules similar to the rules of

section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

Subtitle E—Economic Recovery Tools

SEC. 1401. RECOVERY ZONE BONDS.

(a) IN GENERAL.—Subchapter Y of chapter 1 is amended by adding at the end the following new part:

"PART III—RECOVERY ZONE BONDS

"Sec. 1400U–1. Allocation of recovery zone bonds.
"Sec. 1400U–2. Recovery zone economic development bonds.
"Sec. 1400U–3. Recovery zone facility bonds.

"SEC. 1400U–1. ALLOCATION OF RECOVERY ZONE BONDS.

"(a) ALLOCATIONS.—

"(1) IN GENERAL.—The Secretary shall allocate the national recovery zone economic development bond limitation and the national recovery zone facility bond limitation among the States—

"(A) by allocating 1 percent of each such limitation to each State, and

"(B) by allocating the remainder of each such limitation among the States in the proportion that each State's 2008 State employment decline bears to the aggregate of the 2008 State employment declines for all of the States.

"(2) 2008 STATE EMPLOYMENT DECLINE.—For purposes of this subsection, the term '2008 State

employment decline' means, with respect to any State, the excess (if any) of—

"(A) the number of individuals employed in such State determined for December 2007, over

"(B) the number of individuals employed in such State determined for December 2008.

"(3) ALLOCATIONS BY STATES.—

"(A) IN GENERAL.—Each State with respect to which an allocation is made under paragraph (1) shall reallocate such allocation among the counties and large municipalities in such State in the proportion the each such county's or municipality's 2008 employment decline bears to the aggregate of the 2008 employment declines for all the counties and municipalities in such State.

"(B) LARGE MUNICIPALITIES.—For purposes of subparagraph (A), the term 'large municipality' means a municipality with a population of more than 100,000.

"(C) DETERMINATION OF LOCAL EMPLOYMENT DECLINES.—For purposes of this paragraph, the employment decline of any municipality or county shall be determined in the

same manner as determining the State employment decline under paragraph (2), except that in the case of a municipality any portion of which is in a county, such portion shall be treated as part of such municipality and not part of such county.

"(4) NATIONAL LIMITATIONS.—

"(A) RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS.—There is a national recovery zone economic development bond limitation of $10,000,000,000.

"(B) RECOVERY ZONE FACILITY BONDS.—There is a national recovery zone facility bond limitation of $15,000,000,000.

"(b) RECOVERY ZONE.—For purposes of this part, the term 'recovery zone' means—

"(1) any area designated by the issuer as having significant poverty, unemployment, rate of home foreclosures, or general distress, and

"(2) any area for which a designation as an empowerment zone or renewal community is in effect.

"SEC. 1400U–2. RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS.

"(a) IN GENERAL.—In the case of a recovery zone economic development bond—

"(1) such bond shall be treated as a qualified bond for purposes of section 6431, and

"(2) subsection (b) of such section shall be applied by substituting '40 percent' for '35 percent'.

"(b) RECOVERY ZONE ECONOMIC DEVELOPMENT BOND.—

"(1) IN GENERAL.—For purposes of this section, the term 'recovery zone economic development bond' means any build America bond (as defined in section 54AA(d)) issued before January 1, 2011, as part of issue if—

"(A) 100 percent of the available project proceeds (as defined in section 54A) of such issue are to be used for one or more qualified economic development purposes, and

"(B) the issuer designates such bond for purposes of this section.

"(2) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds which may be designated by any issuer under paragraph (1) shall not exceed the amount of the recovery zone economic development bond limitation allocated to such issuer under section 1400U–1.

"(c) QUALIFIED ECONOMIC DEVELOPMENT PURPOSE.—For purposes of this section, the term 'qualified

economic development purpose' means expenditures for purposes of promoting development or other economic activity in a recovery zone, including—

"(1) capital expenditures paid or incurred with respect to property located in such zone,

"(2) expenditures for public infrastructure and construction of public facilities, and

"(3) expenditures for job training and educational programs.

"SEC. 1400U–3. RECOVERY ZONE FACILITY BONDS.

"(a) IN GENERAL.—For purposes of part IV of subchapter B (relating to tax exemption requirements for State and local bonds), the term 'exempt facility bond' includes any recovery zone facility bond.

"(b) RECOVERY ZONE FACILITY BOND.—

"(1) IN GENERAL.—For purposes of this section, the term 'recovery zone facility bond' means any bond issued as part of an issue if—

"(A) 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of such issue are to be used for recovery zone property,

"(B) such bond is issued before January 1, 2011, and

"(C) the issuer designates such bond for purposes of this section.

1 "(2) LIMITATION ON AMOUNT OF BONDS DES-
2 IGNATED.—The maximum aggregate face amount of
3 bonds which may be designated by any issuer under
4 paragraph (1) shall not exceed the amount of recov-
5 ery zone facility bond limitation allocated to such
6 issuer under section 1400U–1.
7 "(c) RECOVERY ZONE PROPERTY.—For purposes of
8 this section—
9 "(1) IN GENERAL.—The term 'recovery zone
10 property' means any property to which section 168
11 applies (or would apply but for section 179) if—
12 "(A) such property was acquired by the
13 taxpayer by purchase (as defined in section
14 179(d)(2)) after the date on which the designa-
15 tion of the recovery zone took effect,
16 "(B) the original use of which in the recov-
17 ery zone commences with the taxpayer, and
18 "(C) substantially all of the use of which
19 is in the recovery zone and is in the active con-
20 duct of a qualified business by the taxpayer in
21 such zone.
22 "(2) QUALIFIED BUSINESS.—The term 'quali-
23 fied business' means any trade or business except
24 that—

"(A) the rental to others of real property located in a recovery zone shall be treated as a qualified business only if the property is not residential rental property (as defined in section 168(e)(2)), and

"(B) such term shall not include any trade or business consisting of the operation of any facility described in section 144(c)(6)(B).

"(3) SPECIAL RULES FOR SUBSTANTIAL RENOVATIONS AND SALE-LEASEBACK.—Rules similar to the rules of subsections (a)(2) and (b) of section 1397D shall apply for purposes of this subsection.

"(d) NONAPPLICATION OF CERTAIN RULES.—Sections 146 (relating to volume cap) and 147(d) (relating to acquisition of existing property not permitted) shall not apply to any recovery zone facility bond.".

(b) CLERICAL AMENDMENT.—The table of parts for subchapter Y of chapter 1 of such Code is amended by adding at the end the following new item:

"PART III. RECOVERY ZONE BONDS.".

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

SEC. 1402. TRIBAL ECONOMIC DEVELOPMENT BONDS.

(a) IN GENERAL.—Section 7871 is amended by adding at the end the following new subsection:

1 "(f) TRIBAL ECONOMIC DEVELOPMENT BONDS.—

2 "(1) ALLOCATION OF LIMITATION.—

3 "(A) IN GENERAL.—The Secretary shall
4 allocate the national tribal economic develop-
5 ment bond limitation among the Indian tribal
6 governments in such manner as the Secretary,
7 in consultation with the Secretary of the Inte-
8 rior, determines appropriate.

9 "(B) NATIONAL LIMITATION.—There is a
10 national tribal economic development bond limi-
11 tation of $2,000,000,000.

12 "(2) BONDS TREATED AS EXEMPT FROM
13 TAX.—In the case of a tribal economic development
14 bond—

15 "(A) notwithstanding subsection (c), such
16 bond shall be treated for purposes of this title
17 in the same manner as if such bond were issued
18 by a State,

19 "(B) the Indian tribal government issuing
20 such bond and any instrumentality of such In-
21 dian tribal government shall be treated as a
22 State for purposes of section 141, and

23 "(C) section 146 shall not apply.

24 "(3) TRIBAL ECONOMIC DEVELOPMENT
25 BOND.—

"(A) IN GENERAL.—For purposes of this section, the term 'tribal economic development bond' means any bond issued by an Indian tribal government—

"(i) the interest on which would be exempt from tax under section 103 if issued by a State or local government, and

"(ii) which is designated by the Indian tribal government as a tribal economic development bond for purposes of this subsection.

"(B) EXCEPTIONS.—The term tribal economic development bond shall not include any bond issued as part of an issue if any portion of the proceeds of such issue are used to finance—

"(i) any portion of a building in which class II or class III gaming (as defined in section 4 of the Indian Gaming Regulatory Act) is conducted or housed or any other property actually used in the conduct of such gaming, or

"(ii) any facility located outside the Indian reservation (as defined in section 168(j)(6)).

"(C) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds which may be designated by any Indian tribal government under subparagraph (A) shall not exceed the amount of national tribal economic development bond limitation allocated to such government under paragraph (1).".

(b) STUDY.—The Secretary of the Treasury, or the Secretary's delegate, shall conduct a study of the effects of the amendment made by subsection (a). Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury, or the Secretary's delegate, shall report to Congress on the results of the study conducted under this paragraph, including the Secretary's recommendations regarding such amendment.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to obligations issued after the date of the enactment of this Act.

SEC. 1403. MODIFICATIONS TO NEW MARKETS TAX CREDIT.

(a) INCREASE IN NATIONAL LIMITATION.—

(1) IN GENERAL.—Section 45D(f)(1) is amended—

(A) by striking "and" at the end of subparagraph (C),

(B) by striking ", 2007, 2008, and 2009." in subparagraph (D), and inserting "and 2007,", and

(C) by adding at the end the following new subparagraphs:

"(E) $5,000,000,000 for 2008, and

"(F) $5,000,000,000 for 2009.".

(2) SPECIAL RULE FOR ALLOCATION OF INCREASED 2008 LIMITATION.—The amount of the increase in the new markets tax credit limitation for calendar year 2008 by reason of the amendments made by subsection (a) shall be allocated in accordance with section 45D(f)(2) of the Internal Revenue Code of 1986 to qualified community development entities (as defined in section 45D(c) of such Code) which—

(A) submitted an allocation application with respect to calendar year 2008, and

(B)(i) did not receive an allocation for such calendar year, or

(ii) received an allocation for such calendar year in an amount less than the amount requested in the allocation application.

(b) ALTERNATIVE MINIMUM TAX RELIEF.—

(1) IN GENERAL.—Section 38(c)(4)(B) is amended by redesignating clauses (v) through (viii) as clauses (vi) through (ix), respectively, and by inserting after clause (iv) the following new clause:

"(v) the credit determined under section 45D to the extent that such credit is attributable to a qualified equity investment which is designated as such under section 45D(b)(1)(C) pursuant to an allocation of the new markets tax credit limitation for calendar year 2009,".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to credits determined under section 45D of the Internal Revenue Code of 1986 in taxable years ending after the date of the enactment of this Act, and to carrybacks of such credits.

Subtitle F—Infrastructure Financing Tools

PART I—IMPROVED MARKETABILITY FOR TAX-EXEMPT BONDS

SEC. 1501. DE MINIMIS SAFE HARBOR EXCEPTION FOR TAX-EXEMPT INTEREST EXPENSE OF FINANCIAL INSTITUTIONS.

(a) IN GENERAL.—Subsection (b) of section 265 is amended by adding at the end the following new paragraph:

"(7) DE MINIMIS EXCEPTION FOR BONDS ISSUED DURING 2009 OR 2010.—

"(A) IN GENERAL.—In applying paragraph (2)(A), there shall not be taken into account tax-exempt obligations issued during 2009 or 2010.

"(B) LIMITATION.—The amount of tax-exempt obligations not taken into account by reason of subparagraph (A) shall not exceed 2 percent of the amount determined under paragraph (2)(B).

"(C) REFUNDINGS.—For purposes of this paragraph, a refunding bond (whether a current or advance refunding) shall be treated as issued on the date of the issuance of the refunded

bond (or in the case of a series of refundings, the original bond).''.

(b) TREATMENT AS FINANCIAL INSTITUTION PREFERENCE ITEM.—Clause (iv) of section 291(e)(1)(B) is amended by adding at the end the following: ''That portion of any obligation not taken into account under paragraph (2)(A) of section 265(b) by reason of paragraph (7) of such section shall be treated for purposes of this section as having been acquired on August 7, 1986.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after December 31, 2008.

SEC. 1502. MODIFICATION OF SMALL ISSUER EXCEPTION TO TAX-EXEMPT INTEREST EXPENSE ALLOCATION RULES FOR FINANCIAL INSTITUTIONS.

(a) IN GENERAL.—Paragraph (3) of section 265(b) (relating to exception for certain tax-exempt obligations) is amended by adding at the end the following new subparagraph:

''(G) SPECIAL RULES FOR OBLIGATIONS ISSUED DURING 2009 AND 2010.—

''(i) INCREASE IN LIMITATION.—In the case of obligations issued during 2009 or 2010, subparagraphs (C)(i), (D)(i), and

(D)(iii)(II) shall each be applied by substituting '$30,000,000' for '$10,000,000'.

''(ii) QUALIFIED 501(c)(3) BONDS TREATED AS ISSUED BY EXEMPT ORGANIZATION.—In the case of a qualified 501(c)(3) bond (as defined in section 145) issued during 2009 or 2010, this paragraph shall be applied by treating the 501(c)(3) organization for whose benefit such bond was issued as the issuer.

''(iii) SPECIAL RULE FOR QUALIFIED FINANCINGS.—In the case of a qualified financing issue issued during 2009 or 2010—

''(I) subparagraph (F) shall not apply, and

''(II) any obligation issued as a part of such issue shall be treated as a qualified tax-exempt obligation if the requirements of this paragraph are met with respect to each qualified portion of the issue (determined by treating each qualified portion as a separate issue which is issued by the

qualified borrower with respect to which such portion relates).

"(iv) QUALIFIED FINANCING ISSUE.—For purposes of this subparagraph, the term 'qualified financing issue' means any composite, pooled, or other conduit financing issue the proceeds of which are used directly or indirectly to make or finance loans to 1 or more ultimate borrowers each of whom is a qualified borrower.

"(v) QUALIFIED PORTION.—For purposes of this subparagraph, the term 'qualified portion' means that portion of the proceeds which are used with respect to each qualified borrower under the issue.

"(vi) QUALIFIED BORROWER.—For purposes of this subparagraph, the term 'qualified borrower' means a borrower which is a State or political subdivision thereof or an organization described in section 501(c)(3) and exempt from taxation under section 501(a).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to obligations issued after December 31, 2008.

SEC. 1503. TEMPORARY MODIFICATION OF ALTERNATIVE MINIMUM TAX LIMITATIONS ON TAX-EXEMPT BONDS.

(a) INTEREST ON PRIVATE ACTIVITY BONDS ISSUED DURING 2009 AND 2010 NOT TREATED AS TAX PREFERENCE ITEM.—Subparagraph (C) of section 57(a)(5) is amended by adding at the end a new clause:

"(vi) EXCEPTION FOR BONDS ISSUED IN 2009 AND 2010.—For purposes of clause (i), the term 'private activity bond' shall not include any bond issued after December 31, 2008, and before January 1, 2011. For purposes of the preceding sentence, a refunding bond (whether a current or advance refunding) shall be treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).".

(b) NO ADJUSTMENT TO ADJUSTED CURRENT EARNINGS FOR INTEREST ON TAX-EXEMPT BONDS ISSUED DURING 2009 AND 2010.—Subparagraph (B) of section 56(g)(4) is amended by adding at the end the following new clause:

"(iv) TAX EXEMPT INTEREST ON BONDS ISSUED IN 2009 AND 2010.—Clause (i) shall not apply in the case of any inter-

est on a bond issued after December 31, 2008, and before January 1, 2011. For purposes of the preceding sentence, a refunding bond (whether a current or advance refunding) shall be treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after December 31, 2008.

SEC. 1504. MODIFICATION TO HIGH SPEED INTERCITY RAIL FACILITY BONDS.

(a) IN GENERAL.—Paragraph (1) of section 142(i) is amended by striking ''operate at speeds in excess of'' and inserting ''be capable of attaining a maximum speed in excess of''.

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

PART II—DELAY IN APPLICATION OF WITHHOLDING TAX ON GOVERNMENT CONTRACTORS

SEC. 1511. DELAY IN APPLICATION OF WITHHOLDING TAX ON GOVERNMENT CONTRACTORS.

Subsection (b) of section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 is amended by striking ''December 31, 2010'' and inserting ''December 31, 2011''.

PART III—TAX CREDIT BONDS FOR SCHOOLS

SEC. 1521. QUALIFIED SCHOOL CONSTRUCTION BONDS.

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

''SEC. 54F. QUALIFIED SCHOOL CONSTRUCTION BONDS.

''(a) QUALIFIED SCHOOL CONSTRUCTION BOND.—For purposes of this subchapter, the term 'qualified school construction bond' means any bond issued as part of an issue if—

''(1) 100 percent of the available project proceeds of such issue are to be used for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue,

"(2) the bond is issued by a State or local government within the jurisdiction of which such school is located, and

"(3) the issuer designates such bond for purposes of this section.

"(b) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds issued during any calendar year which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated under subsection (d) for such calendar year to such issuer.

"(c) NATIONAL LIMITATION ON AMOUNT OF BONDS DESIGNATED.—There is a national qualified school construction bond limitation for each calendar year. Such limitation is—

"(1) $5,000,000,000 for 2009,

"(2) $5,000,000,000 for 2010, and

"(3) except as provided in subsection (e), zero after 2010.

"(d) LIMITATION ALLOCATED AMONG STATES.—

"(1) IN GENERAL.—The limitation applicable under subsection (c) for any calendar year shall be allocated by the Secretary among the States in proportion to the respective numbers of children in each State who have attained age 5 but not age 18 for

the most recent fiscal year ending before such calendar year. The limitation amount allocated to a State under the preceding sentence shall be allocated by the State to issuers within such State.

"(2) MINIMUM ALLOCATIONS TO STATES.—

"(A) IN GENERAL.—The Secretary shall adjust the allocations under this subsection for any calendar year for each State to the extent necessary to ensure that the amount allocated to such State under this subsection for such year is not less than an amount equal to such State's adjusted minimum percentage of the amount to be allocated under paragraph (1) for the calendar year.

"(B) MINIMUM PERCENTAGE.—A State's minimum percentage for any calendar year is equal to the product of—

"(i) the quotient of—

"(I) the amount the State is eligible to receive under section 1124(d) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(d)) for the most recent fiscal year ending before such calendar year, divided by

"(II) the amount all States are eligible to receive under section 1124 of such Act (20 U.S.C. 6333) for such fiscal year, multiplied by

"(ii) 100.

"(3) ALLOCATIONS TO CERTAIN POSSESSIONS.—The amount to be allocated under paragraph (1) to any possession of the United States other than Puerto Rico shall be the amount which would have been allocated if all allocations under paragraph (1) were made on the basis of respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). In making other allocations, the amount to be allocated under paragraph (1) shall be reduced by the aggregate amount allocated under this paragraph to possessions of the United States.

"(4) ALLOCATIONS FOR INDIAN SCHOOLS.—In addition to the amounts otherwise allocated under this subsection, $200,000,000 for calendar year 2009, and $200,000,000 for calendar year 2010, shall be allocated by the Secretary of the Interior for purposes of the construction, rehabilitation, and repair of schools funded by the Bureau of Indian Affairs. In the case of amounts allocated under the

preceding sentence, Indian tribal governments (as defined in section 7701(a)(40)) shall be treated as qualified issuers for purposes of this subchapter.

''(e) CARRYOVER OF UNUSED LIMITATION.—If for any calendar year—

''(1) the amount allocated under subsection (d) to any State, exceeds

''(2) the amount of bonds issued during such year which are designated under subsection (a) pursuant to such allocation,

the limitation amount under such subsection for such State for the following calendar year shall be increased by the amount of such excess. A similar rule shall apply to the amounts allocated under subsection (d)(4).''.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 54A(d) is amended by striking ''or'' at the end of subparagraph (C), by inserting ''or'' at the end of subparagraph (D), and by inserting after subparagraph (D) the following new subparagraph:

''(E) a qualified school construction bond,''.

(2) Subparagraph (C) of section 54A(d)(2) is amended by striking ''and'' at the end of clause (iii), by striking the period at the end of clause (iv) and

inserting ", and", and by adding at the end the following new clause:

"(v) in the case of a qualified school construction bond, a purpose specified in section 54F(a)(1).".

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

"Sec. 54F. Qualified school construction bonds.".

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

SEC. 1522. EXTENSION AND EXPANSION OF QUALIFIED ZONE ACADEMY BONDS.

(a) IN GENERAL.—Section 54E(c)(1) is amended by striking "and 2009" and inserting "and $1,400,000,000 for 2009 and 2010".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to obligations issued after December 31, 2008.

PART IV—BUILD AMERICA BONDS

SEC. 1531. BUILD AMERICA BONDS.

(a) IN GENERAL.—Part IV of subchapter A of chapter 1 is amended by adding at the end the following new subpart:

1 **"Subpart J—Build America Bonds**

"Sec. 54AA. Build America bonds.

2 **"SEC. 54AA. BUILD AMERICA BONDS.**

3 "(a) IN GENERAL.—If a taxpayer holds a build
4 America bond on one or more interest payment dates of
5 the bond during any taxable year, there shall be allowed
6 as a credit against the tax imposed by this chapter for
7 the taxable year an amount equal to the sum of the credits
8 determined under subsection (b) with respect to such
9 dates.

10 "(b) AMOUNT OF CREDIT.—The amount of the credit
11 determined under this subsection with respect to any in-
12 terest payment date for a build America bond is 35 per-
13 cent of the amount of interest payable by the issuer with
14 respect to such date.

15 "(c) LIMITATION BASED ON AMOUNT OF TAX.—

16 "(1) IN GENERAL.—The credit allowed under
17 subsection (a) for any taxable year shall not exceed
18 the excess of—

19 "(A) the sum of the regular tax liability
20 (as defined in section 26(b)) plus the tax im-
21 posed by section 55, over

22 "(B) the sum of the credits allowable
23 under this part (other than subpart C and this
24 subpart).

"(2) CARRYOVER OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year (determined before the application of paragraph (1) for such succeeding taxable year).

"(d) BUILD AMERICA BOND.—

"(1) IN GENERAL.—For purposes of this section, the term 'build America bond' means any obligation (other than a private activity bond) if—

"(A) the interest on such obligation would (but for this section) be excludable from gross income under section 103,

"(B) such obligation is issued before January 1, 2012, and

"(C) the issuer makes an irrevocable election to have this section apply.

"(2) APPLICABLE RULES.—For purposes of applying paragraph (1)—

"(A) a build America bond shall not be treated as federally guaranteed by reason of the credit allowed under subsection (a) or section 6431,

"(B) the yield on a build America bond shall be determined without regard to the credit allowed under subsection (a), and

"(C) a bond shall not be treated as a build America bond if the issue price has more than a de minimis amount (determined under rules similar to the rules of section 1273(a)(3)) of premium over the stated principal amount of the bond.

"(e) INTEREST PAYMENT DATE.—For purposes of this section, the term 'interest payment date' means any date on which the holder of record of the build America bond is entitled to a payment of interest under such bond.

"(f) SPECIAL RULES.—

"(1) INTEREST ON BUILD AMERICA BONDS INCLUDIBLE IN GROSS INCOME FOR FEDERAL INCOME TAX PURPOSES.—For purposes of this title, interest on any build America bond shall be includible in gross income.

"(2) APPLICATION OF CERTAIN RULES.—Rules similar to the rules of subsections (f), (g), (h), and (i) of section 54A shall apply for purposes of the credit allowed under subsection (a).

"(g) SPECIAL RULE FOR QUALIFIED BONDS ISSUED BEFORE 2011.—In the case of a qualified bond issued before January 1, 2011—

"(1) ISSUER ALLOWED REFUNDABLE CREDIT.—In lieu of any credit allowed under this section with respect to such bond, the issuer of such bond shall be allowed a credit as provided in section 6431.

"(2) QUALIFIED BOND.—For purposes of this subsection, the term 'qualified bond' means any build America bond issued as part of an issue if—

"(A) 100 percent of the available project proceeds (as defined in section 54A) of such issue are to be used for capital expenditures, and

"(B) the issuer makes an irrevocable election to have this subsection apply.

"(h) REGULATIONS.—The Secretary may prescribe such regulations and other guidance as may be necessary or appropriate to carry out this section and section 6431.".

(b) CREDIT FOR QUALIFIED BONDS ISSUED BEFORE 2011.—Subchapter B of chapter 65 is amended by adding at the end the following new section:

"SEC. 6431. CREDIT FOR QUALIFIED BONDS ALLOWED TO ISSUER.

"(a) IN GENERAL.—In the case of a qualified bond issued before January 1, 2011, the issuer of such bond shall be allowed a credit with respect to each interest payment under such bond which shall be payable by the Secretary as provided in subsection (b).

"(b) PAYMENT OF CREDIT.—The Secretary shall pay (contemporaneously with each interest payment date under such bond) to the issuer of such bond (or to any person who makes such interest payments on behalf of the issuer) 35 percent of the interest payable under such bond on such date.

"(c) APPLICATION OF ARBITRAGE RULES.—For purposes of section 148, the yield on a qualified bond shall be reduced by the credit allowed under this section.

"(d) INTEREST PAYMENT DATE.—For purposes of this subsection, the term 'interest payment date' means each date on which interest is payable by the issuer under the terms of the bond.

"(e) QUALIFIED BOND.—For purposes of this subsection, the term 'qualified bond' has the meaning given such term in section 54AA(g).".

(c) CONFORMING AMENDMENTS.—

(1) Section 1324(b)(2) of title 31, United States Code, is amended by striking ''or 6428'' and inserting ''6428, or 6431,''.

(2) Section 54A(c)(1)(B) is amended by striking ''subpart C'' and inserting ''subparts C and J''.

(3) Sections 54(c)(2), 1397E(c)(2), and 1400N(l)(3)(B) are each amended by striking ''and I'' and inserting '', I, and J''.

(4) Section 6401(b)(1) is amended by striking ''and I'' and inserting ''I, and J''.

(5) The table of subparts for part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

''Subpart J. Build America bonds.''.

(6) The table of section for subchapter B of chapter 65 is amended by adding at the end the following new item:

''Sec. 6431. Credit for qualified bonds allowed to issuer.''.

(d) TRANSITIONAL COORDINATION WITH STATE LAW.—Except as otherwise provided by a State after the date of the enactment of this Act, the interest on any build America bond (as defined in section 54AA of the Internal Revenue Code of 1986, as added by this section) and the amount of any credit determined under such section with respect to such bond shall be treated for purposes of the

income tax laws of such State as being exempt from Federal income tax.

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

Subtitle G—Economic Recovery Payments to Certain Individuals

SEC. 1601. ECONOMIC RECOVERY PAYMENT TO RECIPIENTS OF SOCIAL SECURITY, SUPPLEMENTAL SECURITY INCOME, RAILROAD RETIREMENT BENEFITS, AND VETERANS DISABILITY COMPENSATION OR PENSION BENEFITS.

(a) AUTHORITY TO MAKE PAYMENTS.—

(1) ELIGIBILITY.—

(A) IN GENERAL.—Subject to paragraph (5)(B), the Secretary of the Treasury shall make a $300 payment to each individual who, for any month during the 3-month period ending with the month which ends prior to the month that includes the date of the enactment of this Act, is entitled to a benefit payment described in clause (i), (ii), or (iii) of subparagraph (B) or is eligible for a SSI cash benefit described in subparagraph (C).

1 (B) BENEFIT PAYMENT DESCRIBED.—For
2 purposes of subparagraph (A):
3 (i) TITLE II BENEFIT.—A benefit pay-
4 ment described in this clause is a monthly
5 insurance benefit payable (without regard
6 to sections 202(j)(1) and 223(b) of the So-
7 cial Security Act (42 U.S.C. 402(j)(1),
8 423(b)) under—
9 (I) section 202(a) of such Act
10 (42 U.S.C. 402(a));
11 (II) section 202(b) of such Act
12 (42 U.S.C. 402(b));
13 (III) section 202(c) of such Act
14 (42 U.S.C. 402(c));
15 (IV) section 202(d)(1)(B)(ii) of
16 such Act (42 U.S.C.
17 402(d)(1)(B)(ii));
18 (V) section 202(e) of such Act
19 (42 U.S.C. 402(e));
20 (VI) section 202(f) of such Act
21 (42 U.S.C. 402(f));
22 (VII) section 202(g) of such Act
23 (42 U.S.C. 402(g));
24 (VIII) section 202(h) of such Act
25 (42 U.S.C. 402(h));

(IX) section 223(a) of such Act (42 U.S.C. 423(a));

(X) section 227 of such Act (42 U.S.C. 427); or

(XI) section 228 of such Act (42 U.S.C. 428).

(ii) RAILROAD RETIREMENT BENEFIT.—A benefit payment described in this clause is a monthly annuity or pension payment payable (without regard to section 5(a)(ii) of the Railroad Retirement Act of 1974 (45 U.S.C. 231d(a)(ii)) under—

(I) section 2(a)(1) of such Act (45 U.S.C. 231a(a)(1));

(II) section 2(c) of such Act (45 U.S.C. 231a(c));

(III) section 2(d)(1)(i) of such Act (45 U.S.C. 231a(d)(1)(i));

(IV) section 2(d)(1)(ii) of such Act (45 U.S.C. 231a(d)(1)(ii));

(V) section 2(d)(1)(iii)(C) of such Act to an adult disabled child (45 U.S.C. 231a(d)(1)(iii)(C));

(VI) section 2(d)(1)(iv) of such Act (45 U.S.C. 231a(d)(1)(iv));

(VII) section 2(d)(1)(v) of such Act (45 U.S.C. 231a(d)(1)(v)); or

(VIII) section 7(b)(2) of such Act (45 U.S.C. 231f(b)(2)) with respect to any of the benefit payments described in clause (i) of this subparagraph.

(iii) VETERANS BENEFIT.—A benefit payment described in this clause is a compensation or pension payment payable under—

(I) section 1110, 1117, 1121, 1131, 1141, or 1151 of title 38, United States Code;

(II) section 1310, 1312, 1313, 1315, 1316, or 1318 of title 38, United States Code;

(III) section 1513, 1521, 1533, 1536, 1537, 1541, 1542, or 1562 of title 38, United States Code; or

(IV) section 1805, 1815, or 1821 of title 38, United States Code,

to a veteran, surviving spouse, child, or parent as described in paragraph (2), (3), (4)(A)(ii), or (5) of section 101, title 38, United States Code, who received that ben-

efit during any month within the 3 month period ending with the month which ends prior to the month that includes the date of the enactment of this Act.

(C) SSI CASH BENEFIT DESCRIBED.—A SSI cash benefit described in this subparagraph is a cash benefit payable under section 1611 (other than under subsection (e)(1)(B) of such section) or 1619(a) of the Social Security Act (42 U.S.C. 1382, 1382h).

(2) REQUIREMENT.—A payment shall be made under paragraph (1) only to individuals who reside in 1 of the 50 States, the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, American Samoa, or the Northern Mariana Islands. For purposes of the preceding sentence, the determination of the individual's residence shall be based on the current address of record under a program specified in paragraph (1).

(3) NO DOUBLE PAYMENTS.—An individual shall be paid only 1 payment under this section, regardless of whether the individual is entitled to, or eligible for, more than 1 benefit or cash payment described in paragraph (1).

(4) LIMITATION.—A payment under this section shall not be made—

(A) in the case of an individual entitled to a benefit specified in paragraph (1)(B)(i) or paragraph (1)(B)(ii)(VIII) if, for the most recent month of such individual's entitlement in the 3-month period described in paragraph (1), such individual's benefit under such paragraph was not payable by reason of subsection (x) or (y) of section 202 the Social Security Act (42 U.S.C. 402) or section 1129A of such Act (42 U.S.C. 1320a-8a);

(B) in the case of an individual entitled to a benefit specified in paragraph (1)(B)(iii) if, for the most recent month of such individual's entitlement in the 3 month period described in paragraph (1), such individual's benefit under such paragraph was not payable, or was reduced, by reason of section 1505, 5313, or 5313B of title 38, United States Code;

(C) in the case of an individual entitled to a benefit specified in paragraph (1)(C) if, for such most recent month, such individual's benefit under such paragraph was not payable by reason of subsection (e)(1)(A) or (e)(4) of sec-

tion 1611 (42 U.S.C. 1382) or section 1129A of such Act (42 U.S.C. 1320a-8a); or

(D) in the case of any individual whose date of death occurs before the date on which the individual is certified under subsection (b) to receive a payment under this section.

(5) TIMING AND MANNER OF PAYMENTS.—

(A) IN GENERAL.—The Secretary of the Treasury shall commence making payments under this section at the earliest practicable date but in no event later than 120 days after the date of enactment of this Act. The Secretary of the Treasury may make any payment electronically to an individual in such manner as if such payment was a benefit payment or cash benefit to such individual under the applicable program described in subparagraph (B) or (C) of paragraph (1).

(B) DEADLINE.—No payments shall be made under this section after December 31, 2010, regardless of any determinations of entitlement to, or eligibility for, such payments made after such date.

(b) IDENTIFICATION OF RECIPIENTS.—The Commissioner of Social Security, the Railroad Retirement Board,

1 and the Secretary of Veterans Affairs shall certify the in-
2 dividuals entitled to receive payments under this section
3 and provide the Secretary of the Treasury with the infor-
4 mation needed to disburse such payments. A certification
5 of an individual shall be unaffected by any subsequent de-
6 termination or redetermination of the individual's entitle-
7 ment to, or eligibility for, a benefit specified in subpara-
8 graph (B) or (C) of subsection (a)(1).

9 (c) TREATMENT OF PAYMENTS.—

10 (1) PAYMENT TO BE DISREGARDED FOR PUR-
11 POSES OF ALL FEDERAL AND FEDERALLY ASSISTED
12 PROGRAMS.—A payment under subsection (a) shall
13 not be regarded as income and shall not be regarded
14 as a resource for the month of receipt and the fol-
15 lowing 9 months, for purposes of determining the
16 eligibility of the recipient (or the recipient's spouse
17 or family) for benefits or assistance, or the amount
18 or extent of benefits or assistance, under any Fed-
19 eral program or under any State or local program fi-
20 nanced in whole or in part with Federal funds.

21 (2) PAYMENT NOT CONSIDERED INCOME FOR
22 PURPOSES OF TAXATION.—A payment under sub-
23 section (a) shall not be considered as gross income
24 for purposes of the Internal Revenue Code of 1986.

(3) PAYMENTS PROTECTED FROM ASSIGNMENT.—The provisions of sections 207 and 1631(d)(1) of the Social Security Act (42 U.S.C. 407, 1383(d)(1)), section 14(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231m(a)), and section 5301 of title 38, United States Code, shall apply to any payment made under subsection (a) as if such payment was a benefit payment or cash benefit to such individual under the applicable program described in subparagraph (B) or (C) of subsection (a)(1).

(4) PAYMENTS SUBJECT TO OFFSET.—Notwithstanding paragraph (3), for purposes of section 3716 of title 31, United States Code, any payment made under this section shall not be considered a benefit payment or cash benefit made under the applicable program described in subparagraph (B) or (C) of subsection (a)(1) and all amounts paid shall be subject to offset to collect delinquent debts.

(d) PAYMENT TO REPRESENTATIVE PAYEES AND FIDUCIARIES.—

(1) IN GENERAL.—In any case in which an individual who is entitled to a payment under subsection (a) and whose benefit payment or cash benefit described in paragraph (1) of that subsection is

paid to a representative payee or fiduciary, the payment under subsection (a) shall be made to the individual's representative payee or fiduciary and the entire payment shall be used only for the benefit of the individual who is entitled to the payment.

(2) APPLICABILITY.—

(A) PAYMENT ON THE BASIS OF A TITLE II OR SSI BENEFIT.—Section 1129(a)(3) of the Social Security Act (42 U.S.C. 1320a–8(a)(3)) shall apply to any payment made on the basis of an entitlement to a benefit specified in paragraph (1)(B)(i) or (1)(C) of subsection (a) in the same manner as such section applies to a payment under title II or XVI of such Act.

(B) PAYMENT ON THE BASIS OF A RAILROAD RETIREMENT BENEFIT.—Section 13 of the Railroad Retirement Act (45 U.S.C. 231l) shall apply to any payment made on the basis of an entitlement to a benefit specified in paragraph (1)(B)(ii) of subsection (a) in the same manner as such section applies to a payment under such Act.

(C) PAYMENT ON THE BASIS OF A VETERANS BENEFIT.—Sections 5502, 6106, and 6108 of title 38, United States Code, shall

1 apply to any payment made on the basis of an
2 entitlement to a benefit specified in paragraph
3 (1)(B)(iii) of subsection (a) in the same manner
4 as those sections apply to a payment under that
5 title.

6 (e) APPROPRIATION.—Out of any sums in the Treas-
7 ury of the United States not otherwise appropriated, the
8 following sums are appropriated for the period of fiscal
9 years 2009 and 2010 to carry out this section:

10 (1) For the Secretary of the Treasury—

11 (A) such sums as may be necessary to
12 make payments under this section; and

13 (B) $57,000,000 for administrative costs
14 incurred in carrying out this section and section
15 36A of the Internal Revenue Code of 1986 (as
16 added by this Act).

17 (2) For the Commissioner of Social Security,
18 $90,000,000 for the Social Security Administration's
19 Limitation on Administrative Expenses for costs in-
20 curred in carrying out this section.

21 (3) For the Railroad Retirement Board,
22 $1,000,000 for administrative costs incurred in car-
23 rying out this section.

24 (4) For the Secretary of Veterans Affairs,
25 $100,000 for the Information Systems Technology

account and $7,100,000 for the General Operating Expenses account for administrative costs incurred in carrying out this section.

Subtitle H—Trade Adjustment Assistance

SEC. 1701. TEMPORARY EXTENSION OF TRADE ADJUSTMENT ASSISTANCE PROGRAM.

(a) ASSISTANCE FOR WORKERS.—

(1) IN GENERAL.—Section 245(a) of the Trade Act of 1974 (19 U.S.C. 2317(a)) is amended by striking ''December 31, 2007'' and inserting ''December 31, 2010''.

(2) ALTERNATIVE TRADE ADJUSTMENT ASSISTANCE.—Section 246(b)(1) of the Trade Act of 1974 (19 U.S.C. 2318(b)(1)) is amended by striking ''5 years'' and inserting ''7 years''.

(b) ASSISTANCE FOR FIRMS.—Section 256(b) of the Trade Act of 1974 (19 U.S.C. 2346(b)) is amended by striking ''2007, and $4,000,000 for the 3-month period beginning on October 1, 2007,'' and inserting ''December 31, 2010''.

(c) ASSISTANCE FOR FARMERS.—Section 298(a) of the Trade Act of 1974 (19 U.S.C. 2401g(a)) is amended by striking ''through 2007'' and all that follows through

the end period and inserting ''through December 31, 2010 to carry out the purposes of this chapter.''.

(d) EXTENSION OF TERMINATION DATES.—Section 285 of the Trade Act of 1974 (19 U.S.C. 2271 note) is amended by striking ''December 31, 2007'' each place it appears and inserting ''December 31, 2010''.

(e) SENSE OF THE SENATE REGARDING ADJUSTMENT ASSISTANCE FOR COMMUNITIES.—It is the sense of the Senate that title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.) should be amended to assist any community impacted by trade with economic adjustment through—

(1) the coordination of efforts by State and local governments and economic organizations;

(2) the coordination of Federal, State, and local resources;

(3) the creation of community-based development strategies; and

(4) the development and provision of training programs.

(f) EFFECTIVE DATE.—The amendments made by this section shall be effective as of January 1, 2008.

Subtitle I—Prohibition on Collection of Certain Payments Made Under the Continued Dumping and Subsidy Offset Act of 2000

SEC. 1801. PROHIBITION ON COLLECTION OF CERTAIN PAYMENTS MADE UNDER THE CONTINUED DUMPING AND SUBSIDY OFFSET ACT OF 2000.

(a) IN GENERAL.—Notwithstanding any other provision of law, neither the Secretary of Homeland Security nor any other person may—

(1) require repayment of, or attempt in any other way to recoup, any payments described in subsection (b); or

(2) offset any past, current, or future distributions of antidumping or countervailing duties assessed with respect to imports from countries that are not parties to the North American Free Trade Agreement in an attempt to recoup any payments described in subsection (b).

(b) PAYMENTS DESCRIBED.—Payments described in this subsection are payments of antidumping or countervailing duties made pursuant to the Continued Dumping and Subsidy Offset Act of 2000 (section 754 of the Tariff Act of 1930 (19 U.S.C. 1675c; repealed by subtitle F of

1 title VII of the Deficit Reduction Act of 2005 (Public Law
2 109–171; 120 Stat. 154))) that were—
3 (1) assessed and paid on imports of goods from
4 countries that are parties to the North American
5 Free Trade Agreement; and
6 (2) distributed on or after January 1, 2001,
7 and before January 1, 2006.
8 (c) PAYMENT OF FUNDS COLLECTED OR WITH-
9 HELD.—Not later than the date that is 60 days after the
10 date of the enactment of this Act, the Secretary of Home-
11 land Security shall—
12 (1) refund any repayments, or any other
13 recoupment, of payments described in subsection (b);
14 and
15 (2) fully distribute any antidumping or counter-
16 vailing duties that the U.S. Customs and Border
17 Protection is withholding as an offset as described in
18 subsection (a)(2).
19 (d) LIMITATION.—Nothing in this section shall be
20 construed to prevent the Secretary of Homeland Security,
21 or any other person, from requiring repayment of, or at-
22 tempting to otherwise recoup, any payments described in
23 subsection (b) as a result of—
24 (1) a finding of false statements or other mis-
25 conduct by a recipient of such a payment; or

(2) the reliquidation of an entry with respect to which such a payment was made.

Subtitle J—Other Provisions

SEC. 1901. APPLICATION OF CERTAIN LABOR STANDARDS TO PROJECTS FINANCED WITH CERTAIN TAX-FAVORED BONDS.

Subchapter IV of chapter 31 of the title 40, United States Code, shall apply to projects financed with the proceeds of—

(1) any new clean renewable energy bond (as defined in section 54C of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,

(2) any qualified energy conservation bond (as defined in section 54D of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,

(3) any qualified zone academy bond (as defined in section 54E of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,

(4) any qualified school construction bond (as defined in section 54F of the Internal Revenue Code of 1986), and

(5) any recovery zone economic development bond (as defined in section 1400U–2 of the Internal Revenue Code of 1986).

SEC. 1902. INCREASE IN PUBLIC DEBT LIMIT.

Subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting ''$12,140,000,000,000''.

TITLE II—ASSISTANCE FOR UNEMPLOYED WORKERS AND STRUGGLING FAMILIES

SEC. 2000. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the ''Assistance for Unemployed Workers and Struggling Families Act''.

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

TITLE II—ASSISTANCE FOR UNEMPLOYED WORKERS AND STRUGGLING FAMILIES

Sec. 2000. Short title; table of contents.

Subtitle A—Unemployment Insurance

Sec. 2001. Extension of emergency unemployment compensation program.
Sec. 2002. Increase in unemployment compensation benefits.
Sec. 2003. Unemployment compensation modernization.
Sec. 2004. Temporary assistance for States with advances.

Subtitle B—Assistance for Vulnerable Individuals

Sec. 2101. Emergency fund for TANF program.
Sec. 2102. Extension of TANF supplemental grants.
Sec. 2103. Clarification of authority of states to use tanf funds carried over from prior years to provide tanf benefits and services.

Sec. 2104. Temporary reinstatement of authority to provide Federal matching payments for State spending of child support incentive payments.

Subtitle A—Unemployment Insurance

SEC. 2001. EXTENSION OF EMERGENCY UNEMPLOYMENT COMPENSATION PROGRAM.

(a) IN GENERAL.—Section 4007 of the Supplemental Appropriations Act, 2008 (Public Law 110-252; 26 U.S.C. 3304 note), as amended by section 4 of the Unemployment Compensation Extension Act of 2008 (Public Law 110-449; 122 Stat. 5015), is amended—

(1) by striking ''March 31, 2009'' each place it appears and inserting ''December 31, 2009'';

(2) in the heading for subsection (b)(2), by striking ''MARCH 31, 2009'' and inserting ''DECEMBER 31, 2009''; and

(3) in subsection (b)(3), by striking ''August 27, 2009'' and inserting ''May 31, 2010''.

(b) FINANCING PROVISIONS.—Section 4004 of such Act is amended by adding at the end the following:

''(e) TRANSFER OF FUNDS.—Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated)—

''(1) to the extended unemployment compensation account (as established by section 905 of the

Social Security Act) such sums as the Secretary of Labor estimates to be necessary to make payments to States under this title by reason of the amendments made by section 2001(a) of the Assistance for Unemployed Workers and Struggling Families Act; and

"(2) to the employment security administration account (as established by section 901 of the Social Security Act) such sums as the Secretary of Labor estimates to be necessary for purposes of assisting States in meeting administrative costs by reason of the amendments referred to in paragraph (1).

There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.".

SEC. 2002. INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS.

(a) FEDERAL-STATE AGREEMENTS.—Any State which desires to do so may enter into and participate in an agreement under this section with the Secretary of Labor (hereinafter in this section referred to as the "Secretary"). Any State which is a party to an agreement under this section may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

1 (b) PROVISIONS OF AGREEMENT.—

2 (1) ADDITIONAL COMPENSATION.—Any agree-
3 ment under this section shall provide that the State
4 agency of the State will make payments of regular
5 compensation to individuals in amounts and to the
6 extent that they would be determined if the State
7 law of the State were applied, with respect to any
8 week for which the individual is (disregarding this
9 section) otherwise entitled under the State law to re-
10 ceive regular compensation, as if such State law had
11 been modified in a manner such that the amount of
12 regular compensation (including dependents' allow-
13 ances) payable for any week shall be equal to the
14 amount determined under the State law (before the
15 application of this paragraph) plus an additional
16 $25.

17 (2) ALLOWABLE METHODS OF PAYMENT.—Any
18 additional compensation provided for in accordance
19 with paragraph (1) shall be payable either—

20 (A) as an amount which is paid at the
21 same time and in the same manner as any reg-
22 ular compensation otherwise payable for the
23 week involved; or

24 (B) at the option of the State, by pay-
25 ments which are made separately from, but on

the same weekly basis as, any regular compensation otherwise payable.

(c) NONREDUCTION RULE.—An agreement under this section shall not apply (or shall cease to apply) with respect to a State upon a determination by the Secretary that the method governing the computation of regular compensation under the State law of that State has been modified in a manner such that—

(1) the average weekly benefit amount of regular compensation which will be payable during the period of the agreement (determined disregarding any additional amounts attributable to the modification described in subsection (b)(1)) will be less than

(2) the average weekly benefit amount of regular compensation which would otherwise have been payable during such period under the State law, as in effect on December 31, 2008.

(d) PAYMENTS TO STATES.—

(1) IN GENERAL.—

(A) FULL REIMBURSEMENT.—There shall be paid to each State which has entered into an agreement under this section an amount equal to 100 percent of—

(i) the total amount of additional compensation (as described in subsection

(b)(1)) paid to individuals by the State pursuant to such agreement; and

(ii) any additional administrative expenses incurred by the State by reason of such agreement (as determined by the Secretary).

(B) TERMS OF PAYMENTS.—Sums payable to any State by reason of such State's having an agreement under this section shall be payable, either in advance or by way of reimbursement (as determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

(2) CERTIFICATIONS.—The Secretary shall from time to time certify to the Secretary of the

Treasury for payment to each State the sums payable to such State under this section.

(3) APPROPRIATION.—There are appropriated from the general fund of the Treasury, without fiscal year limitation, such sums as may be necessary for purposes of this subsection.

(e) APPLICABILITY.—

(1) IN GENERAL.—An agreement entered into under this section shall apply to weeks of unemployment—

(A) beginning after the date on which such agreement is entered into; and

(B) ending before January 1, 2010.

(2) TRANSITION RULE FOR INDIVIDUALS REMAINING ENTITLED TO REGULAR COMPENSATION AS OF JANUARY 1, 2010.—In the case of any individual who, as of the date specified in paragraph (1)(B), has not yet exhausted all rights to regular compensation under the State law of a State with respect to a benefit year that began before such date, additional compensation (as described in subsection (b)(1)) shall continue to be payable to such individual for any week beginning on or after such date for which the individual is otherwise eligible for regular compensation with respect to such benefit year.

(3) TERMINATION.—Notwithstanding any other provision of this subsection, no additional compensation (as described in subsection (b)(1)) shall be payable for any week beginning after June 30, 2010.

(f) FRAUD AND OVERPAYMENTS.—The provisions of section 4005 of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 122 Stat. 2356) shall apply with respect to additional compensation (as described in subsection (b)(1)) to the same extent and in the same manner as in the case of emergency unemployment compensation.

(g) APPLICATION TO OTHER UNEMPLOYMENT BENEFITS.—

(1) IN GENERAL.—Each agreement under this section shall include provisions to provide that the purposes of the preceding provisions of this section shall be applied with respect to unemployment benefits described in subsection (i)(3) to the same extent and in the same manner as if those benefits were regular compensation.

(2) ELIGIBILITY AND TERMINATION RULES.—Additional compensation (as described in subsection (b)(1))—

(A) shall not be payable, pursuant to this subsection, with respect to any unemployment

benefits described in subsection (i)(3) for any week beginning on or after the date specified in subsection (e)(1)(B), except in the case of an individual who was eligible to receive additional compensation (as so described) in connection with any regular compensation or any unemployment benefits described in subsection (i)(3) for any period of unemployment ending before such date; and

(B) shall in no event be payable for any week beginning after the date specified in subsection (e)(3).

(h) DISREGARD OF ADDITIONAL COMPENSATION FOR PURPOSES OF MEDICAID AND SCHIP.—A State that enters into an agreement under this section shall disregard the monthly equivalent of $25 per week for any individual who receives additional compensation under subsection (b)(1) in considering the amount of income of the individual for any purposes under the Medicaid program under title XIX of the Social Security Act and the State Children's Health Insurance Program under title XXI of such Act.

(i) DEFINITIONS.—For purposes of this section—

(1) the terms ''compensation'', ''regular compensation'', ''benefit year'', ''State'', ''State agency'',

"State law", and "week" have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note);

(2) the term "emergency unemployment compensation" means emergency unemployment compensation under title IV of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 122 Stat. 2353); and

(3) any reference to unemployment benefits described in this paragraph shall be considered to refer to—

(A) extended compensation (as defined by section 205 of the Federal-State Extended Unemployment Compensation Act of 1970); and

(B) unemployment compensation (as defined by section 85(b) of the Internal Revenue Code of 1986) provided under any program administered by a State under an agreement with the Secretary.

SEC. 2003. UNEMPLOYMENT COMPENSATION MODERNIZATION.

(a) IN GENERAL.—Section 903 of the Social Security Act (42 U.S.C. 1103) is amended by adding at the end the following:

1 "Special Transfers for Modernization

2 "(f)(1)(A) In addition to any other amounts, the Sec-
3 retary of Labor shall provide for the making of unemploy-
4 ment compensation modernization incentive payments
5 (hereinafter 'incentive payments') to the accounts of the
6 States in the Unemployment Trust Fund, by transfer from
7 amounts reserved for that purpose in the Federal unem-
8 ployment account, in accordance with succeeding provi-
9 sions of this subsection.

10 "(B) The maximum incentive payment allowable
11 under this subsection with respect to any State shall, as
12 determined by the Secretary of Labor, be equal to the
13 amount obtained by multiplying $7,000,000,000 by the
14 same ratio as would apply under subsection (a)(2)(B) for
15 purposes of determining such State's share of any excess
16 amount (as described in subsection (a)(1)) that would
17 have been subject to transfer to State accounts, as of Oc-
18 tober 1, 2008, under the provisions of subsection (a).

19 "(C) Of the maximum incentive payment determined
20 under subparagraph (B) with respect to a State—

21 "(i) one-third shall be transferred to the ac-
22 count of such State upon a certification under para-
23 graph (4)(B) that the State law of such State meets
24 the requirements of paragraph (2); and

"(ii) the remainder shall be transferred to the account of such State upon a certification under paragraph (4)(B) that the State law of such State meets the requirements of paragraph (3).

"(2) The State law of a State meets the requirements of this paragraph if such State law—

"(A) uses a base period that includes the most recently completed calendar quarter before the start of the benefit year for purposes of determining eligibility for unemployment compensation; or

"(B) provides that, in the case of an individual who would not otherwise be eligible for unemployment compensation under the State law because of the use of a base period that does not include the most recently completed calendar quarter before the start of the benefit year, eligibility shall be determined using a base period that includes such calendar quarter.

"(3) The State law of a State meets the requirements of this paragraph if such State law includes provisions to carry out at least 2 of the following subparagraphs:

"(A) An individual shall not be denied regular unemployment compensation under any State law provisions relating to availability for work, active search for work, or refusal to accept work, solely be-

1 cause such individual is seeking only part-time (and
2 not full-time) work, except that the State law provi-
3 sions carrying out this subparagraph may exclude an
4 individual if a majority of the weeks of work in such
5 individual's base period do not include part-time
6 work.

7 "(B) An individual shall not be disqualified
8 from regular unemployment compensation for sepa-
9 rating from employment if that separation is for any
10 compelling family reason. For purposes of this sub-
11 paragraph, the term 'compelling family reason'
12 means the following:

13 "(i) Domestic violence, verified by such
14 reasonable and confidential documentation as
15 the State law may require, which causes the in-
16 dividual reasonably to believe that such individ-
17 ual's continued employment would jeopardize
18 the safety of the individual or of any member
19 of the individual's immediate family (as defined
20 by the Secretary of Labor).

21 "(ii) The illness or disability of a member
22 of the individual's immediate family (as defined
23 by the Secretary of Labor).

24 "(iii) The need for the individual to accom-
25 pany such individual's spouse—

"(I) to a place from which it is impractical for such individual to commute; and

"(II) due to a change in location of the spouse's employment.

"(C) Weekly unemployment compensation is payable under this subparagraph to any individual who is unemployed (as determined under the State unemployment compensation law), has exhausted all rights to regular unemployment compensation under the State law, and is enrolled and making satisfactory progress in a State-approved training program or in a job training program authorized under the Workforce Investment Act of 1998. Such programs shall prepare individuals who have been separated from a declining occupation, or who have been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment, for entry into a high-demand occupation. The amount of unemployment compensation payable under this subparagraph to an individual for a week of unemployment shall be equal to the individual's average weekly benefit amount (including dependents' allowances) for the most recent benefit year, and the total

amount of unemployment compensation payable under this subparagraph to any individual shall be equal to at least 26 times the individual's average weekly benefit amount (including dependents' allowances) for the most recent benefit year.

"(D) Dependents' allowances are provided, in the case of any individual who is entitled to receive regular unemployment compensation and who has any dependents (as defined by State law), in an amount equal to at least $15 per dependent per week, subject to any aggregate limitation on such allowances which the State law may establish (but which aggregate limitation on the total allowance for dependents paid to an individual may not be less than $50 for each week of unemployment or 50 percent of the individual's weekly benefit amount for the benefit year, whichever is less).

"(4)(A) Any State seeking an incentive payment under this subsection shall submit an application therefor at such time, in such manner, and complete with such information as the Secretary of Labor may within 60 days after the date of the enactment of this subsection prescribe (whether by regulation or otherwise), including information relating to compliance with the requirements of paragraph (2) or (3), as well as how the State intends to use

the incentive payment to improve or strengthen the State's unemployment compensation program. The Secretary of Labor shall, within 30 days after receiving a complete application, notify the State agency of the State of the Secretary's findings with respect to the requirements of paragraph (2) or (3) (or both).

"(B)(i) If the Secretary of Labor finds that the State law provisions (disregarding any State law provisions which are not then currently in effect as permanent law or which are subject to discontinuation) meet the requirements of paragraph (2) or (3), as the case may be, the Secretary of Labor shall thereupon make a certification to that effect to the Secretary of the Treasury, together with a certification as to the amount of the incentive payment to be transferred to the State account pursuant to that finding. The Secretary of the Treasury shall make the appropriate transfer within 7 days after receiving such certification.

"(ii) For purposes of clause (i), State law provisions which are to take effect within 12 months after the date of their certification under this subparagraph shall be considered to be in effect as of the date of such certification.

"(C)(i) No certification of compliance with the requirements of paragraph (2) or (3) may be made with respect to any State whose State law is not otherwise eligible

1 for certification under section 303 or approvable under
2 section 3304 of the Federal Unemployment Tax Act.
3 "(ii) No certification of compliance with the require-
4 ments of paragraph (3) may be made with respect to any
5 State whose State law is not in compliance with the re-
6 quirements of paragraph (2).
7 "(iii) No application under subparagraph (A) may be
8 considered if submitted before the date of the enactment
9 of this subsection or after the latest date necessary (as
10 specified by the Secretary of Labor) to ensure that all in-
11 centive payments under this subsection are made before
12 October 1, 2010. In the case of a State in which the first
13 day of the first regularly scheduled session of the State
14 legislature beginning after the date of enactment of this
15 subsection begins after December 31, 2010, the preceding
16 sentence shall be applied by substituting 'October 1, 2011'
17 for 'October 1, 2010' .
18 "(5)(A) Except as provided in subparagraph (B), any
19 amount transferred to the account of a State under this
20 subsection may be used by such State only in the payment
21 of cash benefits to individuals with respect to their unem-
22 ployment (including for dependents' allowances and for
23 unemployment compensation under paragraph (3)(C)), ex-
24 clusive of expenses of administration.

"(B) A State may, subject to the same conditions as set forth in subsection (c)(2) (excluding subparagraph (B) thereof, and deeming the reference to 'subsections (a) and (b)' in subparagraph (D) thereof to include this subsection), use any amount transferred to the account of such State under this subsection for the administration of its unemployment compensation law and public employment offices.

"(6) Out of any money in the Federal unemployment account not otherwise appropriated, the Secretary of the Treasury shall reserve $7,000,000,000 for incentive payments under this subsection. Any amount so reserved shall not be taken into account for purposes of any determination under section 902, 910, or 1203 of the amount in the Federal unemployment account as of any given time. Any amount so reserved for which the Secretary of the Treasury has not received a certification under paragraph (4)(B) by the deadline described in paragraph (4)(C)(iii) shall, upon the close of fiscal year 2011, become unrestricted as to use as part of the Federal unemployment account.

"(7) For purposes of this subsection, the terms 'benefit year', 'base period', and 'week' have the respective meanings given such terms under section 205 of the Fed-

1 eral-State Extended Unemployment Compensation Act of
2 1970 (26 U.S.C. 3304 note).
3 ''Special Transfer in Fiscal Year 2009 for Administration
4 ''(g)(1) In addition to any other amounts, the Sec-
5 retary of the Treasury shall transfer from the employment
6 security administration account to the account of each
7 State in the Unemployment Trust Fund, within 30 days
8 after the date of the enactment of this subsection, the
9 amount determined with respect to such State under para-
10 graph (2).
11 ''(2) The amount to be transferred under this sub-
12 section to a State account shall (as determined by the Sec-
13 retary of Labor and certified by such Secretary to the Sec-
14 retary of the Treasury) be equal to the amount obtained
15 by multiplying $500,000,000 by the same ratio as deter-
16 mined under subsection (f)(1)(B) with respect to such
17 State.
18 ''(3) Any amount transferred to the account of a
19 State as a result of the enactment of this subsection may
20 be used by the State agency of such State only in the pay-
21 ment of expenses incurred by it for—
22 ''(A) the administration of the provisions of its
23 State law carrying out the purposes of subsection
24 (f)(2) or any subparagraph of subsection (f)(3);

"(B) improved outreach to individuals who might be eligible for regular unemployment compensation by virtue of any provisions of the State law which are described in subparagraph (A);

"(C) the improvement of unemployment benefit and unemployment tax operations, including responding to increased demand for unemployment compensation; and

"(D) staff-assisted reemployment services for unemployment compensation claimants.".

(b) REGULATIONS.—The Secretary of Labor may prescribe any regulations, operating instructions, or other guidance necessary to carry out the amendment made by subsection (a).

SEC. 2004. TEMPORARY ASSISTANCE FOR STATES WITH ADVANCES.

Section 1202(b) of the Social Security Act (42 U.S.C. 1322(b)) is amended by adding at the end the following new paragraph:

"(10)(A) With respect to the period beginning on the date of enactment of this paragraph and ending on December 31, 2010—

"(i) any interest payment otherwise due from a State under this subsection during such period shall be deemed to have been made by the State; and

"(ii) no interest shall accrue on any advance or advances made under section 1201 to a State during such period.

"(B) The provisions of subparagraph (A) shall have no effect on the requirement for interest payments under this subsection after the period described in such subparagraph or on the accrual of interest under this subsection after such period.".

Subtitle B—Assistance for Vulnerable Individuals

SEC. 2101. EMERGENCY FUND FOR TANF PROGRAM.

(a) TEMPORARY FUND.—

(1) IN GENERAL.—Section 403 of the Social Security Act (42 U.S.C. 603) is amended by adding at the end the following:

"(c) EMERGENCY FUND.—

"(1) ESTABLISHMENT.—There is established in the Treasury of the United States a fund which shall be known as the 'Emergency Contingency Fund for State Temporary Assistance for Needy Families Programs' (in this subsection referred to as the 'Emergency Fund').

"(2) DEPOSITS INTO FUND.—

"(A) IN GENERAL.—Out of any money in the Treasury of the United States not otherwise

appropriated, there are appropriated for fiscal year 2009, $3,000,000,000 for payment to the Emergency Fund.

"(B) AVAILABILITY AND USE OF FUNDS.—The amounts appropriated to the Emergency Fund under subparagraph (A) shall remain available through fiscal year 2010 and shall be used to make grants to States in each of fiscal years 2009 and 2010 in accordance with the requirements of paragraph (3).

"(C) LIMITATION.—In no case may the Secretary make a grant from the Emergency Fund for a fiscal year after fiscal year 2010.

"(3) GRANTS.—

"(A) GRANT RELATED TO CASELOAD INCREASES.—

"(i) IN GENERAL.—For each calendar quarter in fiscal year 2009 or 2010, the Secretary shall make a grant from the Emergency Fund to each State that—

"(I) requests a grant under this subparagraph for the quarter; and

"(II) meets the requirement of clause (ii) for the quarter.

"(ii) CASELOAD INCREASE REQUIREMENT.—A State meets the requirement of this clause for a quarter if the average monthly assistance caseload of the State for the quarter exceeds the average monthly assistance caseload of the State for the corresponding quarter in the emergency fund base year of the State.

"(iii) AMOUNT OF GRANT.—Subject to paragraph (5), the amount of the grant to be made to a State under this subparagraph for a quarter shall be 80 percent of the amount (if any) by which the total expenditures of the State for basic assistance (as defined by the Secretary) in the quarter, whether under the State program funded under this part or as qualified State expenditures, exceeds the total expenditures of the State for such assistance for the corresponding quarter in the emergency fund base year of the State.

"(B) GRANT RELATED TO INCREASED EXPENDITURES FOR NON-RECURRENT SHORT TERM BENEFITS.—

1 "(i) IN GENERAL.—For each calendar
2 quarter in fiscal year 2009 or 2010, the
3 Secretary shall make a grant from the
4 Emergency Fund to each State that—
5 "(I) requests a grant under this
6 subparagraph for the quarter; and
7 "(II) meets the requirement of
8 clause (ii) for the quarter.
9 "(ii) NON-RECURRENT SHORT TERM
10 EXPENDITURE REQUIREMENT.—A State
11 meets the requirement of this clause for a
12 quarter if the total expenditures of the
13 State for non-recurrent short term benefits
14 in the quarter, whether under the State
15 program funded under this part or as
16 qualified State expenditures, exceeds the
17 total such expenditures of the State for
18 non-recurrent short term benefits in the
19 corresponding quarter in the emergency
20 fund base year of the State.
21 "(iii) AMOUNT OF GRANT.—Subject to
22 paragraph (5), the amount of the grant to
23 be made to a State under this subpara-
24 graph for a quarter shall be an amount

1 equal to 80 percent of the excess described
2 in clause (ii).
3 "(C) GRANT RELATED TO INCREASED EX-
4 PENDITURES FOR SUBSIDIZED EMPLOYMENT.—
5 "(i) IN GENERAL.—For each calendar
6 quarter in fiscal year 2009 or 2010, the
7 Secretary shall make a grant from the
8 Emergency Fund to each State that—
9 "(I) requests a grant under this
10 subparagraph for the quarter; and
11 "(II) meets the requirement of
12 clause (ii) for the quarter.
13 "(ii) SUBSIDIZED EMPLOYMENT EX-
14 PENDITURE REQUIREMENT.—A State
15 meets the requirement of this clause for a
16 quarter if the total expenditures of the
17 State for subsidized employment in the
18 quarter, whether under the State program
19 funded under this part or as qualified
20 State expenditures, exceeds the total of
21 such expenditures of the State in the cor-
22 responding quarter in the emergency fund
23 base year of the State.
24 "(iii) AMOUNT OF GRANT.—Subject to
25 paragraph (5), the amount of the grant to

be made to a State under this subparagraph for a quarter shall be an amount equal to 80 percent of the excess described in clause (ii).

"(4) AUTHORITY TO MAKE NECESSARY ADJUSTMENTS TO DATA AND COLLECT NEEDED DATA.—In determining the size of the caseload of a State and the expenditures of a State for basic assistance, nonrecurrent short-term benefits, and subsidized employment, during any period for which the State requests funds under this subsection, and during the emergency fund base year of the State, the Secretary may make appropriate adjustments to the data to ensure that the data reflect expenditures under the State program funded under this part and qualified State expenditures. The Secretary may develop a mechanism for collecting expenditure data, including procedures which allow States to make reasonable estimates, and may set deadlines for making revisions to the data.

"(5) LIMITATION.—The total amount payable to a single State under subsection (b) and this subsection for a fiscal year shall not exceed 25 percent of the State family assistance grant.

"(6) LIMITATIONS ON USE OF FUNDS.—A State to which an amount is paid under this subsection may use the amount only as authorized by section 404.

"(7) TIMING OF IMPLEMENTATION.—The Secretary shall implement this subsection as quickly as reasonably possible, pursuant to appropriate guidance to States.

"(8) DEFINITIONS.—In this subsection:

"(A) AVERAGE MONTHLY ASSISTANCE CASELOAD DEFINED.—The term 'average monthly assistance caseload' means, with respect to a State and a quarter, the number of families receiving assistance during the quarter under the State program funded under this part or as qualified State expenditures, subject to adjustment under paragraph (4).

"(B) EMERGENCY FUND BASE YEAR.—

"(i) IN GENERAL.—The term 'emergency fund base year' means, with respect to a State and a category described in clause (ii), whichever of fiscal year 2007 or 2008 is the fiscal year in which the amount described by the category with respect to the State is the lesser.

"(ii) CATEGORIES DESCRIBED.—The categories described in this clause are the following:

"(I) The average monthly assistance caseload of the State.

"(II) The total expenditures of the State for non-recurrent short term benefits, whether under the State program funded under this part or as qualified State expenditures.

"(III) The total expenditures of the State for subsidized employment, whether under the State program funded under this part or as qualified State expenditures.

"(C) QUALIFIED STATE EXPENDITURES.—The term 'qualified State expenditures' has the meaning given the term in section 409(a)(7).".

(2) REPEAL.—Effective October 1, 2010, subsection (c) of section 403 of the Social Security Act (42 U.S.C. 603) (as added by paragraph (1)) is repealed.

(b) TEMPORARY MODIFICATION OF CASELOAD REDUCTION CREDIT.—Section 407(b)(3)(A)(i) of such Act (42 U.S.C. 607(b)(3)(A)(i)) is amended by inserting "(or

if the immediately preceding fiscal year is fiscal year 2008, 2009, or 2010, then, at State option, during the emergency fund base year of the State with respect to the average monthly assistance caseload of the State (within the meaning of section 403(c)(8)(B), except that, if a State elects such option for fiscal year 2008, the emergency fund base year of the State with respect to such caseload shall be fiscal year 2007))'' before ''under the State''.

(c) DISREGARD FROM LIMITATION ON TOTAL PAYMENTS TO TERRITORIES.—Section 1108(a)(2) of the Social Security Act (42 U.S.C. 1308(a)(2)) is amended by inserting ''403(c)(3),'' after ''403(a)(5),''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 2102. EXTENSION OF TANF SUPPLEMENTAL GRANTS.

(a) EXTENSION THROUGH FISCAL YEAR 2010.—Section 7101(a) of the Deficit Reduction Act of 2005 (Public Law 109–171; 120 Stat. 135), as amended by section 301(a) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275), is amended by striking ''fiscal year 2009'' and inserting ''fiscal year 2010''.

(b) CONFORMING AMENDMENT.—Section 403(a)(3)(H)(ii) of the Social Security Act (42 U.S.C. 603(a)(3)(H)(ii)) is amended to read as follows:

"(ii) subparagraph (G) shall be applied as if 'fiscal year 2010' were substituted for 'fiscal year 2001'; and".

SEC. 2103. CLARIFICATION OF AUTHORITY OF STATES TO USE TANF FUNDS CARRIED OVER FROM PRIOR YEARS TO PROVIDE TANF BENEFITS AND SERVICES.

Section 404(e) of the Social Security Act (42 U.S.C. 604(e)) is amended to read as follows:

"(e) AUTHORITY TO CARRY OVER CERTAIN AMOUNTS FOR BENEFITS OR SERVICES OR FOR FUTURE CONTINGENCIES.—A State or tribe may use a grant made to the State or tribe under this part for any fiscal year to provide, without fiscal year limitation, any benefit or service that may be provided under the State or tribal program funded under this part.".

SEC. 2104. TEMPORARY REINSTATEMENT OF AUTHORITY TO PROVIDE FEDERAL MATCHING PAYMENTS FOR STATE SPENDING OF CHILD SUPPORT INCENTIVE PAYMENTS.

During the period that begins on October 1, 2008, and ends on December 31, 2010, section 455(a)(1) of the

1 Social Security Act (42 U.S.C. 655(a)(1)) shall be applied
2 without regard to the amendment made by section
3 7309(a) of the Deficit Reduction Act of 2005 (Public Law
4 109–171, 120 Stat. 147).

5 TITLE III—HEALTH INSURANCE 6 ASSISTANCE

7 **SEC. 3000. TABLE OF CONTENTS OF TITLE.**

8 The table of contents for this title is as follows:

TITLE III—HEALTH INSURANCE ASSISTANCE

Sec. 3000. Table of contents of title.

Subtitle A—Premium Subsidies for COBRA Continuation Coverage for Unemployed Workers

Sec. 3001. Premium assistance for COBRA benefits.

Subtitle B—Transitional Medical Assistance (TMA)

Sec. 3101. Extension of transitional medical assistance (TMA).

Subtitle C—Extension of the Qualified Individual (QI) Program

Sec. 3201. Extension of the qualifying individual (QI) program.

Subtitle D—Other Provisions

Sec. 3301. Premiums and cost sharing protections under Medicaid, eligibility determinations under Medicaid and CHIP, and protection of certain Indian property from Medicaid estate recovery.
Sec. 3302. Rules applicable under Medicaid and CHIP to managed care entities with respect to Indian enrollees and Indian health care providers and Indian managed care entities.
Sec. 3303. Consultation on Medicaid, CHIP, and other health care programs funded under the Social Security Act involving Indian Health Programs and Urban Indian Organizations.
Sec. 3304. Application of prompt pay requirements to nursing facilities.
Sec. 3305. Period of application; sunset.

Subtitle A—Premium Subsidies for COBRA Continuation Coverage for Unemployed Workers

SEC. 3001. PREMIUM ASSISTANCE FOR COBRA BENEFITS.

(a) TABLE OF CONTENTS OF SUBTITLE.—The table of contents of this subtitle is as follows:

Sec. 3001. Premium assistance for COBRA benefits.

(b) PREMIUM ASSISTANCE FOR COBRA CONTINUATION COVERAGE FOR UNEMPLOYED WORKERS AND THEIR FAMILIES.—

(1) PROVISION OF PREMIUM ASSISTANCE.—

(A) REDUCTION OF PREMIUMS PAYABLE.—In the case of any premium for a month of coverage beginning after the date of the enactment of the Act for COBRA continuation coverage with respect to any assistance eligible individual, such individual shall be treated for purposes of any COBRA continuation provision as having paid the amount of such premium if such individual pays 35 percent of the amount of such premium (as determined without regard to this subsection).

(B) PLAN ENROLLMENT OPTION.—

(i) IN GENERAL.—Notwithstanding the COBRA continuation provisions, an as-

1 sistance eligible individual may, not later
2 than 90 days after the date of notice of the
3 plan enrollment option described in this
4 subparagraph, elect to enroll in coverage
5 under a plan offered by the employer in-
6 volved, or the employee organization in-
7 volved (including, for this purpose, a joint
8 board of trustees of a multiemployer trust
9 affiliated with one or more multiemployer
10 plans), that is different than coverage
11 under the plan in which such individual
12 was enrolled at the time the qualifying
13 event occurred, and such coverage shall be
14 treated as COBRA continuation coverage
15 for purposes of the applicable COBRA con-
16 tinuation coverage provision.
17 (ii) REQUIREMENTS.—An assistance
18 eligible individual may elect to enroll in
19 different coverage as described in clause (i)
20 only if—
21 (I) the employer involved has
22 made a determination that such em-
23 ployer will permit assistance eligible
24 individuals to enroll in different cov-

1 erage as provided for this subpara-
2 graph;
3 (II) the premium for such dif-
4 ferent coverage does not exceed the
5 premium for coverage in which the in-
6 dividual was enrolled at the time the
7 qualifying event occurred;
8 (III) the different coverage in
9 which the individual elects to enroll is
10 coverage that is also offered to the ac-
11 tive employees of the employer at the
12 time at which such election is made;
13 and
14 (IV) the different coverage is
15 not—
16 (aa) coverage that provides
17 only dental, vision, counseling, or
18 referral services (or a combina-
19 tion of such services);
20 (bb) a health flexible spend-
21 ing account or health reimburse-
22 ment arrangement; or
23 (cc) coverage that provides
24 coverage for services or treat-
25 ments furnished in an on-site

1 medical facility maintained by
2 the employer and that consists
3 primarily of first-aid services,
4 prevention and wellness care, or
5 similar care (or a combination of
6 such care).

7 (C) PREMIUM REIMBURSEMENT.—For pro-
8 visions providing the balance of such premium,
9 see section 6432 of the Internal Revenue Code
10 of 1986, as added by paragraph (12).

11 (2) LIMITATION OF PERIOD OF PREMIUM AS-
12 SISTANCE.—

13 (A) IN GENERAL.—Paragraph (1)(A) shall
14 not apply with respect to any assistance eligible
15 individual for months of coverage beginning on
16 or after the earlier of—

17 (i) the first date that such individual
18 is eligible for coverage under any other
19 group health plan (other than coverage
20 consisting of only dental, vision, coun-
21 seling, or referral services (or a combina-
22 tion thereof), coverage under a health re-
23 imbursement arrangement or a health
24 flexible spending arrangement, or coverage
25 of treatment that is furnished in an on-site

1 medical facility maintained by the em-
2 ployer and that consists primarily of first-
3 aid services, prevention and wellness care,
4 or similar care (or a combination thereof))
5 or is eligible for benefits under title XVIII
6 of the Social Security Act; or
7 (ii) the earliest of—
8 (I) the date which is 9 months
9 after the first day of first month that
10 paragraph (1)(A) applies with respect
11 to such individual,
12 (II) the date following the expira-
13 tion of the maximum period of con-
14 tinuation coverage required under the
15 applicable COBRA continuation cov-
16 erage provision, or
17 (III) the date following the expi-
18 ration of the period of continuation
19 coverage allowed under paragraph
20 (4)(B)(ii).
21 (B) TIMING OF ELIGIBILITY FOR ADDI-
22 TIONAL COVERAGE.—For purposes of subpara-
23 graph (A)(i), an individual shall not be treated
24 as eligible for coverage under a group health

1 plan before the first date on which such indi-
2 vidual could be covered under such plan.
3 (C) NOTIFICATION REQUIREMENT.—An
4 assistance eligible individual shall notify in writ-
5 ing the group health plan with respect to which
6 paragraph (1)(A) applies if such paragraph
7 ceases to apply by reason of subparagraph
8 (A)(i). Such notice shall be provided to the
9 group health plan in such time and manner as
10 may be specified by the Secretary of Labor.
11 (3) ASSISTANCE ELIGIBLE INDIVIDUAL.—For
12 purposes of this section, the term ''assistance eligible
13 individual'' means any qualified beneficiary if—
14 (A) at any time during the period that be-
15 gins with September 1, 2008, and ends with
16 December 31, 2009, such qualified beneficiary
17 is eligible for COBRA continuation coverage,
18 (B) such qualified beneficiary elects such
19 coverage, and
20 (C) the qualifying event with respect to the
21 COBRA continuation coverage consists of the
22 involuntary termination of the covered employ-
23 ee's employment and occurred during such pe-
24 riod.

1 (4) EXTENSION OF ELECTION PERIOD AND EF-
2 FECT ON COVERAGE.—
3 (A) IN GENERAL.—Notwithstanding sec-
4 tion 605(a) of the Employee Retirement Income
5 Security Act of 1974, section 4980B(f)(5)(A) of
6 the Internal Revenue Code of 1986, section
7 2205(a) of the Public Health Service Act, and
8 section 8905a(c)(2) of title 5, United States
9 Code, in the case of an individual who is a
10 qualified beneficiary described in paragraph
11 (3)(A) as of the date of the enactment of this
12 Act and has not made the election referred to
13 in paragraph (3)(B) as of such date, such indi-
14 vidual may elect the COBRA continuation cov-
15 erage under the COBRA continuation coverage
16 provisions containing such sections during the
17 60-day period commencing with the date on
18 which the notification required under paragraph
19 (7)(C) is provided to such individual.
20 (B) COMMENCEMENT OF COVERAGE; NO
21 REACH-BACK.—Any COBRA continuation cov-
22 erage elected by a qualified beneficiary during
23 an extended election period under subparagraph
24 (A)—

(i) shall commence on the date of the enactment of this Act, and

(ii) shall not extend beyond the period of COBRA continuation coverage that would have been required under the applicable COBRA continuation coverage provision if the coverage had been elected as required under such provision.

(C) PREEXISTING CONDITIONS.—With respect to a qualified beneficiary who elects COBRA continuation coverage pursuant to subparagraph (A), the period—

(i) beginning on the date of the qualifying event, and

(ii) ending with the day before the date of the enactment of this Act,

shall be disregarded for purposes of determining the 63-day periods referred to in section 701)(2) of the Employee Retirement Income Security Act of 1974, section 9801(c)(2) of the Internal Revenue Code of 1986, and section 2701(c)(2) of the Public Health Service Act.

(5) EXPEDITED REVIEW OF DENIALS OF PREMIUM ASSISTANCE.—In any case in which an individual requests treatment as an assistance eligible

individual and is denied such treatment by the group health plan by reason of such individual's ineligibility for COBRA continuation coverage, the Secretary of Labor (or the Secretary of Health and Human services in connection with COBRA continuation coverage which is provided other than pursuant to part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974), in consultation with the Secretary of the Treasury, shall provide for expedited review of such denial. An individual shall be entitled to such review upon application to such Secretary in such form and manner as shall be provided by such Secretary. Such Secretary shall make a determination regarding such individual's eligibility within 10 business days after receipt of such individual's application for review under this paragraph.

(6) DISREGARD OF SUBSIDIES FOR PURPOSES OF FEDERAL AND STATE PROGRAMS.—Notwithstanding any other provision of law, any premium reduction with respect to an assistance eligible individual under this subsection shall not be considered income or resources in determining eligibility for, or the amount of assistance or benefits provided under, any other public benefit provided under Federal law

or the law of any State or political subdivision thereof.

(7) NOTICES TO INDIVIDUALS.—

(A) GENERAL NOTICE.—

(i) IN GENERAL.—In the case of notices provided under section 606(4) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1166(4)), section 4980B(f)(6)(D) of the Internal Revenue Code of 1986, section 2206(4) of the Public Health Service Act (42 U.S.C. 300bb-6(4)), or section 8905a(f)(2)(A) of title 5, United States Code, with respect to individuals who, during the period described in paragraph (3)(A), become entitled to elect COBRA continuation coverage, such notices shall include an additional notification to the recipient of—

(I) the availability of premium reduction with respect to such coverage under this subsection; and

(II) the option to enroll in different coverage if an employer that permits assistance eligible individuals to elect enrollment in different cov-

erage (as described in paragraph (1)(B)).

(ii) ALTERNATIVE NOTICE.—In the case of COBRA continuation coverage to which the notice provision under such sections does not apply, the Secretary of Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall, in coordination with administrators of the group health plans (or other entities) that provide or administer the COBRA continuation coverage involved, provide rules requiring the provision of such notice.

(iii) FORM.—The requirement of the additional notification under this subparagraph may be met by amendment of existing notice forms or by inclusion of a separate document with the notice otherwise required.

(B) SPECIFIC REQUIREMENTS.—Each additional notification under subparagraph (A) shall include—

(i) the forms necessary for establishing eligibility for premium reduction under this subsection,

(ii) the name, address, and telephone number necessary to contact the plan administrator and any other person maintaining relevant information in connection with such premium reduction,

(iii) a description of the extended election period provided for in paragraph (4)(A),

(iv) a description of the obligation of the qualified beneficiary under paragraph (2)(C) to notify the plan providing continuation coverage of eligibility for subsequent coverage under another group health plan or eligibility for benefits under title XVIII of the Social Security Act and the penalty provided for failure to so notify the plan,

(v) a description, displayed in a prominent manner, of the qualified beneficiary's right to a reduced premium and any conditions on entitlement to the reduced premium; and

1 (vi) a description of the option of the
2 qualified beneficiary to enroll in different
3 coverage if the employer permits such ben-
4 eficiary to elect to enroll in such different
5 coverage under paragraph (1)(B).
6 (C) NOTICE RELATING TO RETROACTIVE
7 COVERAGE.—In the case of an individual de-
8 scribed in paragraph (3)(A) who has elected
9 COBRA continuation coverage as of the date of
10 enactment of this Act or an individual described
11 in paragraph (4)(A), the administrator of the
12 group health plan (or other person) involved
13 shall provide (within 60 days after the date of
14 enactment of this Act) for the additional notifi-
15 cation required to be provided under subpara-
16 graph (A).
17 (D) MODEL NOTICES.—Not later than 30
18 days after the date of enactment of this Act,
19 the Secretary of the Labor, in consultation with
20 the Secretary of the Treasury and the Secretary
21 of Health and Human Services, shall prescribe
22 models for the additional notification required
23 under this paragraph.
24 (8) SAFEGUARDS.—The Secretary of the Treas-
25 ury shall provide such rules, procedures, regulations,

1 and other guidance as may be necessary and appro-
2 priate to prevent fraud and abuse under this sub-
3 section.

4 (9) OUTREACH.—The Secretary of Labor, in
5 consultation with the Secretary of the Treasury and
6 the Secretary of Health and Human Services, shall
7 provide outreach consisting of public education and
8 enrollment assistance relating to premium reduction
9 provided under this subsection. Such outreach shall
10 target employers, group health plan administrators,
11 public assistance programs, States, insurers, and
12 other entities as determined appropriate by such
13 Secretaries. Such outreach shall include an initial
14 focus on those individuals electing continuation cov-
15 erage who are referred to in paragraph (7)(C). In-
16 formation on such premium reduction, including en-
17 rollment, shall also be made available on website of
18 the Departments of Labor, Treasury, and Health
19 and Human Services.

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

22 (A) ADMINISTRATOR.—The term ''admin-
23 istrator'' has the meaning given such term in
24 section 3(16) of the Employee Retirement In-
25 come Security Act of 1974

(B) COBRA CONTINUATION COVERAGE.—The term ''COBRA continuation coverage'' means continuation coverage provided pursuant to part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (other than under section 609), title XXII of the Public Health Service Act, section 4980B of the Internal Revenue Code of 1986 (other than subsection (f)(1) of such section insofar as it relates to pediatric vaccines), or section 8905a of title 5, United States Code, or under a State program that provides continuation coverage comparable to such continuation coverage. Such term does not include coverage under a health flexible spending arrangement.

(C) COBRA CONTINUATION PROVISION.—The term ''COBRA continuation provision'' means the provisions of law described in subparagraph (B).

(D) COVERED EMPLOYEE.—The term ''covered employee'' has the meaning given such term in section 607(2) of the Employee Retirement Income Security Act of 1974.

(E) QUALIFIED BENEFICIARY.—The term ''qualified beneficiary'' has the meaning given

1 such term in section 607(3) of the Employee
2 Retirement Income Security Act of 1974.
3 (F) GROUP HEALTH PLAN.—The term
4 ''group health plan'' has the meaning given
5 such term in section 607(1) of the Employee
6 Retirement Income Security Act of 1974.
7 (G) STATE.—The term ''State'' includes
8 the District of Columbia, the Commonwealth of
9 Puerto Rico, the Virgin Islands, Guam, Amer-
10 ican Samoa, and the Commonwealth of the
11 Northern Mariana Islands.
12 (11) REPORTS.—
13 (A) INTERIM REPORT.—The Secretary of
14 the Treasury shall submit an interim report to
15 the Committee on Education and Labor, the
16 Committee on Ways and Means, and the Com-
17 mittee on Energy and Commerce of the House
18 of Representatives and the Committee on
19 Health, Education, Labor, and Pensions and
20 the Committee on Finance of the Senate re-
21 garding the premium reduction provided under
22 this subsection that includes—
23 (i) the number of individuals provided
24 such assistance as of the date of the re-
25 port; and

(ii) the total amount of expenditures incurred (with administrative expenditures noted separately) in connection with such assistance as of the date of the report.

(B) FINAL REPORT.—As soon as practicable after the last period of COBRA continuation coverage for which premium reduction is provided under this section, the Secretary of the Treasury shall submit a final report to each Committee referred to in subparagraph (A) that includes—

(i) the number of individuals provided premium reduction under this section;

(ii) the average dollar amount (monthly and annually) of premium reductions provided to such individuals; and

(iii) the total amount of expenditures incurred (with administrative expenditures noted separately) in connection with premium reduction under this section.

(12) COBRA PREMIUM ASSISTANCE.—

(A) IN GENERAL.—Subchapter B of chapter 65 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

"SEC. 6432. COBRA PREMIUM ASSISTANCE.

"(a) IN GENERAL.—The person to whom premiums are payable under COBRA continuation coverage shall be reimbursed for the amount of premiums not paid by plan beneficiaries by reason of section 3001(b) of the American Recovery and Reinvestment Act of 2009. Such amount shall be treated as a credit against the requirement of such person to make deposits of payroll taxes and the liability of such person for payroll taxes. To the extent that such amount exceeds the amount of such taxes, the Secretary shall pay to such person the amount of such excess. No payment may be made under this subsection to a person with respect to any assistance eligible individual until after such person has received the reduced premium from such individual required under section 3001(a)(1)(A) of such Act.

"(b) PAYROLL TAXES.—For purposes of this section, the term 'payroll taxes' means—

"(1) amounts required to be deducted and withheld for the payroll period under section 3401 (relating to wage withholding),

"(2) amounts required to be deducted for the payroll period under section 3102 (relating to FICA employee taxes), and

1 "(3) amounts of the taxes imposed for the pay-
2 roll period under section 3111 (relating to FICA em-
3 ployer taxes).
4 "(c) TREATMENT OF CREDIT.—Except as otherwise
5 provided by the Secretary, the credit described in sub-
6 section (a) shall be applied as though the employer had
7 paid to the Secretary, on the day that the qualified bene-
8 ficiary's premium payment is received, an amount equal
9 to such credit.
10 "(d) TREATMENT OF PAYMENT.—For purposes of
11 section 1324(b)(2) of title 31, United States Code, any
12 payment under this subsection shall be treated in the same
13 manner as a refund of the credit under section 35.
14 "(e) REPORTING.—
15 "(1) IN GENERAL.—Each person entitled to re-
16 imbursement under subsection (a) for any period
17 shall submit such reports as the Secretary may re-
18 quire, including—
19 "(A) an attestation of involuntary termi-
20 nation of employment for each covered em-
21 ployee on the basis of whose termination entitle-
22 ment to reimbursement is claimed under sub-
23 section (a), and
24 "(B) a report of the amount of payroll
25 taxes offset under subsection (a) for the report-

ing period and the estimated offsets of such taxes for the subsequent reporting period in connection with reimbursements under subsection (a).

"(2) TIMING OF REPORTS RELATING TO AMOUNT OF PAYROLL TAXES.—Reports required under paragraph (1)(B) shall be submitted at the same time as deposits of taxes imposed by chapters 21, 22, and 24 or at such time as is specified by the Secretary.

"(f) REGULATIONS.—The Secretary may issue such regulations or other guidance as may be necessary or appropriate to carry out this section, including the requirement to report information or the establishment of other methods for verifying the correct amounts of payments and credits under this section, and the application of this section to group health plans which are multiemployer plans.".

(B) SOCIAL SECURITY TRUST FUNDS HELD HARMLESS.—In determining any amount transferred or appropriated to any fund under the Social Security Act, section 6432 of the Internal Revenue Code of 1986 shall not be taken into account.

1 (C) CLERICAL AMENDMENT.—The table of
2 sections for subchapter B of chapter 65 of the
3 Internal Revenue Code of 1986 is amended by
4 adding at the end the following new item:

"Sec. 6432. COBRA premium assistance.".

5 (D) EFFECTIVE DATE.—The amendments
6 made by this paragraph shall apply to pre-
7 miums to which subsection (a)(1)(A) applies.
8 (E) SPECIAL RULE.—
9 (i) IN GENERAL.—In the case of an
10 assistance eligible individual who pays the
11 full premium amount required for COBRA
12 continuation coverage for any month dur-
13 ing the 60-day period beginning on the
14 first day of the first month after the date
15 of enactment of this Act, the person to
16 whom such payment is made shall—
17 (I) make a reimbursement pay-
18 ment to such individual for the
19 amount of such premium paid in ex-
20 cess of the amount required to be paid
21 under subsection (b)(1)(A); or
22 (II) provide credit to the indi-
23 vidual for such amount in a manner
24 that reduces one or more subsequent
25 premium payments that the individual

is required to pay under such subsection for the coverage involved.

(ii) REIMBURSING EMPLOYER.—A person to which clause (i) applies shall be reimbursed as provided for in section 6432 of the Internal Revenue Code of 1986 for any payment made, or credit provided, to the employee under such clause.

(iii) PAYMENT OR CREDITS.—Unless it is reasonable to believe that the credit for the excess payment in clause (i)(II) will be used by the assistance eligible individual within 180 days of the date on which the person receives from the individual the payment of the full premium amount, a person to which clause (i) applies shall make the payment required under such clause to the individual within 60 days of such payment of the full premium amount. If, as of any day within the 180-day period, it is no longer reasonable to believe that the credit will be used during that period, payment equal to the remainder of the credit outstanding shall be made to the individual within 60 days of such day.

(13) PENALTY FOR FAILURE TO NOTIFY HEALTH PLAN OF CESSATION OF ELIGIBILITY FOR PREMIUM ASSISTANCE.—

(A) IN GENERAL.—Part I of subchapter B of chapter 68 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

"SEC. 6720C. PENALTY FOR FAILURE TO NOTIFY HEALTH PLAN OF CESSATION OF ELIGIBILITY FOR COBRA PREMIUM ASSISTANCE.

''(a) IN GENERAL.—Any person required to notify a group health plan under section 3001(a)(2)(C) of the American Recovery and Reinvestment Act of 2009 who fails to make such a notification at such time and in such manner as the Secretary of Labor may require shall pay a penalty of 110 percent of the premium reduction provided under such section after termination of eligibility under such subsection.

''(b) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subsection (a) with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect.''.

(B) CLERICAL AMENDMENT.—The table of sections of part I of subchapter B of chapter 68

of such Code is amended by adding at the end the following new item:

"Sec. 6720C. Penalty for failure to notify health plan of cessation of eligibility for COBRA premium assistance.".

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to failures occurring after the date of the enactment of this Act.

(14) COORDINATION WITH HCTC.—

(A) IN GENERAL.—Subsection (g) of section 35 of the Internal Revenue Code of 1986 is amended by redesignating paragraph (9) as paragraph (10) and inserting after paragraph (8) the following new paragraph:

"(9) COBRA PREMIUM ASSISTANCE.—In the case of an assistance eligible individual who receives premium reduction for COBRA continuation coverage under section 3001(a) of the American Recovery and Reinvestment Act of 2009 for any month during the taxable year, such individual shall not be treated as an eligible individual, a certified individual, or a qualifying family member for purposes of this section or section 7527 with respect to such month.".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to tax-

able years ending after the date of the enactment of this Act.

(15) EXCLUSION OF COBRA PREMIUM ASSISTANCE FROM GROSS INCOME.—

(A) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 139B the following new section:

"SEC. 139C. COBRA PREMIUM ASSISTANCE.

''In the case of an assistance eligible individual (as defined in section 3001 of the American Recovery and Reinvestment Act of 2009), gross income does not include any premium reduction provided under subsection (a) of such section.''.

(B) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of such Code is amended by inserting after the item relating to section 139B the following new item:

''Sec. 139C. COBRA premium assistance.''.

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to taxable years ending after the date of the enactment of this Act.

Subtitle B—Transitional Medical Assistance (TMA)

SEC. 3101. EXTENSION OF TRANSITIONAL MEDICAL ASSISTANCE (TMA).

(a) 18-MONTH EXTENSION.—

(1) IN GENERAL.—Sections 1902(e)(1)(B) and 1925(f) of the Social Security Act (42 U.S.C. 1396a(e)(1)(B), 1396r–6(f)) are each amended by striking ''September 30, 2003'' and inserting ''December 31, 2010''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on July 1, 2009.

(b) STATE OPTION OF INITIAL 12-MONTH ELIGIBILITY.—Section 1925 of the Social Security Act (42 U.S.C. 1396r–6) is amended—

(1) in subsection (a)(1), by inserting ''but subject to paragraph (5)'' after ''Notwithstanding any other provision of this title'';

(2) by adding at the end of subsection (a) the following:

''(5) OPTION OF 12-MONTH INITIAL ELIGIBILITY PERIOD.—A State may elect to treat any reference in this subsection to a 6-month period (or 6 months) as a reference to a 12-month period (or 12 months).

In the case of such an election, subsection (b) shall not apply.''; and

(3) in subsection (b)(1), by inserting ''but subject to subsection (a)(5)'' after ''Notwithstanding any other provision of this title''.

(c) REMOVAL OF REQUIREMENT FOR PREVIOUS RECEIPT OF MEDICAL ASSISTANCE.—Section 1925(a)(1) of such Act (42 U.S.C. 1396r–6(a)(1)), as amended by subsection (b)(1), is further amended—

(1) by inserting ''subparagraph (B) and'' before ''paragraph (5)'';

(2) by redesignating the matter after ''REQUIREMENT.—'' as a subparagraph (A) with the heading ''IN GENERAL.—'' and with the same indentation as subparagraph (B) (as added by paragraph (3)); and

(3) by adding at the end the following:

''(B) STATE OPTION TO WAIVE REQUIREMENT FOR 3 MONTHS BEFORE RECEIPT OF MEDICAL ASSISTANCE.—A State may, at its option, elect also to apply subparagraph (A) in the case of a family that was receiving such aid for fewer than three months or that had applied for and was eligible for such aid for fewer than

1 3 months during the 6 immediately preceding
2 months described in such subparagraph.''.
3 (d) CMS REPORT ON ENROLLMENT AND PARTICIPA-
4 TION RATES UNDER TMA.—Section 1925 of such Act (42
5 U.S.C. 1396r–6), as amended by this section, is further
6 amended by adding at the end the following new sub-
7 section:
8 ''(g) COLLECTION AND REPORTING OF PARTICIPA-
9 TION INFORMATION.—
10 ''(1) COLLECTION OF INFORMATION FROM
11 STATES.—Each State shall collect and submit to the
12 Secretary (and make publicly available), in a format
13 specified by the Secretary, information on average
14 monthly enrollment and average monthly participa-
15 tion rates for adults and children under this section
16 and of the number and percentage of children who
17 become ineligible for medical assistance under this
18 section whose medical assistance is continued under
19 another eligibility category or who are enrolled under
20 the State's child health plan under title XXI. Such
21 information shall be submitted at the same time and
22 frequency in which other enrollment information
23 under this title is submitted to the Secretary.
24 ''(2) ANNUAL REPORTS TO CONGRESS.—Using
25 the information submitted under paragraph (1), the

Secretary shall submit to Congress annual reports concerning enrollment and participation rates described in such paragraph.''.

(e) EFFECTIVE DATE.—The amendments made by subsections (b) through (d) shall take effect on July 1, 2009.

Subtitle C—Extension of the Qualified Individual (QI) Program

SEC. 3201. EXTENSION OF THE QUALIFYING INDIVIDUAL (QI) PROGRAM.

(a) EXTENSION.—Section 1902(a)(10)(E)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iv)) is amended by striking ''December 2009'' and inserting ''December 2010''.

(b) EXTENDING TOTAL AMOUNT AVAILABLE FOR ALLOCATION.—Section 1933(g) of such Act (42 U.S.C. 1396u–3(g)) is amended—

(1) in paragraph (2)—

(A) by striking ''and'' at the end of subparagraph (K);

(B) in subparagraph (L), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following new subparagraphs:

"(M) for the period that begins on January 1, 2010, and ends on September 30, 2010, the total allocation amount is $412,500,000; and

"(N) for the period that begins on October 1, 2010, and ends on December 31, 2010, the total allocation amount is $150,000,000."; and

(2) in paragraph (3), in the matter preceding subparagraph (A), by striking "or (L)" and inserting "(L), or (N)".

Subtitle D—Other Provisions

SEC. 3301. PREMIUMS AND COST SHARING PROTECTIONS UNDER MEDICAID, ELIGIBILITY DETERMINATIONS UNDER MEDICAID AND CHIP, AND PROTECTION OF CERTAIN INDIAN PROPERTY FROM MEDICAID ESTATE RECOVERY.

(a) PREMIUMS AND COST SHARING PROTECTION UNDER MEDICAID.—

(1) IN GENERAL.—Section 1916 of the Social Security Act (42 U.S.C. 1396o) is amended—

(A) in subsection (a), in the matter preceding paragraph (1), by striking "and (i)" and inserting ", (i), and (j)"; and

(B) by adding at the end the following new subsection:

1 "(j) NO PREMIUMS OR COST SHARING FOR INDIANS
2 FURNISHED ITEMS OR SERVICES DIRECTLY BY INDIAN
3 HEALTH PROGRAMS OR THROUGH REFERRAL UNDER
4 CONTRACT HEALTH SERVICES.—
5 "(1) NO COST SHARING FOR ITEMS OR SERV-
6 ICES FURNISHED TO INDIANS THROUGH INDIAN
7 HEALTH PROGRAMS.—
8 "(A) IN GENERAL.—No enrollment fee,
9 premium, or similar charge, and no deduction,
10 copayment, cost sharing, or similar charge shall
11 be imposed against an Indian who is furnished
12 an item or service directly by the Indian Health
13 Service, an Indian Tribe, Tribal Organization,
14 or Urban Indian Organization or through refer-
15 ral under contract health services for which
16 payment may be made under this title.
17 "(B) NO REDUCTION IN AMOUNT OF PAY-
18 MENT TO INDIAN HEALTH PROVIDERS.—Pay-
19 ment due under this title to the Indian Health
20 Service, an Indian Tribe, Tribal Organization,
21 or Urban Indian Organization, or a health care
22 provider through referral under contract health
23 services for the furnishing of an item or service
24 to an Indian who is eligible for assistance under
25 such title, may not be reduced by the amount

of any enrollment fee, premium, or similar charge, or any deduction, copayment, cost sharing, or similar charge that would be due from the Indian but for the operation of subparagraph (A).

"(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed as restricting the application of any other limitations on the imposition of premiums or cost sharing that may apply to an individual receiving medical assistance under this title who is an Indian.".

(2) CONFORMING AMENDMENT.—Section 1916A(b)(3) of such Act (42 U.S.C. 1396o–1(b)(3)) is amended—

(A) in subparagraph (A), by adding at the end the following new clause:

"(vi) An Indian who is furnished an item or service directly by the Indian Health Service, an Indian Tribe, Tribal Organization or Urban Indian Organization or through referral under contract health services."; and

(B) in subparagraph (B), by adding at the end the following new clause:

"(ix) Items and services furnished to an Indian directly by the Indian Health Service, an Indian Tribe, Tribal Organization or Urban Indian Organization or through referral under contract health services.".

(b) TREATMENT OF CERTAIN PROPERTY FROM RESOURCES FOR MEDICAID AND CHIP ELIGIBILITY.—

(1) MEDICAID.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended by adding at the end the following new subsection:

"(dd) Notwithstanding any other requirement of this title or any other provision of Federal or State law, a State shall disregard the following property from resources for purposes of determining the eligibility of an individual who is an Indian for medical assistance under this title:

"(1) Property, including real property and improvements, that is held in trust, subject to Federal restrictions, or otherwise under the supervision of the Secretary of the Interior, located on a reservation, including any federally recognized Indian Tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established by the Alaska Native Claims Settlement Act, and Indian allotments on or near a res-

ervation as designated and approved by the Bureau of Indian Affairs of the Department of the Interior.

''(2) For any federally recognized Tribe not described in paragraph (1), property located within the most recent boundaries of a prior Federal reservation.

''(3) Ownership interests in rents, leases, royalties, or usage rights related to natural resources (including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish) resulting from the exercise of federally protected rights.

''(4) Ownership interests in or usage rights to items not covered by paragraphs (1) through (3) that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom.''.

(2) APPLICATION TO CHIP.—Section 2107(e)(1) of such Act (42 U.S.C. 1397gg(e)(1)) is amended—

(A) by redesignating subparagraphs (B) through (E), as subparagraphs (C) through (F), respectively; and

(B) by inserting after subparagraph (A), the following new subparagraph:

"(B) Section 1902(dd) (relating to disregard of certain property for purposes of making eligibility determinations).".

(c) CONTINUATION OF CURRENT LAW PROTECTIONS OF CERTAIN INDIAN PROPERTY FROM MEDICAID ESTATE RECOVERY.—Section 1917(b)(3) of the Social Security Act (42 U.S.C. 1396p(b)(3)) is amended—

(1) by inserting "(A)" after "(3)"; and

(2) by adding at the end the following new subparagraph:

"(B) The standards specified by the Secretary under subparagraph (A) shall require that the procedures established by the State agency under subparagraph (A) exempt income, resources, and property that are exempt from the application of this subsection as of April 1, 2003, under manual instructions issued to carry out this subsection (as in effect on such date) because of the Federal responsibility for Indian Tribes and Alaska Native Villages. Nothing in this subparagraph shall be construed as preventing the Secretary from providing additional estate recovery exemptions under this title for Indians.".

SEC. 3302. RULES APPLICABLE UNDER MEDICAID AND CHIP TO MANAGED CARE ENTITIES WITH RESPECT TO INDIAN ENROLLEES AND INDIAN HEALTH CARE PROVIDERS AND INDIAN MANAGED CARE ENTITIES.

(a) IN GENERAL.—Section 1932 of the Social Security Act (42 U.S.C. 1396u–2) is amended by adding at the end the following new subsection:

"(h) SPECIAL RULES WITH RESPECT TO INDIAN ENROLLEES, INDIAN HEALTH CARE PROVIDERS, AND INDIAN MANAGED CARE ENTITIES.—

"(1) ENROLLEE OPTION TO SELECT AN INDIAN HEALTH CARE PROVIDER AS PRIMARY CARE PROVIDER.—In the case of a non-Indian Medicaid managed care entity that—

"(A) has an Indian enrolled with the entity; and

"(B) has an Indian health care provider that is participating as a primary care provider within the network of the entity,

insofar as the Indian is otherwise eligible to receive services from such Indian health care provider and the Indian health care provider has the capacity to provide primary care services to such Indian, the contract with the entity under section 1903(m) or under section 1905(t)(3) shall require, as a condi-

1 tion of receiving payment under such contract, that
2 the Indian shall be allowed to choose such Indian
3 health care provider as the Indian's primary care
4 provider under the entity.

5 "(2) ASSURANCE OF PAYMENT TO INDIAN
6 HEALTH CARE PROVIDERS FOR PROVISION OF COV-
7 ERED SERVICES.—Each contract with a managed
8 care entity under section 1903(m) or under section
9 1905(t)(3) shall require any such entity, as a condi-
10 tion of receiving payment under such contract, to
11 satisfy the following requirements:

12 "(A) DEMONSTRATION OF ACCESS TO IN-
13 DIAN HEALTH CARE PROVIDERS AND APPLICA-
14 TION OF ALTERNATIVE PAYMENT ARRANGE-
15 MENTS.—Subject to subparagraph (C), to—

16 "(i) demonstrate that the number of
17 Indian health care providers that are par-
18 ticipating providers with respect to such
19 entity are sufficient to ensure timely access
20 to covered Medicaid managed care services
21 for those Indian enrollees who are eligible
22 to receive services from such providers; and

23 "(ii) agree to pay Indian health care
24 providers, whether such providers are par-
25 ticipating or nonparticipating providers

with respect to the entity, for covered Medicaid managed care services provided to those Indian enrollees who are eligible to receive services from such providers at a rate equal to the rate negotiated between such entity and the provider involved or, if such a rate has not been negotiated, at a rate that is not less than the level and amount of payment which the entity would make for the services if the services were furnished by a participating provider which is not an Indian health care provider.

"(B) PROMPT PAYMENT.—To agree to make prompt payment (consistent with rule for prompt payment of providers under section 1932(f)) to Indian health care providers that are participating providers with respect to such entity or, in the case of an entity to which subparagraph (A)(ii) or (C) applies, that the entity is required to pay in accordance with that subparagraph.

"(C) APPLICATION OF SPECIAL PAYMENT REQUIREMENTS FOR FEDERALLY-QUALIFIED HEALTH CENTERS AND FOR SERVICES PRO-

1 VIDED BY CERTAIN INDIAN HEALTH CARE PRO-
2 VIDERS.—
3 "(i) FEDERALLY-QUALIFIED HEALTH
4 CENTERS.—
5 "(I) MANAGED CARE ENTITY
6 PAYMENT REQUIREMENT.—To agree
7 to pay any Indian health care provider
8 that is a federally-qualified health
9 center under this title but not a par-
10 ticipating provider with respect to the
11 entity, for the provision of covered
12 Medicaid managed care services by
13 such provider to an Indian enrollee of
14 the entity at a rate equal to the
15 amount of payment that the entity
16 would pay a federally-qualified health
17 center that is a participating provider
18 with respect to the entity but is not
19 an Indian health care provider for
20 such services.
21 "(II) CONTINUED APPLICATION
22 OF STATE REQUIREMENT TO MAKE
23 SUPPLEMENTAL PAYMENT.—Nothing
24 in subclause (I) or subparagraph (A)
25 or (B) shall be construed as waiving

1 the application of section 1902(bb)(5)
2 regarding the State plan requirement
3 to make any supplemental payment
4 due under such section to a federally-
5 qualified health center for services
6 furnished by such center to an en-
7 rollee of a managed care entity (re-
8 gardless of whether the federally-
9 qualified health center is or is not a
10 participating provider with the entity).
11 ''(ii) PAYMENT RATE FOR SERVICES
12 PROVIDED BY CERTAIN INDIAN HEALTH
13 CARE PROVIDERS.—If the amount paid by
14 a managed care entity to an Indian health
15 care provider that is not a federally-quali-
16 fied health center for services provided by
17 the provider to an Indian enrollee with the
18 managed care entity is less than the rate
19 that applies to the provision of such serv-
20 ices by the provider under the State plan,
21 the plan shall provide for payment to the
22 Indian health care provider, whether the
23 provider is a participating or nonpartici-
24 pating provider with respect to the entity,
25 of the difference between such applicable

1 rate and the amount paid by the managed
2 care entity to the provider for such serv-
3 ices.

4 "(D) CONSTRUCTION.—Nothing in this
5 paragraph shall be construed as waiving the ap-
6 plication of section 1902(a)(30)(A) (relating to
7 application of standards to assure that pay-
8 ments are consistent with efficiency, economy,
9 and quality of care).

10 "(3) SPECIAL RULE FOR ENROLLMENT FOR IN-
11 DIAN MANAGED CARE ENTITIES.—Regarding the ap-
12 plication of a Medicaid managed care program to In-
13 dian Medicaid managed care entities, an Indian
14 Medicaid managed care entity may restrict enroll-
15 ment under such program to Indians and to mem-
16 bers of specific Tribes in the same manner as Indian
17 Health Programs may restrict the delivery of serv-
18 ices to such Indians and tribal members.

19 "(4) DEFINITIONS.—For purposes of this sub-
20 section:

21 "(A) INDIAN HEALTH CARE PROVIDER.—
22 The term 'Indian health care provider' means
23 an Indian Health Program or an Urban Indian
24 Organization.

1 "(B) INDIAN MEDICAID MANAGED CARE
2 ENTITY.—The term 'Indian Medicaid managed
3 care entity' means a managed care entity that
4 is controlled (within the meaning of the last
5 sentence of section 1903(m)(1)(C)) by the In-
6 dian Health Service, a Tribe, Tribal Organiza-
7 tion, or Urban Indian Organization, or a con-
8 sortium, which may be composed of 1 or more
9 Tribes, Tribal Organizations, or Urban Indian
10 Organizations, and which also may include the
11 Service.
12 "(C) NON-INDIAN MEDICAID MANAGED
13 CARE ENTITY.—The term 'non-Indian Medicaid
14 managed care entity' means a managed care en-
15 tity that is not an Indian Medicaid managed
16 care entity.
17 "(D) COVERED MEDICAID MANAGED CARE
18 SERVICES.—The term 'covered Medicaid man-
19 aged care services' means, with respect to an
20 individual enrolled with a managed care entity,
21 items and services for which benefits are avail-
22 able with respect to the individual under the
23 contract between the entity and the State in-
24 volved.

"(E) MEDICAID MANAGED CARE PROGRAM.—The term 'Medicaid managed care program' means a program under sections 1903(m), 1905(t), and 1932 and includes a managed care program operating under a waiver under section 1915(b) or 1115 or otherwise.".

(b) APPLICATION TO CHIP.—Subject to section __013(d), section 2107(e)(1) of such Act (42 U.S.C. 1397gg(1)) is amended by adding at the end the following new subparagraph:

"(E) Subsections (a)(2)(C) and (h) of section 1932.".

SEC. 3303. CONSULTATION ON MEDICAID, CHIP, AND OTHER HEALTH CARE PROGRAMS FUNDED UNDER THE SOCIAL SECURITY ACT INVOLVING INDIAN HEALTH PROGRAMS AND URBAN INDIAN ORGANIZATIONS.

(a) CONSULTATION WITH TRIBAL TECHNICAL ADVISORY GROUP (TTAG).—The Secretary of Health and Human Services shall maintain within the Centers for Medicaid & Medicare Services (CMS) a Tribal Technical Advisory Group (TTAG), which was first established in accordance with requirements of the charter dated September 30, 2003, and the Secretary of Health and Human

1 Services shall include in such Group a representative of
2 a national urban Indian health organization and a rep-
3 resentative of the Indian Health Service. The inclusion of
4 a representative of a national urban Indian health organi-
5 zation in such Group shall not affect the nonapplication
6 of the Federal Advisory Committee Act (5 U.S.C. App.)
7 to such Group.

8 (b) SOLICITATION OF ADVICE UNDER MEDICAID AND
9 CHIP.—

10 (1) MEDICAID STATE PLAN AMENDMENT.—
11 Subject to subsection (d), section 1902(a) of the So-
12 cial Security Act (42 U.S.C. 1396a(a)) is amend-
13 ed—

14 (A) in paragraph (70), by striking ''and''
15 at the end;

16 (B) in paragraph (71), by striking the pe-
17 riod at the end and inserting ''; and''; and

18 (C) by inserting after paragraph (71), the
19 following new paragraph:

20 ''(72) in the case of any State in which 1 or
21 more Indian Health Programs or Urban Indian Or-
22 ganizations furnishes health care services, provide
23 for a process under which the State seeks advice on
24 a regular, ongoing basis from designees of such In-
25 dian Health Programs and Urban Indian Organiza-

1 tions on matters relating to the application of this
2 title that are likely to have a direct effect on such
3 Indian Health Programs and Urban Indian Organi-
4 zations and that—

5 "(A) shall include solicitation of advice
6 prior to submission of any plan amendments,
7 waiver requests, and proposals for demonstra-
8 tion projects likely to have a direct effect on In-
9 dians, Indian Health Programs, or Urban In-
10 dian Organizations; and

11 "(B) may include appointment of an advi-
12 sory committee and of a designee of such In-
13 dian Health Programs and Urban Indian Orga-
14 nizations to the medical care advisory com-
15 mittee advising the State on its State plan
16 under this title.".

17 (2) APPLICATION TO CHIP.—Subject to sub-
18 section (d), section 2107(e)(1) of such Act (42
19 U.S.C. 1397gg(e)(1)), as amended by section
20 3302(b)(2), is amended—

21 (A) by redesignating subparagraphs (B)
22 through (E) as subparagraphs (C) through (F),
23 respectively; and

24 (B) by inserting after subparagraph (A),
25 the following new subparagraph:

"(B) Section 1902(a)(72) (relating to requiring certain States to seek advice from designees of Indian Health Programs and Urban Indian Organizations).".

(c) RULE OF CONSTRUCTION.—Nothing in the amendments made by this section shall be construed as superseding existing advisory committees, working groups, guidance, or other advisory procedures established by the Secretary of Health and Human Services or by any State with respect to the provision of health care to Indians.

(d) CONTINGENCY RULE.—If the Children's Health Insurance Program Reauthorization Act of 2009 (in this subsection referred to as "CHIPRA") has been enacted as of the date of enactment of this Act, the following shall apply:

(1) Subparagraph (I) of section 2107(e) of the Social Security Act (as redesignated by CHIPRA) is redesignated as subparagraph (K) and the subparagraph (E) added to section 2107(e) of the Social Security Act by section 3302(b) is redesignated as subparagraph (J).

(2) Subparagraphs (D) through (H) of section 2107(e) of the Social Security Act (as added and redesignated by CHIPRA) are redesignated as subparagraphs (E) through (I), respectively and the

subparagraph (B) of section 2107(e) of the Social Security Act added by subsection (b)(2) of this section is redesignated as subparagraph (D) and amended by striking ''1902(a)(72)'' and inserting ''1902(a)(73)''.

(3) Section 1902(a) of the Social Security Act (as amended by CHIPRA) is amended by striking ''and'' at the end of paragraph (71), by striking the period at the end of the paragraph (72) added by CHIPRA and inserting ''; and'' and by redesignated the paragraph (72) added to such section by subsection (b)(1) of this section as paragraph (73).

SEC. 3304. APPLICATION OF PROMPT PAY REQUIREMENTS TO NURSING FACILITIES.

Section 1902(a)(37)(A) of the Social Security Act (42 U.S.C. 1396a(a)(37)(A)) is amended by inserting '', or by nursing facilities,'' after ''health facilities''

SEC. 3305. PERIOD OF APPLICATION; SUNSET.

This subtitle and the amendments made by this subtitle shall be in effect only during the period that begins on April 1, 2009, and ends on December 31, 2010. On and after January 1, 2011, the Social Security Act shall be applied as if this subtitle and the amendments made by this subtitle had not been enacted.

TITLE IV—HEALTH INFORMATION TECHNOLOGY

SEC. 4001. SHORT TITLE; TABLE OF CONTENTS OF TITLE.

(a) SHORT TITLE.—This title may be cited as the "Medicare and Medicaid Health Information Technology for Economic and Clinical Health Act" or the "M-HITECH Act".

(b) TABLE OF CONTENTS OF TITLE.—The table of contents for this title is as follows:

TITLE IV—HEALTH INFORMATION TECHNOLOGY

Sec. 4001. Short title; table of contents of title.

Subtitle A—Medicare Program

Sec. 4201. Incentives for eligible professionals.
Sec. 4202. Incentives for hospitals.
Sec. 4203. Premium hold harmless and implementation funding.
Sec. 4204. Non-application of phased-out indirect medical education (IME) adjustment factor for fiscal year 2009.
Sec. 4205. Study on application of EHR payment incentives for providers not receiving other incentive payments.
Sec. 4206. Study on availability of open source health information technology systems.

Subtitle B—Medicaid Funding

Sec. 4211. Medicaid provider EHR adoption and operation payments; implementation funding.

Subtitle A—Medicare Program

SEC. 4201. INCENTIVES FOR ELIGIBLE PROFESSIONALS.

(a) INCENTIVE PAYMENTS.—Section 1848 of the Social Security Act (42 U.S.C. 1395w–4) is amended by adding at the end the following new subsection:

"(o) INCENTIVES FOR ADOPTION AND MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—

1 "(1) INCENTIVE PAYMENTS.—
2 "(A) IN GENERAL.—
3 "(i) IN GENERAL.—Subject to clause
4 (ii) and the succeeding subparagraphs of
5 this paragraph, with respect to covered
6 professional services furnished by an eligi-
7 ble professional during a payment year (as
8 defined in subparagraph (E)), if the eligi-
9 ble professional is a meaningful EHR user
10 (as determined under paragraph (2)) for
11 the reporting period with respect to such
12 year, in addition to the amount otherwise
13 paid under this part, there also shall be
14 paid to the eligible professional (or to an
15 employer or facility in the cases described
16 in clause (A) of section 1842(b)(6)), from
17 the Federal Supplementary Medical Insur-
18 ance Trust Fund established under section
19 1841 an amount equal to 75 percent of the
20 Secretary's estimate (based on claims sub-
21 mitted not later than 2 months after the
22 end of the payment year) of the allowed
23 charges under this part for all such cov-
24 ered professional services furnished by the
25 eligible professional during such year.

"(ii) NO INCENTIVE PAYMENTS WITH RESPECT TO YEARS AFTER 2015.—No incentive payments may be made under this subsection with respect to a year after 2015.

"(B) LIMITATIONS ON AMOUNTS OF INCENTIVE PAYMENTS.—

"(i) IN GENERAL.—In no case shall the amount of the incentive payment provided under this paragraph for an eligible professional for a payment year exceed the applicable amount specified under this subparagraph with respect to such eligible professional and such year.

"(ii) AMOUNT.—Subject to clauses (iii) through (v), the applicable amount specified in this subparagraph for an eligible professional is as follows:

"(I) For the first payment year for such professional, $15,000 (or, if the first payment year for such eligible professional is 2011 or 2012, $18,000).

"(II) For the second payment year for such professional, $12,000.

1 "(III) For the third payment
2 year for such professional, $8,000.
3 "(IV) For the fourth payment
4 year for such professional, $4,000.
5 "(V) For the fifth payment year
6 for such professional, $2,000.
7 "(VI) For any succeeding pay-
8 ment year for such professional, $0.
9 "(iii) PHASE DOWN FOR ELIGIBLE
10 PROFESSIONALS FIRST ADOPTING EHR IN
11 2014.—If the first payment year for an eli-
12 gible professional is 2014, then the amount
13 specified in this subparagraph for a pay-
14 ment year for such professional is the
15 same as the amount specified in clause (ii)
16 for such payment year for an eligible pro-
17 fessional whose first payment year is 2013.
18 "(iv) INCREASE FOR CERTAIN RURAL
19 ELIGIBLE PROFESSIONALS.—In the case of
20 an eligible professional who predominantly
21 furnishes services under this part in a
22 rural area that is designated by the Sec-
23 retary (under section 332(a)(1)(A) of the
24 Public Health Service Act) as a health pro-
25 fessional shortage area, the amount that

would otherwise apply for a payment year for such professional under subclauses (I) through (V) of clause (ii) shall be increased by 25 percent. In implementing the preceding sentence, the Secretary may, as determined appropriate, apply provisions of subsections (m) and (u) of section 1833 in a similar manner as such provisions apply under such subsection.

"(v) NO INCENTIVE PAYMENT IF FIRST ADOPTING AFTER 2014.—If the first payment year for an eligible professional is after 2014 then the applicable amount specified in this subparagraph for such professional for such year and any subsequent year shall be $0.

"(C) NON-APPLICATION TO HOSPITAL-BASED ELIGIBLE PROFESSIONALS.—

"(i) IN GENERAL.—No incentive payment may be made under this paragraph in the case of a hospital-based eligible professional.

"(ii) HOSPITAL-BASED ELIGIBLE PROFESSIONAL.—For purposes of clause (i), the term 'hospital-based eligible profes-

1 sional' means, with respect to covered pro-
2 fessional services furnished by an eligible
3 professional during the reporting period for
4 a payment year, an eligible professional,
5 such as a pathologist, anesthesiologist, or
6 emergency physician, who furnishes sub-
7 stantially all of such services in a hospital
8 setting (whether inpatient or outpatient)
9 and through the use of the facilities and
10 equipment, including qualified electronic
11 health records, of the hospital.
12 ''(D) PAYMENT.—
13 ''(i) FORM OF PAYMENT.—The pay-
14 ment under this paragraph may be in the
15 form of a single consolidated payment or
16 in the form of such periodic installments
17 as the Secretary may specify.
18 ''(ii) COORDINATION OF APPLICATION
19 OF LIMITATION FOR PROFESSIONALS IN
20 DIFFERENT PRACTICES.—In the case of an
21 eligible professional furnishing covered pro-
22 fessional services in more than one practice
23 (as specified by the Secretary), the Sec-
24 retary shall establish rules to coordinate
25 the incentive payments, including the ap-

1 plication of the limitation on amounts of
2 such incentive payments under this para-
3 graph, among such practices.
4 "(iii) COORDINATION WITH MED-
5 ICAID.—The Secretary shall seek, to the
6 maximum extent practicable, to avoid du-
7 plicative requirements from Federal and
8 State Governments to demonstrate mean-
9 ingful use of certified EHR technology
10 under this title and title XIX. In doing so,
11 the Secretary may deem satisfaction of
12 State requirements for such meaningful
13 use for a payment year under title XIX to
14 be sufficient to qualify as meaningful use
15 under this subsection and subsection (a)(7)
16 and vice versa. The Secretary may also ad-
17 just the reporting periods under such title
18 and such subsections in order to carry out
19 this clause.
20 "(E) PAYMENT YEAR DEFINED.—
21 "(i) IN GENERAL.—For purposes of
22 this subsection, the term 'payment year'
23 means a year beginning with 2011.
24 "(ii) FIRST, SECOND, ETC. PAYMENT
25 YEAR.—The term 'first payment year'

means, with respect to covered professional services furnished by an eligible professional, the first year for which an incentive payment is made for such services under this subsection. The terms 'second payment year', 'third payment year', 'fourth payment year', and 'fifth payment year' mean, with respect to covered professional services furnished by such eligible professional, each successive year immediately following the first payment year for such professional.

''(2) MEANINGFUL EHR USER.—

''(A) IN GENERAL.—For purposes of paragraph (1), an eligible professional shall be treated as a meaningful EHR user for a reporting period for a payment year (or, for purposes of subsection (a)(7), for a reporting period under such subsection for a year) if each of the following requirements is met:

''(i) MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—The eligible professional demonstrates to the satisfaction of the Secretary, in accordance with subparagraph (C)(i), that during such period the

1 professional is using certified EHR tech-
2 nology in a meaningful manner, which
3 shall include the use of electronic pre-
4 scribing as determined to be appropriate
5 by the Secretary.

6 "(ii) INFORMATION EXCHANGE.—The
7 eligible professional demonstrates to the
8 satisfaction of the Secretary, in accordance
9 with subparagraph (C)(i), that during such
10 period such certified EHR technology is
11 connected in a manner that provides, in
12 accordance with law and standards appli-
13 cable to the exchange of information, for
14 the electronic exchange of health informa-
15 tion to improve the quality of health care,
16 such as promoting care coordination.

17 "(iii) REPORTING ON MEASURES
18 USING EHR.—Subject to subparagraph
19 (B)(ii) and using such certified EHR tech-
20 nology, the eligible professional submits in-
21 formation for such period, in a form and
22 manner specified by the Secretary, on such
23 clinical quality measures and such other
24 measures as selected by the Secretary
25 under subparagraph (B)(i).

1 The Secretary may provide for the use of alter-
2 native means for meeting the requirements of
3 clauses (i), (ii), and (iii) in the case of an eligi-
4 ble professional furnishing covered professional
5 services in a group practice (as defined by the
6 Secretary). The Secretary shall seek to improve
7 the use of electronic health records and health
8 care quality over time by requiring more strin-
9 gent measures of meaningful use selected under
10 this paragraph.

11 ''(B) REPORTING ON MEASURES.—

12 ''(i) SELECTION.—The Secretary shall
13 select measures for purposes of subpara-
14 graph (A)(iii) but only consistent with the
15 following:

16 ''(I) The Secretary shall provide
17 preference to clinical quality measures
18 that have been endorsed by the entity
19 with a contract with the Secretary
20 under section 1890(a).

21 ''(II) Prior to any measure being
22 selected under this subparagraph, the
23 Secretary shall publish in the Federal
24 Register such measure and provide for

a period of public comment on such measure.

"(ii) LIMITATION.—The Secretary may not require the electronic reporting of information on clinical quality measures under subparagraph (A)(iii) unless the Secretary has the capacity to accept the information electronically, which may be on a pilot basis.

"(iii) COORDINATION OF REPORTING OF INFORMATION.—In selecting such measures, and in establishing the form and manner for reporting measures under subparagraph (A)(iii), the Secretary shall seek to avoid redundant or duplicative reporting otherwise required, including reporting under subsection (k)(2)(C).

"(C) DEMONSTRATION OF MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY AND INFORMATION EXCHANGE.—

"(i) IN GENERAL.—A professional may satisfy the demonstration requirement of clauses (i) and (ii) of subparagraph (A) through means specified by the Secretary, which may include—

1 "(I) an attestation;
2 "(II) the submission of claims
3 with appropriate coding (such as a
4 code indicating that a patient encoun-
5 ter was documented using certified
6 EHR technology);
7 "(III) a survey response;
8 "(IV) reporting under subpara-
9 graph (A)(iii); and
10 "(V) other means specified by the
11 Secretary.
12 "(ii) USE OF PART D DATA.—Not-
13 withstanding sections 1860D–15(d)(2)(B)
14 and 1860D–15(f)(2), the Secretary may
15 use data regarding drug claims submitted
16 for purposes of section 1860D–15 that are
17 necessary for purposes of subparagraph
18 (A).
19 "(3) APPLICATION.—
20 "(A) PHYSICIAN REPORTING SYSTEM
21 RULES.—Paragraphs (5), (6), and (8) of sub-
22 section (k) shall apply for purposes of this sub-
23 section in the same manner as they apply for
24 purposes of such subsection.

1 "(B) COORDINATION WITH OTHER PAY-
2 MENTS.—The provisions of this subsection shall
3 not be taken into account in applying the provi-
4 sions of subsection (m) of this section and of
5 section 1833(m) and any payment under such
6 provisions shall not be taken into account in
7 computing allowable charges under this sub-
8 section.

9 "(C) LIMITATIONS ON REVIEW.—There
10 shall be no administrative or judicial review
11 under section 1869, section 1878, or otherwise
12 of the determination of any incentive payment
13 under this subsection and the payment adjust-
14 ment under subsection (a)(7), including the de-
15 termination of a meaningful EHR user under
16 paragraph (2), a limitation under paragraph
17 (1)(B), and the exception under subsection
18 (a)(7)(B).

19 "(D) POSTING ON WEBSITE.—The Sec-
20 retary shall post on the Internet website of the
21 Centers for Medicare & Medicaid Services, in an
22 easily understandable format, a list of the
23 names, business addresses, and business phone
24 numbers of the eligible professionals who are
25 meaningful EHR users and, as determined ap-

1 propriate by the Secretary, of group practices
2 receiving incentive payments under paragraph
3 (1).
4 "(4) CERTIFIED EHR TECHNOLOGY DEFINED.—
5 For purposes of this section, the term 'certified
6 EHR technology' means a qualified electronic health
7 record (as defined in 3000(13) of the Public Health
8 Service Act) that is certified pursuant to section
9 3001(c)(5) of such Act as meeting standards adopt-
10 ed under section 3004 of such Act that are applica-
11 ble to the type of record involved (as determined by
12 the Secretary, such as an ambulatory electronic
13 health record for office-based physicians or an inpa-
14 tient hospital electronic health record for hospitals).
15 "(5) DEFINITIONS.—For purposes of this sub-
16 section:
17 "(A) COVERED PROFESSIONAL SERV-
18 ICES.—The term 'covered professional services'
19 has the meaning given such term in subsection
20 (k)(3).
21 "(B) ELIGIBLE PROFESSIONAL.—The term
22 'eligible professional' means a physician, as de-
23 fined in section 1861(r).
24 "(C) REPORTING PERIOD.—The term 're-
25 porting period' means any period (or periods),

with respect to a payment year, as specified by the Secretary.''.

(b) INCENTIVE PAYMENT ADJUSTMENT.—Section 1848(a) of the Social Security Act (42 U.S.C. 1395w–4(a)) is amended by adding at the end the following new paragraph:

''(7) INCENTIVES FOR MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—

''(A) ADJUSTMENT.—

''(i) IN GENERAL.—Subject to subparagraphs (B) and (D), with respect to covered professional services furnished by an eligible professional during 2015 or any subsequent payment year, if the eligible professional is not a meaningful EHR user (as determined under subsection (o)(2)) for a reporting period for the year, the fee schedule amount for such services furnished by such professional during the year (including the fee schedule amount for purposes of determining a payment based on such amount) shall be equal to the applicable percent of the fee schedule amount that would otherwise apply to such services under this subsection (determined after ap-

1 plication of paragraph (3) but without re-
2 gard to this paragraph).
3 "(ii) APPLICABLE PERCENT.—Subject
4 to clause (iii), for purposes of clause (i),
5 the term 'applicable percent' means—
6 "(I) for 2015, 99 percent (or, in
7 the case of an eligible professional
8 who was subject to the application of
9 the payment adjustment under section
10 1848(a)(5) for 2014, 98 percent);
11 "(II) for 2016, 98 percent; and
12 "(III) for 2017 and each subse-
13 quent year, 97 percent.
14 "(iii) AUTHORITY TO DECREASE AP-
15 PLICABLE PERCENTAGE FOR 2018 AND
16 SUBSEQUENT YEARS.—For 2018 and each
17 subsequent year, if the Secretary finds that
18 the proportion of eligible professionals who
19 are meaningful EHR users (as determined
20 under subsection (o)(2)) is less than 75
21 percent, the applicable percent shall be de-
22 creased by 1 percentage point from the ap-
23 plicable percent in the preceding year, but
24 in no case shall the applicable percent be
25 less than 95 percent.

1 "(B) SIGNIFICANT HARDSHIP EXCEP-
2 TION.—The Secretary may, on a case-by-case
3 basis, exempt an eligible professional from the
4 application of the payment adjustment under
5 subparagraph (A) if the Secretary determines,
6 subject to annual renewal, that compliance with
7 the requirement for being a meaningful EHR
8 user would result in a significant hardship, such
9 as in the case of an eligible professional who
10 practices in a rural area without sufficient
11 Internet access. In no case may an eligible pro-
12 fessional be granted an exemption under this
13 subparagraph for more than 5 years.
14 "(C) APPLICATION OF PHYSICIAN REPORT-
15 ING SYSTEM RULES.—Paragraphs (5), (6), and
16 (8) of subsection (k) shall apply for purposes of
17 this paragraph in the same manner as they
18 apply for purposes of such subsection.
19 "(D) NON-APPLICATION TO HOSPITAL-
20 BASED ELIGIBLE PROFESSIONALS.—No pay-
21 ment adjustment may be made under subpara-
22 graph (A) in the case of hospital-based eligible
23 professionals (as defined in subsection
24 (o)(1)(C)(ii)).

"(E) DEFINITIONS.—For purposes of this paragraph:

"(i) COVERED PROFESSIONAL SERVICES.—The term 'covered professional services' has the meaning given such term in subsection (k)(3).

"(ii) ELIGIBLE PROFESSIONAL.—The term 'eligible professional' means a physician, as defined in section 1861(r).

"(iii) REPORTING PERIOD.—The term 'reporting period' means, with respect to a year, a period specified by the Secretary.".

(c) APPLICATION TO CERTAIN MA-AFFILIATED ELIGIBLE PROFESSIONALS.—Section 1853 of the Social Security Act (42 U.S.C. 1395w–23) is amended by adding at the end the following new subsection:

"(l) APPLICATION OF ELIGIBLE PROFESSIONAL INCENTIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION AND MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—

"(1) IN GENERAL.—Subject to paragraphs (3) and (4), in the case of a qualifying MA organization, the provisions of sections 1848(o) and 1848(a)(7) shall apply with respect to eligible professionals described in paragraph (2) of the organization who the

1 organization attests under paragraph (6) to be
2 meaningful EHR users in a similar manner as they
3 apply to eligible professionals under such sections.
4 Incentive payments under paragraph (3) shall be
5 made to and payment adjustments under paragraph
6 (4) shall apply to such qualifying organizations.

7 "(2) ELIGIBLE PROFESSIONAL DESCRIBED.—
8 With respect to a qualifying MA organization, an eli-
9 gible professional described in this paragraph is an
10 eligible professional (as defined for purposes of sec-
11 tion 1848(o)) who—

12 "(A)(i) is employed by the organization; or

13 "(ii)(I) is employed by, or is a partner of,
14 an entity that through contract with the organi-
15 zation furnishes at least 80 percent of the enti-
16 ty's patient care services to enrollees of such or-
17 ganization; and

18 "(II) furnishes at least 75 percent of the
19 professional services of the eligible professional
20 to enrollees of the organization; and

21 "(B) furnishes, on average, at least 20
22 hours per week of patient care services.

23 "(3) ELIGIBLE PROFESSIONAL INCENTIVE PAY-
24 MENTS.—

"(A) IN GENERAL.—In applying section 1848(o) under paragraph (1), instead of the additional payment amount under section 1848(o)(1)(A) and subject to subparagraph (B), the Secretary may substitute an amount determined by the Secretary to the extent feasible and practical to be similar to the estimated amount in the aggregate that would be payable if payment for services furnished by such professionals was payable under part B instead of this part.

"(B) AVOIDING DUPLICATION OF PAYMENTS.—

"(i) IN GENERAL.—If an eligible professional described in paragraph (2) is eligible for the maximum incentive payment under section 1848(o)(1)(A) for the same payment period, the payment incentive shall be made only under such section and not under this subsection.

"(ii) METHODS.—In the case of an eligible professional described in paragraph (2) who is eligible for an incentive payment under section 1848(o)(1)(A) but is not described in clause (i) for the same payment

period, the Secretary shall develop a process—

"(I) to ensure that duplicate payments are not made with respect to an eligible professional both under this subsection and under section 1848(o)(1)(A); and

"(II) to collect data from Medicare Advantage organizations to ensure against such duplicate payments.

"(C) FIXED SCHEDULE FOR APPLICATION OF LIMITATION ON INCENTIVE PAYMENTS FOR ALL ELIGIBLE PROFESSIONALS.—In applying section 1848(o)(1)(B)(ii) under subparagraph (A), in accordance with rules specified by the Secretary, a qualifying MA organization shall specify a year (not earlier than 2011) that shall be treated as the first payment year for all eligible professionals with respect to such organization.

"(D) CAP FOR ECONOMIES OF SCALE.—In no case may an incentive payment be made under this subsection, including under subparagraph (A), to a qualifying MA organization with

respect to more than 5,000 eligible professionals of the organization.

"(4) PAYMENT ADJUSTMENT.—

"(A) IN GENERAL.—In applying section 1848(a)(7) under paragraph (1), instead of the payment adjustment being an applicable percent of the fee schedule amount for a year under such section, subject to subparagraph (D), the payment adjustment under paragraph (1) shall be equal to the percent specified in subparagraph (B) for such year of the payment amount otherwise provided under this section for such year.

"(B) SPECIFIED PERCENT.—The percent specified under this subparagraph for a year is 100 percent minus a number of percentage points equal to the product of—

"(i) a percentage equal to 100 percent reduced by the applicable percent (under section 1848(a)(7)(A)(ii)) for the year; and

"(ii) a percentage equal to the Secretary's estimate of the proportion for the year, of the expenditures under parts A and B that are not attributable to this

1 part, that are attributable to expenditures
2 for physicians' services.
3 "(C) APPLICATION OF PAYMENT ADJUST-
4 MENT.—In the case that a qualifying MA orga-
5 nization attests that not all eligible profes-
6 sionals of the organization are meaningful EHR
7 users with respect to a year, the Secretary shall
8 apply the payment adjustment under this para-
9 graph based on the proportion of all eligible
10 professionals of the organization that are not
11 meaningful EHR users for such year. If the
12 number of eligible professionals of the organiza-
13 tion that are not meaningful EHR users for
14 such year exceeds 5,000, such number shall be
15 reduced to 5,000 for purposes of determining
16 the proportion under the preceding sentence.
17 "(5) QUALIFYING MA ORGANIZATION DE-
18 FINED.—In this subsection and subsection (m), the
19 term 'qualifying MA organization' means a Medicare
20 Advantage organization that is organized as a health
21 maintenance organization (as defined in section
22 2791(b)(3) of the Public Health Service Act).
23 "(6) MEANINGFUL EHR USER ATTESTATION.—
24 For purposes of this subsection and subsection (m),
25 a qualifying MA organization shall submit an attes-

1 tation, in a form and manner specified by the Sec-
2 retary which may include the submission of such at-
3 testation as part of submission of the initial bid
4 under section 1854(a)(1)(A)(iv), identifying—
5 "(A) whether each eligible professional de-
6 scribed in paragraph (2), with respect to such
7 organization is a meaningful EHR user (as de-
8 fined in section 1848(o)(2)) for a year specified
9 by the Secretary; and
10 "(B) whether each eligible hospital de-
11 scribed in subsection (m)(1), with respect to
12 such organization, is a meaningful EHR user
13 (as defined in section 1886(n)(3)) for an appli-
14 cable period specified by the Secretary.
15 "(7) POSTING ON WEBSITE.—The Secretary
16 shall post on the Internet website of the Centers for
17 Medicare & Medicaid Services, in an easily under-
18 standable format, a list of the names, business ad-
19 dresses, and business phone numbers of—
20 "(A) each qualifying MA organization re-
21 ceiving an incentive payment under this sub-
22 section for eligible professionals of the organiza-
23 tion; and

"(B) the eligible professionals of such organization for which such incentive payment is based.".

(d) CONFORMING AMENDMENTS.—Section 1853 of the Social Security Act (42 U.S.C. 1395w–23) is amended—

(1) in subsection (a)(1)(A), by striking "and (i)" and inserting "(i), and (l)";

(2) in subsection (c)—

(A) in paragraph (1)(D)(i), by striking "section 1886(h)" and inserting "sections 1848(o) and 1886(h)"; and

(B) in paragraph (6)(A), by inserting after "under part B," the following: "excluding expenditures attributable to subsections (a)(7) and (o) of section 1848,"; and

(3) in subsection (f), by inserting "and for payments under subsection (l)" after "with the organization".

(e) CONFORMING AMENDMENTS TO E-PRESCRIBING.—

(1) Section 1848(a)(5)(A) of the Social Security Act (42 U.S.C. 1395w–4(a)(5)(A)) is amended—

(A) in clause (i), by striking ''or any subsequent year'' and inserting '', 2013, or 2014''; and

(B) in clause (ii), by striking ''and each subsequent year''.

(2) Section 1848(m)(2) of such Act (42 U.S.C. 1395w–4(m)(2)) is amended—

(A) in subparagraph (A), by striking ''For 2009'' and inserting ''Subject to subparagraph (D), for 2009''; and

(B) by adding at the end the following new subparagraph:

''(D) LIMITATION WITH RESPECT TO EHR INCENTIVE PAYMENTS.—The provisions of this paragraph shall not apply to an eligible professional (or, in the case of a group practice under paragraph (3)(C), to the group practice) if, for the reporting period the eligible professional (or group practice) receives an incentive payment under subsection (o)(1)(A) with respect to a certified EHR technology (as defined in subsection (o)(4)) that has the capability of electronic prescribing.''.

(f) PROVIDING ASSISTANCE TO ELIGIBLE PROFESSIONALS AND CERTAIN HOSPITALS.—

1 (1) IN GENERAL.—The Secretary of Health and
2 Human Services shall provide assistance to eligible
3 professionals (as defined in section 1848(o)(5), as
4 added by subsection (a)), Medicaid providers (as de-
5 fined in section 1903(t)(2) of such Act, as added by
6 section 4211(a)), and eligible hospitals (as defined in
7 section 1886(n)(6)(A) of such Act, as added by sec-
8 tion 4202(a)) located in rural or other medically un-
9 derserved areas to successfully choose, implement,
10 and use certified EHR technology (as defined in sec-
11 tion 1848(o)(4) of the Social Security Act, as added
12 by section 4201(a)).
13 (2) USE OF ENTITIES WITH EXPERTISE.—To
14 the extent practicable, the Secretary shall provide
15 such assistance through entities that have expertise
16 in the choice, implementation, and use of such cer-
17 tified EHR technology.
18 **SEC. 4202. INCENTIVES FOR HOSPITALS.**
19 (a) INCENTIVE PAYMENT.—Section 1886 of the So-
20 cial Security Act (42 U.S.C. 1395ww) is amended by add-
21 ing at the end the following new subsection:
22 "(n) INCENTIVES FOR ADOPTION AND MEANINGFUL
23 USE OF CERTIFIED EHR TECHNOLOGY.—
24 "(1) IN GENERAL.—Subject to the succeeding
25 provisions of this subsection, with respect to inpa-

tient hospital services furnished by an eligible hospital during a payment year (as defined in paragraph (2)(G)), if the eligible hospital is a meaningful EHR user (as determined under paragraph (3)) for the reporting period with respect to such year, in addition to the amount otherwise paid under this section, there also shall be paid to the eligible hospital, from the Federal Hospital Insurance Trust Fund established under section 1817, an amount equal to the applicable amount specified in paragraph (2)(A) for the hospital for such payment year.

"(2) PAYMENT AMOUNT.—

"(A) IN GENERAL.—Subject to the succeeding subparagraphs of this paragraph, the applicable amount specified in this subparagraph for an eligible hospital for a payment year is equal to the product of the following:

"(i) INITIAL AMOUNT.—The sum of—

"(I) the base amount specified in subparagraph (B); plus

"(II) the discharge related amount specified in subparagraph (C) for a 12-month period selected by the Secretary with respect to such payment year.

"(ii) MEDICARE SHARE.—The Medicare share as specified in subparagraph (D) for the hospital for a period selected by the Secretary with respect to such payment year.

"(iii) TRANSITION FACTOR.—The transition factor specified in subparagraph (E) for the hospital for the payment year.

"(B) BASE AMOUNT.—The base amount specified in this subparagraph is $2,000,000.

"(C) DISCHARGE RELATED AMOUNT.—The discharge related amount specified in this subparagraph for a 12-month period selected by the Secretary shall be determined as the sum of the amount, based upon total discharges (regardless of any source of payment) for the period, for each discharge up to the 23,000th discharge as follows:

"(i) For the 1,150th through the 9,200nd discharge, $200.

"(ii) For the 9,201st through the 13,800th discharge, 50 percent of the amount specified in clause (i).

1 "(iii) For the 13,801st through the
2 23,000th discharge, 30 percent of the
3 amount specified in clause (i).
4 "(D) MEDICARE SHARE.—The Medicare
5 share specified under this subparagraph for a
6 hospital for a period selected by the Secretary
7 for a payment year is equal to the fraction—
8 "(i) the numerator of which is the
9 sum (for such period and with respect to
10 the hospital) of—
11 "(I) the number of inpatient-bed-
12 days (as established by the Secretary)
13 which are attributable to individuals
14 with respect to whom payment may be
15 made under part A; and
16 "(II) the number of inpatient-
17 bed-days (as so established) which are
18 attributable to individuals who are en-
19 rolled with a Medicare Advantage or-
20 ganization under part C; and
21 "(ii) the denominator of which is the
22 product of—
23 "(I) the total number of inpa-
24 tient-bed-days with respect to the hos-
25 pital during such period; and

"(II) the total amount of the hospital's charges during such period, not including any charges that are attributable to charity care (as such term is used for purposes of hospital cost reporting under this title), divided by the total amount of the hospital's charges during such period.

Insofar as the Secretary determines that data are not available on charity care necessary to calculate the portion of the formula specified in clause (ii)(II), the Secretary shall use data on uncompensated care and may adjust such data so as to be an appropriate proxy for charity care including a downward adjustment to eliminate bad debt data from uncompensated care data. In the absence of the data necessary, with respect to a hospital, for the Secretary to compute the amount described in clause (ii)(II), the amount under such clause shall be deemed to be 1. In the absence of data, with respect to a hospital, necessary to compute the amount described in clause (i)(II), the amount under such clause shall be deemed to be 0.

"(E) TRANSITION FACTOR SPECIFIED.—

1 "(i) IN GENERAL.—Subject to clause
2 (ii), the transition factor specified in this
3 subparagraph for an eligible hospital for a
4 payment year is as follows:
5 "(I) For the first payment year
6 for such hospital, 1.
7 "(II) For the second payment
8 year for such hospital, ¾.
9 "(III) For the third payment
10 year for such hospital, ½.
11 "(IV) For the fourth payment
12 year for such hospital, ¼.
13 "(V) For any succeeding pay-
14 ment year for such hospital, 0.
15 "(ii) PHASE DOWN FOR ELIGIBLE
16 HOSPITALS FIRST ADOPTING EHR AFTER
17 2013.—If the first payment year for an eli-
18 gible hospital is after 2013, then the tran-
19 sition factor specified in this subparagraph
20 for a payment year for such hospital is the
21 same as the amount specified in clause (i)
22 for such payment year for an eligible hos-
23 pital for which the first payment year is
24 2013. If the first payment year for an eli-
25 gible hospital is after 2015 then the transi-

1 tion factor specified in this subparagraph
2 for such hospital and for such year and
3 any subsequent year shall be 0.
4 ''(F) FORM OF PAYMENT.—The payment
5 under this subsection for a payment year may
6 be in the form of a single consolidated payment
7 or in the form of such periodic installments as
8 the Secretary may specify.
9 ''(G) PAYMENT YEAR DEFINED.—
10 ''(i) IN GENERAL.—For purposes of
11 this subsection, the term 'payment year'
12 means a fiscal year beginning with fiscal
13 year 2011.
14 ''(ii) FIRST, SECOND, ETC. PAYMENT
15 YEAR.—The term 'first payment year'
16 means, with respect to inpatient hospital
17 services furnished by an eligible hospital,
18 the first fiscal year for which an incentive
19 payment is made for such services under
20 this subsection. The terms 'second pay-
21 ment year', 'third payment year', and
22 'fourth payment year' mean, with respect
23 to an eligible hospital, each successive year
24 immediately following the first payment
25 year for that hospital.

1 "(3) MEANINGFUL EHR USER.—

2 "(A) IN GENERAL.—For purposes of para-
3 graph (1), an eligible hospital shall be treated
4 as a meaningful EHR user for a reporting pe-
5 riod for a payment year (or, for purposes of
6 subsection (b)(3)(B)(ix), for a reporting period
7 under such subsection for a fiscal year) if each
8 of the following requirements are met:

9 "(i) MEANINGFUL USE OF CERTIFIED
10 EHR TECHNOLOGY.—The eligible hospital
11 demonstrates to the satisfaction of the Sec-
12 retary, in accordance with subparagraph
13 (C)(i), that during such period the hospital
14 is using certified EHR technology in a
15 meaningful manner.

16 "(ii) INFORMATION EXCHANGE.—The
17 eligible hospital demonstrates to the satis-
18 faction of the Secretary, in accordance
19 with subparagraph (C)(i), that during such
20 period such certified EHR technology is
21 connected in a manner that provides, in
22 accordance with law and standards appli-
23 cable to the exchange of information, for
24 the electronic exchange of health informa-

1 tion to improve the quality of health care,
2 such as promoting care coordination.
3 "(iii) REPORTING ON MEASURES
4 USING EHR.—Subject to subparagraph
5 (B)(ii) and using such certified EHR tech-
6 nology, the eligible hospital submits infor-
7 mation for such period, in a form and
8 manner specified by the Secretary, on such
9 clinical quality measures and such other
10 measures as selected by the Secretary
11 under subparagraph (B)(i).
12 The Secretary shall seek to improve the use of
13 electronic health records and health care quality
14 over time by requiring more stringent measures
15 of meaningful use selected under this para-
16 graph.
17 "(B) REPORTING ON MEASURES.—
18 "(i) SELECTION.—The Secretary shall
19 select measures for purposes of subpara-
20 graph (A)(iii) but only consistent with the
21 following:
22 "(I) The Secretary shall provide
23 preference to clinical quality measures
24 that have been selected for purposes
25 of applying subsection (b)(3)(B)(viii)

1 or that have been endorsed by the en-
2 tity with a contract with the Secretary
3 under section 1890(a).
4 ''(II) Prior to any measure (other
5 than a clinical quality measure that
6 has been selected for purposes of ap-
7 plying subsection (b)(3)(B)(viii))
8 being selected under this subpara-
9 graph, the Secretary shall publish in
10 the Federal Register such measure
11 and provide for a period of public
12 comment on such measure.
13 ''(ii) LIMITATIONS.—The Secretary
14 may not require the electronic reporting of
15 information on clinical quality measures
16 under subparagraph (A)(iii) unless the
17 Secretary has the capacity to accept the in-
18 formation electronically, which may be on
19 a pilot basis.
20 ''(iii) COORDINATION OF REPORTING
21 OF INFORMATION.—In selecting such
22 measures, and in establishing the form and
23 manner for reporting measures under sub-
24 paragraph (A)(iii), the Secretary shall seek
25 to avoid redundant or duplicative reporting

with reporting otherwise required, including reporting under subsection (b)(3)(B)(viii).

"(C) DEMONSTRATION OF MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY AND INFORMATION EXCHANGE.—

"(i) IN GENERAL.—A hospital may satisfy the demonstration requirement of clauses (i) and (ii) of subparagraph (A) through means specified by the Secretary, which may include—

"(I) an attestation;

"(II) the submission of claims with appropriate coding (such as a code indicating that inpatient care was documented using certified EHR technology);

"(III) a survey response;

"(IV) reporting under subparagraph (A)(iii); and

"(V) other means specified by the Secretary.

"(ii) USE OF PART D DATA.—Notwithstanding sections 1860D–15(d)(2)(B) and 1860D–15(f)(2), the Secretary may

use data regarding drug claims submitted for purposes of section 1860D–15 that are necessary for purposes of subparagraph (A).

"(4) APPLICATION.—

"(A) LIMITATIONS ON REVIEW.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of the determination of any incentive payment under this subsection and the payment adjustment under subsection (b)(3)(B)(ix), including the determination of a meaningful EHR user under paragraph (3), determination of measures applicable to services furnished by eligible hospitals under this subsection, and the exception under subsection (b)(3)(B)(ix)(II).

"(B) POSTING ON WEBSITE.—The Secretary shall post on the Internet website of the Centers for Medicare & Medicaid Services, in an easily understandable format, a list of the names of the eligible hospitals that are meaningful EHR users under this subsection or subsection (b)(3)(B)(ix) and other relevant data as determined appropriate by the Secretary. The Secretary shall ensure that a hospital has the

opportunity to review the other relevant data that are to be made public with respect to the hospital prior to such data being made public.

"(5) CERTIFIED EHR TECHNOLOGY DEFINED.—The term 'certified EHR technology' has the meaning given such term in section 1848(o)(4).

"(6) DEFINITIONS.—For purposes of this subsection:

"(A) ELIGIBLE HOSPITAL.—The term 'eligible hospital' means—

"(i) a subsection (d) hospital; and

"(ii) a critical access hospital (as defined in section 1861(mm)(1)).

"(B) REPORTING PERIOD.—The term 'reporting period' means any period (or periods), with respect to a payment year, as specified by the Secretary.".

(b) INCENTIVE MARKET BASKET ADJUSTMENT.—

(1) IN GENERAL.—Section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)) is amended—

(A) in clause (viii)(I), by inserting "(or, beginning with fiscal year 2016, by one-quarter)" after "2.0 percentage points"; and

1 (B) by adding at the end the following new
2 clause:
3 "(ix)(I) For purposes of clause (i) for fiscal year
4 2015 and each subsequent fiscal year, in the case of an
5 eligible hospital (as defined in subsection (n)(6)(A)) that
6 is not a meaningful EHR user (as defined in subsection
7 (n)(3)) for the reporting period for such fiscal year, three-
8 quarters of the applicable percentage increase otherwise
9 applicable under clause (i) for such fiscal year shall be
10 reduced by 33⅓ percent for fiscal year 2015, 66⅔ per-
11 cent for fiscal year 2016, and 100 percent for fiscal year
12 2017 and each subsequent fiscal year. Such reduction
13 shall apply only with respect to the fiscal year involved
14 and the Secretary shall not take into account such reduc-
15 tion in computing the applicable percentage increase under
16 clause (i) for a subsequent fiscal year.
17 "(II) The Secretary may, on a case-by-case basis, ex-
18 empt a subsection (d) hospital from the application of sub-
19 clause (I) with respect to a fiscal year if the Secretary
20 determines, subject to annual renewal, that requiring such
21 hospital to be a meaningful EHR user during such fiscal
22 year would result in a significant hardship, such as in the
23 case of a hospital in a rural area without sufficient Inter-
24 net access. In no case may a hospital be granted an ex-
25 emption under this subclause for more than 5 years.

1 "(III) For fiscal year 2015 and each subsequent fis-
2 cal year, a State in which hospitals are paid for services
3 under section 1814(b)(3) shall adjust the payments to
4 each subsection (d) hospital in the State that is not a
5 meaningful EHR user (as defined in subsection (n)(3))
6 in a manner that is designed to result in an aggregate
7 reduction in payments to hospitals in the State that is
8 equivalent to the aggregate reduction that would have oc-
9 curred if payments had been reduced to each subsection
10 (d) hospital in the State in a manner comparable to the
11 reduction under the previous provisions of this clause. The
12 State shall report to the Secretary the methodology it will
13 use to make the payment adjustment under the previous
14 sentence.

15 "(IV) For purposes of this clause, the term 'reporting
16 period' means, with respect to a fiscal year, any period
17 (or periods), with respect to the fiscal year, as specified
18 by the Secretary.".

19 (2) CRITICAL ACCESS HOSPITALS.—Section
20 1814(l) of the Social Security Act (42 U.S.C.
21 1395f(l)) is amended—

22 (A) in subparagraph (1), by striking
23 "paragraph (2)" and inserting "paragraphs (2)
24 and (3)"; and

(B) by adding at the end the following new paragraph:

"(3)(A) Subject to subparagraph (B), for fiscal year 2015 and each subsequent fiscal year, in the case of a critical access hospital that is not a meaningful EHR user (as defined in section 1886(n)(3)) for the reporting period for such fiscal year, paragraph (1) shall be applied by substituting the applicable percent under subparagraph (C) for the percent described in such paragraph (1).

"(B) The Secretary may, on a case-by-case basis, exempt a critical access hospital from the application of subparagraph (A) with respect to a fiscal year if the Secretary determines, subject to annual renewal, that requiring such hospital to be a meaningful EHR user during such fiscal year would result in a significant hardship, such as in the case of a hospital in a rural area without sufficient Internet access. In no case may a hospital be granted an exemption under this subparagraph for more than 5 years.

"(C) The percent described in this subparagraph is—

"(i) for fiscal year 2015, 100.66 percent;

"(ii) for fiscal year 2016, 100.33 percent; and

"(iii) for fiscal year 2017 and each subsequent fiscal year, 100 percent.".

(c) APPLICATION TO CERTAIN MA-AFFILIATED ELIGIBLE HOSPITALS.—Section 1853 of the Social Security

1 Act (42 U.S.C. 1395w-23), as amended by section
2 4201(c), is further amended by adding at the end the fol-
3 lowing new subsection:

4 "(m) APPLICATION OF ELIGIBLE HOSPITAL INCEN-
5 TIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION
6 AND MEANINGFUL USE OF CERTIFIED EHR TECH-
7 NOLOGY.—

8 "(1) APPLICATION.—Subject to paragraphs (3)
9 and (4), in the case of a qualifying MA organization,
10 the provisions of sections 1814(l)(3), 1886(n), and
11 1886(b)(3)(B)(ix) shall apply with respect to eligible
12 hospitals described in paragraph (2) of the organiza-
13 tion which the organization attests under subsection
14 (l)(6) to be meaningful EHR users in a similar man-
15 ner as they apply to eligible hospitals under such
16 sections. Incentive payments under paragraph (3)
17 shall be made to and payment adjustments under
18 paragraph (4) shall apply to such qualifying organi-
19 zations.

20 "(2) ELIGIBLE HOSPITAL DESCRIBED.—With
21 respect to a qualifying MA organization, an eligible
22 hospital described in this paragraph is an eligible
23 hospital (as defined in section 1886(n)(6)(A)) that is
24 under common corporate governance with such orga-

1 nization and serves individuals enrolled under an
2 MA plan offered by such organization.
3 "(3) ELIGIBLE HOSPITAL INCENTIVE PAY-
4 MENTS.—
5 "(A) IN GENERAL.—In applying section
6 1886(n)(2) under paragraph (1), instead of the
7 additional payment amount under section
8 1886(n)(2), there shall be substituted an
9 amount determined by the Secretary to be simi-
10 lar to the estimated amount in the aggregate
11 that would be payable if payment for services
12 furnished by such hospitals was payable under
13 part A instead of this part. In implementing the
14 previous sentence, the Secretary—
15 "(i) shall, insofar as data to deter-
16 mine the discharge related amount under
17 section 1886(n)(2)(C) for an eligible hos-
18 pital are not available to the Secretary, use
19 such alternative data and methodology to
20 estimate such discharge related amount as
21 the Secretary determines appropriate; and
22 "(ii) shall, insofar as data to deter-
23 mine the medicare share described in sec-
24 tion 1886(n)(2)(D) for an eligible hospital
25 are not available to the Secretary, use such

1 alternative data and methodology to esti-
2 mate such share, which data and method-
3 ology may include use of the inpatient bed
4 days (or discharges) with respect to an eli-
5 gible hospital during the appropriate pe-
6 riod which are attributable to both individ-
7 uals for whom payment may be made
8 under part A or individuals enrolled in an
9 MA plan under a Medicare Advantage or-
10 ganization under this part as a proportion
11 of the total number of patient-bed-days (or
12 discharges) with respect to such hospital
13 during such period.
14 ''(B) AVOIDING DUPLICATION OF PAY-
15 MENTS.—
16 ''(i) IN GENERAL.—In the case of a
17 hospital that for a payment year is an eli-
18 gible hospital described in paragraph (2)
19 and for which at least one-third of their
20 discharges (or bed-days) of Medicare pa-
21 tients for the year are covered under part
22 A, payment for the payment year shall be
23 made only under section 1886(n) and not
24 under this subsection.

1 "(ii) METHODS.—In the case of a
2 hospital that is an eligible hospital de-
3 scribed in paragraph (2) and also is eligi-
4 ble for an incentive payment under section
5 1886(n) but is not described in clause (i)
6 for the same payment period, the Secretary
7 shall develop a process—
8 "(I) to ensure that duplicate pay-
9 ments are not made with respect to
10 an eligible hospital both under this
11 subsection and under section 1886(n);
12 and
13 "(II) to collect data from Medi-
14 care Advantage organizations to en-
15 sure against such duplicate payments.
16 "(4) PAYMENT ADJUSTMENT.—
17 "(A) Subject to paragraph (3), in the case
18 of a qualifying MA organization (as defined in
19 section 1853(l)(5)), if, according to the attesta-
20 tion of the organization submitted under sub-
21 section (l)(6) for an applicable period, one or
22 more eligible hospitals (as defined in section
23 1886(n)(6)(A)) that are under common cor-
24 porate governance with such organization and
25 that serve individuals enrolled under a plan of-

1 fered by such organization are not meaningful
2 EHR users (as defined in section 1886(n)(3))
3 with respect to a period, the payment amount
4 payable under this section for such organization
5 for such period shall be the percent specified in
6 subparagraph (B) for such period of the pay-
7 ment amount otherwise provided under this sec-
8 tion for such period.

9 ''(B) SPECIFIED PERCENT.—The percent
10 specified under this subparagraph for a year is
11 100 percent minus a number of percentage
12 points equal to the product of—

13 ''(i) the number of the percentage
14 point reduction effected under section
15 1886(b)(3)(B)(ix)(I) for the period; and

16 ''(ii) the Medicare hospital expendi-
17 ture proportion specified in subparagraph
18 (C) for the year.

19 ''(C) MEDICARE HOSPITAL EXPENDITURE
20 PROPORTION.—The Medicare hospital expendi-
21 ture proportion under this subparagraph for a
22 year is the Secretary's estimate of the propor-
23 tion, of the expenditures under parts A and B
24 that are not attributable to this part, that are

1 attributable to expenditures for inpatient hos-
2 pital services.

3 "(D) APPLICATION OF PAYMENT ADJUST-
4 MENT.—In the case that a qualifying MA orga-
5 nization attests that not all eligible hospitals
6 are meaningful EHR users with respect to an
7 applicable period, the Secretary shall apply the
8 payment adjustment under this paragraph
9 based on a methodology specified by the Sec-
10 retary, taking into account the proportion of
11 such eligible hospitals, or discharges from such
12 hospitals, that are not meaningful EHR users
13 for such period.

14 "(5) POSTING ON WEBSITE.—The Secretary
15 shall post on the Internet website of the Centers for
16 Medicare & Medicaid Services, in an easily under-
17 standable format, —

18 "(A) a list of the names, business address-
19 es, and business phone numbers of each quali-
20 fying MA organization receiving an incentive
21 payment under this subsection for eligible hos-
22 pitals described in paragraph (2); and

23 "(B) a list of the names of the eligible hos-
24 pitals for which such incentive payment is
25 based.".

(d) CONFORMING AMENDMENTS.—

(1) Section 1814(b) of the Social Security Act (42 U.S.C. 1395f(b)) is amended—

(A) in paragraph (3), in the matter preceding subparagraph (A), by inserting ", subject to section 1886(d)(3)(B)(ix)(III)," after "then"; and

(B) by adding at the end the following: "For purposes of applying paragraph (3), there shall be taken into account incentive payments, and payment adjustments under subsection (b)(3)(B)(ix) or (n) of section 1886.".

(2) Section 1851(i)(1) of the Social Security Act (42 U.S.C. 1395w–21(i)(1)) is amended by striking "and 1886(h)(3)(D)" and inserting "1886(h)(3)(D), and 1853(m)".

(3) Section 1853 of the Social Security Act (42 U.S.C. 1395w–23), as amended by section 4311(d)(1), is amended—

(A) in subsection (c)—

(i) in paragraph (1)(D)(i), by striking "1848(o)" and inserting ", 1848(o), and 1886(n)"; and

(ii) in paragraph (6)(A), by inserting "and subsections (b)(3)(B)(ix) and (n) of section 1886" after "section 1848"; and

(B) in subsection (f), by inserting "and subsection (m)" after "under subsection (l)".

SEC. 4203. PREMIUM HOLD HARMLESS AND IMPLEMENTATION FUNDING.

(a) PREMIUM HOLD HARMLESS.—

(1) IN GENERAL.—Section 1839(a)(1) of the Social Security Act (42 U.S.C. 1395r(a)(1)) is amended by adding at the end the following: "In applying this paragraph there shall not be taken into account additional payments under section 1848(o) and section 1853(l)(3) and the Government contribution under section 1844(a)(3).".

(2) PAYMENT.—Section 1844(a) of such Act (42 U.S.C. 1395w(a)) is amended—

(A) in paragraph (2), by striking the period at the end and inserting "; plus"; and

(B) by adding at the end the following new paragraph:

"(3) a Government contribution equal to the amount of payment incentives payable under sections 1848(o) and 1853(l)(3).".

1 (b) IMPLEMENTATION FUNDING.—In addition to
2 funds otherwise available, out of any funds in the Treas-
3 ury not otherwise appropriated, there are appropriated to
4 the Secretary of Health and Human Services for the Cen-
5 ter for Medicare & Medicaid Services Program Manage-
6 ment Account, $100,000,000 for each of fiscal years 2009
7 through 2015 and $45,000,000 for each succeeding fiscal
8 year through fiscal year 2018, which shall be available for
9 purposes of carrying out the provisions of (and amend-
10 ments made by) this part. Amounts appropriated under
11 this subsection for a fiscal year shall be available until ex-
12 pended.

13 **SEC. 4204. NON-APPLICATION OF PHASED-OUT INDIRECT**
14 **MEDICAL EDUCATION (IME) ADJUSTMENT**
15 **FACTOR FOR FISCAL YEAR 2009.**

16 (a) IN GENERAL.—Section 412.322 of title 42, Code
17 of Federal Regulations, shall be applied without regard to
18 paragraph (c) of such section, and the Secretary of Health
19 and Human Services shall recompute payments for dis-
20 charges occurring on or after October 1, 2008, as if such
21 paragraph had never been in effect.

22 (b) NO EFFECT ON SUBSEQUENT YEARS.—Nothing
23 in subsection (a) shall be construed as having any effect
24 on the application of paragraph (d) of section 412.322 of
25 title 42, Code of Federal Regulations.

SEC. 4205. STUDY ON APPLICATION OF EHR PAYMENT INCENTIVES FOR PROVIDERS NOT RECEIVING OTHER INCENTIVE PAYMENTS.

(a) STUDY.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study to determine the extent to which and manner in which payment incentives (such as under title XVIII or XIX of the Social Security Act) and other funding for purposes of implementing and using certified EHR technology (as defined in section 1848(o)(4) of the Social Security Act, as added by section 4311(a)) should be made available to health care providers who are receiving minimal or no payment incentives or other funding under this Act, under title XVIII or XIX of such Act, or otherwise, for such purposes.

(2) DETAILS OF STUDY.—Such study shall include an examination of—

(A) the adoption rates of certified EHR technology (as so defined) by such health care providers;

(B) the clinical utility of such technology by such health care providers;

(C) whether the services furnished by such health care providers are appropriate for or would benefit from the use of such technology;

(D) the extent to which such health care providers work in settings that might otherwise receive an incentive payment or other funding under this Act, title XVIII or XIX of the Social Security Act, or otherwise;

(E) the potential costs and the potential benefits of making payment incentives and other funding available to such health care providers; and

(F) any other issues the Secretary deems to be appropriate.

(b) REPORT.—Not later than June 30, 2010, the Secretary shall submit to Congress a report on the findings and conclusions of the study conducted under subsection (a).

SEC. 4206. STUDY ON AVAILABILITY OF OPEN SOURCE HEALTH INFORMATION TECHNOLOGY SYSTEMS.

(a) IN GENERAL.—

(1) STUDY.—The Secretary of Health and Human Services shall, in consultation with the Under Secretary for Health of the Veterans Health Administration, the Director of the Indian Health Service, the Secretary of Defense, the Director of the Agency for Healthcare Research and Quality,

1 the Administrator of the Health Resources and Serv-
2 ices Administration, and the Chairman of the Fed-
3 eral Communications Commission, conduct a study
4 on—
5 (A) the current availability of open source
6 health information technology systems to Fed-
7 eral safety net providers (including small, rural
8 providers);
9 (B) the total cost of ownership of such sys-
10 tems in comparison to the cost of proprietary
11 commercial products available;
12 (C) the ability of such systems to respond
13 to the needs of, and be applied to, various pop-
14 ulations (including children and disabled indi-
15 viduals); and
16 (D) the capacity of such systems to facili-
17 tate interoperability.
18 (2) CONSIDERATIONS.—In conducting the study
19 under paragraph (1), the Secretary of Health and
20 Human Services shall take into account the cir-
21 cumstances of smaller health care providers, health
22 care providers located in rural or other medically un-
23 derserved areas, and safety net providers that deliver
24 a significant level of health care to uninsured indi-

1 viduals, Medicaid beneficiaries, SCHIP beneficiaries,
2 and other vulnerable individuals.
3 (b) REPORT.—Not later than October 1, 2010, the
4 Secretary of Health and Human Services shall submit to
5 Congress a report on the findings and the conclusions of
6 the study conducted under subsection (a), together with
7 recommendations for such legislation and administrative
8 action as the Secretary determines appropriate.

9 Subtitle B—Medicaid Funding

10 SEC. 4211. MEDICAID PROVIDER EHR ADOPTION AND OPER-
11 ATION PAYMENTS; IMPLEMENTATION FUND-
12 ING.

13 (a) IN GENERAL.—Section 1903 of the Social Secu-
14 rity Act (42 U.S.C. 1396b) is amended—
15 (1) in subsection (a)(3)—
16 (A) by striking ''and'' at the end of sub-
17 paragraph (D);
18 (B) by striking ''plus'' at the end of sub-
19 paragraph (E) and inserting ''and''; and
20 (C) by adding at the end the following new
21 subparagraph:
22 ''(F)(i) 100 percent of so much of the
23 sums expended during such quarter as are at-
24 tributable to payments for certified EHR tech-
25 nology (and support services including mainte-

1 nance and training that is for, or is necessary
2 for the adoption and operation of, such tech-
3 nology) by Medicaid providers described in sub-
4 section (t)(1); and
5 ''(ii) 90 percent of so much of the sums ex-
6 pended during such quarter as are attributable
7 to payments for reasonable administrative ex-
8 penses related to the administration of pay-
9 ments described in clause (i) if the State meets
10 the condition described in subsection (t)(9);
11 plus''; and
12 (2) by inserting after subsection (s) the fol-
13 lowing new subsection:
14 ''(t)(1)(A) For purposes of subsection (a)(3)(F), the
15 payments for certified EHR technology (and support serv-
16 ices including maintenance that is for, or is necessary for
17 the operation of, such technology) by Medicaid providers
18 described in this paragraph are payments made by the
19 State in accordance with this subsection of the applicable
20 percent of the net allowable costs of Medicaid providers
21 (as defined in paragraph (2)) for such technology (and
22 support services).
23 ''(B) For purposes of subparagraph (A), the term
24 'applicable percent' means—

1 "(i) in the case of a Medicaid provider de-
2 scribed in paragraph (2)(A), 85 percent;
3 "(ii) in the case of a Medicaid provider de-
4 scribed in clause (i) or (ii) of paragraph (2)(B), 100
5 percent; and
6 "(iii) in the case of a Medicaid provider de-
7 scribed in clause (iii) of paragraph (2)(B), a percent
8 specified by the Secretary, but not less than 85 per-
9 cent.
10 "(2) In this subsection and subsection (a)(3)(F), the
11 term 'Medicaid provider' means—
12 "(A) an eligible professional (as defined in
13 paragraph (3)(B)) who is not hospital-based and has
14 at least 30 percent of the professional's patient vol-
15 ume (as estimated in accordance with standards es-
16 tablished by the Secretary) attributable to individ-
17 uals who are receiving medical assistance under this
18 title; and
19 "(B)(i) a children's hospital, (ii) an acute-care
20 hospital that is not described in clause (i) and that
21 has at least 10 percent of the hospital's patient vol-
22 ume (as estimated in accordance with standards es-
23 tablished by the Secretary) attributable to individ-
24 uals who are receiving medical assistance under this
25 title, or (iii) a Federally-qualified health center or

1 rural health clinic that has at least 30 percent of the
2 center's or clinic's patient volume (as estimated in
3 accordance with standards established by the Sec-
4 retary) attributable to individuals who are receiving
5 medical assistance under this title.
6 An eligible professional shall not qualify as a Medicaid
7 provider under this subsection unless the professional has
8 waived, in a manner specified by the Secretary, any right
9 to payment under section 1848(o) with respect to the
10 adoption or support of certified EHR technology by the
11 eligible professional. In applying clauses (ii) and (iii) of
12 subparagraph (B), the standards established by the Sec-
13 retary for patient volume shall include individuals enrolled
14 in a Medicaid managed care plan (under section 1903(m)
15 or section 1932).
16 ''(3) In this subsection and subsection (a)(3)(F):
17 ''(A) The term 'certified EHR technology'
18 means a qualified electronic health record (as de-
19 fined in 3000(13) of the Public Health Service Act)
20 that is certified pursuant to section 3001(c)(5) of
21 such Act as meeting standards adopted under sec-
22 tion 3004 of such Act that are applicable to the type
23 of record involved (as determined by the Secretary,
24 such as an ambulatory electronic health record for

1 office-based physicians or an inpatient hospital elec-
2 tronic health record for hospitals).
3 ''(B) The term 'eligible professional' means a
4 physician as defined in paragraphs (1) and (2) of
5 section 1861(r), and includes a nurse mid-wife and
6 a nurse practitioner.
7 ''(C) The term 'hospital-based' means, with re-
8 spect to an eligible professional, a professional (such
9 as a pathologist, anesthesiologist, or emergency phy-
10 sician) who furnishes substantially all of the individ-
11 ual's professional services in a hospital setting
12 (whether inpatient or outpatient) and through the
13 use of the facilities and equipment, including quali-
14 fied electronic health records, of the hospital.
15 ''(4)(A) The term 'allowable costs' means, with re-
16 spect to certified EHR technology of a Medicaid provider,
17 costs of such technology (and support services including
18 maintenance and training that is for, or is necessary for
19 the adoption and operation of, such technology) as deter-
20 mined by the Secretary to be reasonable.
21 ''(B) The term 'net allowable costs' means allowable
22 costs reduced by any payment that is made to the Med-
23 icaid provider involved from any other source that is di-
24 rectly attributable to payment for certified EHR tech-
25 nology or services described in subparagraph (A).

1 "(C) In no case shall—

2 "(i) the aggregate allowable costs under this
3 subsection (covering one or more years) with respect
4 to a Medicaid provider described in paragraph
5 (2)(A) for purchase and initial implementation of
6 certified EHR technology (and services described in
7 subparagraph (A)) exceed $25,000 or include costs
8 over a period of longer than 5 years;

9 "(ii) for costs not described in clause (i) relat-
10 ing to the operation, maintenance, or use of certified
11 EHR technology, the annual allowable costs under
12 this subsection with respect to such a Medicaid pro-
13 vider for costs not described in clause (i) for any
14 year exceed $10,000;

15 "(iii) payment described in paragraph (1) for
16 costs described in clause (ii) be made with respect
17 to such a Medicaid provider over a period of more
18 than 5 years;

19 "(iv) the aggregate allowable costs under this
20 subsection with respect to such a Medicaid provider
21 for all costs exceed $75,000; or

22 "(v) the allowable costs, whether for purchase
23 and initial implementation, maintenance, or other-
24 wise, for a Medicaid provider described in paragraph
25 (2)(B)(iii) exceed such aggregate or annual limita-

1 tion as the Secretary shall establish, based on an
2 amount determined by the Secretary as being ade-
3 quate to adopt and maintain certified EHR tech-
4 nology, consistent with paragraph (6).

5 "(5) Payments described in paragraph (1) are not in
6 accordance with this subsection unless the following re-
7 quirements are met:

8 "(A) The State provides assurances satisfactory
9 to the Secretary that amounts received under sub-
10 section (a)(3)(F) with respect to costs of a Medicaid
11 provider are paid directly to such provider without
12 any deduction or rebate.

13 "(B) Such Medicaid provider is responsible for
14 payment of the costs described in such paragraph
15 that are not provided under this title.

16 "(C) With respect to payments to such Med-
17 icaid provider for costs other than costs related to
18 the initial adoption of certified EHR technology, the
19 Medicaid provider demonstrates meaningful use of
20 certified EHR technology through a means that is
21 approved by the State and acceptable to the Sec-
22 retary, and that may be based upon the methodolo-
23 gies applied under section 1848(o) or 1886(n). In
24 establishing such means, which may include the re-
25 porting of clinical quality measures to the State, the

1 State shall ensure that populations with unique
2 needs, such as children, are appropriately addressed.
3 "(D) To the extent specified by the Secretary,
4 the certified EHR technology is compatible with
5 State or Federal administrative management sys-
6 tems.
7 "(6)(A) In no case shall the payments described in
8 paragraph (1), with respect to a hospital, exceed in the
9 aggregate the product of—
10 "(i) the overall hospital EHR amount for the
11 hospital computed under subparagraph (B); and
12 "(ii) the Medicaid share for such hospital com-
13 puted under subparagraph (C).
14 "(B) For purposes of this paragraph, the overall hos-
15 pital EHR amount, with respect to a hospital, is the sum
16 of the applicable amounts specified in section
17 1886(n)(2)(A) for such hospital for the first 4 payment
18 years (as estimated by the Secretary) determined as if the
19 Medicare share specified in clause (ii) of such section were
20 1. The Secretary shall publish in the Federal Register the
21 overall hospital EHR amount for each hospital eligible for
22 payments under this subsection. In computing amounts
23 under clause (ii) for payment years after the first payment
24 year, the Secretary shall assume that in subsequent pay-
25 ment years discharges increase at the average annual rate

1 of growth of the most recent three years for which dis-
2 charge data are available.

3 "(C) The Medicaid share computed under this sub-
4 paragraph, for a hospital for a period specified by the Sec-
5 retary, shall be calculated in the same manner as the
6 Medicare share under section 1886(n)(2)(D) for such a
7 hospital and period, except that there shall be substituted
8 for the numerator under clause (i) of such section the
9 amount that is equal to the number of inpatient-bed-days
10 (as established by the Secretary) which are attributable
11 to individuals who are receiving medical assistance under
12 this title and who are not described in section
13 1886(n)(2)(D)(i). In computing inpatient-bed-days under
14 the previous sentence, the Secretary shall take into ac-
15 count inpatient-bed-days attributable to inpatient-bed-
16 days that are paid for individuals enrolled in a Medicaid
17 managed care plan (under section 1903(m) or section
18 1932).

19 "(7) With respect to health care providers other than
20 hospitals, the Secretary shall establish and implement a
21 detailed process to ensure coordination of the different
22 programs for payment of such health care providers for
23 adoption or use of health information technology (includ-
24 ing certified EHR technology), as well as payments for
25 such health care providers provided under this title or title

1 XVIII, to assure no duplication of funding. The Secretary
2 shall promulgate regulations to carry out the preceding
3 sentence.

4 "(8) In carrying out paragraph (5)(C), the State and
5 Secretary shall seek, to the maximum extent practicable,
6 to avoid duplicative requirements from Federal and State
7 Governments to demonstrate meaningful use of certified
8 EHR technology under this title and title XVIII. In doing
9 so, the Secretary may deem satisfaction of requirements
10 for such meaningful use for a payment year under title
11 XVIII to be sufficient to qualify as meaningful use under
12 this subsection. The Secretary may also specify the report-
13 ing periods under this subsection in order to carry out this
14 paragraph.

15 "(9) In order to be provided Federal financial partici-
16 pation under subsection (a)(3)(F)(ii), a State must dem-
17 onstrate to the satisfaction of the Secretary, that the
18 State—

19 "(A) is using the funds provided for the pur-
20 poses of administering payments under this sub-
21 section, including tracking of meaningful use by
22 Medicaid providers;

23 "(B) is conducting adequate oversight of the
24 program under this subsection, including routine

1 tracking of meaningful use attestations and report-
2 ing mechanisms; and
3 "(C) is pursuing initiatives to encourage the
4 adoption of certified EHR technology to promote
5 health care quality and the exchange of health care
6 information under this title, subject to applicable
7 laws and regulations governing such exchange.
8 "(10) The Secretary shall periodically submit reports
9 to the Committee on Energy and Commerce of the House
10 of Representatives and the Committee on Finance of the
11 Senate on status, progress, and oversight of payments
12 under paragraph (1).".
13 (b) IMPLEMENTATION FUNDING.—In addition to
14 funds otherwise available, out of any funds in the Treas-
15 ury not otherwise appropriated, there are appropriated to
16 the Secretary of Health and Human Services for the Cen-
17 ter for Medicare & Medicaid Services Program Manage-
18 ment Account, $40,000,000 for each of fiscal years 2009
19 through 2015 and $20,000,000 for each succeeding fiscal
20 year through fiscal year 2018, which shall be available for
21 purposes of carrying out the provisions of (and the amend-
22 ments made by) this part. Amounts appropriated under
23 this subsection for a fiscal year shall be available until ex-
24 pended.

(c) HHS REPORT ON IMPLEMENTATION OF DETAILED PROCESS TO ASSURE NO DUPLICATION OF FUNDING.—Not later than July 1, 2012, the Secretary of Health and Human Services shall submit to Congress a report on the establishment and implementation of the detailed process under section 1903(t)(7) of the Social Security Act, as added by subsection (a), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

TITLE V—STATE FISCAL RELIEF

SEC. 5000. PURPOSES; TABLE OF CONTENTS.

(a) PURPOSES.—The purposes of this title are as follows:

(1) To provide fiscal relief to States in a period of economic downturn.

(2) To protect and maintain State Medicaid programs during a period of economic downturn, including by helping to avert cuts to provider payment rates and benefits or services, and to prevent constrictions of income eligibility requirements for such programs, but not to promote increases in such requirements.

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

TITLE V—STATE FISCAL RELIEF

Sec. 5000. Purposes; table of contents.

Sec. 5001. Temporary increase of Medicaid FMAP.
Sec. 5002. Extension and update of special rule for increase of Medicaid DSH allotments for low DSH States.
Sec. 5003. Payment of Medicare liability to States as a result of the Special Disability Workload Project.
Sec. 5004. Funding for the Department of Health and Human Services Office of the Inspector General.
Sec. 5005. GAO study and report regarding State needs during periods of national economic downturn.

1 **SEC. 5001. TEMPORARY INCREASE OF MEDICAID FMAP.**

2 (a) PERMITTING MAINTENANCE OF FMAP.—Subject
3 to subsections (e), (f), and (g), if the FMAP determined
4 without regard to this section for a State for—

5 (1) fiscal year 2009 is less than the FMAP as
6 so determined for fiscal year 2008, the FMAP for
7 the State for fiscal year 2008 shall be substituted
8 for the State's FMAP for fiscal year 2009, before
9 the application of this section;

10 (2) fiscal year 2010 is less than the FMAP as
11 so determined for fiscal year 2008 or fiscal year
12 2009 (after the application of paragraph (1)), the
13 greater of such FMAP for the State for fiscal year
14 2008 or fiscal year 2009 shall be substituted for the
15 State's FMAP for fiscal year 2010, before the appli-
16 cation of this section; and

17 (3) fiscal year 2011 is less than the FMAP as
18 so determined for fiscal year 2008, fiscal year 2009
19 (after the application of paragraph (1)), or fiscal
20 year 2010 (after the application of paragraph (2)),
21 the greatest of such FMAP for the State for fiscal

year 2008, fiscal year 2009, or fiscal year 2010 shall be substituted for the State's FMAP for fiscal year 2011, before the application of this section, but only for the first calendar quarter in fiscal year 2011.

(b) GENERAL 7.6 PERCENTAGE POINT INCREASE.—Subject to subsections (e), (f), and (g), for each State for calendar quarters during the recession adjustment period (as defined in subsection (h)(2)) , the FMAP (after the application of subsection (a)) shall be increased (without regard to any limitation otherwise specified in section 1905(b) of the Social Security Act) by 7.6 percentage points.

(c) ADDITIONAL RELIEF BASED ON INCREASE IN UNEMPLOYMENT.—

(1) IN GENERAL.—Subject to subsections (e), (f), and (g), if a State is a qualifying State under paragraph (2) for a calendar quarter occurring during the recession adjustment period, the FMAP for the State shall be further increased by the number of percentage points equal to the product of the State percentage applicable for the State under section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) after the application of subsections (a) and (b) and the applicable percent determined in paragraph (3) for the calendar quarter (or, if great-

1 er, for a previous such calendar quarter, subject to
2 paragraph (4)) .
3 (2) QUALIFYING CRITERIA.—
4 (A) IN GENERAL.—For purposes of para-
5 graph (1), a State qualifies for additional relief
6 under this subsection for a calendar quarter oc-
7 curring during the recession adjustment period
8 if the State is 1 of the 50 States or the District
9 of Columbia and the State satisfies any of the
10 following criteria for the quarter:
11 (i) An increase of at least 1.5 percent-
12 age points, but less than 2.5 percentage
13 points, in the average monthly unemploy-
14 ment rate, seasonally adjusted, for the
15 State or District, as determined by com-
16 paring months in the most recent previous
17 3-consecutive month period for which data
18 are available for the State or District to
19 the lowest average monthly unemployment
20 rate, seasonally adjusted, for the State or
21 District for any 3-consecutive-month pe-
22 riod preceding that period and beginning
23 on or after January 1, 2006 (based on the
24 most recently available monthly publica-

1 tions of the Bureau of Labor Statistics of
2 the Department of Labor).
3 (ii) An increase of at least 2.5 per-
4 centage points, but less than 3.5 percent-
5 age points, in the average monthly unem-
6 ployment rate, seasonally adjusted, for the
7 State or District (as so determined).
8 (iii) An increase of at least 3.5 per-
9 centage points for the State or District, in
10 the average monthly unemployment rate,
11 seasonally adjusted, for the State or Dis-
12 trict (as so determined).
13 (B) MAINTENANCE OF STATUS.—If a
14 State qualifies for additional relief under this
15 subsection for a calendar quarter, it shall be
16 deemed to have qualified for such relief for each
17 subsequent calendar quarter ending before July
18 1, 2010.
19 (3) APPLICABLE PERCENT.—For purposes of
20 paragraph (1), the applicable percent is—
21 (A) 2.5 percent, if the State satisfies the
22 criteria described in paragraph (2)(A)(i) for the
23 calendar quarter;

(B) 4.5 percent if the State satisfies the criteria described in paragraph (2)(A)(ii) for the calendar quarter; and

(C) 6.5 percent if the State satisfies the criteria described in paragraph (2)(A)(iii) for the calendar quarter.

(4) MAINTENANCE OF HIGHER PERCENTAGE REDUCTION FOR PERIOD AFTER LOWER PERCENTAGE DEDUCTION WOULD OTHERWISE TAKE EFFECT.—

(A) HOLD HARMLESS PERIOD.—If the percentage reduction applied to a State under paragraph (3) for any calendar quarter in the recession adjustment period beginning on or after January 1, 2009, and ending before July 1, 2010, (determined without regard to this paragraph) is less than the percentage reduction applied for the preceding quarter (as so determined), the higher percentage reduction shall continue in effect for each subsequent calendar quarter ending before July 1, 2010.

(B) NOTICE OF DECREASE IN PERCENTAGE REDUCTION.—The Secretary shall notify a State at least 3 months prior to applying any

lower percentage reduction to the State under paragraph (3).

(d) INCREASE IN CAP ON MEDICAID PAYMENTS TO TERRITORIES.—Subject to subsections (f) and (g), with respect to entire fiscal years occurring during the recession adjustment period and with respect to fiscal years only a portion of which occurs during such period (and in proportion to the portion of the fiscal year that occurs during such period), the amounts otherwise determined for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa under subsections (f) and (g) of section 1108 of the Social Security Act (42 6 U.S.C. 1308) shall each be increased by 15.2 percent.

(e) SCOPE OF APPLICATION.—The increases in the FMAP for a State under this section shall apply for purposes of title XIX of the Social Security Act and shall not apply with respect to—

(1) disproportionate share hospital payments described in section 1923 of such Act (42 U.S.C. 1396r–4);

(2) payments under title IV of such Act (42 U.S.C. 601 et seq.) (except that the increases under subsections (a) and (b) shall apply to payments under part E of title IV of such Act (42 U.S.C. 670 et seq.));

1 (3) payments under title XXI of such Act (42
2 U.S.C. 1397aa et seq.);
3 (4) any payments under title XIX of such Act
4 that are based on the enhanced FMAP described in
5 section 2105(b) of such Act (42 U.S.C. 1397ee(b));
6 or
7 (5) any payments under title XIX of such Act
8 that are attributable to expenditures for medical as-
9 sistance provided to individuals made eligible under
10 a State plan under title XIX of the Social Security
11 Act (including under any waiver under such title or
12 under section 1115 of such Act (42 U.S.C. 1315))
13 because of income standards (expressed as a per-
14 centage of the poverty line) for eligibility for medical
15 assistance that are higher than the income stand-
16 ards (as so expressed) for such eligibility as in effect
17 on July 1, 2008.
18 (f) STATE INELIGIBILITY.—
19 (1) MAINTENANCE OF ELIGIBILITY REQUIRE-
20 MENTS.—
21 (A) IN GENERAL.—Subject to subpara-
22 graphs (B) and (C), a State is not eligible for
23 an increase in its FMAP under subsection (a),
24 (b), or (c), or an increase in a cap amount
25 under subsection (d), if eligibility standards,

1 methodologies, or procedures under its State
2 plan under title XIX of the Social Security Act
3 (including any waiver under such title or under
4 section 1115 of such Act (42 U.S.C. 1315)) are
5 more restrictive than the eligibility standards,
6 methodologies, or procedures, respectively,
7 under such plan (or waiver) as in effect on July
8 1, 2008.

9 (B) STATE REINSTATEMENT OF ELIGI-
10 BILITY PERMITTED.—Subject to subparagraph
11 (C), a State that has restricted eligibility stand-
12 ards, methodologies, or procedures under its
13 State plan under title XIX of the Social Secu-
14 rity Act (including any waiver under such title
15 or under section 1115 of such Act (42 U.S.C.
16 1315)) after July 1, 2008, is no longer ineli-
17 gible under subparagraph (A) beginning with
18 the first calendar quarter in which the State
19 has reinstated eligibility standards, methodolo-
20 gies, or procedures that are no more restrictive
21 than the eligibility standards, methodologies, or
22 procedures, respectively, under such plan (or
23 waiver) as in effect on July 1, 2008.

24 (C) SPECIAL RULES.—A State shall not be
25 ineligible under subparagraph (A)—

(i) for the calendar quarters before July 1, 2009, on the basis of a restriction that was applied after July 1, 2008, and before the date of the enactment of this Act, if the State prior to July 1, 2009, has reinstated eligibility standards, methodologies, or procedures that are no more restrictive than the eligibility standards, methodologies, or procedures, respectively, under such plan (or waiver) as in effect on July 1, 2008; or

(ii) on the basis of a restriction that was directed to be made under State law as of July 1, 2008, and would have been in effect as of such date, but for a delay in the request for, and approval of, a waiver under section 1115 of such Act with respect to such restriction.

(2) COMPLIANCE WITH PROMPT PAY REQUIREMENTS.—No State shall be eligible for an increased FMAP rate as provided under this section for any claim submitted by a provider subject to the terms of section 1902(a)(37)(A) of the Social Security Act (42 U.S.C. 1396a(a)(37)(A)) during any period in which that State has failed to pay claims in accord-

ance with section 1902(a)(37)(A) of such Act. Each State shall report to the Secretary, no later than 30 days following the 1st day of the month, its compliance with the requirements of section 1902(a)(37)(A) of the Social Security Act as they pertain to claims made for covered services during the preceding month.

(3) NO WAIVER AUTHORITY.—The Secretary may not waive the application of this subsection or subsection (g) under section 1115 of the Social Security Act or otherwise.

(g) REQUIREMENTS.—

(1) IN GENERAL.—A State may not deposit or credit the additional Federal funds paid to the State as a result of this section to any reserve or rainy day fund maintained by the State.

(2) STATE REPORTS.—Each State that is paid additional Federal funds as a result of this section shall, not later than September 30, 2011, submit a report to the Secretary, in such form and such manner as the Secretary shall determine, regarding how the additional Federal funds were expended.

(3) ADDITIONAL REQUIREMENT FOR CERTAIN STATES.—In the case of a State that requires political subdivisions within the State to contribute to-

ward the non-Federal share of expenditures under the State Medicaid plan required under section 1902(a)(2) of the Social Security Act (42 U.S.C. 1396a(a)(2)), the State is not eligible for an increase in its FMAP under subsection (b) or (c), or an increase in a cap amount under subsection (d), if it requires that such political subdivisions pay for quarters during the recession adjustment period a greater percentage of the non-Federal share of such expenditures, or a greater percentage of the non-Federal share of payments under section 1923, than the respective percentage that would have been required by the State under such plan on September 30, 2008, prior to application of this section.

(h) DEFINITIONS.—In this section, except as otherwise provided:

(1) FMAP.—The term ''FMAP'' means the Federal medical assistance percentage, as defined in section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)), as determined without regard to this section except as otherwise specified.

(2) POVERTY LINE.—The term ''poverty line'' has the meaning given such term in section 673(2) of the Community Services Block Grant Act (42

U.S.C. 9902(2)), including any revision required by such section.

(3) RECESSION ADJUSTMENT PERIOD.—The term ''recession adjustment period'' means the period beginning on October 1, 2008, and ending on December 31, 2010.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(5) STATE.—The term ''State'' has the meaning given such term for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(i) SUNSET.—This section shall not apply to items and services furnished after the end of the recession adjustment period.

SEC. 5002. EXTENSION AND UPDATE OF SPECIAL RULE FOR INCREASE OF MEDICAID DSH ALLOTMENTS FOR LOW DSH STATES.

Section 1923(f)(5) of the Social Security Act (42 U.S.C. 1396r–4(f)(5)) is amended—

(1) in subparagraph (B)—

(A) in the subparagraph heading, by striking ''YEAR 2004 AND SUBSEQUENT FISCAL YEARS'' and inserting ''YEARS 2004 THROUGH 2008'';

(B) in clause (i), by inserting ''and'' after the semicolon;

(C) in clause (ii), by striking ''; and'' and inserting a period; and

(D) by striking clause (iii); and

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

''(C) FOR FISCAL YEAR 2009 AND SUBSEQUENT FISCAL YEARS.—In the case of a State in which the total expenditures under the State plan (including Federal and State shares) for disproportionate share hospital adjustments under this section for fiscal year 2006, as reported to the Administrator of the Centers for Medicare & Medicaid Services as of August 31, 2009, is greater than 0 but less than 3 percent of the State's total amount of expenditures under the State plan for medical assistance during the fiscal year, the DSH allotment for the State with respect to—

''(i) fiscal year 2009, shall be the DSH allotment for the State for fiscal year 2008 increased by 16 percent;

"(ii) fiscal year 2010, shall be the DSH allotment for the State for fiscal year 2009 increased by 16 percent;

"(iii) fiscal year 2011 for the period ending on December 31, 2010, shall be ¼ of the DSH allotment for the State for fiscal year 2010 increased by 16 percent;

"(iv) fiscal year 2011 for the period beginning on January 1, 2011, and ending on September 30, 2011, shall be ¾ of the DSH allotment that would have been determined under this subsection for the State for fiscal year 2011 if this subparagraph had not been enacted;

"(v) fiscal year 2012, shall be the DSH allotment that would have been determined under this subsection for the State for fiscal year 2012 if this subparagraph had not been enacted; and

"(vi) fiscal year 2013 and any subsequent fiscal year, shall be the DSH allotment for the State for the previous fiscal year subject to an increase for inflation as provided in paragraph (3)(A).".

SEC. 5003. PAYMENT OF MEDICARE LIABILITY TO STATES AS A RESULT OF THE SPECIAL DISABILITY WORKLOAD PROJECT.

(a) IN GENERAL.—The Secretary, in consultation with the Commissioner, shall work with each State to reach an agreement, not later than 3 months after the date of enactment of this Act, on the amount of a payment for the State related to the Medicare program liability as a result of the Special Disability Workload project, subject to the requirements of subsection (c).

(b) PAYMENTS.—

(1) DEADLINE FOR MAKING PAYMENTS.—Not later than 30 days after reaching an agreement with a State under subsection (a), the Secretary shall pay the State, from the amounts appropriated under paragraph (2), the payment agreed to for the State.

(2) APPROPRIATION.—Out of any money in the Treasury not otherwise appropriated, there is appropriated $3,000,000,000 for fiscal year 2009 for making payments to States under paragraph (1).

(3) LIMITATIONS.—In no case may—

(A) the aggregate amount of payments made by the Secretary to States under paragraph (1) exceed $3,000,000,000; or

(B) any payments be provided by the Secretary under this section after the first day of

the first month that begins 4 months after the date of enactment of this Act.

(c) REQUIREMENTS.—The requirements of this subsection are the following:

(1) FEDERAL DATA USED TO DETERMINE AMOUNT OF PAYMENTS.—The amount of the payment under subsection (a) for each State is determined on the basis of the most recent Federal data available, including the use of proxies and reasonable estimates as necessary, for determining expeditiously the amount of the payment that shall be made to each State that enters into an agreement under this section. The payment methodology shall consider the following factors:

(A) The number of SDW cases found to have been eligible for benefits under the Medicare program and the month of the initial Medicare program eligibility for such cases.

(B) The applicable non-Federal share of expenditures made by a State under the Medicaid program during the time period for SDW cases.

(C) Such other factors as the Secretary and the Commissioner, in consultation with the States, determine appropriate.

(2) CONDITIONS FOR PAYMENTS.—A State shall not receive a payment under this section unless the State—

(A) waives the right to file a civil action (or to be a party to any action) in any Federal or State court in which the relief sought includes a payment from the United States to the State related to the Medicare liability under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) as a result of the Special Disability Workload project; and

(B) releases the United States from any further claims for reimbursement of State expenditures as a result of the Special Disability Workload project.

(3) NO INDIVIDUAL STATE CLAIMS DATA REQUIRED.—No State shall be required to submit individual claims evidencing payment under the Medicaid program as a condition for receiving a payment under this section.

(4) INELIGIBLE STATES.—No State that is a party to a civil action in any Federal or State court in which the relief sought includes a payment from the United States to the State related to the Medicare liability under title XVIII of the Social Security

1 Act (42 U.S.C. 1395 et seq.) as a result of the Spe-
2 cial Disability Workload project shall be eligible to
3 receive a payment under this section while such an
4 action is pending or if such an action is resolved in
5 favor of the State.
6 (d) DEFINITIONS.—In this section:
7 (1) COMMISSIONER.—The term ''Commis-
8 sioner'' means the Commissioner of Social Security.
9 (2) MEDICAID PROGRAM.—The term ''Medicaid
10 program'' means the program of medical assistance
11 established under title XIX of the Social Security
12 Act (42 U.S.C. 1396a et seq.) and includes medical
13 assistance provided under any waiver of that pro-
14 gram approved under section 1115 or 1915 of such
15 Act (42 U.S.C. 1315, 1396n) or otherwise.
16 (3) MEDICARE PROGRAM.—The term ''Medicare
17 program'' means the program established under title
18 XVIII of the Social Security Act (42 U.S.C. 1395 et
19 seq.).
20 (4) SECRETARY.—The term ''Secretary'' means
21 the Secretary of Health and Human Services.
22 (5) SDW CASE.—The term ''SDW case'' means
23 a case in the Special Disability Workload project in-
24 volving an individual determined by the Commis-
25 sioner to have been eligible for benefits under title

1 II of the Social Security Act (42 U.S.C. 401 et seq.)
2 for a period during which such benefits were not
3 provided to the individual and who was, during all
4 or part of such period, enrolled in a State Medicaid
5 program.

6 (6) SPECIAL DISABILITY WORKLOAD
7 PROJECT.—The term ''Special Disability Workload
8 project'' means the project described in the 2008
9 Annual Report of the Board of Trustees of the Fed-
10 eral Old-Age and Survivors Insurance and Federal
11 Disability Insurance Trust Funds, H.R. Doc. No.
12 110-104, 110th Cong. (2008).

13 (7) STATE.—The term ''State'' means each of
14 the 50 States and the District of Columbia.

15 **SEC. 5004. FUNDING FOR THE DEPARTMENT OF HEALTH**
16 **AND HUMAN SERVICES OFFICE OF THE IN-**
17 **SPECTOR GENERAL.**

18 For purposes of ensuring the proper expenditure of
19 Federal funds under title XIX of the Social Security Act
20 (42 U.S.C. 1396 et seq.), there is appropriated to the Of-
21 fice of the Inspector General of the Department of Health
22 and Human Services, out of any money in the Treasury
23 not otherwise appropriated and without further appropria-
24 tion, $31,250,000 for the recession adjustment period (as
25 defined in section 5001(h)(3)). Amounts appropriated

1 under this section shall remain available for expenditure
2 until expended and shall be in addition to any other
3 amounts appropriated or made available to such Office for
4 such purposes.

5 **SEC. 5005. GAO STUDY AND REPORT REGARDING STATE**
6 **NEEDS DURING PERIODS OF NATIONAL ECO-**
7 **NOMIC DOWNTURN.**

8 (a) IN GENERAL.—The Comptroller General of the
9 United States shall study the period of national economic
10 downturn in effect on the date of enactment of this Act,
11 as well as previous periods of national economic downturn
12 since 1974, for the purpose of developing recommenda-
13 tions for addressing the needs of States during such peri-
14 ods. As part of such analysis, the Comptroller General
15 shall study the past and projected effects of temporary in-
16 creases in the Federal medical assistance percentage
17 under the Medicaid program with respect to such periods.

18 (b) REPORT.—Not later than April 1, 2011, the
19 Comptroller General of the United States shall submit a
20 report to the appropriate committees of Congress on the
21 results of the study conducted under paragraph (1). Such
22 report shall include the following:

23 (1) Such recommendations as the Comptroller
24 General determines appropriate for modifying the
25 national economic downturn assistance formula for

1 temporary adjustment of the Federal medical assist-
2 ance percentage under Medicaid (also referred to as
3 a ''countercyclical FMAP'') described in GAO report
4 number GAO–07–97 to improve the effectiveness of
5 the application of such percentage in addressing the
6 needs of States during periods of national economic
7 downturn, including recommendations for—
8 (A) improvements to the factors that would
9 begin and end the application of such percent-
10 age;
11 (B) how the determination of the amount
12 of such percentage could be adjusted to address
13 State and regional economic variations during
14 such periods; and
15 (C) how the determination of the amount
16 of such percentage could be adjusted to be more
17 responsive to actual Medicaid costs incurred by
18 States during such periods.
19 (2) An analysis of the impact on States during
20 such periods of—
21 (A) declines in private health benefits cov-
22 erage;
23 (B) declines in State revenues; and
24 (C) caseload maintenance and growth
25 under Medicaid, the State Children's Health In-

1 surance Program, or any other publicly-funded
2 programs to provide health benefits coverage
3 for State residents.
4 (3) Identification of, and recommendations for
5 addressing, the effects on States of any other spe-
6 cific economic indicators that the Comptroller Gen-
7 eral determines appropriate.

Amendment No. 98

H.R. 1