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111TH CONGRESS
1ST SESSION

H. R. 1

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 2009

Ordered to be printed with the amendment of the Senate

[Strike out all after the enacting clause and insert the part printed in italic]

AN ACT

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

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

~~**SECTION 1. SHORT TITLE.**~~

~~This Act may be cited as the "American Recovery and Reinvestment Act of 2009".~~

~~**SEC. 2. TABLE OF CONTENTS.**~~

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

~~DIVISION A—APPROPRIATION PROVISIONS~~

~~TITLE I—GENERAL PROVISIONS~~
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~~TITLE III—COMMERCE, JUSTICE, AND SCIENCE~~
~~TITLE IV—DEFENSE~~

~~TITLE V—ENERGY AND WATER~~
~~TITLE VI—FINANCIAL SERVICES AND GENERAL GOVERNMENT~~
~~TITLE VII—HOMELAND SECURITY~~
~~TITLE VIII—INTERIOR AND ENVIRONMENT~~
~~TITLE IX—LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION~~
~~TITLE X—MILITARY CONSTRUCTION AND VETERANS AFFAIRS~~
~~TITLE XI—DEPARTMENT OF STATE~~
~~TITLE XII—TRANSPORTATION, AND HOUSING AND URBAN DEVELOPMENT~~
~~TITLE XIII—STATE FISCAL STABILIZATION FUND~~

~~DIVISION B—OTHER PROVISIONS~~

~~TITLE I—TAX PROVISIONS~~
~~TITLE II—ASSISTANCE FOR UNEMPLOYED WORKERS AND STRUGGLING FAMILIES~~
~~TITLE III—HEALTH INSURANCE ASSISTANCE FOR THE UNEMPLOYED~~
~~TITLE IV—HEALTH INFORMATION TECHNOLOGY~~
~~TITLE V—MEDICAID PROVISIONS~~
~~TITLE VI—BROADBAND COMMUNICATIONS~~
~~TITLE VII—ENERGY~~

~~SEC. 3. PURPOSES AND PRINCIPLES.~~

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

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

~~(2) To assist those most impacted by the recession.~~

~~(3) To provide investments needed to increase economic efficiency by spurring technological advances in science and health.~~

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

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

~~in essential services and counterproductive state and local tax increases.~~

~~(b) GENERAL PRINCIPLES CONCERNING USE OF FUNDS.—The President and the heads of Federal departments and agencies shall manage and expend the funds made available in this Act so as to achieve the purposes specified in subsection (a), including commencing expenditures and activities as quickly as possible consistent with prudent management.~~

~~SEC. 4. 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.~~

~~SEC. 5. EMERGENCY DESIGNATIONS.~~

~~(a) IN GENERAL.—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.~~

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

~~DIVISION A—APPROPRIATION PROVISIONS~~

~~SEC. 1001. STATEMENT OF APPROPRIATIONS.~~

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

~~TITLE I—GENERAL PROVISIONS~~

~~Subtitle A—Use of Funds~~

~~SEC. 1101. RELATIONSHIP TO OTHER APPROPRIATIONS.~~

~~Each amount appropriated or made available in this Act is in addition to amounts otherwise appropriated 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).~~

~~SEC. 1102. PREFERENCE FOR QUICK-START ACTIVITIES.~~

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

~~SEC. 1103. REQUIREMENT OF TIMELY AWARD OF GRANTS.~~

~~(a) FORMULA GRANTS.—Formula grants using funds made available in this Act shall be awarded not later than 30 days after the date of the enactment of this Act (or, in the case of appropriations not available upon enactment, not later than 30 days after the appropriation becomes available for obligation), unless expressly provided otherwise in this Act.~~

~~(b) COMPETITIVE GRANTS.—Competitive grants using funds made available in this Act shall be awarded not later than 90 days after the date of the enactment of this Act (or, in the case of appropriations not available upon enactment, not later than 90 days after the appropriation becomes available for obligation), unless expressly provided otherwise in this Act.~~

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

~~SEC. 1104. USE IT OR LOSE IT REQUIREMENTS FOR GRANTEES.~~

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

~~Act (or not later than 9 months after the grant is awarded, if later) to make use of 50 percent of the funds awarded, and shall enter into contracts or other binding commitments not later than 2 years after the date of the enactment of this Act (or not later than 21 months after the grant is awarded, if later) to make use of the remaining funds. In the case of activities to be carried out directly by a grant recipient (rather than by contracts, subgrants, or other arrangements with third parties), a certification by the recipient specifying the amounts, planned timing, and purpose of such expenditures shall be deemed a binding commitment for purposes of this section.~~

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

~~(c) APPROPRIATIONS TO WHICH THIS SECTION APPLIES.—This section shall apply to grants made using amounts appropriated in any of the following accounts within this Act:~~

~~(1) "Environmental Protection Agency—State and Tribal Assistance Grants".~~

~~(2) "Department of Transportation—Federal Aviation Administration—Grants-in-Aid for Airports".~~

~~(3) "Department of Transportation—Federal Railroad Administration—Capital Assistance for Intercity Passenger Rail Service".~~

~~(4) "Department of Transportation—Federal Transit Administration—Capital Investment Grants".~~

~~(5) "Department of Transportation—Federal Transit Administration—Fixed Guideway Infrastructure Investment".~~

~~(6) "Department of Transportation—Federal Transit Administration—Transit Capital Assistance".~~

~~(7) "Department of Housing and Urban Development—Public and Indian Housing—Public Housing Capital Fund".~~

~~(8) "Department of Housing and Urban Development—Public and Indian Housing—Elderly, Disabled, and Section 8 Assisted Housing Energy Retrofit".~~

~~(9) "Department of Housing and Urban Development—Public and Indian Housing—Native American Housing Block Grants".~~

~~(10) "Department of Housing and Urban Development—Community Planning and Development—HOME Investment Partnerships Program".~~

~~(11) "Department of Housing and Urban Development—Community Planning and Development—Self-Help and Assisted Homeownership Opportunity Program".~~

~~SEC. 1105. PERIOD OF AVAILABILITY.~~

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

~~(b) REOBLIGATION.—Amounts that are not needed or cannot be used under title X of this Act for the activity for which originally obligated may be deobligated and, notwithstanding the limitation on availability specified in subsection (a), reobligated for other activities that have received funding from the same account or appropriation in such title.~~

~~SEC. 1106. SET-ASIDE FOR MANAGEMENT AND OVERSIGHT.~~

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

~~expenses of management and oversight of the programs, grants, and activities funded by such appropriation, and may be transferred by the head of the Federal department or agency involved to any other appropriate account within the department or agency for that purpose. Funds set aside under this section shall remain available for obligation until September 30, 2012.~~

~~SEC. 1107. APPROPRIATIONS FOR INSPECTORS GENERAL.~~

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

~~(1) "Department of Agriculture—Office of Inspector General", $22,500,000.~~

~~(2) "Department of Commerce—Office of Inspector General", $10,000,000.~~

~~(3) "Department of Defense—Office of the Inspector General", $15,000,000.~~

~~(4) "Department of Education—Departmental Management—Office of the Inspector General", $14,000,000.~~

~~(5) "Department of Energy—Office of Inspector General", $15,000,000.~~

~~(6) "Department of Health and Human Services—Office of the Secretary—Office of Inspector General", $19,000,000.~~

~~(7) "Department of Homeland Security—Office of Inspector General", $2,000,000.~~

~~(8) "Department of Housing and Urban Development—Management and Administration—Office of Inspector General", $15,000,000.~~

~~(9) "Department of the Interior—Office of Inspector General", $15,000,000.~~

~~(10) "Department of Justice—Office of Inspector General", $2,000,000.~~

~~(11) "Department of Labor—Departmental Management—Office of Inspector General", $6,000,000.~~

~~(12) "Department of Transportation—Office of Inspector General", $20,000,000.~~

~~(13) "Department of Veterans Affairs—Office of Inspector General", $1,000,000.~~

~~(14) "Environmental Protection Agency—Office of Inspector General", $20,000,000.~~

~~(15) "General Services Administration—General Activities—Office of Inspector General", $15,000,000.~~

~~(16) "National Aeronautics and Space Administration—Office of Inspector General", $2,000,000.~~

~~(17) "National Science Foundation—Office of Inspector General", $2,000,000.~~

~~(18) "Small Business Administration—Office of Inspector General", $10,000,000.~~

~~(19) "Social Security Administration—Office of Inspector General", $2,000,000.~~

~~(20) "Corporation for National and Community Service—Office of Inspector General", $1,000,000.~~

~~SEC. 1108. APPROPRIATION FOR GOVERNMENT ACCOUNTABILITY OFFICE.~~

~~There is hereby appropriated as an additional amount for "Government Accountability Office—Salaries and Expenses" $25,000,000, for oversight activities relating to this Act.~~

~~SEC. 1109. PROHIBITED USES.~~

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

~~SEC. 1110. USE OF AMERICAN IRON AND STEEL.~~

~~(a) IN GENERAL.—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 and steel used in the project is produced in the United States.~~

~~(b) EXCEPTIONS.—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 and steel are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or~~

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

~~(c) WRITTEN JUSTIFICATION FOR WAIVER.—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 justification as to why the provision is being waived.~~

~~(d) DEFINITIONS.—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.~~

~~SEC. 1111. WAGE RATE REQUIREMENTS.~~

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

~~SEC. 1112. ADDITIONAL ASSURANCE OF APPROPRIATE USE OF FUNDS.~~

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

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

~~SEC. 1113. PERSISTENT POVERTY COUNTIES.~~

~~(a) ALLOCATION REQUIREMENT.—Of the amount appropriated in this Act for "Department of Agriculture—Rural Development Programs—Rural Community Advancement Program", at least 10 percent shall be allocated for assistance in persistent poverty counties.~~

~~(b) DEFINITION.—For purposes of this section, the term "persistent poverty counties" means any county that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1980, 1990, and 2000 decennial censuses.~~

~~SEC. 1114. REQUIRED PARTICIPATION IN E-VERIFY PROGRAM.~~

~~None of the funds made available in this Act may be used to enter into a contract with an entity that does not participate in the E-verify program described in section 401(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note).~~

~~SEC. 1115. ADDITIONAL FUNDING DISTRIBUTION AND ASSURANCE OF APPROPRIATE USE OF FUNDS.~~

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

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

~~(c) DISTRIBUTION.—After the adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion.~~

~~Subtitle B—Accountability in Recovery Act Spending~~

~~PART 1—TRANSPARENCY AND OVERSIGHT REQUIREMENTS~~

~~SEC. 1201. TRANSPARENCY REQUIREMENTS.~~

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

~~ery.gov (as established under section 1226 of this subtitle)—~~

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

~~(2) all announcements for grant competitions, allocations of formula grants, and awards of competitive grants using those funds.~~

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

~~(1) INFRASTRUCTURE INVESTMENT FUNDING.—With respect to funds made available under this Act for infrastructure investments to Federal, State, or local government agencies, the following requirements apply:~~

~~(A) Each such agency shall notify the public of funds obligated to particular infrastructure investments by posting the notification on the website Recovery.gov.~~

~~(B) The notification required by subparagraph (A) shall include the following:~~

~~(i) A description of the infrastructure investment funded.~~

~~(ii) The purpose of the infrastructure investment.~~

~~(iii) The total cost of the infrastructure investment.~~

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

~~(v) The name of the person to contact at the agency if there are concerns with the infrastructure investment and, with respect to Federal agencies, an email address for the Federal official in the agency whom the public can contact.~~

~~(vi) In the case of State or local agencies, a certification from the Governor, mayor, or other chief executive, as appropriate, 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.~~

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

~~grants for operational purposes to State or local government agencies or other organizations, the agency or organization shall publish on the website Recovery.gov a description of the intended use of the funds, including the number of jobs sustained or created.~~

~~(c) AVAILABILITY ON INTERNET OF CONTRACTS AND GRANTS.—Each contract awarded or grant issued using funds made available in this Act shall be posted on the Internet and linked to the website Recovery.gov. Proprietary data that is required to be kept confidential under applicable Federal or State law or regulation shall be redacted before posting.~~

~~SEC. 1202. INSPECTOR GENERAL REVIEWS.~~

~~(a) REVIEWS.—Any inspector general of a Federal department or executive agency shall review, as appropriate, any concerns raised by the public about specific investments using funds made available in this Act. Any findings of an inspector general resulting from such a review shall be relayed immediately to the head of each department and agency. In addition, the findings of such reviews, along with any audits conducted by any inspector general of funds made available in this Act, shall be posted on the Internet and linked to the website Recovery.gov.~~

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

~~SEC. 1203. GOVERNMENT ACCOUNTABILITY OFFICE REVIEWS AND REPORTS.~~

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

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

~~SEC. 1204. COUNCIL OF ECONOMIC ADVISERS REPORTS.~~

~~The Chairman of the Council of Economic Advisers, in consultation with the Director of the Office of Management and Budget and the Secretary of the Treasury, shall submit quarterly reports to Congress detailing the estimated impact of programs under this Act on employment, economic growth, and other key economic indicators.~~

~~SEC. 1205. SPECIAL CONTRACTING PROVISIONS.~~

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

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

~~PART 2—ACCOUNTABILITY AND TRANSPARENCY BOARD~~

~~SEC. 1221. ESTABLISHMENT OF THE ACCOUNTABILITY AND TRANSPARENCY BOARD.~~

~~There is established a board to be known as the "Recovery Act Accountability and Transparency Board" (hereafter in this subtitle referred to as the "Board") to coordinate and conduct oversight of Federal spending under this Act to prevent waste, fraud, and abuse.~~

~~SEC. 1222. COMPOSITION OF BOARD.~~

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

~~(1) The Chief Performance Officer of the President, who shall chair the Board.~~

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

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

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

~~SEC. 1223. FUNCTIONS OF THE BOARD.~~

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

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

~~(2) Verifying that competition requirements applicable to contracts and grants under this Act and other applicable Federal law have been satisfied.~~

~~(3) Investigating spending under this Act to determine whether wasteful spending, poor contract or grant management, or other abuses are occurring.~~

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

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

there are appropriate mechanisms for interagency collaboration.

(b) REPORTS.—

(1) FLASH AND OTHER REPORTS.—The Board shall submit to Congress reports, to be known as "flash reports", on potential management and funding problems that require immediate attention. The Board also shall submit to Congress such other reports as the Board considers appropriate on the use and benefits of funds made available in this Act.

(2) QUARTERLY.—The Board shall submit to the President and Congress quarterly reports summarizing its findings and the findings of agency inspectors general and may issue additional reports as appropriate.

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

~~(c) RECOMMENDATIONS TO AGENCIES.—The Board shall make recommendations to Federal agencies on measures to prevent waste, fraud, and abuse. A Federal agency shall, within 30 days after receipt of any such recommendation, submit to the Board, the President, and the congressional committees of jurisdiction a report on whether the agency agrees or disagrees with the recommendations and what steps, if any, the agency plans to take to implement the recommendations.~~

~~SEC. 1224. POWERS OF THE BOARD.~~

~~(a) COORDINATION OF AUDITS AND INVESTIGATIONS BY AGENCY INSPECTORS GENERAL.—The Board shall coordinate the audits and investigations of spending under this Act by agency inspectors general.~~

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

~~(c) MEETINGS.—The Board may, for the purpose of carrying out its duties under this Act, hold public meetings, sit and act at times and places, and receive information as the Board considers appropriate. The Board shall meet at least once a month.~~

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

~~out its duties under this Act. Upon request of the Chairman of the Board, the head of that department or agency shall furnish that information to the Board.~~

~~(c) CONTRACTS.—The Board may enter into contracts to enable the Board to discharge its duties under this Act.~~

~~SEC. 1225. STAFFING.~~

~~(a) EXECUTIVE DIRECTOR.—The Chairman of the Board may appoint and fix the compensation of an executive director and other personnel as may be required to carry out the functions of the Board. The Director shall be paid at the rate of basic pay for level IV of the Executive Schedule.~~

~~(b) STAFF OF FEDERAL AGENCIES.—Upon request of the Board, the head of any Federal department or agency may detail any Federal official or employee, including officials and employees of offices of inspector general, to the Board without reimbursement from the Board, and such detailed staff shall retain the rights, status, and privileges of his or her regular employment without interruption.~~

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

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

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

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

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

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

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

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

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

~~of carrying out this Act, 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 funds made available in this Act 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 awarded for purposes of carrying out this Act.~~

~~(7) The website shall be enhanced and updated as necessary to carry out the purposes of this subtitle.~~

~~(8) The website shall provide, by location, links to and information on how to access job opportunities created at or by entities receiving funding under this Act, including, if possible, links to or information about local employment agencies, state, local and other public agencies receiving funding, and private firms contracted to perform work funded by this Act.~~

~~SEC. 1227. PRESERVATION OF THE INDEPENDENCE OF INSPECTORS GENERAL.~~

~~Inspectors general shall retain independent authority to determine whether to conduct an audit or investigation of spending under this Act. 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, within 30 days after receipt of the request, submit to the Board, the agency head, and the congressional committees of jurisdiction a report explaining why the inspector general has rejected the request in whole or in part.~~

~~SEC. 1228. 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. 1229. INDEPENDENT ADVISORY PANEL.~~

~~(a) ESTABLISHMENT.—There is established a panel to be known as the "Independent Advisory Panel" to advise the Board.~~

~~(b) MEMBERSHIP.—The Panel shall be composed of five members appointed by the President from among individuals with expertise in economics, public finance, contracting, accounting, or other relevant fields.~~

~~(c) FUNCTIONS.—The Panel shall make recommendations to the Board on actions the Board could take to prevent waste, fraud, and abuse in Federal spending under this Act.~~

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

~~SEC. 1230. FUNDING.~~

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

~~SEC. 1231. BOARD TERMINATION.~~

~~The Board shall terminate 12 months after 90 percent of the funds made available under this Act have been expended, as determined by the Director of the Office of Management and Budget.~~

~~PART 3—ADDITIONAL ACCOUNTABILITY AND TRANSPARENCY PROVISIONS~~

~~SEC. 1241. LIMITATION ON THE LENGTH OF CERTAIN NON-COMPETITIVE CONTRACTS.~~

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

~~amount greater than the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. (4)(11))—~~

~~(1) may exceed the time necessary—~~

~~(A) to meet the unusual and compelling requirements of the work to be performed under the contract; and~~

~~(B) for the executive agency to enter into another contract for the required goods or services through the use of competitive procedures; and~~

~~(2) may exceed one year unless the head of the executive agency entering into such contract determines that exceptional circumstances apply.~~

~~SEC. 1242. ACCESS OF GOVERNMENT ACCOUNTABILITY OFFICE AND OFFICES OF INSPECTOR GENERAL TO CERTAIN EMPLOYEES.~~

~~(a) ACCESS.—Each contract awarded using funds made available in this Act shall provide that the Comptroller General and his representatives, and any representatives of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), are authorized—~~

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

~~cy 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.~~

~~(b) RELATIONSHIP TO EXISTING AUTHORITY.—Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General or an Inspector General.~~

~~SEC. 1243. PROTECTING STATE AND LOCAL GOVERNMENT AND CONTRACTOR WHISTLEBLOWERS.~~

~~(a) PROHIBITION OF REPRISALS.—An employee of any non-Federal employer receiving funds made available in this Act 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 Federal agency head, or their representatives, information that the employee reasonably believes is evidence of—~~

~~(1) gross mismanagement of an executive agency contract or grant;~~

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

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

~~(4) a violation of law related to an executive agency contract (including the competition for or negotiation of a contract) or grant awarded or issued to carry out this Act.~~

~~(b) INVESTIGATION OF COMPLAINTS.—~~

~~(1) A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the inspector general of the executive agency that awarded the contract or issued the grant. 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 Federal agency that awarded the contract or issued the grant, and the Board.~~

~~(2)(A) 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) If the inspector general is unable to complete an investigation in time to submit a report within the 180-day period specified in 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) Not later than 30 days after receiving an inspector general report pursuant to 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 one 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) If the head of an executive 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 paragraph (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) An inspector general determination and an agency head order denying relief under paragraph (2) shall be admissible in evidence in any de novo action at law or equity brought pursuant to this subsection.~~

~~(4) Whenever a person fails to comply with an order issued under paragraph (1), the head of the agency shall file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.~~

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

~~order by the head of the agency. Review shall conform to chapter 7 of title 5.~~

~~(d) CONSTRUCTION.—Nothing in this section may be construed to authorize the discharge of, demotion 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.~~

~~(e) DEFINITIONS.—~~

~~(1) NON-FEDERAL EMPLOYER RECEIVING FUNDS UNDER THIS ACT.—The term "non-Federal employer receiving funds made available in this Act" means—~~

~~(A) with respect to a Federal contract awarded or Federal grant issued to carry out this Act, the contractor or grantee, as the case may be, if the contractor or grantee is an employer; or~~

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

~~(2) EXECUTIVE AGENCY.—The term "executive agency" has the meaning given that term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).~~

1 ~~(3) STATE OR LOCAL GOVERNMENT.—The term~~
2 ~~"State or local government" means—~~
3 ~~(A) the government of each of the several~~
4 ~~States, the District of Columbia, the Common-~~
5 ~~wealth of Puerto Rico, Guam, American Samoa,~~
6 ~~the Virgin Islands, the Northern Mariana Is-~~
7 ~~lands, or any other territory or possession of~~
8 ~~the United States; or~~
9 ~~(B) the government of any political sub-~~
10 ~~division of a government listed in subparagraph~~
11 ~~(A).~~

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

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

15 ~~(a) SHORT TITLE.—This part may be cited as the~~
16 ~~"Whistleblower Protection Enhancement Act of 2009".~~
17 ~~(b) TABLE OF CONTENTS.—The table of contents for~~
18 ~~this part is as follows:~~

~~PART 4—FURTHER ACCOUNTABILITY AND TRANSPARENCY PROVISIONS~~

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

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

~~SEC. 1262. CLARIFICATION OF DISCLOSURES COVERED.~~

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

~~(1) in subparagraph (A)—~~

~~(A) by striking "which the employee or applicant reasonably believes evidences" and inserting ", without restriction as to time, place, form, motive, context, forum, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties, that the employee or applicant reasonably believes is evidence of"; and~~

~~(B) in clause (i), by striking "a violation" and inserting "any violation"; and~~

~~(2) in subparagraph (B)—~~

~~(A) by striking "which the employee or applicant reasonably believes evidences" and inserting ", without restriction as to time, place, form, motive, context, forum, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties, of informa-~~

~~tion that the employee or applicant reasonably believes is evidence of'';~~ ~~and~~

~~(B) in clause (i), by striking ''a violation'' and inserting ''any violation (other than a violation of this section)''.~~

~~(b) PROHIBITED PERSONNEL PRACTICES UNDER SECTION 2302(b)(9).—Title 5, United States Code, is amended in subsections (a)(3), (b)(4)(A), and (b)(4)(B)(i) of section 1214 and in subsections (a) and (c)(1) of section 1221 by inserting ''or 2302(b)(9)(B)–(D)'' after ''section 2302(b)(8)'' each place it appears.~~

~~SEC. 1263. DEFINITIONAL AMENDMENTS.~~

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

~~(1) in subparagraph (B)(ii), by striking ''and'' at the end;~~

~~(2) in subparagraph (C)(iii), by striking the period at the end and inserting ''; and''; and~~

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

~~''(D) 'disclosure' means a formal or informal communication, but does not include a communication concerning policy decisions that lawfully exercise discretionary authority unless the employee or applicant providing the disclosure reasonably believes that the disclosure evidences—~~

1 ~~"(i) any violation of any law, rule, or regu-~~
2 ~~lation; or~~
3 ~~"(ii) gross mismanagement, a gross waste~~
4 ~~of funds, an abuse of authority, or a substantial~~
5 ~~and specific danger to public health or safety.".~~
6 ~~(b) CLEAR AND CONVINCING EVIDENCE.—Sections~~
7 ~~1214(b)(4)(B)(ii) and 1221(e)(2) of title 5, United States~~
8 ~~Code, are amended by adding at the end the following:~~
9 ~~"For purposes of the preceding sentence, 'clear and con-~~
10 ~~vincing evidence' means evidence indicating that the mat-~~
11 ~~ter to be proved is highly probable or reasonably certain.".~~
12 **~~SEC. 1264. REBUTTABLE PRESUMPTION.~~**
13 ~~Section 2302(b) of title 5, United States Code, is~~
14 ~~amended by adding at the end the following: "For pur-~~
15 ~~poses of paragraph (8), any presumption relating to the~~
16 ~~performance of a duty by an employee who has authority~~
17 ~~to take, direct others to take, recommend, or approve any~~
18 ~~personnel action may be rebutted by substantial evidence.~~
19 ~~For purposes of paragraph (8), a determination as to~~
20 ~~whether an employee or applicant reasonably believes that~~
21 ~~such employee or applicant has disclosed information that~~
22 ~~evidences any violation of law, rule, regulation, gross mis-~~
23 ~~management, a gross waste of funds, an abuse of author-~~
24 ~~ity, or a substantial and specific danger to public health~~
25 ~~or safety shall be made by determining whether a disin-~~

~~terested observer with knowledge of the essential facts known to or readily ascertainable by the employee or applicant could reasonably conclude that the actions of the Government evidence such violations, mismanagement, waste, abuse, or danger.''.~~

~~SEC. 1265. NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS.~~

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

~~(1) in clause (x), by striking ''and'' at the end;~~

~~(2) by redesignating clause (xi) as clause (xii), and~~

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

~~''(xi) the implementation or enforcement of any nondisclosure policy, form, or agreement; and''.~~

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

~~(1) in paragraph (11), by striking ''or'' at the end;~~

~~(2) by redesignating paragraph (12) as paragraph (14); and~~

~~(3) by inserting after paragraph (11) the following:~~

~~"(12) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement: 'These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code (governing disclosures to Congress by members of the military); section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse, or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 and following) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosures that could compromise national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by such Executive order and such statutory provisions are incorporated into this agreement and are controlling.';~~

~~"(13) conduct, or cause to be conducted, an investigation, other than any ministerial or nondiscretionary factfinding activities necessary for the agency to perform its mission, of an employee or applicant for employment because of any activity protected under this section; or".~~

~~SEC. 1266. EXCLUSION OF AGENCIES BY THE PRESIDENT.~~

~~Section 2302(a)(2)(C) of title 5, United States Code, is amended by striking clause (ii) and inserting the following:~~

~~"(ii)(I) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, or the National Security Agency; or~~

~~"(II) as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities, if the determination (as that determination relates to a personnel action) is made before that personnel action; or".~~

~~SEC. 1267. DISCIPLINARY ACTION.~~

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

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

2 ~~"(i) disciplinary action consisting of removal,~~

3 ~~reduction in grade, debarment from Federal employ-~~

4 ~~ment for a period not to exceed 5 years, suspension,~~

5 ~~or reprimand;~~

6 ~~"(ii) an assessment of a civil penalty not to ex-~~

7 ~~ceed $1,000; or~~

8 ~~"(iii) any combination of disciplinary actions~~

9 ~~described under clause (i) and an assessment de-~~

10 ~~scribed under clause (ii).~~

11 ~~"(B) In any case in which the Board finds that an~~

12 ~~employee has committed a prohibited personnel practice~~

13 ~~under paragraph (8) or (9) of section 2302(b), the Board~~

14 ~~shall impose disciplinary action if the Board finds that the~~

15 ~~activity protected under such paragraph (8) or (9) (as the~~

16 ~~case may be) was the primary motivating factor, unless~~

17 ~~that employee demonstrates, by a preponderance of the~~

18 ~~evidence, that the employee would have taken, failed to~~

19 ~~take, or threatened to take or fail to take the same per-~~

20 ~~sonnel action, in the absence of such protected activity.".~~

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

22 **~~ON REVOCATION OF SECURITY CLEARANCES.~~**

23 ~~(a) REQUIREMENT.—The Comptroller General shall~~

24 ~~conduct a study of security clearance revocations, taking~~

25 ~~effect after 1996, with respect to personnel that filed~~

~~claims under chapter 12 of title 5, United States Code, in connection therewith. The study shall consist of an examination of the number of such clearances revoked, the number restored, and the relationship, if any, between the resolution of claims filed under such chapter and the restoration of such clearances.~~

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

~~SEC. 1269. ALTERNATIVE RECOURSE.~~

~~(a) IN GENERAL.—Section 1221 of title 5, United States Code, is amended by adding at the end the following:~~

~~"(k)(1) If, in the case of an employee, former employee, or applicant for employment who seeks corrective action (or on behalf of whom corrective action is sought) from the Merit Systems Protection Board based on an alleged prohibited personnel practice described in section 2302(b)(8) or 2302(b)(9)(B)–(D), no final order or decision is issued by the Board within 180 days after the date on which a request for such corrective action has been duly~~

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

~~"(A) such employee, former employee, or applicant may, after providing written notice to the Board, bring an action at law or equity for de novo review in the appropriate United States district court, which shall have jurisdiction over such action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury; and~~

~~"(B) in any such action, the court—~~

~~"(i) shall apply the standards set forth in subsection (e); and~~

~~"(ii) may award any relief which the court considers appropriate, including any relief described in subsection (g).~~

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

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

~~"(2) For purposes of this subsection, the term 'appropriate United States district court', as used with respect to an alleged prohibited personnel practice, means the United States district court for the district in which the prohibited personnel practice is alleged to have been committed, the judicial district in which the employment records relevant to such practice are maintained and administered, or the judicial district in which resides the employee, former employee, or applicant for employment allegedly affected by such practice.~~

~~"(3) This subsection applies with respect to any appeal, petition, or other request for corrective action duly submitted to the Board, whether pursuant to section 1214(b)(2), the preceding provisions of this section, section 7513(d), or any otherwise applicable provisions of law, rule, or regulation.".~~

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

~~(1) in the first sentence of paragraph (1), by striking "the United States Court of Appeals for the Federal Circuit" and inserting "the appropriate United States court of appeals"; and~~

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

1 ~~"(3) For purposes of the first sentence of paragraph~~
2 ~~(1), the term 'appropriate United States court of appeals'~~
3 ~~means the United States Court of Appeals for the Federal~~
4 ~~Circuit, except that in the case of a prohibited personnel~~
5 ~~practice described in section 2302(b)(8) or~~
6 ~~2302(b)(9)(B)–(D) (other than a case that, disregarding~~
7 ~~this paragraph, would otherwise be subject to paragraph~~
8 ~~(2)), such term means the United States Court of Appeals~~
9 ~~for the Federal Circuit and any United States court of~~
10 ~~appeals having jurisdiction over appeals from any United~~
11 ~~States district court which, under section 1221(k)(2),~~
12 ~~would be an appropriate United States district court for~~
13 ~~purposes of such prohibited personnel practice.".~~
14 ~~(c) COMPENSATORY DAMAGES.—Section~~
15 ~~1221(g)(1)(A)(ii) of such title 5 is amended by striking~~
16 ~~all after "travel expenses," and inserting "any other rea-~~
17 ~~sonable and foreseeable consequential damages, and com-~~
18 ~~pensatory damages (including attorney's fees, interest,~~
19 ~~reasonable expert witness fees, and costs).".~~
20 ~~(d) CONFORMING AMENDMENTS.—~~
21 ~~(1) Section 1221(h) of such title 5 is amended~~
22 ~~by adding at the end the following:~~
23 ~~"(3) Judicial review under this subsection shall not~~
24 ~~be available with respect to any decision or order as to~~

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

(2) Section 7703(c) of such title 5 is amended by striking ''court.'' and inserting ''court, and in the case of a prohibited personnel practice described in section 2302(b)(8) or 2302(b)(9)(B)–(D) brought under any provision of law, rule, or regulation described in section 1221(k)(3), the employee or applicant shall have the right to de novo review in accordance with section 1221(k).''.

SEC. 1270. NATIONAL SECURITY WHISTLEBLOWER RIGHTS.

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

''§ 2303a. National security whistleblower rights

''(a) PROHIBITION OF REPRISALS.—

''(1) IN GENERAL.—In addition to any rights provided in section 2303 of this title, title VII of Public Law 105–272, or any other provision of law, an employee or former employee in a covered agency may not be discharged, demoted, or otherwise discriminated against (including by denying, suspending, or revoking a security clearance, or by otherwise restricting access to classified or sensitive in-

formation) as a reprisal for making a disclosure described in paragraph (2).

"(2) DISCLOSURES DESCRIBED.—A disclosure described in this paragraph is any disclosure of covered information which is made—

"(A) by an employee or former employee in a covered agency (without restriction as to time, place, form, motive, context, or prior disclosure made to any person by an employee or former employee, including a disclosure made in the course of an employee's duties); and

"(B) to an authorized Member of Congress, an authorized official of an Executive agency, or the Inspector General of the covered agency in which such employee or former employee is or was employed.

"(b) INVESTIGATION OF COMPLAINTS.—An employee or former employee in a covered agency who believes that such employee or former employee has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the Inspector General and the head of the covered agency. The Inspector General shall investigate the complaint and, unless the Inspector General determines that the complaint is frivolous, submit a report of the findings of the investigation within 120 days to the employee

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

~~"(c) REMEDY.—~~

~~"(1) Within 180 days of the filing of the complaint, the head of the covered agency shall, taking into consideration the report of the Inspector General under subsection (b) (if any), determine whether the employee or former employee has been subjected to a reprisal prohibited by subsection (a), and shall either issue an order denying relief or shall implement corrective action to return the employee or former employee, as nearly as possible, to the position he would have held had the reprisal not occurred, including voiding any directive or order denying, suspending, or revoking a security clearance or otherwise restricting access to classified or sensitive information that constituted a reprisal, as well as providing back pay and related benefits, medical costs incurred, travel expenses, any other reasonable and foreseeable consequential damages, and compensatory damages (including attorney's fees, interest, reasonable expert witness fees, and costs). If the head of the covered agency issues an order denying relief, he shall issue a report to the employee or former employee detailing the reasons for the denial.*

1 ~~"(2)(A) If the head of the covered agency, in~~
2 ~~the process of implementing corrective action under~~
3 ~~paragraph (1), voids a directive or order denying,~~
4 ~~suspending, or revoking a security clearance or oth-~~
5 ~~erwise restricting access to classified or sensitive in-~~
6 ~~formation that constituted a reprisal, the head of the~~
7 ~~covered agency may re-initiate procedures to issue a~~
8 ~~directive or order denying, suspending, or revoking~~
9 ~~a security clearance or otherwise restricting access~~
10 ~~to classified or sensitive information only if those re-~~
11 ~~initiated procedures are based exclusively on national~~
12 ~~security concerns and are unrelated to the actions~~
13 ~~constituting the original reprisal.~~
14 ~~"(B) In any case in which the head of a covered~~
15 ~~agency re-initiates procedures under subparagraph~~
16 ~~(A), the head of the covered agency shall issue an~~
17 ~~unclassified report to its Inspector General and to~~
18 ~~authorized Members of Congress (with a classified~~
19 ~~annex, if necessary), detailing the circumstances of~~
20 ~~the agency's re-initiated procedures and describing~~
21 ~~the manner in which those procedures are based ex-~~
22 ~~clusively on national security concerns and are unre-~~
23 ~~lated to the actions constituting the original reprisal.~~
24 ~~The head of the covered agency shall also provide~~
25 ~~periodic updates to the Inspector General and au-~~

~~thorized Members of Congress detailing any significant actions taken as a result of those procedures, and shall respond promptly to inquiries from authorized Members of Congress regarding the status of those procedures.~~

~~"(3) If the head of the covered agency has not made a determination under paragraph (1) within 180 days of the filing of the complaint (or he has issued an order denying relief, in whole or in part, whether within that 180-day period or thereafter, then, within 90 days after such order is issued), the employee or former employee may bring an action at law or equity for de novo review to seek any corrective action described in paragraph (1) in the appropriate United States district court (as defined by section 1221(k)(2)), which shall have jurisdiction over such action without regard to the amount in controversy. An appeal from a final decision of a district court in an action under this paragraph may, at the election of the appellant, be taken to the Court of Appeals for the Federal Circuit (which shall have jurisdiction of such appeal), in lieu of the United States court of appeals for the circuit embracing the district in which the action was brought.~~

1 ~~"(4) An employee or former employee adversely~~
2 ~~affected or aggrieved by an order issued under para-~~
3 ~~graph (1), or who seeks review of any corrective ac-~~
4 ~~tion determined under paragraph (1), may obtain ju-~~
5 ~~dicial review of such order or determination in the~~
6 ~~United States Court of Appeals for the Federal Cir-~~
7 ~~cuit or any United States court of appeals having ju-~~
8 ~~risdiction over appeals from any United States dis-~~
9 ~~trict court which, under section 1221(k)(2), would~~
10 ~~be an appropriate United States district court. No~~
11 ~~petition seeking such review may be filed more than~~
12 ~~60 days after issuance of the order or the deter-~~
13 ~~mination to implement corrective action by the head~~
14 ~~of the agency. Review shall conform to chapter 7.~~
15 ~~"(5)(A) If, in any action for damages or relief~~
16 ~~under paragraph (3) or (4), an Executive agency~~
17 ~~moves to withhold information from discovery based~~
18 ~~on a claim that disclosure would be inimical to na-~~
19 ~~tional security by asserting the privilege commonly~~
20 ~~referred to as the 'state secrets privilege', and if the~~
21 ~~assertion of such privilege prevents the employee or~~
22 ~~former employee from establishing an element in~~
23 ~~support of the employee's or former employee's~~
24 ~~claim, the court shall resolve the disputed issue of~~
25 ~~fact or law in favor of the employee or former em-~~

1 ~~ployee, provided that an Inspector General investiga-~~
2 ~~tion under subsection (b) has resulted in substantial~~
3 ~~confirmation of that element, or those elements, of~~
4 ~~the employee's or former employee's claim.~~
5 ~~"(B) In any case in which an Executive agency~~
6 ~~asserts the privilege commonly referred to as the~~
7 ~~'state secrets privilege', whether or not an Inspector~~
8 ~~General has conducted an investigation under sub-~~
9 ~~section (b), the head of that agency shall, at the~~
10 ~~same time it asserts the privilege, issue a report to~~
11 ~~authorized Members of Congress, accompanied by a~~
12 ~~classified annex if necessary, describing the reasons~~
13 ~~for the assertion, explaining why the court hearing~~
14 ~~the matter does not have the ability to maintain the~~
15 ~~protection of classified information related to the as-~~
16 ~~sertion, detailing the steps the agency has taken to~~
17 ~~arrive at a mutually agreeable settlement with the~~
18 ~~employee or former employee, setting forth the date~~
19 ~~on which the classified information at issue will be~~
20 ~~declassified, and providing all relevant information~~
21 ~~about the underlying substantive matter.~~
22 ~~"(d) APPLICABILITY TO NON-COVERED AGENCIES.—~~
23 ~~An employee or former employee in an Executive agency~~
24 ~~(or element or unit thereof) that is not a covered agency~~
25 ~~shall, for purposes of any disclosure of covered information~~

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

~~"(e) CONSTRUCTION.—Nothing in this section may be construed—~~

~~"(1) to authorize the discharge of, demotion of, or discrimination against an employee or former employee for a disclosure other than a disclosure protected by subsection (a) or (d) of this section or to modify or derogate from a right or remedy otherwise available to an employee or former employee; or~~

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

~~No court or administrative agency may require the exhaustion of any right or remedy under this section as a condition for pursuing any other right or remedy otherwise available to an employee or former employee under any other provision of law, rule, or regulation (as referred to in paragraph (2)).~~

~~"(f) DEFINITIONS.—For purposes of this section—~~

~~"(1) the term 'covered information', as used with respect to an employee or former employee, means any information (including classified or sensitive information) which the employee or former employee reasonably believes evidences—~~

~~"(A) any violation of any law, rule, or regulation; or~~

~~"(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;~~

~~"(2) the term 'covered agency' means—~~

~~"(A) the Federal Bureau of Investigation, the Office of the Director of National Intelligence, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, and the National Reconnaissance Office; and~~

~~"(B) any other Executive agency, or element or unit thereof, determined by the President under section 2302(a)(2)(C)(ii)(II) to have as its principal function the conduct of foreign intelligence or counterintelligence activities;~~

~~"(3) the term 'authorized Member of Congress' means—~~

~~"(A) with respect to covered information about sources and methods of the Central Intelligence Agency, the Director of National Intelligence, and the National Intelligence Program (as defined in section 3(6) of the National Security Act of 1947), a member of the House Permanent Select Committee on Intelligence, the Senate Select Committee on Intelligence, or any other committees of the House of Representatives or Senate to which this type of information is customarily provided;~~

~~"(B) with respect to special access programs specified in section 119 of title 10, an appropriate member of the Congressional defense committees (as defined in such section); and~~

~~"(C) with respect to other covered information, a member of the House Permanent Select Committee on Intelligence, the Senate Select Committee on Intelligence, the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, or any other committees of the House of Representatives or the~~

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

~~"(4) the term 'authorized official of an Executive agency' shall have such meaning as the Office of Personnel Management shall by regulation prescribe, except that such term shall, with respect to any employee or former employee in an agency, include the head, the general counsel, and the ombudsman of such agency.".~~

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

~~"2303a. National security whistleblower rights.".~~

~~SEC. 1271. ENHANCEMENT OF CONTRACTOR EMPLOYEE WHISTLEBLOWER PROTECTIONS.~~

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

~~(1) in paragraph (1), by striking "If the head" and all that follows through "actions:" and inserting the following: "Not later than 180 days after submission of a complaint under subsection (b), the head of the executive agency concerned shall determine whether the contractor concerned has subjected the complainant to a reprisal prohibited by sub-~~

~~section (a) and shall either issue an order denying relief or shall take one or more of the following actions:''; and~~

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

~~''(3) If the head of an executive agency has not issued an order within 180 days after the submission of a complaint under subsection (b) 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 his administrative remedies with respect to the complaint, and the complainant may bring an action at law or equity for de novo review 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, and which action shall, at the request of either party to such action, be tried by the court with a jury.''.~~

~~(b) ARMED SERVICES CONTRACTS.—Section 2409(c) of title 10, United States Code, is amended—~~

~~(1) in paragraph (1), by striking ''If the head'' and all that follows through ''actions:'' and inserting the following: ''Not later than 180 days after submission of a complaint under subsection (b), the~~

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

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

~~''(3) If the head of an agency has not issued an order within 180 days after the submission of a complaint under subsection (b) 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 his administrative remedies with respect to the complaint, and the complainant may bring an action at law or equity for de novo review 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, and which action shall, at the request of either party to such action, be tried by the court with a jury.''.~~

~~SEC. 1272. PROHIBITED PERSONNEL PRACTICES AFFECTING THE TRANSPORTATION SECURITY ADMINISTRATION.~~

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

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

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

~~"§ 2304. Prohibited personnel practices affecting the Transportation Security Administration~~

~~"(a) IN GENERAL.—Notwithstanding any other provision of law, any individual holding or applying for a position within the Transportation Security Administration shall be covered by—~~

~~"(1) the provisions of section 2302(b)(1), (8), and (9);~~

~~"(2) any provision of law implementing section 2302(b)(1), (8), or (9) by providing any right or remedy available to an employee or applicant for employment in the civil service; and~~

~~"(3) any rule or regulation prescribed under any provision of law referred to in paragraph (1) or (2).~~

~~"(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect any rights, apart from~~

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

~~"(c) EFFECTIVE DATE.—This section shall take effect as of the date of the enactment of this section.".~~

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

~~"2304. Prohibited personnel practices affecting the Transportation Security Administration.~~
~~"2305. Responsibility of the Government Accountability Office.~~
~~"2306. Coordination with certain other provisions of law.".~~

~~SEC. 1273. CLARIFICATION OF WHISTLEBLOWER RIGHTS RELATING TO SCIENTIFIC AND OTHER RESEARCH.~~

~~(a) IN GENERAL.—Section 2302 of title 5, United States Code, is amended by adding at the end the following:~~

~~"(f) As used in section 2302(b)(8), the term 'abuse of authority' includes—~~

~~"(1) any action that compromises the validity or accuracy of federally funded research or analysis;~~

~~"(2) the dissemination of false or misleading scientific, medical, or technical information;~~

~~"(3) any action that restricts or prevents an employee or any person performing federally funded~~

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

~~"(4) any action that discriminates for or against any employee or applicant for employment on the basis of religion, as defined by section 1273(b) of the Whistleblower Protection Enhancement Act of 2009.".~~

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

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

~~(2) requiring religious participation or non-participation as a condition of employment, or permitting religious harassment;~~

~~(3) failing to accommodate employees' exercise of their religion;~~

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

~~(5) restricting personal religious expression by employees in the Federal workplace except where the employee's interest in the expression is outweighed by the government's interest in the efficient provision of public services or where the expression intrudes upon the legitimate rights of other employees or creates the appearance, to a reasonable observer, of an official endorsement of religion;~~

~~(6) regulating employees' personal religious expression on the basis of its content or viewpoint, or suppressing employees' private religious speech in the workplace while leaving unregulated other private employee speech that has a comparable effect on the efficiency of the workplace, including ideological speech on politics and other topics;~~

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

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

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

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

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

~~(11) inhibiting an employee from urging a colleague to participate or not to participate in religious activities to the same extent that, consistent with concerns of workplace efficiency, they may urge their colleagues to engage in or refrain from other personal endeavors, except that the employee must refrain from such expression when a fellow employee asks that it stop or otherwise demonstrates that it is unwelcome;~~

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

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

~~(13) preventing an employee from—~~

~~(A) wearing personal religious jewelry absent special circumstances (such as safety concerns) that might require a ban on all similar nonreligious jewelry; or~~

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

~~(14) prohibiting an employee from using their private time to discuss religion with willing coworkers in public spaces to the same extent as they may discuss other subjects, so long as the public would reasonably understand the religious expression to be that of the employees acting in their personal capacities;~~

~~(15) discriminating against an employee on the basis of their religion, religious beliefs, or views concerning their religion by promoting, refusing to promote, hiring, refusing to hire, or otherwise favoring~~

~~or disfavoring, an employee or potential employee because of his or her religion, religious beliefs, or views concerning religion, or by explicitly or implicitly, insisting that the employee participate in religious activities as a condition of continued employment, promotion, salary increases, preferred job assignments, or any other incidents of employment or insisting that an employee refrain from participating in religious activities outside the workplace except pursuant to otherwise legal, neutral restrictions that apply to employees' off-duty conduct and expression in general (such as restrictions on political activities prohibited by the Hatch Act);~~

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

~~(17) permitting a hostile environment, or religious harassment, in the form of religiously discriminatory intimidation, or pervasive or severe religious ridicule or insult, whether by supervisors or fellow workers, as determined by its frequency or repetitiveness, and severity;~~

~~(18) failing to accommodate an employee's exercise of their religion unless such accommodation~~

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

~~(19) in those cases where an agency's work rule imposes a substantial burden on a particular employee's exercise of religion, failing to grant the employee an exemption from that rule, absent a compelling interest in denying the exemption and where there is no less restrictive means of furthering that interest.~~

~~(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to create any new right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.~~

~~SEC. 1274. EFFECTIVE DATE.~~

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

~~TITLE II—AGRICULTURE, NUTRITION, AND RURAL DEVELOPMENT~~

~~DEPARTMENT OF AGRICULTURE~~

~~AGRICULTURE BUILDINGS AND FACILITIES AND RENTAL PAYMENTS~~

~~For an additional amount for "Agriculture Buildings and Facilities and Rental Payments", $44,000,000, for necessary construction, repair, and improvement activities: *Provided*, That section 1106 of this Act shall not apply to this appropriation.~~

~~AGRICULTURAL RESEARCH SERVICE~~

~~BUILDINGS AND FACILITIES~~

~~For an additional amount for "Buildings and Facilities", $209,000,000, for work on deferred maintenance at Agricultural Research Service facilities: *Provided*, That priority in the use of such funds shall be given to critical deferred maintenance, to projects that can be completed, and to activities that can commence promptly following enactment of this Act.~~

~~FARM SERVICE AGENCY~~

~~SALARIES AND EXPENSES~~

~~For an additional amount for "Salaries and Expenses," $245,000,000, for the purpose of maintaining and modernizing the information technology system: *Pro-*~~

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

NATURAL RESOURCES CONSERVATION SERVICE

WATERSHED AND FLOOD PREVENTION OPERATIONS

For an additional amount for "Watershed and Flood Prevention Operations", $350,000,000, of which $175,000,000 is for necessary expenses to purchase and restore floodplain easements as authorized by section 403 of the Agricultural Credit Act of 1978 (16 U.S.C. 2203) (except that no more than $50,000,000 of the amount provided for the purchase of floodplain easements may be obligated for projects in any one State). *Provided*, That section 1106 of this Act shall not apply to this appropriation: *Provided further*, That priority in the use of such funds shall be given to projects that can be fully funded and completed with the funds appropriated in this Act, and to activities that can commence promptly following enactment of this Act.

WATERSHED REHABILITATION PROGRAM

For an additional amount for "Watershed Rehabilitation Program", $50,000,000, for necessary expenses to carry out rehabilitation of structural measures: *Provided*, That section 1106 of this Act shall not apply to this appropriation: *Provided further*, That priority in the use of such funds shall be given to projects that can be fully

~~funded and completed with the funds appropriated in this Act, and to activities that can commence promptly following enactment of this Act.~~

~~RURAL DEVELOPMENT PROGRAMS~~

~~RURAL COMMUNITY ADVANCEMENT PROGRAM~~

~~(INCLUDING TRANSFERS OF FUNDS)~~

~~For an additional amount for gross obligations for the principal amount of direct and guaranteed loans as authorized by sections 306 and 310B and described in sections 381E(d)(1), 381E(d)(2), and 381E(d)(3) of the Consolidated Farm and Rural Development Act, to be available from the rural community advancement program, as follows: $5,838,000,000, of which $1,102,000,000 is for rural community facilities direct loans, of which $2,000,000,000 is for business and industry guaranteed loans, and of which $2,736,000,000 is for rural water and waste disposal direct loans.~~

~~For an additional amount for the cost of direct loans, loan guarantees, and grants, including the cost of modifying loans, as defined in section 502 of the Congressional Budget Act of 1974, as follows: $1,800,000,000, of which $63,000,000 is for rural community facilities direct loans, of which $137,000,000 is for rural community facilities grants authorized under section 306(a) of the Consolidated Farm and Rural Development Act, of which~~

~~$87,000,000 is for business and industry guaranteed loans, of which $13,000,000 is for rural business enterprise grants authorized under section 310B of the Consolidated Farm and Rural Development Act, of which $400,000,000 is for rural water and waste disposal direct loans, and of which $1,100,000,000 is for rural water and waste disposal grants authorized under section 306(a). *Provided*, That the amounts appropriated under this heading shall be transferred to, and merged with, the appropriation for "Rural Housing Service, Rural Community Facilities Program Account", the appropriation for "Rural Business-Cooperative Service, Rural Business Program Account", and the appropriation for "Rural Utilities Service, Rural Water and Waste Disposal Program Account". *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 project applications for activities that can be completed if the requested funds are provided. *Provided further*, That priority for awarding such funds shall be given to activities that can commence promptly following enactment of this Act.~~

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

~~made available under this account for administrative costs to carry out loans, loan guarantees, and grants funded under this account, which shall be transferred and merged with the appropriation for "Rural Development, Salaries and Expenses" and shall remain available until September 30, 2012: *Provided*, That the authority provided in this paragraph shall apply to appropriations under this heading in lieu of the provisions of section 1106 of this Act.~~

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

~~RURAL HOUSING SERVICE~~

~~RURAL HOUSING INSURANCE FUND PROGRAM ACCOUNT~~

~~(INCLUDING TRANSFERS OF FUNDS)~~

~~For an additional amount of 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, as follows: $22,129,000,000 for loans to section 502 borrowers, of which $4,018,000,000 shall be for direct loans,~~

~~and of which $18,111,000,000 shall be for 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, as follows: section 502 loans, $500,000,000, of which $270,000,000 shall be for direct loans, and of which $230,000,000 shall be for unsubsidized guaranteed loans.~~

~~In addition to other available funds, the Secretary of Agriculture may use not more than 3 percent of the funds made available under this account for administrative costs to carry out loans and loan guarantees funded under this account, of which $1,750,000 will be committed to agency projects associated with maintaining the compliance, safety, and soundness of the portfolio of loans guaranteed through the section 502 guaranteed loan program: *Provided*, These funds shall be transferred and merged with the appropriation for "Rural Development, Salaries and Expenses": *Provided further*, That the authority provided in this paragraph shall apply to appropriations under this heading in lieu of the provisions of section 1106 of this Act.~~

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

~~ferred between these programs: *Provided*, That the Committees on Appropriations of the House of Representatives and the Senate shall be notified at least 15 days in advance of any transfer.~~

~~RURAL UTILITIES SERVICE~~

~~DISTANCE LEARNING, TELEMEDICINE, AND BROADBAND PROGRAM~~

~~(INCLUDING TRANSFERS OF FUNDS)~~

~~For an additional amount for the cost of broadband loans and loan guarantees, as authorized by the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) and for grants, $2,825,000,000: *Provided*, That the cost of direct and guaranteed loans shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That, notwithstanding title VI of the Rural Electrification Act of 1936, this amount is available for grants, loans and loan guarantees for open access broadband infrastructure in any area of the United States: *Provided further*, That at least 75 percent of the area to be served by a project receiving funds from such grants, loans or loan guarantees shall be in a rural area without sufficient access to high speed broadband service to facilitate rural economic development, as determined by the Secretary of Agriculture: *Provided further*, That priority for awarding funds made available under this paragraph shall be given~~

~~to projects that provide service to the most rural residents that do not have access to broadband service: *Provided further*, That priority shall be given for project applications from borrowers or former borrowers under title II of the Rural Electrification Act of 1936 and for project applications that include such borrowers or former borrowers: *Provided further*, That notwithstanding section 1103 of this Act, 50 percent of the grants, loans, and loan guarantees made available under this heading shall be awarded not later than September 30, 2009: *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 project applications for activities that can be completed if the requested funds are provided: *Provided further*, That priority for awarding such funds shall be given to activities that can commence promptly following enactment of this Act: *Provided further*, That no area of a project funded with amounts made available under this paragraph may receive funding to provide broadband service under the Broadband Deployment Grant Program: *Provided further*, That the Secretary shall submit a report on planned spending and actual obligations describing 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.~~

~~In addition to other available funds, the Secretary may use not more than 3 percent of the funds made available under this account for administrative costs to carry out loans, loan guarantees, and grants funded under this account, which shall be transferred and merged with the appropriation for "Rural Development, Salaries and Expenses" and shall remain available until September 30, 2012. *Provided*, That the authority provided in this paragraph shall apply to appropriations under this heading in lieu of the provisions of section 1106 of this Act.~~

~~FOOD AND NUTRITION SERVICE~~

~~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), $100,000,000, for the purposes specified in section 17(h)(10)(B)(ii) for the Secretary of Agriculture to provide assistance to State agencies to implement new management information systems or improve existing management information systems for the program.~~

~~EMERGENCY FOOD ASSISTANCE PROGRAM~~

~~For an additional amount for the emergency food assistance program as authorized by section 27(a) of the Food and Nutrition Act of 2008 (7 U.S.C. 2036(a)) and section 204(a)(1) of the Emergency Food Assistance Act of 1983 (7 U.S.C. 7508(a)(1)), $150,000,000, of which $100,000,000 is for the purchase of commodities and of which $50,000,000 is for costs associated with the distribution of commodities.~~

~~GENERAL PROVISIONS, THIS TITLE~~

~~SEC. 2001. TEMPORARY INCREASE IN BENEFITS UNDER THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM.~~

~~(a) MAXIMUM BENEFIT INCREASE.—~~

~~(1) IN GENERAL.—Beginning the first month that begins not less than 25 days after the date of enactment of this Act, the value of benefits determined under section 8(a) of the Food and Nutrition Act of 2008 and consolidated block grants for Puerto Rico and American Samoa determined under section 19(a) of such Act shall be calculated using 113.6 percent of the June 2008 value of the thrifty food plan as specified under section 3(o) of such Act.~~

~~(2) TERMINATION.—~~

~~(A) The authority provided by this subsection shall terminate after September 30, 2009.~~

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

~~(b) REQUIREMENTS FOR THE SECRETARY.—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 increase in benefits;~~

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

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

~~(c) ADMINISTRATIVE EXPENSES.—~~

~~(1) IN GENERAL.—For the costs of State administrative expenses associated with carrying out~~

~~this section, the Secretary shall make available $150,000,000 in each of fiscal years 2009 and 2010, to remain available through September 30, 2012, of which $4,500,000 is for necessary expenses of the Food and Nutrition Service for management and oversight of the program and for monitoring the integrity and evaluating the effects of the payments made under this section.~~

~~(2) AVAILABILITY OF FUNDS.—Funds described in paragraph (1) shall be made available as grants to State agencies based on each State's share of households that participate in the Supplemental Nutrition Assistance Program as reported to the Department of Agriculture for the 12-month period ending with June, 2008.~~

~~(d) TREATMENT OF JOBLESS WORKERS.—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, 2010, jobless adults who comply with work registration and employment and training requirements under section 6, section 20, or section 26 of the Food and Nutrition Act of 2008 (7 U.S.C. 2015, 2029, or 2035) shall not be disqualified from the Supplemental Nutrition Assistance Program because of the provisions of section 6(o)(2) of such Act (7 U.S.C.~~

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

~~(c) FUNDING.—There is appropriated to the Secretary of Agriculture such sums as are necessary to carry out this section, to remain available until expended. Section 1106 of this Act shall not apply to this appropriation.~~

~~SEC. 2002. AFTERSCHOOL FEEDING PROGRAM FOR AT-RISK CHILDREN.~~

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

~~TITLE III—COMMERCE, JUSTICE, AND SCIENCE~~

~~Subtitle A—Commerce~~

~~DEPARTMENT OF COMMERCE~~

~~ECONOMIC DEVELOPMENT ADMINISTRATION~~

~~ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS~~

~~(INCLUDING TRANSFER OF FUNDS)~~

~~For an additional amount for "Economic Development Assistance Programs", $250,000,000: *Provided*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall not exceed 2 percent~~

~~instead of the percentage specified in such section: *Provided further*, That the amount set aside pursuant to the previous proviso shall be transferred to and merged with the appropriation for "Salaries and Expenses" for purposes of program administration and oversight: *Provided further*, That up to $50,000,000 may be transferred to federally authorized regional economic development commissions.~~

~~BUREAU OF THE CENSUS~~

~~PERIODIC CENSUSES AND PROGRAMS~~

~~For an additional amount for "Periodic Censuses and Programs", $1,000,000,000: *Provided*, That section 1106 of this Act shall not apply to funds provided under this heading.~~

~~NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION~~

~~SALARIES AND EXPENSES~~

~~For an additional amount for "Salaries and Expenses", $350,000,000, to remain available until September 30, 2011: *Provided*, That funds shall be available to establish the State Broadband Data and Development Grant Program, as authorized by Public Law 110–385, for the development and implementation of statewide initiatives to identify and track the availability and adoption of broadband services within each State, and to develop~~

~~and maintain a nationwide broadband inventory map, as authorized by section 6001 of division B of this Act.~~

~~WIRELESS AND BROADBAND DEPLOYMENT GRANT PROGRAMS~~

~~(INCLUDING TRANSFER OF FUNDS)~~

~~For necessary expenses related to the Wireless and Broadband Deployment Grant Programs established by section 6002 of division B of this Act, $2,825,000,000, of which $1,000,000,000 shall be for Wireless Deployment Grants and $1,825,000,000 shall be for Broadband Deployment Grants: *Provided*, That the National Telecommunications and Information Administration shall submit a report on planned spending and actual obligations describing the use of these funds not later than 120 days after the date of enactment of this Act, and an update report not later than 60 days following the initial report, to the Committees on Appropriations of the House of Representatives and the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate: *Provided further*, That notwithstanding section 1103 of this Act, 50 percent of the grants made available under this heading shall be awarded not later than September 30, 2009: *Provided further*, That up to 20 percent of the funds provided under this heading for Wireless~~

~~Deployment Grants and Broadband Deployment Grants may be transferred between these programs: *Provided further*, That the Committees on Appropriations of the House of Representatives and the Senate shall be notified at least 15 days in advance of any transfer.~~

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

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

~~NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY~~

~~SCIENTIFIC AND TECHNICAL RESEARCH AND SERVICES~~

~~For an additional amount for "Scientific and Technical Research and Services", $100,000,000.~~

~~INDUSTRIAL TECHNOLOGY SERVICES~~

~~For an additional amount for "Industrial Technology Services", $100,000,000, of which $70,000,000 shall be available for the necessary expenses of the Technology Innovation Program and $30,000,000 shall be available for~~

~~the necessary expenses of the Hollings Manufacturing Extension Partnership.~~

~~CONSTRUCTION OF RESEARCH FACILITIES~~

~~For an additional amount for "Construction of Research Facilities", as authorized by sections 13 through 15 of the Act of March 13, 1901 (15 U.S.C. 278c–278e), $300,000,000, for a competitive construction grant program for research science buildings: *Provided further*, That for peer-reviewed grants made under this heading, the time limitation provided in section 1103(b) of this Act shall be 120 days.~~

~~NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION~~

~~OPERATIONS, RESEARCH, AND FACILITIES~~

~~For an additional amount for "Operations, Research, and Facilities", $400,000,000, for habitat restoration and mitigation activities.~~

~~PROCUREMENT, ACQUISITION AND CONSTRUCTION~~

~~For an additional amount for "Procurement, Acquisition and Construction", $600,000,000, for accelerating satellite development and acquisition, acquiring climate sensors and climate modeling capacity, and establishing climate data records: *Provided further*, That not less than $140,000,000 shall be available for climate data modeling.~~

~~Subtitle B—Justice~~

~~DEPARTMENT OF JUSTICE~~

~~STATE AND LOCAL LAW ENFORCEMENT ACTIVITIES~~

~~OFFICE OF JUSTICE PROGRAMS~~

~~STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE~~

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

~~COMMUNITY ORIENTED POLICING SERVICES~~

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

~~GENERAL PROVISIONS, THIS SUBTITLE~~

~~SEC. 3201. WAIVER OF MATCHING REQUIREMENT AND SALARY LIMIT UNDER COPS PROGRAM.~~

~~Sections 1701(g) and 1704(c) of the Omnibus Crime Control and Safe Street Act of 1968 (42 U.S.C. 3796dd(g) and 3796dd–3(c)) shall not apply with respect to funds appropriated in this or any other Act making appropriations for fiscal year 2009 or 2010 for Community Oriented Policing Services authorized under part Q of such Act of 1968.~~

~~Subtitle C—Science~~

~~NATIONAL AERONAUTICS AND SPACE ADMINISTRATION~~

~~SCIENCE~~

~~For an additional amount for "Science", $400,000,000, of which not less than $250,000,000 shall be solely for accelerating the development of the tier 1 set of Earth science climate research missions recommended by the National Academies Decadal Survey.~~

~~AERONAUTICS~~

~~For an additional amount for "Aeronautics", $150,000,000.~~

~~CROSS AGENCY SUPPORT PROGRAMS~~

~~For an additional amount for "Cross Agency Support Programs", for necessary expenses for restoration and mitigation of National Aeronautics and Space Administration owned infrastructure and facilities related to the consequences of hurricanes, floods, and other natural disasters occurring during 2008 for which the President declared a major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974, $50,000,000.~~

~~NATIONAL SCIENCE FOUNDATION~~

~~RESEARCH AND RELATED ACTIVITIES~~

~~For an additional amount for "Research and Related Activities", $2,500,000,000: *Provided*, That $300,000,000 shall be available solely for the Major Research Instrumentation program and $200,000,000 shall be for activities authorized by title II of Public Law 100–570 for academic research facilities modernization: *Provided*, That for peer-reviewed grants made under this heading, the time limitation provided in section 1103(b) of this Act shall be 120 days.~~

~~EDUCATION AND HUMAN RESOURCES~~

~~For an additional amount for "Education and Human Resources", $100,000,000: *Provided*, That $60,000,000 shall be for activities authorized by section~~

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

~~MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION~~

~~For an additional amount for "Major Research Equipment and Facilities Construction", $400,000,000, which shall be available only for approved projects.~~

~~TITLE IV—DEFENSE~~

~~DEPARTMENT OF DEFENSE~~

~~FACILITY INFRASTRUCTURE INVESTMENTS, DEFENSE~~

~~For expenses, not otherwise provided for, to improve, repair and modernize Department of Defense facilities, restore and modernize Army barracks, and invest in the energy efficiency of Department of Defense facilities, $4,500,000,000, for Facilities Sustainment, Restoration and Modernization programs of the Department of Defense (including minor construction and major maintenance and repair), which shall be available as follows:~~

~~(1) "Operation and Maintenance, Army", $1,490,804,000.~~

~~(2) "Operation and Maintenance, Navy", $624,380,000.~~

~~(3) "Operation and Maintenance, Marine Corps", $128,499,000.~~

~~(4) "Operation and Maintenance, Air Force", $1,236,810,000.~~

~~(5) "Defense Health Program", $454,658,000.~~

~~(6) "Operation and Maintenance, Army Reserve", $110,899,000.~~

~~(7) "Operation and Maintenance, Navy Reserve", $62,162,000.~~

~~(8) "Operation and Maintenance, Marine Corps Reserve", $45,038,000.~~

~~(9) "Operation and Maintenance, Air Force Reserve", $14,881,000.~~

~~(10) "Operation and Maintenance, Army National Guard", $302,700,000.~~

~~(11) "Operation and Maintenance, Air National Guard", $29,169,000.~~

~~ENERGY RESEARCH AND DEVELOPMENT, DEFENSE~~

~~For expenses, not otherwise provided for, for research, development, test and evaluation programs for improvements in energy generation, transmission, regulation, use, and storage, for military installations, military vehicles, and other military equipment, $350,000,000, which shall be available as follows:~~

~~(1) "Research, Development, Test and Evaluation, Army", $87,500,000.~~

~~(2) "Research, Development, Test and Evaluation, Navy", $87,500,000.~~

~~(3) "Research, Development, Test and Evaluation, Air Force", $87,500,000.~~

~~(4) "Research, Development, Test and Evaluation, Defense-Wide", $87,500,000~~

~~TITLE V—ENERGY AND WATER~~

~~DEPARTMENT OF THE ARMY~~

~~CORPS OF ENGINEERS—CIVIL~~

~~CONSTRUCTION~~

~~For an additional amount for "Construction", $2,000,000,000: *Provided*, That section 102 of Public Law 109–103 (33 U.S.C. 2221) shall not apply to funds provided in this paragraph: *Provided further*, That notwithstanding any other provision of law, funds provided in this paragraph shall not be cost shared with the Inland Waterways Trust Fund as authorized in Public Law 99–662: *Provided further*, That funds provided in this paragraph may only be used for programs, projects or activities previously funded: *Provided further*, That the Corps of Engineers is directed to prioritize funding for activities based on the ability to accelerate existing contracts or fully fund project elements and contracts for such elements in a time period of 2 years after the date of enactment of this Act giving preference to projects and activities that are labor~~

~~intensive: *Provided further*, That funds provided in this paragraph shall be used for elements of projects, programs or activities that can be completed using funds provided herein: *Provided further*, That funds appropriated in this paragraph 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 one or more of 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), and 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 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 are otherwise expired or lapsed for obligation, expired or lapsed funds appropriated in this Act may be used to pay the cost of associated supervision, inspection, overhead, engineering and design on those projects and on subsequent claims, if any: *Provided further*, That the Secretary~~

~~of the Army shall submit a quarterly report to the Committees on Appropriations of the House of Representatives and the Senate detailing the allocation, obligation and expenditures of these funds, beginning not later than 45 days after enactment of this Act.~~

~~MISSISSIPPI RIVER AND TRIBUTARIES~~

~~For an additional amount for "Mississippi River and Tributaries", $250,000,000: *Provided*, That funds provided in this paragraph may only be used for programs, projects, or activities previously funded: *Provided further*, That the Corps of Engineers is directed to prioritize funding for activities based on the ability to accelerate existing contracts or fully fund project elements and contracts for such elements in a time period of 2 years after the date of enactment of this Act giving preference to projects and activities that are labor intensive: *Provided further*, That funds provided in this paragraph shall be used for elements of projects, programs, or activities that can be completed using funds provided herein: *Provided further*, That for projects that are being completed with funds appropriated in this Act that are otherwise expired or lapsed for obligation, expired or lapsed funds appropriated in this Act may be used to pay the cost of associated supervision, inspection, overhead, engineering and design on those projects and on subsequent claims, if any: *Provided fur-*~~

ther, That the Secretary of the Army shall submit a quarterly report to the Committees on Appropriations of the House of Representatives and the Senate detailing the allocation, obligation and expenditures of these funds, beginning not later than 45 days after enactment of this Act.

OPERATION AND MAINTENANCE

For an additional amount for ''Operation and Maintenance'', $2,225,000,000: *Provided*, That the Corps of Engineers is directed to prioritize funding for activities based on the ability to accelerate existing contracts or fully fund project elements and contracts for such elements in a time period of 2 years after the date of enactment of this Act giving preference to projects and activities that are labor intensive: *Provided further*, That funds provided in this paragraph shall be used for elements of projects, programs, or activities that can be completed using funds provided herein: *Provided further*, That for projects that are being completed with funds appropriated in this Act that are otherwise expired or lapsed for obligation, expired or lapsed funds appropriated in this Act may be used to pay the cost of associated supervision, inspection, overhead, engineering and design on those projects and on subsequent claims, if any: *Provided further*, That the Secretary of the Army shall submit a quarterly report to the Committees on Appropriations of the House of Represent-

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

~~REGULATORY PROGRAM~~

~~For an additional amount for "Regulatory Program", $25,000,000.~~

~~DEPARTMENT OF THE INTERIOR~~

~~BUREAU OF RECLAMATION~~

~~WATER AND RELATED RESOURCES~~

~~For an additional amount for "Water and Related Resources", $500,000,000. *Provided*, That of the amount appropriated under this heading, not less than $126,000,000 shall be used for water reclamation and reuse projects authorized under title XVI of Public Law 102–575. *Provided further*, That of the amount appropriated under this heading, not less than $80,000,000 shall be used for rural water projects and these funds shall be expended primarily on water intake and treatment facilities of such projects. *Provided further*, That the costs of reimbursable activities, other than for maintenance and rehabilitation, carried out with funds made available under this heading 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 ex-~~

~~isting authority, except the length of repayment period shall be determined on needs-based criteria to be established and adopted by the Commissioner of the Bureau of Reclamation, but in no case shall the repayment period exceed 25 years.~~

~~DEPARTMENT OF ENERGY~~

~~ENERGY PROGRAMS~~

~~ENERGY EFFICIENCY AND RENEWABLE ENERGY~~

~~For an additional amount for ''Energy Efficiency and Renewable Energy'', $18,500,000,000, which shall be used as follows:~~

~~(1) $2,000,000,000 shall be for expenses necessary for energy efficiency and renewable energy research, development, demonstration and deployment activities, to accelerate the development of technologies, to include advanced batteries, of which not less than $800,000,000 is for biomass and $400,000,000 is for geothermal technologies.~~

~~(2) $500,000,000 shall be for expenses necessary to implement the programs authorized under part E of title III of the Energy Policy and Conservation Act (42 U.S.C. 6341 et seq.).~~

~~(3) $1,000,000,000 shall be for the cost of grants to institutional entities for energy sustainability and efficiency under section 399A of the En-~~

~~ergy Policy and Conservation Act (42 U.S.C. 6371h–1).~~

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

~~(5) $3,500,000,000 shall be 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.).~~

~~(6) $3,400,000,000 shall be for the State Energy Program authorized under part D of title III of the Energy Policy and Conservation Act (42 U.S.C. 6321).~~

~~(7) $200,000,000 shall be for expenses necessary to implement the programs authorized under section 131 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17011).~~

~~(8) $300,000,000 shall be for expenses necessary to implement the program authorized under section 124 of the Energy Policy Act of 2005 (42 U.S.C. 15821) and the Energy Star program.~~

~~(9) $400,000,000 shall be for expenses necessary to implement the program authorized under~~

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

~~(10) $1,000,000,000 shall be for expenses necessary for the manufacturing of advanced batteries authorized under section 136(b)(1)(B) of the Energy Independence and Security Act of 2007 (42 U.S.C. 17013(b)(1)(B)).~~

~~*Provided*, 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 may, upon a determination that there is a severe shortage of candidates or a critical hiring need for particular positions, 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. *Provided*, That funds shall be available for expenses necessary for elec-~~

~~tricity delivery and energy reliability activities to modernize the electric grid, enhance security and reliability of the energy infrastructure, energy storage research, development, demonstration and deployment, and facilitate recovery from disruptions to the energy supply, and for implementation of programs authorized under title XIII of the Energy Independence and Security Act of 2007 (42 U.S.C. 17381 et seq.). *Provided further*, That of such amounts, $100,000,000 shall be for worker training. *Provided further*, That the Secretary of Energy may use or transfer amounts provided under this heading to carry out new authority for transmission improvements, if such authority is enacted in any subsequent Act, consistent with existing fiscal management practices and procedures.~~

~~ADVANCED BATTERY LOAN GUARANTEE PROGRAM~~

~~For the cost of guaranteed loans as authorized by section 135 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17012), $1,000,000,000, to remain available until expended. *Provided*, That of such amount, $10,000,000 shall be used for administrative expenses in carrying out the guaranteed loan program, and shall be in lieu of the amount set aside under section 1106 of this Act. *Provided further*, That the cost of such loans, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.~~

~~INSTITUTIONAL LOAN GUARANTEE PROGRAM~~

~~For the cost of guaranteed loans as authorized by section 399A of the Energy Policy and Conservation Act (42 U.S.C. 6371h–1), $500,000,000: *Provided*, That of such amount, $10,000,000 shall be used for administrative expenses in carrying out the guaranteed loan program, and shall be in lieu of the amount set aside under section 1106 of this Act: *Provided further*, That the cost of such loans, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.~~

~~INNOVATIVE TECHNOLOGY LOAN GUARANTEE PROGRAM~~

~~For an additional amount for "Innovative Technology Loan Guarantee Program" for the cost of guaranteed loans authorized by section 1705 of the Energy Policy Act of 2005, $8,000,000,000: *Provided*, That of such amount, $25,000,000 shall be used for administrative expenses in carrying out the guaranteed loan program, and shall be in lieu of the amount set aside under section 1106 of this Act: *Provided further*, That the cost of such loans, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.~~

~~FOSSIL ENERGY~~

~~For an additional amount for "Fossil Energy", $2,400,000,000 for necessary expenses to demonstrate~~

~~carbon capture and sequestration technologies as authorized under section 702 of the Energy Independence and Security Act of 2007.~~

~~SCIENCE~~

~~For an additional amount for "Science", $2,000,000,000: *Provided*, That of such amounts, not less than $400,000,000 shall be used for the Advanced Research Projects Agency—Energy authorized under section 5012 of the America COMPETES Act (42 U.S.C. 16538): *Provided further*, That of such amounts, not less than $100,000,000 shall be used for advanced scientific computing.~~

~~ENVIRONMENTAL AND OTHER DEFENSE ACTIVITIES~~

~~DEFENSE ENVIRONMENTAL CLEANUP~~

~~For an additional amount for "Defense Environmental Cleanup," $500,000,000: *Provided*, That such amounts shall be used for elements of projects, programs, or activities that can be completed using funds provided herein.~~

~~GENERAL PROVISIONS, THIS TITLE~~

~~SEC. 5001. 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 1 time) as, in the judg-~~

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

~~"(i) constructing, financing, facilitating, or studying construction of new or upgraded electric power transmission lines and related facilities with at least 1 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 projects financed under this section.~~

1 ~~"(5) CONGRESSIONAL REVIEW OF DISBURSE-~~
2 ~~MENT.—Effective upon the date of enactment of this~~
3 ~~section, the Administrator shall have the authority~~
4 ~~to have utilized $1,750,000,000 at any one time. If~~
5 ~~the Administrator seeks to borrow funds above~~
6 ~~$1,750,000,000, the funds will be disbursed unless~~
7 ~~there is enacted, within 90 calendar days of the first~~
8 ~~such request, a joint resolution that rescinds the re-~~
9 ~~mainder of the balance of the borrowing authority~~
10 ~~provided in this section.~~
11 ~~"(c) TRANSMISSION LINE AND RELATED FACILITY~~
12 ~~PROJECTS.—~~
13 ~~"(1) IN GENERAL.—For repayment purposes,~~
14 ~~each transmission line and related facility project in~~
15 ~~which the Western Area Power Administration par-~~
16 ~~ticipates pursuant to this section shall be treated as~~
17 ~~separate and distinct from—~~
18 ~~"(A) each other such project; and~~
19 ~~"(B) all other Western Area Power Admin-~~
20 ~~istration power and transmission facilities.~~
21 ~~"(2) PROCEEDS.—The Western Area Power~~
22 ~~Administration shall apply the proceeds from the use~~
23 ~~of the transmission capacity from an individual~~
24 ~~project under this section to the repayment of the~~
25 ~~principal and interest of the loan from the Treasury~~

~~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 obligation to provide ancillary services to users of transmission facilities developed under this section.~~

~~"(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—~~

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

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

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

8 ~~"(2) FORGIVENESS OF BALANCES.—~~

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

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

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

20 ~~"(e) PUBLIC PROCESSES.—~~

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

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

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

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

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

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

~~by more than a total of 20 percent by such transfers, and notification of such transfers shall be submitted promptly to the Committees on Appropriations of the House of Representatives and the Senate.~~

~~TITLE VI—FINANCIAL SERVICES AND GENERAL GOVERNMENT~~

~~Subtitle A—General Services~~

~~GENERAL SERVICES ADMINISTRATION~~

~~FEDERAL BUILDINGS FUND~~

~~LIMITATIONS ON AVAILABILITY OF REVENUE~~

~~(INCLUDING TRANSFER OF FUNDS)~~

~~For an additional amount to be deposited in the Federal Buildings Fund, $7,700,000,000 for real property activities with priority given to activities that can commence promptly following enactment of this Act; of which up to $1,000,000,000 shall be used for construction, repair, and alteration of border facilities and land ports of entry; of which not less than $6,000,000,000 shall be used for construction, repair, and alteration of Federal buildings for projects that will create the greatest impact on energy efficiency and conservation; of which $108,000,000 shall remain available until September 30, 2012, and shall be used for rental of space costs associated with the construction, repair, and alteration of these projects; *Provided*, That of the amounts provided, $160,000,000 shall remain~~

~~available until September 30, 2012, and shall be for building operations in support of the activities described in this paragraph: *Provided further*, That the preceding proviso shall apply to this appropriation in lieu of the provisions of section 1106 of this Act: *Provided further*, That the Administrator of General Services is authorized to initiate design, construction, repair, alteration, leasing, and other projects through existing authorities of the Administrator: *Provided further*, That the Administrator shall submit a detailed plan, by project, regarding the use of funds to the Committees on Appropriations of the House of Representatives and the Senate within 30 days after enactment of this Act, and shall provide notification to the Committees within 15 days prior to any changes regarding the use of these funds: *Provided further*, That the Administrator shall report to the Committees on the obligation of these funds on a quarterly basis beginning on June 30, 2009: *Provided further*, That of the amounts provided, $4,000,000 shall be transferred to and merged with "Government-Wide Policy", for the Office of Federal High-Performance Green Buildings as authorized in the Energy Independence and Security Act of 2007 (Public Law 110–140).~~

~~ENERGY EFFICIENT FEDERAL MOTOR VEHICLE FLEET PROCUREMENT~~

~~For capital expenditures and necessary expenses of the General Services Administration's Motor Vehicle Acquisition and Motor Vehicle Leasing programs for the acquisition of motor vehicles, including plug-in and alternative fuel vehicles, $600,000,000. *Provided*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be 1 percent instead of the percentage specified in such section: *Provided further*, That none of these funds may be obligated until the Administrator of General Services submits to the Committees on Appropriations of the House of Representatives and the Senate, within 90 days after enactment of this Act, a plan for expenditure of the funds that details the current inventory of the Federal fleet owned by the General Services Administration, as well as other Federal agencies, and the strategy to expend these funds to replace a portion of the Federal fleet with the goal of substantially increasing energy efficiency over the current status, including increasing fuel efficiency and reducing emissions: *Provided further*, That the Administrator shall report to the Committees on the obligation of these funds on a quarterly basis beginning on June 30, 2009.~~

~~Subtitle B—Small Business~~

~~SMALL BUSINESS ADMINISTRATION~~

~~BUSINESS LOANS PROGRAM ACCOUNT~~

~~(INCLUDING TRANSFERS OF FUNDS)~~

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

~~GENERAL PROVISIONS, THIS SUBTITLE~~

~~SEC. 6201. ECONOMIC STIMULUS LENDING PROGRAM FOR SMALL BUSINESSES.~~

~~(a) PURPOSE.—The purpose of this section is to permit the Small Business Administration to guarantee up to 95 percent of qualifying small business loans made by eligible lenders.~~

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

~~(1) The term "Administrator" means the Administrator of the Small Business Administration.~~

1 ~~(2) The term "qualifying small business loan"~~
2 ~~means any loan to a small business concern that~~
3 ~~would be eligible for a loan guarantee under section~~
4 ~~7(a) of the Small Business Act (15 U.S.C. 636) or~~
5 ~~title V of the Small Business Investment Act of~~
6 ~~1958 (15 U.S.C. 695 and following).~~
7 ~~(3) The term "small business concern" has the~~
8 ~~same meaning as provided by section 3 of the Small~~
9 ~~Business Act (15 U.S.C. 632).~~
10 ~~(c) APPLICATION.—In order to participate in the loan~~
11 ~~guarantee program under this section a lender shall sub-~~
12 ~~mit an application to the Administrator for the guarantee~~
13 ~~of up to 95 percent of the principal amount of a qualifying~~
14 ~~small business loan. The Administrator shall approve or~~
15 ~~deny each such application within 5 business days after~~
16 ~~receipt thereof. The Administrator may not delegate to~~
17 ~~lenders the authority to approve or disapprove such appli-~~
18 ~~cations.~~
19 ~~(d) FEES.—The Administrator may charge fees for~~
20 ~~guarantees issued under this section. Such fees shall not~~
21 ~~exceed the fees permitted for loan guarantees under sec-~~
22 ~~tion 7(a) of the Small Business Act (15 U.S.C. 631 and~~
23 ~~following).~~
24 ~~(e) INTEREST RATES.—The Administrator may not~~
25 ~~guarantee under this section any loan that bears interest~~

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

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

~~(2) The Prime Rate.~~

~~(f) QUALIFIED BORROWERS.—~~

~~(1) ALIENS UNLAWFULLY PRESENT IN THE UNITED STATES.—A loan guarantee may not be made under this section for a loan made to a concern if an individual who is an alien unlawfully present in the United States—~~

~~(A) has an ownership interest in that concern; or~~

~~(B) has an ownership interest in another concern that itself has an ownership interest in that concern.~~

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

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

~~(g) CRIMINAL BACKGROUND CHECKS.—Prior to the approval of any loan guarantee under this section, the Administrator may verify the applicant's criminal background, or lack thereof, through the best available means, including, if possible, use of the National Crime Information Center computer system at the Federal Bureau of Investigation.~~

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

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

~~(j) SMALL BUSINESS ACT PROVISIONS.—The provisions of the Small Business Act applicable to loan guarantees under section 7 of that Act shall apply to loan guarantees under this section except as otherwise provided in this section.~~

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

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

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

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

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

15 ~~(2) The term "SBA" means the Small Business~~
16 ~~Administration.~~

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

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

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

1 designated under subsection (c)(1) as vital to the
2 continued operation of the SBA secondary market
3 by reason of their purchase and sale of the govern-
4 ment guaranteed portion of loans, or pools of loans,
5 originated, underwritten, and closed under the Small
6 Business Act.
7 (c) RESPONSIBILITIES, AUTHORITIES, ORGANIZA-
8 TION, AND LIMITATIONS.—
9 (1) DESIGNATION OF SYSTEMICALLY IMPOR-
10 TANT SBA SECONDARY MARKET BROKER-DEAL-
11 ERS.—The Administrator shall establish a process to
12 designate, in consultation with the Board of Gov-
13 ernors of the Federal Reserve and the Secretary of
14 the Treasury, Systemically Important Secondary
15 Market Broker-Dealers.
16 (2) ESTABLISHMENT OF SBA SECONDARY MAR-
17 KET LENDING AUTHORITY.—
18 (A) ORGANIZATION.—
19 (i) The Administrator shall establish
20 within the SBA an office to provide loans
21 to Systemically Important Secondary Mar-
22 ket Broker-dealers to be used for the pur-
23 pose of financing the inventory of the gov-
24 ernment guaranteed portion of loans, origi-

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

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

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

~~(iv) The Administrator may contract such Authority operations as he determines necessary to qualified third-party companies or individuals.~~

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

~~(B) LOANS.—~~

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

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

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

~~(I) That loans made under this section are for the sole purpose of financing the inventory of the government guaranteed portion of loans, originated, underwritten, and closed under the Small Business Act or pools of such loans.~~

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

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

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

~~(iii) Interest on loans under this section shall not exceed the Federal Funds~~

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

~~(iv) The rule under this section shall provide for such loan documents, legal covenants, collateral requirements and other required documentation as necessary to protect the interests of the agency, the United States, and the taxpayer.~~

~~(v) The Administrator shall establish custodial accounts to safeguard any collateral pledged to the SBA in connection with a loan under this section.~~

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

~~(C) LIMITATIONS ON USE OF LOAN PROCEEDS BY SYSTEMICALLY IMPORTANT SECONDARY MARKET BROKER-DEALERS.—The Administrator shall ensure that borrowers under this section are using funds provided under this section only for the purpose specified in subparagraph (B)(ii)(I). If the Administrator finds that such funds were used for any other purpose, the Administrator shall—~~

~~(i) require immediate repayment of outstanding loans;~~

~~(ii) prohibit the borrower, its affiliates, or any future corporate manifestation of the borrower from using the Authority; and~~

~~(iii) take any other actions the Administrator, in consultation with the Attorney General of the United States, deems appropriate.~~

~~(d) REPORT TO CONGRESS.—The Administrator shall submit a report to Congress not later than the third business day of each month containing a statement of each of the following:~~

~~(1) The aggregate loan amounts extended during the preceding month under this section.~~

~~(2) The aggregate loan amounts repaid under this section during the proceeding month.~~

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

~~(4) The aggregate value of assets held as collateral under this section.~~

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

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

~~(7) Any other information the Administrator deems necessary to fully inform Congress of undue risk of financial loss to the United States in connection with loans made under this section.~~

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

~~(f) FUNDING.—Such sums as necessary are authorized to be appropriated to carry out the provisions of this section.~~

~~(g) BUDGET TREATMENT.—Nothing in this section shall be construed to exempt any activity of the Administrator under this section from the Federal Credit Reform Act of 1990 (title V of the Congressional Budget and Impoundment Control Act of 1974; 2 U.S.C. 661 and following).~~

~~(h) EMERGENCY RULEMAKING AUTHORITY.—The Administrator shall promulgate regulations under this section within 15 days after the date of enactment of enactment of this section. In promulgating these regulations, the Administrator the notice requirements of section 553(b) of title 5 of the United States Code shall not apply.~~

~~SEC. 6203. ESTABLISHMENT OF SBA SECONDARY MARKET GUARANTEE AUTHORITY.~~

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

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

~~(1) The term "Administrator" means the Administrator of the Small Business Administration.~~

~~(2) The term "first lien position 504 loan" means the first mortgage position, non-federally guaranteed loans made by private sector lenders made under title V of the Small Business Investment Act.~~

~~(c) ESTABLISHMENT OF AUTHORITY.—~~

~~(1) ORGANIZATION.—~~

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

~~(B) The Administrator shall appoint a Director of the Authority who shall report to the Administrator.~~

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

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

~~(D) The Administrator is authorized to contract with private sector fiduciary and custodial agents as necessary to operate the Authority.~~

~~(2) GUARANTEE PROCESS.—~~

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

~~(B) The Administrator shall appoint a Director of the Authority who shall report to the Administrator.~~

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

~~(D) The Administrator is authorized to contract with private sector fiduciary and custodial agents as necessary to operate the Authority.~~

1 ~~(3) RESPONSIBILITIES.—~~

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

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

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

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

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

~~(iv) The Administrator may guarantee not more than $3,000,000,0000 of pools under this authority.~~

~~(C) The Administrator shall establish documents, legal covenants, and other required documentation to protect the interests of the United States.~~

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

~~(d) LIMITATIONS.—~~

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

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

~~(A) terminate such guarantee immediately;~~

~~(B) prohibit the purchaser of the guarantee or its affiliates (within the meaning of the regulations under 13 CFR 121.103) from using the authority of this section in the future; and~~

~~(C) take any other actions the Administrator, in consultation with the Attorney General of the United States deems appropriate.~~

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

~~(1) The aggregate amount of guarantees extended under this section during the proceeding month.~~

~~(2) The aggregate amount of guarantees outstanding.~~

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

~~(4) The identity of each purchaser of a guarantee found by the Administrator to have misused guarantees under this section.~~

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

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

~~(g) FUNDING.—Such sums as necessary are authorized to be appropriated to carry out the provisions of this section.~~

~~(h) BUDGET TREATMENT.—Nothing in this section shall be construed to exempt any activity of the Administrator under this section from the Federal Credit Reform Act of 1990 (title V of the Congressional Budget and Impoundment Control Act of 1974; 2 U.S.C. 661 and following).~~

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

~~SEC. 6204. ECONOMIC RECOVERY PROGRAM.~~

~~(a) PURPOSE.—The purpose of this section is to establish a new lending and refinancing authority within the Small Business Administration.~~

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

~~(1) The term "Administrator" means the Administrator of the Small Business Administration.~~

~~(2) The term "small business concern" has the same meaning as provided by section 3 of the Small Business Act (15 U.S.C. 632).~~

~~(c) REFINANCING AUTHORITY.—~~

~~(1) IN GENERAL.—Upon application from a lender (and with consent of the borrower), the Administrator may refinance existing non-Small Business Administration or Small Business Administration loans (including loans under sections 7(a) and 504 of the Small Business Act) made to small business concerns.~~

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

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

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

~~(C) the loan to be refinanced was made before the date of enactment of this Act and for a purpose that would have been eligible for a loan under any Small Business Administration lending program.~~

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

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

~~(4) LIMIT.—The Administrator may not refinance amounts under this section that are greater than the amount the lender agrees to accept from the Administrator as full repayment of the loan as provided in paragraph (2)(B).~~

~~(d) UNDERWRITING AND OTHER LOAN SERVICES.—~~

~~(1) IN GENERAL.—The Administrator is authorized to engage in underwriting, loan closing, funding, and servicing of loans made to small business concerns and to guarantee loans made by other entities to small business concerns.~~

~~(2) APPLICATION PROCESS.—The Administrator shall by rule establish a process in which small business concerns may submit applications to the Administrator for the purposes of securing a loan under this subsection. The Administrator shall, at a minimum, collect all information necessary to determine the creditworthiness and repayment ability of the borrower.~~

1 ~~(3) PARTICIPATION OF LENDERS.—~~

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

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

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

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

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

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

~~(4) ASSET SALES.—The Administrator shall offer to sell loans made or refinanced by the Administrator under this section. Such sales shall be made through semi-annual public solicitation (in the Federal Register and in other media) of offers to purchase. The Administrator may contract with vendors for due diligence, asset valuation, and other services related to such sales. The Administrator may not sell any loan under this section for less than 90 percent of the net present value of the loan, as determined and certified by a qualified third-party.~~

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

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

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

~~(g) QUALIFIED LOANS.—~~

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

~~(A) has an ownership interest in that concern; or~~

~~(B) has an ownership interest in another concern that itself has an ownership interest in that concern.~~

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

1 ~~or practice of hiring, recruiting or referring for a~~
2 ~~fee, for employment in the United States an alien~~
3 ~~knowing the person is an unauthorized alien.~~
4 ~~(h) REPORTS.—The Administrator shall submit a re-~~
5 ~~port to Congress semi-annually setting forth the aggregate~~
6 ~~amount of loans and geographic dispersion of such loans~~
7 ~~made, underwritten, closed, funded, serviced, sold, guaran-~~
8 ~~teed, or held by the Administrator under the authority of~~
9 ~~this section. Such report shall also set forth information~~
10 ~~concerning loan defaults, prepayments, and recoveries re-~~
11 ~~lated to loans ,made under the authority of this section.~~
12 ~~(i) AUTHORIZATION.—There are authorized to be ap-~~
13 ~~propriated such sums as may be necessary to carry out~~
14 ~~this section.~~
15 **~~SEC. 6205. STIMULUS FOR COMMUNITY DEVELOPMENT~~**
16 **~~LENDING.~~**
17 ~~(a) REFINANCING UNDER THE LOCAL DEVELOP-~~
18 ~~MENT BUSINESS LOAN PROGRAM.—Section 502 of the~~
19 ~~Small Business Investment Act of 1958 (15 U.S.C. 696)~~
20 ~~is amended by adding at the end the following:~~
21 ~~"(7) PERMISSIBLE DEBT REFINANCING.—~~
22 ~~"(A) IN GENERAL.—Any financing ap-~~
23 ~~proved under this title may include a limited~~
24 ~~amount of debt refinancing.~~

1 ~~"(B) EXPANSIONS.—If the project involves~~
2 ~~expansion of a small business concern which~~
3 ~~has existing indebtedness collateralized by fixed~~
4 ~~assets, any amount of existing indebtedness~~
5 ~~that does not exceed ½ of the project cost of~~
6 ~~the expansion may be refinanced and added to~~
7 ~~the expansion cost, if—~~
8 ~~"(i) the proceeds of the indebtedness~~
9 ~~were used to acquire land, including a~~
10 ~~building situated thereon, to construct a~~
11 ~~building thereon, or to purchase equip-~~
12 ~~ment;~~
13 ~~"(ii) the borrower has been current on~~
14 ~~all payments due on the existing debt for~~
15 ~~not less than 1 year preceding the date of~~
16 ~~refinancing; and~~
17 ~~"(iii) the financing under section 504~~
18 ~~will provide better terms or rate of interest~~
19 ~~than exists on the debt at the time of refi-~~
20 ~~nancing.".~~
21 ~~(b) JOB CREATION GOALS.—Section 501(e)(1) and~~
22 ~~section 501(e)(2) of the Small Business Investment Act~~
23 ~~(15 U.S.C. 695) are each amended by striking "$50,000"~~
24 ~~and inserting "$65,000".~~

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

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

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

~~"(2) MAXIMUM LEVERAGE.—~~

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

~~"(i) 300 percent of such company's private capital; or~~

~~"(ii) $150,000,000.~~

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

~~(2) by striking paragraph (4).~~

1 ~~(b) SIMPLIFIED AGGREGATE INVESTMENT LIMITA-~~
2 ~~TIONS.—Section 306(a) of the Small Business Investment~~
3 ~~Act of 1958 (15 U.S.C. 686(a)) is amended to read as~~
4 ~~follows:~~
5 ~~"(a) PERCENTAGE LIMITATION ON PRIVATE CAP-~~
6 ~~ITAL.—If any small business investment company has ob-~~
7 ~~tained financing from the Administrator and such financ-~~
8 ~~ing remains outstanding, the aggregate amount of securi-~~
9 ~~ties acquired and for which commitments may be issued~~
10 ~~by such company under the provisions of this title for any~~
11 ~~single enterprise shall not, without the approval of the Ad-~~
12 ~~ministrator, exceed 10 percent of the sum of—~~
13 ~~"(1) the private capital of such company; and~~
14 ~~"(2) the total amount of leverage projected by~~
15 ~~the company in the company's business plan that~~
16 ~~was approved by the Administrator at the time of~~
17 ~~the grant of the company's license.".~~
18 **~~SEC. 6207. GAO REPORT.~~**
19 ~~(a) REPORT.—Not later than 30 days after the enact-~~
20 ~~ment of this Act, the Comptroller General of the United~~
21 ~~States shall report to the Congress on the actions of the~~
22 ~~Administrator in implementing the authority established~~
23 ~~in sections 6201 through 6206 of this Act.~~
24 ~~(b) INCLUDED ITEM.—The report under this section~~
25 ~~shall include a summary of the activity of the Adminis-~~

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

~~TITLE VII—HOMELAND SECURITY~~

~~DEPARTMENT OF HOMELAND SECURITY~~

~~U.S. CUSTOMS AND BORDER PROTECTION~~

~~SALARIES AND EXPENSES~~

~~For an additional amount for "Salaries and Expenses", $100,000,000, for non-intrusive detection technology to be deployed at sea ports of entry.~~

~~CONSTRUCTION~~

~~For an additional amount for "Construction", $150,000,000, to repair and construct inspection facilities at land border ports of entry.~~

~~TRANSPORTATION SECURITY ADMINISTRATION~~

~~AVIATION SECURITY~~

~~For an additional amount for "Aviation Security", $500,000,000, for the purchase and installation of explosive detection systems and emerging checkpoint technologies: *Provided*, That the Assistant Secretary of Homeland Security (Transportation Security Administration) shall prioritize the award of these funds to accelerate the~~

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

~~COAST GUARD~~

~~ALTERATION OF BRIDGES~~

~~For an additional amount for "Alteration of Bridges", $150,000,000, for alteration or removal of obstructive bridges, as authorized by section 6 of the Truman-Hobbs Act (33 U.S.C. 516). *Provided*, That the Coast Guard shall award these funds to those bridges that are ready to proceed to construction.~~

~~FEDERAL EMERGENCY MANAGEMENT AGENCY~~

~~EMERGENCY FOOD AND SHELTER~~

~~For an additional amount for "Emergency Food and Shelter", $200,000,000, 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.). *Provided*, That for the purposes of this appropriation, the redistribution required by section 1104(b) shall be carried out by the Federal Emergency Management Agency and the National Board, who may reallocate and obligate any funds that are unclaimed or returned to the program. *Provided further*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be 3.5 percent instead of the percentage specified in such section.~~

~~GENERAL PROVISIONS, THIS TITLE~~

~~SEC. 7001. EXTENSION OF PROGRAMS.~~

~~Section 401(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by striking "11-year period" and inserting "16-year period".~~

~~SEC. 7002. PROTECTION OF SOCIAL SECURITY ADMINISTRATION PROGRAMS.~~

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

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

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

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

~~(2) provide such funds quarterly in advance of the applicable quarter based on estimating methodology agreed to by the Commissioner and the Secretary (except in such instances where the delayed enactment of an annual appropriation may preclude such quarterly payments); and~~

~~(3) require an annual accounting and reconciliation of the actual costs incurred and the funds provided under the agreement, which shall be reviewed by the Office of Inspector General of the Social Security Administration and the Department of Homeland Security.~~

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

~~grant Responsibility Act of 1996 (8 U.S.C. 1324a note) shall be deemed in effect on an interim basis for such fiscal year until such time as an agreement required under subsection (a) is subsequently reached, except that the terms of such interim agreement shall be modified by the Director of the Office of Management and Budget to adjust for inflation and any increase or decrease in the volume of requests under the basic pilot confirmation system. In any case in which an interim agreement applies for any fiscal year under this subsection, the Commissioner and the Secretary shall, not later than October 1 of such fiscal year, notify the Committee on Ways and Means, the Committee on the Judiciary, and the Committee on Appropriations of the House of Representatives and the Committee on Finance, the Committee on the Judiciary, and the Committee on Appropriations of the Senate of the failure to reach the agreement required under subsection (a) for such fiscal year. Until such time as the agreement required under subsection (a) has been reached for such fiscal year, the Commissioner and the Secretary shall, not later than the end of each 90-day period after October 1 of such fiscal year, notify such Committees of the status of negotiations between the Commissioner and the Secretary in order to reach such an agreement.~~

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

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

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

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

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

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

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

~~SEC. 7004. GAO STUDY OF EFFECTS OF BASIC PILOT PROGRAM ON SMALL ENTITIES.~~

~~(a) IN GENERAL.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committees on the Judiciary of the United States House of Representatives and the Senate a report containing the Comptroller General's analysis of the effects of the basic pilot program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) on small entities (as defined in section 601 of title 5, United States Code). The report shall detail—~~

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

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

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

~~(4) factors that impact small entities' enrollment and participation in such program, including access to appropriate technology, geography, entity size, and class of entity; and~~

1 ~~(5) the steps, if any, the Secretary of Homeland~~
2 ~~Security has taken to minimize the economic impact~~
3 ~~of participating in such program on small entities.~~
4 ~~(b) DIRECT AND INDIRECT EFFECTS.—The report~~
5 ~~shall cover, and treat separately, direct effects (such as~~
6 ~~wages, time, and fees spent on compliance) and indirect~~
7 ~~effects (such as the effect on cash flow, sales, and competi-~~
8 ~~tiveness).~~
9 ~~(c) SPECIFIC CONTENTS.—The report shall provide~~
10 ~~specific and separate details with respect to—~~
11 ~~(1) small businesses (as defined in section 601~~
12 ~~of title 5, United States Code) with fewer than 50~~
13 ~~employees; and~~
14 ~~(2) small entities operating in States that have~~
15 ~~mandated use of the basic pilot program.~~
16 ~~**SEC. 7005. WAIVER OF MATCHING REQUIREMENT UNDER**~~
17 ~~**SAFER PROGRAM.**~~
18 ~~Subparagraph (E) of section 34(a)(1) of the Federal~~
19 ~~Fire Prevention and Control Act of 1974 (15 U.S.C.~~
20 ~~2229a(a)(1)(E)) shall not apply with respect to funds ap-~~
21 ~~propriated in this or any other Act making appropriations~~
22 ~~for fiscal year 2009 or 2010 for grants under such section~~
23 ~~34.~~

~~SEC. 7006. PROCUREMENT FOR DEPARTMENT OF HOMELAND SECURITY.~~

~~(a) REQUIREMENT.—Except as provided in subsections (c) through (e), funds appropriated or otherwise available to the Department of Homeland Security may not be used for the procurement of an item described in subsection (b) if the item is not grown, reprocessed, reused, or produced in the United States.~~

~~(b) COVERED ITEMS.—An item referred to in subsection (a) is any of the following, if the item is directly related to the national security interests of the United States:~~

~~(1) An article or item of—~~

~~(A) clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing (and the materials and components thereof);~~

~~(B) tents, tarpaulins, or covers;~~

~~(C) cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics), canvas products, or wool (whether in the form~~

~~of fiber or yarn or contained in fabrics, materials, or manufactured articles); or~~

~~(D) any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials.~~

~~(c) AVAILABILITY EXCEPTION.—Subsection (a) does not apply to the extent that the Secretary of Homeland Security determines that satisfactory quality and sufficient quantity of any such article or item described in subsection (b)(1) grown, reprocessed, reused, or produced in the United States cannot be procured as and when needed.~~

~~(d) EXCEPTION FOR CERTAIN PROCUREMENTS OUTSIDE THE UNITED STATES.—Subsection (a) does not apply to the following:~~

~~(1) Procurements by vessels in foreign waters.~~

~~(2) Emergency procurements.~~

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

~~(f) APPLICABILITY TO CONTRACTS AND SUBCONTRACTS FOR PROCUREMENT OF COMMERCIAL ITEMS.—This section is applicable to contracts and subcontracts for the procurement of commercial items not-~~

~~withstanding section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430).~~

~~(g) GEOGRAPHIC COVERAGE.—In this section, the term "United States" includes the possessions of the United States.~~

~~(h) NOTIFICATION REQUIRED WITHIN 7 DAYS AFTER CONTRACT AWARD IF CERTAIN EXCEPTIONS APPLIED.—In the case of any contract for the procurement of an item described in subsection (b)(1), if the Secretary of Homeland Security applies an exception set forth in subsection (c) with respect to that contract, the Secretary shall, not later than 7 days after the award of the contract, post a notification that the exception has been applied on the Internet site maintained by the General Services Administration know as FedBizOps.gov (or any successor site).~~

~~(i) TRAINING DURING FISCAL YEAR 2008.—~~

~~(1) IN GENERAL.—The Secretary of Homeland Security shall ensure that each member of the acquisition workforce in the Department of Homeland Security who participates personally and substantially in the acquisition of textiles on a regular basis receives training during fiscal year 2009 on the requirements of this section and the regulations implementing this section.~~

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

~~(j) CONSISTENCY WITH INTERNATIONAL AGREEMENTS.—~~

~~(1) IN GENERAL.—No provision of this section shall apply to the extent the Secretary of Homeland Security, in consultation with the United States Trade Representative, determines that it is in inconsistent with United States obligations under an international agreement.~~

~~(2) REPORT.—The Secretary of Homeland Security shall submit a report each year to Congress containing, with respect to the year covered by the report—~~

~~(A) a list of each provision of this section that did not apply during that year pursuant to a determination by the Secretary under paragraph (1); and~~

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

~~year without regard to a provision in this section because that provision was made inapplicable pursuant to such a determination.~~

~~(k) EFFECTIVE DATE.—This section applies with respect to contracts entered into by the Department of Homeland Security after the date of the enactment of this Act.~~

~~TITLE VIII—INTERIOR AND ENVIRONMENT~~

~~DEPARTMENT OF THE INTERIOR~~

~~BUREAU OF LAND MANAGEMENT~~

~~CONSTRUCTION~~

~~(INCLUDING TRANSFERS OF FUNDS)~~

~~For an additional amount for "Construction", $325,000,000, for priority road, bridge, and trail repair or decommissioning, critical deferred maintenance projects, facilities construction and renovation, hazardous fuels reduction, and remediation of abandoned mine or well sites. *Provided*, That funds may be transferred to other appropriate accounts of the Bureau of Land management. *Provided further*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be not more than 5 percent instead of the percentage specified in such section.~~

~~UNITED STATES FISH AND WILDLIFE SERVICE~~

~~CONSTRUCTION~~

~~(INCLUDING TRANSFER OF FUNDS)~~

~~For an additional amount for "Construction", $300,000,000, for priority road and bridge repair and replacement, and critical deferred maintenance and improvement projects on National Wildlife Refuges, National Fish Hatcheries, and other Service properties: *Provided*, That funds may be transferred to "Resource Management": *Provided further*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be not more than 5 percent instead of the percentage specified in such section.~~

~~NATIONAL PARK SERVICE~~

~~CONSTRUCTION~~

~~(INCLUDING TRANSFER OF FUNDS)~~

~~For an additional amount for "Construction", $1,700,000,000, for projects to address critical deferred maintenance needs within the National Park System, including roads, bridges and trails, and for other critical infrastructure projects: *Provided*, That funds may be transferred to "Operation of the National Park System": *Provided further*, That $200,000,000 of these funds shall be for projects related to the preservation and repair of historical and cultural resources within the National Park~~

~~System: *Provided further*, That $15,000,000 of these funds shall be transferred to the "Historic Preservation Fund" for historic preservation projects at historically black colleges and universities as authorized by the Historic Preservation Fund Act of 1996 and the Omnibus Parks and Public Lands Act of 1996, except that any matching requirements otherwise required for such projects are waived: *Provided further*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be not more than 5 percent instead of the percentage specified in such section.~~

~~CENTENNIAL CHALLENGE~~

~~To carry out provisions of section 814(g) of Public Law 104–333 relating to challenge cost share agreements, $100,000,000, for National Park Service Centennial Challenge signature projects and programs: *Provided*, That not less than 50 percent of the total cost of each project or program is derived from non-Federal sources in the form of donated cash, assets, in-kind services, or a pledge of donation guaranteed by an irrevocable letter of credit: *Provided further*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be not more than 5 percent instead of the percentage specified in such section.~~

~~UNITED STATES GEOLOGICAL SURVEY~~

~~SURVEYS, INVESTIGATIONS, AND RESEARCH~~

~~For an additional amount for "Surveys, Investigations, and Research", $200,000,000, for repair and restoration of facilities; equipment replacement and upgrades including stream gages, and seismic and volcano monitoring systems; national map activities; and other critical deferred maintenance and improvement projects: *Provided*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be not more than 5 percent instead of the percentage specified in such section.~~

~~BUREAU OF INDIAN AFFAIRS~~

~~CONSTRUCTION~~

~~(INCLUDING TRANSFER OF FUNDS)~~

~~For an additional amount for "Construction", $500,000,000, for priority repair and replacement of schools, detention centers, roads, bridges, employee housing, and critical deferred maintenance projects: *Provided*, That not less than $250,000,000 shall be used for new and replacement schools and detention centers: *Provided further*, That funds may be transferred to "Operation of Indian Programs": *Provided further*, That the amount set aside from this appropriation pursuant to section 1106 of~~

~~this Act shall be not more than 5 percent instead of the percentage specified in such section.~~

~~ENVIRONMENTAL PROTECTION AGENCY~~

~~HAZARDOUS SUBSTANCE SUPERFUND~~

~~For an additional amount for "Hazardous Substance Superfund", $800,000,000, which shall be used for the Superfund Remedial program: *Provided*, That amounts available by law from this appropriation for management and administration shall take the place of the set-aside under section 1106 of this Act.~~

~~LEAKING UNDERGROUND STORAGE TANK TRUST FUND PROGRAM~~

~~For an additional amount for "Leaking Underground Storage Tank Trust Fund Program", to carry out leaking underground storage tank cleanup activities authorized by subtitle I of the Solid Waste Disposal Act, $200,000,000, which shall be used to carry out leaking underground storage tank cleanup activities authorized by section 9003(h) of the Solid Waste Disposal Act, except that such funds shall not be subject to the State matching requirements in section 9003(h)(7)(B): *Provided*, That amounts available by law from this appropriation for management and administration shall take the place of the set-aside under section 1106 of this Act.~~

~~STATE AND TRIBAL ASSISTANCE GRANTS~~

~~For an additional amount for "State and Tribal Assistance Grants", $8,400,000,000, which shall be used as follows:~~

~~(1) $6,000,000,000 shall be for capitalization grants for the Clean Water State Revolving Funds under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.), except that such funds shall not be subject to the State matching requirements in paragraphs (2) and (3) of section 602(b) of such Act or to the Federal cost share limitations in section 202 of such Act: *Provided*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be not more than 2 percent instead of the percentage specified in such section: *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 such funds may be reserved by the Administrator of the Environmental Protection Agency for grants under section 518(c) of such Act: *Provided further*, That the requirements of section 513 of such Act shall apply to the construction of treatment works carried out in whole or in part with assistance made available*

~~under this heading by a Clean Water State Revolving Fund under title VI of such Act, or with assistance made available under section 205(m) of such Act, or both: *Provided further*, That, notwithstanding the requirements of section 603(d) of such Act, each State shall use 50 percent of the amount of the capitalization grant received by the State under title VI of such Act to provide assistance, in the form of additional subsidization, including forgiveness of principal, negative interest loans, and grants, to municipalities (as defined in section 502 of such Act) for projects that are included on the State's priority list established under section 603(g) of such Act, of which 80 percent shall be for projects to benefit municipalities that meet affordability criteria as determined by the Governor of the State and 20 percent shall be for projects to address water-efficiency goals, address energy-efficiency goals, mitigate stormwater runoff, or encourage environmentally sensitive project planning, design, and construction, to the extent that there are sufficient project applications eligible for such assistance.~~

~~(2) $2,000,000,000 shall be for capitalization grants for the Drinking Water State Revolving Funds under section 1452 of the Safe Drinking~~

~~Water Act (42 U.S.C. 300j–12), except that such funds shall not be subject to the State matching requirements of section 1452(c) of such Act: *Provided*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be not more than 2 percent instead of the percentage specified in such section: *Provided further*, That section 1452(k) of the Safe Drinking Water Act shall not apply to such funds: *Provided further*, That the requirements of section 1450(e) of such Act (42 U.S.C. 300j–9(e)) shall apply to the construction carried out in whole or part with assistance made available under this heading by a Drinking Water State Revolving fund under section 1452 of such Act: *Provided further*, That, notwithstanding the requirements of section 1452(a)(2) of such Act, each State shall use 50 percent of the amount of the capitalization grant received by the State under section 1452 of such Act to provide assistance, in the form of additional subsidization, including forgiveness of principal, negative interest loans, and grants, to municipalities (as defined in section 1401 of such Act) for projects that are included on the State's priority list established under section 1452(b)(3) of such Act.~~

~~(3) $300,000,000 shall be for grants under title VII, Subtitle G of the Energy Policy Act of 2005: *Provided*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be not more than 3 percent instead of the percentage specified in such section.~~

~~(4) $100,000,000 shall be to carry out section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980: *Provided*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be not more than 3 percent instead of the percentage specified in such section.~~

~~DEPARTMENT OF AGRICULTURE~~

~~FOREST SERVICE~~

~~CAPITAL IMPROVEMENT AND MAINTENANCE~~

~~(INCLUDING TRANSFER OF FUNDS)~~

~~For an additional amount for "Capital Improvement and Maintenance", $650,000,000, for reconstruction, capital improvement, decommissioning, and maintenance of forest roads, bridges and trails; alternative energy technologies, energy efficiency enhancements and deferred maintenance at Federal facilities; and for remediation of abandoned mine sites, removal of fish passage barriers, and other critical habitat, forest improvement and water-~~

~~shed enhancement projects on Federal lands and waters: *Provided*, That funds may be transferred to "National Forest System": *Provided further*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be not more than 5 percent instead of the percentage specified in such section.~~

~~WILDLAND FIRE MANAGEMENT~~

~~(INCLUDING TRANSFERS OF FUNDS)~~

~~For an additional amount for "Wildland Fire Management", $850,000,000, of which $300,000,000 is for hazardous fuels reduction, forest health, wood to energy grants and rehabilitation and restoration activities on Federal lands, and of which $550,000,000 is for State fire assistance hazardous fuels projects, volunteer fire assistance, cooperative forest health projects, city forest enhancements, and wood to energy grants on State and private lands: *Provided*, That amounts in this paragraph may be transferred to "State and Private Forestry" and "National Forest System": *Provided further*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be not more than 5 percent instead of the percentage specified in such section.~~

~~DEPARTMENT OF HEALTH AND HUMAN SERVICES~~

~~INDIAN HEALTH SERVICE~~

~~INDIAN HEALTH FACILITIES~~

~~For an additional amount for "Indian Health Facilities", $550,000,000, for priority health care facilities construction projects and deferred maintenance, and the purchase of equipment and related services, including but not limited to health information technology: *Provided*, That notwithstanding any other provision of law, the amounts available under this paragraph shall be allocated at the discretion of the Director of the Indian Health Service: *Provided further*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be not more than 5 percent instead of the percentage specified in such section.~~

~~OTHER RELATED AGENCIES~~

~~SMITHSONIAN INSTITUTION~~

~~FACILITIES CAPITAL~~

~~(INCLUDING TRANSFER OF FUNDS)~~

~~For an additional amount for "Facilities Capital", $150,000,000, for deferred maintenance projects, and for repair, revitalization, and alteration of facilities owned or occupied by the Smithsonian Institution, by contract or otherwise, as authorized by section 2 of the Act of August~~

~~22, 1949 (63 Stat. 623): *Provided*, That funds may be transferred to "Salaries and Expenses": *Provided further*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be not more than 5 percent instead of the percentage specified in such section.~~

~~NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES~~

~~NATIONAL ENDOWMENT FOR THE ARTS~~

~~GRANTS AND ADMINISTRATION~~

~~For an additional amount for "Grants and Administration", $50,000,000, to be distributed in direct grants to fund arts projects and activities which preserve jobs in the non-profit arts sector threatened by declines in philanthropic and other support during the current economic downturn: *Provided*, That 40 percent of such funds shall be distributed to State arts agencies and regional arts organizations in a manner similar to the agency's current practice and 60 percent of such funds shall be for competitively selected arts projects and activities according to sections 2 and 5(c) of the National Foundation on the Arts and Humanities Act of 1965 (20 U.S.C. 951, 954(c)): *Provided further*, That matching requirements under section 5(c) of such Act shall be waived: *Provided further*, That the amount set aside from this appropriation pursu-~~

~~ant to section 1106 of this Act shall be not more than 5 percent instead of the percentage specified in such section.~~

~~TITLE IX—LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION~~

~~Subtitle A—Labor~~

~~DEPARTMENT OF LABOR~~

~~EMPLOYMENT AND TRAINING ADMINISTRATION~~

~~TRAINING AND EMPLOYMENT SERVICES~~

~~For an additional amount for "Training and Employment Services" for activities under the Workforce Investment Act of 1998 ("WIA"), $4,000,000,000, which shall be available for obligation on the date of enactment of this Act, as follows:~~

~~(1) $500,000,000 for grants to the States for adult employment and training activities.~~

~~(2) $1,200,000,000 for grants to the States for youth activities, including summer jobs for youth. *Provided*, 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 summer jobs for youth provided with such funds: *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 no portion of the additional funds provided herein 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, such funds shall be allotted as if the total amount of funding available for youth activities in the fiscal year does not exceed $1,000,000,000.~~

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

~~(4) $500,000,000 for the dislocated workers assistance national reserve to remain available for Federal obligation through June 30, 2010. *Provided*, That such funds shall be made available for grants only to eligible entities that serve areas of high unemployment or high poverty and only for the purposes described in subsection 173(a)(1) of the WIA. *Provided further*, That the Secretary of Labor shall ensure that applicants for such funds demonstrate how income support, child care, and other supportive services necessary for an individual's participation in job training will be provided.~~

~~(5) $50,000,000 for YouthBuild activities, which shall remain available for Federal obligation through June 30, 2010.~~

~~(6) $750,000,000 for a program of competitive grants for worker training and placement in high growth and emerging industry sectors (including projects funded under section 6002 of division B of this Act): *Provided*, That $500,000,000 shall be for research, labor exchange and job training projects that prepare workers for careers in the energy efficiency and renewable energy industries specified in section 171(c)(1)(B)(ii) of the WIA (as amended by the Green Jobs Act of 2007): *Provided further*, That in awarding grants from those funds not designated in the preceding proviso, the Secretary of Labor shall give priority to projects that prepare workers for careers in the health care sector: *Provided further*, That the provisions of section 1103 of this Act shall not apply to this appropriation:*

~~*Provided*, That the additional funds provided to States under this heading are not subject to section 191(a) of the WIA: *Provided further*, That notwithstanding section 1106 of this Act, there shall be no amount set aside from the appropriations made in subsections (1) through (3) under this heading and the amount set aside for sub-~~

~~sections (4) through (6) shall be up to 1 percent instead of the percentage specified in such section.~~

~~COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS~~

~~For an additional amount for "Community Service Employment for Older Americans" to carry out title V of the Older Americans Act of 1965, $120,000,000, which shall be available for obligation on the date of enactment of this Act: *Provided*, That funds shall be allotted within 30 days of such enactment to current grantees in proportion to their allotment in program year 2008.~~

~~STATE UNEMPLOYMENT INSURANCE AND EMPLOYMENT SERVICE OPERATIONS~~

~~For an additional amount for "State Unemployment Insurance and Employment Service Operations" for grants to the States in accordance with section 6 of the Wagner-Peyser Act, $500,000,000, which may be expended from the Employment Security Administration Account in the Unemployment Trust Fund, and which shall be available for obligation on the date of enactment of this Act: *Provided*, That such funds shall remain available to the States through September 30, 2010: *Provided further*, That, with respect to such funds, section 6(b)(1) of such Act shall be applied by substituting "one-third" for "two-thirds" in subparagraph (A), with the remaining one-third~~

~~of the sums to be allotted in accordance with section 132(b)(2)(B)(ii)(III) of the Workforce Investment Act of 1998. *Provided further*, That not less than $250,000,000 of the amount provided under this heading 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~~

~~SALARIES AND EXPENSES~~

~~(INCLUDING TRANSFER OF FUNDS)~~

~~For an additional amount for "Departmental Management", $80,000,000, for the enforcement of worker protection laws and regulations, oversight, and coordination activities related to the infrastructure and unemployment insurance investments in this Act. *Provided*, That the Secretary of Labor may transfer such sums as necessary to "Employment and Standards Administration", "Occupational Safety and Health Administration", and "Employment and Training Administration—Program Administration" for enforcement, oversight, and coordina-~~

~~tion activities: *Provided further*, That the provisions of section 1106 of this Act shall not apply to this appropriation.~~

~~OFFICE OF JOB CORPS~~

~~For an additional amount for "Office of Job Corps", $300,000,000, for construction, rehabilitation and acquisition of Job Corps Centers, which shall be available upon the date of enactment of this Act and remain available for obligation through June 30, 2010: *Provided*, That section 1552(a) of title 31, United States Code shall not apply to up to 30 percent of such funds, if such funds are used for a multi-year lease agreement that will result in construction activities that can commence within 120 days of enactment of this Act: *Provided further*, That notwithstanding section 3324(a) of title 31, United States Code, the funds referred to in the preceding proviso may be used for advance, progress, and other payments: *Provided further*, That the Secretary of Labor may transfer up to 15 percent of such funds to meet the operational needs of such centers, which may include the provision of additional training for careers in the energy efficiency and renewable energy industries: *Provided further*, That priority should be given to activities that can commence promptly following enactment and to those projects that will create the greatest impact on the energy efficiency of Job Corps facilities: *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 obligations, expenditures, and unobligated balances for each activity funded under this heading not later than September 30, 2009 and quarterly thereafter as long as funding provided under this heading is available for obligation or expenditure.~~

~~GENERAL PROVISIONS, THIS SUBTITLE~~

~~SEC. 9101. ELIGIBLE EMPLOYEES IN THE RECREATIONAL MARINE INDUSTRY.~~

~~Section 2(3)(F) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 902(3)(F)) is amended—~~

~~(1) by striking "; repair, or dismantle"; and~~

~~(2) by striking the semicolon and inserting "; or individuals employed to repair any recreational vessel, or to dismantle any part of a recreational vessel in connection with the repair of such vessel;".~~

~~Subtitle B—Health and Human Services~~

~~DEPARTMENT OF HEALTH AND HUMAN SERVICES~~

~~HEALTH RESOURCES AND SERVICES~~

~~For an additional amount for "Health Resources and Services", $2,188,000,000 which shall be used as follows:~~

~~(1) $500,000,000, of which $250,000,000 shall not be available until October 1, 2009, shall be for grants to health centers authorized under section 330 of the Public Health Service Act ("PHS Act").~~

~~(2) $1,000,000,000 shall be available for renovation and repair of health centers authorized under section 330 of the PHS Act and for the acquisition by such centers of health information technology systems: *Provided*, That the timeframe for the award of grants pursuant to section 1103(b) of this Act shall not be later than 180 days after the date of enactment of this Act instead of the timeframe specified in such section.~~

~~(3) $88,000,000 shall be for fit-out and other costs related to moving into a facility to be secured through a competitive lease procurement to replace or renovate a headquarters building for Public Health Service agencies and other components of the Department of Health and Human Services.~~

~~(4) $600,000,000, of which $300,000,000 shall not be available until October 1, 2009, shall be for the training of nurses and primary care physicians and dentists as authorized under titles VII and VIII of the PHS Act, for the provision of health care personnel under the National Health Service Corps pro-~~

~~gram authorized under title III of the PHS Act, and for the patient navigator program authorized under title III of the PHS Act.~~

~~CENTERS FOR DISEASE CONTROL AND PREVENTION~~

~~DISEASE CONTROL, RESEARCH, AND TRAINING~~

~~For an additional amount for "Disease Control, Research, and Training" for equipment, construction, and renovation of facilities, including necessary repairs and improvements to leased laboratories, $462,000,000: *Provided*, That notwithstanding any other provision of law, the Centers for Disease Control and Prevention may award a single contract or related contracts for development and construction of facilities that collectively include the full scope of the project: *Provided further*, That the solicitation and contract shall contain the clause "availability of funds" found at 48 CFR 52.232–18: *Provided further*, That in accordance with applicable authorities, policies, and procedures, the Centers for Disease Control and Prevention shall acquire real property, and make any necessary improvements thereon, to relocate and consolidate property and facilities of the National Institute for Occupational Safety and Health.~~

~~NATIONAL INSTITUTES OF HEALTH~~

~~NATIONAL CENTER FOR RESEARCH RESOURCES~~

~~For an additional amount for "National Center for Research Resources", $1,500,000,000 for grants or contracts under section 481A of the Public Health Service Act to renovate or repair existing non-Federal research facilities: *Provided*, That sections 481A(c)(1)(B)(ii), paragraphs (1), (3), and (4) of section 481A(c), and section 481B of such Act shall not apply to the use of such funds: *Provided further*, That the references to "20 years" in subsections (c)(1)(B)(i) and (f) of section 481A of such Act are deemed to be references to "10 years" for purposes of using such funds: *Provided further*, That the National Center for Research Resources may also use such funds to provide, under the authority of section 301 and title IV of such Act, shared instrumentation and other capital research equipment to recipients of grants and contracts under section 481A of such Act and other appropriate entities: *Provided further*, That the Director of the Center shall provide to the Committees on Appropriations of the House of Representatives and the Senate an annual report indicating the number of institutions receiving awards of a grant or contract under section 481A of such Act, the proposed use of the funding, the average award size, a list of grant or contract recipients, and the amount of each~~

~~award: *Provided further*, That the Center, in obligating such funds, shall require that each entity that applies for a grant or contract under section 481A for any project shall include in its application an assurance described in section 1621(b)(1)(I) of the Public Health Service Act: *Provided further*, That the Center shall give priority in the award of grants and contracts under section 481A of such Act to those applications that are expected to generate demonstrable energy-saving or beneficial environmental effects: *Provided further*, That the provisions of section 1103 of this Act shall not apply to the peer-reviewed grants awarded under this heading.~~

~~OFFICE OF THE DIRECTOR~~

~~(INCLUDING TRANSFER OF FUNDS)~~

~~For an additional amount for "Office of the Director", $1,500,000,000, of which $750,000,000 shall not be available until October 1, 2009: *Provided*, That such funds 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 Clinical Center, the Global Fund for HIV/AIDS, Tuberculosis and Malaria, or the Office of the Director (except for the transfer to the Common Fund): *Provided further*, That the provisions of section 1103 of this Act shall not apply to the peer-reviewed grants awarded under this heading.~~

~~BUILDINGS AND FACILITIES~~

~~For an additional amount for "Buildings and Facilities", $500,000,000, to fund high priority repair and improvement projects for National Institutes of Health facilities on the Bethesda, Maryland campus and other agency locations.~~

~~AGENCY FOR HEALTHCARE RESEARCH AND QUALITY~~

~~HEALTHCARE RESEARCH AND QUALITY~~

~~(INCLUDING TRANSFER OF FUNDS)~~

~~For an additional amount for "Healthcare Research and Quality" to carry out titles III and IX of the Public Health Service Act, part A of title XI of the Social Secu-~~

~~rity Act, and section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, $700,000,000 for comparative effectiveness research: *Provided*, That of the amount appropriated in this paragraph, $400,000,000 shall be transferred to the Office of the Director of the National Institutes of Health ("Office of the Director") to conduct or support comparative effectiveness research: *Provided further*, That funds transferred to the Office of the Director may be transferred to the national research institutes and national centers of the National Institutes of Health and to the Common Fund established under section 402A(c)(1) of the Public Health Service Act: *Provided further*, That this transfer authority is in addition to any other transfer authority available to the National Institutes of Health: *Provided further*, That the provisions of section 1103 of this Act shall not apply to the peer-reviewed grants awarded under this paragraph: *Provided further*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be not more than 1 percent instead of the percentage specified in such section.~~

~~In addition, $400,000,000 shall be available for comparative effectiveness research to be allocated at the discretion of the Secretary of Health and Human Services ("Secretary"): *Provided*, That the funding appropriated in~~

~~this paragraph shall be used to accelerate the development and dissemination of research assessing the comparative effectiveness of health care treatments and strategies, including through efforts that: (1) conduct, support, or synthesize research that compares the clinical outcomes, effectiveness, and appropriateness of items, services, and procedures that are used to prevent, diagnose, or treat diseases, disorders, and other health conditions; and (2) encourage the development and use of clinical registries, clinical data networks, and other forms of electronic health data that can be used to generate or obtain outcomes data: *Provided further*, That the Secretary shall enter into a contract with the Institute of Medicine, for which no more than $1,500,000 shall be made available from funds provided in this paragraph, to produce and submit a report to the Congress and the Secretary by not later than June 30, 2009, that includes recommendations on the national priorities for comparative effectiveness research to be conducted or supported with the funds provided in this paragraph and that considers input from stakeholders: *Provided further*, That the Secretary shall consider any recommendations of the Federal Coordinating Council for Comparative Effectiveness Research established by section 9201 of this Act and any recommendations included in the Institute of Medicine report pursuant to the preceding~~

~~proviso in designating activities to receive funds provided in this paragraph and may make grants and contracts with appropriate entities, which may include agencies within the Department of Health and Human Services and other governmental agencies, as well as private sector entities, that have demonstrated experience and capacity to achieve the goals of comparative effectiveness research: *Provided 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 provisions of section 1103 of this Act shall not apply to the peer-reviewed grants awarded under this paragraph: *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 Fi-~~

~~nance of the Senate with an annual report on the research conducted or supported through the funds provided under this heading: *Provided further*, That the Secretary, jointly with the Directors of the Agency for Healthcare Research and Quality and the National Institutes of Health, shall provide the Committees on Appropriations of the House of Representatives and the Senate a fiscal year 2009 operating plan for the funds appropriated under this heading prior to making any Federal obligations of such funds in fiscal year 2009, but not later than 90 days after the date of enactment of this Act, and a fiscal year 2010 operating plan for such funds prior to making any Federal obligations of such funds in fiscal year 2010, but not later than November 1, 2009, that detail the type of research being conducted or supported, including the priority conditions addressed; and specify the allocation of resources within the Department of Health and Human Services: *Provided further*, That the Secretary jointly with the Directors of the Agency for Healthcare Research and Quality and the National Institutes of Health, shall provide to the Committees on Appropriations of the 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.~~

~~ADMINISTRATION FOR CHILDREN AND FAMILIES~~

~~LOW-INCOME HOME ENERGY ASSISTANCE~~

~~For an additional amount for "Low-Income Home Energy Assistance" for making payments under section 2602(b) and section 2602(d) of the Low-Income Home Energy Assistance Act of 1981, $1,000,000,000, which shall become available on October 1, 2009: *Provided*, That the provisions of section 1106 of this Act shall not apply to this appropriation.~~

~~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", $2,000,000,000, of which $1,000,000,000 shall become available on October 1, 2009, which shall be used to supplement, not supplant State general revenue funds for child care assistance for low-income families: *Provided*, That the provisions of section 1106 of this Act shall not apply to this appropriation.~~

~~CHILDREN AND FAMILIES SERVICES PROGRAMS~~

~~For an additional amount for "Children and Families Services Programs", $3,200,000,000, which shall be used as follows:~~

~~(1) $1,000,000,000 for carrying out activities under the Head Start Act, of which $500,000,000 shall become available on October 1, 2009.~~

~~(2) $1,100,000,000 for expansion of Early Head Start programs, as described in section 645A of the Head Start Act, of which $550,000,000 shall become available on October 1, 2009: *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: *Provided further*, That the preceding proviso shall apply to this appropriation in lieu of the provisions of section 1106 of this Act: *Provided further*, That the provisions of section 1103 of this Act shall not apply to this appropriation.~~

~~(3) $1,000,000,000 for carrying out activities under sections 674 through 679 of the Community Services Block Grant Act, of which $500,000,000 shall become available on October 1, 2009, and of which no part shall be subject to paragraphs (2) and (3) of section 674(b) of such Act: *Provided*, That notwithstanding section 675C(a)(1) of such Act, 100~~

~~percent of the funds made available to a State from this additional amount shall be distributed to eligible entities as defined in section 673(1) of such Act: *Provided further*, That for services furnished under such Act during fiscal years 2009 and 2010, States may apply the last sentence of section 673(2) of such Act by substituting "200 percent" for "125 percent": *Provided further*, That the provisions of section 1106 of this Act shall not apply to this appropriation.~~

~~(4) $100,000,000 for carrying out activities under section 1110 of the Social Security Act, of which $50,000,000 shall become available on October 1, 2009: *Provided*, That the Secretary of Health and Human Services shall distribute such amount under the Compassion Capital Fund to eligible faith-based and community organizations: *Provided further*, That the provisions of section 1106 of this Act shall not apply to this appropriation.~~

~~ADMINISTRATION ON AGING~~

~~AGING SERVICES PROGRAMS~~

~~For an additional amount for "Aging Services Programs" under section 311, and subparts 1 and 2 of part C, of title III of the Older Americans Act of 1965, $200,000,000, of which $100,000,000 shall become avail-~~

able on October 1, 2009: *Provided*, That the provisions of section 1106 of this Act shall not apply to this appropriation.

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" to carry out section 9202 of this Act, $2,000,000,000, to remain available until expended: *Provided*, That of such 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 the provisions of section 1103 of this Act shall not apply to this appropriation: *Provided further*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be 0.25 percent instead of the percentage specified in such section: *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 fiscal year 2009 operating plan shall be provided not later than 90 days after enactment of this Act and that subsequent annual operating plans shall be provided not later than November 1 of each year: *Provided further*, That these operating plans shall describe how expenditures are aligned with the specific objectives, milestones, and metrics of the Federal Health Information Technology Strategic Plan, including any subsequent updates to the Plan; the allocation of resources within the Department of Health and Human Services and other Federal agencies; and the identification of programs and activities that are supported: *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 obligations, 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 provided under this heading is available for obligation or expenditure: *Provided further*, That the Comptroller General of the United States shall review on an annual basis the expenditures from funds provided~~

~~under this heading to determine if such funds are used in a manner consistent with the purpose and requirements under this heading.~~

~~PUBLIC HEALTH AND SOCIAL SERVICES EMERGENCY FUND~~

~~(INCLUDING TRANSFER OF FUNDS)~~

~~For an additional amount for "Public Health and Social Services Emergency Fund" to support advanced research and development pursuant to section 319L of the Public Health Service Act, $430,000,000: *Provided*, That the provisions of section 1103 of this Act shall not apply to this appropriation.~~

~~For an additional amount for "Public Health and Social Services Emergency Fund" to prepare for and respond to an influenza pandemic, including the development and purchase of vaccine, antivirals, necessary medical supplies, diagnostics, and other surveillance tools, $420,000,000: *Provided*, That the provisions of section 1103 of this Act shall not apply to this appropriation: *Provided further*, That products purchased with these funds may, at the discretion of the Secretary of Health and Human Services ("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 vaccine 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 in this paragraph 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 purposed specified in this sentence.~~

~~For an additional amount for "Public Health and Social Services Emergency Fund" to improve information technology security at the Department of Health and Human Services, $50,000,000: *Provided*, That the Secretary shall prepare and submit a report by not later than November 1, 2009, and by not later than 15 days after the end of each month thereafter, updating the status of actions taken and funds obligated in this and previous appropriations Acts for pandemic influenza preparedness and response activities, biomedical advanced research and development activities, Project BioShield, and Cyber Security.~~

~~PREVENTION AND WELLNESS FUND~~

~~(INCLUDING TRANSFER OF FUNDS)~~

~~For necessary expenses for a "Prevention and Wellness Fund" to be administered through the Depart-~~

~~ment of Health and Human Services Office of the Secretary, $3,000,000,000: *Provided*, That the provisions of section 1103 of this Act shall not apply to this appropriation: *Provided further*, That of the amount appropriated under this heading not less than $2,350,000,000 shall be transferred to the Centers for Disease Control and Prevention as follows:~~

~~(1) Not less than $954,000,000 shall be used as an additional amount to carry out the immunization program authorized by section 317(a), (j), and (k)(1) of the Public Health Service Act ("section 317 immunization program"), of which $649,900,000 shall be available on October 1, 2009.~~

~~(2) Not less than $296,000,000 shall be used as an additional amount to carry out Part A of title XIX of the Public Health Service Act, of which $148,000,000 shall be available on October 1, 2009.~~

~~(3) Not less than $545,000,000 shall be used as an additional amount to carry out chronic disease, health promotion, and genomics programs, as jointly determined by the Secretary of Health and Human Services ("Secretary") and the Director of the Centers for Disease Control and Prevention ("Director").~~

~~(4) Not less than $335,000,000 shall be used as an additional amount to carry out domestic HIV/AIDS, viral hepatitis, sexually-transmitted diseases, and tuberculosis prevention programs, as jointly determined by the Secretary and the Director.~~

~~(5) Not less than $60,000,000 shall be used as an additional amount to carry out environmental health programs, as jointly determined by the Secretary and the Director.~~

~~(6) Not less than $50,000,000 shall be used as an additional amount to carry out injury prevention and control programs, as jointly determined by the Secretary and the Director.~~

~~(7) Not less than $30,000,000 shall be used as an additional amount for public health workforce development activities, as jointly determined by the Secretary and the Director.~~

~~(8) Not less than $40,000,000 shall be used as an additional amount for the National Institute for Occupational Safety and Health to carry out research activities within the National Occupational Research Agenda.~~

~~(9) Not less than $40,000,000 shall be used as an additional amount for the National Center for Health Statistics.~~

~~*Provided further*, That of the amount appropriated under this heading not less than $150,000,000 shall be available for an additional amount to carry out activities to implement a national action plan to prevent healthcare-associated infections, as determined by the Secretary, of which not less $50,000,000 shall be provided to States to implement healthcare-associated infection reduction strategies: *Provided further*, That of the amount appropriated under this heading $500,000,000 shall be used to carry out evidence-based clinical and community-based prevention and wellness strategies and public health workforce development activities authorized by the Public Health Service Act, as determined by the Secretary, that deliver specific, measurable health outcomes that address chronic and infectious disease rates and health disparities, which shall include evidence-based interventions in obesity, diabetes, heart disease, cancer, tobacco cessation and smoking prevention, and oral health, and which may be used for the Healthy Communities program administered by the Centers for Disease Control and Prevention and other existing community-based programs administered by the Department of Health and Human Services: *Provided further*, That funds appropriated in the preceding proviso may be transferred to other appropriation accounts of the Department of Health and Human Services, as determined by~~

~~the Secretary to be appropriate: *Provided further*, That the Secretary shall, directly or through contracts with public or private entities, provide for annual evaluations of programs carried out with funds provided under this heading in order to determine the quality and effectiveness of the programs: *Provided further*, That the Secretary shall, not later than 1 year after the date of enactment of this Act, submit to the Committees on Appropriations of the House of Representatives and the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate, a report: (1) summarizing the annual evaluations of programs from the preceding proviso; and (2) making recommendations concerning future spending on prevention and wellness activities, including any recommendations made by the United States Preventive Services Task Force in the area of clinical preventive services and the Task Force on Community Preventive Services in the area of community preventive services: *Provided further*, That the Secretary shall enter into a contract with the Institute of Medicine, for which no more than $1,500,000 shall be made available from funds provided in this paragraph, to produce and submit a report to the Congress and the Secretary by no later than 1 year after the date of enactment of this Act that includes rec-~~

~~ommendations on the national priorities for clinical and community-based prevention and wellness activities that will have a positive impact in preventing illness or reducing healthcare costs and that considers input from stakeholders: *Provided further*, That the Secretary shall provide to the Committees on Appropriations of the House of Representatives and the Senate a fiscal year 2009 operating plan for the Prevention and Wellness Fund prior to making any Federal obligations of funds provided under this heading in fiscal year 2009 (excluding funds to carry out the section 317 immunization program), but not later than 90 days after the date of enactment of this Act, and a fiscal year 2010 operating plan for the Prevention and Wellness Fund prior to making any Federal obligations of funds provided under this heading in fiscal year 2010 (excluding funds to carry out the section 317 immunization program), but not later than November 1, 2009, that indicate the prevention priorities to be addressed; provide measurable goals for each prevention priority; detail the allocation of resources within the Department of Health and Human Services; and identify which programs or activities are supported, including descriptions of any new programs or activities: *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 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.~~

~~GENERAL PROVISIONS, THIS SUBTITLE~~

~~SEC. 9201. FEDERAL COORDINATING COUNCIL FOR COMPARATIVE EFFECTIVENESS RESEARCH.~~

~~(a) ESTABLISHMENT.—There is hereby established a Federal Coordinating Council for Comparative Effectiveness Research (in this section referred to as the "Council").~~

~~(b) PURPOSE; DUTIES.—The Council shall—~~

~~(1) assist the offices and agencies of the Federal Government, including the Departments of Health and Human Services, Veterans Affairs, and Defense, and other Federal departments or agencies, to coordinate the conduct or support of comparative effectiveness and related health services research; and~~

~~(2) advise the President and Congress on—~~

~~(A) strategies with respect to the infrastructure needs of comparative effectiveness research within the Federal Government;~~

~~(B) appropriate organizational expenditures for comparative effectiveness research by relevant Federal departments and agencies; and~~

~~(C) opportunities to assure optimum coordination of comparative effectiveness and related health services research conducted or supported by relevant Federal departments and agencies, with the goal of reducing duplicative efforts and encouraging coordinated and complementary use of resources.~~

~~(c) MEMBERSHIP.—~~

~~(1) NUMBER AND APPOINTMENT.—The Council shall be composed of not more than 15 members, all of whom are senior Federal officers or employees with responsibility for health-related programs, appointed by the President, acting through the Secretary of Health and Human Services (in this section referred to as the "Secretary"). Members shall first be appointed to the Council not later than 30 days after the date of the enactment of this Act.~~

~~(2) MEMBERS.—~~

~~(A) IN GENERAL.—The members of the Council shall include one senior officer or employee from each of the following agencies:~~

~~(i) The Agency for Healthcare Research and Quality.~~

~~(ii) The Centers for Medicare and Medicaid Services.~~

~~(iii) The National Institutes of Health.~~

~~(iv) The Office of the National Coordinator for Health Information Technology.~~

~~(v) The Food and Drug Administration.~~

~~(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 ~~(1) INITIAL REPORT.—Not later than June 30,~~
2 ~~2009, the Council shall submit to the President and~~
3 ~~the Congress a report containing information de-~~
4 ~~scribing Federal activities on comparative effective-~~
5 ~~ness research and recommendations for additional~~
6 ~~investments in such research conducted or supported~~
7 ~~from funds made available for allotment by the Sec-~~
8 ~~retary for comparative effectiveness research in this~~
9 ~~Act.~~
10 ~~(2) ANNUAL REPORT.—The Council shall sub-~~
11 ~~mit to the President and Congress an annual report~~
12 ~~regarding its activities and recommendations con-~~
13 ~~cerning the infrastructure needs, appropriate organi-~~
14 ~~zational expenditures and opportunities for better~~
15 ~~coordination of comparative effectiveness research by~~
16 ~~relevant Federal departments and agencies.~~
17 ~~(c) STAFFING; SUPPORT.—From funds made avail-~~
18 ~~able for allotment by the Secretary for comparative effec-~~
19 ~~tiveness research in this Act, the Secretary shall make~~
20 ~~available not more than 1 percent to the Council for staff~~
21 ~~and administrative support.~~
22 **~~SEC. 9202. INVESTMENT IN HEALTH INFORMATION TECH-~~**
23 **~~NOLOGY.~~**
24 ~~(a) IN GENERAL.—The Secretary of Health and~~
25 ~~Human Services shall invest in the infrastructure nec-~~

~~essary 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 Office of the National Coordinator for Health Information Technology. Such investment shall include investment in at least the following:~~

~~(1) Health information technology architecture that will support the nationwide electronic exchange and use of health information in a secure, private, and accurate manner, including connecting health information exchanges, and which may include updating and implementing the infrastructure necessary within different agencies of the Department of Health and Human Services to support the electronic use and exchange of health information.~~

~~(2) Integration of health information technology, including electronic medical records, into the initial and ongoing training of health professionals and others in the healthcare industry who would be instrumental to improving the quality of healthcare through the smooth and accurate electronic use and exchange of health information as determined by the Secretary.~~

~~(3) Training on and dissemination of information on best practices to integrate health information~~

~~technology, including electronic records, into a provider's delivery of care, including community health centers receiving assistance under section 330 of the Public Health Service 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.~~

~~The Secretary shall implement paragraph (3) in coordination with State agencies administering the Medicaid program and the State Children's Health Insurance Program.~~

~~(b) LIMITATION.—None of the funds appropriated to carry out this section may be used to make significant investments in, or provide significant funds for, the acquisition of hardware or software or for the use of an electronic health or medical record, or significant components thereof, unless such investments or funds are for certified products that would permit the full and accurate electronic exchange and use of health information in a medical record, including standards for security, privacy, and quality im-~~

~~provement functions adopted by the Office of the National Coordinator for Health Information Technology.~~

~~(c) REPORT.—The Secretary shall annually report to the Committees on Energy and Commerce, on Ways and Means, on Science and Technology, and on Appropriations of the House of Representatives and the Committees on Finance, on Health, Education, Labor, and Pensions, and on Appropriations of the Senate on the uses of these funds and their impact on the infrastructure for the electronic exchange and use of health information.~~

~~Subtitle C—Education~~

~~DEPARTMENT OF EDUCATION~~

~~EDUCATION FOR THE DISADVANTAGED~~

~~For an additional amount for "Education for the Disadvantaged" to carry out title I of the Elementary and Secondary Education Act of 1965 ("ESEA"), $13,000,000,000. *Provided*, That $5,500,000,000 shall be available for targeted grants under section 1125 of the ESEA, of which $2,750,000,000 shall become available on July 1, 2009, and shall remain available through September 30, 2010, and $2,750,000,000 shall become available on July 1, 2010, and shall remain available through September 30, 2011. *Provided further*, That $5,500,000,000 shall be available for education finance incentive grants under section 1125A of the ESEA, of which~~

~~$2,750,000,000 shall become available on July 1, 2009, and shall remain available through September 30, 2010, and $2,750,000,000 shall become available on July 1, 2010, and shall remain available through September 30, 2011. *Provided further*, That $2,000,000,000 shall be for school improvement grants under section 1003(g) of the ESEA, of which $1,000,000,000 shall become available on July 1, 2009, and shall remain available through September 30, 2010, and $1,000,000,000 shall become available on July 1, 2010, and shall remain available through September 30, 2011. *Provided further*, That the provisions of section 1106 of this Act shall not apply to this appropriation.~~

~~IMPACT AID~~

~~For an additional amount for "Impact Aid" to carry out section 8007 of title VIII of the Elementary and Secondary Education Act of 1965, $100,000,000, which shall remain available through September 30, 2010. *Provided*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be 1 percent instead of the percentage specified in such section.~~

~~SCHOOL IMPROVEMENT PROGRAMS~~

~~For an additional amount for "School Improvement Programs" to carry out subpart 1, part D of title II of the Elementary and Secondary Education Act of 1965~~

~~("ESEA"), and subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, $1,066,000,000: *Provided*, That $1,000,000,000 shall be available for subpart 1, part D of title II of the ESEA, of which $500,000,000 shall become available on July 1, 2009, and shall remain available through September 30, 2010, and $500,000,000 shall become available on July 1, 2010, and remain available through September 30, 2011: *Provided further*, That the provisions of section 1106 of this Act shall not apply to these funds: *Provided further*, That $66,000,000 shall be available for subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, of which $33,000,000 shall become available on July 1, 2009, and shall remain available through September 30, 2010, and $33,000,000 shall become available on July 1, 2010, and remain available through September 30, 2011.~~

~~INNOVATION AND IMPROVEMENT~~

~~For an additional amount for "Innovation and Improvement" to carry out subpart 1, part D and subpart 2, part B of title V of the Elementary and Secondary Education Act of 1965 ("ESEA"), $225,000,000: *Provided*, That $200,000,000 shall be available for subpart 1, part D of title V of the ESEA: *Provided further*, That these funds shall be expended as directed in the fifth, sixth, and seventh provisos under the heading "Innovation and Im-~~

~~provement'' in the Department of Education Appropriations Act, 2008. *Provided further*, That a portion of these funds shall also be used for a rigorous national evaluation by the Institute of Education Sciences, utilizing randomized controlled methodology to the extent feasible, that assesses the impact of performance-based teacher and principal compensation systems supported by the funds provided in this Act on teacher and principal recruitment and retention in high-need schools and subjects. *Provided further*, That $25,000,000 shall be available for subpart 2, part B of title V of the ESEA. *Provided further*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be 1 percent instead of the percentage specified in such section.~~

~~SPECIAL EDUCATION~~

~~For an additional amount for ''Special Education'' for carrying out section 611 and part C of the Individuals with Disabilities Education Act (''IDEA''), $13,600,000,000. *Provided*, That $13,000,000,000 shall be available for section 611 of the IDEA, of which $6,000,000,000 shall become available on July 1, 2009, and remain available through September 30, 2010, and $7,000,000,000 shall become available on July 1, 2010, and remain available through September 30, 2011. *Provided further*, That $600,000,000 shall be available for~~

~~part C of the IDEA, of which $300,000,000 shall become available on July 1, 2009, and remain available through September 30, 2010, and $300,000,000 shall become available on July 1, 2010, and remain available through September 30, 2011: *Provided further*, That by July 1, 2009, the Secretary of Education shall reserve the amount needed for grants under section 643(c) of the IDEA from funds available for obligation on July 1, 2009, with any remaining funds to be allocated in accordance with section 643(c) of the IDEA: *Provided further*, That by July 1, 2010, the Secretary shall reserve the amount needed for grants under section 643(c) of the IDEA from funds available for obligation on July 1, 2010, with any remaining funds to be allocated in accordance with section 643(c) of the IDEA: *Provided further*, 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 the provisions of section 1106 of this Act shall not apply to this appropriation.~~

~~REHABILITATION SERVICES AND DISABILITY RESEARCH~~

~~For an additional amount for "Rehabilitation Services and Disability Research" for providing grants to~~

~~States to carry out the Vocational Rehabilitation Services program under part B of title I and parts B and C of chapter 1 and chapter 2 of title VII of the Rehabilitation Act of 1973, $700,000,000: *Provided*, That $500,000,000 shall be available for part B of title I of the Rehabilitation Act, of which $250,000,000 shall become available on October 1, 2009: *Provided further*, That funds provided herein shall not be considered in determining the amount required to be appropriated under section 100(b)(1) of the Rehabilitation Act of 1973 in any fiscal year: *Provided further*, That, notwithstanding section 7(14)(A), the Federal share of the costs of vocational rehabilitation services provided with the funds provided herein shall be 100 percent: *Provided further*, That the provisions of section 1106 of this Act shall not apply to these funds: *Provided further*, That $200,000,000 shall be available for parts B and C of chapter 1 and chapter 2 of title VII of the Rehabilitation Act, of which $100,000,000 shall become available on October 1, 2009: *Provided further*, That $34,775,000 shall be for State Grants, $114,581,000 shall be for independent living centers, and $50,644,000 shall be for services for older blind individuals.~~

~~STUDENT FINANCIAL ASSISTANCE~~

~~For an additional amount for "Student Financial Assistance" to carry out subpart 1 of part A and part C~~

~~of title IV of the Higher Education Act of 1965 (''HEA''), $16,126,000,000, which shall remain available through September 30, 2011: *Provided*, That $15,636,000,000 shall be available for subpart 1of part A of title IV of the HEA: *Provided further*, That $490,000,000 shall be available for part C of title IV of the HEA, of which $245,000,000 shall become available on October 1, 2009: *Provided further*, That the provisions of section 1106 of this Act shall not apply to this appropriation.~~

~~The maximum Pell Grant for which a student shall be eligible during award year 2009–2010 shall be $4,860.~~

~~STUDENT AID ADMINISTRATION~~

~~For an additional amount for ''Student Aid Administration'' to carry out part D of title I, and subparts 1, 3, and 4 of part A, and parts B, C, D, and E of title IV of the Higher Education Act of 1965, $50,000,000, which shall remain available through September 30, 2011: *Provided*, That such amount shall also be available for an independent audit of programs and activities authorized under section 459A of such Act: *Provided further*, That the provisions of section 1106 of this Act shall not apply to this appropriation.~~

~~HIGHER EDUCATION~~

~~For an additional amount for ''Higher Education'' to carry out part A of title H of the Higher Education Act~~

~~of 1965, $100,000,000: *Provided*, That section 203(c)(1) of such Act shall not apply to awards made with these funds.~~

~~INSTITUTE OF EDUCATION SCIENCES~~

~~For an additional amount for Institute of Education Sciences to carry out section 208 of the Educational Technical Assistance Act, $250,000,000, which may be used for Statewide data systems that include postsecondary and workforce information, of which up to $5,000,000 may be used for State data coordinators and for awards to public or private organizations or agencies to improve data coordination: *Provided*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be 1 percent instead of the percentage specified in such section.~~

~~SCHOOL MODERNIZATION, RENOVATION, AND REPAIR~~

~~For carrying out section 9301 of this Act, $14,000,000,000: *Provided*, That amount available under section 9301 of this Act for administration and oversight shall take the place of the set-aside under section 1106 of this Act.~~

~~HIGHER EDUCATION MODERNIZATION, RENOVATION, AND REPAIR~~

~~For carrying out section 9302 of this Act, $6,000,000,000: *Provided*, That amount available under~~

~~section 9302 of this Act for administration and oversight shall take the place of the set-aside under section 1106 of this Act.~~

~~GENERAL PROVISIONS, THIS SUBTITLE~~

~~SEC. 9301. 21ST CENTURY GREEN HIGH-PERFORMING PUBLIC SCHOOL FACILITIES.~~

~~(a) DEFINITIONS.—In this section:~~

~~(1) The term "Bureau-funded school" has the meaning given to such term in section 1141 of the Education Amendments of 1978 (25 U.S.C. 2021).~~

~~(2) The term "charter school" has the meaning given such term in section 5210 of the Elementary and Secondary Education Act of 1965.~~

~~(3) The term "local educational agency"—~~

~~(A) has the meaning given to that term in section 9101 of the Elementary and Secondary Education Act of 1965, and shall also include the Recovery School District of Louisiana and the New Orleans Public Schools; and~~

~~(B) includes any public charter school that constitutes a local educational agency under State law.~~

~~(4) The term "outlying area"—~~

~~(A) means the United States Virgin Islands, Guam, American Samoa, and the Com-~~

~~monwealth of the Northern Mariana Islands; and~~

~~(B) includes the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.~~

~~(5) The term "public school facilities" includes charter schools.~~

~~(6) The term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.~~

~~(7) 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.~~

~~(8) The term "Energy Star" means the Energy Star program of the United States Department of Energy and the United States Environmental Protection Agency.~~

~~(9) The term "CHPS Criteria" means the green building rating program developed by the Collaborative for High Performance Schools.~~

~~(10) The term "Green Globes" means the Green Building Initiative environmental design and rating system referred to as Green Globes.~~

~~(b) PURPOSE.—Grants under this section shall be for the purpose of modernizing, renovating, or repairing public school facilities, based on their need for such improvements, to be safe, healthy, high-performing, and up-to-date technologically.~~

~~(c) ALLOCATION OF FUNDS.—~~

~~(1) RESERVATIONS.—~~

~~(A) IN GENERAL.—From the amount appropriated to carry out this section, the Secretary of Education shall reserve 1 percent of such amount, consistent with the purpose described in subsection (b)—~~

~~(i) to provide assistance to the outlying areas; and~~

~~(ii) for payments to the Secretary of the Interior to provide assistance to Bureau-funded schools.~~

~~(B) ADMINISTRATION AND OVERSIGHT.—The Secretary may, in addition, reserve up to $6,000,000 of such amount for administration and oversight of this section.~~

~~(2) ALLOCATION TO STATES.—~~

~~(A) STATE-BY-STATE ALLOCATION.—Of the amount appropriated to carry out this section, and not reserved under paragraph (1), each State shall be allocated an amount in proportion to the amount received by all local educational agencies in the State under part A of title I of the Elementary and Secondary Education Act of 1965 for fiscal year 2008 relative to the total amount received by all local educational agencies in every State under such part for such fiscal year.~~

~~(B) STATE ADMINISTRATION.—A State may reserve up to 1 percent of its allocation under subparagraph (A) to carry out its responsibilities under this section, including—~~

~~(i) providing technical assistance to local educational agencies;~~

~~(ii) developing, within 6 months of receiving its allocation under subparagraph (A), a plan to develop a database that includes an inventory of public school facilities in the State and the modernization, renovation, and repair needs of, energy use by, and the carbon footprint of such schools; and~~

~~(iii) developing a school energy efficiency quality plan.~~

~~(C) GRANTS TO LOCAL EDUCATIONAL AGENCIES.—From the amount allocated to a State under subparagraph (A), each local educational agency in the State that meets the requirements of section 1112(a) of the Elementary and Secondary Education Act of 1965 shall receive an amount in proportion to the amount received by such local educational agency under part A of title I of that Act for fiscal year 2008 relative to the total amount received by all local educational agencies in the State under such part for such fiscal year, except that no local educational agency that received funds under part A of title I of that Act for such fiscal year shall receive a grant of less than $5,000.~~

~~(D) SPECIAL RULE.—Section 1122(c)(3) of the Elementary and Secondary Education Act of 1965 shall not apply to subparagraph (A) or (C).~~

~~(3) SPECIAL RULES.—~~

~~(A) DISTRIBUTIONS BY SECRETARY.—The Secretary of Education shall make and dis-~~

~~tribute the reservations and allocations described in paragraphs (1) and (2) not later than 30 days after the date of the enactment of this Act.~~

~~(B) DISTRIBUTIONS BY STATES.—A State shall make and distribute the allocations described in paragraph (2)(C) within 30 days of receiving such funds from the Secretary.~~

~~(d) USE IT OR LOSE IT REQUIREMENTS.—~~

~~(1) DEADLINE FOR BINDING COMMITMENTS.—Each local educational agency receiving funds under this section shall enter into contracts or other binding commitments not later than 1 year after the date of the enactment of this Act (or not later than 9 months after such funds are awarded, if later) to make use of 50 percent of such funds, and shall enter into contracts or other binding commitments not later than 2 years after the date of the enactment of this Act (or not later than 21 months after such funds are awarded, if later) to make use of the remaining funds. In the case of activities to be carried out directly by a local educational agency (rather than by contracts, subgrants, or other arrangements with third parties), a certification by the agency specifying the amounts, planned timing, and~~

~~purpose of such expenditures shall be deemed a binding commitment for purposes of this subsection.~~

~~(2) REDISTRIBUTION OF UNCOMMITTED FUNDS.—A State shall recover or deobligate any funds not committed in accordance with paragraph (1), and redistribute such funds to other local educational agencies eligible under this section and able to make use of such funds in a timely manner (including binding commitments within 120 days after the reallocation).~~

~~(c) ALLOWABLE USES OF FUNDS.—A local educational agency receiving a grant under this section shall use the grant for modernization, renovation, or repair of public school facilities, including—~~

~~(1) repairing, replacing, or installing roofs, including extensive, intensive or semi-intensive green roofs, electrical wiring, plumbing systems, sewage systems, lighting systems, or components of such systems, windows, or doors, including security doors;~~

~~(2) repairing, replacing, or installing heating, ventilation, air conditioning systems, or components of such systems (including insulation), including indoor air quality assessments;~~

~~(3) bringing public schools into compliance with fire, health, and safety codes, including professional~~

~~installation of fire/life safety alarms, including modernizations, renovations, and repairs that ensure that schools are prepared for emergencies, such as improving building infrastructure to accommodate security measures;~~

~~(4) 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), except that such modifications shall not be the primary use of the grant;~~

~~(5) asbestos or polychlorinated biphenyls abatement or removal from public school facilities;~~

~~(6) implementation of measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls, abatement, or a combination of each;~~

~~(7) implementation of measures designed to reduce or eliminate human exposure to mold or mildew;~~

~~(8) upgrading or installing educational technology infrastructure to ensure that students have access to up-to-date educational technology;~~

~~(9) technology activities that are carried out in connection with school repair and renovation, including—~~

~~(A) wiring;~~

~~(B) acquiring hardware and software;~~

~~(C) acquiring connectivity linkages and resources; and~~

~~(D) acquiring microwave, fiber optics, cable, and satellite transmission equipment;~~

~~(10) modernization, renovation, or repair of science and engineering laboratory facilities, libraries, and career and technical education facilities, including those related to energy efficiency and renewable energy, and improvements to building infrastructure to accommodate bicycle and pedestrian access;~~

~~(11) renewable energy generation and heating systems, including solar, photovoltaic, wind, geothermal, or biomass, including wood pellet, systems or components of such systems;~~

~~(12) other modernization, renovation, or repair of public school facilities to—~~

~~(A) improve teachers' ability to teach and students' ability to learn;~~

~~(B) ensure the health and safety of students and staff;~~

~~(C) make them more energy efficient; or~~

~~(D) reduce class size; and~~

~~(13) required environmental remediation related to public school modernization, renovation, or repair described in paragraphs (1) through (12).~~

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

~~(1) payment of maintenance costs; or~~

~~(2) stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public.~~

~~(g) SUPPLEMENT, NOT SUPPLANT.—A local educational agency receiving a grant under this section shall use such Federal funds only to supplement and not supplant the amount of funds that would, in the absence of such Federal funds, be available for modernization, renovation, or repair of public school facilities.~~

~~(h) PROHIBITION REGARDING STATE AID.—A State shall not take into consideration payments under this section in determining the eligibility of any local educational agency in that State for State aid, or the amount of State aid, with respect to free public education of children.~~

~~(i) SPECIAL RULE ON CONTRACTING.—Each local educational agency receiving a grant under this section shall ensure that, if the agency carries out modernization, renovation, or repair through a contract, the process for any such contract ensures the maximum number of qualified bidders, including local, small, minority, and women- and veteran-owned businesses, through full and open competition.~~

~~(j) SPECIAL RULE ON USE OF IRON AND STEEL PRODUCED IN THE UNITED STATES.—~~

~~(1) IN GENERAL.—A local educational agency shall not obligate or expend funds received under this section for a project for the modernization, renovation, or repair of a public school facility unless all of the iron and steel used in such project is produced in the United States.~~

~~(2) EXCEPTIONS.—The provisions of paragraph (1) shall not apply in any case in which the local educational agency finds that—~~

~~(A) their application would be inconsistent with the public interest;~~

~~(B) iron and steel are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or~~

~~(C) inclusion of iron and steel produced in the United States will increase the cost of the overall project contract by more than 25 percent.~~

~~(k) 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).~~

~~(l) CHARTER SCHOOLS.—A local educational agency receiving an allocation under this section shall use an equitable portion of that allocation for allowable activities benefitting charter schools within its jurisdiction, as determined based on the percentage of students from low-income families in the schools of the agency who are enrolled in charter schools and on the needs of those schools as determined by the agency.~~

~~(m) GREEN SCHOOLS.—~~

~~(1) IN GENERAL.—A local educational agency shall use not less than 25 percent of the funds received under this section for public school modernization, renovation, or repairs that are certified, verified, or consistent with any applicable provisions of—~~

~~(A) the LEED Green Building Rating System;~~

~~(B) Energy Star;~~

~~(C) the CHPS Criteria;~~

~~(D) Green Globes; or~~

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

~~(2) TECHNICAL ASSISTANCE.—The Secretary, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall provide outreach and technical assistance to States and school districts concerning the best practices in school modernization, renovation, and repair, including those related to student academic achievement and student and staff health, energy efficiency, and environmental protection.~~

~~(n) YOUTHBUILD PROGRAMS.—The Secretary of Education, in consultation with the Secretary of Labor, shall work with recipients of funds under this section to promote appropriate opportunities for participants in a YouthBuild program (as defined in section 173A of the Workforce Investment Act of 1998 (29 U.S.C. 2918a)) to gain employment experience on modernization, renovation, and repair projects funded under this section.~~

~~(o) REPORTING.—~~

~~(1) REPORTS BY LOCAL EDUCATIONAL AGENCIES.—Local educational agencies receiving a grant under this section shall compile, and submit to the State educational agency (which shall compile and submit such reports to the Secretary), a report describing the projects for which such funds were used, including—~~

~~(A) the number of public schools in the agency, including the number of charter schools;~~

~~(B) the total amount of funds received by the local educational agency under this section and the amount of such funds expended, including the amount expended for modernization, renovation, and repair of charter schools;~~

~~(C) the number of public schools in the agency with a metro-centric locale code of 41, 42, or 43 as determined by the National Center for Education Statistics and the percentage of funds received by the agency under this section that were used for projects at such schools;~~

~~(D) the number of public schools in the agency that are eligible for schoolwide programs under section 1114 of the Elementary and Sec-~~

~~ondary Education Act of 1965 and the percentage of funds received by the agency under this section that were used for projects at such schools;~~

~~(E) the cost of each project, which, if any, of the standards described in subsection (k)(1) the project met, and any demonstrable or expected academic, energy, or environmental benefits as a result of the project;~~

~~(F) if flooring was installed, whether—~~

~~(i) it was low- or no-VOC (Volatile Organic Compounds) flooring;~~

~~(ii) it was made from sustainable materials; and~~

~~(iii) use of flooring described in clause (i) or (ii) was cost effective; and~~

~~(G) the total number and amount of contracts awarded, and the number and amount of contracts awarded to local, small, minority-owned, women-owned, and veteran-owned businesses.~~

~~(2) REPORTS BY SECRETARY.—Not later than December 31, 2011, the Secretary of Education shall submit to the Committees on Education and Labor and Appropriations of the House of Rep-~~

~~resentatives and the Committees on Health, Education, Labor, and Pensions and Appropriations of the Senate a report on grants made under this section, including the information described in paragraph (1), the types of modernization, renovation, and repair funded, and the number of students impacted, including the number of students counted under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965.~~

~~SEC. 9302. HIGHER EDUCATION MODERNIZATION, RENOVATION, AND REPAIR.~~

~~(a) PURPOSE.—Grants awarded under this section shall be for the purpose of modernizing, renovating, and repairing institution of higher education facilities that are primarily used for instruction, research, or student housing.~~

~~(b) GRANTS TO STATE HIGHER EDUCATION AGENCIES.—~~

~~(1) FORMULA.—From the amounts appropriated to carry out this section, the Secretary of Education shall allocate funds to State higher education 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 6 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)(B).~~

~~(4) ADMINISTRATION AND OVERSIGHT EXPENSES.—From the amounts appropriated to carry out this section, not more than $6,000,000 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, and repair.~~

~~(C) PRIORITY CONSIDERATIONS.—In awarding subgrants under this section, each State higher education agency shall give priority consideration to institutions of higher education with any of the following characteristics:~~

~~(i) The institution is eligible for Federal assistance under title III or title V of the Higher Education Act of 1965.~~

~~(ii) The institution was impacted by a major disaster or emergency declared by the President (as defined in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2))), including an institution affected by a Gulf hurricane disaster, as such term is defined in section 824(g)(1) of the Higher Education Act of 1965 (20 U.S.C. 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 adminis-~~

~~trative 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 that are primarily for instruction, research, or student housing.~~

~~(2) GREEN SCHOOL REQUIREMENT.—An institution of higher education receiving a subgrant under this section shall use not less than 25 percent of such subgrant to carry out projects for modernization, renovation, or repair that are certified, verified, or consistent with the applicable provisions of—~~

~~(A) the LEED Green Building Rating System;~~

~~(B) Energy Star;~~

~~(C) the CHPS Criteria;~~

~~(D) Green Globes; or~~

~~(E) an equivalent program adopted by the State or the State higher education agency.~~

~~(3) 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.

(4) USE IT OR LOSE IT REQUIREMENTS.—

(A) DEADLINE FOR BINDING COMMITMENTS.—Each institution of higher education receiving a subgrant under this section shall enter into contracts or other binding commitments not later than 1 year after the date of the enactment of this Act (or not later than 9 months after the subgrant is awarded, if later) to make use of 50 percent of the funds awarded, and shall enter into contracts or other binding commitments not later than 2 years after the date of the enactment of this Act (or not later than 21 months after the subgrant is

~~awarded, if later) to make use of the remaining funds. In the case of activities to be carried out directly by an institution of higher education receiving such a subgrant (rather than by contracts, subgrants, or other arrangements with third parties), a certification by the institution specifying the amounts, planned timing, and purpose of such expenditures shall be deemed a binding commitment for purposes of this section.~~

~~(B) REDISTRIBUTION OF UNCOMMITTED FUNDS.—A State higher education agency shall recover or deobligate any subgrant funds not committed in accordance with subparagraph (A), and redistribute such funds to other institutions of higher education that are—~~

~~(i) eligible for subgrants under this section; and~~

~~(ii) able to make use of such funds in a timely manner (including binding commitments within 120 days after the reallocation).~~

~~(c) 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 aca-~~

~~demic, 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) CHPS CRITERIA.—The term "CHPS Criteria" means the green building rating program developed by the Collaborative for High Performance Schools.~~

~~(2) ENERGY STAR.—The term "Energy Star" means the Energy Star program of the United States Department of Energy and the United States Environmental Protection Agency.~~

~~(3) GREEN GLOBES.—The term "Green Globes" means the Green Building Initiative environmental design and rating system referred to as Green Globes.~~

~~(4) 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.~~

~~(5) 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.~~

~~(6) SECRETARY.—The term "Secretary" means the Secretary of Education.~~

~~(7) STATE.—The term "State" has the meaning given such term in section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003).~~

~~(8) STATE HIGHER EDUCATION AGENCY.—The term "State higher education agency" has the meaning given such term in section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003).~~

~~SEC. 9303. MANDATORY PELL GRANTS.~~

~~Section 401(b)(9)(A) of the Higher Education Act of 1965 (20 U.S.C. 1070a(b)(9)(A)) is amended—~~

~~(1) in clause (ii), by striking "$2,090,000,000" and inserting "$2,733,000,000"; and~~

~~(2) in clause (iii), by striking "$3,030,000,000" and inserting "$3,861,000,000".~~

~~SEC. 9304. INCREASE STUDENT LOAN LIMITS.~~

~~(a) AMENDMENTS.—Section 428H(d) of the Higher Education Act of 1965 (20 U.S.C. 1078–8(d)) is amended—~~

~~(1) in paragraph (3)—~~

~~(A) in subparagraph (A), by striking "$2,000" and inserting "$4,000"; and~~

~~(B) in subparagraph (B), by striking "$31,000" and inserting "$39,000"; and~~

~~(2) in paragraph (4)—~~

~~(A) in subparagraph (A)—~~

~~(i) in clause (i)(I) and clause (iii)(I), by striking "$6,000" each place it appears and inserting "$8,000"; and~~

~~(ii) in clause (ii)(I) and clause (iii)(II), by striking "$7,000" each place it appears and inserting "$9,000"; and~~

~~(B) in subparagraph (B), by striking "$57,500" and inserting "$65,500".~~

~~(b) EFFECTIVE DATE.—The amendments made by this section shall be effective for loans first disbursed on or after January 1, 2009.~~

~~SEC. 9305. STUDENT LENDER SPECIAL ALLOWANCE.~~

~~(a) TEMPORARY CALCULATION RULE.—Section 438(b)(2)(I) of the Higher Education Act of 1965 (20 U.S.C. 1087–1(b)(2)(I)) is amended by adding at the end the following new clause:~~

~~"(vii) TEMPORARY CALCULATION RULE DURING UNSTABLE COMMERCIAL PAPER MARKETS.—~~

~~"(I) CALCULATION BASED ON LIBOR.—For the calendar quarter beginning on October 1, 2008, and ending on December 31, 2008, in com-~~

~~puting the special allowance paid pursuant to this subsection with respect to loans for which the first disbursement is made on or after January 1, 2000, clause (i)(I) of this subparagraph shall be applied by substituting 'the rate that is the average rate of the 3-month London Inter Bank Offered Rate (LIBOR) for United States dollars in effect for each of the days in such quarter as compiled and released by the British Bankers Association, minus 0.13 percent,' for 'the average of the bond equivalent rates of the quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H–15 (or its successor) for such 3-month period'.~~

~~"(II) PARTICIPATION INTERESTS.—Notwithstanding subclause (I) of this clause, the special allowance paid on any loan held by a lender that has sold participation interests in~~

~~such loan to the Secretary shall be the rate computed under this subparagraph without regard to subclause (I) of this clause, unless the lender agrees that the participant's yield with respect to such participation interest is to be calculated in accordance with subclause (I) of this clause.''.~~

~~(b) CONFORMING AMENDMENTS.—Section 438(b)(2)(I) of the Higher Education Act of 1965 (20 U.S.C. 1087–1(b)(2)(I)) is further amended—~~

~~(1) in clause (i)(II), by striking ''such average bond equivalent rate'' and inserting ''the rate determined under subclause (I)''; and~~

~~(2) in clause (v)(III), by striking ''(iv), and (vi)'' and inserting ''(iv), (vi), and (vii)''.~~

~~Subtitle D—Related Agencies~~

~~CORPORATION FOR NATIONAL AND COMMUNITY SERVICE~~

~~OPERATING EXPENSES~~

~~For an additional amount for ''Operating Expenses'' to carry out the Domestic Volunteer Service Act of 1973 and the National and Community Service Act of 1990 (''1990 Act''), $160,000,000, which shall be used to expand existing AmeriCorps grants: *Provided*, That funds made available under this heading may be used to provide~~

~~adjustments to awards made prior to September 30, 2010 in order to waive the match requirement authorized in section 121(e)(4) of part I of subtitle C of the 1990 Act, if the Chief Executive Officer of the Corporation for National and Community Service ("CEO") determines that the grantee has reduced capacity to meet this requirement: *Provided further*, That in addition to requirements identified herein, funds provided under this heading shall be subject to the terms and conditions under which funds are appropriated in fiscal year 2009. *Provided further*, That the CEO shall provide the Committees on Appropriations of the House of Representatives and the Senate a fiscal year 2009 operating plan for the funds appropriated under this heading prior to making any Federal obligations of such funds in fiscal year 2009, but not later than 90 days after the date of enactment of this Act, and a fiscal year 2010 operating plan for such funds prior to making any Federal obligations of such funds in fiscal year 2010, but not later than November 1, 2009, that detail the allocation of resources and the increased number of volunteers supported by the AmeriCorps programs: *Provided further*, That the CEO shall provide to the Committees on Appropriations of the House of Representatives and the Senate a report on the actual obligations, expenditures, and unobligated balances for each activity funded under this head-~~

~~ing 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 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).~~

~~SOCIAL SECURITY ADMINISTRATION~~

~~LIMITATION ON ADMINISTRATIVE EXPENSES~~

~~(INCLUDING TRANSFER OF FUNDS)~~

~~For an additional amount for "Limitation on Administrative Expenses", $900,000,000, which shall be used as follows:~~

~~(1) $400,000,000 for the construction and associated costs to establish a new National Computer Center, which may include lease or purchase of real property: *Provided*, That the construction plan and site selection for such center shall be subject to review and approval by the Office of Management and Budget: *Provided further*, That the Committees on Appropriations of the House of Representatives and the Senate shall be notified 15 days in advance of the lease or purchase of such site: *Provided further*, That such center shall continue to be a government-operated facility.~~

~~(2) $500,000,000 for processing disability and retirement workloads: *Provided*, That up to $40,000,000 may be used by the Commissioner of Social Security for health information technology research and activities to facilitate the adoption of electronic medical records in disability claims, including the transfer of funds to "Supplemental Se-~~

~~curity Income Program'' to carry out activities under section 1110 of the Social Security Act.~~

~~TITLE X—MILITARY CONSTRUCTION AND VETERANS AFFAIRS~~

~~DEPARTMENT OF DEFENSE~~

~~MILITARY CONSTRUCTION, ARMY~~

~~For an additional amount for ''Military Construction, Army'', $920,000,000: *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 amount provided under this heading, $600,000,000 shall be for training and recruit troop housing, $220,000,000 shall be for permanent party troop housing, and $100,000,000 shall be for child development centers: *Provided further*, That not later than 30 days after the date of enactment of this Act, the Secretary of Defense shall submit to the Committees on Appropriations of the House of Representatives and the Senate an expenditure plan for funds provided under this heading.~~

~~MILITARY CONSTRUCTION, NAVY AND MARINE CORPS~~

~~For an additional amount for ''Military Construction, Navy and Marine Corps'', $350,000,000: *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 amount provided under this heading, $170,000,000 shall be for sailor and marine housing and $180,000,000 shall be for child development centers. *Provided further*, That not later than 30 days after the date of enactment of this Act, the Secretary of Defense shall submit to the Committees on Appropriations of the House of Representatives and the Senate an expenditure plan for funds provided under this heading.~~

~~MILITARY CONSTRUCTION, AIR FORCE~~

~~For an additional amount for "Military Construction, Air Force", $280,000,000. *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 amount provided under this heading, $200,000,000 shall be for airmen housing and $80,000,000 shall be for child development centers. *Provided further*, That not later than 30 days after the date of enactment of this Act, the Secretary of Defense shall submit to the Committees on Appropriations of the House of Representatives and the Sen-~~

~~ate an expenditure plan for funds provided under this heading.~~

~~MILITARY CONSTRUCTION, DEFENSE-WIDE~~

~~For an additional amount for "Military Construction, Defense-Wide", $3,750,000,000, for the construction of hospitals and ambulatory surgery centers: *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 not later than 30 days after the date of enactment of this Act, the Secretary of Defense shall submit to the Committees on Appropriations of the House of Representatives and the Senate an expenditure plan for funds provided under this heading.~~

~~MILITARY CONSTRUCTION, ARMY NATIONAL GUARD~~

~~For an additional amount for "Military Construction, Army National Guard", $140,000,000: *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 not later than 30 days after the date of enactment of this Act, the Secretary of Defense shall submit to the Committees on Appropriations of the House of Represent-~~

~~atives and the Senate an expenditure plan for funds provided under this heading.~~

~~MILITARY CONSTRUCTION, AIR NATIONAL GUARD~~

~~For an additional amount for "Military Construction, Air National Guard", $70,000,000: *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 not later than 30 days after the date of enactment of this Act, the Secretary of Defense shall submit to the Committees on Appropriations of the House of Representatives and the Senate an expenditure plan for funds provided under this heading.~~

~~MILITARY CONSTRUCTION, ARMY RESERVE~~

~~For an additional amount for "Military Construction, Army Reserve", $100,000,000: *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 not later than 30 days after the date of enactment of this Act, the Secretary of Defense shall submit to the Committees on Appropriations of the House of Representatives and the~~

~~Senate an expenditure plan for funds provided under this heading.~~

~~MILITARY CONSTRUCTION, NAVY RESERVE~~

~~For an additional amount for "Military Construction, Navy Reserve", $30,000,000: *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 not later than 30 days after the date of enactment of this Act, the Secretary of Defense shall submit to the Committees on Appropriations of the House of Representatives and the Senate an expenditure plan for funds provided under this heading.~~

~~MILITARY CONSTRUCTION, AIR FORCE RESERVE~~

~~For an additional amount for "Military Construction, Air Force Reserve", $60,000,000: *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 not later than 30 days after the date of enactment of this Act, the Secretary of Defense shall submit to the Committees on Appropriations of the House of Representatives and the~~

~~Senate an expenditure plan for funds provided under this heading.~~

~~DEPARTMENT OF DEFENSE BASE CLOSURE ACCOUNT 1990~~

~~For an additional amount to be deposited into the Department of Defense Base Closure Account 1990, established by section 2906(a)(1) of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note), $300,000,000: *Provided*, That not later than 30 days after the date of enactment of this Act, the Secretary of Defense shall submit to the Committees on Appropriations of the House of Representatives and the Senate an expenditure plan for funds provided under this heading.~~

~~DEPARTMENT OF VETERANS AFFAIRS~~

~~VETERANS HEALTH ADMINISTRATION~~

~~MEDICAL FACILITIES~~

~~For an additional amount for "Medical Facilities" for non-recurring maintenance, including energy projects, $950,000,000: *Provided*, That not later than 30 days after the date of enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Appropriations of the House of Representatives and the Senate an expenditure plan for funds provided under this heading.~~

~~NATIONAL CEMETERY ADMINISTRATION~~

~~For an additional amount for "National Cemetery Administration" for monument and memorial repairs, $50,000,000. *Provided*, That not later than 30 days after the date of enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Appropriations of the House of Representatives and the Senate an expenditure plan for funds provided under this heading.~~

~~TITLE XI—DEPARTMENT OF STATE~~

~~DEPARTMENT OF STATE~~

~~ADMINISTRATION OF FOREIGN AFFAIRS~~

~~CAPITAL INVESTMENT FUND~~

~~For an additional amount for "Capital Investment Fund", $276,000,000, 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 mission-critical operations and projects, 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 shall submit to the Committees on Appropriations of the House of Representatives and the Senate~~

~~within 90 days of enactment of this Act a detailed spending plan for funds appropriated under this heading.~~

~~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. *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", and such amount shall be in lieu of amounts available under section 1106 of this Act. *Provided*, That the Secretary of State shall submit to the Committees on Appropriations of the House of Representatives and the Senate within 90 days of enactment of this Act a detailed spending plan for funds appropriated under this heading.~~

~~TITLE XII—TRANSPORTATION, AND HOUSING AND URBAN DEVELOPMENT~~

~~DEPARTMENT OF TRANSPORTATION~~

~~FEDERAL AVIATION ADMINISTRATION~~

~~GRANTS-IN-AID FOR AIRPORTS~~

~~For an additional amount for "Grants-in-Aid for Airports", to enable the Secretary of Transportation to make grants for discretionary projects as authorized by subchapter I of chapter 471 and subchapter I of chapter 475 of title 49, United States Code, $3,000,000,000: *Provided*, That such funds shall not be subject to apportionment formulas, special apportionment categories, or minimum percentages under chapter 471: *Provided further*, That the conditions, certifications, and assurances required for grants under subchapter I of chapter 471 of such title apply: *Provided further*, That for purposes of applying section 1104 of this Act to this appropriation, the deadline for grantees to enter into contracts or other binding commitments to make use of not less than 50 percent of the funds awarded shall be 90 days after award of the grant.~~

~~FEDERAL HIGHWAY ADMINISTRATION~~

~~HIGHWAY INFRASTRUCTURE INVESTMENT~~

~~For projects and activities eligible under section 133 of title 23, United States Code, section 144 of such title~~

~~(without regard to subsection (g)), and sections 103, 119, 134, 148, and 149 of such title, $30,000,000,000, of which $300,000,000 shall be for Indian reservation roads under section 204 of such title; $250,000,000 shall be for park roads and parkways under section 204 of such title; $20,000,000 shall be for highway surface transportation and technology training under section 140(b) of such title; and $20,000,000 shall be for disadvantaged business enterprises bonding assistance under section 332(c) of title 49, United States Code: *Provided*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall not be more than 0.2 percent of the funds made available under this heading instead of the percentage specified in such section: *Provided further*, That, after making the set-asides authorized by the previous provisos, the funds made available under this heading shall be distributed among the States, and Puerto Rico, American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands, in the same ratio as the obligation limitation for fiscal year 2008 was distributed among the States in accordance with the formula specified in section 120(a)(6) of division K of Public Law 110–161, but, in the case of the Puerto Rico Highway Program and the Territorial Highway Program, under section 120(a)(5) of such division: *Provided further*, That 45 percent of the~~

~~funds distributed to a State under this heading shall be suballocated within the State in the manner and for the purposes described in section 133(d) of title 23, United States Code, (without regard to the comparison to fiscal year 2005 in paragraph (2)): *Provided further*, That in selecting projects to be funded, recipients shall give priority to projects that can award contracts within 90 days of enactment of this Act, are included in an approved Statewide Transportation Improvement Program (STIP) and/or Metropolitan Transportation Improvement Program (TIP), are projected for completion within a three-year time frame, and are located in economically distressed areas as defined by section 301 of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3161): *Provided further*, That funds made available under this heading shall be administered as if apportioned under chapter 1 of title 23, United States Code, except for funds made available for Indian reservation roads and park roads and parkways which shall be administered in accordance with chapter 2 of title 23, United States Code: *Provided further*, That the Federal share payable on account of any project or activity carried out with funds made available under this heading shall, at the option of the recipient, be up to 100 percent of the total cost thereof: *Provided further*, That funds~~

~~made available by this Act shall not be obligated for the purposes authorized under section 115(b) of title 23, United States Code: *Provided further*, That the provisions of section 1101(b) of Public Law 109–59 shall apply to funds made available under this heading: *Provided further*, That, in lieu of the redistribution required by section 1104(b) of this Act, if less than 50 percent of the funds made available to each State and territory under this heading are obligated within 90 days after the date of distribution of those funds to the States and territories, then the portion of the 50 percent of the total funding distributed to the State or territory that has not been obligated shall be redistributed, in the manner described in section 120(c) of division K of Public Law 110–161, to those States and territories that have obligated at least 50 percent of the funds made available under this heading and are able to obligate amounts in addition to those previously distributed, except that, for those funds suballocated within the State, if less than 50 percent of the funds so suballocated within the State are obligated within 75 days of suballocation, then the portion of the 50 percent of funding so suballocated that has not been obligated will be returned to the State for use anywhere in the State prior to being redistributed in accordance with the first part of this proviso: *Provided further*, That, in lieu of the~~

~~redistribution required by section 1104(b) of this Act, any funds made available under this heading that are not obligated by August 1, 2010, shall be redistributed, in the manner described in section 120(c) of division K of Public Law 110–161, to those States able to obligate amounts in addition to those previously distributed, except that funds suballocated within the State that are not obligated by June 1, 2010, will be returned to the State for use anywhere in the State prior to being redistributed in accordance with the first part of this proviso: *Provided further*, That notwithstanding section 1103 of this Act, funds made available under this heading shall be apportioned not later than 7 days after the date of enactment of this Act.~~

~~FEDERAL RAILROAD ADMINISTRATION~~

~~CAPITAL ASSISTANCE FOR INTERCITY PASSENGER RAIL SERVICE~~

~~For an additional amount for "Capital Assistance for Intercity Passenger Rail Service" to enable the Secretary of Transportation to make grants for capital costs as authorized by chapter 244 of title 49 United States Code, $300,000,000: *Provided*, That notwithstanding section 1103 of this Act, the Secretary shall give preference to projects for the repair, rehabilitation, upgrade, or purchase of railroad assets or infrastructure that can be awarded within 90 days of enactment of this Act: *Provided*~~

further, That in awarding grants for the acquisition of a piece of rolling stock or locomotive, the Secretary shall give preference to FRA-compliant rolling stock and locomotives: *Provided further*, That the Secretary shall give preference to projects that support the development of intercity high speed rail service: *Provided further*, That the Federal share shall be, at the option of the recipient, up to 100 percent.

CAPITAL AND DEBT SERVICE GRANTS TO THE NATIONAL RAILROAD PASSENGER CORPORATION

For an additional amount for "Capital and Debt Service Grants to the National Railroad Passenger Corporation" (Amtrak) to enable the Secretary of Transportation to make capital grants to Amtrak as authorized by section 101(c) of the Passenger Rail Investment and Improvement Act of 2008 (Public Law 110–432), $800,000,000: *Provided*, That priority shall be given to projects for the repair, rehabilitation, or upgrade of railroad assets or infrastructure: *Provided further*, That none of the funds under this heading shall be used to subsidize the operating losses of Amtrak: *Provided further*, Notwithstanding section 1103 of this Act, funds made available under this heading shall be awarded not later than 7 days after the date of enactment of this Act.

~~FEDERAL TRANSIT ADMINISTRATION~~

~~TRANSIT CAPITAL ASSISTANCE~~

~~For transit capital assistance grants, $6,000,000,000 (increased by $1,500,000,000), of which $5,400,000,000 (increased by $1,350,000,000) shall be for grants under section 5307 of title 49, United States Code and shall be apportioned in accordance with section 5336 of such title (other than subsections (i)(1) and (j)) but may not be combined or commingled with any other funds apportioned under such section 5336, and of which $600,000,000 (increased by $150,000,000) shall be for grants under section 5311 of such title and shall be apportioned in accordance with such section 5311 but may not be combined or commingled with any other funds apportioned under that section: *Provided*, That of the funds provided for section 5311 under this heading, 3 percent shall be made available for section 5311(c)(1): *Provided further*, That applicable chapter 53 requirements shall apply except that the Federal share of the costs for which a grant is made under this heading shall be, at the option of the recipient, up to 100 percent: *Provided further*, In lieu of the requirements of section 1103 of this Act, funds made available under this heading shall be apportioned not later than 7 days after the date of enactment of this Act: *Provided further*, That for purposes of applying section 1104 of this~~

~~Act to this appropriation, the deadline for grantees to enter into obligations to make use of not less than 50 percent of the funds awarded shall be 90 days after apportionment: *Provided further,* That the provisions of section 1101(b) of Public Law 109–59 shall apply to funds made available under this heading: *Provided further*, That notwithstanding any other provision of law, of the funds apportioned in accordance with section 5336, up to three-quarters of 1 percent shall be available for administrative expenses and program management oversight and of the funds apportioned in accordance with section 5311, up to one-half of 1 percent shall be available for administrative expenses and program management oversight and both amounts shall remain available for obligation until September 30, 2012: *Provided further*, That the preceding proviso shall apply in lieu of the provisions in section 1106 of this Act.~~

~~FIXED GUIDEWAY INFRASTRUCTURE INVESTMENT~~

~~For an amount for capital expenditures authorized under section 5309(b)(2) of title 49, United States Code, $2,000,000,000: *Provided*, That the Secretary of Transportation shall apportion funds under this heading pursuant to the formula set forth in section 5337 of title 49, United States Code: *Provided further*, That the funds appropriated under this heading shall not be commingled~~

~~with funds available under the Formula and Bus Grants account: *Provided further*, In lieu of the requirements of section 1103 of this Act, funds made available under this heading shall be apportioned not later than 7 days after the date of enactment of this Act: *Provided further*, That for purposes of applying section 1104 of this Act to this appropriation, the deadline for grantees to enter into obligations to make use of not less than 50 percent of the funds awarded shall be 90 days after apportionment: *Provided further*, That applicable chapter 53 requirements shall apply except that the Federal share of the costs for which a grant is made under this heading shall be, at the option of the recipient, up to 100 percent: *Provided further*, That the provisions of section 1101(b) of Public Law 109–59 shall apply to funds made available under this heading: *Provided further*, That notwithstanding any other provision of law, up to 1 percent of the funds under this heading shall be available for administrative expenses and program management oversight and shall remain available for obligation until September 30, 2012: *Provided further*, That the preceding proviso shall apply in lieu of the provisions in section 1106 of this Act.~~

~~CAPITAL INVESTMENT GRANTS~~

~~For an additional amount for "Capital Investment Grants", as authorized under section 5338(c)(4) of title~~

~~49, United States Code, and allocated under section 5309(m)(2)(A) of such title, to enable the Secretary of Transportation to make discretionary grants as authorized by section 5309(d) and (e) of such title, $1,000,000,000 (increased by $1,500,000,000). *Provided*, That such amount shall be allocated without regard to the limitation under section 5309(m)(2)(A)(i). *Provided further*, That in selecting projects to be funded, priority shall be given to projects that are currently in construction or are able to award contracts based on bids within 90 days of enactment of this Act. *Provided further*, That for purposes of applying section 1104 of this Act to this appropriation, the deadline for grantees to enter into contracts or other binding commitments to make use of not less than 50 percent of the funds awarded shall be 90 days after award. *Provided further*, That the provisions of section 1101(b) of Public Law 109–59 shall apply to funds made available under this heading. *Provided further*, That applicable chapter 53 requirements shall apply, except that notwithstanding any other provision of law, up to 1 percent of the funds under this heading shall be available for administrative expenses and program management oversight and shall remain available for obligation until September 30, 2012. *Provided further*, That the preceding proviso shall apply in lieu of the provisions in section 1106 of this Act.~~

~~DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT~~

~~PUBLIC AND INDIAN HOUSING~~

~~PUBLIC HOUSING CAPITAL FUND~~

~~For an additional amount for "Public Housing Capital Fund" to carry out capital and management activities for public housing agencies, as authorized under section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g) ("the Act"), $5,000,000,000: *Provided*, That the Secretary of Housing and Urban Development shall distribute at least $4,000,000,000 of this amount by the same formula used for amounts made available in fiscal year 2008: *Provided further*, That public housing authorities shall give priority to capital projects that can award contracts based on bids within 120 days from the date the funds are made available to the public housing authorities: *Provided further*, That public housing agencies shall give priority consideration to the rehabilitation of vacant rental units: *Provided further*, That notwithstanding any other provision of the Act or regulations: (1) funding provided herein may not be used for Operating Fund activities pursuant to section 9(g) of the Act; and (2) any restriction of funding to replacement housing uses shall be inapplicable: *Provided further*, That public housing agencies shall prioritize capital projects underway or al-~~

~~ready in their 5-year plans: *Provided further*, That of the amount provided under this heading, the Secretary may obligate up to $1,000,000,000, for competitive grants to public housing authorities for activities including: (1) investments that leverage private sector funding or financing for housing renovations and energy conservation retrofit investments; (2) rehabilitation of units using sustainable materials and methods that improve energy efficiency, reduce energy costs, or preserve and improve units with good access to public transportation or employment centers; (3) increase the availability of affordable rental housing by expediting rehabilitation projects to bring vacant units into use or by filling the capital investment gap for redevelopment or replacement housing projects which have been approved or are otherwise ready to proceed but are stalled due to the inability to obtain anticipated private capital; or (4) address the needs of seniors and persons with disabilities through improvements to housing and related facilities which attract or promote the coordinated delivery of supportive services: *Provided further*, That the Secretary may waive statutory or regulatory provisions related to the obligation and expenditure of capital funds if necessary to facilitate the timely expenditure of funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment).~~

~~ELDERLY, DISABLED, AND SECTION 8 ASSISTED HOUSING ENERGY RETROFIT~~

~~For grants or loans 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 (42 U.S.C. 1437f), to accomplish energy retrofit investments, $2,500,000,000: *Provided*, That such loans or grants shall be provided through 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: *Provided further*, That eligible owners must have at least a satisfactory management review rating, be in substantial compliance with applicable performance standards and legal requirements, and commit to an additional period of affordability determined by the Secretary: *Provided further*, That the Secretary shall undertake appropriate underwriting and oversight with respect to such transactions: *Provided further*, That the Secretary may set aside funds made available under this heading for an efficiency incentive payable upon satisfactory completion of energy retrofit investments, and may provide additional incentives if such investments resulted~~

~~in extraordinary job creation for low-income and very low-income persons: *Provided further*, that of the funds provided under this heading, 1 percent shall be available only for staffing, training, technical assistance, technology, monitoring, research and evaluation activities.~~

~~NATIVE AMERICAN HOUSING BLOCK GRANTS~~

~~For an additional amount for "Native American Housing Block Grants", as authorized under title I of the Native American Housing Assistance and Self-Determination Act of 1996 ("NAHASDA") (25 U.S.C. 4111 et seq.), $500,000,000: *Provided*, That $250,000,000 of the amount appropriated under this heading shall be distributed according to the same funding formula used in fiscal year 2008: *Provided further*, That in selecting projects to be funded, recipients shall give priority to projects that can award contracts based on bids within 120 days from the date that funds are available to the recipients: *Provided further*, That in allocating the funds appropriated under this heading, the Secretary of Housing and Urban Development shall not require an additional action plan from grantees: *Provided further*, That the Secretary may obligate $250,000,000 of the amount appropriated under this heading for competitive grants to eligible entities that apply for funds as authorized under NAHASDA: *Provided further*, That in awarding competitive funds, the Secretary~~

~~shall give priority to projects that will spur construction and rehabilitation and will create employment opportunities for low-income and unemployed persons.~~

~~COMMUNITY PLANNING AND DEVELOPMENT~~

~~COMMUNITY DEVELOPMENT FUND~~

~~For an additional amount for "Community Development Fund" $1,000,000,000, to carry out the community development block grant program under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.). *Provided*, That the amount appropriated in this paragraph shall be distributed according to the same funding formula used in fiscal year 2008. *Provided further*, That in allocating the funds appropriated in this paragraph, the Secretary of Housing and Urban Development shall not require an additional action plan from grantees. *Provided further*, That in selecting projects to be funded, recipients shall give priority to projects that can award contracts based on bids within 120 days from the date the funds are made available to the recipients; *Provided further*, That in administering funds provided in this paragraph, 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 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.~~

~~For a further additional amount for "Community Development Fund", $4,190,000,000, to be used for neighborhood stabilization activities related to emergency assistance for the redevelopment of abandoned and foreclosed homes as authorized under division B, title III of the Housing and Economic Recovery Act of 2008 (Public Law 110–289), of which—~~

~~(1) not less than $3,440,000,000 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: *Provided,* That the award criteria for such competition shall include grantee capacity, leveraging potential, targeted impact of foreclosure prevention, 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*, That amounts made available under this Section may be used to: (A) establish financing mechanisms for purchase and redevelopment of foreclosed-upon homes and residential~~

~~properties, including such mechanisms as soft-seconds, loan loss reserves, and shared-equity loans for low- and moderate-income homebuyers; (B) purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon, in order to sell or rent such homes and properties; (C) establish and operate land banks for homes that have been foreclosed upon; (D) demolish foreclosed properties that have become blighted structures; and (E) redevelop demolished or vacant foreclosed properties in order to sell or rent such properties; and~~

~~(2) up to $750,000,000 shall be awarded by competition to nonprofit entities or consortia of nonprofit entities to provide community stabilization assistance by: (A) accelerating state and local government and nonprofit productivity; (B) increasing the scale and efficiency of property transfers of foreclosed and vacant residential properties from financial institutions and government entities to qualified local housing providers in order to return the properties to productive affordable housing use; (C) building industry and property management capacity; and (D) partnering with private sector real estate developers and contractors and leveraging private sector capital: *Provided further*, That such com-~~

~~munity stabilization assistance shall be provided primarily in States and areas with high rates of defaults and foreclosures to support the acquisition, rehabilitation and property management of single-family and multi-family homes and to work in partnership with the private sector real estate industry and to leverage available private and public funds for those purposes. *Provided further*, That for purposes of this paragraph qualified local housing providers shall be nonprofit organizations with demonstrated capabilities in real estate development or acquisition and rehabilitation or property management of single- or multi-family homes, or local or state governments or instrumentalities of such governments. *Provided further*, That qualified local housing providers shall be expected to utilize and leverage additional local nonprofit, governmental, for-profit and private resources.~~

~~*Provided further*, That in the case of any foreclosure on any dwelling or residential real property acquired with any amounts made available under this heading, any successor in interest in such property pursuant to the foreclosure shall assume such interest subject to: (1) the provision by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of~~

~~such notice; and (2) the rights of any bona fide tenant, as of the date of such notice of foreclosure: (A) under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90-day notice under this paragraph; or (B) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90-day notice under this paragraph, except that nothing in this paragraph shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants: *Provided further*, That, for purposes of this paragraph, a lease or tenancy shall be considered bona fide only if: (1) the mortgagor under the contract is not the tenant; (2) the lease or tenancy was the result of an arms-length transaction; and (3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property: *Provided further*, That the recipient of any grant or loan from amounts made available under this heading may not refuse to lease a dwelling unit in housing assisted with such loan or grant to a hold-~~

~~er of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) because of the status of the prospective tenant as such a holder: *Provided further*, That in the case of any qualified foreclosed housing for which funds made available under this heading are used and in which a recipient of assistance under section 8(o) of the U.S. Housing Act of 1937 resides at the time of acquisition or financing, the owner and any successor in interest shall be subject to the lease and to the housing assistance payments contract for the occupied unit: *Provided further*, That vacating the property prior to sale shall not constitute good cause for termination of the tenancy unless the property is unmarketable while occupied or unless the owner or subsequent purchaser desires the unit for personal or family use: *Provided further*, That this paragraph shall not preempt any State or local law that provides more protection for tenants: *Provided further*, That amounts made available under this heading may be used for the costs of demolishing foreclosed housing that is deteriorated or unsafe: *Provided further*, That the amount for demolition of such housing may not exceed 10 percent of amounts allocated under this paragraph to States and units of general local government: *Provided further*, That no amounts from a grant made under this paragraph may be used to~~

~~demolish any public housing (as such term is defined in section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a)). *Provided further*, That section 2301(d)(4) of the Housing and Economic Recovery Act of 2008 (Public Law 110–289) is repealed.~~

~~HOME INVESTMENT PARTNERSHIPS PROGRAM~~

~~For an additional amount for "HOME Investment Partnerships Program" as authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act ("the Act"), $1,500,000,000. *Provided*, That the amount appropriated under this heading shall be distributed according to the same funding formula used in fiscal year 2008. *Provided further*, That the Secretary of Housing and Urban Development may waive statutory or regulatory provisions related to the obligation of such funds if necessary to facilitate the timely expenditure of funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). *Provided further*, That in selecting projects to be funded, recipients shall give priority to projects that can award contracts based on bids within 120 days from the date that funds are available to the recipients.~~

~~SELF-HELP AND ASSISTED HOMEOWNERSHIP OPPORTUNITY PROGRAM~~

~~For an additional amount for "Self-Help and Assisted Homeownership Opportunity Program", as authorized under section 11 of the Housing Opportunity Program Extension Act of 1996, $10,000,000: *Provided*, That in awarding competitive grant funds, the Secretary of Housing and Urban Development shall give priority to the provision and rehabilitation of sustainable, affordable single and multifamily units in low-income, high-need rural areas: *Provided further*, That in selecting projects to be funded, grantees shall give priority to projects that can award contracts based on bids within 120 days from the date the funds are made available to the grantee.~~

~~HOMELESS ASSISTANCE GRANTS~~

~~For an additional amount for "Homeless Assistance Grants", for the emergency shelter grants program as authorized under subtitle B of tile IV of the McKinney-Vento Homeless Assistance Act, $1,500,000,000: *Provided*, That in addition to homeless prevention activities specified in the emergency shelter grant program, funds provided under this heading may 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, legal services, credit~~

~~repair, resolution of security or utility deposits, utility payments, rental assistance for a final month at a location, and moving costs assistance; or other appropriate homelessness prevention activities; *Provided further*, That these funds shall be allocated pursuant to the formula authorized by section 413 of such Act: *Provided further*, That the Secretary of Housing and Urban Development may waive statutory or regulatory provisions related to the obligation and use of emergency shelter grant funds necessary to facilitate the timely expenditure of funds.~~

~~OFFICE OF HEALTHY HOMES AND LEAD HAZARD CONTROL~~

~~LEAD HAZARD REDUCTION~~

~~For an additional amount for "Lead Hazard Reduction", for the Lead Hazard Reduction Program as authorized by section 1011 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, $100,000,000: *Provided*, That for purposes of environmental review, pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other provisions of law that further the purposes of such Act, a grant under the Healthy Homes Initiative, Operation Lead Elimination Action Plan (LEAP), or the Lead Technical Studies program under this heading or under prior appropriations Acts for such purposes under this heading, shall be considered to be~~

~~funds for a special project for purposes of section 305(e) of the Multifamily Housing Property Disposition Reform Act of 1994. *Provided further*, That of the total amount made available under this heading, $30,000,000 shall be made available on a competitive basis for areas with the highest lead paint abatement needs.~~

~~GENERAL PROVISIONS, THIS TITLE~~

~~SEC. 12001. MAINTENANCE OF EFFORT AND REPORTING REQUIREMENTS TO ENSURE TRANSPARENCY AND ACCOUNTABILITY.~~

~~(a) MAINTENANCE OF EFFORT.—Not later than 30 days after the date of enactment of this Act, for each amount that is distributed to a State or agency thereof from an appropriation in this Act for a covered program, the Governor of the State shall certify that the State will maintain its effort with regard to State funding for the types of projects that are funded by the appropriation. As part of this certification, the Governor shall submit to the covered agency a statement identifying the amount of funds the State planned to expend as of October 1, 2008, from non-Federal sources in the period beginning on the date of enactment of this Act through September 30, 2010, for the types of projects that are funded by the appropriation.~~

~~(b) FAILURE TO MAINTAIN EFFORT.—If a Governor is unable to certify that Federal funds will not supplant non-Federal funds pursuant to subsection (a), then the Federal funds apportioned to that State under this Act that will supplant non-Federal funds will be recaptured by the appropriate Federal agency and redistributed to States or agencies that can spend the Federal funds without supplanting non-Federal funds.~~

~~(c) PERIODIC REPORTS.—~~

~~(1) IN GENERAL.—Notwithstanding any other provision of law, each grant recipient shall submit to the covered agency from which they received funding periodic reports on the use of the funds appropriated in this Act for covered programs. Such reports shall be collected and compiled by the covered agency and transmitted to Congress.~~

~~(2) CONTENTS OF REPORTS.—For amounts received under each covered program by a grant recipient under this Act, the grant recipient shall include in the periodic reports information tracking—~~

~~(A) the amount of Federal funds appropriated, allocated, obligated, and outlayed under the appropriation;~~

~~(B) the number of projects that have been put out to bid under the appropriation and the~~

~~amount of Federal funds associated with such projects;~~

~~(C) the number of projects for which contracts have been awarded under the appropriation and the amount of Federal funds associated with such contracts;~~

~~(D) the number of projects for which work has begun under such contracts and the amount of Federal funds associated with such contracts;~~

~~(E) the number of projects for which work has been completed under such contracts and the amount of Federal funds associated with such contracts;~~

~~(F) the number of jobs created or sustained by the Federal funds provided for projects under the appropriation, including information on job sectors and pay levels; and~~

~~(G) for each covered program report information tracking the actual aggregate expenditures by each grant recipient from non-Federal sources for projects eligible for funding under the program during the period beginning on the date of enactment of this Act through September 30, 2010, as compared to the level of~~

~~such expenditures that were planned to occur during such period as of the date of enactment of this Act.~~

~~(3) TIMING OF REPORTS.—Each grant recipient shall submit the first of the periodic reports required under this subsection not later than 30 days after the date of enactment of this Act and shall submit updated reports not later than 60 days, 120 days, 180 days, 1 year, and 3 years after such date of enactment.~~

~~(d) DEFINITIONS.—In this section, the following definitions apply:~~

~~(1) COVERED AGENCY.—The term "covered agency" means the Federal Aviation Administration, the Federal Highway Administration, the Federal Railroad Administration, and the Federal Transit Administration of the Department of Transportation.~~

~~(2) COVERED PROGRAM.—The term "covered program" means funds appropriated in this Act for "Grants-in-Aid for Airports" to the Federal Aviation Administration; for "Highway Infrastructure Investment" to the Federal Highway Administration; for "Capital Assistance for Intercity Passenger Rail Service" to the Federal Railroad Administration; for~~

~~"Transit Capital Assistance", "Fixed Guideway Infrastructure Investment", and "Capital Investment Grants" to the Federal Transit Administration.~~

~~(3) GRANT RECIPIENT.—The term "grant recipient" means a State or other recipient of assistance provided under a covered program in this Act. Such term does not include a Federal department or agency.~~

~~SEC. 12002. FHA LOAN LIMITS FOR 2009.~~

~~(a) LOAN LIMIT FLOOR BASED ON 2008 LEVELS.—For mortgages for which the mortgagee issues credit approval for the borrower during calendar year 2009, if the dollar amount limitation on the principal obligation of a mortgage determined under section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) for any size residence for any area is less than such dollar amount limitation that was in effect for such size residence for such area for 2008 pursuant to section 202 of the Economic Stimulus Act of 2008 (Public Law 110–185; 122 Stat. 620), notwithstanding any other provision of law, the maximum dollar amount limitation on the principal obligation of a mortgage for such size residence for such area for purposes of such section 203(b)(2) shall be considered (except for purposes of section 255(g) of such Act (12 U.S.C.~~

~~1715z–20(g))) to be such dollar amount limitation in effect for such size residence for such area for 2008.~~

~~(b) DISCRETIONARY AUTHORITY FOR SUB-AREAS.—Notwithstanding any other provision of law, if the Secretary of Housing and Urban Development determines, for any geographic area that is smaller than an area for which dollar amount limitations on the principal obligation of a mortgage are determined under section 203(b)(2) of the National Housing Act, that a higher such maximum dollar amount limitation is warranted for any particular size or sizes of residences in such sub-area by higher median home prices in such sub-area, the Secretary may, for mortgages for which the mortgagee issues credit approval for the borrower during calendar year 2009, increase the maximum dollar amount limitation for such size or sizes of residences for such sub-area that is otherwise in effect (including pursuant to subsection (a) of this section), but in no case to an amount that exceeds the amount specified in section 202(a)(2) of the Economic Stimulus Act of 2008.~~

~~SEC. 12003. GSE CONFORMING LOAN LIMITS FOR 2009.~~

~~(a) LOAN LIMIT FLOOR BASED ON 2008 LEVELS.—For mortgages originated during calendar year 2009, if the limitation on the maximum original principal obligation of a mortgage that may purchased by the Federal~~

~~National Mortgage Association or the Federal Home Loan Mortgage Corporation determined under section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) or section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1754(a)(2)), respectively, for any size residence for any area is less than such maximum original principal obligation limitation that was in effect for such size residence for such area for 2008 pursuant to section 201 of the Economic Stimulus Act of 2008 (Public Law 110–185; 122 Stat. 619), notwithstanding any other provision of law, the limitation on the maximum original principal obligation of a mortgage for such Association and Corporation for such size residence for such area shall be such maximum limitation in effect for such size residence for such area for 2008.~~

~~(b) DISCRETIONARY AUTHORITY FOR SUB-AREAS.—Notwithstanding any other provision of law, if the Director of the Federal Housing Finance Agency determines, for any geographic area that is smaller than an area for which limitations on the maximum original principal obligation of a mortgage are determined for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, that a higher such maximum original principal obligation limitation is warranted for any~~

particular size or sizes of residences in such sub-area by higher median home prices in such sub-area, the Director may, for mortgages originated during 2009, increase the maximum original principal obligation limitation for such size or sizes of residences for such sub-area that is otherwise in effect (including pursuant to subsection (a) of this section) for such Association and Corporation, but in no case to an amount that exceeds the amount specified in the matter following the comma in section 201(a)(1)(B) of the Economic Stimulus Act of 2008.

SEC. 12004. FHA REVERSE MORTGAGE LOAN LIMITS FOR 2009.

For mortgages for which the mortgagee issues credit approval for the borrower during calendar year 2009, the second sentence of section 255(g) of the National Housing Act (12 U.S.C. 171520(g)) shall be considered to require that in no case may the benefits of insurance under such section 255 exceed 150 percent of the maximum dollar amount in effect under the sixth sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)).

~~TITLE XIII—STATE FISCAL STABILIZATION FUND~~

~~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, of which $39,500,000,000 shall become available on July 1, 2009, and remain available through September 30, 2010, and $39,500,000,000 shall become available on July 1, 2010, and remain available through September 30, 2011: *Provided*, That the provisions of section 1103 of this Act shall not apply to the funds reserved under section 13001(c) of this title: *Provided further*, That the amount made available under section 13001(b) of this title for administration and oversight shall take the place of the set-aside under section 1106 of this Act.~~

~~GENERAL PROVISIONS, THIS TITLE~~

~~SEC. 13001. ALLOCATIONS.~~

~~(a) OUTLYING AREAS.—From each year's appropriation to carry out this title, 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, in addition, reserve up to $12,500,000 each year 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 $7,500,000,000 each year for grants under sections 13006 and 13007.~~

~~(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 one year of receiving~~

~~a grant, and the Secretary shall reallocate such funds to the remaining States in accordance with subsection (d).~~

~~SEC. 13002. STATE USES OF FUNDS.~~

~~(a) EDUCATION FUND.—~~

~~(1) IN GENERAL.—For each fiscal year, the Governor shall use at least 61 percent of the State's allocation under section 13001 for the support of elementary, secondary, and postsecondary education.~~

~~(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~~

~~(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 shortfall 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.—For each fiscal year, the Governor may use up to 39 percent of the State's allocation under section 1301 for public safety and other government services, which may include assistance for elementary and secondary education and public institutions of higher education.~~

~~SEC. 13003. 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. 13004. 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. 13005. STATE APPLICATIONS.~~

~~(a) IN GENERAL.—The Governor of a State desiring to receive an allocation under section 13001 shall submit an annual application at such time, in such manner, and containing such information as the Secretary may reasonably require.~~

~~(b) FIRST YEAR APPLICATION.—In the first of such applications, the Governor shall—~~

~~(1) include the assurances described in subsection (c);~~

~~(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) SECOND YEAR APPLICATION.—In the second year application, the Governor shall—~~

~~(1) include the assurances described in subsection (c); and~~

~~(2) describe how the State intends to use its allocation.~~

~~(d) INCENTIVE GRANT APPLICATION.—The Governor of a State seeking a grant under section 13006 shall—~~

~~(1) submit an application for consideration;~~

~~(2) describe the status of the State's progress in each of the areas described in subsection (c), and~~

~~the strategies the State is employing to help ensure that high-need students in the State continue making progress towards meeting the State's student academic achievement standards;~~

~~(3) describe how the State would use its grant funding, including how it will allocate the funds to give priority to high-need schools and local educational agencies; and~~

~~(4) include a plan for evaluating its progress in closing achievement gaps.~~

~~(c) ASSURANCES.—An application under subsection (b) or (c) 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 actions to comply with section 1111(b)(8)(C) of ESEA (20 U.S.C. 6311(b)(8)(C)) in order to address inequities in the distribution of teachers between high-and low-poverty schools, and to ensure that low-income and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers.~~

~~(3) IMPROVING COLLECTION AND USE OF DATA.—The State will establish a longitudinal data system that includes the elements described in section 6401(e)(2)(D) of the America COMPETES Act (20 U.S.C. 9871).~~

~~(4) ASSESSMENTS.—The State—~~

~~(A) will enhance the quality of academic assessments described in section 1111(b)(3) of ESEA (20 U.S.C. 6311(b)(3)) through activities such as those described in section 6112(a) of such Act (20 U.S.C. 7301a(a)); and~~

~~(B) will comply with the requirements of paragraphs 3(C)(ix) and (6) of section 1111(b) of ESEA (20 U.S.C. 6311(b)) and section 612(a)(16) of IDEA (20 U.S.C. 1412(a)(16)) related to the inclusion of children with disabil-~~

~~ities and limited English proficient students in State assessments, the development of valid and reliable assessments for those students, and the provision of accommodations that enable their participation in State assessments.~~

~~SEC. 13006. STATE INCENTIVE GRANTS.~~

~~(a) IN GENERAL.—From the total amount reserved under section 13001(c) that is not used for section 13007, the Secretary shall, in fiscal year 2010, make grants to States that have made significant progress in meeting the objectives of paragraphs (2), (3), and (4) of section 13005(c).~~

~~(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 13005 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.~~

1 ~~SEC. 13007. INNOVATION FUND.~~

2 ~~(a) IN GENERAL.—~~

3 ~~(1) PROGRAM ESTABLISHED.—From the total~~
4 ~~amount reserved under section 13001(c), the Sec-~~
5 ~~retary may reserve up to $325,000,000 each year to~~
6 ~~establish an Innovation Fund, which shall consist of~~
7 ~~academic achievement awards that recognize States,~~
8 ~~local educational agencies, or schools that meet the~~
9 ~~requirements described in subsection (b).~~

10 ~~(2) BASIS FOR AWARDS.—The Secretary shall~~
11 ~~make awards to States, local educational agencies,~~
12 ~~or schools that have made significant gains in clos-~~
13 ~~ing the achievement gap as described in subsection~~
14 ~~(b)(1)—~~

15 ~~(A) to allow such States, local educational~~
16 ~~agencies, and schools to expand their work and~~
17 ~~serve as models for best practices;~~

18 ~~(B) to allow such States, local educational~~
19 ~~agencies, and schools to work in partnership~~
20 ~~with the private sector and the philanthropic~~
21 ~~community; and~~

22 ~~(C) to identify and document best practices~~
23 ~~that can be shared, and taken to scale based on~~
24 ~~demonstrated success.~~

25 ~~(b) ELIGIBILITY.—To be eligible for such an award,~~
26 ~~a State, local educational agency, or school shall—~~

~~(1) 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. 13008. STATE REPORTS.~~

~~For each year of the program under this title, 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. 13009. EVALUATION.~~

~~The Comptroller General of the United States shall conduct evaluations of the programs under sections 13006 and 13007 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. 13010. 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 State reports, that evaluates the information provided in the State reports under section 13008.~~

~~SEC. 13011. 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.~~

~~SEC. 13012. 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 used in this title that is defined in section 9101 of ESEA (20 U.S.C. 7801) shall have the meaning given the term in that section.~~

~~DIVISION B—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:~~

~~Sec. 1000. Short title, etc.~~

~~Subtitle A—Making Work Pay~~

~~Sec. 1001. Making work pay credit.~~

~~Subtitle B—Additional Tax Relief for Families With Children~~

~~Sec. 1101. Increase in earned income tax credit.~~
~~Sec. 1102. Increase of refundable portion of child credit.~~

~~Subtitle C—American Opportunity Tax Credit~~

~~Sec. 1201. American opportunity tax credit.~~

~~Subtitle D—Housing Incentives~~

~~Sec. 1301. Waiver of requirement to repay first-time homebuyer credit.~~
~~Sec. 1302. Coordination of low-income housing credit and low-income housing grants.~~

~~Subtitle E—Tax Incentives for Business~~

~~PART 1—TEMPORARY INVESTMENT INCENTIVES~~

~~Sec. 1401. Special allowance for certain property acquired during 2009.~~

~~Sec. 1402. Temporary increase in limitations on expensing of certain depreciable business assets.~~

~~PART 2—5-YEAR CARRYBACK OF OPERATING LOSSES~~

~~Sec. 1411. 5-year carryback of operating losses.~~
~~Sec. 1412. Exception for TARP recipients.~~

~~PART 3—INCENTIVES FOR NEW JOBS~~

~~Sec. 1421. Incentives to hire unemployed veterans and disconnected youth.~~

~~PART 4—CLARIFICATION OF REGULATIONS RELATED TO LIMITATIONS ON CERTAIN BUILT-IN LOSSES FOLLOWING AN OWNERSHIP CHANGE~~

~~Sec. 1431. Clarification of regulations related to limitations on certain built-in losses following an ownership change.~~

~~Subtitle F—Fiscal Relief for State and Local Governments~~

~~PART 1—IMPROVED MARKETABILITY FOR TAX-EXEMPT BONDS~~

~~Sec. 1501. De minimis safe harbor exception for tax-exempt interest expense of financial institutions.~~
~~Sec. 1502. Modification of small issuer exception to tax-exempt interest expense allocation rules for financial institutions.~~
~~Sec. 1503. Temporary modification of alternative minimum tax limitations on tax-exempt bonds.~~

~~PART 2—TAX CREDIT BONDS FOR SCHOOLS~~

~~Sec. 1511. Qualified school construction bonds.~~
~~Sec. 1512. Extension and expansion of qualified zone academy bonds.~~

~~PART 3—TAXABLE BOND OPTION FOR GOVERNMENTAL BONDS~~

~~Sec. 1521. Taxable bond option for governmental bonds.~~

~~PART 4—RECOVERY ZONE BONDS~~

~~Sec. 1531. Recovery zone bonds.~~
~~Sec. 1532. Tribal economic development bonds.~~

~~PART 5—REPEAL OF WITHHOLDING TAX ON GOVERNMENT CONTRACTORS~~

~~Sec. 1541. Repeal of withholding tax on government contractors.~~

~~Subtitle G—Energy Incentives~~

~~PART 1—RENEWABLE ENERGY INCENTIVES~~

~~Sec. 1601. Extension of credit for electricity produced from certain renewable resources.~~
~~Sec. 1602. Election of investment credit in lieu of production credit.~~
~~Sec. 1603. Repeal of certain limitations on credit for renewable energy property.~~
~~Sec. 1604. Coordination with renewable energy grants.~~

~~PART 2—INCREASED ALLOCATIONS OF NEW CLEAN RENEWABLE ENERGY BONDS AND QUALIFIED ENERGY CONSERVATION BONDS~~

~~Sec. 1611. Increased limitation on issuance of new clean renewable energy bonds.~~
~~Sec. 1612. Increased limitation and expansion of qualified energy conservation bonds.~~

~~PART 3—ENERGY CONSERVATION INCENTIVES~~

~~Sec. 1621. Extension and modification of credit for nonbusiness energy property.~~
~~Sec. 1622. Modification of credit for residential energy efficient property.~~
~~Sec. 1623. Temporary increase in credit for alternative fuel vehicle refueling property.~~

~~PART 4—ENERGY RESEARCH INCENTIVES~~

~~Sec. 1631. Increased research credit for energy research.~~

~~Subtitle H—Other Provisions~~

~~PART 1—APPLICATION OF CERTAIN LABOR STANDARDS TO PROJECTS FINANCED WITH CERTAIN TAX-FAVORED BONDS~~

~~Sec. 1701. Application of certain labor standards to projects financed with certain tax-favored bonds.~~

~~PART 2—GRANTS TO PROVIDE FINANCING FOR LOW-INCOME HOUSING~~

~~Sec. 1711. Grants to States for low-income housing projects in lieu of low-income housing credit allocations for 2009.~~

~~PART 3—GRANTS FOR SPECIFIED ENERGY PROPERTY IN LIEU OF TAX CREDITS~~

~~Sec. 1721. Grants for specified energy property in lieu of tax credits.~~

~~PART 4—STUDY OF ECONOMIC, EMPLOYMENT, AND RELATED EFFECTS OF THIS ACT~~

~~Sec. 1731. Study of economic, employment, and related effects of this Act.~~

~~Subtitle A—Making Work Pay~~

~~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) for the taxable year shall be reduced (but not below zero) by 2 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).~~

~~"(2) MODIFIED ADJUSTED GROSS INCOME.—For purposes of subparagraph (A), the term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.~~

~~"(c) DEFINITIONS.—For purposes of this section—~~

~~"(1) ELIGIBLE INDIVIDUAL.—The term 'eligible individual' means any individual other than—~~

~~"(A) any nonresident alien individual,~~

1 ~~"(B) any individual with respect to whom~~
2 ~~a deduction under section 151 is allowable to~~
3 ~~another taxpayer for a taxable year beginning~~
4 ~~in the calendar year in which the individual's~~
5 ~~taxable year begins, and~~
6 ~~"(C) an estate or trust.~~
7 ~~Such term shall not include any individual unless the~~
8 ~~requirements of section 32(c)(1)(E) are met with re-~~
9 ~~spect to such individual.~~
10 ~~"(2) EARNED INCOME.—The term 'earned in-~~
11 ~~come' has the meaning given such term by section~~
12 ~~32(c)(2), except that such term shall not include net~~
13 ~~earnings from self-employment which are not taken~~
14 ~~into account in computing taxable income. For pur-~~
15 ~~poses of the preceding sentence, any amount ex-~~
16 ~~cluded from gross income by reason of section 112~~
17 ~~shall be treated as earned income which is taken~~
18 ~~into account in computing taxable income for the~~
19 ~~taxable year.~~
20 ~~"(d) TERMINATION.—This section shall not apply to~~
21 ~~taxable years beginning after December 31, 2010.".~~
22 ~~(b) TREATMENT OF POSSESSIONS.—~~
23 ~~(1) PAYMENTS TO POSSESSIONS.—~~
24 ~~(A) MIRROR CODE POSSESSION.—The Sec-~~
25 ~~retary of the Treasury shall pay to each posses-~~

~~sion 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.~~

~~(B) OTHER POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury as being equal to the aggregate benefits that would have been provided to residents of such possession by reason of the amendments made by this section for taxable years beginning in 2009 and 2010 if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply with respect to any possession of the United States unless such possession has a plan, which has been approved by the Secretary of the Treasury, under which such possession will promptly distribute such payments to the residents of such possession.~~

~~(2) COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES.—No credit shall be allowed against United States income taxes for any taxable year under section 36A of the Internal Revenue Code of 1986 (as added by this section) to any person—~~

~~(A) to whom a credit is allowed against 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 liabil-~~

~~ity 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) 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.".

(e) EFFECTIVE DATE.—This section shall apply to taxable years beginning after December 31, 2008.

Subtitle B—Additional Tax Relief for Families With Children

SEC. 1101. 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.

1 ~~"(B) REDUCTION OF MARRIAGE PEN-~~
2 ~~ALTY.—~~
3 ~~"(i) IN GENERAL.—The dollar amount~~
4 ~~in effect under paragraph (2)(B) shall be~~
5 ~~$5,000.~~
6 ~~"(ii) INFLATION ADJUSTMENT.—In~~
7 ~~the case of any taxable year beginning in~~
8 ~~2010, the $5,000 amount in clause (i)~~
9 ~~shall be increased by an amount equal to—~~
10 ~~"(I) such dollar amount, multi-~~
11 ~~plied by~~
12 ~~"(II) the cost of living adjust-~~
13 ~~ment determined under section 1(f)(3)~~
14 ~~for the calendar year in which the tax-~~
15 ~~able year begins determined by sub-~~
16 ~~stituting 'calendar year 2008' for 'cal-~~
17 ~~endar year 1992' in subparagraph (B)~~
18 ~~thereof.~~
19 ~~"(iii) ROUNDING.—Subparagraph (A)~~
20 ~~of subsection (j)(2) shall apply after taking~~
21 ~~into account any increase under clause~~
22 ~~(ii).".~~
23 ~~(b) EFFECTIVE DATE.—The amendments made by~~
24 ~~this section shall apply to taxable years beginning after~~
25 ~~December 31, 2008.~~

SEC. 1102. 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 zero.".

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

Subtitle C—American Opportunity Tax Credit

SEC. 1201. 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—~~

1 ~~"(i) the taxpayer's modified adjusted~~
2 ~~gross income (as defined in subsection~~
3 ~~(d)(3)) for such taxable year, over~~
4 ~~"(ii) $80,000 ($160,000 in the case of~~
5 ~~a joint return), bears to~~
6 ~~"(B) $10,000 ($20,000 in the case of a~~
7 ~~joint return).~~
8 ~~"(5) CREDIT ALLOWED AGAINST ALTERNATIVE~~
9 ~~MINIMUM TAX.—In the case of a taxable year to~~
10 ~~which section 26(a)(2) does not apply, so much of~~
11 ~~the credit allowed under subsection (a) as is attrib-~~
12 ~~utable to the Hope Scholarship Credit shall not ex-~~
13 ~~ceed the excess of—~~
14 ~~"(A) the sum of the regular tax liability~~
15 ~~(as defined in section 26(b)) plus the tax im-~~
16 ~~posed by section 55, over~~
17 ~~"(B) the sum of the credits allowable~~
18 ~~under this subpart (other than this subsection~~
19 ~~and sections 23, 25D, and 30D) and section 27~~
20 ~~for the taxable year.~~
21 ~~Any reference in this section or section 24, 25, 26,~~
22 ~~25B, 904, or 1400C to a credit allowable under this~~
23 ~~subsection shall be treated as a reference to so much~~
24 ~~of the credit allowable under subsection (a) as is at-~~
25 ~~tributable to the Hope Scholarship Credit.~~

1 ~~"(6) PORTION OF CREDIT MADE REFUND-~~
2 ~~ABLE.—40 percent of so much of the credit allowed~~
3 ~~under subsection (a) as is attributable to the Hope~~
4 ~~Scholarship Credit (determined after application of~~
5 ~~paragraph (4) and without regard to this paragraph~~
6 ~~and section 26(a)(2) or paragraph (5), as the case~~
7 ~~may be) shall be treated as a credit allowable under~~
8 ~~subpart C (and not allowed under subsection (a)).~~
9 ~~The preceding sentence shall not apply to any tax-~~
10 ~~payer for any taxable year if such taxpayer is a child~~
11 ~~to whom subsection (g) of section 1 applies for such~~
12 ~~taxable year.~~
13 ~~"(7) COORDINATION WITH MIDWESTERN DIS-~~
14 ~~ASTER AREA BENEFITS.—In the case of a taxpayer~~
15 ~~with respect to whom section 702(a)(1)(B) of the~~
16 ~~Heartland Disaster Tax Relief Act of 2008 applies~~
17 ~~for any taxable year, such taxpayer may elect to~~
18 ~~waive the application of this subsection to such tax-~~
19 ~~payer for such taxable year.".~~
20 ~~(b) CONFORMING AMENDMENTS.—~~
21 ~~(1) Section 24(b)(3)(B) is amended by inserting~~
22 ~~"25A(i),'' after "23,".~~
23 ~~(2) Section 25(e)(1)(C)(ii) is amended by in-~~
24 ~~serting "25A(i),'' after "24,".~~

~~(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.~~

~~Subtitle D—Housing Incentives~~

~~SEC. 1301. WAIVER OF REQUIREMENT TO REPAY FIRST-TIME HOMEBUYER CREDIT.~~

~~(a) 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 prin-~~

~~cipal residence after December 31, 2008, and before July 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.".~~

~~(b) 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. 1302. COORDINATION OF LOW-INCOME HOUSING CREDIT AND LOW-INCOME HOUSING GRANTS.~~

~~Subsection (i) of section 42 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:~~

~~"(9) COORDINATION WITH LOW-INCOME HOUSING GRANTS.—~~

~~"(A) REDUCTION IN STATE HOUSING CREDIT CEILING FOR LOW-INCOME HOUSING~~

GRANTS RECEIVED IN 2009.—For purposes of this section, the amounts described in clauses (i) through (iv) of subsection (h)(3)(C) with respect to any State for 2009 shall each be reduced by so much of such amount as is taken into account in determining the amount of any grant to such State under section 1711 of the American Recovery and Reinvestment Tax Act of 2009.

"(B) SPECIAL RULE FOR BASIS.—Basis of a qualified low-income building shall not be reduced by the amount of any grant described in subparagraph (A).".

Subtitle E—Tax Incentives for Business

PART 1—TEMPORARY INVESTMENT INCENTIVES

SEC. 1401. SPECIAL ALLOWANCE FOR CERTAIN PROPERTY ACQUIRED DURING 2009.

(a) IN GENERAL.—Paragraph (2) of section 168(k) is amended—

(1) by striking "January 1, 2010" and inserting "January 1, 2011", and

(2) by striking "January 1, 2009" each place it appears and inserting "January 1, 2010".

(b) CONFORMING AMENDMENTS.—

~~(1) The heading for subsection (k) of section 168 is amended by striking "JANUARY 1, 2009" and inserting "JANUARY 1, 2010".~~

~~(2) 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".~~

~~(3) 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 (v), and~~

~~(C) by inserting after clause (i) the following new clauses:~~

~~"(ii) 'April 1, 2008' shall be substituted for 'January 1, 2008' in subparagraph (A)(iii)(I) thereof,~~

~~"(iii) 'January 1, 2009' shall be substituted for 'January 1, 2010' each place it appears,~~

~~"(iv) 'January 1, 2010' shall be substituted for 'January 1, 2011' in subparagraph (A)(iv) thereof, and".~~

~~(4) Subparagraph (B) of section 168(l)(5) is amended by striking "January 1, 2009" and inserting "January 1, 2010".~~

~~(5) Subparagraph (B) of section 1400N(d)(3) is amended by striking "January 1, 2009" and inserting "January 1, 2010".~~

~~(c) 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.—Section 168(k)(4)(D)(ii) of the Internal Revenue Code of 1986, as added by subsection (b)(3)(C), shall apply to taxable years ending after March 31, 2008.~~

~~SEC. 1402. 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 2—5-YEAR CARRYBACK OF OPERATING LOSSES~~

~~SEC. 1411. 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) such net operating loss shall be reduced by 10 percent of such loss (determined without regard to this subparagraph),~~

~~"(II) 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",~~

~~"(III) 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~~

~~"(IV) 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.~~

1 ~~"(iv) COORDINATION WITH ALTER-~~
2 ~~NATIVE TAX NET OPERATING LOSS DEDUC-~~
3 ~~TION.—In the case of a taxpayer who~~
4 ~~elects to have clause (ii)(II) apply, section~~
5 ~~56(d)(1)(A)(ii) shall be applied by sub-~~
6 ~~stituting 'ending during 2001 or 2002 or~~
7 ~~beginning during 2008 or 2009' for 'end-~~
8 ~~ing during 2001, 2002, 2008, or 2009'.".~~
9 ~~(b) ALTERNATIVE TAX NET OPERATING LOSS DE-~~
10 ~~DUCTION.—Subclause (I) of section 56(d)(1)(A)(ii) is~~
11 ~~amended to read as follows:~~
12 ~~"(I) the amount of such deduc-~~
13 ~~tion attributable to the sum of~~
14 ~~carrybacks of net operating losses~~
15 ~~from taxable years ending during~~
16 ~~2001, 2002, 2008, or 2009 and~~
17 ~~carryovers of net operating losses to~~
18 ~~such taxable years, or".~~
19 ~~(c) LOSS FROM OPERATIONS OF LIFE INSURANCE~~
20 ~~COMPANIES.—Subsection (b) of section 810 is amended~~
21 ~~by adding at the end the following new paragraph:~~
22 ~~"(4) CARRYBACK FOR 2008 AND 2009 LOSSES.—~~
23 ~~"(A) IN GENERAL.—In the case of an ap-~~
24 ~~plicable 2008 or 2009 loss from operations with~~

~~respect to which the taxpayer has elected the application of this paragraph—~~

~~"(i) such loss from operations shall be reduced by 10 percent of such loss (determined without regard to this paragraph), and~~

~~"(ii) 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).~~

~~(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(b)(1)(H) 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.~~

~~For purposes of this paragraph, the term "applicable date" means the date which is 60 days after the date of the enactment of this Act.~~

~~SEC. 1412. EXCEPTION FOR TARP RECIPIENTS.~~

~~The amendments made by this part shall not apply to—~~

~~(1) any taxpayer if—~~

~~(A) the Federal Government acquires, at any time, an equity interest in the taxpayer pursuant to the Emergency Economic Stabilization Act of 2008, or~~

~~(B) the Federal Government acquires, at any time, any warrant (or other right) to acquire any equity interest with respect to the taxpayer pursuant to such Act,~~

~~(2) the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, and~~

~~(3) any taxpayer which at any time in 2008 or 2009 is a member of the same affiliated group (as defined in section 1504 of the Internal Revenue Code of 1986, determined without regard to subsection (b) thereof) as a taxpayer described in paragraph (1) or (2).~~

~~PART 3—INCENTIVES FOR NEW JOBS~~

~~SEC. 1421. 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:~~

1 ~~"(14) CREDIT ALLOWED FOR UNEMPLOYED~~
2 ~~VETERANS AND DISCONNECTED YOUTH HIRED IN~~
3 ~~2009 OR 2010.—~~
4 ~~"(A) IN GENERAL.—Any unemployed vet-~~
5 ~~eran or disconnected youth who begins work for~~
6 ~~the employer during 2009 or 2010 shall be~~
7 ~~treated as a member of a targeted group for~~
8 ~~purposes of this subpart.~~
9 ~~"(B) DEFINITIONS.—For purposes of this~~
10 ~~paragraph—~~
11 ~~"(i) UNEMPLOYED VETERAN.—The~~
12 ~~term 'unemployed veteran' means any vet-~~
13 ~~eran (as defined in paragraph (3)(B), de-~~
14 ~~termined without regard to clause (ii)~~
15 ~~thereof) who is certified by the designated~~
16 ~~local agency as—~~
17 ~~"(I) having been discharged or~~
18 ~~released from active duty in the~~
19 ~~Armed Forces during 2008, 2009, or~~
20 ~~2010, and~~
21 ~~"(II) being in receipt of unem-~~
22 ~~ployment compensation under State or~~
23 ~~Federal law for not less than 4 weeks~~
24 ~~during the 1-year period ending on~~
25 ~~the hiring date.~~

1 ~~"(ii) DISCONNECTED YOUTH.—The~~
2 ~~term 'disconnected youth' means any indi-~~
3 ~~vidual who is certified by the designated~~
4 ~~local agency—~~
5 ~~"(I) as having attained age 16~~
6 ~~but not age 25 on the hiring date,~~
7 ~~"(II) as not regularly attending~~
8 ~~any secondary, technical, or post-sec-~~
9 ~~ondary school during the 6-month pe-~~
10 ~~riod preceding the hiring date,~~
11 ~~"(III) as not regularly employed~~
12 ~~during such 6-month period, and~~
13 ~~"(IV) as not readily employable~~
14 ~~by reason of lacking a sufficient num-~~
15 ~~ber of basic skills.".~~
16 ~~(b) EFFECTIVE DATE.—The amendments made by~~
17 ~~this section shall apply to individuals who begin work for~~
18 ~~the employer after December 31, 2008.~~

~~PART 4—CLARIFICATION OF REGULATIONS RELATED TO LIMITATIONS ON CERTAIN BUILT-IN LOSSES FOLLOWING AN OWNERSHIP CHANGE~~

~~SEC. 1431. CLARIFICATION OF REGULATIONS RELATED TO LIMITATIONS ON CERTAIN BUILT-IN LOSSES FOLLOWING AN OWNERSHIP CHANGE.~~

~~(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 F—Fiscal Relief for State and Local Governments~~

~~PART 1—IMPROVED MARKETABILITY FOR TAX-EXEMPT BONDS~~

~~SEC. 1501. DE MINIMIS SAFE HARBOR EXCEPTION FOR TAX-EXEMPT INTEREST EXPENSE OF FINANCIAL INSTITUTIONS.~~

~~(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).~~

1 ~~"(C) REFUNDINGS.—For purposes of this~~
2 ~~paragraph, a refunding bond (whether a current~~
3 ~~or advance refunding) shall be treated as issued~~
4 ~~on the date of the issuance of the refunded~~
5 ~~bond (or in the case of a series of refundings,~~
6 ~~the original bond).".~~
7 ~~(b) TREATMENT AS FINANCIAL INSTITUTION PREF-~~
8 ~~ERENCE ITEM.—Clause (iv) of section 291(e)(1)(B) is~~
9 ~~amended by adding at the end the following: "That por-~~
10 ~~tion of any obligation not taken into account under para-~~
11 ~~graph (2)(A) of section 265(b) by reason of paragraph (7)~~
12 ~~of such section shall be treated for purposes of this section~~
13 ~~as having been acquired on August 7, 1986.".~~
14 ~~(c) EFFECTIVE DATE.—The amendments made by~~
15 ~~this section shall apply to obligations issued after Decem-~~
16 ~~ber 31, 2008.~~
17 **~~SEC. 1502. MODIFICATION OF SMALL ISSUER EXCEPTION~~**
18 **~~TO TAX-EXEMPT INTEREST EXPENSE ALLOCA-~~**
19 **~~TION RULES FOR FINANCIAL INSTITUTIONS.~~**
20 ~~(a) IN GENERAL.—Paragraph (3) of section 265(b)~~
21 ~~(relating to exception for certain tax-exempt obligations)~~
22 ~~is amended by adding at the end the following new sub-~~
23 ~~paragraph:~~
24 ~~"(G) SPECIAL RULES FOR OBLIGATIONS~~
25 ~~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 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 one 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).".~~

1 ~~(b) EFFECTIVE DATE.—The amendments made by~~
2 ~~this section shall apply to obligations issued after Decem-~~
3 ~~ber 31, 2008.~~

4 ~~**SEC. 1503. TEMPORARY MODIFICATION OF ALTERNATIVE**~~
5 ~~**MINIMUM TAX LIMITATIONS ON TAX-EXEMPT**~~
6 ~~**BONDS.**~~

7 ~~(a) INTEREST ON PRIVATE ACTIVITY BONDS ISSUED~~
8 ~~DURING 2009 AND 2010 NOT TREATED AS TAX PREF-~~
9 ~~ERENCE ITEM.—Subparagraph (C) of section 57(a)(5) is~~
10 ~~amended by adding at the end a new clause:~~

11 ~~"(vi) EXCEPTION FOR BONDS ISSUED~~
12 ~~IN 2009 AND 2010.—For purposes of clause~~
13 ~~(i), the term 'private activity bond' shall~~
14 ~~not include any bond issued after Decem-~~
15 ~~ber 31, 2008, and before January 1, 2011.~~
16 ~~For purposes of the preceding sentence, a~~
17 ~~refunding bond (whether a current or ad-~~
18 ~~vance refunding) shall be treated as issued~~
19 ~~on the date of the issuance of the refunded~~
20 ~~bond (or in the case of a series of~~
21 ~~refundings, the original bond).".~~

22 ~~(b) NO ADJUSTMENT TO ADJUSTED CURRENT~~
23 ~~EARNINGS FOR INTEREST ON TAX-EXEMPT BONDS~~
24 ~~ISSUED AFTER 2008.—Subparagraph (B) of section~~

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 interest 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.

PART 2—TAX CREDIT BONDS FOR SCHOOLS

SEC. 1511. 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 sum of—~~

~~"(1) the limitation amount allocated under subsection (d) for such calendar year to such issuer, and~~

~~"(2) if such issuer is a large local educational agency (as defined in subsection (c)(4)) or is issuing on behalf of such an agency, the limitation amount~~

~~allocated under subsection (c) for such calendar year to such agency.~~

~~"(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) $11,000,000,000 for 2009,~~

~~"(2) $11,000,000,000 for 2010, and~~

~~"(3) except as provided in subsection (f), zero after 2010.~~

~~"(d) 60 PERCENT OF LIMITATION ALLOCATED AMONG STATES.—~~

~~"(1) IN GENERAL.—60 percent of 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 sum of—

"(i) the amount allocated to such State under this subsection for such year, and

"(ii) the aggregate amounts allocated under subsection (e) to large local educational agencies in such State 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) ADJUSTED MINIMUM PERCENTAGE.—A State's adjusted minimum percentage for any calendar year is the product of—

"(i) the minimum percentage described in section 1124(d) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6334(d)) for such State for the most recent fiscal year ending before such calendar year, multiplied by

"(ii) 1.68.

"(3) ALLOCATIONS TO CERTAIN POSSESSIONS.—The amount to be allocated under para-

1 graph (1) to any possession of the United States
2 other than Puerto Rico shall be the amount which
3 would have been allocated if all allocations under
4 paragraph (1) were made on the basis of respective
5 populations of individuals below the poverty line (as
6 defined by the Office of Management and Budget).
7 In making other allocations, the amount to be allo-
8 cated under paragraph (1) shall be reduced by the
9 aggregate amount allocated under this paragraph to
10 possessions of the United States.
11 "(4) ALLOCATIONS FOR INDIAN SCHOOLS.—In
12 addition to the amounts otherwise allocated under
13 this subsection, $200,000,000 for calendar year
14 2009, and $200,000,000 for calendar year 2010,
15 shall be allocated by the Secretary of the Interior for
16 purposes of the construction, rehabilitation, and re-
17 pair of schools funded by the Bureau of Indian Af-
18 fairs. In the case of amounts allocated under the
19 preceding sentence, Indian tribal governments (as
20 defined in section 7701(a)(40)) shall be treated as
21 qualified issuers for purposes of this subchapter.
22 "(c) 40 PERCENT OF LIMITATION ALLOCATED
23 AMONG LARGEST SCHOOL DISTRICTS.—
24 "(1) IN GENERAL.—40 percent of the limitation
25 applicable under subsection (c) for any calendar year

~~shall be allocated under paragraph (2) by the Secretary among local educational agencies which are large local educational agencies for such year.~~

~~"(2) ALLOCATION FORMULA.—The amount to be allocated under paragraph (1) for any calendar year shall be allocated among large local educational agencies in proportion to the respective amounts each such agency received for Basic Grants under subpart 2 of part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6331 et seq.) for the most recent fiscal year ending before such calendar year.~~

~~"(3) ALLOCATION OF UNUSED LIMITATION TO STATE.—The amount allocated under this subsection to a large local educational agency for any calendar year may be reallocated by such agency to the State in which such agency is located for such calendar year. Any amount reallocated to a State under the preceding sentence may be allocated as provided in subsection (d)(1).~~

~~"(4) LARGE LOCAL EDUCATIONAL AGENCY.—For purposes of this section, the term 'large local educational agency' means, with respect to a calendar year, any local educational agency if such agency is—~~

1 ~~"(A) among the 100 local educational~~
2 ~~agencies with the largest numbers of children~~
3 ~~aged 5 through 17 from families living below~~
4 ~~the poverty level, as determined by the Sec-~~
5 ~~retary using the most recent data available~~
6 ~~from the Department of Commerce that are~~
7 ~~satisfactory to the Secretary, or~~
8 ~~"(B) 1 of not more than 25 local edu-~~
9 ~~cational agencies (other than those described in~~
10 ~~subparagraph (A)) that the Secretary of Edu-~~
11 ~~cation determines (based on the most recent~~
12 ~~data available satisfactory to the Secretary) are~~
13 ~~in particular need of assistance, based on a low~~
14 ~~level of resources for school construction, a high~~
15 ~~level of enrollment growth, or such other factors~~
16 ~~as the Secretary deems appropriate.~~
17 ~~"(f) CARRYOVER OF UNUSED LIMITATION.—If for~~
18 ~~any calendar year—~~
19 ~~"(1) the amount allocated under subsection (d)~~
20 ~~to any State, exceeds~~
21 ~~"(2) the amount of bonds issued during such~~
22 ~~year which are designated under subsection (a) pur-~~
23 ~~suant to such allocation,~~
24 ~~the limitation amount under such subsection for such~~
25 ~~State for the following calendar year shall be increased~~

~~by the amount of such excess. A similar rule shall apply to the amounts allocated under subsection (d)(4) or (e).''.~~

~~(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 December 31, 2008.~~

~~SEC. 1512. 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 3—TAXABLE BOND OPTION FOR GOVERNMENTAL BONDS~~

~~SEC. 1521. TAXABLE BOND OPTION FOR GOVERNMENTAL BONDS.~~

~~(a) IN GENERAL.—Part IV of subchapter A of chapter 1 is amended by adding at the end the following new subpart:~~

~~"Subpart J—Taxable Bond Option for Governmental Bonds~~

~~"Sec. 54AA. Taxable bond option for governmental bonds.~~

~~"SEC. 54AA. TAXABLE BOND OPTION FOR GOVERNMENTAL BONDS.~~

~~"(a) IN GENERAL.—If a taxpayer holds a taxable governmental bond on one or more interest payment dates of the bond during any taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the credits~~

~~determined under subsection (b) with respect to such dates.~~

~~"(b) AMOUNT OF CREDIT.—The amount of the credit determined under this subsection with respect to any interest payment date for a taxable governmental bond is 35 percent of the amount of interest payable by the issuer with respect to such date.~~

~~"(c) LIMITATION BASED ON AMOUNT OF TAX.—~~

~~"(1) IN GENERAL.—The credit allowed under subsection (a) for any taxable year 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 part (other than subpart C and this 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).~~

1 ~~"(d) TAXABLE GOVERNMENTAL BOND.—~~

2 ~~"(1) IN GENERAL.—For purposes of this sec-~~

3 ~~tion, the term 'taxable governmental bond' means~~

4 ~~any obligation (other than a private activity bond)~~

5 ~~if—~~

6 ~~"(A) the interest on such obligation would~~

7 ~~(but for this section) be excludable from gross~~

8 ~~income under section 103, and~~

9 ~~"(B) the issuer makes an irrevocable elec-~~

10 ~~tion to have this section apply.~~

11 ~~"(2) APPLICABLE RULES.—For purposes of ap-~~

12 ~~plying paragraph (1)—~~

13 ~~"(A) a taxable governmental bond shall not~~

14 ~~be treated as federally guaranteed by reason of~~

15 ~~the credit allowed under subsection (a) or sec-~~

16 ~~tion 6432,~~

17 ~~"(B) the yield on a taxable governmental~~

18 ~~bond shall be determined without regard to the~~

19 ~~credit allowed under subsection (a), and~~

20 ~~"(C) a bond shall not be treated as a tax-~~

21 ~~able governmental bond if the issue price has~~

22 ~~more than a de minimis amount (determined~~

23 ~~under rules similar to the rules of section~~

24 ~~1273(a)(3)) of premium over the stated prin-~~

25 ~~cipal amount of the bond.~~

1 ~~"(e) INTEREST PAYMENT DATE.—For purposes of~~
2 ~~this section, the term 'interest payment date' means any~~
3 ~~date on which the holder of record of the taxable govern-~~
4 ~~mental bond is entitled to a payment of interest under~~
5 ~~such bond.~~
6 ~~"(f) SPECIAL RULES.—~~
7 ~~"(1) INTEREST ON TAXABLE GOVERNMENTAL~~
8 ~~BONDS INCLUDIBLE IN GROSS INCOME FOR FED-~~
9 ~~ERAL INCOME TAX PURPOSES.—For purposes of this~~
10 ~~title, interest on any taxable governmental bond~~
11 ~~shall be includible in gross income.~~
12 ~~"(2) APPLICATION OF CERTAIN RULES.—Rules~~
13 ~~similar to the rules of subsections (f), (g), (h), and~~
14 ~~(i) of section 54A shall apply for purposes of the~~
15 ~~credit allowed under subsection (a).~~
16 ~~"(g) SPECIAL RULE FOR QUALIFIED BONDS ISSUED~~
17 ~~BEFORE 2011.—In the case of a qualified bond issued be-~~
18 ~~fore January 1, 2011—~~
19 ~~"(1) ISSUER ALLOWED REFUNDABLE CRED-~~
20 ~~IT.—In lieu of any credit allowed under this section~~
21 ~~with respect to such bond, the issuer of such bond~~
22 ~~shall be allowed a credit as provided in section 6432.~~
23 ~~"(2) QUALIFIED BOND.—For purposes of this~~
24 ~~subsection, the term 'qualified bond' means any tax-~~

able governmental 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 6432.".

(b) CREDIT FOR QUALIFIED BONDS ISSUED BEFORE 2011.—Subchapter B of chapter 65, as amended by this Act, is amended by adding at the end the following new section:

"SEC. 6432. 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(h).".~~

~~(c) CONFORMING AMENDMENTS.—~~

~~(1) Section 1324(b)(2) of title 31, United States Code, is amended by striking "or 6428" and inserting "6428, or 6432,".~~

~~(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".~~

1 ~~(5) The table of subparts for part IV of sub-~~
2 ~~chapter A of chapter 1 is amended by adding at the~~
3 ~~end the following new item:~~

~~"Subpart J. Taxable bond option for governmental bonds.".~~

4 ~~(6) The table of sections for subchapter B of~~
5 ~~chapter 65, as amended by this Act, is amended by~~
6 ~~adding at the end the following new item:~~

~~"Sec. 6432. Credit for qualified bonds allowed to issuer on advance basis.".~~

7 ~~(d) TRANSITIONAL COORDINATION WITH STATE~~
8 ~~LAW.—Except as otherwise provided by a State after the~~
9 ~~date of the enactment of this Act, the interest on any tax-~~
10 ~~able governmental bond (as defined in section 54AA of~~
11 ~~the Internal Revenue Code of 1986, as added by this sec-~~
12 ~~tion) and the amount of any credit determined under such~~
13 ~~section with respect to such bond shall be treated for pur-~~
14 ~~poses of the income tax laws of such State as being exempt~~
15 ~~from Federal income tax.~~

16 ~~(e) EFFECTIVE DATE.—The amendments made by~~
17 ~~this section shall apply to obligations issued after the date~~
18 ~~of the enactment of this Act.~~

19 **~~PART 4—RECOVERY ZONE BONDS~~**

20 **~~SEC. 1531. RECOVERY ZONE BONDS.~~**

21 ~~(a) IN GENERAL.—Subchapter Y of chapter 1 is~~
22 ~~amended by adding at the end the following new part:~~

23 **~~"PART III—RECOVERY ZONE BONDS~~**

~~"Sec. 1400U–1. Allocation of recovery zone bonds.~~

~~"Sec. 1400U–2. Recovery zone economic development bonds.~~
~~"Sec. 1400U–3. Recovery zone facility bonds.~~

1 **~~"SEC. 1400U–1. ALLOCATION OF RECOVERY ZONE BONDS.~~**

2 ~~"(a) ALLOCATIONS.—~~

3 ~~"(1) IN GENERAL.—The Secretary shall allo-~~
4 ~~cate the national recovery zone economic develop-~~
5 ~~ment bond limitation and the national recovery zone~~
6 ~~facility bond limitation among the States in the pro-~~
7 ~~portion that each such State's 2008 State employ-~~
8 ~~ment decline bears to the aggregate of the 2008~~
9 ~~State employment declines for all of the States.~~

10 ~~"(2) 2008 STATE EMPLOYMENT DECLINE.—For~~
11 ~~purposes of this subsection, the term '2008 State~~
12 ~~employment decline' means, with respect to any~~
13 ~~State, the excess (if any) of—~~

14 ~~"(A) the number of individuals employed~~
15 ~~in such State determined for December 2007,~~
16 ~~over~~

17 ~~"(B) the number of individuals employed~~
18 ~~in such State determined for December 2008.~~

19 ~~"(3) ALLOCATIONS BY STATES.—~~

20 ~~"(A) IN GENERAL.—Each State with re-~~
21 ~~spect to which an allocation is made under~~
22 ~~paragraph (1) shall reallocate such allocation~~
23 ~~among the counties and large municipalities in~~
24 ~~such State in the proportion the each such~~

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.

1 ~~"(B) RECOVERY ZONE FACILITY BONDS.—~~
2 ~~There is a national recovery zone facility bond~~
3 ~~limitation of $15,000,000,000.~~
4 ~~"(b) RECOVERY ZONE.—For purposes of this part,~~
5 ~~the term 'recovery zone' means—~~
6 ~~"(1) any area designated by the issuer as hav-~~
7 ~~ing significant poverty, unemployment, home fore-~~
8 ~~closures, or general distress, and~~
9 ~~"(2) any area for which a designation as an em-~~
10 ~~powerment zone or renewal community is in effect.~~
11 **~~"SEC. 1400U–2. RECOVERY ZONE ECONOMIC DEVELOPMENT~~**
12 **~~BONDS.~~**
13 ~~"(a) IN GENERAL.—In the case of a recovery zone~~
14 ~~economic development bond—~~
15 ~~"(1) such bond shall be treated as a qualified~~
16 ~~bond for purposes of section 6432, and~~
17 ~~"(2) subsection (b) of such section shall be ap-~~
18 ~~plied by substituting '55 percent' for '35 percent'.~~
19 ~~"(b) RECOVERY ZONE ECONOMIC DEVELOPMENT~~
20 ~~BOND.—~~
21 ~~"(1) IN GENERAL.—For purposes of this sec-~~
22 ~~tion, the term 'recovery zone economic development~~
23 ~~bond' means any taxable governmental bond (as de-~~
24 ~~fined in section 54AA(d)) issued before January 1,~~
25 ~~2011, as part of issue if—~~

1 ~~"(A) 100 percent of the available project~~
2 ~~proceeds (as defined in section 54A) of such~~
3 ~~issue are to be used for one or more qualified~~
4 ~~economic development purposes, and~~
5 ~~"(B) the issuer designates such bond for~~
6 ~~purposes of this section.~~
7 ~~"(2) LIMITATION ON AMOUNT OF BONDS DES-~~
8 ~~IGNATED.—The maximum aggregate face amount of~~
9 ~~bonds which may be designated by any issuer under~~
10 ~~paragraph (1) shall not exceed the amount of the re-~~
11 ~~covery zone economic development bond limitation~~
12 ~~allocated to such issuer under section 1400U–1.~~
13 ~~"(c) QUALIFIED ECONOMIC DEVELOPMENT PUR-~~
14 ~~POSE.—For purposes of this section, the term 'qualified~~
15 ~~economic development purpose' means expenditures for~~
16 ~~purposes of promoting development or other economic ac-~~
17 ~~tivity in a recovery zone, including—~~
18 ~~"(1) capital expenditures paid or incurred with~~
19 ~~respect to property located in such zone,~~
20 ~~"(2) expenditures for public infrastructure and~~
21 ~~construction of public facilities, and~~
22 ~~"(3) expenditures for job training and edu-~~
23 ~~cational programs.~~

1 **~~"SEC. 1400U–3. RECOVERY ZONE FACILITY BONDS.~~**

2 ~~"(a) IN GENERAL.—For purposes of part IV of sub-~~
3 ~~chapter B (relating to tax exemption requirements for~~
4 ~~State and local bonds), the term 'exempt facility bond' in-~~
5 ~~cludes any recovery zone facility bond.~~

6 ~~"(b) RECOVERY ZONE FACILITY BOND.—~~

7 ~~"(1) IN GENERAL.—For purposes of this sec-~~
8 ~~tion, the term 'recovery zone facility bond' means~~
9 ~~any bond issued as part of an issue if—~~

10 ~~"(A) 95 percent or more of the net pro-~~
11 ~~ceeds (as defined in section 150(a)(3)) of such~~
12 ~~issue are to be used for recovery zone property,~~

13 ~~"(B) such bond is issued before January 1,~~
14 ~~2011, and~~

15 ~~"(C) the issuer designates such bond for~~
16 ~~purposes of this section.~~

17 ~~"(2) LIMITATION ON AMOUNT OF BONDS DES-~~
18 ~~IGNATED.—The maximum aggregate face amount of~~
19 ~~bonds which may be designated by any issuer under~~
20 ~~paragraph (1) shall not exceed the amount of recov-~~
21 ~~ery zone facility bond limitation allocated to such~~
22 ~~issuer under section 1400U–1.~~

23 ~~"(c) RECOVERY ZONE PROPERTY.—For purposes of~~
24 ~~this section—~~

~~"(1) IN GENERAL.—The term 'recovery zone property' means any property to which section 168 applies (or would apply but for section 179) if—~~

~~"(A) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after the date on which the designation of the recovery zone took effect,~~

~~"(B) the original use of which in the recovery zone commences with the taxpayer, and~~

~~"(C) substantially all of the use of which is in the recovery zone and is in the active conduct of a qualified business by the taxpayer in such zone.~~

~~"(2) QUALIFIED BUSINESS.—The term 'qualified business' means any trade or business except 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).~~

1 ~~"(3) SPECIAL RULES FOR SUBSTANTIAL REN-~~
2 ~~OVATIONS AND SALE-LEASEBACK.—Rules similar to~~
3 ~~the rules of subsections (a)(2) and (b) of section~~
4 ~~1397D shall apply for purposes of this subsection.~~
5 ~~"(d) NONAPPLICATION OF CERTAIN RULES.—Sec-~~
6 ~~tions 146 (relating to volume cap) and 147(d) (relating~~
7 ~~to acquisition of existing property not permitted) shall not~~
8 ~~apply to any recovery zone facility bond.".~~
9 ~~(b) CLERICAL AMENDMENT.—The table of parts for~~
10 ~~subchapter Y of chapter 1 of such Code is amended by~~
11 ~~adding at the end the following new item:~~

~~"PART III. RECOVERY ZONE BONDS.".~~

12 ~~(c) EFFECTIVE DATE.—The amendments made by~~
13 ~~this section shall apply to obligations issued after the date~~
14 ~~of the enactment of this Act.~~

15 **~~SEC. 1532. TRIBAL ECONOMIC DEVELOPMENT BONDS.~~**

16 ~~(a) IN GENERAL.—Section 7871 is amended by add-~~
17 ~~ing at the end the following new subsection:~~
18 ~~"(f) TRIBAL ECONOMIC DEVELOPMENT BONDS.—~~
19 ~~"(1) ALLOCATION OF LIMITATION.—~~
20 ~~"(A) IN GENERAL.—The Secretary shall~~
21 ~~allocate the national tribal economic develop-~~
22 ~~ment bond limitation among the Indian tribal~~
23 ~~governments in such manner as the Secretary,~~
24 ~~in consultation with the Secretary of the Inte-~~
25 ~~rior, determines appropriate.~~

1 ~~"(B) NATIONAL LIMITATION.—There is a~~
2 ~~national tribal economic development bond limi-~~
3 ~~tation of $2,000,000,000.~~
4 ~~"(2) BONDS TREATED AS EXEMPT FROM~~
5 ~~TAX.—In the case of a tribal economic development~~
6 ~~bond—~~
7 ~~"(A) notwithstanding subsection (c), such~~
8 ~~bond shall be treated for purposes of this title~~
9 ~~in the same manner as if such bond were issued~~
10 ~~by a State, and~~
11 ~~"(B) section 146 shall not apply.~~
12 ~~"(3) TRIBAL ECONOMIC DEVELOPMENT~~
13 ~~BOND.—~~
14 ~~"(A) IN GENERAL.—For purposes of this~~
15 ~~section, the term 'tribal economic development~~
16 ~~bond' means any bond issued by an Indian trib-~~
17 ~~al government—~~
18 ~~"(i) the interest on which is not ex-~~
19 ~~empt from tax under section 103 by reason~~
20 ~~of subsection (c) (determined without re-~~
21 ~~gard to this subsection) but would be so~~
22 ~~exempt if issued by a State or local govern-~~
23 ~~ment, and~~
24 ~~"(ii) which is designated by the In-~~
25 ~~dian tribal government as a tribal eco-~~

~~nomic 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 studies 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.

PART 5—REPEAL OF WITHHOLDING TAX ON GOVERNMENT CONTRACTORS

SEC. 1541. REPEAL OF WITHHOLDING TAX ON GOVERNMENT CONTRACTORS.

Section 3402 is amended by striking subsection (t).

Subtitle G—Energy Incentives

PART 1—RENEWABLE ENERGY INCENTIVES

SEC. 1601. 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. 1602. 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.—~~

1 ~~"(A) IN GENERAL.—In the case of any~~
2 ~~qualified investment credit facility placed in~~
3 ~~service in 2009 or 2010—~~
4 ~~"(i) such facility shall be treated as~~
5 ~~energy property for purposes of this sec-~~
6 ~~tion, and~~
7 ~~"(ii) the energy percentage with re-~~
8 ~~spect to such property shall be 30 percent.~~
9 ~~"(B) DENIAL OF PRODUCTION CREDIT.—~~
10 ~~No credit shall be allowed under section 45 for~~
11 ~~any taxable year with respect to any qualified~~
12 ~~investment credit facility.~~
13 ~~"(C) QUALIFIED INVESTMENT CREDIT FA-~~
14 ~~CILITY.—For purposes of this paragraph, the~~
15 ~~term 'qualified investment credit facility' means~~
16 ~~any facility described in paragraph (1), (2), (3),~~
17 ~~(4), (6), (7), (9), or (11) of section 45(d) if no~~
18 ~~credit has been allowed under section 45 with~~
19 ~~respect to such facility and the taxpayer makes~~
20 ~~an irrevocable election to have this paragraph~~
21 ~~apply to such facility.".~~
22 ~~(b) EFFECTIVE DATE.—The amendments made by~~
23 ~~this section shall apply to facilities placed in service after~~
24 ~~December 31, 2008.~~

1 ~~SEC. 1603. REPEAL OF CERTAIN LIMITATIONS ON CREDIT~~
2 ~~FOR RENEWABLE ENERGY PROPERTY.~~
3 ~~(a) REPEAL OF LIMITATION ON CREDIT FOR QUALI-~~
4 ~~FIED SMALL WIND ENERGY PROPERTY.—Paragraph (4)~~
5 ~~of section 48(c) is amended by striking subparagraph (B)~~
6 ~~and by redesignating subparagraphs (C) and (D) as sub-~~
7 ~~paragraphs (B) and (C).~~
8 ~~(b) REPEAL OF LIMITATION ON PROPERTY FI-~~
9 ~~NANCED BY SUBSIDIZED ENERGY FINANCING.—~~
10 ~~(1) IN GENERAL.—Subsection (a) of section 48~~
11 ~~is amended by striking paragraph (4).~~
12 ~~(2) CONFORMING AMENDMENTS.—~~
13 ~~(A) Section 25C(e)(1) is amended by strik-~~
14 ~~ing "(8), and (9)" and inserting "and (8)".~~
15 ~~(B) Section 25D(e) is amended by striking~~
16 ~~paragraph (9).~~
17 ~~(c) EFFECTIVE DATE.—~~
18 ~~(1) IN GENERAL.—Except as provided in para-~~
19 ~~graph (2),the amendment made by this section shall~~
20 ~~apply to periods after December 31, 2008, under~~
21 ~~rules similar to the rules of section 48(m) of the In-~~
22 ~~ternal Revenue Code of 1986 (as in effect on the day~~
23 ~~before the date of the enactment of the Revenue~~
24 ~~Reconciliation Act of 1990).~~

1 ~~(2) CONFORMING AMENDMENTS.—The amend-~~
2 ~~ments made by subsection (b)(2) shall apply to tax-~~
3 ~~able years beginning after December 31, 2008.~~

4 ~~**SEC. 1604. COORDINATION WITH RENEWABLE ENERGY**~~
5 ~~**GRANTS.**~~

6 ~~Section 48 is amended by adding at the end the fol-~~
7 ~~lowing new subsection:~~

8 ~~"(d) COORDINATION WITH DEPARTMENT OF EN-~~
9 ~~ERGY GRANTS.—In the case of any property with respect~~
10 ~~to which the Secretary of Energy makes a grant under~~
11 ~~section 1721 of the American Recovery and Reinvestment~~
12 ~~Tax Act of 2009—~~

13 ~~"(1) DENIAL OF PRODUCTION AND INVEST-~~
14 ~~MENT CREDITS.—No credit shall be determined~~
15 ~~under this section or section 45 with respect to such~~
16 ~~property for the taxable year in which such grant is~~
17 ~~made or any subsequent taxable year.~~

18 ~~"(2) RECAPTURE OF CREDITS FOR PROGRESS~~
19 ~~EXPENDITURES MADE BEFORE GRANT.—If a credit~~
20 ~~was determined under this section with respect to~~
21 ~~such property for any taxable year ending before~~
22 ~~such grant is made—~~

23 ~~"(A) the tax imposed under subtitle A on~~
24 ~~the taxpayer for the taxable year in which such~~

~~grant is made shall be increased by so much of such credit as was allowed under section 38,~~

~~"(B) the general business carryforwards under section 39 shall be adjusted so as to recapture the portion of such credit which was not so allowed, and~~

~~"(C) the amount of such grant shall be determined without regard to any reduction in the basis of such property by reason of such credit.~~

~~"(3) TREATMENT OF GRANTS.—Any such grant shall—~~

~~"(A) not be includible in the gross income of the taxpayer, but~~

~~"(B) shall be taken into account in determining the basis of the property to which such grant relates, except that the basis of such property shall be reduced under section 50(c) in the same manner as a credit allowed under subsection (a).".~~

1 **~~PART 2—INCREASED ALLOCATIONS OF NEW~~**
2 **~~CLEAN RENEWABLE ENERGY BONDS AND~~**
3 **~~QUALIFIED ENERGY CONSERVATION BONDS~~**
4 **~~SEC. 1611. INCREASED LIMITATION ON ISSUANCE OF NEW~~**
5 **~~CLEAN RENEWABLE ENERGY BONDS.~~**
6 ~~Subsection (c) of section 54C is amended by adding~~
7 ~~at the end the following new paragraph:~~
8 ~~"(4) ADDITIONAL LIMITATION.—The national~~
9 ~~new clean renewable energy bond limitation shall be~~
10 ~~increased by $1,600,000,000. Such increase shall be~~
11 ~~allocated by the Secretary consistent with the rules~~
12 ~~of paragraphs (2) and (3).".~~
13 **~~SEC. 1612. INCREASED LIMITATION AND EXPANSION OF~~**
14 **~~QUALIFIED ENERGY CONSERVATION BONDS.~~**
15 ~~(a) INCREASED LIMITATION.—Subsection (c) of sec-~~
16 ~~tion 54D is amended by adding at the end the following~~
17 ~~new paragraph:~~
18 ~~"(4) ADDITIONAL LIMITATION.—The national~~
19 ~~qualified energy conservation bond limitation shall~~
20 ~~be increased by $2,400,000,000. Such increase shall~~
21 ~~be allocated by the Secretary consistent with the~~
22 ~~rules of paragraphs (1), (2), and (3).".~~
23 ~~(b) LOANS AND GRANTS TO IMPLEMENT GREEN~~
24 ~~COMMUNITY PROGRAMS.—~~
25 ~~(1) IN GENERAL.—Subparagraph (A) of section~~
26 ~~54D(f)(1) is amended by inserting "(or loans or~~

1 ~~grants for capital expenditures to implement any~~
2 ~~green community program)'' after ''Capital expendi-~~
3 ~~tures''.~~
4 ~~(2) BONDS TO IMPLEMENT GREEN COMMUNITY~~
5 ~~PROGRAMS NOT TREATED AS PRIVATE ACTIVITY~~
6 ~~BONDS FOR PURPOSES OF LIMITATIONS ON QUALI-~~
7 ~~FIED ENERGY CONSERVATION BONDS .—Subsection~~
8 ~~(c) of section 54D is amended by adding at the end~~
9 ~~the following new paragraph:~~
10 ~~''(4) BONDS TO IMPLEMENT GREEN COMMU-~~
11 ~~NITY PROGRAMS NOT TREATED AS PRIVATE ACTIV-~~
12 ~~ITY BONDS.—For purposes of paragraph (3) and~~
13 ~~subsection (f)(2), a bond shall not be treated as a~~
14 ~~private activity bond solely because proceeds of the~~
15 ~~issue of which such bond is a part are to be used~~
16 ~~for loans or grants for capital expenditures to imple-~~
17 ~~ment any green community program.''.~~
18 ~~(c) EFFECTIVE DATE.—The amendments made by~~
19 ~~this section shall apply to obligations issued after the date~~
20 ~~of the enactment of this Act.~~

1 **~~PART 3—ENERGY CONSERVATION INCENTIVES~~**

2 **~~SEC. 1621. EXTENSION AND MODIFICATION OF CREDIT FOR~~**

3 **~~NONBUSINESS ENERGY PROPERTY.~~**

4 ~~(a) IN GENERAL.—Section 25C is amended by strik-~~

5 ~~ing subsections (a) and (b) and inserting the following new~~

6 ~~subsections:~~

7 ~~"(a) ALLOWANCE OF CREDIT.—In the case of an in-~~

8 ~~dividual, there shall be allowed as a credit against the tax~~

9 ~~imposed by this chapter for the taxable year an amount~~

10 ~~equal to 30 percent of the sum of—~~

11 ~~"(1) the amount paid or incurred by the tax-~~

12 ~~payer during such taxable year for qualified energy~~

13 ~~efficiency improvements, and~~

14 ~~"(2) the amount of the residential energy prop-~~

15 ~~erty expenditures paid or incurred by the taxpayer~~

16 ~~during such taxable year.~~

17 ~~"(b) LIMITATION.—The aggregate amount of the~~

18 ~~credits allowed under this section for taxable years begin-~~

19 ~~ning in 2009 and 2010 with respect to any taxpayer shall~~

20 ~~not exceed $1,500.".~~

21 ~~(b) EXTENSION.—Section 25C(g)(2) is amended by~~

22 ~~striking "December 31, 2009" and inserting "December~~

23 ~~31, 2010".~~

24 ~~(c) EFFECTIVE DATE.—The amendments made by~~

25 ~~this section shall apply to taxable years beginning after~~

26 ~~December 31, 2008.~~

~~SEC. 1622. 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) (determined 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(c) 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:~~

1 ~~"(A) MAXIMUM EXPENDITURES FOR FUEL~~
2 ~~CELLS.—The maximum amount of such ex-~~
3 ~~penditures which may be taken into account~~
4 ~~under subsection (a) by all such individuals~~
5 ~~with respect to such dwelling unit during such~~
6 ~~calendar year shall be $1,667 in the case of~~
7 ~~each half kilowatt of capacity of qualified fuel~~
8 ~~cell property (as defined in section 48(c)(1))~~
9 ~~with respect to which such expenditures re-~~
10 ~~late.", and~~
11 ~~(B) by striking subparagraph (C).~~
12 ~~(b) EFFECTIVE DATE.—The amendments made by~~
13 ~~this section shall apply to taxable years beginning after~~
14 ~~December 31, 2008.~~
15 ~~**SEC. 1623. TEMPORARY INCREASE IN CREDIT FOR ALTER-**~~
16 ~~**NATIVE FUEL VEHICLE REFUELING PROP-**~~
17 ~~**ERTY.**~~
18 ~~(a) IN GENERAL.—Section 30C(c) is amended by~~
19 ~~adding at the end the following new paragraph:~~
20 ~~"(6) SPECIAL RULE FOR PROPERTY PLACED IN~~
21 ~~SERVICE DURING 2009 AND 2010.—In the case of~~
22 ~~property placed in service in taxable years beginning~~
23 ~~after December 31, 2008, and before January 1,~~
24 ~~2011—~~

1 ~~"(A) in the case of any such property~~
2 ~~which does not relate to hydrogen—~~
3 ~~"(i) subsection (a) shall be applied by~~
4 ~~substituting '50 percent' for '30 percent',~~
5 ~~"(ii) subsection (b)(1) shall be applied~~
6 ~~by substituting '$50,000' for '$30,000',~~
7 ~~and~~
8 ~~"(iii) subsection (b)(2) shall be ap-~~
9 ~~plied by substituting '$2,000' for '$1,000',~~
10 ~~and~~
11 ~~"(B) in the case of any such property~~
12 ~~which relates to hydrogen, subsection (b) shall~~
13 ~~be applied by substituting '$200,000' for~~
14 ~~'$30,000'.".~~
15 ~~(b) EFFECTIVE DATE.—The amendment made by~~
16 ~~this section shall apply to taxable years beginning after~~
17 ~~December 31, 2008.~~
18 **~~PART 4—ENERGY RESEARCH INCENTIVES~~**
19 **~~SEC. 1631. INCREASED RESEARCH CREDIT FOR ENERGY RE-~~**
20 **~~SEARCH.~~**
21 ~~(a) IN GENERAL.—Section 41 is amended by redesig-~~
22 ~~nating subsection (h) as subsection (i) and by inserting~~
23 ~~after subsection (g) the following new subsection:~~
24 ~~"(h) ENERGY RESEARCH CREDIT.—In the case of~~
25 ~~any taxable year beginning in 2009 or 2010—~~

1 ~~"(1) IN GENERAL.—The credit determined~~
2 ~~under subsection (a)(1) shall be increased by 20 per-~~
3 ~~cent of the qualified energy research expenses for~~
4 ~~the taxable year.~~
5 ~~"(2) QUALIFIED ENERGY RESEARCH EX-~~
6 ~~PENSES.—For purposes of this subsection, the term~~
7 ~~'qualified energy research expenses' means so much~~
8 ~~of the taxpayer's qualified research expenses as are~~
9 ~~related to the fields of fuel cells and battery tech-~~
10 ~~nology, renewable energy, energy conservation tech-~~
11 ~~nology, efficient transmission and distribution of~~
12 ~~electricity, and carbon capture and sequestration.~~
13 ~~"(3) COORDINATION WITH OTHER RESEARCH~~
14 ~~CREDITS.—~~
15 ~~"(A) INCREMENTAL CREDIT.—The amount~~
16 ~~of qualified energy research expenses taken into~~
17 ~~account under subsection (a)(1)(A) shall not ex-~~
18 ~~ceed the base amount.~~
19 ~~"(B) ALTERNATIVE SIMPLIFIED CREDIT.—~~
20 ~~For purposes of subsection (c)(5), the amount~~
21 ~~of qualified energy research expenses taken into~~
22 ~~account for the taxable year for which the cred-~~
23 ~~it is being determined shall not exceed—~~
24 ~~"(i) in the case of subsection~~
25 ~~(c)(5)(A), 50 percent of the average quali-~~

~~fied 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.~~

~~Subtitle H—Other Provisions~~

~~PART 1—APPLICATION OF CERTAIN LABOR STANDARDS TO PROJECTS FINANCED WITH CERTAIN TAX-FAVORED BONDS~~

~~SEC. 1701. APPLICATION OF CERTAIN LABOR STANDARDS TO PROJECTS FINANCED WITH CERTAIN TAX-FAVORED BONDS.~~

~~Subchapter IV of chapter 31 of the title 40, United States Code, shall apply to projects financed with the proceeds of—~~

~~(1) any qualified 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).

PART 2—GRANTS TO PROVIDE FINANCING FOR LOW-INCOME HOUSING

SEC. 1711. GRANTS TO STATES FOR LOW-INCOME HOUSING PROJECTS IN LIEU OF LOW-INCOME HOUSING CREDIT ALLOCATIONS FOR 2009.

(a) IN GENERAL.—The Secretary of the Treasury shall make a grant to the housing credit agency of each State in an amount equal to such State's low-income housing grant election amount.

(b) LOW-INCOME HOUSING GRANT ELECTION AMOUNT.—For purposes of this section, the term ''low-income housing grant election amount'' means, with respect to any State, such amount as the State may elect which does not exceed 85 percent of the product of—

(1) the sum of—

(A) 100 percent of the State housing credit ceiling for 2009 which is attributable to amounts described in clauses (i) and (iii) of section 42(h)(3)(C) of the Internal Revenue Code of 1986, and

(B) 40 percent of the State housing credit ceiling for 2009 which is attributable to

~~amounts described in clauses (ii) and (iv) of such section, multiplied by~~

~~(2) 10.~~

~~(c) SUBAWARDS FOR LOW-INCOME BUILDINGS.—~~

~~(1) IN GENERAL.—A State housing credit agency receiving a grant under this section shall use such grant to make subawards to finance the construction or acquisition and rehabilitation of qualified low-income buildings. A subaward under this section may be made to finance a qualified low-income building with or without an allocation under section 42 of the Internal Revenue Code of 1986, except that a State housing credit agency may make subawards to finance qualified low-income buildings without an allocation only if it makes a determination that such use will increase the total funds available to the State to build and rehabilitate affordable housing. In complying with such determination requirement, a State housing credit agency shall establish a process in which applicants that are allocated credits are required to demonstrate good faith efforts to obtain investment commitments for such credits before the agency makes such subawards.~~

~~(2) SUBAWARDS SUBJECT TO SAME REQUIREMENTS AS LOW-INCOME HOUSING CREDIT ALLOCA-~~

~~TIONS.—Any such subaward with respect to any qualified low-income building shall be made in the same manner and shall be subject to the same limitations (including rent, income, and use restrictions on such building) as an allocation of housing credit dollar amount allocated by such State housing credit agency under section 42 of the Internal Revenue Code of 1986, except that such subawards shall not be limited by, or otherwise affect (except as provided in subsection (h)(3)(J) of such section), the State housing credit ceiling applicable to such agency.~~

~~(3) COMPLIANCE AND ASSET MANAGEMENT.—The State housing credit agency shall perform asset management functions to ensure compliance with section 42 of the Internal Revenue Code of 1986 and the long-term viability of buildings funded by any subaward under this section. The State housing credit agency may collect reasonable fees from a subaward recipient to cover expenses associated with the performance of its duties under this paragraph. The State housing credit agency may retain an agent or other private contractor to satisfy the requirements of this paragraph.~~

~~(4) RECAPTURE.—The State housing credit agency shall impose conditions or restrictions, in-~~

~~cluding a requirement providing for recapture, on any subaward under this section so as to assure that the building with respect to which such subaward is made remains a qualified low-income building during the compliance period. Any such recapture shall be payable to the Secretary of the Treasury for deposit in the general fund of the Treasury and may be enforced by means of liens or such other methods as the Secretary of the Treasury determines appropriate.~~

~~(d) RETURN OF UNUSED GRANT FUNDS.—Any grant funds not used to make subawards under this section before January 1, 2011, shall be returned to the Secretary of the Treasury on such date. Any subawards returned to the State housing credit agency on or after such date shall be promptly returned to the Secretary of the Treasury. Any amounts returned to the Secretary of the Treasury under this subsection shall be deposited in the general fund of the Treasury.~~

~~(e) DEFINITIONS.—Any term used in this section which is also used in section 42 of the Internal Revenue Code of 1986 shall have the same meaning for purposes of this section as when used in such section 42. Any reference in this section to the Secretary of the Treasury shall be treated as including the Secretary's delegate.~~

~~(f) APPROPRIATIONS.—There is hereby appropriated to the Secretary of the Treasury such sums as may be necessary to carry out this section.~~

~~PART 3—GRANTS FOR SPECIFIED ENERGY PROPERTY IN LIEU OF TAX CREDITS~~

~~SEC. 1721. GRANTS FOR SPECIFIED ENERGY PROPERTY IN LIEU OF TAX CREDITS.~~

~~(a) IN GENERAL.—Upon application, the Secretary of Energy shall, within 60 days of the application and subject to the requirements of this section, provide a grant to each person who places in service specified energy property during 2009 or 2010 to reimburse such person for a portion of the expense of such facility as provided in subsection (b).~~

~~(b) GRANT AMOUNT.—~~

~~(1) IN GENERAL.—The amount of the grant under subsection (a) with respect to any specified energy property shall be the applicable percentage of the basis of such facility.~~

~~(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term "applicable percentage" means—~~

~~(A) 30 percent in the case of any property described in paragraphs (1) through (4) of subsection (c), and~~

~~(B) 10 percent in the case of any other property.~~

~~(3) DOLLAR LIMITATIONS.—In the case of property described in paragraph (2), (6), or (7) of subsection (c), the amount of any grant under this section with respect to such property shall not exceed the limitation described in section 48(c)(1)(B), 48(c)(2)(B), or 48(c)(3)(B) of the Internal Revenue Code of 1986, respectively, with respect to such property.~~

~~(c) SPECIFIED ENERGY PROPERTY.—For purposes of this section, the term "specified energy property" means any of the following:~~

~~(1) QUALIFIED FACILITIES.—Any facility described in paragraph (1), (2), (3), (4), (6), (7), (9), or (11) of section 45(d) of the Internal Revenue Code of 1986.~~

~~(2) QUALIFIED FUEL CELL PROPERTY.—Any qualified fuel cell property (as defined in section 48(c)(1) of such Code).~~

~~(3) SOLAR PROPERTY.—Any property described in clause (i) or (ii) of section 48(a)(3)(A) of such Code.~~

~~(4) QUALIFIED SMALL WIND ENERGY PROPERTY.—Any qualified small wind energy property (as defined in section 48(c)(4) of such Code).~~

~~(5) GEOTHERMAL PROPERTY.—Any property described in clause (iii) of section 48(a)(3)(A) of such Code.~~

~~(6) QUALIFIED MICROTURBINE PROPERTY.—Any qualified microturbine property (as defined in section 48(c)(2) of such Code).~~

~~(7) COMBINED HEAT AND POWER SYSTEM PROPERTY.—Any combined heat and power system property (as defined in section 48(c)(3) of such Code).~~

~~(8) GEOTHERMAL HEATPUMP PROPERTY.—Any property described in clause (vii) of section 48(a)(3)(A) of such Code.~~

~~(d) APPLICATION OF CERTAIN RULES.—In making grants under this section, the Secretary of Energy shall apply rules similar to the rules of section 50 of the Internal Revenue Code of 1986. In applying such rules, if the facility is disposed of, or otherwise ceases to be a qualified renewable energy facility, the Secretary of Energy shall provide for the recapture of the appropriate percentage of the grant amount in such manner as the Secretary of Energy determines appropriate.~~

~~(e) EXCEPTION FOR CERTAIN NON-TAXPAYERS.—The Secretary of Energy shall not make any grant under this section to any Federal, State, or local government (or any political subdivision, agency, or instrumentality thereof) or any organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code.~~

~~(f) DEFINITIONS.—Terms used in this section which are also used in section 45 or 48 of the Internal Revenue Code of 1986 shall have the same meaning for purposes of this section as when used in such section 45 or 48. Any reference in this section to the Secretary of the Treasury shall be treated as including the Secretary's delegate.~~

~~(g) COORDINATION BETWEEN DEPARTMENTS OF TREASURY AND ENERGY.—The Secretary of the Treasury shall provide the Secretary of Energy with such technical assistance as the Secretary of Energy may require in carrying out this section. The Secretary of Energy shall provide the Secretary of the Treasury with such information as the Secretary of the Treasury may require in carrying out the amendment made by section 1604.~~

~~(h) APPROPRIATIONS.—There is hereby appropriated to the Secretary of Energy such sums as may be necessary to carry out this section.~~

(i) TERMINATION.—The Secretary of Energy shall not make any grant to any person under this section unless the application of such person for such grant is received before October 1, 2011.

PART 4—STUDY OF ECONOMIC, EMPLOYMENT, AND RELATED EFFECTS OF THIS ACT

SEC. 1731. STUDY OF ECONOMIC, EMPLOYMENT, AND RELATED EFFECTS OF THIS ACT.

On February 1, 2010, and every 3 months thereafter in calendar year 2010, the Comptroller General of the United States shall submit to the Committee on Ways and Means a written report on the most recent national (and, where available, State-by-State) information on—

(1) the economic effects of this Act;

(2) the employment effects of this Act, including—

(A) a comparison of the number of jobs preserved and the number of jobs created as a result of this Act; and

(B) a comparison of the numbers of jobs preserved and the number of jobs created in each of the public and private sectors;

(3) the share of tax and non-tax expenditures provided under this Act that were spent or saved, by group and income class;

~~(4) how the funds provided to States under this Act have been spent, including a breakdown of—~~

~~(A) funds used for services provided to citizens; and~~

~~(B) wages and other compensation for public employees; and~~

~~(5) a description of any funds made available under this Act that remain unspent, and the reasons why.~~

~~TITLE II—ASSISTANCE FOR UNEMPLOYED WORKERS AND STRUGGLING FAMILIES~~

~~SEC. 2000. SHORT TITLE.~~

~~This title may be cited as the "Assistance for Unemployed Workers and Struggling Families Act".~~

~~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.~~

~~(b) PROVISIONS OF AGREEMENT.—~~

~~(1) ADDITIONAL COMPENSATION.—Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had~~

~~been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to the amount determined under the State law (before the application of this paragraph) plus an additional $25.~~

~~(2) ALLOWABLE METHODS OF PAYMENT.—Any additional compensation provided for in accordance with paragraph (1) shall be payable either—~~

~~(A) as an amount which is paid at the same time and in the same manner as any regular compensation otherwise payable for the week involved; or~~

~~(B) at the option of the State, by payments 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 reimburse-~~

~~ment (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.~~

~~(c) 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 (h)(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 (h)(3) for any week beginning on or after the date specified in subsection (c)(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 (h)(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 (c)(3).~~

~~(h) DISREGARD OF ADDITIONAL COMPENSATION FOR PURPOSES OF MEDICAID AND SCHIP.—The monthly equivalent of any additional compensation paid under this section shall be disregarded in considering the amount of income of an individual for any purposes under title XIX and title XXI of the Social Security 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—~~

1 ~~(A) extended compensation (as defined by~~
2 ~~section 205 of the Federal-State Extended Un-~~
3 ~~employment Compensation Act of 1970); and~~
4 ~~(B) unemployment compensation (as de-~~
5 ~~fined by section 85(b) of the Internal Revenue~~
6 ~~Code of 1986) provided under any program ad-~~
7 ~~ministered by a State under an agreement with~~
8 ~~the Secretary.~~

9 ~~**SEC. 2003. SPECIAL TRANSFERS FOR UNEMPLOYMENT**~~
10 ~~**COMPENSATION MODERNIZATION.**~~

11 ~~(a) IN GENERAL.—Section 903 of the Social Security~~
12 ~~Act (42 U.S.C. 1103) is amended by adding at the end~~
13 ~~the following:~~

14 ~~"Special Transfers in Fiscal Years 2009, 2010, and 2011~~
15 ~~for Modernization~~

16 ~~"(f)(1)(A) In addition to any other amounts, the Sec-~~
17 ~~retary of Labor shall provide for the making of unemploy-~~
18 ~~ment compensation modernization incentive payments~~
19 ~~(hereinafter 'incentive payments') to the accounts of the~~
20 ~~States in the Unemployment Trust Fund, by transfer from~~
21 ~~amounts reserved for that purpose in the Federal unem-~~
22 ~~ployment account, in accordance with succeeding provi-~~
23 ~~sions of this subsection.~~

24 ~~"(B) The maximum incentive payment allowable~~
25 ~~under this subsection with respect to any State shall, as~~

~~determined by the Secretary of Labor, be equal to the amount obtained by multiplying $7,000,000,000 by the same ratio as would apply under subsection (a)(2)(B) for purposes of determining such State's share of any excess amount (as described in subsection (a)(1)) that would have been subject to transfer to State accounts, as of October 1, 2008, under the provisions of subsection (a).~~

~~"(C) Of the maximum incentive payment determined under subparagraph (B) with respect to a State—~~

~~"(i) one-third 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 (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 unemploy-~~

~~ment 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 because such individual is seeking only part-time work (as defined by the Secretary of Labor), except that the State law provisions carrying out this subparagraph may exclude an individual if a majority of the weeks of work in such individual's base period do not include part-time work (as so defined).~~

~~"(B) An individual shall not be disqualified from regular unemployment compensation for separating from employment if that separation is for any compelling family reason. For purposes of this subparagraph, the term 'compelling family reason' means the following:~~

1 ~~"(i) Domestic violence, verified by such~~
2 ~~reasonable and confidential documentation as~~
3 ~~the State law may require, which causes the in-~~
4 ~~dividual reasonably to believe that such individ-~~
5 ~~ual's continued employment would jeopardize~~
6 ~~the safety of the individual or of any member~~
7 ~~of the individual's immediate family (as defined~~
8 ~~by the Secretary of Labor).~~
9 ~~"(ii) The illness or disability of a member~~
10 ~~of the individual's immediate family (as those~~
11 ~~terms are defined by the Secretary of Labor).~~
12 ~~"(iii) The need for the individual to accom-~~
13 ~~pany such individual's spouse—~~
14 ~~"(I) to a place from which it is im-~~
15 ~~practical for such individual to commute;~~
16 ~~and~~
17 ~~"(II) due to a change in location of~~
18 ~~the spouse's employment.~~
19 ~~"(C) Weekly unemployment compensation is~~
20 ~~payable under this subparagraph to any individual~~
21 ~~who is unemployed (as determined under the State~~
22 ~~unemployment compensation law), has exhausted all~~
23 ~~rights to regular unemployment compensation under~~
24 ~~the State law, and is enrolled and making satisfac-~~
25 ~~tory progress in a State-approved training program~~

~~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 for certification under section 303 or approvable under section 3304 of the Federal Unemployment Tax Act.~~

~~"(ii) No certification of compliance with the requirements of paragraph (3) may be made with respect to any State whose State law is not in compliance with the requirements of paragraph (2).~~

~~"(iii) No application under subparagraph (A) may be considered if submitted before the date of the enactment of this subsection or after the latest date necessary (as specified by the Secretary of Labor) to ensure that all incentive payments under this subsection are made before October 1, 2011.~~

~~"(5)(A) Except as provided in subparagraph (B), any amount transferred to the account of a State under this subsection may be used by such State only in the payment of cash benefits to individuals with respect to their unemployment (including for dependents' allowances and for unemployment compensation under paragraph (3)(C)), exclusive 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 Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).~~

~~"Special Transfer in Fiscal Year 2009 for Administration~~

~~"(g)(1) In addition to any other amounts, the Secretary of the Treasury shall transfer from the employment security administration account to the account of each State in the Unemployment Trust Fund, within 30 days after the date of the enactment of this subsection, the amount determined with respect to such State under paragraph (2).~~

~~"(2) The amount to be transferred under this subsection to a State account shall (as determined by the Secretary of Labor and certified by such Secretary to the Secretary of the Treasury) be equal to the amount obtained by multiplying $500,000,000 by the same ratio as determined under subsection (f)(1)(B) with respect to such State.~~

~~"(3) Any amount transferred to the account of a State as a result of the enactment of this subsection may~~

be used by the State agency of such State only in the payment of expenses incurred by it for—

"(A) the administration of the provisions of its State law carrying out the purposes of subsection (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).

Subtitle B—Assistance for Vulnerable Individuals

SEC. 2101. EMERGENCY FUND FOR TANF PROGRAM.

(a) IN GENERAL.—Section 403 of the Social Security Act (42 U.S.C. 603) is amended by adding at the end the following:

1 ~~"(c) EMERGENCY FUND.—~~

2 ~~"(1) ESTABLISHMENT.—There is established in~~
3 ~~the Treasury of the United States a fund which~~
4 ~~shall be known as the 'Emergency Contingency~~
5 ~~Fund for State Temporary Assistance for Needy~~
6 ~~Families Programs' (in this subsection referred to as~~
7 ~~the 'Emergency Fund').~~

8 ~~"(2) DEPOSITS INTO FUND.—Out of any money~~
9 ~~in the Treasury of the United States not otherwise~~
10 ~~appropriated, there are appropriated such sums as~~
11 ~~are necessary for payment to the Emergency Fund.~~

12 ~~"(3) GRANTS.—~~

13 ~~"(A) GRANT RELATED TO CASELOAD IN-~~
14 ~~CREASES.—~~

15 ~~"(i) IN GENERAL.—For each calendar~~
16 ~~quarter in fiscal year 2009 or 2010, the~~
17 ~~Secretary shall make a grant from the~~
18 ~~Emergency Fund to each State that—~~

19 ~~"(I) requests a grant under this~~
20 ~~subparagraph for the quarter; and~~

21 ~~"(II) meets the requirement of~~
22 ~~clause (ii) for the quarter.~~

23 ~~"(ii) CASELOAD INCREASE REQUIRE-~~
24 ~~MENT.—A State meets the requirement of~~
25 ~~this clause for a quarter if the average~~

~~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.—~~

~~"(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—~~

1 ~~"(I) requests a grant under this~~
2 ~~subparagraph for the quarter; and~~
3 ~~"(II) meets the requirement of~~
4 ~~clause (ii) for the quarter.~~
5 ~~"(ii) NON-RECURRENT SHORT TERM~~
6 ~~EXPENDITURE REQUIREMENT.—A State~~
7 ~~meets the requirement of this clause for a~~
8 ~~quarter if the total expenditures of the~~
9 ~~State for non-recurrent short term benefits~~
10 ~~in the quarter, whether under the State~~
11 ~~program funded under this part or as~~
12 ~~qualified State expenditures, exceeds the~~
13 ~~total such expenditures of the State for~~
14 ~~non-recurrent short term benefits in the~~
15 ~~corresponding quarter in the emergency~~
16 ~~fund base year of the State.~~
17 ~~"(iii) AMOUNT OF GRANT.—Subject to~~
18 ~~paragraph (5), the amount of the grant to~~
19 ~~be made to a State under this subpara-~~
20 ~~graph for a quarter shall be an amount~~
21 ~~equal to 80 percent of the excess described~~
22 ~~in clause (ii).~~
23 ~~"(C) GRANT RELATED TO INCREASED EX-~~
24 ~~PENDITURES FOR SUBSIDIZED EMPLOYMENT.—~~

1 ~~"(i) IN GENERAL.—For each calendar~~
2 ~~quarter in fiscal year 2009 or 2010, the~~
3 ~~Secretary shall make a grant from the~~
4 ~~Emergency Fund to each State that—~~
5 ~~"(I) requests a grant under this~~
6 ~~subparagraph for the quarter; and~~
7 ~~"(II) meets the requirement of~~
8 ~~clause (ii) for the quarter.~~
9 ~~"(ii) SUBSIDIZED EMPLOYMENT EX-~~
10 ~~PENDITURE REQUIREMENT.—A State~~
11 ~~meets the requirement of this clause for a~~
12 ~~quarter if the total expenditures of the~~
13 ~~State for subsidized employment in the~~
14 ~~quarter, whether under the State program~~
15 ~~funded under this part or as qualified~~
16 ~~State expenditures, exceeds the total of~~
17 ~~such expenditures of the State in the cor-~~
18 ~~responding quarter in the emergency fund~~
19 ~~base year of the State.~~
20 ~~"(iii) AMOUNT OF GRANT.—Subject to~~
21 ~~paragraph (5), the amount of the grant to~~
22 ~~be made to a State under this subpara-~~
23 ~~graph for a quarter shall be an amount~~
24 ~~equal to 80 percent of the excess described~~
25 ~~in clause (ii).~~

~~"(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.~~

1 ~~"(7) TIMING OF IMPLEMENTATION.—The Sec-~~
2 ~~retary shall implement this subsection as quickly as~~
3 ~~reasonably possible, pursuant to appropriate guid-~~
4 ~~ance to States.~~
5 ~~"(8) DEFINITIONS.—In this subsection:~~
6 ~~"(A) AVERAGE MONTHLY ASSISTANCE~~
7 ~~CASELOAD.—The term 'average monthly assist-~~
8 ~~ance caseload' means, with respect to a State~~
9 ~~and a quarter, the number of families receiving~~
10 ~~assistance during the quarter under the State~~
11 ~~program funded under this part or as qualified~~
12 ~~State expenditures, subject to adjustment under~~
13 ~~paragraph (4).~~
14 ~~"(B) EMERGENCY FUND BASE YEAR.—~~
15 ~~"(i) IN GENERAL.—The term 'emer-~~
16 ~~gency fund base year' means, with respect~~
17 ~~to a State and a category described in~~
18 ~~clause (ii), whichever of fiscal year 2007 or~~
19 ~~2008 is the fiscal year in which the~~
20 ~~amount described by the category with re-~~
21 ~~spect to the State is the lesser.~~
22 ~~"(ii) CATEGORIES DESCRIBED.—The~~
23 ~~categories described in this clause are the~~
24 ~~following:~~

1 ~~"(I) The average monthly assist-~~
2 ~~ance caseload of the State.~~
3 ~~"(II) The total expenditures of~~
4 ~~the State for non-recurrent short term~~
5 ~~benefits, whether under the State pro-~~
6 ~~gram funded under this part or as~~
7 ~~qualified State expenditures.~~
8 ~~"(III) The total expenditures of~~
9 ~~the State for subsidized employment,~~
10 ~~whether under the State program~~
11 ~~funded under this part or as qualified~~
12 ~~State expenditures.~~
13 ~~"(C) QUALIFIED STATE EXPENDITURES.—~~
14 ~~The term 'qualified State expenditures' has the~~
15 ~~meaning given the term in section 409(a)(7).".~~
16 ~~(b) TEMPORARY MODIFICATION OF CASELOAD RE-~~
17 ~~DUCTION CREDIT.—Section 407(b)(3)(A)(i) of such Act~~
18 ~~(42 U.S.C. 607(b)(3)(A)(i)) is amended by inserting "(or~~
19 ~~if the immediately preceding fiscal year is fiscal year 2009~~
20 ~~or 2010, then, at State option, during the emergency fund~~
21 ~~base year of the State with respect to the average monthly~~
22 ~~assistance caseload of the State (within the meaning of~~
23 ~~section 403(c)(8)(B)))" before "under the State".~~

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

SEC. 2102. ONE-TIME EMERGENCY PAYMENT TO SSI RECIPIENTS.

(a) PAYMENT AUTHORITY.—

(1) IN GENERAL.—At the earliest practicable date in calendar year 2009 but not later than 120 days after the date of the enactment of this section, the Commissioner of Social Security shall make a one-time payment to each individual who is determined by the Commissioner in calendar year 2009 to be an individual who—

(A) is entitled to a cash benefit under the supplemental security income program under title XVI of the Social Security Act (other than pursuant to section 1611(e)(1)(B) of such Act) for at least 1 day in the calendar month in which the first payment under this section is to be made; or

(B)(i) was entitled to such a cash benefit (other than pursuant to section 1611(e)(1)(B) of such Act) for at least 1 day in the 2-month period preceding that calendar month; and

~~(ii) whose entitlement to that benefit ceased in that 2-month period solely because the income of the individual (and the income of the spouse, if any, of the individual) exceeded the applicable income limit described in paragraph (1)(A) or (2)(A) of section 1611(a) of such Act.~~

~~(2) AMOUNT OF PAYMENT.—Subject to subsection (b)(1) of this section, the amount of the payment shall be—~~

~~(A) in the case of an individual eligible for a payment under this section who does not have a spouse eligible for such a payment, an amount equal to the average of the cash benefits payable in the aggregate under section 1611 or 1619(a) of the Social Security Act to eligible individuals who do not have an eligible spouse, for the most recent month for which data on payment of the benefits are available, as determined by the Commissioner of Social Security; or~~

~~(B) in the case of an individual eligible for a payment under this section who has a spouse eligible for such a payment, an amount equal to the average of the cash benefits payable in the~~

~~aggregate under section 1611 or 1619(a) of the Social Security Act to eligible individuals who have an eligible spouse, for the most recent month for which data on payment of the benefits are available, as so determined.~~

~~(b) ADMINISTRATIVE PROVISIONS.—~~

~~(1) AUTHORITY TO WITHHOLD PAYMENT TO RECOVER PRIOR OVERPAYMENT OF SSI BENEFITS.—The Commissioner of Social Security may withhold part or all of a payment otherwise required to be made under subsection (a) of this section to an individual, in order to recover a prior overpayment of benefits to the individual under the supplemental security income program under title XVI of the Social Security Act, subject to the limitations of section 1631(b) of such Act.~~

~~(2) PAYMENT TO BE DISREGARDED IN DETERMINING UNDERPAYMENTS UNDER THE SSI PROGRAM.—A payment under subsection (a) shall be disregarded in determining whether there has been an underpayment of benefits under the supplemental security income program under title XVI of the Social Security Act.~~

~~(3) NONASSIGNMENT.—The provisions of section 1631(d) of the Social Security Act shall apply~~

with respect to payments under this section to the same extent as they apply in the case of title XVI of such Act.

(c) PAYMENTS TO BE DISREGARDED FOR PURPOSES OF ALL FEDERAL AND FEDERALLY ASSISTED PROGRAMS.—A payment under subsection (a) shall not be regarded as income to the recipient, and shall not be regarded as a resource of the recipient for the month of receipt and the following 6 months, for purposes of determining the eligibility of any 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) APPROPRIATION.—Out of any sums in the Treasury of the United States not otherwise appropriated, there are appropriated such sums as may be necessary to carry out this section.

SEC. 2103. TEMPORARY RESUMPTION OF PRIOR CHILD SUPPORT LAW.

During the period that begins with October 1, 2008, and ends with September 30, 2010, section 455(a)(1) of the Social Security Act shall be applied and administered as if the phrase "from amounts paid to the State under section 458 or" did not appear in such section.

~~TITLE III—HEALTH INSURANCE ASSISTANCE FOR THE UNEMPLOYED~~

~~SEC. 3001. SHORT TITLE AND TABLE OF CONTENTS OF TITLE.~~

~~(a) SHORT TITLE OF TITLE.—This title may be cited as the "Health Insurance Assistance for the Unemployed Act of 2009".~~

~~(b) TABLE OF CONTENTS OF TITLE.—The table of contents of this title is as follows:~~

~~Sec. 3001. Short title and table of contents of title.~~
~~Sec. 3002. Premium assistance for COBRA benefits and extension of COBRA benefits for older or long-term employees.~~
~~Sec. 3003. Temporary optional Medicaid coverage for the unemployed.~~

~~SEC. 3002. PREMIUM ASSISTANCE FOR COBRA BENEFITS AND EXTENSION OF COBRA BENEFITS FOR OLDER OR LONG-TERM EMPLOYEES.~~

~~(a) PREMIUM ASSISTANCE FOR COBRA CONTINUATION COVERAGE FOR INDIVIDUALS AND THEIR FAMILIES.—~~

~~(1) PROVISION OF PREMIUM ASSISTANCE.—~~

~~(A) REDUCTION OF PREMIUMS PAYABLE.—In the case of any premium for a period of coverage beginning on or after the date of the enactment of this 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) PREMIUM REIMBURSEMENT.—For provisions providing the balance of such premium, see section 6431 of the Internal Revenue Code of 1986, as added by paragraph (12).~~

~~(2) LIMITATION OF PERIOD OF PREMIUM ASSISTANCE.—~~

~~(A) IN GENERAL.—Paragraph (1)(A) shall not apply with respect to any assistance eligible individual for months of coverage beginning on or after the earlier of—~~

~~(i) the first date that such individual is eligible for coverage under any other group health plan (other than coverage consisting of only dental, vision, counseling, or referral services (or a combination thereof), coverage under a health reimbursement arrangement or a health flexible spending arrangement, or coverage of treatment that is furnished in an on-site medical facility maintained by the em-~~

~~ployer and that consists primarily of first-aid services, prevention and wellness care, or similar care (or a combination thereof)) or is eligible for benefits under title XVIII of the Social Security Act, or~~

~~(ii) the earliest of—~~

~~(I) the date which is 12 months after the first day of the first month that paragraph (1)(A) applies with respect to such individual,~~

~~(II) the date following the expiration of the maximum period of continuation coverage required under the applicable COBRA continuation coverage provision, or~~

~~(III) the date following the expiration of the period of continuation coverage allowed under paragraph (4)(B)(ii).~~

~~(B) TIMING OF ELIGIBILITY FOR ADDITIONAL COVERAGE.—For purposes of subparagraph (A)(i), an individual shall not be treated as eligible for coverage under a group health plan before the first date on which such individual could be covered under such plan.~~

~~(C) NOTIFICATION REQUIREMENT.—An assistance eligible individual shall notify in writing the group health plan with respect to which paragraph (1)(A) applies if such paragraph ceases to apply by reason of subparagraph (A)(i). Such notice shall be provided to the group health plan in such time and manner as may be specified by the Secretary of Labor.~~

~~(3) ASSISTANCE ELIGIBLE INDIVIDUAL.—For purposes of this section, the term "assistance eligible individual" means any qualified beneficiary if—~~

~~(A) at any time during the period that begins with September 1, 2008, and ends with December 31, 2009, such qualified beneficiary is eligible for COBRA continuation coverage,~~

~~(B) such qualified beneficiary elects such coverage, and~~

~~(C) the qualifying event with respect to the COBRA continuation coverage consists of the involuntary termination of the covered employee's employment and occurred during such period.~~

~~(4) EXTENSION OF ELECTION PERIOD AND EFFECT ON COVERAGE.—~~

~~(A) IN GENERAL.—Notwithstanding section 605(a) of the Employee Retirement Income Security Act of 1974, section 4980B(f)(5)(A) of the Internal Revenue Code of 1986, section 2205(a) of the Public Health Service Act, and section 8905a(c)(2) of title 5, United States Code, in the case of an individual who is a qualified beneficiary described in paragraph (3)(A) as of the date of the enactment of this Act and has not made the election referred to in paragraph (3)(B) as of such date, such individual may elect the COBRA continuation coverage under the COBRA continuation coverage provisions containing such sections during the 60-day period commencing with the date on which the notification required under paragraph (7)(C) is provided to such individual.~~

~~(B) COMMENCEMENT OF COVERAGE; NO REACH-BACK.—Any COBRA continuation coverage elected by a qualified beneficiary during an extended election period under subparagraph (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 ineligi-~~

~~bility 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.~~

1 ~~(7) NOTICES TO INDIVIDUALS.—~~

2 ~~(A) GENERAL NOTICE.—~~

3 ~~(i) IN GENERAL.—In the case of no-~~

4 ~~tices provided under section 606(4) of the~~

5 ~~Employee Retirement Income Security Act~~

6 ~~of 1974 (29 U.S.C. 1166(4)), section~~

7 ~~4980B(f)(6)(D) of the Internal Revenue~~

8 ~~Code of 1986, section 2206(4) of the Pub-~~

9 ~~lic Health Service Act (42 U.S.C. 300bb-~~

10 ~~6(4)), or section 8905a(f)(2)(A) of title 5,~~

11 ~~United States Code, with respect to indi-~~

12 ~~viduals who, during the period described in~~

13 ~~paragraph (3)(A), become entitled to elect~~

14 ~~COBRA continuation coverage, such no-~~

15 ~~tices shall include an additional notifica-~~

16 ~~tion to the recipient of the availability of~~

17 ~~premium reduction with respect to such~~

18 ~~coverage under this subsection.~~

19 ~~(ii) ALTERNATIVE NOTICE.—In the~~

20 ~~case of COBRA continuation coverage to~~

21 ~~which the notice provision under such sec-~~

22 ~~tions does not apply, the Secretary of~~

23 ~~Labor, in consultation with the Secretary~~

24 ~~of the Treasury and the Secretary of~~

25 ~~Health and Human Services, shall, in co-~~

~~ordination 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, and~~

~~(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.~~

~~(C) NOTICE RELATING TO RETROACTIVE COVERAGE.—In the case of an individual described in paragraph (3)(A) who has elected COBRA continuation coverage as of the date of enactment of this Act or an individual described in paragraph (4)(A), the administrator of the group health plan (or other entity) involved shall provide (within 60 days after the date of enactment of this Act) for the additional notification required to be provided under subparagraph (A).~~

1 ~~(D) MODEL NOTICES.—Not later than 30~~
2 ~~days after the date of enactment of this Act,~~
3 ~~the Secretary of the Labor, in consultation with~~
4 ~~the Secretary of the Treasury and the Secretary~~
5 ~~of Health and Human Services, shall prescribe~~
6 ~~models for the additional notification required~~
7 ~~under this paragraph.~~
8 ~~(8) SAFEGUARDS.—The Secretary of the Treas-~~
9 ~~ury shall provide such rules, procedures, regulations,~~
10 ~~and other guidance as may be necessary and appro-~~
11 ~~priate to prevent fraud and abuse under this sub-~~
12 ~~section.~~
13 ~~(9) OUTREACH.—The Secretary of Labor, in~~
14 ~~consultation with the Secretary of the Treasury and~~
15 ~~the Secretary of Health and Human Services, shall~~
16 ~~provide outreach consisting of public education and~~
17 ~~enrollment assistance relating to premium reduction~~
18 ~~provided under this subsection. Such outreach shall~~
19 ~~target employers, group health plan administrators,~~
20 ~~public assistance programs, States, insurers, and~~
21 ~~other entities as determined appropriate by such~~
22 ~~Secretaries. Such outreach shall include an initial~~
23 ~~focus on those individuals electing continuation cov-~~
24 ~~erage who are referred to in paragraph (7)(C). In-~~
25 ~~formation on such premium reduction, including en-~~

~~rollment, shall also be made available on website of the Departments of Labor, Treasury, and Health and Human Services.~~

~~(10) DEFINITIONS.—For purposes of this subsection—~~

~~(A) ADMINISTRATOR.—The term "administrator" has the meaning given such term in section 3(16) of the Employee Retirement Income 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 such term in section 607(3) of the Employee Retirement Income Security Act of 1974.~~

~~(F) GROUP HEALTH PLAN.—The term "group health plan" has the meaning given such term in section 607(1) of the Employee Retirement Income Security Act of 1974.~~

~~(G) STATE.—The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.~~

~~(11) REPORTS.—~~

~~(A) INTERIM REPORT.—The Secretary of the Treasury shall submit an interim report to the Committee on Education and Labor, the~~

~~Committee on Ways and Means, and the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate regarding the premium reduction provided under this subsection that includes—~~

~~(i) the number of individuals provided such assistance as of the date of the report; 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;~~

1 ~~(ii) the average dollar amount~~
2 ~~(monthly and annually) of premium reduc-~~
3 ~~tions provided to such individuals; and~~
4 ~~(iii) the total amount of expenditures~~
5 ~~incurred (with administrative expenditures~~
6 ~~noted separately) in connection with pre-~~
7 ~~mium reduction under this section.~~
8 ~~(12) COBRA PREMIUM ASSISTANCE.—~~
9 ~~(A) IN GENERAL.—Subchapter B of chap-~~
10 ~~ter 65 of the Internal Revenue Code of 1986 is~~
11 ~~amended by adding at the end the following~~
12 ~~new section:~~
13 **~~"SEC. 6431. COBRA PREMIUM ASSISTANCE.~~**
14 ~~"(a) IN GENERAL.—The entity to whom premiums~~
15 ~~are payable under COBRA continuation coverage shall be~~
16 ~~reimbursed for the amount of premiums not paid by plan~~
17 ~~beneficiaries by reason of section 3002(a) of the Health~~
18 ~~Insurance Assistance for the Unemployed Act of 2009.~~
19 ~~Such amount shall be treated as a credit against the re-~~
20 ~~quirement of such entity to make deposits of payroll taxes~~
21 ~~and the liability of such entity for payroll taxes. To the~~
22 ~~extent that such amount exceeds the amount of such~~
23 ~~taxes, the Secretary shall pay to such entity the amount~~
24 ~~of such excess. No payment may be made under this sub-~~
25 ~~section to an entity with respect to any assistance eligible~~

~~individual until after such entity has received the reduced premium from such individual required under section 3002(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~~

~~"(3) amounts of the taxes imposed for the payroll period under section 3111 (relating to FICA employer taxes).~~

~~"(c) TREATMENT OF CREDIT.—Except as otherwise provided by the Secretary, the credit described in subsection (a) shall be applied as though the employer had paid to the Secretary, on the day that the qualified beneficiary's premium payment is received, an amount equal to such credit.~~

~~"(d) TREATMENT OF PAYMENT.—For purposes of section 1324(b)(2) of title 31, United States Code, any payment under this section shall be treated in the same manner as a refund of the credit under section 35.~~

~~"(e) REPORTING.—~~

1 ~~"(1) IN GENERAL.—Each entity entitled to re-~~
2 ~~imbursement under subsection (a) for any period~~
3 ~~shall submit such reports as the Secretary may re-~~
4 ~~quire, including—~~
5 ~~"(A) an attestation of involuntary termi-~~
6 ~~nation of employment for each covered em-~~
7 ~~ployee on the basis of whose termination entitle-~~
8 ~~ment to reimbursement is claimed under sub-~~
9 ~~section (a), and~~
10 ~~"(B) a report of the amount of payroll~~
11 ~~taxes offset under subsection (a) for the report-~~
12 ~~ing period and the estimated offsets of such~~
13 ~~taxes for the subsequent reporting period in~~
14 ~~connection with reimbursements under sub-~~
15 ~~section (a).~~
16 ~~"(2) TIMING OF REPORTS RELATING TO~~
17 ~~AMOUNT OF PAYROLL TAXES.—Reports required~~
18 ~~under paragraph (1)(B) shall be submitted at the~~
19 ~~same time as deposits of taxes imposed by chapters~~
20 ~~21, 22, and 24 or at such time as is specified by the~~
21 ~~Secretary.~~
22 ~~"(f) REGULATIONS.—The Secretary may issue such~~
23 ~~regulations or other guidance as may be necessary or ap-~~
24 ~~propriate to carry out this section, including the require-~~
25 ~~ment to report information or the establishment of other~~

~~methods for verifying the correct amounts of payments and credits under this section. The Secretary shall issue such regulations or guidance with respect to the application of this section to group health plans that are multiemployer plans (as defined in section 3(37) of the Employee Retirement Income Security Act of 1974).".~~

~~(B) SOCIAL SECURITY TRUST FUNDS HELD HARMLESS.—In determining any amount transferred or appropriated to any fund under the Social Security Act, section 6431 of the Internal Revenue Code of 1986 shall not be taken into account.~~

~~(C) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 65 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:~~

~~"Sec. 6431. COBRA premium assistance.".~~

~~(D) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to premiums to which subsection (a)(1)(A) applies.~~

~~(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~~

1 1986 is amended by adding at the end the fol-
2 lowing new section:

3 **"SEC. 6720C. PENALTY FOR FAILURE TO NOTIFY HEALTH**
4 **PLAN OF CESSATION OF ELIGIBILITY FOR**
5 **COBRA PREMIUM ASSISTANCE.**

6 "(a) IN GENERAL.—Any person required to notify a
7 group health plan under section 3002(a)(2)(C)) of the
8 Health Insurance Assistance for the Unemployed Act of
9 2009 who fails to make such a notification at such time
10 and in such manner as the Secretary of Labor may require
11 shall pay a penalty of 110 percent of the premium reduc-
12 tion provided under such section after termination of eligi-
13 bility under such subsection.

14 "(b) REASONABLE CAUSE EXCEPTION.—No penalty
15 shall be imposed under subsection (a) with respect to any
16 failure if it is shown that such failure is due to reasonable
17 cause and not to willful neglect.".

18 (B) CLERICAL AMENDMENT.—The table of
19 sections of part I of subchapter B of chapter 68
20 of such Code is amended by adding at the end
21 the following new item:

"Sec. 6720C. Penalty for failure to notify health plan of cessation of eligibility for COBRA premium assistance.".

22 (C) EFFECTIVE DATE.—The amendments
23 made by this paragraph shall apply to failures

~~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 3002(a) of the Health Insurance Assistance for the Unemployed 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 taxable years ending after the date of the enactment of this Act.~~

~~(15) EXCLUSION OF COBRA PREMIUM ASSISTANCE FROM GROSS INCOME.—~~

1 ~~(A) IN GENERAL.—Part III of subchapter~~
2 ~~B of chapter 1 of the Internal Revenue Code of~~
3 ~~1986 is amended by inserting after section~~
4 ~~139B the following new section:~~

5 **~~"SEC. 139C. COBRA PREMIUM ASSISTANCE.~~**

6 ~~"In the case of an assistance eligible individual (as~~
7 ~~defined in section 3002 of the Health Insurance Assist-~~
8 ~~ance for the Unemployed Act of 2009), gross income does~~
9 ~~not include any premium reduction provided under sub-~~
10 ~~section (a) of such section.".~~

11 ~~(B) CLERICAL AMENDMENT.—The table of~~
12 ~~sections for part III of subchapter B of chapter~~
13 ~~1 of such Code is amended by inserting after~~
14 ~~the item relating to section 139B the following~~
15 ~~new item:~~

~~"Sec. 139C. COBRA premium assistance.".~~

16 ~~(C) EFFECTIVE DATE.—The amendments~~
17 ~~made by this paragraph shall apply to taxable~~
18 ~~years ending after the date of the enactment of~~
19 ~~this Act.~~

20 ~~(b) EXTENSION OF COBRA BENEFITS FOR OLDER~~
21 ~~OR LONG-TERM EMPLOYEES.—~~

22 ~~(1) ERISA AMENDMENT.—Section 602(2)(A)~~
23 ~~of the Employee Retirement Income Security Act of~~
24 ~~1974 is amended by adding at the end the following~~
25 ~~new clauses:~~

~~"(x) SPECIAL RULE FOR OLDER OR LONG-TERM EMPLOYEES GENERALLY.—In the case of a qualifying event described in section 603(2) with respect to a covered employee who (as of such qualifying event) has attained age 55 or has completed 10 or more years of service with the entity that is the employer at the time of the qualifying event, clauses (i) and (ii) shall not apply. For purposes of this clause, in the case of a group health plan that is a multiemployer plan, service by the covered employee performed for 2 or more employers during periods for which such employers contributed to such plan shall be treated as service performed for the entity referred to in the preceding sentence.~~

~~"(xi) YEAR OF SERVICE.— For purposes of this subparagraph, the term 'year of service' shall have the meaning provided in section 202(a)(3).".~~

~~(2) IRC AMENDMENT.—Clause (i) of section 4980B(f)(2)(B) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subclauses:~~

1 ~~"(X) SPECIAL RULE FOR OLDER~~
2 ~~OR LONG-TERM EMPLOYEES GEN-~~
3 ~~ERALLY.—In the case of a qualifying~~
4 ~~event described in paragraph (3)(B)~~
5 ~~with respect to a covered employee~~
6 ~~who (as of such qualifying event) has~~
7 ~~attained age 55 or has completed 10~~
8 ~~or more years of service with the enti-~~
9 ~~ty that is the employer at the time of~~
10 ~~the qualifying event, subclauses (I)~~
11 ~~and (II) shall not apply. For purposes~~
12 ~~of this subclause, in the case of a~~
13 ~~group health plan that is a multiem-~~
14 ~~ployer plan (as defined in section~~
15 ~~3(37) of the Employee Retirement In-~~
16 ~~come Security Act of 1974), service by~~
17 ~~the covered employee performed for 2~~
18 ~~or more employers during periods for~~
19 ~~which such employers contributed to~~
20 ~~such plan shall be treated as service~~
21 ~~performed for the entity referred to in~~
22 ~~the preceding sentence.~~
23 ~~"(XI) YEAR OF SERVICE.— For~~
24 ~~purposes of this clause, the term 'year~~
25 ~~of service' shall have the meaning pro-~~

~~vided in section 202(a)(3) of the Employee Retirement Income Security Act of 1974.''.~~

~~(3) PHSA AMENDMENT.—Section 2202(2)(A) of the Public Health Service Act is amended by adding at the end the following new clauses:~~

~~''(viii) SPECIAL RULE FOR OLDER OR LONG-TERM EMPLOYEES GENERALLY.—In the case of a qualifying event described in section 2203(2) with respect to a covered employee who (as of such qualifying event) has attained age 55 or has completed 10 or more years of service with the entity that is the employer at the time of the qualifying event, clauses (i) and (ii) shall not apply. For purposes of this clause, in the case of a group health plan that is a multiemployer plan (as defined in section 3(37) of the Employee Retirement Income Security Act of 1974), service by the covered employee performed for 2 or more employers during periods for which such employers contributed to such plan shall be treated as service performed for the entity referred to in the preceding sentence.~~

1 ~~"(ix) YEAR OF SERVICE.— For pur-~~
2 ~~poses of this subparagraph, the term 'year~~
3 ~~of service' shall have the meaning provided~~
4 ~~in section 202(a)(3) of the Employee Re-~~
5 ~~tirement Income Security Act of 1974.".~~
6 ~~(4) EFFECTIVE DATE OF AMENDMENTS.—The~~
7 ~~amendments made by this subsection shall apply to~~
8 ~~periods of coverage which would (without regard to~~
9 ~~the amendments made by this section) end on or~~
10 ~~after the date of the enactment of this Act.~~
11 **~~SEC. 3003. TEMPORARY OPTIONAL MEDICAID COVERAGE~~**
12 **~~FOR THE UNEMPLOYED.~~**
13 ~~(a) IN GENERAL.—Section 1902 of the Social Secu-~~
14 ~~rity Act (42 U.S.C. 1396b) is amended—~~
15 ~~(1) in subsection (a)(10)(A)(ii)—~~
16 ~~(A) by striking "or" at the end of sub-~~
17 ~~clause (XVIII);~~
18 ~~(B) by adding "or" at the end of subclause~~
19 ~~(XIX); and~~
20 ~~(C) by adding at the end the following new~~
21 ~~subclause:~~
22 ~~"(XX) who are described in sub-~~
23 ~~section (dd)(1) (relating to certain un-~~
24 ~~employed individuals and their fami-~~
25 ~~lies);"; and~~

~~(2) by adding at the end the following new subsection:~~

~~"(dd)(1) Individuals described in this paragraph are—~~

~~"(A) individuals who—~~

~~"(i) are within one or more of the categories described in paragraph (2), as elected under the State plan; and~~

~~"(ii) meet the applicable requirements of paragraph (3); and~~

~~"(B) individuals who—~~

~~"(i) are the spouse, or dependent child under 19 years of age, of an individual described in subparagraph (A); and~~

~~"(ii) meet the requirement of paragraph (3)(B).~~

~~"(2) The categories of individuals described in this paragraph are each of the following:~~

~~"(A)(i) Individuals who are receiving unemployment compensation benefits; and~~

~~"(ii) individuals who were receiving, but have exhausted, unemployment compensation benefits on or after July 1, 2008.~~

~~"(B) Individuals who are involuntarily unemployed and were involuntarily separated from employment on or after September 1, 2008, and before~~

~~January 1, 2011, whose family gross income does not exceed a percentage specified by the State (not to exceed 200 percent) of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved, and who, but for subsection (a)(10)(A)(ii)(XX), are not eligible for medical assistance under this title or health assistance under title XXI.~~

~~"(C) Individuals who are involuntarily unemployed and were involuntarily separated from employment on or after September 1, 2008, and before January 1, 2011, who are members of households participating in the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.), and who, but for subsection (a)(10)(A)(ii)(XX), are not eligible for medical assistance under this title or health assistance under title XXI.~~

~~"(3) The requirements of this paragraph with respect to an individual are the following:~~

~~"(A) In the case of individuals within a category described in subparagraph (A)(i) of paragraph~~

~~(2), the individual was involuntarily separated from employment on or after September 1, 2008, and before January 1, 2011, or meets such comparable requirement as the Secretary specifies through rule, guidance, or otherwise in the case of an individual who was an independent contractor.~~

~~"(B) The individual is not otherwise covered under creditable coverage, as defined in section 2701(c) of the Public Health Service Act (42 U.S.C. 300gg(c)), but applied without regard to paragraph (1)(F) of such section and without regard to coverage provided by reason of the application of subsection (a)(10)(A)(ii)(XX).~~

~~"(4)(A) No income or resources test shall be applied with respect to any category of individuals described in subparagraph (A) or (C) of paragraph (2) who are eligible for medical assistance only by reason of the application of subsection (a)(10)(A)(ii)(XX).~~

~~"(B) Nothing in this subsection shall be construed to prevent a State from imposing a resource test for the category of individuals described in paragraph (2)(B)).~~

~~"(C) In the case of individuals described in paragraph (2)(A) or (2)(C), the requirements of subsections (i)(22) and (x) in section 1903 shall not apply.".~~

~~(b) 100 PERCENT FEDERAL MATCHING RATE.—~~

~~(1) FMAP FOR TIME-LIMITED PERIOD.—The third sentence of section 1905(b) of such Act (42 U.S.C. 1396d(b)) is amended by inserting before the period at the end the following: "and for items and services furnished on or after the date of enactment of this Act and before January 1, 2011, to individuals who are eligible for medical assistance only by reason of the application of section 1902(a)(10)(A)(ii)(XX)".~~

~~(2) CERTAIN ENROLLMENT-RELATED ADMINISTRATIVE COSTS.—Notwithstanding any other provision of law, for purposes of applying section 1903(a) of the Social Security Act (42 U.S.C. 1396b(a)), with respect to expenditures incurred on or after the date of the enactment of this Act and before January 1, 2011, for costs of administration (including outreach and the modification and operation of eligibility information systems) attributable to eligibility determination and enrollment of individuals who are eligible for medical assistance only by reason of the application of section 1902(a)(10)(A)(ii)(XX) of such Act, as added by subsection (a)(1), the Federal matching percentage shall be 100 percent instead of the matching percentage otherwise applicable.~~

1 ~~(c) CONFORMING AMENDMENTS.—(1) Section~~
2 ~~1903(f)(4) of such Act (42 U.S.C. 1396c(f)(4)) is amend-~~
3 ~~ed by inserting "1902(a)(10)(A)(ii)(XX), or" after~~
4 ~~"1902(a)(10)(A)(ii)(XIX),".~~
5 ~~(2) Section 1905(a) of such Act (42 U.S.C.~~
6 ~~1396d(a)) is amended, in the matter preceding paragraph~~
7 ~~(1)—~~
8 ~~(A) by striking "or" at the end of clause (xii);~~
9 ~~(B) by adding "or" at the end of clause (xiii);~~
10 ~~and~~
11 ~~(C) by inserting after clause (xiii) the following~~
12 ~~new clause:~~
13 ~~"(xiv) individuals described in section~~
14 ~~1902(dd)(1),".~~

15 **~~TITLE IV—HEALTH~~**
16 **~~INFORMATION TECHNOLOGY~~**

17 **~~SEC. 4001. SHORT TITLE; TABLE OF CONTENTS OF TITLE.~~**

18 ~~(a) SHORT TITLE.—This title may be cited as the~~
19 ~~"Health Information Technology for Economic and Clin-~~
20 ~~ical Health Act" or the "HITECH Act".~~
21 ~~(b) TABLE OF CONTENTS OF TITLE.—The table of~~
22 ~~contents of this title is as follows:~~

~~Sec. 4001. Short title; table of contents of title.~~

~~Subtitle A—Promotion of Health Information Technology~~

~~PART I—IMPROVING HEALTH CARE QUALITY, SAFETY, AND EFFICIENCY~~

~~Sec. 4101. ONCHIT; standards development and adoption.~~

~~"TITLE XXX—HEALTH INFORMATION TECHNOLOGY AND QUALITY~~

~~"Sec. 3000. Definitions.~~

~~"Subtitle A—Promotion of Health Information Technology~~

~~"Sec. 3001. Office of the National Coordinator for Health Information Technology.~~
~~"Sec. 3002. HIT Policy Committee.~~
~~"Sec. 3003. HIT Standards Committee.~~
~~"Sec. 3004. Process for adoption of endorsed recommendations; adoption of initial set of standards, implementation specifications, and certification criteria.~~
~~"Sec. 3005. Application and use of adopted standards and implementation specifications by Federal agencies.~~
~~"Sec. 3006. Voluntary application and use of adopted standards and implementation specifications by private entities.~~
~~"Sec. 3007. Federal health information technology.~~
~~"Sec. 3008. Transitions.~~
~~"Sec. 3009. Relation to HIPAA privacy and security law.~~
~~"Sec. 3010. Authorization for appropriations.~~
~~Sec. 4102. Technical amendment.~~

~~PART II—APPLICATION AND USE OF ADOPTED HEALTH INFORMATION TECHNOLOGY STANDARDS; REPORTS~~

~~Sec. 4111. Coordination of Federal activities with adopted standards and implementation specifications.~~
~~Sec. 4112. Application to private entities.~~
~~Sec. 4113. Study and reports.~~

~~Subtitle B—Testing of Health Information Technology~~

~~Sec. 4201. National Institute for Standards and Technology testing.~~
~~Sec. 4202. Research and development programs.~~

~~Subtitle C—Incentives for the Use of Health Information Technology~~

~~PART I—GRANTS AND LOANS FUNDING~~

~~Sec. 4301. Grant, loan, and demonstration programs.~~

~~"Subtitle B—Incentives for the Use of Health Information Technology~~

~~"Sec. 3011. Immediate funding to strengthen the health information technology infrastructure.~~
~~"Sec. 3012. Health information technology implementation assistance.~~
~~"Sec. 3013. State grants to promote health information technology.~~
~~"Sec. 3014. Competitive grants to States and Indian tribes for the development of loan programs to facilitate the widespread adoption of certified EHR technology.~~
~~"Sec. 3015. Demonstration program to integrate information technology into clinical education.~~
~~"Sec. 3016. Information technology professionals on health care.~~
~~"Sec. 3017. General grant and loan provisions.~~
~~"Sec. 3018. Authorization for appropriations.~~

~~PART II—MEDICARE PROGRAM~~

~~SEC. 4311. Incentives for eligible professionals.~~
~~SEC. 4312. Incentives for hospitals.~~
~~SEC. 4313. Treatment of payments and savings; implementation funding.~~
~~SEC. 4314. Study on application of EHR payment incentives for providers not receiving other incentive payments.~~

~~PART III—MEDICAID FUNDING~~

~~SEC. 4321. Medicaid provider HIT adoption and operation payments; implementation funding.~~
~~SEC. 4322. Medicaid nursing home grant program.~~

~~Subtitle D—Privacy~~

~~SEC. 4400. Definitions.~~

~~PART I—IMPROVED PRIVACY PROVISIONS AND SECURITY PROVISIONS~~

~~SEC. 4401. Application of security provisions and penalties to business associates of covered entities; annual guidance on security provisions.~~
~~SEC. 4402. Notification in the case of breach.~~
~~SEC. 4403. Education on Health Information Privacy.~~
~~SEC. 4404. Application of privacy provisions and penalties to business associates of covered entities.~~
~~SEC. 4405. Restrictions on certain disclosures and sales of health information; accounting of certain protected health information disclosures; access to certain information in electronic format.~~
~~SEC. 4406. Conditions on certain contacts as part of health care operations.~~
~~SEC. 4407. Temporary breach notification requirement for vendors of personal health records and other non-HIPAA covered entities.~~
~~SEC. 4408. Business associate contracts required for certain entities.~~
~~SEC. 4409. Clarification of application of wrongful disclosures criminal penalties.~~
~~SEC. 4410. Improved enforcement.~~
~~SEC. 4411. Audits.~~
~~SEC. 4412. Special rule for information to reduce medication errors and improve patient safety.~~

~~PART II—RELATIONSHIP TO OTHER LAWS; REGULATORY REFERENCES; EFFECTIVE DATE; REPORTS~~

~~SEC. 4421. Relationship to other laws.~~
~~SEC. 4422. Regulatory references.~~
~~SEC. 4423. Effective date.~~
~~SEC. 4424. Studies, reports, guidance.~~

~~Subtitle E—Miscellaneous Medicare Provisions~~

~~SEC. 4501. Moratoria on certain Medicare regulations.~~
~~SEC. 4502. Long-term care hospital technical corrections.~~

Subtitle A—Promotion of Health Information Technology

PART I—IMPROVING HEALTH CARE QUALITY, SAFETY, AND EFFICIENCY

SEC. 4101. 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 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 govern-

~~ment, 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 nursing facility, nursing facility, home health entity or other long term care facility, health care clinic, 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, an ambulatory surgical center described in section 1833(i) of the Social Security Act, and any other category of facil-~~

~~ity 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 packaged solutions sold as services that are specifically designed for use by health care entities for the electronic creation, maintenance, or exchange of health information.~~

~~"(6) HEALTH PLAN.—The term 'health plan' has the meaning given such term in section 1171(5) of the Social Security Act.~~

~~"(7) HIT POLICY COMMITTEE.—The term 'HIT Policy Committee' means such Committee established under section 3002(a).~~

~~"(8) HIT STANDARDS COMMITTEE.—The term 'HIT Standards Committee' means such Committee established under section 3003(a).~~

~~"(9) INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION.—The term 'individually identifiable~~

~~health information' has the meaning given such term in section 1171(6) of the Social Security Act.~~

~~"(10) LABORATORY.—The term 'laboratory' has the meaning given such term in section 353(a).~~

~~"(11) NATIONAL COORDINATOR.—The term 'National Coordinator' means the head of the Office of the National Coordinator for Health Information Technology established under section 3001(a).~~

~~"(12) PHARMACIST.—The term 'pharmacist' has the meaning given such term in section 804(2) of the Federal Food, Drug, and Cosmetic Act.~~

~~"(13) QUALIFIED ELECTRONIC HEALTH RECORD.—The term 'qualified electronic health record' means an electronic record of health-related information on an individual that—~~

~~"(A) includes patient demographic and clinical health information, such as medical history and problem lists; and~~

~~"(B) has the capacity—~~

~~"(i) to provide clinical decision support;~~

~~"(ii) to support physician order entry;~~

~~"(iii) to capture and query information relevant to health care quality; and~~

1 ~~"(iv) to exchange electronic health in-~~
2 ~~formation with, and integrate such infor-~~
3 ~~mation from other sources.~~
4 ~~"(14) STATE.—The term 'State' means each of~~
5 ~~the several States, the District of Columbia, Puerto~~
6 ~~Rico, the Virgin Islands, Guam, American Samoa,~~
7 ~~and the Northern Mariana Islands.~~

8 **~~"Subtitle A—Promotion of Health~~**
9 **~~Information Technology~~**

10 **~~"SEC. 3001. OFFICE OF THE NATIONAL COORDINATOR FOR~~**
11 **~~HEALTH INFORMATION TECHNOLOGY.~~**

12 ~~"(a) ESTABLISHMENT.—There is established within~~
13 ~~the Department of Health and Human Services an Office~~
14 ~~of the National Coordinator for Health Information Tech-~~
15 ~~nology (referred to in this section as the 'Office'). The Of-~~
16 ~~fice shall be headed by a National Coordinator who shall~~
17 ~~be appointed by the Secretary and shall report directly to~~
18 ~~the Secretary.~~
19 ~~"(b) PURPOSE.—The National Coordinator shall per-~~
20 ~~form the duties under subsection (c) in a manner con-~~
21 ~~sistent with the development of a nationwide health infor-~~
22 ~~mation technology infrastructure that allows for the elec-~~
23 ~~tronic use and exchange of information and that—~~

1 ~~"(1) ensures that each patient's health informa-~~
2 ~~tion is secure and protected, in accordance with ap-~~
3 ~~plicable law;~~
4 ~~"(2) improves health care quality, reduces med-~~
5 ~~ical errors, reduces health disparities, and advances~~
6 ~~the delivery of patient-centered medical care;~~
7 ~~"(3) reduces health care costs resulting from~~
8 ~~inefficiency, medical errors, inappropriate care, du-~~
9 ~~plicative care, and incomplete information;~~
10 ~~"(4) provides appropriate information to help~~
11 ~~guide medical decisions at the time and place of~~
12 ~~care;~~
13 ~~"(5) ensures the inclusion of meaningful public~~
14 ~~input in such development of such infrastructure;~~
15 ~~"(6) improves the coordination of care and in-~~
16 ~~formation among hospitals, laboratories, physician~~
17 ~~offices, and other entities through an effective infra-~~
18 ~~structure for the secure and authorized exchange of~~
19 ~~health care information;~~
20 ~~"(7) improves public health activities and facili-~~
21 ~~tates the early identification and rapid response to~~
22 ~~public health threats and emergencies, including bio-~~
23 ~~terror events and infectious disease outbreaks;~~
24 ~~"(8) facilitates health and clinical research and~~
25 ~~health care quality;~~

1 ~~"(9) promotes prevention of chronic diseases;~~

2 ~~"(10) promotes a more effective marketplace,~~
3 ~~greater competition, greater systems analysis, in-~~
4 ~~creased consumer choice, and improved outcomes in~~
5 ~~health care services; and~~

6 ~~"(11) improves efforts to reduce health dispari-~~
7 ~~ties.~~

8 ~~"(c) DUTIES OF THE NATIONAL COORDINATOR.—~~

9 ~~"(1) STANDARDS.—The National Coordinator~~
10 ~~shall review and determine whether to endorse each~~
11 ~~standard, implementation specification, and certifi-~~
12 ~~cation criterion for the electronic exchange and use~~
13 ~~of health information that is recommended by the~~
14 ~~HIT Standards Committee under section 3003 for~~
15 ~~purposes of adoption under section 3004. The Coor-~~
16 ~~dinator shall make such determination, and report to~~
17 ~~the Secretary such determination, not later than 45~~
18 ~~days after the date the recommendation is received~~
19 ~~by the Coordinator.~~

20 ~~"(2) HIT POLICY COORDINATION.—~~

21 ~~"(A) IN GENERAL.—The National Coordi-~~
22 ~~nator shall coordinate health information tech-~~
23 ~~nology policy and programs of the Department~~
24 ~~with those of other relevant executive branch~~
25 ~~agencies with a goal of avoiding duplication of~~

efforts and of helping to ensure that each agency undertakes health information technology activities primarily within the areas of its greatest expertise and technical capability and in a manner towards a coordinated national goal.

"(B) HIT POLICY AND STANDARDS COMMITTEES.—The National Coordinator shall be a leading member in the establishment and operations of the HIT Policy Committee and the HIT Standards Committee and shall serve as a liaison among those two Committees and the Federal Government.

"(3) STRATEGIC PLAN.—

"(A) IN GENERAL.—The National Coordinator shall, in consultation with other appropriate Federal agencies (including the National Institute of Standards and Technology), update the Federal Health IT Strategic Plan (developed as of June 3, 2008) to include specific objectives, milestones, and metrics with respect to the following:

"(i) The electronic exchange and use of health information and the enterprise integration of such information.

1 ~~"(ii) The utilization of an electronic~~
2 ~~health record for each person in the United~~
3 ~~States by 2014.~~
4 ~~"(iii) The incorporation of privacy and~~
5 ~~security protections for the electronic ex-~~
6 ~~change of an individual's individually iden-~~
7 ~~tifiable health information.~~
8 ~~"(iv) Ensuring security methods to~~
9 ~~ensure appropriate authorization and elec-~~
10 ~~tronic authentication of health information~~
11 ~~and specifying technologies or methodolo-~~
12 ~~gies for rendering health information unus-~~
13 ~~able, unreadable, or indecipherable.~~
14 ~~"(v) Specifying a framework for co-~~
15 ~~ordination and flow of recommendations~~
16 ~~and policies under this subtitle among the~~
17 ~~Secretary, the National Coordinator, the~~
18 ~~HIT Policy Committee, the HIT Standards~~
19 ~~Committee, and other health information~~
20 ~~exchanges and other relevant entities.~~
21 ~~"(vi) Methods to foster the public un-~~
22 ~~derstanding of health information tech-~~
23 ~~nology.~~
24 ~~"(vii) Strategies to enhance the use of~~
25 ~~health information technology in improving~~

~~the quality of health care, reducing medical errors, reducing health disparities, improving public health, and improving the continuity of care among health care settings.~~

~~"(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 4201(b) of the HITECH Act.~~
7 ~~"(B) CERTIFICATION CRITERIA DE-~~
8 ~~SCRIBED.—In this title, the term 'certification~~
9 ~~criteria' means, with respect to standards and~~
10 ~~implementation specifications for health infor-~~
11 ~~mation technology, criteria to establish that the~~
12 ~~technology meets such standards and implemen-~~
13 ~~tation specifications.~~
14 ~~"(6) REPORTS AND PUBLICATIONS.—~~
15 ~~"(A) REPORT ON ADDITIONAL FUNDING~~
16 ~~OR AUTHORITY NEEDED.—Not later than 12~~
17 ~~months after the date of the enactment of this~~
18 ~~title, the National Coordinator shall submit to~~
19 ~~the appropriate committees of jurisdiction of~~
20 ~~the House of Representatives and the Senate a~~
21 ~~report on any additional funding or authority~~
22 ~~the Coordinator or the HIT Policy Committee~~
23 ~~or HIT Standards Committee requires to evalu-~~
24 ~~ate and develop standards, implementation~~
25 ~~specifications, and certification criteria, or to~~

~~achieve full participation of stakeholders in the adoption of a nationwide health information technology infrastructure that allows for the electronic use and exchange of health information.~~

~~"(B) IMPLEMENTATION REPORT.—The National Coordinator shall prepare a report that identifies lessons learned from major public and private health care systems in their implementation of health information technology, including information on whether the technologies and practices developed by such systems may be applicable to and usable in whole or in part by other health care providers.~~

~~"(C) ASSESSMENT OF IMPACT OF HIT ON COMMUNITIES WITH HEALTH DISPARITIES AND UNINSURED, UNDERINSURED, AND MEDICALLY UNDERSERVED AREAS.—The National Coordinator shall assess and publish the impact of health information technology in communities with health disparities and in areas with a high proportion of individuals who are uninsured, underinsured, and medically underserved individuals (including urban and rural areas) and identify practices to increase the adoption of~~

~~such technology by health care providers in such communities.~~

~~"(D) EVALUATION OF BENEFITS AND COSTS OF THE ELECTRONIC USE AND EXCHANGE OF HEALTH INFORMATION.—The National Coordinator shall evaluate and publish evidence on the benefits and costs of the electronic use and exchange of health information and assess to whom these benefits and costs accrue.~~

~~"(E) RESOURCE REQUIREMENTS.—The National Coordinator shall estimate and publish resources required annually to reach the goal of utilization of an electronic health record for each person in the United States by 2014, including the required level of Federal funding, expectations for regional, State, and private investment, and the expected contributions by volunteers to activities for the utilization of such records.~~

~~"(7) ASSISTANCE.—The National Coordinator may provide financial assistance to consumer advocacy groups and not-for-profit entities that work in the public interest for purposes of defraying the cost to such groups and entities to participate under,~~

~~whether in whole or in part, the National Technology Transfer Act of 1995 (15 U.S.C. 272 note).~~

~~"(8) GOVERNANCE FOR NATIONWIDE HEALTH INFORMATION NETWORK.—The National Coordinator shall establish a governance mechanism for the nationwide health information network.~~

~~"(d) DETAIL OF FEDERAL EMPLOYEES.—~~

~~"(1) IN GENERAL.—Upon the request of the National Coordinator, the head of any Federal agency is authorized to detail, with or without reimbursement from the Office, any of the personnel of such agency to the Office to assist it in carrying out its duties under this section.~~

~~"(2) EFFECT OF DETAIL.—Any detail of personnel under paragraph (1) shall—~~

~~"(A) not interrupt or otherwise affect the civil service status or privileges of the Federal 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 agen-~~

1 ~~cies without regard to whether the agency described~~
2 ~~under paragraph (1) is reimbursed.~~
3 ~~"(c) CHIEF PRIVACY OFFICER OF THE OFFICE OF~~
4 ~~THE NATIONAL COORDINATOR.—Not later than 12~~
5 ~~months after the date of the enactment of this title, the~~
6 ~~Secretary shall appoint a Chief Privacy Officer of the Of-~~
7 ~~fice of the National Coordinator, whose duty it shall be~~
8 ~~to advise the National Coordinator on privacy, security,~~
9 ~~and data stewardship of electronic health information and~~
10 ~~to coordinate with other Federal agencies (and similar pri-~~
11 ~~vacy officers in such agencies), with State and regional~~
12 ~~efforts, and with foreign countries with regard to the pri-~~
13 ~~vacy, security, and data stewardship of electronic individ-~~
14 ~~ually identifiable health information.~~
15 **~~"SEC. 3002. HIT POLICY COMMITTEE.~~**
16 ~~"(a) ESTABLISHMENT.—There is established a HIT~~
17 ~~Policy Committee to make policy recommendations to the~~
18 ~~National Coordinator relating to the implementation of a~~
19 ~~nationwide health information technology infrastructure,~~
20 ~~including implementation of the strategic plan described~~
21 ~~in section 3001(c)(3).~~
22 ~~"(b) DUTIES.—~~
23 ~~"(1) RECOMMENDATIONS ON HEALTH INFOR-~~
24 ~~MATION TECHNOLOGY INFRASTRUCTURE.—The HIT~~
25 ~~Policy Committee shall recommend a policy frame-~~

1 ~~work for the development and adoption of a nation-~~
2 ~~wide health information technology infrastructure~~
3 ~~that permits the electronic exchange and use of~~
4 ~~health information as is consistent with the strategic~~
5 ~~plan under section 3001(c)(3) and that includes the~~
6 ~~recommendations under paragraph (2). The Com-~~
7 ~~mittee shall update such recommendations and make~~
8 ~~new recommendations as appropriate.~~
9 ~~"(2) SPECIFIC AREAS OF STANDARD DEVELOP-~~
10 ~~MENT.—~~
11 ~~"(A) IN GENERAL.—The HIT Policy Com-~~
12 ~~mittee shall recommend the areas in which~~
13 ~~standards, implementation specifications, and~~
14 ~~certification criteria are needed for the elec-~~
15 ~~tronic exchange and use of health information~~
16 ~~for purposes of adoption under section 3004~~
17 ~~and shall recommend an order of priority for~~
18 ~~the development, harmonization, and recogni-~~
19 ~~tion of such standards, specifications, and cer-~~
20 ~~tification criteria among the areas so rec-~~
21 ~~ommended. Such standards and implementation~~
22 ~~specifications shall include named standards,~~
23 ~~architectures, and software schemes for the au-~~
24 ~~thentication and security of individually identifi-~~
25 ~~able health information and other information~~

~~as needed to ensure the reproducible development of common solutions across disparate entities.~~

~~"(B) AREAS REQUIRED FOR CONSIDERATION.—For purposes of subparagraph (A), the HIT Policy Committee shall make recommendations for at least the following areas:~~

~~"(i) Technologies that protect the privacy of health information and promote security in a qualified electronic health record, including for the segmentation and protection from disclosure of specific and sensitive individually identifiable health information with the goal of minimizing the reluctance of patients to seek care (or disclose information about a condition) because of privacy concerns, in accordance with applicable law, and for the use and disclosure of limited data sets of such information.~~

~~"(ii) A nationwide health information technology infrastructure that allows for the electronic use and accurate exchange of health information.~~

1 ~~"(iii) The utilization of a certified~~
2 ~~electronic health record for each person in~~
3 ~~the United States by 2014.~~
4 ~~"(iv) Technologies that as a part of a~~
5 ~~qualified electronic health record allow for~~
6 ~~an accounting of disclosures made by a~~
7 ~~covered entity (as defined for purposes of~~
8 ~~regulations promulgated under section~~
9 ~~264(c) of the Health Insurance Portability~~
10 ~~and Accountability Act of 1996) for pur-~~
11 ~~poses of treatment, payment, and health~~
12 ~~care operations (as such terms are defined~~
13 ~~for purposes of such regulations).~~
14 ~~"(v) The use of certified electronic~~
15 ~~health records to improve the quality of~~
16 ~~health care, such as by promoting the co-~~
17 ~~ordination of health care and improving~~
18 ~~continuity of health care among health~~
19 ~~care providers, by reducing medical errors,~~
20 ~~by improving population health, by reduc-~~
21 ~~ing health disparities, and by advancing re-~~
22 ~~search and education.~~
23 ~~"(vi) Technologies that allow individ-~~
24 ~~ually identifiable health information to be~~
25 ~~rendered unusable, unreadable, or indeci-~~

~~pherable to unauthorized individuals when such information is transmitted in the nationwide health information network or physically transported outside of the secured, physical perimeter of a health care provider, health plan, or health care clearinghouse.~~

~~"(C) OTHER AREAS FOR CONSIDERATION.—In making recommendations under subparagraph (A), the HIT Policy Committee may consider the following additional areas:~~

~~"(i) The appropriate uses of a nationwide health information infrastructure, including for purposes of—~~

~~"(I) the collection of quality data and public reporting;~~

~~"(II) biosurveillance and public health;~~

~~"(III) medical and clinical research; and~~

~~"(IV) drug safety.~~

~~"(ii) Self-service technologies that facilitate the use and exchange of patient information and reduce wait times.~~

1 ~~"(iii) Telemedicine technologies, in~~
2 ~~order to reduce travel requirements for pa-~~
3 ~~tients in remote areas.~~
4 ~~"(iv) Technologies that facilitate home~~
5 ~~health care and the monitoring of patients~~
6 ~~recuperating at home.~~
7 ~~"(v) Technologies that help reduce~~
8 ~~medical errors.~~
9 ~~"(vi) Technologies that facilitate the~~
10 ~~continuity of care among health settings.~~
11 ~~"(vii) Technologies that meet the~~
12 ~~needs of diverse populations.~~
13 ~~"(viii) Any other technology that the~~
14 ~~HIT Policy Committee finds to be among~~
15 ~~the technologies with the greatest potential~~
16 ~~to improve the quality and efficiency of~~
17 ~~health care.~~
18 ~~"(3) FORUM.—The HIT Policy Committee shall~~
19 ~~serve as a forum for broad stakeholder input with~~
20 ~~specific expertise in policies relating to the matters~~
21 ~~described in paragraphs (1) and (2).~~
22 ~~"(c) MEMBERSHIP AND OPERATIONS.—~~
23 ~~"(1) IN GENERAL.—The National Coordinator~~
24 ~~shall provide leadership in the establishment and op-~~
25 ~~erations of the HIT Policy Committee.~~

1 ~~"(2) MEMBERSHIP.—The membership of the~~
2 ~~HIT Policy Committee shall at least reflect pro-~~
3 ~~viders, ancillary healthcare workers, consumers, pur-~~
4 ~~chasers, health plans, technology vendors, research-~~
5 ~~ers, relevant Federal agencies, and individuals with~~
6 ~~technical expertise on health care quality, privacy~~
7 ~~and security, and on the electronic exchange and use~~
8 ~~of health information.~~
9 ~~"(3) CONSIDERATION.—The National Coordi-~~
10 ~~nator shall ensure that the relevant recommenda-~~
11 ~~tions and comments from the National Committee~~
12 ~~on Vital and Health Statistics are considered in the~~
13 ~~development of policies.~~
14 ~~"(d) APPLICATION OF 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~~

~~recommend to the National Coordinator standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption under section 3004, consistent with the implementation of the strategic plan described in section 3001(c)(3) and beginning with the areas listed in section 3002(b)(2)(B) in accordance with policies developed by the HIT Policy Committee.~~

~~"(b) DUTIES.—~~

~~"(1) STANDARDS DEVELOPMENT.—~~

~~"(A) IN GENERAL.—The HIT Standards Committee shall recommend to the National Coordinator standards, implementation specifications, and certification criteria described in subsection (a) that have been developed, harmonized, or recognized by the HIT Standards Committee. The HIT Standards Committee shall update such recommendations and make new recommendations as appropriate, including in response to a notification sent under section 3004(a)(2)(B). Such recommendations shall be consistent with the latest recommendations made by the HIT Policy Committee.~~

~~"(B) PILOT TESTING OF STANDARDS AND 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 4201(a) of the HITECH 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.

"(3) SCHEDULE.—Not later than 90 days after the date of the enactment of this title, the HIT

~~Standards Committee shall develop a schedule for the assessment of policy recommendations developed by the HIT Policy Committee under section 3002. The HIT Standards Committee shall update such schedule annually. The Secretary shall publish such schedule in the Federal Register.~~

~~"(4) PUBLIC INPUT.—The HIT Standards Committee shall conduct open public meetings and develop a process to allow for public comment on the schedule described in paragraph (3) and recommendations described in this subsection. Under such process comments shall be submitted in a timely manner after the date of publication of a recommendation under this subsection.~~

~~"(e) MEMBERSHIP AND OPERATIONS.—~~

~~"(1) IN GENERAL.—The National Coordinator shall provide leadership in the establishment and operations of the HIT Standards Committee.~~

~~"(2) MEMBERSHIP.—The membership of the HIT Standards Committee shall at least reflect providers, ancillary healthcare workers, consumers, purchasers, health plans, technology vendors, researchers, 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 3004(a), 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~~

~~specifications, and certification criteria adopted before the date of the enactment of this title through the process existing through the Office of the National Coordinator for Health Information Technology may be applied towards meeting the requirement of paragraph (1).~~

~~"SEC. 3005. APPLICATION AND USE OF ADOPTED STANDARDS AND IMPLEMENTATION SPECIFICATIONS BY FEDERAL AGENCIES.~~

~~"For requirements relating to the application and use by Federal agencies of the standards and implementation specifications adopted under section 3004, see section 4111 of the HITECH Act.~~

~~"SEC. 3006. VOLUNTARY APPLICATION AND USE OF ADOPTED STANDARDS AND IMPLEMENTATION SPECIFICATIONS BY PRIVATE ENTITIES.~~

~~"(a) IN GENERAL.—Except as provided under section 4112 of the HITECH Act, any standard or implementation specification adopted under section 3004 shall be voluntary with respect to private entities.~~

~~"(b) RULE OF CONSTRUCTION.—Nothing in this subtitle shall be construed to require that a private entity that enters into a contract with the Federal Government apply or use the standards and implementation specifications~~

1 adopted under section 3004 with respect to activities not
2 related to the contract.

3 **"SEC. 3007. FEDERAL HEALTH INFORMATION TECH-**
4 **NOLOGY.**

5 "(a) IN GENERAL.—The National Coordinator shall
6 support the development, routine updating, and provision
7 of qualified EHR technology (as defined in section 3000)
8 consistent with subsections (b) and (c) unless the Sec-
9 retary determines that the needs and demands of pro-
10 viders are being substantially and adequately met through
11 the marketplace.

12 "(b) CERTIFICATION.—In making such EHR tech-
13 nology publicly available, the National Coordinator shall
14 ensure that the qualified EHR technology described in
15 subsection (a) is certified under the program developed
16 under section 3001(c)(3) to be in compliance with applica-
17 ble standards adopted under section 3003(a).

18 "(c) AUTHORIZATION TO CHARGE A NOMINAL
19 FEE.—The National Coordinator may impose a nominal
20 fee for the adoption by a health care provider of the health
21 information technology system developed or approved
22 under subsection (a) and (b). Such fee shall take into ac-
23 count the financial circumstances of smaller providers, low
24 income providers, and providers located in rural or other
25 medically underserved areas.

1 ~~"(d) RULE OF CONSTRUCTION.—Nothing in this sec-~~
2 ~~tion shall be construed to require that a private or govern-~~
3 ~~ment entity adopt or use the technology provided under~~
4 ~~this section.~~

5 ~~**"SEC. 3008. TRANSITIONS.**~~

6 ~~"(a) ONCHIT.—To the extent consistent with sec-~~
7 ~~tion 3001, all functions, personnel, assets, liabilities, and~~
8 ~~administrative actions applicable to the National Coordi-~~
9 ~~nator for Health Information Technology appointed under~~
10 ~~Executive Order No. 13335 or the Office of such National~~
11 ~~Coordinator on the date before the date of the enactment~~
12 ~~of this title shall be transferred to the National Coordi-~~
13 ~~nator appointed under section 3001(a) and the Office of~~
14 ~~such National Coordinator as of the date of the enactment~~
15 ~~of this title.~~

16 ~~"(b) AHIC.—~~

17 ~~"(1) To the extent consistent with sections~~
18 ~~3002 and 3003, all functions, personnel, assets, and~~
19 ~~liabilities applicable to the AHIC Successor, Inc.~~
20 ~~doing business as the National eHealth Collaborative~~
21 ~~as of the day before the date of the enactment of~~
22 ~~this title shall be transferred to the HIT Policy~~
23 ~~Committee or the HIT Standards Committee, estab-~~
24 ~~lished under section 3002(a) or 3003(a), as appro-~~
25 ~~priate, as of the date of the enactment of this title.~~

1 ~~"(2) In carrying out section 3003(b)(1)(A),~~
2 ~~until recommendations are made by the HIT Policy~~
3 ~~Committee, recommendations of the HIT Standards~~
4 ~~Committee shall be consistent with the most recent~~
5 ~~recommendations made by such AHIC Successor,~~
6 ~~Inc.~~
7 ~~"(c) RULES OF CONSTRUCTION.—~~
8 ~~"(1) ONCHIT.—Nothing in section 3001 or~~
9 ~~subsection (a) shall be construed as requiring the~~
10 ~~creation of a new entity to the extent that the Office~~
11 ~~of the National Coordinator for Health Information~~
12 ~~Technology established pursuant to Executive Order~~
13 ~~No. 13335 is consistent with the provisions of sec-~~
14 ~~tion 3001.~~
15 ~~"(2) AHIC.—Nothing in sections 3002 or 3003~~
16 ~~or subsection (b) shall be construed as prohibiting~~
17 ~~the AHIC Successor, Inc. doing business as the Na-~~
18 ~~tional eHealth Collaborative from modifying its char-~~
19 ~~ter, duties, membership, and any other structure or~~
20 ~~function required to be consistent with section 3002~~
21 ~~and 3003 in a manner that would permit the Sec-~~
22 ~~retary to choose to recognize such AHIC Successor,~~
23 ~~Inc. as the HIT Policy Committee or the HIT~~
24 ~~Standards Committee.~~

1 **“SEC. 3009. RELATION TO HIPAA PRIVACY AND SECURITY**
2 **LAW.**
3 “(a) IN GENERAL.—With respect to the relation of
4 this title to HIPAA privacy and security law:
5 “(1) This title may not be construed as having
6 any effect on the authorities of the Secretary under
7 HIPAA privacy and security law.
8 “(2) The purposes of this title include ensuring
9 that the health information technology standards
10 and implementation specifications adopted under
11 section 3004 take into account the requirements of
12 HIPAA privacy and security law.
13 “(b) DEFINITION.—For purposes of this section, the
14 term ‘HIPAA privacy and security law’ means—
15 “(1) the provisions of part C of title XI of the
16 Social Security Act, section 264 of the Health Insur-
17 ance Portability and Accountability Act of 1996, and
18 subtitle D of title IV of the HITECH Act; and
19 “(2) regulations under such provisions.
20 **“SEC. 3010. AUTHORIZATION FOR APPROPRIATIONS.**
21 “There is authorized to be appropriated to the Office
22 of the National Coordinator for Health Information Tech-
23 nology to carry out this subtitle $250,000,000 for fiscal
24 year 2009.”.

SEC. 4102. 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. 4111. 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 of the Public Health Service Act, as added by section 4101.

(b) FEDERAL INFORMATION COLLECTION ACTIVITIES.—With respect to a standard or implementation specification adopted under section 3004 of the Public

~~Health Service Act, as added by section 4101, the President shall take measures to ensure that Federal activities involving the broad collection and submission of health information are consistent with such standard or implementation specification, respectively, within three years after the date of such adoption.~~

~~(c) APPLICATION OF DEFINITIONS.—The definitions contained in section 3000 of the Public Health Service Act, as added by section 4101, shall apply for purposes of this part.~~

~~SEC. 4112. APPLICATION TO PRIVATE ENTITIES.~~

~~Each agency (as defined in such Executive Order issued on August 22, 2006, relating to promoting quality and efficient health care in Federal government administered or sponsored health care programs) shall require in contracts or agreements with health care providers, health plans, or health insurance issuers that as each provider, plan, or issuer implements, acquires, or upgrades health information technology systems, it shall utilize, where available, health information technology systems and products that meet standards and implementation specifications adopted under section 3004 of the Public Health Service Act, as added by section 4101.~~

1 **~~SEC. 4113. STUDY AND REPORTS.~~**

2 ~~(a) REPORT ON ADOPTION OF NATIONWIDE SYS-~~
3 ~~TEM.—Not later than 2 years after the date of the enact-~~
4 ~~ment of this Act and annually thereafter, the Secretary~~
5 ~~of Health and Human Services shall submit to the appro-~~
6 ~~priate committees of jurisdiction of the House of Rep-~~
7 ~~resentatives and the Senate a report that—~~

8 ~~(1) describes the specific actions that have been~~
9 ~~taken by the Federal Government and private enti-~~
10 ~~ties to facilitate the adoption of a nationwide system~~
11 ~~for the electronic use and exchange of health infor-~~
12 ~~mation;~~

13 ~~(2) describes barriers to the adoption of such a~~
14 ~~nationwide system; and~~

15 ~~(3) contains recommendations to achieve full~~
16 ~~implementation of such a nationwide system.~~

17 ~~(b) REIMBURSEMENT INCENTIVE STUDY AND RE-~~
18 ~~PORT.—~~

19 ~~(1) STUDY.—The Secretary of Health and~~
20 ~~Human Services shall carry out, or contract with a~~
21 ~~private entity to carry out, a study that examines~~
22 ~~methods to create efficient reimbursement incentives~~
23 ~~for improving health care quality in Federally quali-~~
24 ~~fied health centers, rural health clinics, and free~~
25 ~~clinics.~~

~~(2) REPORT.—Not later than 2 years after the date of the enactment of this Act, 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 on the study carried out under paragraph (1).~~

~~(c) AGING SERVICES TECHNOLOGY STUDY AND REPORT.—~~

~~(1) IN GENERAL.—The Secretary of Health and Human Services shall carry out, or contract with a private entity to carry out, a study of matters relating to the potential use of new aging services technology to assist seniors, individuals with disabilities, and their caregivers throughout the aging process.~~

~~(2) MATTERS TO BE STUDIED.—The study under paragraph (1) shall include—~~

~~(A) an evaluation of—~~

~~(i) methods for identifying current, emerging, and future health technology that can be used to meet the needs of seniors and individuals with disabilities and their caregivers across all aging services settings, as specified by the Secretary;~~

~~(ii) methods for fostering scientific innovation 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~~

~~seniors, individuals with disabilities, and the caregivers of such seniors and individuals.~~

~~(B) SENIOR.—The term "senior" has such meaning as specified by the Secretary.~~

~~Subtitle B—Testing of Health Information Technology~~

~~SEC. 4201. NATIONAL INSTITUTE FOR STANDARDS AND TECHNOLOGY TESTING.~~

~~(a) PILOT TESTING OF STANDARDS AND IMPLEMENTATION SPECIFICATIONS.—In coordination with the HIT Standards Committee established under section 3003 of the Public Health Service Act, as added by section 4101, with respect to the development of standards and implementation specifications under such section, the Director of the National Institute for Standards and Technology shall test such standards and implementation specifications, as appropriate, in order to assure the efficient implementation and use of such standards and implementation specifications.~~

~~(b) VOLUNTARY TESTING PROGRAM.—In coordination with the HIT Standards Committee established under section 3003 of the Public Health Service Act, as added by section 4101, with respect to the development of standards and implementation specifications under such section, the Director of the National Institute of Standards~~

~~and Technology shall support the establishment of a conformance testing infrastructure, including the development of technical test beds. The development of this conformance testing infrastructure may include a program to accredit independent, non-Federal laboratories to perform testing.~~

~~SEC. 4202. RESEARCH AND DEVELOPMENT PROGRAMS.~~

~~(a) HEALTH CARE INFORMATION ENTERPRISE INTEGRATION RESEARCH CENTERS.—~~

~~(1) IN GENERAL.—The Director of the National Institute of Standards and Technology, in consultation with the Director of the National Science Foundation and other appropriate Federal agencies, shall establish a program of assistance to institutions of higher education (or consortia thereof which may include nonprofit entities and Federal Government laboratories) to establish multidisciplinary Centers for Health Care Information Enterprise Integration.~~

~~(2) REVIEW; COMPETITION.—Grants shall be awarded under this subsection on a merit-reviewed, competitive basis.~~

~~(3) PURPOSE.—The purposes of the Centers described in paragraph (1) shall be—~~

~~(A) to generate innovative approaches to health care information enterprise integration~~

~~by conducting cutting-edge, multidisciplinary research on the systems challenges to health care delivery; and~~

~~(B) the development and use of health information technologies and other complementary fields.~~

~~(4) RESEARCH AREAS.—Research areas may include—~~

~~(A) interfaces between human information and communications technology systems;~~

~~(B) voice-recognition systems;~~

~~(C) software that improves interoperability and connectivity among health information systems;~~

~~(D) software dependability in systems critical to health care delivery;~~

~~(E) measurement of the impact of information technologies on the quality and productivity of health care;~~

~~(F) health information enterprise management;~~

~~(G) health information technology security and integrity; and~~

~~(H) relevant health information technology 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. 4301. GRANT, LOAN, AND DEMONSTRATION PROGRAMS.

Title XXX of the Public Health Service Act, as added by section 4101, 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 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 such date as the standards are

1 ~~adopted under section 3004. The Secretary shall invest~~
2 ~~funds through the different agencies with expertise in such~~
3 ~~goals, such as the Office of the National Coordinator for~~
4 ~~Health Information Technology, the Health Resources and~~
5 ~~Services Administration, the Agency for Healthcare Re-~~
6 ~~search and Quality, the Centers of Medicare & Medicaid~~
7 ~~Services, the Centers for Disease Control and Prevention,~~
8 ~~and the Indian Health Service to support the following:~~
9 ~~"(1) Health information technology architecture~~
10 ~~that will support the nationwide electronic exchange~~
11 ~~and use of health information in a secure, private,~~
12 ~~and accurate manner, including connecting health~~
13 ~~information exchanges, and which may include up-~~
14 ~~dating and implementing the infrastructure nec-~~
15 ~~essary within different agencies of the Department~~
16 ~~of Health and Human Services to support the elec-~~
17 ~~tronic use and exchange of health information.~~
18 ~~"(2) Development and adoption of appropriate~~
19 ~~certified electronic health records for categories of~~
20 ~~providers, as defined in section 3000, not eligible for~~
21 ~~support under title XVIII or XIX of the Social Secu-~~
22 ~~rity Act for the adoption of such records.~~
23 ~~"(3) Training on and dissemination of informa-~~
24 ~~tion on best practices to integrate health information~~
25 ~~technology, including electronic health records, into~~

~~a provider's delivery of care, consistent with best practices learned from the Health Information Technology Research Center developed under section 3012(b), including community health centers receiving assistance under section 330, covered entities under section 340B, 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) Improvement and expansion of the use of health information technology by public health departments.~~

~~"(8) Provision of $300 million to support regional or sub-national efforts towards health information exchange.~~

1 ~~"(b) COORDINATION.—The Secretary shall ensure~~
2 ~~funds under this section are used in a coordinated manner~~
3 ~~with other health information promotion activities.~~
4 ~~"(c) ADDITIONAL USE OF FUNDS.—In addition to~~
5 ~~using funds as provided in subsection (a), the Secretary~~
6 ~~may use amounts appropriated under section 3018 to~~
7 ~~carry out health information technology activities that are~~
8 ~~provided for under laws in effect on the date of the enact-~~
9 ~~ment of this title.~~
10 ~~**"SEC. 3012. HEALTH INFORMATION TECHNOLOGY IMPLE-**~~
11 ~~**MENTATION ASSISTANCE.**~~
12 ~~"(a) HEALTH INFORMATION TECHNOLOGY EXTEN-~~
13 ~~SION PROGRAM.—To assist health care providers to adopt,~~
14 ~~implement, and effectively use certified EHR technology~~
15 ~~that allows for the electronic exchange and use of health~~
16 ~~information, the Secretary, acting through the Office of~~
17 ~~the National Coordinator, shall establish a health informa-~~
18 ~~tion technology extension program to provide health infor-~~
19 ~~mation technology assistance services to be carried out~~
20 ~~through the Department of Health and Human Services.~~
21 ~~The National Coordinator shall consult with other Federal~~
22 ~~agencies with demonstrated experience and expertise in in-~~
23 ~~formation technology services, such as the National Insti-~~
24 ~~tute of Standards and Technology, in developing and im-~~
25 ~~plementing this program.~~

1 ~~"(b) HEALTH INFORMATION TECHNOLOGY RE-~~
2 ~~SEARCH CENTER.—~~
3 ~~"(1) IN GENERAL.—The Secretary shall create~~
4 ~~a Health Information Technology Research Center~~
5 ~~(in this section referred to as the 'Center') to pro-~~
6 ~~vide technical assistance and develop or recognize~~
7 ~~best practices to support and accelerate efforts to~~
8 ~~adopt, implement, and effectively utilize health infor-~~
9 ~~mation technology that allows for the electronic ex-~~
10 ~~change and use of information in compliance with~~
11 ~~standards, implementation specifications, and certifi-~~
12 ~~cation criteria adopted under section 3004.~~
13 ~~"(2) INPUT.—The Center shall incorporate~~
14 ~~input from—~~
15 ~~"(A) other Federal agencies with dem-~~
16 ~~onstrated experience and expertise in informa-~~
17 ~~tion technology services such as the National~~
18 ~~Institute of Standards and Technology;~~
19 ~~"(B) users of health information tech-~~
20 ~~nology, such as providers and their support and~~
21 ~~clerical staff and others involved in the care and~~
22 ~~care coordination of patients, from the health~~
23 ~~care and health information technology indus-~~
24 ~~try; and~~
25 ~~"(C) others as appropriate.~~

1 ~~"(3) PURPOSES.—The purposes of the Center~~
2 ~~are to—~~
3 ~~"(A) provide a forum for the exchange of~~
4 ~~knowledge and experience;~~
5 ~~"(B) accelerate the transfer of lessons~~
6 ~~learned from existing public and private sector~~
7 ~~initiatives, including those currently receiving~~
8 ~~Federal financial support;~~
9 ~~"(C) assemble, analyze, and widely dis-~~
10 ~~seminate evidence and experience related to the~~
11 ~~adoption, implementation, and effective use of~~
12 ~~health information technology that allows for~~
13 ~~the electronic exchange and use of information~~
14 ~~including through the regional centers described~~
15 ~~in subsection (c);~~
16 ~~"(D) provide technical assistance for the~~
17 ~~establishment and evaluation of regional and~~
18 ~~local health information networks to facilitate~~
19 ~~the electronic exchange of information across~~
20 ~~health care settings and improve the quality of~~
21 ~~health care;~~
22 ~~"(E) provide technical assistance for the~~
23 ~~development and dissemination of solutions to~~
24 ~~barriers to the exchange of electronic health in-~~
25 ~~formation; and~~

1 ~~"(F) learn about effective strategies to~~
2 ~~adopt and utilize health information technology~~
3 ~~in medically underserved communities.~~
4 ~~"(c) HEALTH INFORMATION TECHNOLOGY RE-~~
5 ~~GIONAL EXTENSION CENTERS.—~~
6 ~~"(1) IN GENERAL.—The Secretary shall provide~~
7 ~~assistance for the creation and support of regional~~
8 ~~centers (in this subsection referred to as 'regional~~
9 ~~centers') to provide technical assistance and dissemi-~~
10 ~~nate best practices and other information learned~~
11 ~~from the Center to support and accelerate efforts to~~
12 ~~adopt, implement, and effectively utilize health infor-~~
13 ~~mation technology that allows for the electronic ex-~~
14 ~~change and use of information in compliance with~~
15 ~~standards, implementation specifications, and certifi-~~
16 ~~cation criteria adopted under section 3004. Activities~~
17 ~~conducted under this subsection shall be consistent~~
18 ~~with the strategic plan developed by the National~~
19 ~~Coordinator, (and, as available) under section 3001.~~
20 ~~"(2) AFFILIATION.—Regional centers shall be~~
21 ~~affiliated with any United States-based nonprofit in-~~
22 ~~stitution or organization, or group thereof, that ap-~~
23 ~~plies and is awarded financial assistance under this~~
24 ~~section. Individual awards shall be decided on the~~
25 ~~basis of merit.~~

1 ~~"(3) OBJECTIVE.—The objective of the regional~~
2 ~~centers is to enhance and promote the adoption of~~
3 ~~health information technology through—~~
4 ~~"(A) assistance with the implementation,~~
5 ~~effective use, upgrading, and ongoing mainte-~~
6 ~~nance of health information technology, includ-~~
7 ~~ing electronic health records, to healthcare pro-~~
8 ~~viders nationwide;~~
9 ~~"(B) broad participation of individuals~~
10 ~~from industry, universities, and State govern-~~
11 ~~ments;~~
12 ~~"(C) active dissemination of best practices~~
13 ~~and research on the implementation, effective~~
14 ~~use, upgrading, and ongoing maintenance of~~
15 ~~health information technology, including elec-~~
16 ~~tronic health records, to health care providers~~
17 ~~in order to improve the quality of healthcare~~
18 ~~and protect the privacy and security of health~~
19 ~~information;~~
20 ~~"(D) participation, to the extent prac-~~
21 ~~ticable, in health information exchanges;~~
22 ~~"(E) utilization, when appropriate, of the~~
23 ~~expertise and capability that exists in Federal~~
24 ~~agencies other than the Department; and~~

1 ~~"(F) integration of health information~~
2 ~~technology, including electronic health records,~~
3 ~~into the initial and ongoing training of health~~
4 ~~professionals and others in the healthcare in-~~
5 ~~dustry that would be instrumental to improving~~
6 ~~the quality of healthcare through the smooth~~
7 ~~and accurate electronic use and exchange of~~
8 ~~health information.~~
9 ~~"(4) REGIONAL ASSISTANCE.—Each regional~~
10 ~~center shall aim to provide assistance and education~~
11 ~~to all providers in a region, but shall prioritize any~~
12 ~~direct assistance first to the following:~~
13 ~~"(A) Public or not-for-profit hospitals or~~
14 ~~critical access hospitals.~~
15 ~~"(B) Federally qualified health centers (as~~
16 ~~defined in section 1861(aa)(4) of the Social Se-~~
17 ~~curity Act).~~
18 ~~"(C) Entities that are located in rural and~~
19 ~~other areas that serve uninsured, underinsured,~~
20 ~~and medically underserved individuals (regard-~~
21 ~~less of whether such area is urban or rural).~~
22 ~~"(D) Individual or small group practices~~
23 ~~(or a consortium thereof) that are primarily fo-~~
24 ~~cused on primary care.~~

~~"(5) FINANCIAL SUPPORT.—The Secretary may provide financial support to any regional center created under this subsection for a period not to exceed four years. The Secretary may not provide more than 50 percent of the capital and annual operating and maintenance funds required to create and maintain such a center, except in an instance of national economic conditions which would render this cost-share requirement detrimental to the program and upon notification to Congress as to the justification to waive the cost-share requirement.~~

~~"(6) NOTICE OF PROGRAM DESCRIPTION AND AVAILABILITY OF FUNDS.—The Secretary shall publish in the Federal Register, not later than 90 days after the date of the enactment of this title, a draft description of the program for establishing regional centers under this subsection. Such description shall include the following:~~

~~"(A) A detailed explanation of the program and the programs goals.~~

~~"(B) Procedures to be followed by the applicants.~~

~~"(C) Criteria for determining qualified applicants.~~

1 ~~"(D) Maximum support levels expected to~~
2 ~~be available to centers under the program.~~
3 ~~"(7) APPLICATION REVIEW.—The Secretary~~
4 ~~shall subject each application under this subsection~~
5 ~~to merit review. In making a decision whether to ap-~~
6 ~~prove such application and provide financial support,~~
7 ~~the Secretary shall consider at a minimum the mer-~~
8 ~~its of the application, including those portions of the~~
9 ~~application regarding—~~
10 ~~"(A) the ability of the applicant to provide~~
11 ~~assistance under this subsection and utilization~~
12 ~~of health information technology appropriate to~~
13 ~~the needs of particular categories of health care~~
14 ~~providers;~~
15 ~~"(B) the types of service to be provided to~~
16 ~~health care providers;~~
17 ~~"(C) geographical diversity and extent of~~
18 ~~service area; and~~
19 ~~"(D) the percentage of funding and~~
20 ~~amount of in-kind commitment from other~~
21 ~~sources.~~
22 ~~"(8) BIENNIAL EVALUATION.—Each regional~~
23 ~~center which receives financial assistance under this~~
24 ~~subsection shall be evaluated biennially by an evalua-~~
25 ~~tion panel appointed by the Secretary. Each evalua-~~

~~tion 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.~~

~~"(b) PLANNING GRANTS.—The Secretary may award a grant to a State or qualified State-designated entity (as~~

~~described in subsection (f)) that submits an application to the Secretary at such time, in such manner, and containing such information as the Secretary may specify, for the purpose of planning activities described in subsection (d).~~

~~"(e) IMPLEMENTATION GRANTS.—The Secretary may award a grant to a State or qualified State designated entity that—~~

~~"(1) has submitted, and the Secretary has approved, a plan described in subsection (e) (regardless of whether such plan was prepared using amounts awarded under subsection (b); and~~

~~"(2) submits an application at such time, in such manner, and containing such information as the Secretary may specify.~~

~~"(d) USE OF FUNDS.—Amounts received under a grant under subsection (e) shall be used to conduct activities to facilitate and expand the electronic movement and use of health information among organizations according to nationally recognized standards through activities that include—~~

~~"(1) enhancing broad and varied participation in the authorized and secure nationwide electronic use and exchange of health information;~~

1 ~~"(2) identifying State or local resources avail-~~
2 ~~able towards a nationwide effort to promote health~~
3 ~~information technology;~~
4 ~~"(3) complementing other Federal grants, pro-~~
5 ~~grams, and efforts towards the promotion of health~~
6 ~~information technology;~~
7 ~~"(4) providing technical assistance for the de-~~
8 ~~velopment and dissemination of solutions to barriers~~
9 ~~to the exchange of electronic health information;~~
10 ~~"(5) promoting effective strategies to adopt and~~
11 ~~utilize health information technology in medically~~
12 ~~underserved communities;~~
13 ~~"(6) assisting patients in utilizing health infor-~~
14 ~~mation technology;~~
15 ~~"(7) encouraging clinicians to work with Health~~
16 ~~Information Technology Regional Extension Centers~~
17 ~~as described in section 3012, to the extent they are~~
18 ~~available and valuable;~~
19 ~~"(8) supporting public health agencies' author-~~
20 ~~ized use of and access to electronic health informa-~~
21 ~~tion;~~
22 ~~"(9) promoting the use of electronic health~~
23 ~~records for quality improvement including through~~
24 ~~quality measures reporting; and~~

1 ~~"(10) such other activities as the Secretary may~~
2 ~~specify.~~
3 ~~"(c) PLAN.—~~
4 ~~"(1) IN GENERAL.—A plan described in this~~
5 ~~subsection is a plan that describes the activities to~~
6 ~~be carried out by a State or by the qualified State-~~
7 ~~designated entity within such State to facilitate and~~
8 ~~expand the electronic movement and use of health~~
9 ~~information among organizations according to na-~~
10 ~~tionally recognized standards and implementation~~
11 ~~specifications.~~
12 ~~"(2) REQUIRED ELEMENTS.—A plan described~~
13 ~~in paragraph (1) shall—~~
14 ~~"(A) be pursued in the public interest;~~
15 ~~"(B) be consistent with the strategic plan~~
16 ~~developed by the National Coordinator, (and, as~~
17 ~~available) under section 3001;~~
18 ~~"(C) include a description of the ways the~~
19 ~~State or qualified State-designated entity will~~
20 ~~carry out the activities described in subsection~~
21 ~~(b); and~~
22 ~~"(D) contain such elements as the Sec-~~
23 ~~retary may require.~~

1 ~~"(f) QUALIFIED STATE-DESIGNATED ENTITY.—For~~
2 ~~purposes of this section, to be a qualified State-designated~~
3 ~~entity, with respect to a State, an entity shall—~~
4 ~~"(1) be designated by the State as eligible to~~
5 ~~receive awards under this section;~~
6 ~~"(2) be a not-for-profit entity with broad stake-~~
7 ~~holder representation on its governing board;~~
8 ~~"(3) demonstrate that one of its principal goals~~
9 ~~is to use information technology to improve health~~
10 ~~care quality and efficiency through the authorized~~
11 ~~and secure electronic exchange and use of health in-~~
12 ~~formation;~~
13 ~~"(4) adopt nondiscrimination and conflict of in-~~
14 ~~terest policies that demonstrate a commitment to~~
15 ~~open, fair, and nondiscriminatory participation by~~
16 ~~stakeholders; and~~
17 ~~"(5) conform to such other requirements as the~~
18 ~~Secretary may establish.~~
19 ~~"(g) REQUIRED CONSULTATION.—In carrying out~~
20 ~~activities described in subsections (b) and (c), a State or~~
21 ~~qualified State-designated entity shall consult with and~~
22 ~~consider the recommendations of—~~
23 ~~"(1) health care providers (including providers~~
24 ~~that provide services to low income and underserved~~
25 ~~populations);~~

1 ~~"(2) health plans;~~

2 ~~"(3) patient or consumer organizations that~~

3 ~~represent the population to be served;~~

4 ~~"(4) health information technology vendors;~~

5 ~~"(5) health care purchasers and employers;~~

6 ~~"(6) public health agencies;~~

7 ~~"(7) health professions schools, universities and~~

8 ~~colleges;~~

9 ~~"(8) clinical researchers;~~

10 ~~"(9) other users of health information tech-~~

11 ~~nology such as the support and clerical staff of pro-~~

12 ~~viders and others involved in the care and care co-~~

13 ~~ordination of patients; and~~

14 ~~"(10) such other entities, as may be determined~~

15 ~~appropriate by the Secretary.~~

16 ~~"(h) CONTINUOUS IMPROVEMENT.—The Secretary~~

17 ~~shall annually evaluate the activities conducted under this~~

18 ~~section and shall, in awarding grants under this section,~~

19 ~~implement the lessons learned from such evaluation in a~~

20 ~~manner so that awards made subsequent to each such~~

21 ~~evaluation are made in a manner that, in the determina-~~

22 ~~tion of the Secretary, will lead towards the greatest im-~~

23 ~~provement in quality of care, decrease in costs, and the~~

24 ~~most effective authorized and secure electronic exchange~~

25 ~~of health information.~~

~~"(i) REQUIRED MATCH.—~~

~~"(1) IN GENERAL.—For a fiscal year (beginning with fiscal year 2011), the Secretary may not make a grant under this section to a State unless the State agrees to make available non-Federal contributions (which may include in-kind contributions) toward the costs of a grant awarded under subsection (c) in an amount equal to—~~

~~"(A) for fiscal year 2011, not less than $1 for each $10 of Federal funds provided under the grant;~~

~~"(B) for fiscal year 2012, not less than $1 for each $7 of Federal funds provided under the grant; and~~

~~"(C) for fiscal year 2013 and each subsequent fiscal year, not less than $1 for each $3 of Federal funds provided under the grant.~~

~~"(2) AUTHORITY TO REQUIRE STATE MATCH FOR FISCAL YEARS BEFORE FISCAL YEAR 2011.—For any fiscal year during the grant program under this section before fiscal year 2011, the Secretary may determine the extent to which there shall be required a non-Federal contribution from a State receiving a grant under this section.~~

1 **~~"SEC. 3014. COMPETITIVE GRANTS TO STATES AND INDIAN~~**
2 **~~TRIBES FOR THE DEVELOPMENT OF LOAN~~**
3 **~~PROGRAMS TO FACILITATE THE WIDE-~~**
4 **~~SPREAD ADOPTION OF CERTIFIED EHR TECH-~~**
5 **~~NOLOGY.~~**

6 ~~"(a) IN GENERAL.—The National Coordinator may~~
7 ~~award competitive grants to eligible entities for the estab-~~
8 ~~lishment of programs for loans to health care providers~~
9 ~~to conduct the activities described in subsection (c).~~

10 ~~"(b) ELIGIBLE ENTITY DEFINED.—For purposes of~~
11 ~~this subsection, the term 'eligible entity' means a State~~
12 ~~or Indian tribe (as defined in the Indian Self-Determina-~~
13 ~~tion and Education Assistance Act) that—~~

14 ~~"(1) submits to the National Coordinator an~~
15 ~~application at such time, in such manner, and con-~~
16 ~~taining such information as the National Coordi-~~
17 ~~nator may require;~~

18 ~~"(2) submits to the National Coordinator a~~
19 ~~strategic plan in accordance with subsection (d) and~~
20 ~~provides to the National Coordinator assurances that~~
21 ~~the entity will update such plan annually in accord-~~
22 ~~ance with such subsection;~~

23 ~~"(3) provides assurances to the National Coor-~~
24 ~~dinator that the entity will establish a Loan Fund~~
25 ~~in accordance with subsection (c);~~

1 ~~"(4) provides assurances to the National Coor-~~
2 ~~dinator that the entity will not provide a loan from~~
3 ~~the Loan Fund to a health care provider unless the~~
4 ~~provider agrees to—~~
5 ~~"(A) submit reports on quality measures~~
6 ~~adopted by the Federal Government (by not~~
7 ~~later than 90 days after the date on which such~~
8 ~~measures are adopted), to—~~
9 ~~"(i) the Administrator of the Centers~~
10 ~~for Medicare & Medicaid Services (or his~~
11 ~~or her designee), in the case of an entity~~
12 ~~participating in the Medicare program~~
13 ~~under title XVIII of the Social Security~~
14 ~~Act or the Medicaid program under title~~
15 ~~XIX of such Act; or~~
16 ~~"(ii) the Secretary in the case of other~~
17 ~~entities;~~
18 ~~"(B) demonstrate to the satisfaction of the~~
19 ~~Secretary (through criteria established by the~~
20 ~~Secretary) that any certified EHR technology~~
21 ~~purchased, improved, or otherwise financially~~
22 ~~supported under a loan under this section is~~
23 ~~used to exchange health information in a man-~~
24 ~~ner that, in accordance with law and standards~~
25 ~~(as adopted under section 3004) applicable to~~

1 the exchange of information, improves the qual-
2 ity of health care, such as promoting care co-
3 ordination; and
4 "(C) comply with such other requirements
5 as the entity or the Secretary may require;
6 "(D) include a plan on how health care
7 providers involved intend to maintain and sup-
8 port the certified EHR technology over time;
9 "(E) include a plan on how the health care
10 providers involved intend to maintain and sup-
11 port the certified EHR technology that would
12 be purchased with such loan, including the type
13 of resources expected to be involved and any
14 such other information as the State or Indian
15 Tribe, respectively, may require; and
16 "(5) agrees to provide matching funds in ac-
17 cordance with subsection (h).
18 "(e) ESTABLISHMENT OF FUND.—For purposes of
19 subsection (b)(3), an eligible entity shall establish a cer-
20 tified EHR technology loan fund (referred to in this sub-
21 section as a 'Loan Fund') and comply with the other re-
22 quirements contained in this section. A grant to an eligible
23 entity under this section shall be deposited in the Loan
24 Fund established by the eligible entity. No funds author-
25 ized by other provisions of this title to be used for other

~~purposes specified in this title shall be deposited in any Loan Fund.~~

~~"(d) STRATEGIC PLAN.—~~

~~"(1) IN GENERAL.—For purposes of subsection (b)(2), a strategic plan of an eligible entity under this subsection shall identify the intended uses of amounts available to the Loan Fund of such entity.~~

~~"(2) CONTENTS.—A strategic plan under paragraph (1), with respect to a Loan Fund of an eligible entity, shall include for a year the following:~~

~~"(A) A list of the projects to be assisted through the Loan Fund during such year.~~

~~"(B) A description of the criteria and methods established for the distribution of funds from the Loan Fund during the year.~~

~~"(C) A description of the financial status of the Loan Fund as of the date of submission of the plan.~~

~~"(D) The short-term and long-term goals of the Loan Fund.~~

~~"(e) USE OF FUNDS.—Amounts deposited in a Loan Fund, including loan repayments and interest earned on such amounts, shall be used only for awarding loans or loan guarantees, making reimbursements described in subsection (g)(4)(A), or as a source of reserve and security~~

~~for leveraged loans, the proceeds of which are deposited in the Loan Fund established under subsection (c). Loans under this section may be used by a health care provider to—~~

~~"(1) facilitate the purchase of certified EHR technology;~~

~~"(2) enhance the utilization of certified EHR technology;~~

~~"(3) train personnel in the use of such technology; or~~

~~"(4) improve the secure electronic exchange of health information.~~

~~"(f) TYPES OF ASSISTANCE.—Except as otherwise limited by applicable State law, amounts deposited into a Loan Fund under this section may only be used for the following:~~

~~"(1) To award loans that comply with the following:~~

~~"(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.~~

1 ~~"(C) The Loan Fund shall be credited with~~
2 ~~all payments of principal and interest on each~~
3 ~~loan awarded from the Loan Fund.~~
4 ~~"(2) To guarantee, or purchase insurance for,~~
5 ~~a local obligation (all of the proceeds of which fi-~~
6 ~~nance a project eligible for assistance under this~~
7 ~~subsection) if the guarantee or purchase would im-~~
8 ~~prove credit market access or reduce the interest~~
9 ~~rate applicable to the obligation involved.~~
10 ~~"(3) As a source of revenue or security for the~~
11 ~~payment of principal and interest on revenue or gen-~~
12 ~~eral obligation bonds issued by the eligible entity if~~
13 ~~the proceeds of the sale of the bonds will be depos-~~
14 ~~ited into the Loan Fund.~~
15 ~~"(4) To earn interest on the amounts deposited~~
16 ~~into the Loan Fund.~~
17 ~~"(5) To make reimbursements described in sub-~~
18 ~~section (g)(4)(A).~~
19 ~~"(g) ADMINISTRATION OF LOAN FUNDS.—~~
20 ~~"(1) COMBINED FINANCIAL ADMINISTRATION.—~~
21 ~~An eligible entity may (as a convenience and to~~
22 ~~avoid unnecessary administrative costs) combine, in~~
23 ~~accordance with applicable State law, the financial~~
24 ~~administration of a Loan Fund established under~~
25 ~~this subsection with the financial administration of~~

~~any other revolving fund established by the entity if otherwise not prohibited by the law under which the Loan Fund was established.~~

~~"(2) COST OF ADMINISTERING FUND.—Each eligible entity may annually use not to exceed 4 percent of the funds provided to the entity under a grant under this section to pay the reasonable costs of the administration of the programs under this section, including the recovery of reasonable costs expended to establish a Loan Fund which are incurred after the date of the enactment of this title.~~

~~"(3) GUIDANCE AND REGULATIONS.—The National Coordinator shall publish guidance and promulgate regulations as may be necessary to carry out the provisions of this section, including—~~

~~"(A) provisions to ensure that each eligible entity commits and expends funds allotted to the entity under this section as efficiently as possible in accordance with this title and applicable State laws; and~~

~~"(B) guidance to prevent waste, fraud, and abuse.~~

~~"(4) PRIVATE SECTOR CONTRIBUTIONS.—~~

~~"(A) IN GENERAL.—A Loan Fund established under this section may accept contribu-~~

~~tions from private sector entities, except that such entities may not specify the recipient or recipients of any loan issued under this subsection. An eligible entity may agree to reimburse a private sector entity for any contribution made under this subparagraph, except that the amount of such reimbursement may not be greater than the principal amount of the contribution made.~~

~~"(B) AVAILABILITY OF INFORMATION.—An eligible entity shall make publicly available the identity of, and amount contributed by, any private sector entity under subparagraph (A) and may issue letters of commendation or make other awards (that have no financial value) to any such entity.~~

~~"(h) MATCHING REQUIREMENTS.—~~

~~"(1) IN GENERAL.—The National Coordinator may not make a grant under subsection (a) to an eligible entity unless the entity agrees to make available (directly or through donations from public or private entities) non-Federal contributions in cash to the costs of carrying out the activities for which the grant is awarded in an amount equal to not less~~

1 than $1 for each $5 of Federal funds provided under
2 the grant.
3 "(2) DETERMINATION OF AMOUNT OF NON-
4 FEDERAL CONTRIBUTION.—In determining the
5 amount of non-Federal contributions that an eligible
6 entity has provided pursuant to subparagraph (A),
7 the National Coordinator may not include any
8 amounts provided to the entity by the Federal Gov-
9 ernment.
10 "(i) EFFECTIVE DATE.—The Secretary may not
11 make an award under this section prior to January 1,
12 2010.
13 **"SEC. 3015. DEMONSTRATION PROGRAM TO INTEGRATE IN-**
14 **FORMATION TECHNOLOGY INTO CLINICAL**
15 **EDUCATION.**
16 "(a) IN GENERAL.—The Secretary may award grants
17 under this section to carry out demonstration projects to
18 develop academic curricula integrating certified EHR
19 technology in the clinical education of health professionals.
20 Such awards shall be made on a competitive basis and
21 pursuant to peer review.
22 "(b) ELIGIBILITY.—To be eligible to receive a grant
23 under subsection (a), an entity shall—

1 ~~"(1) submit to the Secretary an application at~~
2 ~~such time, in such manner, and containing such in-~~
3 ~~formation as the Secretary may require;~~
4 ~~"(2) submit to the Secretary a strategic plan~~
5 ~~for integrating certified EHR technology in the clin-~~
6 ~~ical education of health professionals to reduce med-~~
7 ~~ical errors and enhance health care quality;~~
8 ~~"(3) be—~~
9 ~~"(A) a school of medicine, osteopathic~~
10 ~~medicine, dentistry, or pharmacy, a graduate~~
11 ~~program in behavioral or mental health, or any~~
12 ~~other graduate health professions school;~~
13 ~~"(B) a graduate school of nursing or phy-~~
14 ~~sician assistant studies;~~
15 ~~"(C) a consortium of two or more schools~~
16 ~~described in subparagraph (A) or (B); or~~
17 ~~"(D) an institution with a graduate med-~~
18 ~~ical education program in medicine, osteopathic~~
19 ~~medicine, dentistry, pharmacy, nursing, or phy-~~
20 ~~sician assistance studies;~~
21 ~~"(4) provide for the collection of data regarding~~
22 ~~the effectiveness of the demonstration project to be~~
23 ~~funded under the grant in improving the safety of~~
24 ~~patients, the efficiency of health care delivery, and~~
25 ~~in increasing the likelihood that graduates of the~~

~~grantee will adopt and incorporate certified EHR technology, in the delivery of health care services; and~~

~~"(5) provide matching funds in accordance with subsection (d).~~

~~"(e) USE OF FUNDS.—~~

~~"(1) IN GENERAL.—With respect to a grant under subsection (a), an eligible entity shall—~~

~~"(A) use grant funds in collaboration with 2 or more disciplines; and~~

~~"(B) use grant funds to integrate certified EHR technology into community-based clinical education.~~

~~"(2) LIMITATION.—An eligible entity shall not use amounts received under a grant under subsection (a) to purchase hardware, software, or services.~~

~~"(d) FINANCIAL SUPPORT.—The Secretary may not provide more than 50 percent of the costs of any activity for which assistance is provided under subsection (a), except in an instance of national economic conditions which would render the cost-share requirement under this subsection detrimental to the program and upon notification to Congress as to the justification to waive the cost-share requirement.~~

1 ~~"(e) EVALUATION.—The Secretary shall take such~~
2 ~~action as may be necessary to evaluate the projects funded~~
3 ~~under this section and publish, make available, and dis-~~
4 ~~seminate the results of such evaluations on as wide a basis~~
5 ~~as is practicable.~~

6 ~~"(f) REPORTS.—Not later than 1 year after the date~~
7 ~~of enactment of this title, and annually thereafter, the Sec-~~
8 ~~retary shall submit to the Committee on Health, Edu-~~
9 ~~cation, Labor, and Pensions and the Committee on Fi-~~
10 ~~nance of the Senate, and the Committee on Energy and~~
11 ~~Commerce of the House of Representatives a report~~
12 ~~that—~~

13 ~~"(1) describes the specific projects established~~
14 ~~under this section; and~~

15 ~~"(2) contains recommendations for Congress~~
16 ~~based on the evaluation conducted under subsection~~
17 ~~(c).~~

18 **~~"SEC. 3016. INFORMATION TECHNOLOGY PROFESSIONALS~~**
19 **~~ON HEALTH CARE.~~**

20 ~~"(a) IN GENERAL.—The Secretary, in consultation~~
21 ~~with the Director of the National Science Foundation,~~
22 ~~shall provide assistance to institutions of higher education~~
23 ~~(or consortia thereof) to establish or expand medical~~
24 ~~health informatics education programs, including certifi-~~
25 ~~cation, undergraduate, and masters degree programs, for~~

both health care and information technology students to ensure the rapid and effective utilization and development of health information technologies (in the United States health care infrastructure).

"(b) ACTIVITIES.—Activities for which assistance may be provided under subsection (a) may include the following:

"(1) Developing and revising curricula in medical health informatics and related disciplines.

"(2) Recruiting and retaining students to the program involved.

"(3) Acquiring equipment necessary for student instruction in these programs, including the installation of testbed networks for student use.

"(4) Establishing or enhancing bridge programs in the health informatics fields between community colleges and universities.

"(c) PRIORITY.—In providing assistance under subsection (a), the Secretary shall give preference to the following:

"(1) Existing education and training programs.

"(2) Programs designed to be completed in less than six months.

"(d) FINANCIAL SUPPORT.—The Secretary may not provide more than 50 percent of the costs of any activity

for which assistance is provided under subsection (a), except in an instance of national economic conditions which would render the cost-share requirement under this subsection detrimental to the program and upon notification to Congress as to the justification to waive the cost-share requirement.

"SEC. 3017. GENERAL GRANT AND LOAN PROVISIONS.

"(a) REPORTS.—The Secretary may require that an entity receiving assistance under this subtitle shall submit to the Secretary, not later than the date that is 1 year after the date of receipt of such assistance, a report that includes—

"(1) an analysis of the effectiveness of the activities for which the entity receives such assistance, as compared to the goals for such activities; and

"(2) an analysis of the impact of the project on health care quality and safety.

"(b) REQUIREMENT TO IMPROVE QUALITY OF CARE AND DECREASE IN COSTS.—The National Coordinator shall annually evaluate the activities conducted under this subtitle and shall, in awarding grants, implement the lessons learned from such evaluation in a manner so that awards made subsequent to each such evaluation are made in a manner that, in the determination of the National

1 Coordinator, will result in the greatest improvement in the
2 quality and efficiency of health care.

3 **"SEC. 3018. AUTHORIZATION FOR APPROPRIATIONS.**

4 "For the purposes of carrying out this subtitle, there
5 is authorized to be appropriated such sums as may be nec-
6 essary for each of the fiscal years 2009 through 2013.
7 Amounts so appropriated shall remain available until ex-
8 pended.".

9 **PART II—MEDICARE PROGRAM**

10 **SEC. 4311. INCENTIVES FOR ELIGIBLE PROFESSIONALS.**

11 (a) INCENTIVE PAYMENTS.—Section 1848 of the So-
12 cial Security Act (42 U.S.C. 1395w–4) is amended by add-
13 ing at the end the following new subsection:

14 "(o) INCENTIVES FOR ADOPTION AND MEANINGFUL
15 USE OF CERTIFIED EHR TECHNOLOGY.—

16 "(1) INCENTIVE PAYMENTS.—

17 "(A) IN GENERAL.—Subject to the suc-
18 ceeding subparagraphs of this paragraph, with
19 respect to covered professional services fur-
20 nished by an eligible professional during a pay-
21 ment year (as defined in subparagraph (E)), if
22 the eligible professional is a meaningful EHR
23 user (as determined under paragraph (2)) for
24 the reporting period with respect to such year,
25 in addition to the amount otherwise paid under

~~this part, there also shall be paid to the eligible professional (or to an employer or facility in the cases described in clause (A) of section 1842(b)(6)), from the Federal Supplementary Medical Insurance Trust Fund established under section 1841 an amount equal to 75 percent of the Secretary's estimate (based on claims submitted not later than 2 months after the end of the payment year) of the allowed charges under this part for all such covered professional services furnished by the eligible professional during such year.~~

~~"(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 clause (iii), the applicable amount specified in this subparagraph for an eligible professional is as follows:~~

1 ~~"(I) For the first payment year~~
2 ~~for such professional, $15,000.~~
3 ~~"(II) For the second payment~~
4 ~~year for such professional, $12,000.~~
5 ~~"(III) For the third payment~~
6 ~~year for such professional, $8,000.~~
7 ~~"(IV) For the fourth payment~~
8 ~~year for such professional, $4,000.~~
9 ~~"(V) For the fifth payment year~~
10 ~~for such professional, $2,000.~~
11 ~~"(VI) For any succeeding pay-~~
12 ~~ment year for such professional, $0.~~
13 ~~"(iii) PHASE DOWN FOR ELIGIBLE~~
14 ~~PROFESSIONALS FIRST ADOPTING EHR~~
15 ~~AFTER 2013.—If the first payment year for~~
16 ~~an eligible professional is after 2013, then~~
17 ~~the amount specified in this subparagraph~~
18 ~~for a payment year for such professional is~~
19 ~~the same as the amount specified in clause~~
20 ~~(ii) for such payment year for an eligible~~
21 ~~professional whose first payment year is~~
22 ~~2013. If the first payment year for an eli-~~
23 ~~gible professional is after 2015 then the~~
24 ~~applicable amount specified in this sub-~~

~~paragraph 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 professional' means, with respect to covered professional services furnished by an eligible professional during the reporting period for a payment year, an eligible professional, such as a pathologist, anesthesiologist, or emergency physician, who furnishes substantially all of such services in a hospital setting (whether inpatient or outpatient) and through the use of the facilities and equipment, including computer equipment, of the hospital.~~

~~"(D) PAYMENT.—~~

~~"(i) FORM OF PAYMENT.—The payment under this paragraph may be in the~~

form of a single consolidated payment or in the form of such periodic installments as the Secretary may specify.

"(ii) COORDINATION OF APPLICATION OF LIMITATION FOR PROFESSIONALS IN DIFFERENT PRACTICES.—In the case of an eligible professional furnishing covered professional services in more than one practice (as specified by the Secretary), the Secretary shall establish rules to coordinate the incentive payments, including the application of the limitation on amounts of such incentive payments under this paragraph, among such practices.

"(iii) COORDINATION WITH MEDICAID.—The Secretary shall seek, to the maximum extent practicable, to avoid duplicative requirements from Federal and State Governments to demonstrate meaningful use of certified EHR technology under this title and title XIX. The Secretary may also adjust the reporting periods under such title and such subsections in order to carry out this clause.

"(E) PAYMENT YEAR DEFINED.—

~~"(i) IN GENERAL.—For purposes of this subsection, the term 'payment year' means a year beginning with 2011.~~

~~"(ii) FIRST, SECOND, ETC. PAYMENT 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:~~

1 ~~"(i) MEANINGFUL USE OF CERTIFIED~~
2 ~~EHR TECHNOLOGY.—The eligible profes-~~
3 ~~sional demonstrates to the satisfaction of~~
4 ~~the Secretary, in accordance with subpara-~~
5 ~~graph (C)(i), that during such period the~~
6 ~~professional is using certified EHR tech-~~
7 ~~nology in a meaningful manner, which~~
8 ~~shall include the use of electronic pre-~~
9 ~~scribing as determined to be appropriate~~
10 ~~by the Secretary.~~
11 ~~"(ii) INFORMATION EXCHANGE.—The~~
12 ~~eligible professional demonstrates to the~~
13 ~~satisfaction of the Secretary, in accordance~~
14 ~~with subparagraph (C)(i), that during such~~
15 ~~period such certified EHR technology is~~
16 ~~connected in a manner that provides, in~~
17 ~~accordance with law and standards appli-~~
18 ~~cable to the exchange of information, for~~
19 ~~the electronic exchange of health informa-~~
20 ~~tion to improve the quality of health care,~~
21 ~~such as promoting care coordination.~~
22 ~~"(iii) REPORTING ON MEASURES~~
23 ~~USING EHR.—Subject to subparagraph~~
24 ~~(B)(ii) and using such certified EHR tech-~~
25 ~~nology, the eligible professional submits in-~~

~~formation for such period, in a form and manner specified by the Secretary, on such clinical quality measures and such other measures as selected by the Secretary under subparagraph (B)(i).~~

~~The Secretary may provide for the use of alternative means for meeting the requirements of clauses (i), (ii), and (iii) in the case of an eligible professional furnishing covered professional services in a group practice (as defined by the Secretary). The Secretary shall seek to improve the use of electronic health records and health care quality over time by requiring more stringent measures of meaningful use selected under this paragraph.~~

~~"(B) REPORTING ON MEASURES.—~~

~~"(i) SELECTION.—The Secretary shall select measures for purposes of subparagraph (A)(iii) but only consistent with the following:~~

~~"(I) The Secretary shall provide preference to clinical quality measures that have been endorsed by the entity with a contract with the Secretary under section 1890(a).~~

1 ~~"(II) Prior to any measure being~~
2 ~~selected under this subparagraph, the~~
3 ~~Secretary shall publish in the Federal~~
4 ~~Register such measure and provide for~~
5 ~~a period of public comment on such~~
6 ~~measure.~~
7 ~~"(ii) LIMITATION.—The Secretary~~
8 ~~may not require the electronic reporting of~~
9 ~~information on clinical quality measures~~
10 ~~under subparagraph (A)(iii) unless the~~
11 ~~Secretary has the capacity to accept the in-~~
12 ~~formation electronically, which may be on~~
13 ~~a pilot basis.~~
14 ~~"(iii) COORDINATION OF REPORTING~~
15 ~~OF INFORMATION.—In selecting such~~
16 ~~measures, and in establishing the form and~~
17 ~~manner for reporting measures under sub-~~
18 ~~paragraph (A)(iii), the Secretary shall seek~~
19 ~~to avoid redundant or duplicative reporting~~
20 ~~otherwise required, including reporting~~
21 ~~under subsection (k)(2)(C).~~
22 ~~"(C) DEMONSTRATION OF MEANINGFUL~~
23 ~~USE OF CERTIFIED EHR TECHNOLOGY AND IN-~~
24 ~~FORMATION EXCHANGE.—~~

1 ~~"(i) IN GENERAL.—A professional~~
2 ~~may satisfy the demonstration requirement~~
3 ~~of clauses (i) and (ii) of subparagraph (A)~~
4 ~~through means specified by the Secretary,~~
5 ~~which may include—~~
6 ~~"(I) an attestation;~~
7 ~~"(II) the submission of claims~~
8 ~~with appropriate coding (such as a~~
9 ~~code indicating that a patient encoun-~~
10 ~~ter was documented using certified~~
11 ~~EHR technology);~~
12 ~~"(III) a survey response;~~
13 ~~"(IV) reporting under subpara-~~
14 ~~graph (A)(iii); and~~
15 ~~"(V) other means specified by the~~
16 ~~Secretary.~~
17 ~~"(ii) USE OF PART D DATA.—Not-~~
18 ~~withstanding sections 1860D–15(d)(2)(B)~~
19 ~~and 1860D–15(f)(2), the Secretary may~~
20 ~~use data regarding drug claims submitted~~
21 ~~for purposes of section 1860D–15 that are~~
22 ~~necessary for purposes of subparagraph~~
23 ~~(A).~~
24 ~~"(3) APPLICATION.—~~

1 ~~"(A) PHYSICIAN REPORTING SYSTEM~~
2 ~~RULES.—Paragraphs (5), (6), and (8) of sub-~~
3 ~~section (k) shall apply for purposes of this sub-~~
4 ~~section in the same manner as they apply for~~
5 ~~purposes of such subsection.~~
6 ~~"(B) COORDINATION WITH OTHER PAY-~~
7 ~~MENTS.—The provisions of this subsection shall~~
8 ~~not be taken into account in applying the provi-~~
9 ~~sions of subsection (m) of this section and of~~
10 ~~section 1833(m) and any payment under such~~
11 ~~provisions shall not be taken into account in~~
12 ~~computing allowable charges under this sub-~~
13 ~~section.~~
14 ~~"(C) LIMITATIONS ON REVIEW.—There~~
15 ~~shall be no administrative or judicial review~~
16 ~~under section 1869, section 1878, or otherwise~~
17 ~~of the determination of any incentive payment~~
18 ~~under this subsection and the payment adjust-~~
19 ~~ment under subsection (a)(7), including the de-~~
20 ~~termination of a meaningful EHR user under~~
21 ~~paragraph (2), a limitation under paragraph~~
22 ~~(1)(B), and the exception under subsection~~
23 ~~(a)(7)(B).~~
24 ~~"(D) POSTING ON WEBSITE.—The Sec-~~
25 ~~retary shall post on the Internet website of the~~

~~Centers for Medicare & Medicaid Services, in an easily understandable format, a list of the names, business addresses, and business phone numbers of the eligible professionals who are meaningful EHR users and, as determined appropriate by the Secretary, of group practices receiving incentive payments under paragraph (1).~~

~~"(4) CERTIFIED EHR TECHNOLOGY DEFINED.—For purposes of this section, the term 'certified EHR technology' means a qualified electronic health record (as defined in 3000(13) of the Public Health Service Act) that is certified pursuant to section 3001(c)(5) of such Act as meeting standards adopted under section 3004 of such Act 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).~~

~~"(5) DEFINITIONS.—For purposes of this subsection:~~

~~"(A) COVERED PROFESSIONAL SERVICES.—The term 'covered professional services' has the meaning given such term in subsection (k)(3).~~

1 ~~"(B) ELIGIBLE PROFESSIONAL.—The term~~
2 ~~'eligible professional' means a physician, as de-~~
3 ~~fined in section 1861(r).~~
4 ~~"(C) REPORTING PERIOD.—The term 're-~~
5 ~~porting period' means any period (or periods),~~
6 ~~with respect to a payment year, as specified by~~
7 ~~the Secretary.".~~
8 ~~(b) INCENTIVE PAYMENT ADJUSTMENT.—Section~~
9 ~~1848(a) of the Social Security Act (42 U.S.C. 1395w–~~
10 ~~4(a)) is amended by adding at the end the following new~~
11 ~~paragraph:~~
12 ~~"(7) INCENTIVES FOR MEANINGFUL USE OF~~
13 ~~CERTIFIED EHR TECHNOLOGY.—~~
14 ~~"(A) ADJUSTMENT.—~~
15 ~~"(i) IN GENERAL.—Subject to sub-~~
16 ~~paragraphs (B) and (D), with respect to~~
17 ~~covered professional services furnished by~~
18 ~~an eligible professional during 2016 or any~~
19 ~~subsequent payment year, if the eligible~~
20 ~~professional is not a meaningful EHR user~~
21 ~~(as determined under subsection (o)(2)) for~~
22 ~~a reporting period for the year, the fee~~
23 ~~schedule amount for such services fur-~~
24 ~~nished by such professional during the year~~
25 ~~(including the fee schedule amount for pur-~~

~~poses 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 application of paragraph (3) but without regard to this paragraph).~~

~~"(ii) APPLICABLE PERCENT.—Subject to clause (iii), for purposes of clause (i), the term 'applicable percent' means—~~

~~"(I) for 2016, 99 percent;~~

~~"(II) for 2017, 98 percent; and~~

~~"(III) for 2018 and each subsequent year, 97 percent.~~

~~"(iii) AUTHORITY TO DECREASE APPLICABLE PERCENTAGE FOR 2019 AND SUBSEQUENT YEARS.—For 2019 and each subsequent year, if the Secretary finds that the proportion of eligible professionals who are meaningful EHR users (as determined under subsection (o)(2)) is less than 75 percent, the applicable percent shall be decreased by 1 percentage point from the applicable percent in the preceding year, but~~

~~in no case shall the applicable percent be less than 95 percent.~~

~~"(B) SIGNIFICANT HARDSHIP EXCEPTION.—The Secretary may, on a case-by-case basis, exempt an eligible professional from the application of the payment adjustment under subparagraph (A) if the Secretary determines, subject to annual renewal, that compliance with the requirement for being a meaningful EHR user would result in a significant hardship, such as in the case of an eligible professional who practices in a rural area without sufficient Internet access. In no case may an eligible professional be granted an exemption under this subparagraph for more than 5 years.~~

~~"(C) APPLICATION OF PHYSICIAN REPORTING SYSTEM RULES.—Paragraphs (5), (6), and (8) of subsection (k) shall apply for purposes of this paragraph in the same manner as they apply for purposes of such subsection.~~

~~"(D) NON-APPLICATION TO HOSPITAL-BASED ELIGIBLE PROFESSIONALS.—No payment adjustment may be made under subparagraph (A) in the case of hospital-based eligible~~

~~professionals (as defined in subsection (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 HMO-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 organization attests under paragraph (6) to be meaningful EHR users in a similar manner as they apply to eligible professionals under such sections. Incentive payments under paragraph (3) shall be made to and payment adjustments under paragraph (4) shall apply to such qualifying organizations.~~

~~"(2) ELIGIBLE PROFESSIONAL DESCRIBED.—With respect to a qualifying MA organization, an eligible professional described in this paragraph is an eligible professional (as defined for purposes of section 1848(o)) who—~~

~~"(A)(i) is employed by the organization; or~~

~~"(ii)(I) is employed by, or is a partner of, an entity that through contract with the organization furnishes at least 80 percent of the entity's patient care services to enrollees of such organization; and~~

~~"(II) furnishes at least 80 percent of the professional services of the eligible professional to enrollees of the organization; and~~

~~"(B) furnishes, on average, at least 20 hours per week of patient care services.~~

1 ~~"(3) ELIGIBLE PROFESSIONAL INCENTIVE PAY-~~
2 ~~MENTS.—~~
3 ~~"(A) IN GENERAL.—In applying section~~
4 ~~1848(o) under paragraph (1), instead of the ad-~~
5 ~~ditional payment amount under section~~
6 ~~1848(o)(1)(A) and subject to subparagraph~~
7 ~~(B), the Secretary may substitute an amount~~
8 ~~determined by the Secretary to the extent fea-~~
9 ~~sible and practical to be similar to the esti-~~
10 ~~mated amount in the aggregate that would be~~
11 ~~payable if payment for services furnished by~~
12 ~~such professionals was payable under part B in-~~
13 ~~stead of this part.~~
14 ~~"(B) AVOIDING DUPLICATION OF PAY-~~
15 ~~MENTS.—~~
16 ~~"(i) IN GENERAL.—If an eligible pro-~~
17 ~~fessional described in paragraph (2) is eli-~~
18 ~~gible for the maximum incentive payment~~
19 ~~under section 1848(o)(1)(A) for the same~~
20 ~~payment period, the payment incentive~~
21 ~~shall be made only under such section and~~
22 ~~not under this subsection.~~
23 ~~"(ii) METHODS.—In the case of an el-~~
24 ~~igible professional described in paragraph~~
25 ~~(2) who is eligible for an incentive payment~~

~~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.~~

~~"(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) the number of percentage points by which the applicable percent (under section 1848(a)(7)(A)(ii)) for the year is less than 100 percent; and~~

~~"(ii) the Medicare physician expenditure proportion specified in subparagraph (C) for the year.~~

~~"(C) MEDICARE PHYSICIAN EXPENDITURE PROPORTION.—The Medicare physician expenditure proportion under this subparagraph for a year is the Secretary's estimate of the proportion, of the expenditures under parts A and B that are not attributable to this part, that are~~

~~attributable to expenditures for physicians' services.~~

~~"(D) APPLICATION OF PAYMENT ADJUSTMENT.—In the case that a qualifying MA organization attests that not all eligible professionals are meaningful EHR users with respect to a year, the Secretary shall apply the payment adjustment under this paragraph based on the proportion of such eligible professionals that are not meaningful EHR users for such year.~~

~~"(5) QUALIFYING MA ORGANIZATION DEFINED.—In this subsection and subsection (m), the term 'qualifying MA organization' means a Medicare Advantage organization that is organized as a health maintenance organization (as defined in section 2791(b)(3) of the Public Health Service Act).~~

~~"(6) MEANINGFUL EHR USER ATTESTATION.—For purposes of this subsection and subsection (m), a qualifying MA organization shall submit an attestation, in a form and manner specified by the Secretary which may include the submission of such attestation as part of submission of the initial bid under section 1854(a)(1)(A)(iv), identifying—~~

~~"(A) whether each eligible professional described in paragraph (2), with respect to such~~

~~organization is a meaningful EHR user (as defined in section 1848(o)(2)) for a year specified by the Secretary; and~~

~~"(B) whether each eligible hospital described in subsection (m)(1), with respect to such organization, is a meaningful EHR user (as defined in section 1886(n)(3)) for an applicable period specified by the Secretary.".~~

~~(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".~~

~~(c) 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, 2014, or 2015"; and~~

~~(B) in clause (ii), by striking "and each subsequent year" and inserting "and 2015".~~

~~(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 sub-~~

1 section (o)(4)) that has the capability of elec-
2 tronic prescribing.''.

3 **SEC. 4312. INCENTIVES FOR HOSPITALS.**

4 (a) INCENTIVE PAYMENT.—Section 1886 of the So-
5 cial Security Act (42 U.S.C. 1395ww) is amended by add-
6 ing at the end the following new subsection:

7 ''(n) INCENTIVES FOR ADOPTION AND MEANINGFUL
8 USE OF CERTIFIED EHR TECHNOLOGY.—

9 ''(1) IN GENERAL.—Subject to the succeeding
10 provisions of this subsection, with respect to inpa-
11 tient hospital services furnished by an eligible hos-
12 pital during a payment year (as defined in para-
13 graph (2)(G)), if the eligible hospital is a meaningful
14 EHR user (as determined under paragraph (3)) for
15 the reporting period with respect to such year, in ad-
16 dition to the amount otherwise paid under this sec-
17 tion, there also shall be paid to the eligible hospital,
18 from the Federal Hospital Insurance Trust Fund es-
19 tablished under section 1817, an amount equal to
20 the applicable amount specified in paragraph (2)(A)
21 for the hospital for such payment year.

22 ''(2) PAYMENT AMOUNT.—

23 ''(A) IN GENERAL.—Subject to the suc-
24 ceeding subparagraphs of this paragraph, the
25 applicable amount specified in this subpara-

~~graph 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 (re-~~

~~gardless 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 23,000th discharge, $200.~~

~~"(ii) For any discharge greater than the 23,000th, $0.~~

~~"(D) MEDICARE SHARE.—The Medicare share specified under this subparagraph for a hospital for a period selected by the Secretary for a payment year is equal to the fraction—~~

~~"(i) the numerator of which is the sum (for such period and with respect to the hospital) of—~~

~~"(I) the number of inpatient-bed-days (as established by the Secretary) which are attributable to individuals with respect to whom payment may be made under part A; and~~

~~"(II) the number of inpatient-bed-days (as so established) which are attributable to individuals who are enrolled with a Medicare Advantage organization under part C; and~~

1 ~~"(ii) the denominator of which is the~~
2 ~~product of—~~
3 ~~"(I) the total number of inpa-~~
4 ~~tient-bed-days with respect to the hos-~~
5 ~~pital during such period; and~~
6 ~~"(II) the total amount of the hos-~~
7 ~~pital's charges during such period, not~~
8 ~~including any charges that are attrib-~~
9 ~~utable to charity care (as such term is~~
10 ~~used for purposes of hospital cost re-~~
11 ~~porting under this title), divided by~~
12 ~~the total amount of the hospital's~~
13 ~~charges during such period.~~
14 ~~Insofar as the Secretary determines that data~~
15 ~~are not available on charity care necessary to~~
16 ~~calculate the portion of the formula specified in~~
17 ~~clause (ii)(II), the Secretary shall use data on~~
18 ~~uncompensated care and may adjust such data~~
19 ~~so as to be an appropriate proxy for charity~~
20 ~~care including a downward adjustment to elimi-~~
21 ~~nate bad debt data from uncompensated care~~
22 ~~data. In the absence of the data necessary, with~~
23 ~~respect to a hospital, for the Secretary to com-~~
24 ~~pute the amount described in clause (ii)(II), the~~
25 ~~amount under such clause shall be deemed to~~

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.—

"(i) IN GENERAL.—Subject to clause (ii), the transition factor specified in this subparagraph for an eligible hospital for a payment year is as follows:

"(I) For the first payment year for such hospital, 1.

"(II) For the second payment year for such hospital, ¾.

"(III) For the third payment year for such hospital, ½.

"(IV) For the fourth payment year for such hospital, ¼.

"(V) For any succeeding payment year for such hospital, 0.

"(ii) PHASE DOWN FOR ELIGIBLE HOSPITALS FIRST ADOPTING EHR AFTER 2013.—If the first payment year for an eligible hospital is after 2013, then the transition factor specified in this subparagraph for a payment year for such hospital is the

same as the amount specified in clause (i) for such payment year for an eligible hospital for which the first payment year is 2013. If the first payment year for an eligible hospital is after 2015 then the transition factor specified in this subparagraph for such hospital and for such year and any subsequent year shall be 0.

"(F) FORM OF PAYMENT.—The payment under this subsection for a payment year may be in the form of a single consolidated payment or in the form of such periodic installments as the Secretary may specify.

"(G) PAYMENT YEAR DEFINED.—

"(i) IN GENERAL.—For purposes of this subsection, the term 'payment year' means a fiscal year beginning with fiscal year 2011.

"(ii) FIRST, SECOND, ETC. PAYMENT YEAR.—The term 'first payment year' means, with respect to inpatient hospital services furnished by an eligible hospital, the first fiscal year for which an incentive payment is made for such services under this subsection. The terms 'second pay-

1 ~~ment year', 'third payment year', and~~
2 ~~'fourth payment year' mean, with respect~~
3 ~~to an eligible hospital, each successive year~~
4 ~~immediately following the first payment~~
5 ~~year for that hospital.~~
6 ~~"(3) MEANINGFUL EHR USER.—~~
7 ~~"(A) IN GENERAL.—For purposes of para-~~
8 ~~graph (1), an eligible hospital shall be treated~~
9 ~~as a meaningful EHR user for a reporting pe-~~
10 ~~riod for a payment year (or, for purposes of~~
11 ~~subsection (b)(3)(B)(ix), for a reporting period~~
12 ~~under such subsection for a fiscal year) if each~~
13 ~~of the following requirements are met:~~
14 ~~"(i) MEANINGFUL USE OF CERTIFIED~~
15 ~~EHR TECHNOLOGY.—The eligible hospital~~
16 ~~demonstrates to the satisfaction of the Sec-~~
17 ~~retary, in accordance with subparagraph~~
18 ~~(C)(i), that during such period the hospital~~
19 ~~is using certified EHR technology in a~~
20 ~~meaningful manner.~~
21 ~~"(ii) INFORMATION EXCHANGE.—The~~
22 ~~eligible hospital demonstrates to the satis-~~
23 ~~faction of the Secretary, in accordance~~
24 ~~with subparagraph (C)(i), that during such~~
25 ~~period such certified EHR technology is~~

~~connected in a manner that provides, in accordance with law and standards applicable to the exchange of information, for the electronic exchange of health information to improve the quality of health care, such as promoting care coordination.~~

~~"(iii) REPORTING ON MEASURES USING EHR.—Subject to subparagraph (B)(ii) and using such certified EHR technology, the eligible hospital submits information for such period, in a form and manner specified by the Secretary, on such clinical quality measures and such other measures as selected by the Secretary under subparagraph (B)(i).~~

~~The Secretary shall seek to improve the use of electronic health records and health care quality over time by requiring more stringent measures of meaningful use selected under this paragraph.~~

~~"(B) REPORTING ON MEASURES.—~~

~~"(i) SELECTION.—The Secretary shall select measures for purposes of subparagraph (A)(iii) but only consistent with the following:~~

1 ~~"(I) The Secretary shall provide~~
2 ~~preference to clinical quality measures~~
3 ~~that have been selected for purposes~~
4 ~~of applying subsection (b)(3)(B)(viii)~~
5 ~~or that have been endorsed by the en-~~
6 ~~tity with a contract with the Secretary~~
7 ~~under section 1890(a).~~
8 ~~"(II) Prior to any measure (other~~
9 ~~than a clinical quality measure that~~
10 ~~has been selected for purposes of ap-~~
11 ~~plying subsection (b)(3)(B)(viii))~~
12 ~~being selected under this subpara-~~
13 ~~graph, the Secretary shall publish in~~
14 ~~the Federal Register such measure~~
15 ~~and provide for a period of public~~
16 ~~comment on such measure.~~
17 ~~"(ii) LIMITATIONS.—The Secretary~~
18 ~~may not require the electronic reporting of~~
19 ~~information on clinical quality measures~~
20 ~~under subparagraph (A)(iii) unless the~~
21 ~~Secretary has the capacity to accept the in-~~
22 ~~formation electronically, which may be on~~
23 ~~a pilot basis.~~
24 ~~"(iii) COORDINATION OF REPORTING~~
25 ~~OF INFORMATION.—In selecting such~~

~~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 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~~

1 ~~"(V) other means specified by the~~
2 ~~Secretary.~~
3 ~~"(ii) USE OF PART D DATA.—Not-~~
4 ~~withstanding sections 1860D–15(d)(2)(B)~~
5 ~~and 1860D–15(f)(2), the Secretary may~~
6 ~~use data regarding drug claims submitted~~
7 ~~for purposes of section 1860D–15 that are~~
8 ~~necessary for purposes of subparagraph~~
9 ~~(A).~~
10 ~~"(4) APPLICATION.—~~
11 ~~"(A) LIMITATIONS ON REVIEW.—There~~
12 ~~shall be no administrative or judicial review~~
13 ~~under section 1869, section 1878, or otherwise~~
14 ~~of the determination of any incentive payment~~
15 ~~under this subsection and the payment adjust-~~
16 ~~ment under subsection (b)(3)(B)(ix), including~~
17 ~~the determination of a meaningful EHR user~~
18 ~~under paragraph (3), determination of meas-~~
19 ~~ures applicable to services furnished by eligible~~
20 ~~hospitals under this subsection, and the excep-~~
21 ~~tion under subsection (b)(3)(B)(ix)(II).~~
22 ~~"(B) POSTING ON WEBSITE.—The Sec-~~
23 ~~retary shall post on the Internet website of the~~
24 ~~Centers for Medicare & Medicaid Services, in an~~
25 ~~easily understandable format, a list of the~~

~~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 a subsection (d) hospital.~~

~~"(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.—Section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)) is amended—~~

~~(1) in clause (viii)(I), by inserting "(or, beginning with fiscal year 2016, by one-quarter)" after "2.0 percentage points"; and~~

~~(2) by adding at the end the following new clause:~~

~~"(ix)(I) For purposes of clause (i) for fiscal year 2016 and each subsequent fiscal year, in the case of an eligible hospital (as defined in subsection (n)(6)(A)) that is not a meaningful EHR user (as defined in subsection (n)(3)) for the reporting period for such fiscal year, three-quarters of the applicable percentage increase otherwise applicable under clause (i) for such fiscal year shall be reduced by 33⅓ percent for fiscal year 2016, 66⅔ percent for fiscal year 2017, and 100 percent for fiscal year 2018 and each subsequent fiscal year. Such reduction shall apply only with respect to the fiscal year involved and the Secretary shall not take into account such reduction in computing the applicable percentage increase under clause (i) for a subsequent fiscal year.~~

~~"(II) The Secretary may, on a case-by-case basis, exempt a subsection (d) hospital from the application of subclause (I) 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 subclause for more than 5 years.~~

1 ~~"(III) For fiscal year 2016 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 ~~(c) APPLICATION TO CERTAIN HMO-AFFILIATED~~
20 ~~ELIGIBLE HOSPITALS.—Section 1853 of the Social Secu-~~
21 ~~rity Act (42 U.S.C. 1395w–23), as amended by section~~
22 ~~4311(c), is further amended by adding at the end the fol-~~
23 ~~lowing new subsection:~~

24 ~~"(m) APPLICATION OF ELIGIBLE HOSPITAL INCEN-~~
25 ~~TIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION~~

1 ~~AND MEANINGFUL USE OF CERTIFIED EHR TECH-~~
2 ~~NOLOGY.—~~
3 ~~"(1) APPLICATION.—Subject to paragraphs (3)~~
4 ~~and (4), in the case of a qualifying MA organization,~~
5 ~~the provisions of sections 1886(n) and~~
6 ~~1886(b)(3)(B)(ix) shall apply with respect to eligible~~
7 ~~hospitals described in paragraph (2) of the organiza-~~
8 ~~tion which the organization attests under subsection~~
9 ~~(l)(6) to be meaningful EHR users in a similar man-~~
10 ~~ner as they apply to eligible hospitals under such~~
11 ~~sections. Incentive payments under paragraph (3)~~
12 ~~shall be made to and payment adjustments under~~
13 ~~paragraph (4) shall apply to such qualifying organi-~~
14 ~~zations.~~
15 ~~"(2) ELIGIBLE HOSPITAL DESCRIBED.—With~~
16 ~~respect to a qualifying MA organization, an eligible~~
17 ~~hospital described in this paragraph is an eligible~~
18 ~~hospital that is under common corporate governance~~
19 ~~with such organization and serves individuals en-~~
20 ~~rolled under an MA plan offered by such organiza-~~
21 ~~tion.~~
22 ~~"(3) ELIGIBLE HOSPITAL INCENTIVE PAY-~~
23 ~~MENTS.—~~
24 ~~"(A) IN GENERAL.—In applying section~~
25 ~~1886(n)(2) under paragraph (1), instead of the~~

~~additional payment amount under section 1886(n)(2), there shall be substituted an amount determined by the Secretary to be similar to the estimated amount in the aggregate that would be payable if payment for services furnished by such hospitals was payable under part A instead of this part. In implementing the previous sentence, the Secretary—~~

~~"(i) shall, insofar as data to determine the discharge related amount under section 1886(n)(2)(C) for an eligible hospital are not available to the Secretary, use such alternative data and methodology to estimate such discharge related amount as the Secretary determines appropriate; and~~

~~"(ii) shall, insofar as data to determine the medicare share described in section 1886(n)(2)(D) for an eligible hospital are not available to the Secretary, use such alternative data and methodology to estimate such share, which data and methodology may include use of the inpatient bed days (or discharges) with respect to an eligible hospital during the appropriate period which are attributable to both individ-~~

~~uals for whom payment may be made under part A or individuals enrolled in an MA plan under a Medicare Advantage organization under this part as a proportion of the total number of patient-bed-days (or discharges) with respect to such hospital during such period.~~

~~"(B) AVOIDING DUPLICATION OF PAYMENTS.—~~

~~"(i) IN GENERAL.—In the case of a hospital that for a payment year is an eligible hospital described in paragraph (2), is an eligible hospital under section 1886(n), and for which at least one-third of their discharges (or bed-days) of Medicare patients for the year are covered under part A, payment for the payment year shall be made only under section 1886(n) and not under this subsection.~~

~~"(ii) METHODS.—In the case of a hospital that is an eligible hospital described in paragraph (2) and also is eligible for an incentive payment under section 1886(n) 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 hospital both under this subsection and under section 1886(n); and~~

~~"(II) to collect data from Medicare Advantage organizations to ensure against such duplicate payments.~~

~~"(4) PAYMENT ADJUSTMENT.—~~

~~"(A) Subject to paragraph (3), in the case of a qualifying MA organization (as defined in section 1853(l)(5)), if, according to the attestation of the organization submitted under subsection (l)(6) for an applicable period, one or more eligible hospitals (as defined in section 1886(n)(6)(A)) that are under common corporate governance with such organization and that serve individuals enrolled under a plan offered by such organization are not meaningful EHR users (as defined in section 1886(n)(3)) with respect to a period, the payment amount payable under this section for such organization for such period shall be the percent specified in~~

1 subparagraph (B) for such period of the pay-
2 ment amount otherwise provided under this sec-
3 tion for such period.
4 "(B) SPECIFIED PERCENT.—The percent
5 specified under this subparagraph for a year is
6 100 percent minus a number of percentage
7 points equal to the product of—
8 "(i) the number of the percentage
9 point reduction effected under section
10 1886(b)(3)(B)(ix)(I) for the period; and
11 "(ii) the Medicare hospital expendi-
12 ture proportion specified in subparagraph
13 (C) for the year.
14 "(C) MEDICARE HOSPITAL EXPENDITURE
15 PROPORTION.—The Medicare hospital expendi-
16 ture proportion under this subparagraph for a
17 year is the Secretary's estimate of the propor-
18 tion, of the expenditures under parts A and B
19 that are not attributable to this part, that are
20 attributable to expenditures for inpatient hos-
21 pital services.
22 "(D) APPLICATION OF PAYMENT ADJUST-
23 MENT.—In the case that a qualifying MA orga-
24 nization attests that not all eligible hospitals
25 are meaningful EHR users with respect to an

~~applicable period, the Secretary shall apply the payment adjustment under this paragraph based on a methodology specified by the Secretary, taking into account the proportion of such eligible hospitals, or discharges from such hospitals, that are not meaningful EHR users for such period.''.~~

~~(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. 4313. TREATMENT OF PAYMENTS AND SAVINGS; 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).".~~

~~(b) MEDICARE IMPROVEMENT FUND.—Section 1898 of the Social Security Act (42 U.S.C. 1395iii), as added by section 7002(a) of the Supplemental Appropriations Act, 2008 (Public Law 110–252) and as amended by section 188(a)(2) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275, 122 Stat. 2589) and by section 6 of the QI Program Supplemental Funding Act of 2008, is amended—~~

~~(1) in subsection (a)—~~

~~(A) by inserting "medicare" before "fee-for-service"; and~~

~~(B) by inserting before the period at the end the following: "including, but not limited to, an increase in the conversion factor under section 1848(d) to address, in whole or in part, any projected shortfall in the conversion factor for 2014 relative to the conversion factor for 2008 and adjustments to payments for items~~

~~and services furnished by providers of services and suppliers under such original medicare fee-for-service program'';~~ ~~and~~

~~(2) in subsection (b)—~~

~~(A) in paragraph (1), by striking ''during fiscal year 2014,'' and all that follows and inserting the following: ''during—~~

~~''(A) fiscal year 2014, $22,290,000,000; and~~

~~''(B) fiscal year 2020 and each subsequent fiscal year, the Secretary's estimate, as of July 1 of the fiscal year, of the aggregate reduction in expenditures under this title during the preceding fiscal year directly resulting from the reduction in payment amounts under sections 1848(a)(7), 1853(l)(4), 1853(m)(4), and 1886(b)(3)(B)(ix).'';~~ ~~and~~

~~(B) by adding at the end the following new paragraph:~~

~~''(4) NO EFFECT ON PAYMENTS IN SUBSEQUENT YEARS.—In the case that expenditures from the Fund are applied to, or otherwise affect, a payment rate for an item or service under this title for a year, the payment rate for such item or service~~

1 shall be computed for a subsequent year as if such
2 application or effect had never occurred.''.
3 (c) IMPLEMENTATION FUNDING.—In addition to
4 funds otherwise available, out of any funds in the Treas-
5 ury not otherwise appropriated, there are appropriated to
6 the Secretary of Health and Human Services for the Cen-
7 ter for Medicare & Medicaid Services Program Manage-
8 ment Account, $60,000,000 for each of fiscal years 2009
9 through 2015 and $30,000,000 for each succeeding fiscal
10 year through fiscal year 2019, which shall be available for
11 purposes of carrying out the provisions of (and amend-
12 ments made by) this part. Amounts appropriated under
13 this subsection for a fiscal year shall be available until ex-
14 pended.

15 **SEC. 4314. STUDY ON APPLICATION OF EHR PAYMENT IN-**
16 **CENTIVES FOR PROVIDERS NOT RECEIVING**
17 **OTHER INCENTIVE PAYMENTS.**

18 (a) STUDY.—
19 (1) IN GENERAL.—The Secretary of Health and
20 Human Services shall conduct a study to determine
21 the extent to which and manner in which payment
22 incentives (such as under title XVIII or XIX of the
23 Social Security Act) and other funding for purposes
24 of implementing and using certified EHR technology
25 (as defined in section 3000 of the Public Health

~~Service Act) 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 the Social Security 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 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.~~

1 ~~(b) REPORT.—Not later than June 30, 2010, the~~
2 ~~Secretary shall submit to Congress a report on the find-~~
3 ~~ings and conclusions of the study conducted under sub-~~
4 ~~section (a).~~

5 **~~PART III—MEDICAID FUNDING~~**

6 **~~SEC. 4321. MEDICAID PROVIDER HIT ADOPTION AND OPER-~~**
7 **~~ATION PAYMENTS; IMPLEMENTATION FUND-~~**
8 **~~ING.~~**

9 ~~(a) IN GENERAL.—Section 1903 of the Social Secu-~~
10 ~~rity Act (42 U.S.C. 1396b) is amended—~~
11 ~~(1) in subsection (a)(3)—~~
12 ~~(A) by striking "and" at the end of sub-~~
13 ~~paragraph (D);~~
14 ~~(B) by striking "plus" at the end of sub-~~
15 ~~paragraph (E) and inserting "and"; and~~
16 ~~(C) by adding at the end the following new~~
17 ~~subparagraph:~~
18 ~~"(F)(i) 100 percent of so much of the~~
19 ~~sums expended during such quarter as are at-~~
20 ~~tributable to payments for certified EHR tech-~~
21 ~~nology (and support services including mainte-~~
22 ~~nance and training that is for, or is necessary~~
23 ~~for the adoption and operation of, such tech-~~
24 ~~nology) by Medicaid providers described in sub-~~
25 ~~section (t)(1); and~~

1 ~~"(ii) 90 percent of so much of the sums ex-~~
2 ~~pended during such quarter as are attributable~~
3 ~~to payments for reasonable administrative ex-~~
4 ~~penses related to the administration of pay-~~
5 ~~ments described in clause (i) if the State meets~~
6 ~~the condition described in subsection (t)(9);~~
7 ~~plus"; and~~
8 ~~(2) by inserting after subsection (s) the fol-~~
9 ~~lowing new subsection:~~
10 ~~"(t)(1)(A) For purposes of subsection (a)(3)(F), the~~
11 ~~payments for certified EHR technology (and support serv-~~
12 ~~ices including maintenance that is for, or is necessary for~~
13 ~~the operation of, such technology) by Medicaid providers~~
14 ~~described in this paragraph are payments made by the~~
15 ~~State in accordance with this subsection of the applicable~~
16 ~~percent (as specified in subparagraph (B)) of the net al-~~
17 ~~lowable costs of Medicaid providers (as defined in para-~~
18 ~~graph (2)) for such technology (and support services).~~
19 ~~"(B) For purposes of subparagraph (A), the applica-~~
20 ~~ble percent is—~~
21 ~~"(i) in the case of a Medicaid provider de-~~
22 ~~scribed in paragraph (2)(A), 85 percent; and~~
23 ~~"(ii) in the case of a Medicaid provider de-~~
24 ~~scribed in paragraph (2)(B), 100 percent.~~

1 ~~"(2) In this subsection and subsection (a)(3)(F), the~~
2 ~~term 'Medicaid provider' means—~~
3 ~~"(A) an eligible professional (as defined in~~
4 ~~paragraph (3)(B)) who is not hospital-based and has~~
5 ~~at least 30 percent of the professional's patient vol-~~
6 ~~ume (as estimated in accordance with standards es-~~
7 ~~tablished by the Secretary) attributable to individ-~~
8 ~~uals who are receiving medical assistance under this~~
9 ~~title; and~~
10 ~~"(B)(i) a children's hospital, (ii) an acute-care~~
11 ~~hospital that is not described in clause (i) and that~~
12 ~~has at least 10 percent of the hospital's patient vol-~~
13 ~~ume (as estimated in accordance with standards es-~~
14 ~~tablished by the Secretary) attributable to individ-~~
15 ~~uals who are receiving medical assistance under this~~
16 ~~title, or (iii) a Federally-qualified health center or~~
17 ~~rural health clinic that has at least 30 percent of the~~
18 ~~center's or clinic's patient volume (as estimated in~~
19 ~~accordance with standards established by the Sec-~~
20 ~~retary) attributable to individuals who are receiving~~
21 ~~medical assistance under this title.~~
22 ~~An eligible professional shall not qualify as a Medicaid~~
23 ~~provider under this subsection unless the eligible profes-~~
24 ~~sional has waived, in a manner specified by the Secretary,~~
25 ~~any right to payment under section 1848(o) with respect~~

~~to the adoption or support of certified EHR technology by the professional. In applying clauses (ii) and (iii) of subparagraph (B), the standards established by the Secretary for patient volume shall include individuals enrolled in a Medicaid managed care plan (under section 1903(m) or section 1932).~~

~~"(3) In this subsection and subsection (a)(3)(F):~~

~~"(A) The term 'certified EHR technology' means a qualified electronic health record (as defined in 3000(13) of the Public Health Service Act) that is certified pursuant to section 3001(c)(5) of such Act as meeting standards adopted under section 3004 of such Act 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).~~

~~"(B) The term 'eligible professional' means a physician as defined in paragraphs (1) and (2) of section 1861(r), and includes a certified nurse midwife and a nurse practitioner.~~

~~"(C) The term 'hospital-based' means, with respect to an eligible professional, a professional (such as a pathologist, anesthesiologist, or emergency physician) who furnishes substantially all of the individ-~~

1 ~~ual's professional services in a hospital setting~~
2 ~~(whether inpatient or outpatient) and through the~~
3 ~~use of the facilities and equipment, including com-~~
4 ~~puter equipment, of the hospital.~~
5 ~~"(4)(A) The term 'allowable costs' means, with re-~~
6 ~~spect to certified EHR technology of a Medicaid provider,~~
7 ~~costs of such technology (and support services including~~
8 ~~maintenance and training that is for, or is necessary for~~
9 ~~the adoption and operation of, such technology) as deter-~~
10 ~~mined by the Secretary to be reasonable.~~
11 ~~"(B) The term 'net allowable costs' means allowable~~
12 ~~costs reduced by any payment that is made to the Med-~~
13 ~~icaid provider involved from any other source that is di-~~
14 ~~rectly attributable to payment for certified EHR tech-~~
15 ~~nology or services described in subparagraph (A).~~
16 ~~"(C) In no case shall—~~
17 ~~"(i) the aggregate allowable costs under this~~
18 ~~subsection (covering one or more years) with respect~~
19 ~~to a Medicaid provider described in paragraph~~
20 ~~(2)(A) for purchase and initial implementation of~~
21 ~~certified EHR technology (and services described in~~
22 ~~subparagraph (A)) exceed $25,000 or include costs~~
23 ~~over a period of longer than 5 years;~~
24 ~~"(ii) for costs not described in clause (i) relat-~~
25 ~~ing to the operation, maintenance, or use of certified~~

~~EHR technology, the annual allowable costs under this subsection with respect to such a Medicaid provider for costs not described in clause (i) for any year exceed $10,000;~~

~~"(iii) payment described in paragraph (1) for costs described in clause (ii) be made with respect to such a Medicaid provider over a period of more than 5 years;~~

~~"(iv) the aggregate allowable costs under this subsection with respect to such a Medicaid provider for all costs exceed $75,000; or~~

~~"(v) the allowable costs, whether for purchase and initial implementation, maintenance, or otherwise, for a Medicaid provider described in paragraph (2)(B)(iii) exceed such aggregate or annual limitation as the Secretary shall establish, based on an amount determined by the Secretary as being adequate to adopt and maintain certified EHR technology, consistent with paragraph (6).~~

~~"(5) Payments described in paragraph (1) are not in accordance with this subsection unless the following requirements are met:~~

~~"(A) The State provides assurances satisfactory to the Secretary that amounts received under subsection (a)(3)(F) with respect to costs of a Medicaid~~

~~provider are paid directly to such provider without any deduction or rebate.~~

~~"(B) Such Medicaid provider is responsible for payment of the costs described in such paragraph that are not provided under this title.~~

~~"(C) With respect to payments to such Medicaid provider for costs other than costs related to the initial adoption of certified EHR technology, the Medicaid provider demonstrates meaningful use of certified EHR technology through a means that is approved by the State and acceptable to the Secretary, and that may be based upon the methodologies applied under section 1848(o) or 1886(n).~~

~~"(D) To the extent specified by the Secretary, the certified EHR technology is compatible with State or Federal administrative management systems.~~

~~"(6)(A) In no case shall the payments described in paragraph (1), with respect to a hospital, exceed in the aggregate the product of—~~

~~"(i) the overall hospital EHR amount for the hospital computed under subparagraph (B); and~~

~~"(ii) the Medicaid share for such hospital computed under subparagraph (C).~~

1 ~~"(B) For purposes of this paragraph, the overall hos-~~
2 ~~pital EHR amount, with respect to a hospital, is the sum~~
3 ~~of the applicable amounts specified in section~~
4 ~~1886(n)(2)(A) for such hospital for the first 4 payment~~
5 ~~years (as estimated by the Secretary) determined as if the~~
6 ~~Medicare share specified in clause (ii) of such section were~~
7 ~~1. The Secretary shall publish in the Federal Register the~~
8 ~~overall hospital EHR amount for each hospital eligible for~~
9 ~~payments under this subsection. In computing amounts~~
10 ~~under paragraph 1886(n)(2)(C) for payment years after~~
11 ~~the first payment year, the Secretary shall assume that~~
12 ~~in subsequent payment years discharges increase at the~~
13 ~~average annual rate of growth of the most recent 3 years~~
14 ~~for which discharge data are available per year.~~
15 ~~"(C) The Medicaid share computed under this sub-~~
16 ~~paragraph, for a hospital for a period specified by the Sec-~~
17 ~~retary, shall be calculated in the same manner as the~~
18 ~~Medicare share under section 1886(n)(2)(D) for such a~~
19 ~~hospital and period, except that there shall be substituted~~
20 ~~for the numerator under clause (i) of such section the~~
21 ~~amount that is equal to the number of inpatient-bed-days~~
22 ~~(as established by the Secretary) which are attributable~~
23 ~~to individuals who are receiving medical assistance under~~
24 ~~this title and who are not described in section~~
25 ~~1886(n)(2)(D)(i). In computing inpatient-bed-days under~~

the previous sentence, the Secretary shall take into account inpatient-bed-days attributable to inpatient-bed-days that are paid for individuals enrolled in a Medicaid managed care plan (under section 1903(m) or section 1932).

"(7) With respect to health care providers other than hospitals, the Secretary shall ensure coordination of the different programs for payment of such health care providers for adoption or use of health information technology (including certified EHR technology), as well as payments for such health care providers provided under this title or title XVIII, to assure no duplication of funding.

"(8) In carrying out paragraph (5)(C), the State and Secretary shall seek, to the maximum extent practicable, to avoid duplicative requirements from Federal and State Governments to demonstrate meaningful use of certified EHR technology under this title and title XVIII. In doing so, the Secretary may deem satisfaction of requirements for such meaningful use for a payment year under title XVIII to be sufficient to qualify as meaningful use under this subsection. The Secretary may also specify the reporting periods under this subsection in order to carry out this paragraph.

"(9) In order to be provided Federal financial participation under subsection (a)(3)(F)(ii), a State must dem-

1 ~~onstrate to the satisfaction of the Secretary, that the~~
2 ~~State—~~
3 ~~"(A) is using the funds provided for the pur-~~
4 ~~poses of administering payments under this sub-~~
5 ~~section, including tracking of meaningful use by~~
6 ~~Medicaid providers;~~
7 ~~"(B) is conducting adequate oversight of the~~
8 ~~program under this subsection, including routine~~
9 ~~tracking of meaningful use attestations and report-~~
10 ~~ing mechanisms; and~~
11 ~~"(C) is pursuing initiatives to encourage the~~
12 ~~adoption of certified EHR technology to promote~~
13 ~~health care quality and the exchange of health care~~
14 ~~information under this title, subject to applicable~~
15 ~~laws and regulations governing such exchange.~~
16 ~~"(10) The Secretary shall periodically submit reports~~
17 ~~to the Committee on Energy and Commerce of the House~~
18 ~~of Representatives and the Committee on Finance of the~~
19 ~~Senate on status, progress, and oversight of payments~~
20 ~~under paragraph (1).".~~
21 ~~(b) IMPLEMENTATION FUNDING.—In addition to~~
22 ~~funds otherwise available, out of any funds in the Treas-~~
23 ~~ury not otherwise appropriated, there are appropriated to~~
24 ~~the Secretary of Health and Human Services for the Cen-~~
25 ~~ter for Medicare & Medicaid Services Program Manage-~~

~~ment Account, $40,000,000 for each of fiscal years 2009 through 2015 and $20,000,000 for each succeeding fiscal year through fiscal year 2019, which shall be available for purposes of carrying out the provisions of (and the amendments made by) this part. Amounts appropriated under this subsection for a fiscal year shall be available until expended.~~

~~SEC. 4322. MEDICAID NURSING FACILITY GRANT PROGRAM.~~

~~(a) IN GENERAL.—The Secretary shall establish a grant program to enhance the meaningful use of certified electronic health records in nursing facilities. In establishing such program, the Secretary shall use payment incentives for meaningful use of certified EHR technology, similar to those specified in sections 4311, 4312, and 4321, as appropriate. For the purpose of such incentives, the Secretary shall define meaningful use in a manner so as to be consistent with such sections to the extent practicable. The Secretary shall award funds to not more than 10 States to carry out activities under this section.~~

~~(b) ACTIVITIES.—The Secretary shall require a State participating in the grant program to—~~

~~(1) provide payment incentives to nursing facilities contingent on the demonstration of meaningful use of certified electronic health records;~~

1 ~~(2) require participating nursing facilities to en-~~
2 ~~gage in programs to improve the quality and coordi-~~
3 ~~nation of care through the use of certified EHR~~
4 ~~technology, including for persons who are repeatedly~~
5 ~~admitted to acute care hospitals from the nursing~~
6 ~~facility and persons who receive services across mul-~~
7 ~~tiple medical and social services providers (including~~
8 ~~facility and community-based providers); and~~
9 ~~(3) provide for training of appropriate per-~~
10 ~~sonnel in the use of certified electronic health~~
11 ~~records.~~
12 ~~(c) TARGETING.—The Secretary shall require a State~~
13 ~~participating in the grant program to target nursing facili-~~
14 ~~ties with a significant percentage (but not less than the~~
15 ~~average in the State) of the facility's patient volume (as~~
16 ~~estimated in accordance with standards established by the~~
17 ~~Secretary) attributable to individuals who are receiving~~
18 ~~medical assistance under title XIX of the Social Security~~
19 ~~Act.~~
20 ~~(d) PRIORITY.—In making grants under this section,~~
21 ~~the Secretary shall give priority to States with a high pro-~~
22 ~~portion of total national nursing facility days paid under~~
23 ~~title XIX of the Social Security Act.~~
24 ~~(e) LIMITATIONS ON USE OF FUNDS.—A State may~~
25 ~~not make payments to a nursing facility in excess of 90~~

~~percent of the costs of such nursing facility for the adoption and operation of certified EHR technology.~~

~~(f) APPLICATION.—No grant may be made to a State under this section unless the State submits an application to the Secretary in a form and manner specified by the Secretary.~~

~~(g) REPORT.—Not later than the end of the 3-year period beginning on the date that grants under this section are first awarded, the Secretary shall submit a report to Congress on the activities under this grant program and the effect of this program on quality and coordination of care under title XIX of the Social Security Act.~~

~~(h) APPROPRIATION.—Out of any money in the Treasury not otherwise appropriated, there is appropriated to the Secretary of Health and Human Services to carry out this section $600,000,000, to remain available until expended.~~

~~Subtitle D—Privacy~~

~~SEC. 4400. DEFINITIONS.~~

~~In this subtitle, except as specified otherwise:~~

~~(1) BREACH.—The term "breach" means the unauthorized acquisition, access, use, or disclosure of protected health information which compromises the security, privacy, or integrity of protected health information maintained by or on behalf of a person.~~

~~Such term does not include any unintentional acquisition, 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.~~

~~(6) HEALTH CARE OPERATIONS.—The term "health care operation" has the meaning given such term in section 164.501 of title 45, Code of Federal Regulations.~~

~~(7) HEALTH CARE PROVIDER.—The term "health care provider" has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.~~

~~(8) HEALTH PLAN.—The term "health plan" has the meaning given such term in section 1171(5) of the Social Security Act.~~

~~(9) NATIONAL COORDINATOR.—The term "National Coordinator" means the head of the Office of the National Coordinator for Health Information Technology established under section 3001(a) of the Public Health Service Act, as added by section 4101.~~

~~(10) PAYMENT.—The term "payment" has the meaning given such term in section 164.501 of title 45, Code of Federal Regulations.~~

~~(11) PERSONAL HEALTH RECORD.—The term "personal health record" means an electronic record of individually identifiable health information on an~~

~~individual that can be drawn from multiple sources and that is managed, shared, and controlled by or for the individual.~~

~~(12) PROTECTED HEALTH INFORMATION.—The term "protected health information" has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.~~

~~(13) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.~~

~~(14) SECURITY.—The term "security" has the meaning given such term in section 164.304 of title 45, Code of Federal Regulations.~~

~~(15) STATE.—The term "State" means each of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.~~

~~(16) TREATMENT.—The term "treatment" has the meaning given such term in section 164.501 of title 45, Code of Federal Regulations.~~

~~(17) USE.—The term "use" has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.~~

~~(18) VENDOR OF PERSONAL HEALTH RECORDS.—The term "vendor of personal health 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. 4401. 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~~

~~sections apply to a covered entity that violates such security provision.~~

~~(c) ANNUAL GUIDANCE.—For the first year beginning after the date of the enactment of this Act and annually thereafter, the Secretary of Health and Human Services shall, in consultation with industry stakeholders, annually issue guidance on the most effective and appropriate technical safeguards for use in carrying out the sections referred to in subsection (a) and the security standards in subpart C of part 164 of title 45, Code of Federal Regulations, including the use of standards developed under section 3002(b)(2)(B)(vi) of the Public Health Service Act, as added by section 4101, as such provisions are in effect as of the date before the enactment of this Act.~~

~~SEC. 4402. NOTIFICATION IN THE CASE OF BREACH.~~

~~(a) IN GENERAL.—A covered entity that accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured protected health information (as defined in subsection (h)(1)) shall, in the case of a breach of such information that is discovered by the covered entity, notify each individual whose unsecured protected health information has been, or is reasonably believed by the covered entity to have been, accessed, acquired, or disclosed as a result of such breach.~~

~~(b) NOTIFICATION OF COVERED ENTITY BY BUSINESS ASSOCIATE.—A business associate of a covered entity that accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured protected health information shall, following the discovery of a breach of such information, notify the covered entity of such breach. Such notice shall include the identification of each individual whose unsecured protected health information has been, or is reasonably believed by the business associate to have been, accessed, acquired, or disclosed during such breach.~~

~~(c) BREACHES TREATED AS DISCOVERED.—For purposes of this section, a breach shall be treated as discovered by a covered entity or by a business associate as of the first day on which such breach is known to such entity or associate, respectively, (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of such entity or associate, respectively) or should reasonably have been known to such entity or associate (or person) to have occurred.~~

~~(d) TIMELINESS OF NOTIFICATION.—~~

~~(1) IN GENERAL.—Subject to subsection (g), all notifications required under this section shall be made without unreasonable delay and in no case later than 60 calendar days after the discovery of a~~

~~breach by the covered entity involved (or business associate involved in the case of a notification required under subsection (b)).~~

~~(2) BURDEN OF PROOF.—The covered entity involved (or business associate involved in the case of a notification required under subsection (b)), shall have the burden of demonstrating that all notifications were made as required under this part, including evidence demonstrating the necessity of any delay.~~

~~(c) METHODS OF NOTICE.—~~

~~(1) INDIVIDUAL NOTICE.—Notice required under this section to be provided to an individual, with respect to a breach, shall be provided promptly and in the following form:~~

~~(A) Written notification by first-class mail to the individual (or the next of kin of the individual if the individual is deceased) at the last known address of the individual or the next of kin, respectively, or, if specified as a preference by the individual, by electronic mail. The notification may be provided in one or more mailings as information is available.~~

~~(B) In the case in which there is insufficient, or out-of-date contact information (in-~~

~~cluding a phone number, email address, or any other form of appropriate communication) that 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 jurisdiction, following the discovery of a breach described in subsection (a), if the unsecured protected health information of more than 500 residents of such State or jurisdiction is, or is reasonably believed to have been, accessed, acquired, or disclosed during such breach.~~

~~(3) NOTICE TO SECRETARY.—Notice shall be provided to the Secretary by covered entities of unsecured protected health information that has been acquired or disclosed in a breach. If the breach was with respect to 500 or more individuals than such notice must be provided immediately. If the breach was with respect to less than 500 individuals, the covered entity involved may maintain a log of any such breach occurring and annually submit such a log to the Secretary documenting such breaches occurring during the year involved.~~

~~(4) POSTING ON HHS PUBLIC WEBSITE.—The Secretary shall make available to the public on the Internet website of the Department of Health and Human Services a list that identifies each covered~~

~~entity involved in a breach described in subsection (a) in which the unsecured protected health information of more than 500 individuals is acquired or disclosed.~~

~~(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 determines that a notification, notice, or posting required under this section would impede a criminal investigation or cause damage to national security, such notification, notice, or posting shall be delayed in the same manner as provided under section 164.528(a)(2) of title 45, Code of Federal Regulations, in the case of a disclosure covered under such section.~~

~~(h) UNSECURED PROTECTED HEALTH INFORMATION.—~~

~~(1) DEFINITION.—~~

~~(A) IN GENERAL.—Subject to subparagraph (B), for purposes of this section, the term "unsecured protected health information" means protected health information that is not secured through the use of a technology or methodology specified by the Secretary in the guidance issued under paragraph (2).~~

~~(B) EXCEPTION IN CASE TIMELY GUIDANCE NOT ISSUED.—In the case that the Secretary does not issue guidance under paragraph (2) by the date specified in such paragraph, for~~

~~purposes of this section, the term "unsecured protected health information" shall mean protected health information that is not secured by a technology standard that renders protected health information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.~~

~~(2) GUIDANCE.—For purposes of paragraph (1) and section 407(f)(3), not later than the date that is 60 days after the date of the enactment of this Act, the Secretary shall, after consultation with stakeholders, issue (and annually update) guidance specifying the technologies and methodologies that render protected health information unusable, unreadable, or indecipherable to unauthorized individuals, including use of standards developed under section 3002(b)(2)(B)(vi) of the Public Health Service Act, as added by section 4101.~~

~~(i) REPORT TO CONGRESS ON BREACHES.—~~

~~(1) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act and annually thereafter, the Secretary shall prepare and submit to the Committee on Finance and the Com-~~

~~mittee 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 containing the information described in paragraph (2) regarding breaches for which notice was provided to the Secretary under subsection (e)(3).~~

~~(2) INFORMATION.—The information described in this paragraph regarding breaches specified in paragraph (1) shall include—~~

~~(A) the number and nature of such breaches; and~~

~~(B) actions taken in response to such breaches.~~

~~(j) 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 title. The provisions of this section shall apply to breaches that are discovered on or after the date that is 30 days after the date of publication of such interim final regulations.~~

1 ~~**SEC. 4403. EDUCATION ON HEALTH INFORMATION PRI-**~~
2 ~~**VACY.**~~

3 ~~(a) REGIONAL OFFICE PRIVACY ADVISORS.—Not~~
4 ~~later than 6 months after the date of the enactment of~~
5 ~~this Act, the Secretary shall designate an individual in~~
6 ~~each regional office of the Department of Health and~~
7 ~~Human Services to offer guidance and education to cov-~~
8 ~~ered entities, business associates, and individuals on their~~
9 ~~rights and responsibilities related to Federal privacy and~~
10 ~~security requirements for protected health information.~~

11 ~~(b) EDUCATION INITIATIVE ON USES OF HEALTH IN-~~
12 ~~FORMATION.—Not later than 12 months after the date of~~
13 ~~the enactment of this Act, the Office for Civil Rights with-~~
14 ~~in the Department of Health and Human Services shall~~
15 ~~develop and maintain a multi-faceted national education~~
16 ~~initiative to enhance public transparency regarding the~~
17 ~~uses of protected health information, including programs~~
18 ~~to educate individuals about the potential uses of their~~
19 ~~protected health information, the effects of such uses, and~~
20 ~~the rights of individuals with respect to such uses. Such~~
21 ~~programs shall be conducted in a variety of languages and~~
22 ~~present information in a clear and understandable man-~~
23 ~~ner.~~

~~SEC. 4404. APPLICATION OF PRIVACY PROVISIONS AND PENALTIES TO BUSINESS ASSOCIATES OF COVERED ENTITIES.~~

~~(a) APPLICATION OF CONTRACT REQUIREMENTS.—In the case of a business associate of a covered entity that obtains or creates protected health information pursuant to a written contract (or other written arrangement) described in section 164.502(e)(2) of title 45, Code of Federal Regulations, with such covered entity, the business associate may use and disclose such protected health information only if such use or disclosure, respectively, is in compliance with each applicable requirement of section 164.504(e) of such title. The additional requirements of this subtitle that relate to privacy 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 KNOWLEDGE ELEMENTS ASSOCIATED WITH CONTRACTS.—Section 164.504(e)(1)(ii) of title 45, Code of Federal Regulations, shall apply to a business associate described in subsection (a), with respect to compliance with such subsection, in the same manner that such section applies to a covered entity, with respect to compliance with the standards in sections 164.502(e) and 164.504(e) of such title, except that in applying such~~

~~section 164.504(e)(1)(ii) each reference to the business associate, with respect to a contract, shall be treated as a reference to the covered entity involved in such contract.~~

~~(c) APPLICATION OF CIVIL AND CRIMINAL PENALTIES.—In the case of a business associate that violates any provision of subsection (a) or (b), the provisions of 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 as such provisions apply to a person who violates a provision of part C of title XI of such Act.~~

~~SEC. 4405. RESTRICTIONS ON CERTAIN DISCLOSURES AND SALES OF HEALTH INFORMATION; ACCOUNTING OF CERTAIN PROTECTED HEALTH INFORMATION DISCLOSURES; ACCESS TO CERTAIN INFORMATION IN ELECTRONIC FORMAT.~~

~~(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.~~

~~(b) DISCLOSURES REQUIRED TO BE LIMITED TO THE LIMITED DATA SET OR THE MINIMUM NECESSARY.—~~

~~(1) IN GENERAL.—~~

~~(A) IN GENERAL.—Subject to subparagraph (B), a covered entity shall be treated as being in compliance with section 164.502(b)(1) of title 45, Code of Federal Regulations, with respect to the use, disclosure, or request of protected health information described in such section, only if the covered entity limits such protected health information, to the extent practicable, to the limited data set (as defined in section 164.514(e)(2) of such title) or, if needed by such entity, to the minimum necessary to accomplish the intended purpose of such use, disclosure, or request, respectively.~~

~~(B) GUIDANCE.—Not later than 18 months after the date of the enactment of this section, the Secretary shall issue guidance on what constitutes "minimum necessary" for purposes of subpart E of part 164 of title 45, Code of Federal Regulation. In issuing such guidance the Secretary shall take into consideration the guidance under section 4424(c).~~

~~(C) SUNSET.—Subparagraph (A) shall not apply on and after the effective date on which the Secretary issues the guidance under subparagraph (B).~~

~~(2) DETERMINATION OF MINIMUM NECESSARY.—For purposes of paragraph (1), in the case of the disclosure of protected health information, the covered entity or business associate disclosing such information shall determine what constitutes the minimum necessary to accomplish the intended purpose of such disclosure.~~

~~(3) APPLICATION OF EXCEPTIONS.—The exceptions described in section 164.502(b)(2) of title 45, Code of Federal Regulations, shall apply to the requirement under paragraph (1) as of the effective date described in section 4423 in the same manner~~

~~that such exceptions apply to section 164.502(b)(1) of such title before such date.~~

~~(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed as affecting the use, disclosure, or request of protected health information that has been de-identified.~~

~~(c) ACCOUNTING OF CERTAIN PROTECTED HEALTH INFORMATION DISCLOSURES REQUIRED IF COVERED ENTITY USES ELECTRONIC HEALTH RECORD.—~~

~~(1) IN GENERAL.—In applying section 164.528 of title 45, Code of Federal Regulations, in the case that a covered entity uses or maintains an electronic health record with respect to protected health information—~~

~~(A) the exception under paragraph (a)(1)(i) of such section shall not apply to disclosures through an electronic health record made by such entity of such information; and~~

~~(B) an individual shall have a right to receive an accounting of disclosures described in such paragraph of such information made by such covered entity during only the three years prior to the date on which the accounting is requested.~~

~~(2) REGULATIONS.—The Secretary shall promulgate regulations on what information shall be collected about each disclosure referred to in paragraph (1)(A) not later than 18 months after the date on which the Secretary adopts standards on accounting for disclosure described in the section 3002(b)(2)(B)(iv) of the Public Health Service Act, as added by section 4101. Such regulations shall only require such information to be collected through an electronic health record in a manner that takes into account the interests of individuals in learning the circumstances under which their protected health information is being disclosed and takes into account the administrative burden of accounting for such disclosures.~~

~~(3) CONSTRUCTION.—Nothing in this subsection shall be construed as requiring a covered entity to account for disclosures of protected health information that are not made by such covered entity or by a business associate acting on behalf of the covered entity.~~

~~(4) EFFECTIVE DATE.—~~

~~(A) CURRENT USERS OF ELECTRONIC RECORDS.—In the case of a covered entity insofar as it acquired an electronic health record as~~

~~of January 1, 2009, paragraph (1) shall apply 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, 2009, 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 into account the report under section 424(d). In such regulations the Secretary shall specify the date on which such regulations shall apply to disclosures made by a covered entity, but in no case would such date be sooner than the date that is 24 months after the date of the enactment of this section.

(e) PROHIBITION ON SALE OF ELECTRONIC HEALTH RECORDS OR PROTECTED HEALTH INFORMATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), a covered entity or business associate shall not directly or indirectly receive remuneration in exchange for any protected health information of an individual unless the covered entity obtained from the individual, in accordance with section 164.508 of title 45, Code of Federal Regulations, a valid authorization that includes, in accordance with such section, a specification of whether the protected health information can be further exchanged for remuneration by the entity receiving protected health information of that individual.

(2) EXCEPTIONS.—Paragraph (1) shall not apply in the following cases:

~~(A) The purpose of the exchange is for research or public health activities (as described in sections 164.501, 164.512(i), and 164.512(b) of title 45, Code of Federal Regulations) and the price charged reflects the costs of preparation and transmittal of the data for such purpose.~~

~~(B) The purpose of the exchange is for the treatment of the individual and the price charges reflects not more than the costs of preparation and transmittal of the data for such purpose.~~

~~(C) The purpose of the exchange is the health care operation specifically described in subparagraph (iv) of paragraph (6) of the definition of health care operations in section 164.501 of title 45, Code of Federal Regulations.~~

~~(D) The purpose of the exchange is for remuneration that is provided by a covered entity to a business associate for activities involving the exchange of protected health information that the business associate undertakes on behalf of and at the specific request of the covered entity pursuant to a business associate agreement.~~

~~(E) The purpose of the exchange is to provide an individual with a copy of the individual's protected health information pursuant to section 164.524 of title 45, Code of Federal Regulations.~~

~~(F) The purpose of the exchange is otherwise determined by the Secretary in regulations to be similarly necessary and appropriate as the exceptions provided in subparagraphs (A) through (E).~~

~~(3) REGULATIONS.—The Secretary shall promulgate regulations to carry out paragraph (this subsection, including exceptions described in paragraph (2), not later than 18 months after the date of the enactment of this title.~~

~~(4) EFFECTIVE DATE.—Paragraph (1) shall apply to exchanges occurring on or after the date that is 6 months after the date of the promulgation of final regulations implementing this subsection.~~

~~(f) ACCESS TO CERTAIN INFORMATION IN ELECTRONIC FORMAT.—In applying section 164.524 of title 45, Code of Federal Regulations, in the case that a covered entity uses or maintains an electronic health record with respect to protected health information of an individual—~~

~~(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).~~

~~(g) CLARIFICATION.—Nothing in this subtitle shall constitute a waiver of any privilege otherwise applicable to an individual with respect to the protected health information of such individual.~~

~~SEC. 4406. 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 commu-~~

~~nication 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.~~

~~(2) PAYMENT FOR CERTAIN COMMUNICATIONS.—A covered entity or business associate may not receive direct or indirect payment in exchange for making any communication described in subparagraph (i), (ii), or (iii) of paragraph (1) of the definition of marketing in section 164.501 of title 45, Code of Federal Regulations, except—~~

~~(A) a business associate of a covered entity may receive payment from the covered entity for making any such communication on behalf of the covered entity that is consistent with the written contract (or other written arrangement) described in section 164.502(e)(2) of such title between such business associate and covered entity; or~~

~~(B) a covered entity may receive payment in exchange for making any such communication if the entity obtains from the recipient of the communication, in accordance with section 164.508 of title 45, Code of Federal Regulations, a valid authorization (as described in~~

1 ~~paragraph (b) of such section) with respect to~~
2 ~~such communication.~~
3 ~~(b) FUNDRAISING.—Fundraising for the benefit of a~~
4 ~~covered entity shall not be considered a health care oper-~~
5 ~~ation for purposes of section 164.501 of title 45, Code of~~
6 ~~Federal Regulations.~~
7 ~~(c) EFFECTIVE DATE.—This section shall apply to~~
8 ~~contracting occurring on or after the effective date speci-~~
9 ~~fied under section 4423.~~
10 ~~**SEC. 4407. TEMPORARY BREACH NOTIFICATION REQUIRE-**~~
11 ~~**MENT FOR VENDORS OF PERSONAL HEALTH**~~
12 ~~**RECORDS AND OTHER NON-HIPAA COVERED**~~
13 ~~**ENTITIES.**~~
14 ~~(a) IN GENERAL.—In accordance with subsection (c),~~
15 ~~each vendor of personal health records, following the dis-~~
16 ~~covery of a breach of security of unsecured PHR identifi-~~
17 ~~able health information that is in a personal health record~~
18 ~~maintained or offered by such vendor, and each entity de-~~
19 ~~scribed in clause (ii) or (iii) of section 4424(b)(1)(A), fol-~~
20 ~~lowing the discovery of a breach of security of such infor-~~
21 ~~mation that is obtained through a product or service pro-~~
22 ~~vided by such entity, shall—~~
23 ~~(1) notify each individual who is a citizen or~~
24 ~~resident of the United States whose unsecured PHR~~
25 ~~identifiable health information was acquired by an~~

~~unauthorized person as a result of such a breach of security; and~~

~~(2) notify the Federal Trade Commission.~~

~~(b) NOTIFICATION BY THIRD PARTY SERVICE PROVIDERS.—A third party service provider that provides services to a vendor of personal health records or to an entity described in clause (ii) or (iii) of section 4424(b)(1)(A) in connection with the offering or maintenance of a personal health record or a related product or service and that accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured PHR identifiable health information in such a record as a result of such services shall, following the discovery of a breach of security of such information, notify such vendor or entity, respectively, of such breach. Such notice shall include the identification of each individual whose unsecured PHR identifiable health information has been, or is reasonably believed to have been, accessed, acquired, or disclosed during such breach.~~

~~(c) APPLICATION OF REQUIREMENTS FOR TIMELINESS, METHOD, AND CONTENT OF NOTIFICATIONS.—Subsections (c), (d), (e), and (f) of section 402 shall apply to a notification required under subsection (a) and a vendor of personal health records, an entity described in subsection (a) and a third party service provider described~~

~~in subsection (b), with respect to a breach of security under subsection (a) of unsecured PHR identifiable health information in such records maintained or offered by such vendor, in a manner specified by the Federal Trade Commission.~~

~~(d) NOTIFICATION OF THE SECRETARY.—Upon receipt of a notification of a breach of security under subsection (a)(2), the Federal Trade Commission shall notify the Secretary of such breach.~~

~~(e) ENFORCEMENT.—A violation of subsection (a) or (b) shall be treated as an unfair and deceptive act or practice in violation of a regulation under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) regarding unfair or deceptive acts or practices.~~

~~(f) DEFINITIONS.—For purposes of this section:~~

~~(1) BREACH OF SECURITY.—The term "breach of security" means, with respect to unsecured PHR identifiable health information of an individual in a personal health record, acquisition of such information without the authorization of the individual.~~

~~(2) PHR IDENTIFIABLE HEALTH INFORMATION.—The term "PHR identifiable health information" means individually identifiable health information, as defined in section 1171(6) of the Social Se-~~

~~curity Act (42 U.S.C. 1320d(6)), and includes, with respect to an individual, information—~~

~~(A) that is provided by or on behalf of the individual; and~~

~~(B) that identifies the individual or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.~~

~~(3) UNSECURED PHR IDENTIFIABLE HEALTH INFORMATION.—~~

~~(A) IN GENERAL.—Subject to subparagraph (B), the term "unsecured PHR identifiable health information" means PHR identifiable health information that is not protected through the use of a technology or methodology specified by the Secretary in the guidance issued under section 4402(h)(2).~~

~~(B) EXCEPTION IN CASE TIMELY GUIDANCE NOT ISSUED.—In the case that the Secretary does not issue guidance under section 4402(h)(2) by the date specified in such section, for purposes of this section, the term "unsecured PHR identifiable health information" 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. 4408. 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-~~

~~tions, as such provisions are in effect as of the date of enactment of this title.~~

~~SEC. 4409. CLARIFICATION OF APPLICATION OF WRONGFUL DISCLOSURES CRIMINAL PENALTIES.~~

~~Section 1177(a) of the Social Security Act (42 U.S.C. 1320d–6(a)) is amended by adding at the end the following new sentence: "For purposes of the previous sentence, a person (including an employee or other individual) shall be considered to have obtained or disclosed individually identifiable health information in violation of this part if the information is maintained by a covered entity (as defined in the HIPAA privacy regulation described in section 1180(b)(3)) and the individual obtained or disclosed such information without authorization.".~~

~~SEC. 4410. IMPROVED ENFORCEMENT.~~

~~(a) IN GENERAL.—Section 1176 of the Social Security Act (42 U.S.C. 1320d–5) is amended—~~

~~(1) in subsection (b)(1), by striking "the act constitutes an offense punishable under section 1177" and inserting "a penalty has been imposed under section 1177 with respect to such act"; and~~

~~(2) by adding at the end the following new subsection:~~

~~"(c) NONCOMPLIANCE DUE TO WILLFUL NEGLECT.—~~

1 ~~"(1) IN GENERAL.—A violation of a provision~~
2 ~~of this part due to willful neglect is a violation for~~
3 ~~which the Secretary is required to impose a penalty~~
4 ~~under subsection (a)(1).~~
5 ~~"(2) REQUIRED INVESTIGATION.—For purposes~~
6 ~~of paragraph (1), the Secretary shall formally inves-~~
7 ~~tigate any complaint of a violation of a provision of~~
8 ~~this part if a preliminary investigation of the facts~~
9 ~~of the complaint indicate such a possible violation~~
10 ~~due to willful neglect.".~~
11 ~~(b) EFFECTIVE DATE; REGULATIONS.—~~
12 ~~(1) The amendments made by subsection (a)~~
13 ~~shall apply to penalties imposed on or after the date~~
14 ~~that is 24 months after the date of the enactment~~
15 ~~of this title.~~
16 ~~(2) Not later than 18 months after the date of~~
17 ~~the enactment of this title, the Secretary of Health~~
18 ~~and Human Services shall promulgate regulations to~~
19 ~~implement such amendments.~~
20 ~~(c) DISTRIBUTION OF CERTAIN CIVIL MONETARY~~
21 ~~PENALTIES COLLECTED.—~~
22 ~~(1) IN GENERAL.—Subject to the regulation~~
23 ~~promulgated pursuant to paragraph (3), any civil~~
24 ~~monetary penalty or monetary settlement collected~~
25 ~~with respect to an offense punishable under this sub-~~

~~title or section 1176 of the Social Security Act (42 U.S.C. 1320d–5) insofar as such section relates to privacy or security shall be transferred to the Office of Civil Rights of the Department of Health and Human Services to be used for purposes of enforcing the provisions of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date of enactment of this Act.~~

~~(2) GAO REPORT.—Not later than 18 months after the date of the enactment of this title, the Comptroller General shall submit to the Secretary a report including recommendations for a 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.~~

~~(3) ESTABLISHMENT OF METHODOLOGY TO DISTRIBUTE PERCENTAGE OF CMPS COLLECTED TO HARMED INDIVIDUALS.—Not later than 3 years after the date of the enactment of this title, the Secretary shall establish by regulation and based on the recommendations submitted under paragraph (2), a 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) THERED 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.~~

~~(c) 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:~~

~~"(e) 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.~~

1 ~~"(3) ATTORNEY FEES.—In the case of any suc-~~
2 ~~cessful action under paragraph (1), the court, in its~~
3 ~~discretion, may award the costs of the action and~~
4 ~~reasonable attorney fees to the State.~~
5 ~~"(4) NOTICE TO SECRETARY.—The State shall~~
6 ~~serve prior written notice of any action under para-~~
7 ~~graph (1) upon the Secretary and provide the Sec-~~
8 ~~retary with a copy of its complaint, except in any~~
9 ~~case in which such prior notice is not feasible, in~~
10 ~~which case the State shall serve such notice imme-~~
11 ~~diately upon instituting such action. The Secretary~~
12 ~~shall have the right—~~
13 ~~"(A) to intervene in the action;~~
14 ~~"(B) upon so intervening, to be heard on~~
15 ~~all matters arising therein; and~~
16 ~~"(C) to file petitions for appeal.~~
17 ~~"(5) CONSTRUCTION.—For purposes of bring-~~
18 ~~ing any civil action under paragraph (1), nothing in~~
19 ~~this section shall be construed to prevent an attor-~~
20 ~~ney general of a State from exercising the powers~~
21 ~~conferred on the attorney general by the laws of that~~
22 ~~State.~~
23 ~~"(6) VENUE; SERVICE OF PROCESS.—~~
24 ~~"(A) VENUE.—Any action brought under~~
25 ~~paragraph (1) may be brought in the district~~

~~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 (c)";~~

~~(B) in paragraph (2)(A)—~~

~~(i) in the matter before clause (i), 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 (c)"; 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 (c)" 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 ~~"(d) ALLOWING CONTINUED USE OF CORRECTIVE~~
8 ~~ACTION.—Nothing in this section shall be construed as~~
9 ~~preventing the Office of Civil Rights of the Department~~
10 ~~of Health and Human Services from continuing, in its dis-~~
11 ~~cretion, to use corrective action without a penalty in cases~~
12 ~~where the person did not know (and by exercising reason-~~
13 ~~able diligence would not have known) of the violation in-~~
14 ~~volved.".~~
15 **~~SEC. 4411. AUDITS.~~**
16 ~~The Secretary shall provide for periodic audits to en-~~
17 ~~sure that covered entities and business associates that are~~
18 ~~subject to the requirements of this subtitle and subparts~~
19 ~~C and E of part 164 of title 45, Code of Federal Regula-~~
20 ~~tions, as such provisions are in effect as of the date of~~
21 ~~enactment of this Act, comply with such requirements.~~

SEC. 4412. SPECIAL RULE FOR INFORMATION TO REDUCE MEDICATION ERRORS AND IMPROVE PATIENT SAFETY.

Nothing under this subtitle shall prevent a pharmacist from communicating with patients in order to reduce medication errors and improve patient safety provided there is no remuneration other than for the treatment of the individual and payment for such treatment of the individual as defined in 45 CFR 164.501. The Secretary may by regulation authorize a pharmacy to receive remuneration that does not exceed their reasonable out-of-pocket costs for such communications if the Secretary determines that allowing this remuneration improves patient care and protects protected health information.

PART II—RELATIONSHIP TO OTHER LAWS; REGULATORY REFERENCES; EFFECTIVE DATE; REPORTS

SEC. 4421. 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.~~

~~SEC. 4422. 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. 4423. 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. 4424. 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 an-~~

~~nually 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 such provisions are in effect as of the date of enactment of this Act) relating to privacy and security of health information that are received by the Secretary during the year for which the report is being prepared. Each such report shall include, with respect to such complaints received during the year—~~

~~(A) the number of such complaints;~~

~~(B) the number of such complaints resolved informally, a summary of the types of such complaints so resolved, and the number of covered entities that received technical assistance from the Secretary during such year in order to achieve compliance with such provisions and the types of such technical assistance provided;~~

~~(C) the number of such complaints that have resulted in the imposition of civil monetary penalties or have been resolved through monetary settlements, including the nature of the complaints involved and the amount paid in each penalty or settlement;~~

~~(D) the number of compliance reviews conducted and the outcome of each such review;~~

~~(E) the number of subpoenas or inquiries 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 4411.~~

~~(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 individually identifiable health information that has been rendered unusable, unreadable, or indecipherable through technologies or methodologies recognized by appropriate professional organization or standard setting bodies to provide effective security for the information) that should be applied to—~~

~~(i) vendors of personal health records;~~

~~(ii) entities that offer products or services through the website of a vendor of personal health records;~~

~~(iii) entities that are not covered entities and that offer products or services through the websites of covered entities~~

~~that offer individuals personal health records;~~

~~(iv) entities that are not covered entities and that access information in a personal health record or send information to a personal health record; and~~

~~(v) third party service providers used by a vendor or entity described in clause (i), (ii), (iii), or (iv) to assist in providing 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~~

1 ~~recommendations on the privacy and security re-~~
2 ~~quirements described in such paragraph.~~
3 ~~(c) GUIDANCE ON IMPLEMENTATION SPECIFICATION~~
4 ~~TO DE-IDENTIFY PROTECTED HEALTH INFORMATION.—~~
5 ~~Not later than 12 months after the date of the enactment~~
6 ~~of this title, the Secretary shall, in consultation with stake-~~
7 ~~holders, issue guidance on how best to implement the re-~~
8 ~~quirements for the de-identification of protected health in-~~
9 ~~formation under section 164.514(b) of title 45, Code of~~
10 ~~Federal Regulations.~~
11 ~~(d) GAO REPORT ON TREATMENT DISCLOSURES.—~~
12 ~~Not later than one year after the date of the enactment~~
13 ~~of this title, the Comptroller General of the United States~~
14 ~~shall submit to the Committee on Health, Education,~~
15 ~~Labor, and Pensions of the Senate and the Committee on~~
16 ~~Ways and Means and the Committee on Energy and Com-~~
17 ~~merce of the House of Representatives a report on the~~
18 ~~best practices related to the disclosure among health care~~
19 ~~providers of protected health information of an individual~~
20 ~~for purposes of treatment of such individual. Such report~~
21 ~~shall include an examination of the best practices imple-~~
22 ~~mented by States and by other entities, such as health~~
23 ~~information exchanges and regional health information or-~~
24 ~~ganizations, an examination of the extent to which such~~
25 ~~best practices are successful with respect to the quality~~

of the resulting health care provided to the individual and with respect to the ability of the health care provider to manage such best practices, and an examination of the use of electronic informed consent for disclosing protected health information for treatment, payment, and health care operations.

Subtitle E—Miscellaneous Medicare Provisions

SEC. 4501. MORATORIA ON CERTAIN MEDICARE REGULATIONS.

(a) DELAY IN PHASE OUT OF MEDICARE HOSPICE BUDGET NEUTRALITY ADJUSTMENT FACTOR DURING FISCAL YEAR 2009.—Notwithstanding any other provision of law, including the final rule published on August 8, 2008, 73 Federal Register 46464 et seq., relating to Medicare Program; Hospice Wage Index for Fiscal Year 2009, the Secretary of Health and Human Services shall not phase out or eliminate the budget neutrality adjustment factor in the Medicare hospice wage index before October 1, 2009, and the Secretary shall recompute and apply the final Medicare hospice wage index for fiscal year 2009 as if there had been no reduction in the budget neutrality adjustment factor.

~~(b) NON-APPLICATION OF PHASED-OUT INDIRECT MEDICAL EDUCATION (IME) ADJUSTMENT FACTOR FOR FISCAL YEAR 2009.—~~

~~(1) IN GENERAL.—Section 412.322 of title 42, Code of Federal Regulations, shall be applied without regard to paragraph (c) of such section, and the Secretary of Health and Human Services shall recompute payments for discharges occurring on or after October 1, 2008, as if such paragraph had never been in effect.~~

~~(2) NO EFFECT ON SUBSEQUENT YEARS.—Nothing in paragraph (1) shall be construed as having any effect on the application of paragraph (d) of section 412.322 of title 42, Code of Federal Regulations.~~

~~(c) FUNDING FOR IMPLEMENTATION.—In addition to funds otherwise available, for purposes of implementing the provisions of subsections (a) and (b), including costs incurred in reprocessing claims in carrying out such provisions, the Secretary of Health and Human Services shall provide for the transfer from the Federal Hospital Insurance Trust Fund established under section 1817 of the Social Security Act (42 U.S.C. 1395i) to the Centers for Medicare & Medicaid Services Program Management Account of $2,000,000 for fiscal year 2009.~~

1 **~~SEC. 4502. LONG-TERM CARE HOSPITAL TECHNICAL COR-~~**
2 **~~RECTIONS.~~**
3 ~~(a) PAYMENT.—Subsection (c) of section 114 of the~~
4 ~~Medicare, Medicaid, and SCHIP Extension Act of 2007~~
5 ~~(Public Law 110–173) is amended—~~
6 ~~(1) in paragraph (1)—~~
7 ~~(A) by amending the heading to read as~~
8 ~~follows: "DELAY IN APPLICATION OF 25 PER-~~
9 ~~CENT PATIENT THRESHOLD PAYMENT ADJUST-~~
10 ~~MENT";~~
11 ~~(B) by striking "the date of the enactment~~
12 ~~of this Act" and inserting "July 1, 2007,"; and~~
13 ~~(C) in subparagraph (A), by inserting "or~~
14 ~~to a long-term care hospital, or satellite facility,~~
15 ~~that as of December 29, 2007, was co-located~~
16 ~~with an entity that is a provider-based, off-cam-~~
17 ~~pus location of a subsection (d) hospital which~~
18 ~~did not provide services payable under section~~
19 ~~1886(d) of the Social Security Act at the off-~~
20 ~~campus location" after "freestanding long-term~~
21 ~~care hospitals"; and~~
22 ~~(2) in paragraph (2)—~~
23 ~~(A) in subparagraph (B)(ii), by inserting~~
24 ~~"or that is described in section 412.22(h)(3)(i)~~
25 ~~of such title" before the period; and~~

~~(B) in subparagraph (C), by striking "the date of the enactment of this Act" and inserting "October 1, 2007 (or July 1, 2007, in the case of a satellite facility described in section 412.22(h)(3)(i) of title 42, Code of Federal Regulations)".~~

~~(b) MORATORIUM.—Subsection (d)(3)(A) of such section is amended by striking "if the hospital or facility" and inserting "if the hospital or facility obtained a certificate of need for an increase in beds that is in a State for which such certificate of need is required and that was issued on or after April 1, 2005, and before December 29, 2007, or if the hospital or facility".~~

~~(c) EFFECTIVE DATE.—The amendments made by this section shall be effective and apply as if included in the enactment of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173).~~

~~TITLE V—MEDICAID PROVISIONS~~

~~SEC. 5000. TABLE OF CONTENTS OF TITLE.~~

~~The table of contents of this title is as follows:~~

~~Sec. 5000. Table of contents of title.~~
~~Sec. 5001. Temporary increase of Medicaid FMAP.~~
~~Sec. 5002. Moratoria on certain regulations.~~
~~Sec. 5003. Transitional Medicaid assistance (TMA).~~
~~Sec. 5004. Protections for Indians under Medicaid and CHIP.~~
~~Sec. 5005. Consultation on Medicaid and CHIP.~~
~~Sec. 5006. Temporary increase in DSH allotments during recession.~~

~~**SEC. 5001. TEMPORARY INCREASE OF MEDICAID FMAP.**~~

~~(a) PERMITTING MAINTENANCE OF FMAP.—Subject to subsections (c), (f), and (g), if the FMAP determined without regard to this section for a State for—~~

~~(1) fiscal year 2009 is less than the FMAP as so determined for fiscal year 2008, the FMAP for the State for fiscal year 2008 shall be substituted for the State's FMAP for fiscal year 2009, before the application of this section;~~

~~(2) fiscal year 2010 is less than the FMAP as so determined for fiscal year 2008 or fiscal year 2009 (after the application of paragraph (1)), the greater of such FMAP for the State for fiscal year 2008 or fiscal year 2009 shall be substituted for the State's FMAP for fiscal year 2010, before the application of this section; and~~

~~(3) fiscal year 2011 is less than the FMAP as so determined for fiscal year 2008, fiscal year 2009 (after the application of paragraph (1)), or fiscal year 2010 (after the application of paragraph (2)), 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 4.9 PERCENTAGE POINT INCREASE.—~~

~~(1) IN GENERAL.—Subject to subsections (e), (f), and (g) and paragraph (2), 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 4.9 percentage points.~~

~~(2) SPECIAL ELECTION FOR TERRITORIES.—In the case of a State that is not one of the 50 States or the District of Columbia, paragraph (1) shall only apply if the State makes a one-time election, in a form and manner specified by the Secretary and for the entire recession adjustment period, to apply the increase in FMAP under paragraph (1) and a 10 percent increase under subsection (d) instead of applying a 20 percent increase under subsection (d).~~

~~(e) ADDITIONAL ADJUSTMENT TO REFLECT INCREASE IN UNEMPLOYMENT.—~~

~~(1) IN GENERAL.—Subject to subsections (e), (f), and (g), in the case of a State that is a high unemployment State (as defined in paragraph (2)) for a calendar quarter during the recession adjustment period, the FMAP (taking into account the application of subsections (a) and (b)) for such quarter~~

~~shall be further increased by the high unemployment percentage point adjustment specified in paragraph (3) for the State for the quarter.~~

~~(2) HIGH UNEMPLOYMENT STATE.—~~

~~(A) IN GENERAL.—In this subsection, subject to subparagraph (B), the term "high unemployment State" means, with respect to a calendar quarter in the recession adjustment period, a State that is 1 of the 50 States or the District of Columbia and for which the State unemployment increase percentage (as computed under paragraph (5)) for the quarter is not less than 1.5 percentage points.~~

~~(B) MAINTENANCE OF STATUS.—If a State is a high unemployment State for a calendar quarter, it shall remain a high unemployment State for each subsequent calendar quarter ending before July 1, 2010.~~

~~(3) HIGH UNEMPLOYMENT PERCENTAGE POINT ADJUSTMENT.—~~

~~(A) IN GENERAL.—The high unemployment percentage point adjustment specified in this paragraph for a high unemployment State for a quarter is equal to the product of—~~

~~(i) the SMAP for such State and quarter (determined after the application of subsection (a) and before the application of subsection (b)); and~~

~~(ii) subject to subparagraph (B), the State unemployment reduction factor specified in paragraph (4) for the State and quarter.~~

~~(B) MAINTENANCE OF ADJUSTMENT LEVEL FOR CERTAIN QUARTERS.—In no case shall the State unemployment reduction factor applied under subparagraph (A)(ii) for a State for a quarter (beginning on or after January 1, 2009, and ending before July 1, 2010) be less than the State unemployment reduction factor applied to the State for the previous quarter (taking into account the application of this subparagraph).~~

~~(4) STATE UNEMPLOYMENT REDUCTION FACTOR.—In the case of a high unemployment State for which the State unemployment increase percentage (as computed under paragraph (5)) with respect to a calendar quarter is—~~

~~(A) not less than 1.5, but is less than 2.5, percentage points, the State unemployment re-~~

~~duction factor for the State and quarter is 6 percent;~~

~~(B) not less than 2.5, but is less than 3.5, percentage points, the State unemployment reduction factor for the State and quarter is 12 percent; or~~

~~(C) not less than 3.5 percentage points, the State unemployment reduction factor for the State and quarter is 14 percent.~~

~~(5) COMPUTATION OF STATE UNEMPLOYMENT INCREASE PERCENTAGE.—~~

~~(A) IN GENERAL.—In this subsection, the "State unemployment increase percentage" for a State for a calendar quarter is equal to the number of percentage points (if any) by which—~~

~~(i) the average monthly unemployment rate for the State for months in the most recent previous 3-consecutive-month period for which data are available, subject to subparagraph (C); exceeds~~

~~(ii) the lowest average monthly unemployment rate for the State for any 3-consecutive-month period preceding the period~~

~~described in clause (i) and beginning on or after January 1, 2006.~~

~~(B) AVERAGE MONTHLY UNEMPLOYMENT RATE DEFINED.—In this paragraph, the term "average monthly unemployment rate" means the average of the monthly number unemployed, divided by the average of the monthly civilian labor force, seasonally adjusted, as determined based on the most recent monthly publications of the Bureau of Labor Statistics of the Department of Labor.~~

~~(C) SPECIAL RULE.—With respect to—~~

~~(i) the first 2 calendar quarters of the recession adjustment period, the most recent previous 3-consecutive-month period described in subparagraph (A)(i) shall be the 3-consecutive-month period beginning with October 2008; and~~

~~(ii) the last 2 calendar quarters of the recession adjustment period, the most recent previous 3-consecutive-month period described in such subparagraph shall be the 3-consecutive-month period beginning with December 2009.~~

~~(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 U.S.C. 1308) shall each be increased by 20 percent (or, in the case of an election under subsection (b)(2), 10 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—~~

~~(1) the increases applied under subsections (a), (b), and (c) shall not apply with respect—~~

~~(A) to payments under parts A, B, and D of title IV or title XXI of such Act (42 U.S.C. 601 et seq. and 1397aa et seq.);~~

~~(B) to payments under title XIX of such Act that are based on the enhanced FMAP described in section 2105(b) of such Act (42 U.S.C. 1397ee(b)); and~~

~~(C) to payments for disproportionate share hospital (DSH) payment adjustments under section 1923 of such Act (42 U.S.C. 1396r–4); and~~

~~(2) the increase provided under subsection (c) shall not apply with respect to payments under part E of title IV of such Act.~~

~~(f) STATE INELIGIBILITY AND LIMITATION.—~~

~~(1) IN GENERAL.—Subject to paragraphs (2) and (3), a State is not eligible for an increase in its FMAP under subsection (a), (b), or (c), or an increase in a cap amount under subsection (d), if eligibility standards, methodologies, or procedures under its State plan under title XIX of the Social Security Act (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)) are more restrictive than the eligibility standards, methodologies, or procedures, respectively, under such plan (or waiver) as in effect on July 1, 2008.~~

~~(2) STATE REINSTATEMENT OF ELIGIBILITY PERMITTED.—Subject to paragraph (3), a State that has restricted eligibility standards, methodologies, or procedures under its State plan under title XIX of the Social Security Act (including any waiver under such title or under section 1115 of such Act (42~~

~~U.S.C. 1315)) after July 1, 2008, is no longer ineligible under paragraph (1) beginning with the first calendar quarter in which the State 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.~~

~~(3) SPECIAL RULES.—A State shall not be ineligible under paragraph (1)—~~

~~(A) 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, 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~~

~~(B) on the basis of a restriction that was effective under State law as of July 1, 2008, and would have been in effect as of such date, but for a delay (of not longer than 1 calendar quarter) in the approval of a request for a new~~

~~waiver under section 1115 of such Act with respect to such restriction.~~

~~(4) STATE'S APPLICATION TOWARD RAINY DAY FUND.—A 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 any amounts attributable (directly or indirectly) to such increase are deposited or credited into any reserve or rainy day fund of the State.~~

~~(5) RULE OF CONSTRUCTION.—Nothing in paragraph (1) or (2) shall be construed as affecting a State's flexibility with respect to benefits offered under the State Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)).~~

~~(6) 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) REQUIREMENT FOR CERTAIN STATES.—In the case of a State that requires political subdivisions within the State to contribute toward 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 (a), (b), or (c), or an increase in a cap amount under subsection (d), if it requires that such political subdivisions pay a greater percentage of the non-Federal share of such expenditures for quarters during the recession adjustment period, than the 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) RECESSION ADJUSTMENT PERIOD.—The term "recession adjustment period" means the period beginning on October 1, 2008, and ending on December 31, 2010.~~

~~(3) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.~~

~~(4) SMAP.—The term "SMAP" means, for a State, 100 percent minus the Federal medical assistance percentage.~~

1 ~~(5) STATE.—The term "State" has the mean-~~
2 ~~ing given such term in section 1101(a)(1) of the So-~~
3 ~~cial Security Act (42 U.S.C. 1301(a)(1)) for pur-~~
4 ~~poses of title XIX of the Social Security Act (42~~
5 ~~U.S.C. 1396 et seq.).~~
6 ~~(i) SUNSET.—This section shall not apply to items~~
7 ~~and services furnished after the end of the recession ad-~~
8 ~~justment period.~~
9 ~~**SEC. 5002. MORATORIA ON CERTAIN REGULATIONS.**~~
10 ~~(a) EXTENSION OF MORATORIA ON CERTAIN MED-~~
11 ~~ICAID REGULATIONS.—The following sections are each~~
12 ~~amended by striking "April 1, 2009" and inserting "July~~
13 ~~1, 2009".~~
14 ~~(1) Section 7002(a)(1) of the U.S. Troop Read-~~
15 ~~iness, Veterans' Care, Katrina Recovery, and Iraq~~
16 ~~Accountability Appropriations Act, 2007 (Public~~
17 ~~Law 110–28), as amended by section 7001(a)(1) of~~
18 ~~the Supplemental Appropriations Act, 2008 (Public~~
19 ~~Law 110–252).~~
20 ~~(2) Section 206 of the Medicare, Medicaid, and~~
21 ~~SCHIP Extension Act of 2007 (Public Law 110–~~
22 ~~173), as amended by section 7001(a)(2) of the Sup-~~
23 ~~plemental Appropriations Act, 2008 (Public Law~~
24 ~~110–252).~~

1 ~~(3) Section 7001(a)(3)(A) of the Supplemental~~
2 ~~Appropriations Act, 2008 (Public Law 110–252).~~
3 ~~(b) ADDITIONAL MEDICAID MORATORIUM.—Not-~~
4 ~~withstanding any other provision of law, with respect to~~
5 ~~expenditures for services furnished during the period be-~~
6 ~~ginning on December 8, 2008 and ending on June 30,~~
7 ~~2009, the Secretary of Health and Human Services shall~~
8 ~~not take any action (through promulgation of regulation,~~
9 ~~issuance of regulatory guidance, use of Federal payment~~
10 ~~audit procedures, or other administrative action, policy, or~~
11 ~~practice, including a Medical Assistance Manual trans-~~
12 ~~mittal or letter to State Medicaid directors) to implement~~
13 ~~the final regulation relating to clarification of the defini-~~
14 ~~tion of outpatient hospital facility services under the Med-~~
15 ~~icaid program published on November 7, 2008 (73 Federal~~
16 ~~Register 66187).~~
17 **~~SEC. 5003. TRANSITIONAL MEDICAID ASSISTANCE (TMA).~~**
18 ~~(a) 18-MONTH EXTENSION.—~~
19 ~~(1) IN GENERAL.—Sections 1902(e)(1)(B) and~~
20 ~~1925(f) of the Social Security Act (42 U.S.C.~~
21 ~~1396a(e)(1)(B), 1396r–6(f)) are each amended by~~
22 ~~striking "September 30, 2003" and inserting "De-~~
23 ~~cember 31, 2010".~~
24 ~~(2) EFFECTIVE DATE.—The amendments made~~
25 ~~by this subsection shall take effect on July 1, 2009.~~

~~(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~~

1 heading "IN GENERAL.—" and with the same inden-
2 tation as subparagraph (B) (as added by paragraph
3 (3)); and
4 (3) by adding at the end the following:
5 "(B) STATE OPTION TO WAIVE REQUIRE-
6 MENT FOR 3 MONTHS BEFORE RECEIPT OF
7 MEDICAL ASSISTANCE.—A State may, at its op-
8 tion, elect also to apply subparagraph (A) in
9 the case of a family that was receiving such aid
10 for fewer than three months or that had applied
11 for and was eligible for such aid for fewer than
12 3 months during the 6 immediately preceding
13 months described in such subparagraph.".
14 (d) CMS REPORT ON ENROLLMENT AND PARTICIPA-
15 TION RATES UNDER TMA.—Section 1925 of such Act (42
16 U.S.C. 1396r–6), as amended by this section, is further
17 amended by adding at the end the following new sub-
18 section:
19 "(g) COLLECTION AND REPORTING OF PARTICIPA-
20 TION INFORMATION.—
21 "(1) COLLECTION OF INFORMATION FROM
22 STATES.—Each State shall collect and submit to the
23 Secretary (and make publicly available), in a format
24 specified by the Secretary, information on average
25 monthly enrollment and average monthly participa-

~~tion rates for adults and children under this section and of the number and percentage of children who become ineligible for medical assistance under this section whose medical assistance is continued under another eligibility category or who are enrolled under the State's child health plan under title XXI. Such information shall be submitted at the same time and frequency in which other enrollment information under this title is submitted to the Secretary.~~

~~"(2) ANNUAL REPORTS TO CONGRESS.—Using the information submitted under paragraph (1), the Secretary shall submit to Congress annual reports concerning enrollment and participation rates described in such paragraph.".~~

~~(c) EFFECTIVE DATE.—The amendments made by subsections (b) through (d) shall take effect on July 1, 2009.~~

~~SEC. 5004. PROTECTIONS FOR INDIANS UNDER MEDICAID AND CHIP.~~

~~(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—~~

1 ~~(A) in subsection (a), in the matter pre-~~
2 ~~ceding paragraph (1), by striking "and (i)" and~~
3 ~~inserting ", (i), and (j)"; and~~
4 ~~(B) by adding at the end the following new~~
5 ~~subsection:~~
6 ~~"(j) NO PREMIUMS OR COST SHARING FOR INDIANS~~
7 ~~FURNISHED ITEMS OR SERVICES DIRECTLY BY INDIAN~~
8 ~~HEALTH PROGRAMS OR THROUGH REFERRAL UNDER~~
9 ~~CONTRACT HEALTH SERVICES.—~~
10 ~~"(1) NO COST SHARING FOR ITEMS OR SERV-~~
11 ~~ICES FURNISHED TO INDIANS THROUGH INDIAN~~
12 ~~HEALTH PROGRAMS.—~~
13 ~~"(A) IN GENERAL.—No enrollment fee,~~
14 ~~premium, or similar charge, and no deduction,~~
15 ~~copayment, cost sharing, or similar charge shall~~
16 ~~be imposed against an Indian who is furnished~~
17 ~~an item or service directly by the Indian Health~~
18 ~~Service, an Indian Tribe, Tribal Organization,~~
19 ~~or Urban Indian Organization or through refer-~~
20 ~~ral under contract health services for which~~
21 ~~payment may be made under this title.~~
22 ~~"(B) NO REDUCTION IN AMOUNT OF PAY-~~
23 ~~MENT TO INDIAN HEALTH PROVIDERS.—Pay-~~
24 ~~ment due under this title to the Indian Health~~
25 ~~Service, an Indian Tribe, Tribal Organization,~~

~~or Urban Indian Organization, or a health care provider through referral under contract health services for the furnishing of an item or service to an Indian who is eligible for assistance under 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 Organiza-~~

~~tion 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.''.~~

~~(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on October 1, 2009.~~

~~(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), as amended by section 3003(a) of the Health Insurance Assistance for the Unemployed Act of 2009, is amended by adding at the end the following new subsection:~~

~~''(ee) 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 ~~"(1) Property, including real property and im-~~
2 ~~provements, that is held in trust, subject to Federal~~
3 ~~restrictions, or otherwise under the supervision of~~
4 ~~the Secretary of the Interior, located on a reserva-~~
5 ~~tion, including any federally recognized Indian~~
6 ~~Tribe's reservation, pueblo, or colony, including~~
7 ~~former reservations in Oklahoma, Alaska Native re-~~
8 ~~gions established by the Alaska Native Claims Set-~~
9 ~~tlement Act, and Indian allotments on or near a res-~~
10 ~~ervation as designated and approved by the Bureau~~
11 ~~of Indian Affairs of the Department of the Interior.~~
12 ~~"(2) For any federally recognized Tribe not de-~~
13 ~~scribed in paragraph (1), property located within the~~
14 ~~most recent boundaries of a prior Federal reserva-~~
15 ~~tion.~~
16 ~~"(3) Ownership interests in rents, leases, royal-~~
17 ~~ties, or usage rights related to natural resources (in-~~
18 ~~cluding extraction of natural resources or harvesting~~
19 ~~of timber, other plants and plant products, animals,~~
20 ~~fish, and shellfish) resulting from the exercise of fed-~~
21 ~~erally protected rights.~~
22 ~~"(4) Ownership interests in or usage rights to~~
23 ~~items not covered by paragraphs (1) through (3)~~
24 ~~that have unique religious, spiritual, traditional, or~~
25 ~~cultural significance or rights that support subsist-~~

~~ence 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 by adding at the end the following new subparagraph:~~

~~''(E) Section 1902(ff) (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. 5005. CONSULTATION ON MEDICAID AND CHIP.

(a) IN GENERAL.—Section 1139 of the Social Security Act (42 U.S.C. 1320b–9) is amended to read as follows:

''CONSULTATION WITH TRIBAL TECHNICAL ADVISORY GROUP (TTAG)

''SEC. 1139. The Secretary shall maintain within the Centers for Medicaid & Medicare Services (CMS) a Tribal Technical Advisory Group, which was first established in accordance with requirements of the charter dated September 30, 2003, and the Secretary shall include in such Group a representative of the Urban Indian Organizations and the Service. The representative of the Urban Indian Organization shall be deemed to be an elected officer of a tribal government for purposes of applying section 204(b) of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1534(b)).''.

(b) SOLICITATION OF ADVICE UNDER MEDICAID AND CHIP.—

(1) MEDICAID STATE PLAN AMENDMENT.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

~~(A) in paragraph (70), by striking "and" at the end;~~

~~(B) in paragraph (71), by striking the period at the end and inserting "; and"; and~~

~~(C) by inserting after paragraph (71), the following new paragraph:~~

~~"(72) in the case of any State in which 1 or more Indian Health Programs or Urban Indian Organizations furnishes health care services, provide for a process under which the State seeks advice on a regular, ongoing basis from designees of such Indian Health Programs and Urban Indian Organizations on matters relating to the application of this title that are likely to have a direct effect on such Indian Health Programs and Urban Indian Organizations and that—~~

~~"(A) shall include solicitation of advice prior to submission of any plan amendments, waiver requests, and proposals for demonstration projects likely to have a direct effect on Indians, Indian Health Programs, or Urban Indian Organizations; and~~

~~"(B) may include appointment of an advisory committee and of a designee of such Indian Health Programs and Urban Indian Orga-~~

~~nizations to the medical care advisory committee advising the State on its State plan under this title.''.~~

~~(2) APPLICATION TO CHIP.—Section 2107(e)(1) of such Act (42 U.S.C. 1397gg(e)(1)), as amended by section 5004(b), is amended by adding at the end the following new subparagraph:~~

~~''(F) 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.~~

~~SEC. 5006. TEMPORARY INCREASE IN DSH ALLOTMENTS DURING RECESSION.~~

~~Section 1923(f)(3) of the Social Security Act (42 U.S.C. 1396r–4(f)(3)) is amended—~~

~~(1) in subparagraph (A), by striking ''paragraph (6)'' and inserting ''paragraph (6) and subparagraph (E)''; and~~

1 ~~(2) by adding at the end the following new sub-~~
2 ~~paragraph:~~
3 ~~"(E) TEMPORARY INCREASE IN ALLOT-~~
4 ~~MENTS DURING RECESSION.—~~
5 ~~"(i) IN GENERAL.—Subject to clause~~
6 ~~(ii), the DSH allotment for any State—~~
7 ~~"(I) for fiscal year 2009 is equal~~
8 ~~to 102.5 percent of the DSH allot-~~
9 ~~ment that would be determined under~~
10 ~~this paragraph for the State for fiscal~~
11 ~~year 2009 without application of this~~
12 ~~subparagraph, notwithstanding sub-~~
13 ~~paragraph (B);~~
14 ~~"(II) for fiscal year 2010 is equal~~
15 ~~to 102.5 percent of the DSH allot-~~
16 ~~ment for the State for fiscal year~~
17 ~~2009, as determined under subclause~~
18 ~~(I); and~~
19 ~~"(III) for each succeeding fiscal~~
20 ~~year is equal to the DSH allotment~~
21 ~~for the State under this paragraph de-~~
22 ~~termined without applying subclauses~~
23 ~~(I) and (II).~~
24 ~~"(ii) APPLICATION.—Clause (i) shall~~
25 ~~not apply to a State for a year in the case~~

that the DSH allotment for such State for such year under this paragraph determined without applying clause (i) would grow higher than the DSH allotment specified under clause (i) for the State for such year.''.

TITLE VI—BROADBAND COMMUNICATIONS

SEC. 6001. INVENTORY OF BROADBAND SERVICE CAPABILITY AND AVAILABILITY.

(a) ESTABLISHMENT.—To provide a comprehensive nationwide inventory of existing broadband service capability and availability, the National Telecommunications and Information Administration (''NTIA'') shall develop and maintain a broadband inventory map of the United States that identifies and depicts the geographic extent to which broadband service capability is deployed and available from a commercial provider or public provider throughout each State.

(b) PUBLIC AVAILABILITY AND INTERACTIVITY.—Not later than 2 years after the date of enactment of this Act, the NTIA shall make the broadband inventory map developed and maintained pursuant to this section accessible by the public on a World Wide Web site of the NTIA in a form that is interactive and searchable.

~~SEC. 6002. WIRELESS AND BROADBAND DEPLOYMENT GRANT PROGRAMS.~~

~~(a) GRANTS AUTHORIZED.—~~

~~(1) IN GENERAL.—The National Telecommunications and Information Administration ("NTIA") is authorized to carry out a program to award grants to eligible entities for the non-recurring costs associated with the deployment of broadband infrastructure in rural, suburban, and urban areas, in accordance with the requirements of this section.~~

~~(2) PROGRAM WEBSITE.—The NTIA shall develop and maintain a website to make publicly available information about the program described in paragraph (1), including—~~

~~(A) each prioritization report submitted by a State under subsection (b);~~

~~(B) a list of eligible entities that have applied for a grant under this section, and the area or areas the entity proposes to serve; and~~

~~(C) the status of each such application, whether approved, denied, or pending.~~

~~(b) STATE PRIORITIES.—~~

~~(1) PRIORITIES REPORT SUBMISSION.—Not later than 75 days after the date of enactment of this section, each State intending to participate in the program under this section shall submit to the~~

~~NTIA a report indicating the geographic areas of the State which—~~

~~(A) for the purposes of determining the need for Wireless Deployment Grants under subsection (c), the State considers to have the greatest priority for—~~

~~(i) wireless voice service in unserved areas; and~~

~~(ii) advanced wireless broadband service in underserved areas; and~~

~~(B) for the purposes of determining the need for Broadband Deployment Grants under subsection (d), the State considers to have the greatest priority for—~~

~~(i) basic broadband service in unserved areas; and~~

~~(ii) advanced broadband service in underserved areas.~~

~~(2) LIMITATION.—The unserved and underserved areas identified by a State in the report required by this subsection shall not represent, in the aggregate, more than 20 percent of the population of such State.~~

~~(c) WIRELESS DEPLOYMENT GRANTS.—~~

~~(1) AUTHORIZED ACTIVITY.—The NTIA shall award Wireless Deployment Grants in accordance with this subsection from amounts authorized for Wireless Deployment Grants by this subtitle to eligible entities to deploy necessary infrastructure for the provision of wireless voice service or advanced wireless broadband service to end users in designated areas.~~

~~(2) GRANT DISTRIBUTION.—The NTIA shall seek to distribute grants, to the extent possible, so that 25 percent of the grants awarded under this subsection shall be awarded to eligible entities for providing wireless voice service to unserved areas and 75 percent of grants awarded under this subsection shall be awarded to eligible entities for providing advanced wireless broadband service to underserved areas.~~

~~(d) BROADBAND DEPLOYMENT GRANTS.—~~

~~(1) AUTHORIZED ACTIVITY.—The NTIA shall award Broadband Deployment Grants in accordance with this subsection from amounts authorized for Broadband Deployment Grants by this subtitle to eligible entities to deploy necessary infrastructure for the provision of basic broadband service or advanced broadband service to end users in designated areas.~~

~~(2) GRANT DISTRIBUTION.—The NTIA shall seek to distribute grants, to the extent possible, so that 25 percent of the grants awarded under this subsection shall be awarded to eligible entities for providing basic broadband service to unserved areas and 75 percent of grants awarded under this subsection shall be awarded to eligible entities for providing advanced broadband service to underserved areas.~~

~~(e) GRANT REQUIREMENTS.—The NTIA shall—~~

~~(1) adopt rules to protect against unjust enrichment; and~~

~~(2) ensure that grant recipients—~~

~~(A) meet buildout requirements;~~

~~(B) maximize use of the supported infrastructure by the public;~~

~~(C) operate basic and advanced broadband service networks on an open access basis;~~

~~(D) operate advanced wireless broadband service on a wireless open access basis; and~~

~~(E) adhere to the principles contained in the Federal Communications Commission's broadband policy statement (FCC 05–151, adopted August 5, 2005).~~

~~(f) APPLICATIONS.—~~

~~(1) SUBMISSION.—To be considered for a grant awarded under subsection (c) or (d), an eligible entity shall submit to the NTIA an application at such time, in such manner, and containing such information and assurances as the NTIA may require. Such an application shall include—~~

~~(A) a cost-study estimate for serving the particular geographic area to be served by the entity;~~

~~(B) a proposed build-out schedule to residential households and small businesses in the area;~~

~~(C) for applicants for Wireless Deployment Grants under subsection (c), a build-out schedule for geographic coverage of such areas; and~~

~~(D) any other requirements the NTIA deems necessary.~~

~~(2) SELECTION.—~~

~~(A) NOTIFICATION.—The NTIA shall notify each eligible entity that has submitted a complete application whether the entity has been approved or denied for a grant under this section in a timely fashion.~~

~~(B) GRANT DISTRIBUTION CONSIDERATIONS.—In awarding grants under this section, the NTIA shall, to the extent practical—~~

~~(i) award not less than one grant in each State;~~

~~(ii) give substantial weight to whether an application is from an eligible entity to deploy infrastructure in an area that is an area—~~

~~(I) identified by a State in a report submitted under subsection (b); or~~

~~(II) in which the NTIA determines there will be a significant amount of public safety or emergency response use of the infrastructure;~~

~~(iii) consider whether an application from an eligible entity to deploy infrastructure in an area—~~

~~(I) will, if approved, increase the affordability of, or subscribership to, service to the greatest population of underserved users in the area;~~

~~(II) will, if approved, enhance service for health care delivery, edu-~~

~~cation, or children to the greatest population of underserved users in the area;~~

~~(III) contains concrete plans for enhancing computer ownership or computer literacy in the area;~~

~~(IV) is from a recipient of more than 20 percent matching grants from State, local, or private entities for service in the area and the extent of such commitment;~~

~~(V) will, if approved, result in unjust enrichment because the eligible entity has applied for, or intends to apply for, support for the non-recurring costs through another Federal program for service in the area; and~~

~~(VI) will, if approved, significantly improve interoperable broadband communications systems available for use by public safety and emergency response; and~~

~~(iv) consider whether the eligible entity is a socially and economically disadvantaged small business concern, as defined~~

~~under section 8(a) of the Small Business Act (15 U.S.C. 637).~~

~~(g) COORDINATION AND CONSULTATION.—The NTIA shall coordinate with the Federal Communications Commission and shall consult with other appropriate Federal agencies in implementing this section.~~

~~(h) REPORT REQUIRED.—The NTIA shall submit an annual report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate for 5 years assessing the impact of the grants funded under this section on the basis of the objectives and criteria described in subsection (f)(2)(B)(iii).~~

~~(i) RULEMAKING AUTHORITY.—The NTIA shall have the authority to prescribe such rules as necessary to carry out the purposes of this section.~~

~~(j) DEFINITIONS.—For the purpose of this section—~~

~~(1) the term "advanced broadband service" means a service delivering data to the end user transmitted at a speed of at least 45 megabits per second downstream and at least 15 megabits per second upstream;~~

~~(2) the term "advanced wireless broadband service" means a wireless service delivering to the end user data transmitted at a speed of at least 3~~

~~megabits per second downstream and at least 1 megabit per second upstream over an end-to-end internet protocol wireless network;~~

~~(3) the term "basic broadband service" means a service delivering data to the end user transmitted at a speed of at least 5 megabits per second downstream and at least 1 megabit per second upstream;~~

~~(4) the term "eligible entity" means—~~

~~(A) a provider of wireless voice service, advanced wireless broadband service, basic broadband service, or advanced broadband service, including a satellite carrier that provides any such service;~~

~~(B) a State or unit of local government, or agency or instrumentality thereof, that is or intends to be a provider of any such service; and~~

~~(C) any other entity, including construction companies, tower companies, backhaul companies, or other service providers, that the NTIA authorizes by rule to participate in the programs under this section, if such other entity is required to provide access to the supported infrastructure on a neutral, reasonable basis to maximize use;~~

~~(5) the term "interoperable broadband communications systems" means communications systems which enable public safety agencies to share information among local, State, Federal, and tribal public safety agencies in the same area using voice or data signals via advanced wireless broadband service;~~

~~(6) the term "open access" shall be defined by the Federal Communications Commission not later than 45 days after the date of enactment of this section;~~

~~(7) the term "State" includes the District of Columbia and the territories and possessions;~~

~~(8) the term "underserved area" shall be defined by the Federal Communications Commission not later than 45 days after the date of enactment of this section;~~

~~(9) the term "unserved area" shall be defined by the Federal Communications Commission not later than 45 days after the date of enactment of this section;~~

~~(10) the term "wireless open access" shall be defined by the Federal Communications Commission not later than 45 days after the date of enactment of this section; and~~

1 ~~(11) the term "wireless voice service" means~~
2 ~~the provision of two-way, real-time, voice commu-~~
3 ~~nications using a mobile service.~~
4 ~~(k) REVIEW OF DEFINITIONS.—Not later than 3~~
5 ~~months after the date the NTIA makes a broadband in-~~
6 ~~ventory map of the United States accessible to the public~~
7 ~~pursuant to section 6001(b), the Federal Communications~~
8 ~~Commission shall review the definitions of "underserved~~
9 ~~area" and "unserved area", as defined by the Commission~~
10 ~~within 45 days after the date of enactment of this Act~~
11 ~~(as required by paragraphs (8) and (9) of subsection (j)),~~
12 ~~and shall revise such definitions based on the data used~~
13 ~~by the NTIA to develop and maintain such map.~~
14 **~~SEC. 6003. NATIONAL BROADBAND PLAN.~~**
15 ~~(a) REPORT REQUIRED.—Not later than 1 year after~~
16 ~~the date of enactment of this section, the Federal Commu-~~
17 ~~nications Commission shall submit to the Committee on~~
18 ~~Energy and Commerce of the House of Representatives~~
19 ~~and the Committee on Commerce, Science, and Transpor-~~
20 ~~tation of the Senate, a report containing a national~~
21 ~~broadband plan.~~
22 ~~(b) CONTENTS OF PLAN.—The national broadband~~
23 ~~plan required by this section shall seek to ensure that all~~
24 ~~people of the United States have access to broadband ca-~~

~~pability and shall establish benchmarks for meeting that goal. The plan shall also include—~~

~~(1) an analysis of the most effective and efficient mechanisms for ensuring broadband access by all people of the United States;~~

~~(2) a detailed strategy for achieving affordability of such service and maximum utilization of broadband infrastructure and service by the public; and~~

~~(3) a plan for use of broadband infrastructure and services in advancing consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, worker training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes.~~

~~TITLE VII—ENERGY~~

~~SEC. 7001. TECHNICAL CORRECTIONS TO THE ENERGY INDEPENDENCE AND SECURITY ACT OF 2007.~~

~~(a) Section 543(a) of the Energy Independence and Security Act of 2007 (42 U.S.C. 17153(a)) is amended—~~

~~(1) by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively; and~~

~~(2) by striking paragraph (1) and inserting the following:~~

~~"(1) 34 percent to eligible units of local government–alternative 1, in accordance with subsection (b);~~

~~"(2) 34 percent to eligible units of local government–alternative 2, in accordance with subsection (b);".~~

~~(b) Section 543(b) of the Energy Independence and Security Act of 2007 (42 U.S.C. 17153(b)) is amended by striking "subsection (a)(1)" and inserting "subsection (a)(1) or (2)".~~

~~(c) Section 548(a)(1) of the Energy Independence and Security Act of 2007 (42 U.S.C. 17158(a)(1)) is amending by striking "; provided" and all that follows through "541(3)(B)".~~

~~SEC. 7002. AMENDMENTS TO TITLE XIII OF THE ENERGY INDEPENDENCE AND SECURITY ACT OF 2007.~~

~~Title XIII of the Energy Independence and Security Act of 2007 (42 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 in urban, suburban, and rural areas, including areas where electric system assets are controlled by tax-exempt entities and areas where electric system assets are controlled by investor-owned utilities.''.~~

~~(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 after section 1304(b)(3)(D) the following new subparagraphs:~~

~~''(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 finan-~~

~~cial 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.~~

~~"(F) OPEN PROTOCOLS AND STANDARDS.—The Secretary shall require as a condition of receiving funding under this subsection that demonstration projects utilize Internet-based or other open protocols and standards if available and appropriate.".~~

~~(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 (c) of section 1306 to read as follows:~~

~~"(c) PROCEDURES AND RULES.—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) require as a condition of receiving a grant under this section that grant recipients utilize Internet-based or other open protocols and standards if available and appropriate;~~

~~"(3) establish procedures to ensure that there is no duplication or multiple payment or recovery 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;~~

1 ~~"(4) maintain public records of grants made,~~
2 ~~recipients, and qualifying smart grid investments~~
3 ~~which have received grants;~~
4 ~~"(5) establish procedures to provide advance~~
5 ~~payment of moneys up to the full amount of the~~
6 ~~grant award; and~~
7 ~~"(6) have and exercise the discretion to deny~~
8 ~~grants for investments that do not qualify in the~~
9 ~~reasonable judgment of the Secretary.".~~
10 ~~**SEC. 7003. RENEWABLE ENERGY AND ELECTRIC POWER**~~
11 ~~**TRANSMISSION LOAN GUARANTEE PROGRAM.**~~
12 ~~(a) AMENDMENT.—Title XVII of the Energy Policy~~
13 ~~Act of 2005 (42 U.S.C. 16511 et seq.) is amended by add-~~
14 ~~ing the following at the end:~~
15 ~~**"SEC. 1705. TEMPORARY PROGRAM FOR RAPID DEPLOY-**~~
16 ~~**MENT OF RENEWABLE ENERGY AND ELEC-**~~
17 ~~**TRIC POWER TRANSMISSION PROJECTS.**~~
18 ~~"(a) IN GENERAL.—Notwithstanding section 1703,~~
19 ~~the Secretary may make guarantees under this section~~
20 ~~only for commercial technology projects under subsection~~
21 ~~(b) that will commence construction not later than Sep-~~
22 ~~tember 30, 2011.~~
23 ~~"(b) CATEGORIES.—Projects from only the following~~
24 ~~categories shall be eligible for support under this section:~~

1 ~~"(1) Renewable energy systems, including incre-~~
2 ~~mental hydropower, that generate electricity.~~
3 ~~"(2) Electric power transmission systems, in-~~
4 ~~cluding upgrading and reconductoring projects.~~
5 ~~"(3) Leading edge biofuel projects that will use~~
6 ~~technologies performing at the pilot or demonstra-~~
7 ~~tion scale that the Secretary determines are likely to~~
8 ~~become commercial technologies and will produce~~
9 ~~transportation fuels that substantially reduce life-~~
10 ~~cycle greenhouse gas emissions compared to other~~
11 ~~transportation fuels.~~
12 ~~"(c) FACTORS RELATING TO ELECTRIC POWER~~
13 ~~TRANSMISSION SYSTEMS.—In determining to make guar-~~
14 ~~antees to projects described in subsection (b)(2), the Sec-~~
15 ~~retary shall consider the following factors:~~
16 ~~"(1) The viability of the project without guar-~~
17 ~~antees.~~
18 ~~"(2) The availability of other Federal and State~~
19 ~~incentives.~~
20 ~~"(3) The importance of the project in meeting~~
21 ~~reliability needs.~~
22 ~~"(4) The effect of the project in meeting a~~
23 ~~State or region's environment (including climate~~
24 ~~change) and energy goals.~~

1 ~~"(d) WAGE RATE REQUIREMENTS.—The Secretary~~
2 ~~shall require that each recipient of support under this sec-~~
3 ~~tion provide reasonable assurance that all laborers and~~
4 ~~mechanics employed in the performance of the project for~~
5 ~~which the assistance is provided, including those employed~~
6 ~~by contractors or subcontractors, will be paid wages at~~
7 ~~rates not less than those prevailing on similar work in the~~
8 ~~locality as determined by the Secretary of Labor in accord-~~
9 ~~ance with subchapter IV of chapter 31 of part A of subtitle~~
10 ~~II of title 40, United States Code (commonly referred to~~
11 ~~as the 'Davis-Bacon Act').~~

12 ~~"(e) LIMITATION.—Funding under this section for~~
13 ~~projects described in subsection (b)(3) shall not exceed~~
14 ~~$500,000,000.~~

15 ~~"(f) SUNSET.—The authority to enter into guaran-~~
16 ~~tees under this section shall expire on September 30,~~
17 ~~2011.".~~

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

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

~~SEC. 7004. WEATHERIZATION ASSISTANCE 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) EFFECTIVE USE OF FUNDS.—In providing funds made available by this Act for the Weatherization Assistance Program, the Secretary may encourage States to give priority to using such funds for the most cost-effective efficiency activities, which may include insulation of attics, if, in the Secretary's view, such use of funds would increase the effectiveness of the program.~~

~~SEC. 7005. RENEWABLE ELECTRICITY TRANSMISSION STUDY.~~

~~In completing the 2009 National Electric Transmission Congestion Study, the Secretary of Energy shall include—~~

~~(1) an analysis of the significant potential sources of renewable energy that are constrained in accessing appropriate market areas by lack of adequate transmission capacity;~~

~~(2) an analysis of the reasons for failure to develop the adequate transmission capacity;~~

~~(3) recommendations for achieving adequate transmission capacity;~~

~~(4) an analysis of the extent to which legal challenges filed at the State and Federal level are delaying the construction of transmission necessary to access renewable energy; and~~

~~(5) an explanation of assumptions and projections made in the Study, including—~~

~~(A) assumptions and projections relating to energy efficiency improvements in each load center;~~

~~(B) assumptions and projections regarding the location and type of projected new generation capacity; and~~

~~(C) assumptions and projections regarding projected deployment of distributed generation infrastructure.~~

~~SEC. 7006. ADDITIONAL STATE ENERGY GRANTS.~~

~~(a) IN GENERAL.—Amounts appropriated in paragraph (6) under the heading "Department of Energy—Energy Programs—Energy Efficiency and Renewable Energy" in title V of division A of this Act shall be available to the Secretary of Energy for making additional grants~~

~~under part D of title III of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.). The Secretary shall make grants under this section in excess of the base allocation established for a State under regulations issued pursuant to the authorization provided in section 365(f) of such Act only if the governor of the recipient State notifies the Secretary of Energy that the governor will seek, to the extent of his or her authority, to ensure that each of the following will occur:~~

~~(1) The applicable State regulatory authority will implement the following regulatory policies for each electric and gas utility with respect to which the State regulatory authority has ratemaking authority:~~

~~(A) Policies that ensure that a utility's recovery of prudent fixed costs of service is timely and independent of its retail sales, without in the process shifting prudent costs from variable to fixed charges. This cost shifting constraint shall not apply to rate designs adopted prior to the date of enactment of this Act.~~

~~(B) Cost recovery for prudent investments by utilities in energy efficiency.~~

~~(C) An earnings opportunity for utilities associated with cost-effective energy efficiency savings.~~

~~(2) The State, or the applicable units of local government that have authority to adopt building codes, will implement the following:~~

~~(A) A building energy code (or codes) for residential buildings that meets or exceeds the most recently published International Energy Conservation Code, or achieves equivalent or greater energy savings.~~

~~(B) A building energy code (or codes) for commercial buildings throughout the State that meets or exceeds the ANSI/ASHRAE/IESNA Standard 90.1–2007, or achieves equivalent or greater energy savings.~~

~~(C) A plan for the jurisdiction achieving compliance with the building energy code or codes described in subparagraphs (A) and (B) within 8 years of the date of enactment of this Act in at least 90 percent of new and renovated residential and commercial building space. Such plan shall include active training and enforcement programs and measurement of the rate of compliance each year.~~

~~(3) The State will to the extent practicable prioritize the grants toward funding energy efficiency and renewable energy programs, including—~~

~~(A) the expansion of existing energy efficiency programs approved by the State or the appropriate regulatory authority, including energy efficiency retrofits of buildings and industrial facilities, that are funded—~~

~~(i) by the State; or~~

~~(ii) through rates under the oversight of the applicable regulatory authority, to the extent applicable;~~

~~(B) the expansion of existing programs, approved by the State or the appropriate regulatory authority, to support renewable energy projects and deployment activities, including programs operated by entities which have the authority and capability to manage and distribute grants, loans, performance incentives, and other forms of financial assistance; and~~

~~(C) cooperation and joint activities between States to advance more efficient and effective use of this funding to support the priorities described in this paragraph.~~

~~(b) STATE MATCH.—The State cost share requirement under the item relating to "DEPARTMENT OF ENERGY; energy conservation" in title II of the Department of the Interior and Related Agencies Appropriations Act, 1985 (42 U.S.C. 6323a; 98 Stat. 1861) shall not apply to assistance provided under this section.~~

~~(c) EQUIPMENT AND MATERIALS FOR ENERGY EFFICIENCY MEASURES.—No limitation on the percentage of funding that may be used for the purchase and installation of equipment and materials for energy efficiency measures under grants provided under part D of title III of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.) shall apply to assistance provided under this section.~~

~~SEC. 7007. INAPPLICABILITY OF LIMITATION.~~

~~The limitations in section 399A(f)(2), (3), and (4) of the Energy Policy and Conservation Act (42 U.S.C. 6371h–1(f)(2), (3), and (4)) shall not apply to grants funded with appropriations provided by this Act, except that such grant funds shall be available for not more than an amount equal to 80 percent of the costs of the project for which the grant is provided.~~

SECTION 1. SHORT TITLE.

This Act may be cited as the "American Recovery and Reinvestment Act of 2009".

1 ***SEC. 2. TABLE OF CONTENTS.***

2 *The table of contents for this Act is as follows:*

DIVISION A—APPROPRIATIONS PROVISIONS

TITLE I—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES
TITLE II—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES
TITLE III—DEPARTMENT OF DEFENSE
TITLE IV—ENERGY AND WATER DEVELOPMENT
TITLE V—FINANCIAL SERVICES AND GENERAL GOVERNMENT
TITLE VI—DEPARTMENT OF HOMELAND SECURITY
TITLE VII—INTERIOR, ENVIRONMENT, AND RELATED AGENCIES
TITLE VIII—DEPARTMENTS OF LABOR, HEALTH AND HUMAN 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

3 ***SEC. 3. REFERENCES.***

4 *Except as expressly provided otherwise, any reference*
5 *to "this Act" contained in any division of this Act shall*
6 *be treated as referring only to the provisions of that divi-*
7 *sion.*

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", $200,000,000, 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, 2011, for oversight and audit of programs, grants, and activities funded under this title and an additional $17,500,000 for such purposes, to remain available until September 30, 2011.

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), $50,000,000, to remain available until September 30, 2010.

FARM SERVICE AGENCY

AGRICULTURAL CREDIT INSURANCE FUND PROGRAM 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", $65,000,000, to remain available until September 30, 2010.

RURAL DEVELOPMENT SALARIES AND EXPENSES

For an additional amount for "Rural Development, Salaries and Expenses", $80,000,000, 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., $100,000,000, 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, $100,000,000, 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 remain 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 describing 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 September 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 provided 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 appropriated 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 indem-

nified 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 non-insured 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 non-insured crop disaster assistance program 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 substantial 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 $50,000,000, 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).

(e) ADMINISTRATION.—There is hereby appropriated $54,000,000 to carry out this section.

SEC. 104. (a) Hereafter, in this section, the term "non-ambulatory 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", $7,000,000,000, to remain available until September 30, 2010: Provided, That of the funds provided under this heading, $6,650,000,000 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 "Department 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", $168,000,000, to remain available until September 30, 2010.

CONSTRUCTION OF RESEARCH FACILITIES

For an additional amount for "Construction of Research Facilities", $307,000,000, 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", $377,000,000, to remain available until September 30, 2010.

PROCUREMENT, ACQUISITION AND CONSTRUCTION

For an additional amount for "Procurement, Acquisition and Construction", $645,000,000, to remain available until September 30, 2010.

OFFICE OF INSPECTOR GENERAL

For an additional amount for "Office of Inspector General", $6,000,000, to remain available until September 30, 2012.

DEPARTMENT OF JUSTICE

GENERAL ADMINISTRATION

TACTICAL LAW ENFORCEMENT WIRELESS COMMUNICATIONS

For an additional amount for "Tactical Law Enforcement Wireless Communications", $100,000,000 for the costs of developing and implementing a nationwide Integrated Wireless network supporting Federal law enforcement, to remain available until September 30, 2010.

DETENTION TRUSTEE

For an additional amount for "Detention Trustee", $100,000,000, 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, 2011.

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", $100,000,000, 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", $300,000,000, to remain available until September 30, 2010.

FEDERAL PRISON SYSTEM

BUILDINGS AND FACILITIES

For an additional amount for "Federal Prison System, Buildings and Facilities", $800,000,000, 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", $1,200,000,000 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", $300,000,000 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", $90,000,000, 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 Traf-

ficking 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 additional 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", $450,000,000, to remain available until September 30, 2010.

AERONAUTICS

For an additional amount for "Aeronautics", $200,000,000, to remain available until September 30, 2010.

EXPLORATION

For an additional amount for "Exploration", $450,000,000, to remain available until September 30, 2010.

CROSS AGENCY SUPPORT

For an additional amount for "Cross Agency Support", $200,000,000, 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, 2011.

NATIONAL SCIENCE FOUNDATION

RESEARCH AND RELATED ACTIVITIES

For an additional amount for "Research and Related Activities", $1,000,000,000, 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, 2011.

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 deter-

mines 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 quarterly, 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 serv-

ice 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, 2011, and an additional $3,000,000 for such purposes, to remain available until September 30, 2011.

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 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 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 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 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 chan-

nels, 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 pre-placement 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 governments, federally recognized Indian tribes, and others, $1,400,000,000; of which such amounts as may be necessary may be advanced to the Colorado River Dam Fund: Provided, That of the total appropriated, the amount for program activities that can be financed by the Reclamation Fund or the Bureau of Reclamation special fee account established by 16 U.S.C. 460l–6a(i) shall be derived from that Fund or account: Provided further, That funds contributed

under 43 U.S.C. 395 are available until expended for the purposes for which contributed: Provided further, That funds advanced under 43 U.S.C. 397a shall be credited to this account and are available until expended for the same purposes as the sums appropriated under this heading: 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 in this Act shall be used for elements of projects, programs or activities that can be completed within these funding amounts and not create budgetary obligations in future fiscal years: Provided further, That $50,000,000 of the funds provided under this heading may be transferred to the Department of the Interior 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: Pro-

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

(A) building energy codes for residential buildings that the Secretary determines are likely to meet or exceed the 2009 International Energy Conservation Code;

(B) building energy codes for commercial buildings that the Secretary determines are likely to meet or exceed the ANSI/ASHRAE/IESNA Standard 90.1–2007; and

(C) a plan for implementing and enforcing the building energy codes described in subparagraphs (A) and (B) that is likely to ensure that at least 90 percent of the new and renovated residential and commercial building space will meet the standards within 8 years after the date of enactment of this 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 expenses, to remain available until September 30, 2010: Provided, That $100,000,000 shall be available for worker training activities: 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: Pro-

vided 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: Provided, That for the purpose of facilitating the development of regional transmission plans, the Office of Electricity Delivery and Energy Reliability within the Department of Energy is provided $80,000,000 within the available funds to conduct a resource assessment and an analysis of future demand and transmission requirements: Provided further, That the Office of Electricity Delivery and Energy Reliability will provide technical assistance to 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 power-plant(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", $330,000,000, 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: Provided, That these amounts are in addition to any authority provided elsewhere in this Act and this and previous fiscal years: Provided further, That such sums as are derived from amounts received from borrowers pursuant to section 1702(b)(2) of the Energy Policy Act of 2005 under this heading in this and prior Acts, shall be collected in accordance with section 502(7) of the Congressional Budget Act of 1974: Provided further, That the source of such payment received from borrowers is not a loan or other debt obligation that is guaranteed by the Federal Government: Provided further, That pursuant to section 1702(b)(2) of the Energy Policy Act of 2005, no appropriations are available

to pay the subsidy cost of such guarantees: Provided further, That none of the loan guarantee authority made available in this Act shall be available for commitments to guarantee loans under section 1702(b)(2) of the Energy Policy Act of 2005 for any projects where funds, personnel, or property (tangible or intangible) of any Federal agency, instrumentality, personnel or affiliated entity are expected to be used (directly or indirectly) through acquisitions, contracts, demonstrations, exchanges, grants, incentives, leases, procurements, sales, other transaction authority, or other arrangements, to support the project or to obtain goods or services from the project: Provided further, That none of the loan guarantee 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, $8,500,000,000, 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 September 30, 2012, and an additional $10,000,000 for such purposes, to remain available until September 30, 2012.

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 Administration 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 judg-

ment 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 Sec-

retary 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 Con-

servation 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 sub-

sidiaries 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.

DISTRICT OF COLUMBIA

FEDERAL PAYMENTS

FEDERAL PAYMENT TO THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

For a Federal payment to the District of Columbia Water and Sewer Authority, $125,000,000, to remain available until September 30, 2010, to continue implementation of the Combined Sewer Overflow Long-Term Control Plan: Provided, That the District of Columbia Water and Sewer Authority provide a 100 percent match for this payment: Provided further, That no later than 60 days after the date of enactment of this Act, the District of Columbia Water and Sewer Authority 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: Provided further, That such expenditure plan shall

include a description of each specific project, how specific projects will further the objectives of the Long-Term Control Plan, and all funding sources for each project.

GENERAL SERVICES ADMINISTRATION

REAL PROPERTY ACTIVITIES

FEDERAL BUILDINGS FUND

LIMITATIONS ON AVAILABILITY OF REVENUE

(INCLUDING TRANSFER OF FUNDS)

For an additional amount to be deposited in the Federal Buildings Fund, $5,548,000,000, to carry out the purposes of the Fund, of which not less than $1,400,000,000 shall be available for Federal buildings and United States courthouses, not less than $1,200,000,000 shall be available for border stations, and not less than $2,500,000,000 shall be available for measures necessary to convert GSA facilities to High-Performance Green Buildings, as defined in section 401 of Public Law 110–140: Provided, That not to exceed $108,000,000 of the amounts provided under this heading may be expended for rental of space, related to leasing of temporary space in connection with projects funded under this heading: Provided further, That not to exceed $127,000,000 of the amounts provided under this heading may be expended for building operations, for the administrative costs of completing projects funded under this heading: Provided further, That not less than $5,000,000,000 of

the funds provided under this heading shall be obligated by September 30, 2010: 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, $300,000,000, 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 and an additional $5,000,000 for such purposes, to remain available until September 30, 2012.

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 loans, $615,000,000, to remain available until September 30, 2010: Provided, That of the amount for the cost of guaranteed loans, $515,000,000 shall be for loan subsidies and loan modifications for loans to small business concerns authorized in section 501(a) of this title; and $100,000,000 shall be for loan subsidies and loan modifications for loans to small business concerns authorized in section 501(b) of this title: Provided further, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.

ADMINISTRATIVE PROVISIONS—SMALL BUSINESS ADMINISTRATION

SEC. 501. ECONOMIC STIMULUS FOR SMALL BUSINESS CONCERNS. (a) TEMPORARY FEE ELIMINATION FOR THE 7(a) LOAN PROGRAM.—Until September 30, 2010, and to the extent that the cost of such elimination of fees is offset by appropriations, with respect to each loan guaranteed under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) for which the application is approved on or after the date of enactment of this Act, the Administrator shall—

(1) in lieu of the fee otherwise applicable under section 7(a)(23)(A) of the Small Business Act (15 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".

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

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

"(A) the project financed under this title involves the expansion of a small business concern;

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

"(C) the existing indebtedness was incurred for the benefit of the small business concern;

"(D) the proceeds of the existing indebtedness were used to acquire land (including a building situated thereon), to construct or expand a building thereon, or to purchase equipment;

"(E) the borrower has been current on all 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).

SEC. 505. SURETY BONDS.

(a) MAXIMUM BOND AMOUNT.—Section 411(a)(1) of the Small Business Investment Act of 1958 (15 U.S.C. 694b(a)(1)) is amended—

(1) by inserting "(A)" after "(1)";

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

(3) by adding at the end the following:

"(B) The Administrator may guarantee a surety under subparagraph (A) for a total work order or contract amount that does not exceed $10,000,000, if a contracting officer of a Federal agency certifies that such a guarantee is necessary.".

(b) SIZE STANDARDS.—Section 410 of the Small Business Investment Act of 1958 (15 U.S.C. 694a) is amended by adding at the end the following:

"(9) Notwithstanding any other provision of law or any rule, regulation, or order of the Administration, for purposes of sections 410, 411, and 412 the term 'small business concern' means a business concern that meets the size standard for the primary industry in which such business concern, and the affiliates of such business concern, is engaged, as determined by the Administrator in accordance with the North American Industry Classification System.".

(c) SUNSET.—The amendments made by this section shall remain in effect until September 30, 2010.

SEC. 506.—OFFICE OF INSPECTOR GENERAL. For an additional amount for "Treasury Office of Inspector General for Tax Administration", $7,000,000, to remain available until September 30, 2012, for oversight and audit of programs grants and activities funded under this title.

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", $198,000,000, to remain available until September 30, 2011, solely for planning, design, and construction costs, including site security, information technology infrastructure, 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, 2012, 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", $1,000,000,000, 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", $450,000,000, to remain available until September 30, 2010, of which $195,000,000 shall be for shore facilities and aids to navigation facilities; and of which $255,000,000 shall be for priority procurements due to materials and labor cost increases, and to repair, renovate, assess, or improve vessels: 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 Sys-

temwide Amtrak Security Upgrades under sections 1406, 1513, and 1514 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110–53; 6 U.S.C. 1135, 1163, and 1164).

(2) $100,000,000, to remain available until September 30, 2010, for Port Security Grants in accordance with 46 U.S.C. 70107, notwithstanding 46 U.S.C. 70107(c).

(3) $250,000,000, to remain available until September 30, 2010, for upgrading, modifying, or constructing emergency operations centers under section 614 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, notwithstanding section 614(c) of that Act or for upgrading, modifying, or constructing State and local fusion centers as defined by section 210A(j)(1) of the Homeland Security Act of 2002 (6 U.S.C. 124h(j)(1)).

(4) $500,000,000 for construction to upgrade or modify critical infrastructure, as defined in section 1016(e) of the USA PATRIOT Act of 2001 (42 U.S.C. 5195c(e)), to mitigate consequences related to potential damage from all-hazards: Provided, That funds in this paragraph shall remain available until September 30, 2011: Provided further, That 5 percent shall be for program administration: Provided fur-

ther, 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.

GENERAL PROVISIONS—THIS TITLE

SEC. 601. Notwithstanding any other provision of law, the President shall establish an arbitration panel under the Federal Emergency Management Agency public assistance program to expedite the recovery efforts from Hurricanes Katrina, Rita, Gustav, and Ike within the Gulf Coast Re-

gion. The arbitration panel shall have sufficient authority regarding the award or denial of disputed public assistance applications for covered hurricane damage under section 403, 406, or 407 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170b, 5172, or 5173) for a project the total amount of which is more than $500,000.

SEC. 602. The Administrator of the Federal Emergency Management Agency may not prohibit or restrict the use of funds designated under the hazard mitigation grant program for damage caused by Hurricanes Katrina and Rita if the homeowner who is an applicant for assistance under such program commenced work otherwise eligible 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", $165,000,000, 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.

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 September 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, 2011, and an additional $7,400,000 for such purposes, to remain available until September 30, 2011.

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.

ENVIROMENTAL PROTECTION AGENCY

HAZARDOUS SUBSTANCE SUPERFUND

(INCLUDING TRANSFERS OF FUNDS)

For an additional amount for "Hazardous Substance Superfund", $600,000,000, 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.

STATE AND TRIBAL ASSISTANCE GRANTS

(INCLUDING TRANSFERS OF FUNDS)

For an additional amount for "State and Tribal Assistance Grants", $6,400,000,000, to remain available until September 30, 2010, of which $4,000,000,000 shall be for making capitalization grants for the Clean Water State Revolving Funds under title VI of the Federal Water Pollution Control Act, as amended; of which $2,000,000,000 shall be for making capitalization grants for the Drinking Water State Revolving Fund under section 1452 of the Safe Drinking Water Act, as amended; of which $100,000,000 shall be available for Brownfields remediation grants pursuant to section 104(k)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as

amended; and of which $300,000,000 shall be for Diesel Emission Reduction Act grants pursuant to title VII, subtitle G of the Energy Policy Act of 2005, as amended: Provided, That notwithstanding the priority ranking they would otherwise receive under each program, priority for funds appropriated herein for the Clean Water State Revolving Funds and Drinking Water State Revolving Funds (Revolving Funds) shall be allocated to projects that are ready to proceed to construction within 180 days of enactment of this Act: Provided further, That the Administrator of the Environmental 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 expedite 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", $485,000,000, 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 $260,000,000 is available for work on State and private lands using all the authorities available to the Forest Service: Provided, That of the funds provided for State and private land fuels reduction activities, up to $50,000,000 may be used to make grants for the purpose of creating incentives for increased use of biomass from national forest lands.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

INDIAN HEALTH SERVICE

INDIAN HEALTH SERVICES

For an additional amount for "Indian Health Services", $135,000,000, to remain available until September 30, 2010, of which $50,000,000 is for contract health services; and of which $85,000,000 is for health information technology: Provided, That the amount made available for health information technology activities may be used for

both telehealth services development and related infrastructure requirements that are typically funded through the "Indian Health Facilities" account: Provided further, That notwithstanding any other provision of law, health information technology funds provided within this title shall be allocated at the discretion of the Director of the Indian Health Service.

INDIAN HEALTH FACILITIES

For an additional amount for "Indian Health Facilities", $410,000,000, to remain available until September 30, 2010: Provided, That for the purposes of this Act, 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", $75,000,000, 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 Com-

mittees 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 indus-

try 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 available 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, 2011, 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", $1,958,000,000, 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 and other components of the Department of Health and Human Services, including renovation and fit-out costs, and of which $1,870,000,000 shall be for grants for construction, renovation and equipment for health centers receiving operating grants under section 330 of the Public Health Service Act, notwithstanding the limitation in section 330(e)(3).

CENTERS FOR DISEASE CONTROL AND PREVENTION

DISEASE CONTROL, RESEARCH, AND TRAINING

For an additional amount for "Disease Control, Research, and Training" for acquisition of real property, equipment, construction, and renovation of facilities, including necessary repairs and improvements to leased laboratories, $412,000,000, which shall remain available through September 30, 2010: Provided, That notwithstanding any other provision of law, the Centers for Disease

Control and Prevention may award a single contract or related contracts for development and construction of facilities that collectively include the full scope of the project: Provided further, That the solicitation and contract shall contain the clause "availability of funds" found 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 Clinical Center, the Global Fund for HIV/AIDS, Tuberculosis and Malaria, or the Office of the Director (except for the transfer to the Common Fund).

The additional amount available for 'Office of the Director' in the previous sentence shall be increased by $6,500,000,000: Provided, That a total of $7,850,000,000 shall be transferred pursuant to such sentence: Provided further, That any amounts in this sentence shall be 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.

BUILDINGS AND FACILITIES

For an additional amount for "Buildings and Facilities", $500,000,000, which shall be available through September 30, 2010, to fund high-priority repair, construction and improvement projects for National Institutes of Health

facilities on the Bethesda, Maryland campus and other agency locations.

AGENCY FOR HEALTHCARE RESEARCH AND QUALITY

HEALTHCARE RESEARCH AND QUALITY

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for "Healthcare Research and Quality" to carry out titles III and IX of the Public Health Service Act, part A of title XI of the Social Security Act, and section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, $700,000,000 for comparative clinical effectiveness research, which shall remain available through September 30, 2010: Provided, That of the amount appropriated in this paragraph, $400,000,000 shall be transferred to the Office of the Director of the National Institutes of Health ("Office of the Director") to conduct or support comparative clinical effectiveness research under section 301 and title IV of the Public Health Service Act: Provided further, That funds transferred to the Office of the Director may 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: Provided further, That this transfer authority is in addition to any other transfer authority available to the National Institutes of Health: Provided further, That within the amount avail-

able in this paragraph for the Agency for Healthcare Research and Quality, not more than 1 percent shall be made available for additional full-time equivalents.

In addition, $400,000,000 shall be available for comparative clinical effectiveness research to be allocated at the discretion of the Secretary of Health and Human Services ("Secretary") and shall remain available through September 30, 2010: Provided, That the funding appropriated in this paragraph shall be used to accelerate the development and dissemination of research assessing the comparative clinical effectiveness of health care treatments and strategies, including through efforts that: (1) conduct, support, or synthesize research that compares the clinical outcomes, effectiveness, and appropriateness of items, services, and procedures that are used to prevent, diagnose, or treat diseases, disorders, and other health conditions and (2) encourage the development and use of clinical registries, clinical data networks, and other forms of electronic health data that can be used to generate or obtain outcomes data: Provided further, That the Secretary shall enter into a contract with the Institute of Medicine, for which no more than $1,500,000 shall be made available from funds provided in this paragraph, to produce and submit a report to the Congress and the Secretary by not later than June 30, 2009 that includes recommendations on the national priorities

for comparative clinical effectiveness research to be conducted or supported with the funds provided in this paragraph and that considers input from stakeholders: Provided further, That the Secretary shall consider any recommendations of the Federal Coordinating Council for Comparative Clinical Effectiveness Research established by section 802 of this Act and any recommendations included in the Institute of Medicine report pursuant to the preceding proviso in designating activities to receive funds provided in this paragraph and may make grants and contracts with appropriate entities, which may include agencies within the Department of Health and Human Services and other governmental agencies, as well as private sector entities, that have demonstrated experience and capacity to achieve the goals of comparative clinical effectiveness research: Provided 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 provided 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, $500,000,000, which shall remain available through September 30, 2010. In addition, $550,000,000, 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", $3,000,000,000, 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 obligations, 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, 2012, and an additional $15,000,000 for

such purposes, to remain available until September 30, 2012.

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, $12,400,000,000, 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 $1,400,000,000 shall be for school improvement grants under section 1003(g): Provided further, That each local educational agency receiving funds available 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," $1,070,000,000, 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, and subtitle B of title VII of the McKinney-Vento Homeless Assistance Act ("McKinney-Vento"): 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 educational 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 the IDEA shall be equal to the lesser of the amount available for that activity during fiscal year 2008, increased by the amount of inflation as specified in section 619(d)(2)(B), or the percentage increase in the funds appropriated under section 611(i): Provided further, That each local educational agency receiving funds available under this paragraph for part B shall use not less than 15 percent for special education and related services to children described in section 619(a) of the IDEA.

REHABILITATION SERVICES AND DISABILITY RESEARCH

For an additional amount for "Rehabilitation Services and Disability Research" for providing grants to States to carry out the Vocational Rehabilitation Services program under part B of title I and parts B and C of chapter 1 and chapter 2 of title VII of the Rehabilitation Act of 1973, $610,000,000, which shall remain available through September 30, 2010: Provided, That $500,000,000 shall be available for part B of title I of the Rehabilitation Act: Provided further, That funds provided herein shall not be considered in determining the amount required to be appropriated under section 100(b)(1) of the Rehabilitation Act of 1973 in any fiscal year: Provided further, That, notwithstanding section 7(14)(A), the Federal share of the costs of vocational rehabilitation services provided with the funds provided herein shall be 100 percent.

STUDENT FINANCIAL ASSISTANCE

For an additional amount for "Student Financial Assistance" to carry out subpart 1 of part A of title IV of the Higher Education Act of 1965, $13,869,000,000: Provided, That such funds shall be used to increase the maximum Pell Grant by $281 for award year 2009–2010, to increase the maximum Pell Grant by $400 for the award year 2010–2011, and to reduce or eliminate the Pell Grant

shortfall: Provided further, That these funds shall remain available through September 30, 2011.

For an additional amount for "Student Financial Assistance" to carry out part E of title IV of the Higher Education Act of 1965, $61,000,000: Provided, That these funds shall remain available through September 30, 2010.

HIGHER EDUCATION

For an additional amount for "Higher Education" for carrying out activities under part A of title II of the Higher Education Act of 1965, $50,000,000: 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 and an additional $10,000,000 for such purposes, to remain available until September 30, 2012.

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 the Chief Executive Officer of the Corporation for National and Community Service ("CEO") determines that a waiver of the Federal share limitation is warranted under section 2521.70 of title 45 of the Code of Federal Regulations: Provided further, That of the amount made available in this paragraph, not less than $6,000,000 shall be transferred to "Salaries and Expenses" for necessary expenses relating to information technology upgrades: Provided further, That of the amount provided in this paragraph, $10,000,000 shall be available for additional members in the Civilian Community Corps authorized under subtitle E of title I of the 1990 Act: Provided further, That of the amount provided in this

paragraph, $1,000,000 shall be made available for a one-time supplement grant to State commissions on national and community service under section 126(a) of the 1990 Act without regard to the limitation on Federal share under section 126(a)(2) of the 1990 Act: Provided further, That of the amount made available in this paragraph, not less than $13,000,000 shall be for research activities authorized under subtitle H of title I of the 1990 Act: Provided further, That of the amount made available in this paragraph, not less than $65,000,000 shall be for programs under title I, part A of the 1973 Act: Provided further, That funds provided in the previous proviso shall not be made available in connection with cost-share agreements authorized under section 192A(g)(10) of the 1990 Act: Provided further, That of the funds available under this heading, up to 20 percent of funds allocated to grants authorized under section 124(b) of title I, subtitle C of the 1990 Act may be used to administer, reimburse, or support any national service program under section 129(d)(2) of the 1990 Act: Provided further, That, except as provided herein and in addition to requirements identified herein, funds provided in this paragraph shall be subject to the terms and conditions under which funds were appropriated in fiscal year 2008: Provided further, That the CEO shall provide the Committees on Appropriations of the House of Representatives and the Senate

a fiscal year 2009 operating plan for the funds appropriated in this paragraph prior to making any Federal obligations of such funds in fiscal year 2009, but not later than 90 days after the date of enactment of this Act, and a fiscal year 2010 operating plan for such funds prior to making any Federal obligations of such funds in fiscal year 2010, but not later than November 1, 2009, that detail the allocation of resources and the increased number of members supported by the AmeriCorps programs: Provided further, That the CEO shall provide to the Committees on Appropriations of the 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.

OFFICE OF THE INSPECTOR GENERAL

For an additional amount for the Office of the Inspector General, $1,000,000, which shall remain available until September 30, 2011.

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, 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).

SOCIAL SECURITY ADMINISTRATION

LIMITATION ON ADMINISTRATIVE EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for "Limitation on Administrative Expenses", $890,000,000 shall be available as follows:

(1) $750,000,000 shall remain available until expended for necessary expenses of the replacement of the National Computer Center and the information technology costs associated with such Center: Provided, That the Commissioner of Social Security shall notify the Committees on Appropriations of the House

of Representatives and the Senate not later than 10 days prior to each public notice soliciting bids related to site selection and construction: Provided further, That unobligated balances of funds not needed for this purpose may be used as described in subparagraph (2); and

(2) $140,000,000 shall be available through September 30, 2010 for information technology acquisitions and research, which may include research and activities to facilitate the adoption of electronic medical records in disability claims and the transfer of funds to "Supplemental Security Income" to 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 territory is $7.25 per hour, the Government Accountability Office shall conduct a study to—

"(1) assess the impact of the minimum wage increases that occurred in American Samoa and the Commonwealth of the Northern Mariana Islands in 2007 and 2008, as required under Public Law 110–28, on the rates of employment and the living standards of workers, with full consideration of the other factors that impact rates of employment and the living standards of workers such as inflation in the cost of food, energy, and other commodities; and

"(2) estimate the impact of any further wage increases on rates of employment and the living standards of workers in American Samoa and the Commonwealth of the Northern Mariana Islands, with full consideration of the other factors that may impact the rates of employment and the living standards of workers, including assessing how the profitability of major private sector firms may be impacted by wage increases in comparison to other factors such as energy costs and the value of tax benefits.

"(b) REPORT.—No earlier than March 15, 2009, and not later than April 15, 2009, the Government Accountability 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").

(b) PURPOSE; DUTIES.—The Council shall—

(1) assist the offices and agencies of the Federal Government, including the Departments of Health and Human Services, Veterans Affairs, and Defense, and other Federal departments or agencies, to coordinate the conduct or support of comparative clinical effectiveness and related health services research; and

(2) advise the President and Congress on—

(A) strategies with respect to the infrastructure needs of comparative clinical effectiveness research within the Federal Government;

(B) appropriate organizational expenditures for comparative clinical effectiveness research by relevant Federal departments and agencies; and

(C) opportunities to assure optimum coordination of comparative clinical effectiveness and related health services research conducted or supported by relevant Federal departments and agencies, with the goal of reducing duplicative efforts and encouraging coordinated and complementary use of resources.

(c) MEMBERSHIP.—

(1) NUMBER AND APPOINTMENT.—The Council shall be composed of not more than 15 members, all of whom are senior Federal officers or employees with responsibility for health-related programs, appointed by the President, acting through the Secretary of Health and Human Services (in this section referred to as the "Secretary"). Members shall first be appointed to the Council not later than 30 days after the date of the enactment of this Act.

(2) MEMBERS.—

(A) IN GENERAL.—The members of the Council shall include one senior officer or employee from each of the following agencies:

(i) The Agency for Healthcare Research and Quality.

(ii) The Centers for Medicare and Medicaid Services.

(iii) The National Institutes of Health.

(iv) The Office of the National Coordinator for Health Information Technology.

(v) The Food and Drug Administration.

(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 regarding its activities and recommendations concerning the infrastructure needs, appropriate organizational expenditures and opportunities for better coordination of comparative clinical effectiveness research by relevant Federal departments and agencies.

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

(TRANSFER OF FUNDS)

SEC. 803. (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 to the De-

partment of Labor in this title; oversee and evaluate the use of such funds; and enforce applicable laws and regulations governing worker rights and protections associated with the funds made available in this Act.

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

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

SEC. 804. ELIGIBLE EMPLOYEES IN THE RECREATIONAL MARINE INDUSTRY. Section 2(3)(F) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 902(3)(F)) is amended—

(1) by striking ", repair or dismantle"; and

(2) by striking the semicolon and inserting ", or individuals employed to repair any recreational vessel, or to dismantle any part of a recreational vessel in connection with the repair of such vessel;".

TITLE IX—LEGISLATIVE BRANCH

GOVERNMENT ACCOUNTABILITY OFFICE

SALARIES AND EXPENSES

For an additional amount for "Salaries and Expenses" of the Government Accountability Office, $20,000,000, to remain available until September 30, 2010.

GENERAL PROVISIONS—THIS TITLE

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

(1) IN GENERAL.—The Comptroller General shall conduct bimonthly reviews and prepare reports on such reviews on the use by selected State and localities of funds made available in this Act. Such reports, along with any audits conducted by the Comptroller General of such funds, shall be posted on the Internet and linked to the website established under this Act by the Recovery Accountability and Transparency Board.

(2) REDACTIONS.—Any portion of a report or audit 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).

(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 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, 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—

"(A) any member of the Armed Forces in medical transition who—

"(i) incurred a wound, injury, or illness in the line of duty during a deployment in support of the Armed Forces;

"(ii) is disabled to a degree of 30 percent or more as a result of such wound, in-

jury, or illness, as determined by the Secretary of Defense or the Secretary of Veterans Affairs; and

"(iii) is reassigned in furtherance of medical treatment or rehabilitation, or due to medical retirement in connection with such disability;

"(B) any civilian employee of the Department of Defense or the United States Coast Guard who—

"(i) was wounded, injured, or became ill in the line of duty during a forward deployment in support of the Armed Forces; and

"(ii) is reassigned in furtherance of medical treatment, rehabilitation, or due to medical retirement resulting from the sustained 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, 2011, 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 Vet-

erans 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 Guerrilla 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 title 31, United States Code, or the amount of such benefits;

(B) eligibility of an individual to receive benefits under title VIII of the Social Security Act, or the amount of such benefits; or

(C) eligibility of an individual for, or the amount of benefits under, any other Federal or federally assisted program.

(h) RELEASE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the acceptance by an eligible person or surviving spouse, as applicable, of a payment under this section shall be final, and shall constitute a complete release of any claim against the United States by reason of any service described in subsection (d).

(2) PAYMENT OF PRIOR ELIGIBILITY STATUS.—Nothing in this section shall prohibit a person from receiving any benefit (including health care, survivor,

or burial benefits) which the person would have been eligible to receive based on laws in effect as of the day before the date of the enactment of this Act.

(i) RECOGNITION OF SERVICE.—The service of a person 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 compensa-

tion 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, $90,000,000, to remain available until September 30, 2010, of which up to $20,000,000 shall be available for passport facilities and systems, and up to $65,000,000 shall

be available for a consolidated security training facility in the United States and should be obligated in accordance with United States General Services Administration site selection procedures: 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", $228,000,000, to remain available until September 30, 2010, which shall be available for information technology security and upgrades to support mission-critical operations: 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 Com-

mittees on Appropriations within 90 days of enactment of this Act a detailed spending plan for funds appropriated under this heading.

OFFICE OF INSPECTOR GENERAL

For an additional amount for "Office of Inspector General" for oversight requirements, $1,500,000, to remain available until September 30, 2011.

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", $58,000,000, to remain available until September 30, 2010, which shall be available for information technology modernization programs and 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, 2011.

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 expected 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 head-

ing: 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 funds awarded to that grantee less the amount of funding obligated, and the Secretary shall redistribute such amounts to other States that have had no funds withdrawn under this proviso in the manner described in section 120(c) of division K of Public Law 110–161: Provided further, That 1 year following

the date of such apportionment, the Secretary shall withdraw from each recipient of funds apportioned under this heading 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 State, the Secretary of Transportation may provide an extension of such 1-year period only to the extent that he or she feels satisfied that the State has encountered extreme conditions that create an unworkable bidding environment or other extenuating circumstances: Provided further, That before granting a such an extension, the Secretary shall send a letter to the House and Senate Committees on Appropriations that provides a thorough justification for the extension: Provided further, That the provisions of subsections 133(d)(3) and 133(d)(4) of title 23, United States Code, shall apply to funds apportioned under this heading, except that the percentage of funds to be allocated to local jurisdictions shall be 40 percent and such 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, That of the funds identified in the preceding proviso, $320,000,000 shall be for the Indian Reservation Roads program, $100,000,000 shall be for the Park Roads and Parkways program, $70,000,000 shall be for the Forest Highway Program, and $10,000,000 shall be for the Refuge Roads program: Provided further, That for investments at Indian reservations and Federal lands,

priority shall be given to capital investments, and to projects and activities that can be completed within 2 years of enactment of this Act: Provided further, That 1 year following the enactment of this Act, to ensure the prompt use of the $500,000,000 provided for investments at Indian reservations and Federal lands, the Secretary shall have the authority to redistribute unobligated funds within the respective program for which the funds were appropriated: Provided further, That up to 4 percent of the funding provided for Indian Reservation Roads may be used by the Secretary of the Interior for program management and oversight and project-related administrative expenses: Provided further, That section 134(f)(3)(C)(ii)(II) of title 23, United States Code, shall not apply to funds provided under this heading: Provided further, That the Federal share payable on account of any project or activity carried out with funds made available under this heading shall be at the option of the recipient, and may be up to 100 percent of the total cost thereof: Provided further, That funding provided under this heading shall be in addition to any and all funds provided for fiscal years 2008 and 2009 in any other Act for "Federal-aid Highways" and shall not affect the distribution of funds provided for "Federal-aid Highways" in any other Act: Provided further, That the amount made available under this heading shall not be subject to any lim-

itation on obligations for Federal-aid highways or highway safety construction programs set forth in any Act: 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 313 of title 23, United States Code, shall apply to funds provided under this heading: Provided further, That section 1101(b) of Public Law 109–59 shall apply to funds apportioned under this heading: Provided further, That for the purposes of the definition of States for this paragraph, sections 101(a)(32) of title 23, United States Code, shall apply: Provided further, That the Administrator of the Federal Highway Administration may retain up to $12,000,000 of the funds provided under this heading to carry out the function of the "Federal Highway Administration, Limitation on Administrative Expenses" and 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 Secretary 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, and an additional $12,250,000 for such purposes, to remain available until September 30, 2012: 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 years beyond the current fiscal year, assuming an annual growth of the program of 10 percent".

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

NATIVE AMERICAN HOUSING BLOCK GRANTS

For an additional amount for "Native American Housing Block Grants", as authorized under title I of the

Native American Housing Assistance and Self-Determination Act of 1996 ("NAHASDA") (25 U.S.C. 4111 et seq.), $510,000,000, to remain available until September 30, 2011: Provided, That $255,000,000 of the amount provided under this heading shall be distributed according to the same funding formula used in fiscal year 2008: Provided further, That in selecting projects to be funded, recipients shall give priority to projects that can award contracts based on bids within 180 days from the date that funds are available to recipients: Provided further, That the Secretary shall obligate $255,000,000 of the amount provided under this heading for competitive grants to eligible entities that apply for funds authorized under NAHASDA: Provided further, That in awarding competitive funds, the Secretary shall give priority to projects that will spur construction and rehabilitation and will create employment opportunities for low-income and unemployed 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, re-

search 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".

PUBLIC HOUSING CAPITAL FUND

For an additional amount for the "Public Housing Capital Fund" to carry out capital and management activities for public housing agencies, as authorized under section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g) (the "Act"), $5,000,000,000, to remain available until September 30, 2011: Provided, That the Secretary of Housing and Urban Development shall allocate $3,000,000,000 of this amount by the formula authorized under section 9(d)(2) of the Act, except that the Secretary

may determine not to allocate funding to public housing agencies currently designated as troubled or to public housing agencies that elect not to accept such funding: Provided further, That the Secretary shall make available $2,000,000,000 by competition for priority investments, including investments that leverage private sector funding or financing for renovations and energy conservation retrofit investments: Provided further, That public housing agencies shall prioritize capital projects that are already underway or included in the 5-year capital fund plans required by the Act (42 U.S.C. 1437c–1(a)): Provided further, That in allocating competitive grants under this heading, the Secretary shall give priority consideration to the rehabilitation of vacant rental units: Provided 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".

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 Act (the "Act"), $250,000,000, to remain available until September 30, 2011: Provided, That except as specifically provided herein, funds provided under this heading shall be distributed pursuant to the formula authorized by section 217 of

the Act: Provided further, That the Secretary may establish a minimum grant size: Provided further, That participating jurisdictions 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 participating jurisdiction for obligation and shall expend 100 percent of the funds within 3 years of such date: Provided further, That if a participating jurisdiction 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 participating jurisdiction and reallocate such funds to participating jurisdictions that are in compliance with those requirements: Provided further, That if a participating jurisdiction fails to comply with the 3-year expenditure requirement, the Secretary shall recapture the balance of the funds awarded to the participating jurisdiction: Provided further, That in administering funds under 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, 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".

For an additional amount for capital investments in low-income housing tax credit projects, $2,000,000,000, to remain available until September 30, 2011: Provided, That the funds shall be allocated to States under the HOME program under this Heading shall be made available to State housing finance agencies in an amount totaling $2,000,000,000, subject to any changes made to a State allocation for the benefit of a State by the Secretary of Housing and Urban Development for areas that have suffered from disproportionate job loss and foreclosure: Provided further, That the Secretary, in consultation with the States, shall determine the amount of funds each State shall have available under HOME: Provided further, That the State housing finance agencies (including for purposes throughout this heading any entity that is responsible for distributing low-income housing tax credits) or as appropriate as an entity as a gap financer, shall distribute these funds competitively under this heading to housing developers for projects eligible for funding (such terms including those who may have received funding) under the low-income housing tax credit program as provided under section 42 of the I.R.C. of 1986, with a review of both the decisionmaking and process for the award by the Secretary of Housing and Urban Develop-

ment: Provided further, That funds under this heading must be awarded by State housing finance agencies within 120 days of enactment of the Act and obligated by the developer of the low-income housing tax credit project within one year of the date of enactment of this Act, shall expend 75 percent of the funds within two years of the date on which the funds become available, and shall expend 100 percent of the funds within 3 years of such date: Provided further, That failure by a developer to expend funds within the parameters required within the previous proviso shall result in a redistribution of these funds by a State housing finance agency or by the Secretary if there is a more deserving project in another jurisdiction: Provided further, That projects awarded tax credits within 3 years prior to the date of enactment of this Act shall be eligible for funding under this heading: Provided further, That as part of the review, the Secretary shall ensure equitable distribution of funds and an appropriate balance in addressing the needs of urban and rural communities with a special priority on areas that have suffered from excessive job loss and foreclosures: Provided further, That State housing finance agencies shall give priority to projects that require an additional share of Federal funds in order to complete an overall funding package, and to projects that are expected to be completed within 3 years of enactment: Provided further, That any assistance pro-

vided to an eligible low-income housing tax credit project under this heading shall be made in the same manner and be subject to the same limitations (including rent, income, and use restrictions) as an allocation of the housing credit amount allocated by the State housing finance agency under section 42 of the I.R.C. of 1986, except that such assistance shall not be limited by, or otherwise affect (except as provided in subsection (h)(3)(J) of such section), the State housing finance agency applicable to such agency: Provided further, That the State housing finance agency shall perform asset management functions to ensure compliance with section 42 of the I.R.C. of 1986, and the long term viability of buildings funded by assistance under this heading: Provided further, That the term basis (as such term is defined in such section 42) of a qualified low-income housing tax credit building receiving assistance under this heading shall not be reduced by the amount of any grant described under this heading: Provided further, That the Secretary shall collect all information related to the award of Federal funds from state housing finance agencies and establish an internet site that shall identify all projects selected for an award, including the amount of the award as well as the process and all information that was used to make the award decision.

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), $2,250,000,000, 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 $118,000,000 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 review rating, be in substantial compliance with applicable performance standards and legal requirements, and commit to an additional period of affordability determined by the Secretary, but of not fewer than 15 years: Provided further, That the Secretary shall undertake appropriate underwriting and oversight with respect to grant and loan transactions and may set aside up to 5 percent of the funds made available under this heading for grants or loans for such purpose: Provided further, That the Secretary shall take steps nec-

essary to ensure that owners receiving funding for energy and green retrofit investments under this heading shall expend such funding within 2 years of the date they received the funding: Provided further, That the Secretary may waive or modify statutory or regulatory requirements with respect to any existing grant, loan, or insurance mechanism authorized to be used by the Secretary to enable or facilitate the accomplishment of investments supported with funds made available under this heading for grants or loans: 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 funding made available under this heading and used by the Secretary for personnel expenses shall be transferred to and merged with funding provided to "Housing Compensation and Benefits": Provided further, That any funding made available under this heading used by the Secretary for training and 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 funding provided to "Working Capital Fund."

OFFICE OF HEALTHY HOMES AND LEAD HAZARD CONTROL

For an additional amount for the "Lead Hazard Reduction", as authorized by section 1011 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, $100,000,000, to remain available until September 30, 2011: Provided, That funds shall be awarded first to applicant jurisdictions which had applied under the Lead-Based Paint Hazard Control Grant Program Notice of Funding Availability for fiscal year 2008, and were found in the application review to be qualified for award, but were not awarded because of funding limitations, and that any funds which remain after reservation of funds for such grants shall be added to the amount of funds to be awarded under the Lead-Based Paint Hazard Control Grant Program Notice of Funding Availability for fiscal year 2009: Provided further, That each applicant jurisdiction for the Lead-Based Paint Hazard control Grant Program Notice of Funding Availability for fiscal year 2009 shall submit a detailed plan and strategy that demonstrates adequate capacity that is acceptable to the Secretary to carry out the proposed use of funds: 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 75 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 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 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, and an additional $12,250,000 for such purposes, to remain available until September 30, 2012: 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 nursing facility, nursing facility, home health entity, or other long-term care facility, health care clinic, community mental health center (as defined in section 1913(b)), renal dialysis facility, blood center, ambulatory surgical center described in section 1833(i) of the Social Security Act, 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 sec-

tion 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' includes hardware, software, integrated technologies and related licenses, intellectual property, upgrades, and packaged solutions sold as services for use by health care entities for the electronic creation, maintenance, access or exchange of health information.

"(6) HEALTH PLAN.—The term 'health plan' has the meaning given such term in section 1171(5) of the Social Security Act.

"(7) HIT POLICY COMMITTEE.—The term 'HIT Policy Committee' means such Committee established under section 3002(a).

"(8) HIT STANDARDS COMMITTEE.—The term 'HIT Standards Committee' means such Committee established under section 3003(a).

"(9) INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION.—The term 'individually identifiable health information' has the meaning given such term in section 1171(6) of the Social Security Act.

"(10) LABORATORY.—The term 'laboratory' has the meaning given such term in section 353(a).

"(11) NATIONAL COORDINATOR.—The term 'National Coordinator' means the head of the Office of the National Coordinator for Health Information Technology established under section 3001(a).

"(12) PHARMACIST.—The term 'pharmacist' has the meaning given such term in section 804(2) of the Federal Food, Drug, and Cosmetic Act.

"(13) QUALIFIED ELECTRONIC HEALTH RECORD.—The term 'qualified electronic health record' means an electronic record of health-related information on an individual that—

"(A) includes patient demographic and clinical health information, such as medical history and problem lists; and

"(B) has the capacity—

"(i) to provide clinical decision support;

"(ii) to support physician order entry;

"(iii) to capture and query information relevant to health care quality; and

"(iv) to exchange electronic health information with, and integrate such information from other sources.

"(14) STATE.—The term 'State' means each of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, 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 ap-

pointed 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;

"(4) provides appropriate information to help guide medical decisions at the time and place of care;

"(5) ensures the inclusion of meaningful public input in such development of such infrastructure;

"(6) improves the coordination of care and information among hospitals, laboratories, physician offices, and other entities through an effective infrastructure for the secure and authorized exchange of health care information;

"(7) improves public health activities and facilitates the early identification and rapid response to public health threats and emergencies, including bioterror events and infectious disease outbreaks;

"(8) facilitates health and clinical research and health care quality;

"(9) promotes early detection, prevention, and management of chronic diseases;

"(10) promotes a more effective marketplace, greater competition, greater systems analysis, increased consumer choice, and improved outcomes in health care services; and

"(11) improves efforts to reduce health disparities.

"(c) DUTIES OF THE NATIONAL COORDINATOR.—

"(1) STANDARDS.—The National Coordinator shall—

"(A) review and determine whether to endorse each standard, implementation specification, and certification criterion for the electronic exchange and use of health information that is recommended by the HIT Standards Committee under section 3003 for purposes of adoption under section 3004;

"(B) make such determinations under subparagraph (A), and report to the Secretary such determinations, not later than 45 days after the date the recommendation is received by the Coordinator;

"(C) review Federal health information technology investments to ensure that Federal health information technology programs are meeting the objectives of the strategic plan published under paragraph (3); and

"(D) provide comments and advice regarding specific Federal health information technology programs, at the request of the Office of Management and Budget.

"(2) HIT POLICY COORDINATION.—

"(A) IN GENERAL.—The National Coordinator shall coordinate health information technology policy and programs of the Department with those of other relevant executive branch agencies with a goal of avoiding duplication of efforts and of helping to ensure that each agency undertakes health information technology activities primarily within the areas of its greatest expertise and technical capability and in a manner towards a coordinated national goal.

"(B) HIT POLICY AND STANDARDS COMMITTEES.—The National Coordinator shall be a leading member in the establishment and operations of the HIT Policy Committee and the HIT Standards Committee and shall serve as a liaison among those two Committees and the Federal Government.

"(3) STRATEGIC PLAN.—

"(A) IN GENERAL.—The National Coordinator shall, in consultation with other appropriate Federal agencies (including the National Institute of Standards and Technology), update the Federal Health IT Strategic Plan (developed as of June 3, 2008) to include specific objectives, milestones, and metrics with respect to the following:

"(i) The electronic exchange and use of health information and the enterprise integration of such information.

"(ii) The utilization of an electronic health record for each person in the United States by 2014.

"(iii) The incorporation of privacy and security protections for the electronic

exchange of an individual's individually identifiable health information.

"(iv) Ensuring security methods to ensure appropriate authorization and electronic authentication of health information and specifying technologies or methodologies for rendering health information unusable, unreadable, or indecipherable.

"(v) Specifying a framework for coordination and flow of recommendations and policies under this subtitle among the Secretary, the National Coordinator, the HIT Policy Committee, the HIT Standards Committee, and other health information exchanges and other relevant entities.

"(vi) Methods to foster the public understanding of health information technology.

"(vii) Strategies to enhance the use of health information technology in improving the quality of health care, reducing medical errors, reducing health disparities, improving public health, increasing prevention and coordination with community resources,

and improving the continuity of care among health care settings.

"(viii) Specific plans for ensuring that populations with unique needs, such as 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) HARMONIZATION.—The Secretary may recognize an entity or entities for the purpose of harmonizing or updating standards and implementation specifications in order to achieve uniform and consistent implementation of the standards and implementation specifications.

"(6) CERTIFICATION.—

"(A) IN GENERAL.—The National Coordinator, in consultation with the Director of the National Institute of Standards and Technology, shall recognize a program or programs for the voluntary certification of health information technology as being in compliance with applicable certification criteria adopted under this subtitle. Such program shall include, as appropriate, testing of the technology in accordance with section 14201(b) of the Health Information Technology for Economic and Clinical Health Act.

"(B) CERTIFICATION CRITERIA DESCRIBED.—In this title, the term 'certification criteria' means, with respect to standards and implementation specifications for health information technology, criteria to establish that the

technology meets such standards and implementation specifications.

"(6) REPORTS AND PUBLICATIONS.—

"(A) REPORT ON ADDITIONAL FUNDING OR AUTHORITY NEEDED.—Not later than 12 months after the date of the enactment of this title, the National Coordinator shall submit to the appropriate committees of jurisdiction of the House of Representatives and the Senate a report on any additional funding or authority the Coordinator or the HIT Policy Committee or HIT Standards Committee requires to evaluate and develop standards, implementation specifications, and certification criteria, or to achieve full participation of stakeholders in the adoption of a nationwide health information technology infrastructure that allows for the electronic use and exchange of health information.

"(B) IMPLEMENTATION REPORT.—The National Coordinator shall prepare a report that identifies lessons learned from major public and private health care systems in their implementation of health information technology, including information on whether the technologies and practices developed by such systems may be ap-

plicable to and usable in whole or in part by other health care providers.

"(C) ASSESSMENT OF IMPACT OF HIT ON COMMUNITIES WITH HEALTH DISPARITIES AND UNINSURED, UNDERINSURED, AND MEDICALLY UNDERSERVED AREAS.—The National Coordinator shall assess and publish the impact of health information technology in communities with health disparities and in areas with a high proportion of individuals who are uninsured, underinsured, and medically underserved individuals (including urban and rural areas) and identify practices to increase the adoption of such technology by health care providers in such communities, and the use of health information technology to reduce and better manage chronic diseases.

"(D) EVALUATION OF BENEFITS AND COSTS OF THE ELECTRONIC USE AND EXCHANGE OF HEALTH INFORMATION.—The National Coordinator shall evaluate and publish evidence on the benefits and costs of the electronic use and exchange of health information and assess to whom these benefits and costs accrue.

(E) RESOURCE REQUIREMENTS.—The National Coordinator shall estimate and publish resources required annually to reach the goal of utilization of an electronic health record for each person in the United States by 2014, including—

(i) the required level of Federal funding;

(ii) expectations for regional, State, and private investment;

(iii) the expected contributions by volunteers to activities for the utilization of such records; and

(iv) the resources needed to establish or expand education programs in medical and health informatics and health information management to train health care and information technology students and provide a health information technology workforce sufficient to ensure the rapid and effective deployment and utilization of health information technologies.

"(7) ASSISTANCE.—The National Coordinator may provide financial assistance to consumer advocacy groups and not-for-profit entities that work in

the public interest for purposes of defraying the cost to such groups and entities to participate under, whether in whole or in part, the National Technology Transfer Act of 1995 (15 U.S.C. 272 note).

"(8) GOVERNANCE FOR NATIONWIDE HEALTH INFORMATION NETWORK.—The National Coordinator shall establish a governance mechanism for the nationwide health information network.

"(d) DETAIL OF FEDERAL EMPLOYEES.—

"(1) IN GENERAL.—Upon the request of the National Coordinator, the head of any Federal agency is authorized to detail, with or without reimbursement from the Office, any of the personnel of such agency to the Office to assist it in carrying out its duties under this section.

"(2) EFFECT OF DETAIL.—Any detail of personnel under paragraph (1) shall—

"(A) not interrupt or otherwise affect the civil service status or privileges of the Federal 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, including implementation of the strategic plan described in section 3001(c)(3).

"(b) DUTIES.—

"(1) RECOMMENDATIONS ON HEALTH INFORMATION TECHNOLOGY INFRASTRUCTURE.—The HIT Pol-

icy Committee shall recommend a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the strategic plan under section 3001(c)(3) and that includes the recommendations under paragraph (2). The Committee shall update such recommendations and make new recommendations as appropriate.

"(2) SPECIFIC AREAS OF STANDARD DEVELOPMENT.—

"(A) IN GENERAL.—The HIT Policy Committee shall recommend the areas in which standards, implementation specifications, and certification criteria are needed for the electronic exchange and use of health information for purposes of adoption under section 3004 and shall recommend an order of priority for the development, harmonization, and recognition of such standards, specifications, and certification criteria among the areas so recommended. Such standards and implementation specifications shall include named standards, architectures, and software schemes for the authentication and security of individually identifiable health infor-

mation and other information as needed to ensure the reproducible development of common solutions across disparate entities.

"(B) AREAS REQUIRED FOR CONSIDERATION.—For purposes of subparagraph (A), the HIT Policy Committee shall make recommendations for at least the following areas:

"(i) Technologies that protect the privacy of health information and promote security in a qualified electronic health record, including for the segmentation and protection from disclosure of specific and sensitive individually identifiable health information with the goal of minimizing the reluctance of patients to seek care (or disclose information about a condition) because of privacy concerns, in accordance with applicable law, and for the use and disclosure of limited data sets of such information.

"(ii) A nationwide health information technology infrastructure that allows for the electronic use and accurate exchange of health information.

"(iii) The utilization of a certified electronic health record for each person in the United States by 2014.

"(iv) Technologies that as a part of a qualified electronic health record allow for an accounting of disclosures made by a covered entity (as defined for purposes of regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996) for purposes of treatment, payment, and health care operations (as such terms are defined for purposes of such regulations).

"(v) The use of certified electronic health records to improve the quality of health care, such as by promoting the coordination of health care and improving continuity of health care among health care providers, by reducing medical errors, by improving population health, reducing chronic disease, and by advancing research and education.

"(vi) The use of electronic systems to ensure the comprehensive collection of patient demographic data, including, at a

minimum, race, ethnicity, primary language, and gender information.

"(vii) Technologies and design features that address the needs of children and other vulnerable populations.

"(C) OTHER AREAS FOR CONSIDERATION.—In making recommendations under subparagraph (A), the HIT Policy Committee may consider the following additional areas:

"(i) The appropriate uses of a nationwide health information infrastructure, including for purposes of—

"(I) the collection of quality data and public reporting;

"(II) biosurveillance and public health;

"(III) medical and clinical research; and

"(IV) drug safety.

"(ii) Self-service technologies that facilitate the use and exchange of patient information and reduce wait times.

"(iii) Telemedicine technologies, in order to reduce travel requirements for patients in remote areas.

"(iv) Technologies that facilitate home health care and the monitoring of patients recuperating at home.

"(v) Technologies that help reduce medical errors.

"(vi) Technologies that facilitate the continuity of care among health settings.

"(vii) Technologies that meet the needs of diverse populations.

"(viii) Methods to facilitate secure access by an individual to such individual's protected health information.

"(ix) Methods, guidelines, and safeguards to facilitate secure access to patient information by a family member, caregiver, or guardian acting on behalf of a patient due to age-related and other disability, cognitive impairment, or dementia that prevents a patient from accessing the patient's individually identifiable health information.

"(x) Any other technology that the HIT Policy Committee finds to be among the technologies with the greatest potential to

improve the quality and efficiency of health care.

"(3) FORUM.—The HIT Policy Committee shall serve as a forum for broad stakeholder input with specific expertise in policies relating to the matters described in paragraphs (1) and (2).

"(4) CONSISTENCY WITH EVALUATION CONDUCTED UNDER MIPPA.—

"(A) REQUIREMENT FOR CONSISTENCY.—The HIT Policy Committee shall ensure that recommendations made under paragraph (2)(B)(vi) are consistent with the evaluation conducted under section 1809(a) of the Social Security Act.

"(B) SCOPE.—Nothing in subparagraph (A) shall be construed to limit the recommendations under paragraph (2)(B)(vi) to the elements described in section 1809(a)(3) of the Social Security Act.

"(C) TIMING.—The requirement under subparagraph (A) shall be applicable to the extent that evaluations have been conducted under section 1809(a) of the Social Security Act, regardless of whether the report described in subsection (b) of such section has been submitted.

"(c) MEMBERSHIP AND OPERATIONS.—

"(1) IN GENERAL.—The National Coordinator shall provide leadership in the establishment and operations of the HIT Policy Committee.

"(2) MEMBERSHIP.—The HIT Policy Committee shall be composed of members to be appointed as follows:

"(A) One member shall be appointed by the Secretary.

"(B) One member shall be appointed by the Secretary of Veterans Affairs who shall represent the Department of Veterans Affairs.

"(C) One member shall be appointed by the Secretary of Defense who shall represent the Department of Defense.

"(D) One member shall be appointed by the Majority Leader of the Senate.

"(E) One member shall be appointed by the Minority Leader of the Senate.

"(F) One member shall be appointed by the Speaker of the House of Representatives.

"(G) One member shall be appointed by the Minority Leader of the House of Representatives.

"(H) Eleven members shall be appointed by the Comptroller General of the United States, of whom—

"(i) three members shall represent patients or consumers;

"(ii) one member shall represent health care providers;

"(iii) one member shall be from a labor organization representing health care workers;

"(iv) one member shall have expertise in privacy and security;

"(v) one member shall have expertise in improving the health of vulnerable populations;

"(vi) one member shall represent health plans or other third party payers;

"(vii) one member shall represent information technology vendors;

"(viii) one member shall represent purchasers or employers; and

"(ix) one member shall have expertise in health care quality measurement and reporting.

"(3) CHAIRPERSON AND VICE CHAIRPERSON.—The HIT Policy Committee shall designate one member to serve as the chairperson and one member to serve as the vice chairperson of the Policy Committee.

"(4) NATIONAL COORDINATOR.—The National Coordinator shall serve as a member of the HIT Policy Committee and act as a liaison among the HIT Policy Committee, the HIT Standards Committee, and the Federal Government.

"(5) PARTICIPATION.—The members of the HIT Policy Committee appointed under paragraph (2) shall represent a balance among various sectors of the health care system so that no single sector unduly influences the recommendations of the Policy Committee.

"(6) TERMS.—

"(A) IN GENERAL.—The terms of the members of the HIT Policy Committee shall be for 3 years, except that the Comptroller General shall designate staggered terms for the members first appointed.

"(B) VACANCIES.—Any member appointed to fill a vacancy in the membership of the HIT Policy Committee that occurs prior to the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has been appointed. A vacancy in the

HIT Policy Committee shall be filled in the manner in which the original appointment was made.

"(7) OUTSIDE INVOLVEMENT.—The HIT Policy Committee shall ensure an adequate opportunity for the participation of outside advisors, including individuals with expertise in—

"(A) health information privacy and security;

"(B) improving the health of vulnerable populations;

"(C) health care quality and patient safety, including individuals with expertise in the measurement and use of health information technology to capture data to improve health care quality and patient safety;

"(D) long-term care and aging services;

"(E) medical and clinical research; and

"(F) data exchange and developing health information technology standards and new health information technology.

"(8) QUORUM.—Ten members of the HIT Policy Committee shall constitute a quorum for purposes of voting, but a lesser number of members may meet and hold hearings.

"(9) FAILURE OF INITIAL APPOINTMENT.—If, on the date that is 45 days after the date of enactment of this title, an official authorized under paragraph (2) to appoint one or more members of the HIT Policy Committee has not appointed the full number of members that such paragraph authorizes such official to appoint—

"(A) the number of members that such official is authorized to appoint shall be reduced to the number that such official has appointed as of that date; and

"(B) the number prescribed in paragraph (8) as the quorum shall be reduced to the smallest whole number that is greater than one-half of the total number of members who have been appointed as of that date.

"(10) 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 policies.

"(d) APPLICATION OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.), other than section 14 of such Act, shall apply to the HIT Policy 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 policy recommendations made by the HIT Policy Committee under this section.

"SEC. 3003. HIT STANDARDS COMMITTEE.

"(a) ESTABLISHMENT.—There is established a committee to be known as the HIT Standards Committee to recommend to the National Coordinator standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption under section 3004, consistent with the implementation of the strategic plan described in section 3001(c)(3) and beginning with the areas listed in section 3002(b)(2)(B) in accordance with policies developed by the HIT Policy Committee.

"(b) DUTIES.—

"(1) STANDARD DEVELOPMENT.—

"(A) IN GENERAL.—The HIT Standards Committee shall recommend to the National Coordinator standards, implementation specifications, and certification criteria described in subsection (a) that have been developed, harmonized, or recognized by the HIT Standards Committee.

The HIT Standards Committee shall update such recommendations and make new recommendations as appropriate, including in response to a notification sent under section 3004(b)(2). Such recommendations shall be consistent with the latest recommendations made by the HIT Policy Committee.

"(B) PILOT TESTING OF STANDARDS AND IMPLEMENTATION SPECIFICATIONS.—In the development, 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.

"(3) SCHEDULE.—Not later than 90 days after the date of the enactment of this title, the HIT Standards Committee shall develop a schedule for the assessment of policy recommendations developed by the HIT Policy Committee under section 3002. The HIT Standards Committee shall update such schedule annually. The Secretary shall publish such schedule in the Federal Register.

"(4) PUBLIC INPUT.—The HIT Standards Committee shall conduct open public meetings and develop a process to allow for public comment on the schedule described in paragraph (3) and recommendations described in this subsection. Under such process comments shall be submitted in a timely manner after the date of publication of a recommendation under this subsection.

"(5) 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.

"(c) MEMBERSHIP AND OPERATIONS.—

"(1) IN GENERAL.—The National Coordinator shall provide leadership in the establishment and operations of the HIT Standards Committee.

"(2) MEMBERSHIP.—The membership of the HIT Standards Committee shall at least reflect providers, ancillary healthcare workers, consumers, purchasers, health plans, technology vendors, researchers, 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) BROAD PARTICIPATION.—There is broad participation in the HIT Standards Committee by a variety of public and private stakeholders, either through membership in the Committee or through another means.

"(4) CHAIRPERSON; VICE CHAIRPERSON.—The HIT Standards Committee may designate one member to serve as the chairperson and one member to serve as the vice chairperson.

"(5) DEPARTMENT MEMBERSHIP.—The Secretary shall be a member of the HIT Standards Committee. The National Coordinator shall act as a liaison among the HIT Standards Committee, the HIT Policy Committee, and the Federal Government.

"(6) BALANCE AMONG SECTORS.—In developing the procedures for conducting the activities of the HIT Standards Committee, the HIT Standards Committee shall act to ensure a balance among various sectors of the health care system so that no single sector unduly influences the actions of the HIT Standards Committee.

"(7) 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) OPEN AND PUBLIC PROCESS.—In providing for the establishment of the HIT Standards Committee pursuant to subsection (a), the Secretary shall ensure the following:

"(1) CONSENSUS APPROACH; OPEN PROCESS.—The HIT Standards Committee shall use a consensus approach and a fair and open process to support the development, harmonization, and recognition of standards described in subsection (a)(1).

"(2) PARTICIPATION OF OUTSIDE ADVISERS.—The HIT Standards Committee shall ensure an adequate opportunity for the participation of outside advisors, including individuals with expertise in—

"(A) health information privacy;

"(B) health information security;

"(C) health care quality and patient safety, including individuals with expertise in utilizing health information technology to improve healthcare quality and patient safety;

"(D) long-term care and aging services; and

"(E) data exchange and developing health information technology standards and new health information technology.

"(3) OPEN MEETINGS.—Plenary and other regularly scheduled formal meetings of the HIT Standards Committee (or established subgroups thereof) shall be open to the public.

"(4) PUBLICATION OF MEETING NOTICES AND MATERIALS PRIOR TO MEETINGS.—The HIT Stand-

ards Committee shall develop and maintain an Internet website on which it publishes, prior to each meeting, a meeting notice, a meeting agenda, and meeting materials.

"(5) OPPORTUNITY FOR PUBLIC COMMENT.—The HIT Standards Committee shall develop a process that allows for public comment during the process by which the Entity develops, harmonizes, or recognizes standards and implementation specifications.

"(e) VOLUNTARY CONSENSUS STANDARD BODY.—The provisions of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) and the Office of Management and Budget circular 119 shall apply to the HIT Standards Committee.

"(f) 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 deter-

mination 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 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 specifications, and certification criteria adopted before the date of the enactment of this title through the process existing through the Office of the National Coordinator for Health Information Technology may be applied towards meeting the requirement of paragraph (1).

"(3) SUBSEQUENT STANDARDS ACTIVITY.—The Secretary shall adopt additional standards, imple-

mentation specifications, and certification criteria as necessary and consistent with the schedule published under section 3003(b)(2).

"SEC. 3005. APPLICATION AND USE OF ADOPTED STANDARDS AND IMPLEMENTATION SPECIFICATIONS BY FEDERAL AGENCIES.

"For requirements relating to the application and use by Federal agencies of the standards and implementation specifications adopted under section 3004, see section 13111 of the Health Information Technology for Economic and Clinical Health Act.

"SEC. 3006. VOLUNTARY APPLICATION AND USE OF ADOPTED STANDARDS AND IMPLEMENTATION SPECIFICATIONS BY PRIVATE ENTITIES.

"(a) IN GENERAL.—Except as provided under section 13112 of the Health Information Technology for Economic and Clinical Health Act, any standard or implementation specification adopted under section 3004 shall be voluntary with respect to private entities.

"(b) RULE OF CONSTRUCTION.—Nothing in this subtitle shall be construed to require that a private entity that enters into a contract with the Federal Government apply or use the standards and implementation specifications adopted under section 3004 with respect to activities not related to the contract.

1 ***"SEC. 3007. FEDERAL HEALTH INFORMATION TECHNOLOGY.***

2 *"(a) IN GENERAL.—The National Coordinator shall*
3 *support the development and routine updating of qualified*
4 *electronic health record technology (as defined in section*
5 *3000) consistent with subsections (b) and (c) and make*
6 *available such qualified electronic health record technology*
7 *unless the Secretary and the HIT Policy Committee deter-*
8 *mine through an assessment that the needs and demands*
9 *of providers are being substantially and adequately met*
10 *through the marketplace.*

11 *"(b) CERTIFICATION.—In making such EHR tech-*
12 *nology publicly available, the National Coordinator shall*
13 *ensure that the qualified EHR technology described in sub-*
14 *section (a) is certified under the program developed under*
15 *section 3001(c)(3) to be in compliance with applicable*
16 *standards adopted under section 3003(a).*

17 *"(c) AUTHORIZATION TO CHARGE A NOMINAL FEE.—*
18 *The National Coordinator may impose a nominal fee for*
19 *the adoption by a health care provider of the health infor-*
20 *mation technology system developed or approved under sub-*
21 *section (a) and (b). Such fee shall take into account the*
22 *financial circumstances of smaller providers, low income*
23 *providers, and providers located in rural or other medically*
24 *underserved areas.*

25 *"(d) RULE OF CONSTRUCTION.—Nothing in this sec-*
26 *tion shall be construed to require that a private or govern-*

1 *ment entity adopt or use the technology provided under this*
2 *section.*

3 ***SEC. 3008. TRANSITIONS.***

4 *"(a) ONCHIT.—Nothing in section 3001 shall be con-*
5 *strued as requiring the creation of a new entity to the extent*
6 *that the Office of the National Coordinator for Health Infor-*
7 *mation Technology established pursuant to Executive Order*
8 *13335 is consistent with the provisions of section 3001.*

9 *"(b) NATIONAL EHEALTH COLLABORATIVE.—Nothing*
10 *in sections 3002 or 3003 or this subsection shall be con-*
11 *strued as prohibiting the National eHealth Collaborative*
12 *from modifying its charter, duties, membership, and any*
13 *other structure or function required to be consistent with*
14 *the requirements of a voluntary consensus standards body*
15 *so as to allow the Secretary to recognize the National*
16 *eHealth Collaborative as the HIT Standards Committee.*

17 *"(c) CONSISTENCY OF RECOMMENDATIONS.—In car-*
18 *rying out section 3003(b)(1)(A), until recommendations are*
19 *made by the HIT Policy Committee, recommendations of*
20 *the HIT Standards Committee shall be consistent with the*
21 *most recent recommendations made by such AHIC Suc-*
22 *cessor, Inc.*

"SEC. 3009. RELATION TO HIPAA PRIVACY AND SECURITY LAW.

"(a) IN GENERAL.—With respect to the relation of this title to HIPAA privacy and security law:

"(1) This title may not be construed as having any effect on the authorities of the Secretary under HIPAA privacy and security law.

"(2) The purposes of this title include ensuring that the health information technology standards and implementation specifications adopted under section 3004 take into account the requirements of HIPAA privacy and security law.

"(b) DEFINITION.—For purposes of this section, the term 'HIPAA privacy and security law' means—

"(1) the provisions of part C of title XI of the Social Security Act, section 264 of the Health Insurance Portability and Accountability Act of 1996, and subtitle D of the Health Information Technology for Economic and Clinical Health Act; and

"(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 Health Service Act, as added by section 13101, the President shall take measures to ensure that Federal activities involving the broad collection and submission of health information are consistent with such standard or implementation speci-

fication, respectively, within three years after the date of such adoption.

(c) APPLICATION OF DEFINITIONS.—The definitions contained in section 3000 of the Public Health Service Act, as added by section 13101, shall apply for purposes of this part.

SEC. 13112. APPLICATION TO PRIVATE ENTITIES.

Each agency (as defined in such Executive Order issued on August 22, 2006, relating to promoting quality and efficient health care in Federal government administered or sponsored health care programs) shall require in contracts or agreements with health care providers, health plans, or health insurance issuers that as each provider, plan, or issuer implements, acquires, or upgrades health information technology systems, 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.

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 com-

mittees 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.

(2) REPORT.—Not later than 2 years after the date of the enactment of this Act, 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 on the study carried out under paragraph (1).

(c) AGING SERVICES TECHNOLOGY STUDY AND REPORT.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall carry out, or contract with a private entity to carry out, a study of matters relating to the potential use of new aging services technology to assist seniors, individuals with disabilities, and their caregivers throughout the aging process.

(2) MATTERS TO BE STUDIED.—The study under paragraph (1) shall include—

(A) an evaluation of—

(i) methods for identifying current, emerging, and future health technology that can be used to meet the needs of seniors and individuals with disabilities and their caregivers across all aging services settings, as specified by the Secretary;

(ii) methods for fostering scientific innovation 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 seniors, individuals with disabilities, and the caregivers of such seniors and individuals.

(B) SENIOR.—The term "senior" has such meaning as specified by the Secretary.

GENERAL PROVISIONS—HOPE FOR HOMEOWNERS AMENDMENTS

SEC. 1211. Section 257 of the National Housing Act (12 U.S.C. 1715z–23), as amended by the Emergency Eco-

nomic Stabilization Act of 2008 (Public Law 110–343), is amended—

(1) in subsection (e)(1)(B), by inserting after "being reset," the following: "or has, due to a decrease in income,";

(2) in subsection (k)(2), by striking "and the mortgagor" and all that follows through the end and inserting "shall, upon any sale or disposition of the property to which the mortgage relates, be entitled to 25 percent of appreciation, up to the appraised value of the home at the time when the mortgage being refinanced under this section was originally made. The Secretary may share any amounts received under this paragraph with the holder of the eligible mortgage refinanced under this section.";

(3) in subsection (i)—

(A) by inserting ", after weighing maximization of participation with consideration for the solvency of the program," after "Secretary shall";

(B) in paragraph (1), by striking "equal to 3 percent" and inserting "not more than 2 percent"; and

(C) in paragraph (2), by striking "equal to 1.5 percent" and inserting "not more than 1 percent"; and

(4) by adding at the end the following:

"(x) AUCTIONS.—The Board shall, if feasible, establish a structure and organize procedures for an auction to refinance eligible mortgages on a wholesale or bulk basis.

"(y) COMPENSATION OF SERVICERS.—To provide incentive for participation in the program under this section, each servicer of an eligible mortgage insured under this section shall be paid $1,000 for performing services associated with refinancing such mortgage, or such other amount as the Board determines is warranted. Funding for such compensation shall be provided by funds realized through the HOPE bond under subsection (w).".

Subtitle B—Testing of Health Information Technology

SEC. 13201. NATIONAL INSTITUTE FOR STANDARDS AND TECHNOLOGY TESTING.

(a) PILOT TESTING OF STANDARDS AND IMPLEMENTATION SPECIFICATIONS.—In coordination with the HIT Standards Committee established under section 3003 of the Public Health Service Act, as added by section 13101, with respect to the development of standards and implementation specifications under such section, the Director of the Na-

tional Institute for Standards and Technology shall test such standards and implementation specifications, as appropriate, in order to assure the efficient implementation and use of such standards and implementation specifications.

(b) VOLUNTARY TESTING PROGRAM.—In coordination with the HIT Standards Committee established under section 3003 of the Public Health Service Act, as added by section 13101, with respect to the development of standards and implementation specifications under such section, the Director of the National Institute of Standards and Technology shall support the establishment of a conformance testing infrastructure, including the development of technical test beds. The development of this conformance testing infrastructure may include a program to accredit independent, non-Federal laboratories to perform testing.

SEC. 13202. RESEARCH AND DEVELOPMENT PROGRAMS.

(a) HEALTH CARE INFORMATION ENTERPRISE INTEGRATION RESEARCH CENTERS.—

(1) IN GENERAL.—The Director of the National Institute of Standards and Technology, in consultation with the Director of the National Science Foundation and other appropriate Federal agencies, shall establish a program of assistance to institutions of higher education (or consortia thereof which may in-

clude nonprofit entities and Federal Government laboratories) to establish multidisciplinary Centers for Health Care Information Enterprise Integration.

(2) REVIEW; COMPETITION.—Grants shall be awarded under this subsection on a merit-reviewed, competitive basis.

(3) PURPOSE.—The purposes of the Centers described in paragraph (1) shall be—

(A) to generate innovative approaches to health care information enterprise integration by conducting cutting-edge, multidisciplinary research on the systems challenges to health care delivery; and

(B) the development and use of health information technologies and other complementary fields.

(4) RESEARCH AREAS.—Research areas may include—

(A) interfaces between human information and communications technology systems;

(B) voice-recognition systems;

(C) software that improves interoperability and connectivity among health information systems;

(D) software dependability in systems critical to health care delivery;

(E) measurement of the impact of information technologies on the quality and productivity of health care;

(F) health information enterprise management;

(G) health information technology security and integrity; and

(H) relevant health information technology 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.

(b) NATIONAL INFORMATION TECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM.—The National High-Performance Computing Program established by section 101 of the High-Performance Computing Act of 1991 (15 U.S.C. 5511) may review Federal research and development programs related to the development and deployment of health information technology, including activities related to—

(1) computer infrastructure;

(2) data security;

(3) development of large-scale, distributed, reliable computing systems;

(4) wired, wireless, and hybrid high-speed networking;

(5) development of software and software-intensive systems;

(6) human-computer interaction and information management technologies; and

(7) the social and economic implications of information 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 Sec-

retary 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 such date as the standards are adopted under section 3004. The Secretary shall invest funds through the different agencies with expertise in such goals, such as the Office of the National Coordinator for Health Information Technology, the Health Resources and Services Administration, the Agency for Healthcare Research and Quality, the Centers of Medicare & Medicaid Services, the Centers for Disease Control and Prevention, and the Indian Health Service to support the following:

"(1) Health information technology architecture that will support the nationwide electronic exchange and use of health information in a secure, private, and accurate manner, including connecting health information exchanges, and which may include updating and implementing the infrastructure necessary within different agencies of the Department of Health and Human Services to support the electronic use and exchange of health information.

"(2) Development and adoption of appropriate certified electronic health records for categories of providers not eligible for support under title XVIII or

XIX of the Social Security Act for the adoption of such records.

"(3) Training on and dissemination of information 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.

"(8) Provide $300,000,000 to support regional or sub-national efforts towards health information exchange.

"(b) COORDINATION.—The Secretary shall ensure funds under this section are used in a coordinated manner with other health information promotion activities.

"(c) ADDITIONAL USE OF FUNDS.—In addition to using funds as provided in subsection (a), the Secretary may use amounts appropriated under section 3018 to carry out activities that are provided for under laws in effect on the date of enactment of this title.

"SEC. 3012. HEALTH INFORMATION TECHNOLOGY IMPLEMENTATION ASSISTANCE.

"(a) HEALTH INFORMATION TECHNOLOGY EXTENSION PROGRAM.—To assist health care providers to adopt, implement, and effectively use certified EHR technology that allows for the electronic exchange and use of health information, the Secretary, acting through the Office of the National Coordinator, shall establish a health information technology extension program to provide health information technology assistance services to be carried out through the Department of Health and Human Services. The National Coordinator shall consult with other Federal agencies with demonstrated

experience and expertise in information technology services, such as the National Institute of Standards and Technology, in developing and implementing this program.

"(b) HEALTH INFORMATION TECHNOLOGY RESEARCH CENTER.—

"(1) IN GENERAL.—The Secretary shall create a Health Information Technology Research Center (in this section referred to as the 'Center') to provide technical assistance and develop or recognize best practices to support and accelerate efforts to adopt, implement, and effectively utilize health information technology that allows for the electronic exchange and use of information in compliance with standards, implementation specifications, and certification criteria adopted under section 3004(b).

"(2) INPUT.—The Center shall incorporate input from—

"(A) other Federal agencies with demonstrated experience and expertise in information technology services such as the National Institute of Standards and Technology;

"(B) users of health information technology, such as providers and their support and clerical staff and others involved in the care and care co-

ordination of patients, from the health care and health information technology industry; and

"(C) others as appropriate.

"(3) PURPOSES.—The purposes of the Center are to—

"(A) provide a forum for the exchange of knowledge and experience;

"(B) accelerate the transfer of lessons learned from existing public and private sector initiatives, including those currently receiving Federal financial support;

"(C) assemble, analyze, and widely disseminate evidence and experience related to the adoption, implementation, and effective use of health information technology that allows for the electronic exchange and use of information including through the regional centers described in subsection (c);

"(D) provide technical assistance for the establishment and evaluation of regional and local health information networks to facilitate the electronic exchange of information across health care settings and improve the quality of health care;

"(E) provide technical assistance for the development and dissemination of solutions to bar-

riers to the exchange of electronic health information; and

"(F) learn about effective strategies to adopt and utilize health information technology in medically underserved communities.

"(c) HEALTH INFORMATION TECHNOLOGY REGIONAL EXTENSION CENTERS.—

"(1) IN GENERAL.—The Secretary shall provide assistance for the creation and support of regional centers (in this subsection referred to as 'regional centers') to provide technical assistance and disseminate best practices and other information learned from the Center to support and accelerate efforts to adopt, implement, and effectively utilize health information technology that allows for the electronic exchange and use of information in compliance with standards, implementation specifications, and certification criteria adopted under section 3004. Activities conducted under this subsection shall be consistent with the strategic plan developed by the National Coordinator (and, as available) under section 3001.

"(2) AFFILIATION.—Regional centers shall be affiliated with any United States-based nonprofit institution or organization, or group thereof, that applies and is awarded financial assistance under this sec-

tion. Individual awards shall be decided on the basis of merit.

"(3) OBJECTIVE.—The objective of the regional centers is to enhance and promote the adoption of health information technology through—

"(A) assistance with the implementation, effective use, upgrading, and ongoing maintenance of health information technology, including electronic health records, to healthcare providers nationwide;

"(B) broad participation of individuals from industry, universities, and State governments;

"(C) active dissemination of best practices and research on the implementation, effective use, upgrading, and ongoing maintenance of health information technology, including electronic health records, to health care providers in order to improve the quality of healthcare and protect the privacy and security of health information;

"(D) participation, to the extent practicable, in health information exchanges;

"(E) utilization, when appropriate, of the expertise and capability that exists in federal agencies other than the Department; and

"(F) integration of health information technology, including electronic health records, into the initial and ongoing training of health professionals and others in the healthcare industry that would be instrumental to improving the quality of healthcare through the smooth and accurate electronic use and exchange of health information.

"(4) REGIONAL ASSISTANCE.—Each regional center shall aim to provide assistance and education to all providers in a region, but shall prioritize any direct assistance first to the following:

"(A) Public or not-for-profit hospitals or critical access hospitals.

"(B) Federally qualified health centers (as defined in section 1861(aa)(4) of the Social Security Act).

"(C) Entities that are located in rural and other areas that serve uninsured, underinsured, and medically underserved individuals (regardless of whether such area is urban or rural).

"(D) Individual or small group practices (or a consortium thereof) that are primarily focused on primary care.

"(5) FINANCIAL SUPPORT.—The Secretary may provide financial support to any regional center created under this subsection for a period not to exceed four years. The Secretary may not provide more than 50 percent of the capital and annual operating and maintenance funds required to create and maintain such a center, except in an instance of national economic conditions which would render this cost-share requirement detrimental to the program and upon notification to Congress as to the justification to waive the cost-share requirement.

"(6) NOTICE OF PROGRAM DESCRIPTION AND AVAILABILITY OF FUNDS.—The Secretary shall publish in the Federal Register, not later than 90 days after the date of the enactment of this Act, a draft description of the program for establishing regional centers under this subsection. Such description shall include the following:

"(A) A detailed explanation of the program and the programs goals.

"(B) Procedures to be followed by the applicants.

"(C) Criteria for determining qualified applicants.

"(D) Maximum support levels expected to be available to centers under the program.

"(7) APPLICATION REVIEW.—The Secretary shall subject each application under this subsection to merit review. In making a decision whether to approve such application and provide financial support, the Secretary shall consider at a minimum the merits of the application, including those portions of the application regarding—

"(A) the ability of the applicant to provide assistance under this subsection and utilization of health information technology appropriate to the needs of particular categories of health care providers;

"(B) the types of service to be provided to health care providers;

"(C) geographical diversity and extent of service area; and

"(D) the percentage of funding and amount of in-kind commitment from other sources.

"(8) BIENNIAL EVALUATION.—Each regional 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.

"(b) PLANNING GRANTS.—The Secretary may award a grant to a State or qualified State-designated entity (as

described in subsection (d)) that submits an application to the Secretary at such time, in such manner, and containing such information as the Secretary may specify, for the purpose of planning activities described in subsection (b).

"(c) IMPLEMENTATION GRANTS.—The Secretary may award a grant to a State or qualified State designated entity that—

"(1) has submitted, and the Secretary has approved, a plan described in subsection (c) (regardless of whether such plan was prepared using amounts awarded under paragraph (1)); and

"(2) submits an application at such time, in such manner, and containing such information as the Secretary may specify.

"(d) USE OF FUNDS.—Amounts received under a grant under subsection (a)(3) shall be used to conduct activities to facilitate and expand the electronic movement and use of health information among organizations according to nationally recognized standards through activities that include—

"(1) enhancing broad and varied participation in the authorized and secure nationwide electronic use and exchange of health information;

"(2) identifying State or local resources available towards a nationwide effort to promote health information technology;

"(3) complementing other Federal grants, programs, and efforts towards the promotion of health information technology;

"(4) providing technical assistance for the development and dissemination of solutions to barriers to the exchange of electronic health information;

"(5) promoting effective strategies to adopt and utilize health information technology in medically underserved communities;

"(6) assisting patients in utilizing health information technology;

"(7) encouraging clinicians to work with Health Information Technology Regional Extension Centers as described in section 3012, to the extent they are available and valuable;

"(8) supporting public health agencies' authorized use of and access to electronic health information;

"(9) promoting the use of electronic health records for quality improvement including through quality measures reporting;

"(10) establishing and supporting health record banking models to further consumer-based consent

models that promote lifetime access to qualified health records, if such activities are included in the plan described in subsection (e), and may contain smart card functionality; and

"(11) such other activities as the Secretary may specify.

"(e) PLAN.—

"(1) IN GENERAL.—A plan described in this subsection is a plan that describes the activities to be carried out by a State or by the qualified State-designated entity within such State to facilitate and expand the electronic movement and use of health information among organizations according to nationally recognized standards and implementation specifications.

"(2) REQUIRED ELEMENTS.—A plan described in paragraph (1) shall—

"(A) be pursued in the public interest;

"(B) be consistent with the strategic plan developed by the National Coordinator (and, as available) under section 3001;

"(C) include a description of the ways the State or qualified State-designated entity will carry out the activities described in subsection (b); and

"(D) contain such elements as the Secretary may require.

"(f) QUALIFIED STATE-DESIGNATED ENTITY.—For purposes of this section, to be a qualified State-designated entity, with respect to a State, an entity shall—

"(1) be designated by the State as eligible to receive awards under this section;

"(2) be a not-for-profit entity with broad stakeholder representation on its governing board;

"(3) demonstrate that one of its principal goals is to use information technology to improve health care quality and efficiency through the authorized and secure electronic exchange and use of health information;

"(4) adopt nondiscrimination and conflict of interest policies that demonstrate a commitment to open, fair, and nondiscriminatory participation by stakeholders; and

"(5) conform to such other requirements as the Secretary may establish.

"(g) REQUIRED CONSULTATION.—In carrying out activities described in subsections (a)(2) and (a)(3), a State or qualified State-designated entity shall consult with and consider the recommendations of—

"(1) health care providers (including providers that provide services to low income and underserved populations);

"(2) health plans;

"(3) patient or consumer organizations that represent the population to be served;

"(4) health information technology vendors;

"(5) health care purchasers and employers;

"(6) public health agencies;

"(7) health professions schools, universities and colleges;

"(8) clinical researchers;

"(9) other users of health information technology such as the support and clerical staff of providers and others involved in the care and care coordination of patients; and

"(10) such other entities, as may be determined appropriate by the Secretary.

"(h) CONTINUOUS IMPROVEMENT.—The Secretary shall annually evaluate the activities conducted under this section and shall, in awarding grants under this section, implement the lessons learned from such evaluation in a manner so that awards made subsequent to each such evaluation are made in a manner that, in the determination of the Secretary, will lead towards the greatest improvement

in quality of care, decrease in costs, and the most effective authorized and secure electronic exchange of health information.

"(i) REQUIRED MATCH.—

"(1) IN GENERAL.—For a fiscal year (beginning with fiscal year 2011), the Secretary may not make a grant under subsection (a) to a State unless the State agrees to make available non-Federal contributions (which may include in-kind contributions) toward the costs of a grant awarded under subsection (a)(3) in an amount equal to—

"(A) for fiscal year 2011, not less than $1 for each $10 of Federal funds provided under the grant;

"(B) for fiscal year 2012, not less than $1 for each $7 of Federal funds provided under the grant; and

"(C) for fiscal year 2013 and each subsequent fiscal year, not less than $1 for each $3 of Federal funds provided under the grant.

"(2) AUTHORITY TO REQUIRE STATE MATCH FOR FISCAL YEARS BEFORE FISCAL YEAR 2011.—For any fiscal year during the grant program under this section before fiscal year 2011, the Secretary may 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;

"(3) provides assurances to the National Coordinator that the entity will establish a Loan Fund in accordance with subsection (c);

"(4) provides assurances to the National Coordinator that the entity will not provide a loan from the Loan Fund to a health care provider unless the provider agrees to—

"(A) submit reports on quality measures adopted by the Federal Government (by not later than 90 days after the date on which such measures are adopted), to—

"(i) the Director of the Centers for Medicare & Medicaid Services (or his or her designee), in the case of an entity participating in the Medicare program under title XVIII of the Social Security Act or the Medicaid program under title XIX of such Act; or

"(ii) the Secretary in the case of other entities;

"(B) demonstrate to the satisfaction of the Secretary (through criteria established by the Secretary) that any certified EHR technology purchased, improved, or otherwise financially supported under a loan under this section is

used to exchange health information in a manner that, in accordance with law and standards (as adopted under section 3005) applicable to the exchange of information, improves the quality of health care, such as promoting care coordination;

"(C) comply with such other requirements as the entity or the Secretary may require;

"(D) include a plan on how healthcare providers involved intend to maintain and support the certified EHR technology over time; and

"(E) include a plan on how the healthcare providers involved intend to maintain and support the certified EHR technology that would be purchased with such loan, including the type of resources expected to be involved and any such other information as the State or Indian tribe, respectively, may require; and

"(5) agrees to provide matching funds in accordance with subsection (i).

"(c) ESTABLISHMENT OF FUND.—For purposes of subsection (b)(3), an eligible entity shall establish a certified EHR technology loan fund (referred to in this subsection as a 'Loan Fund') and comply with the other requirements contained in this section. A grant to an eligible entity under this section shall be deposited in the Loan Fund established

by the eligible entity. No funds authorized by other provisions of this title to be used for other purposes specified in this title shall be deposited in any Loan Fund.

"(d) STRATEGIC PLAN.—

"(1) IN GENERAL.—For purposes of subsection (b)(2), a strategic plan of an eligible entity under this subsection shall identify the intended uses of amounts available to the Loan Fund of such entity.

"(2) CONTENTS.—A strategic plan under paragraph (1), with respect to a Loan Fund of an eligible entity, shall include for a year the following:

"(A) A list of the projects to be assisted through the Loan Fund during such year.

"(B) A description of the criteria and methods established for the distribution of funds from the Loan Fund during the year.

"(C) A description of the financial status of the Loan Fund as of the date of submission of the plan.

"(D) The short-term and long-term goals of the Loan Fund.

"(e) USE OF FUNDS.—Amounts deposited in a Loan Fund, including loan repayments and interest earned on such amounts, shall be used only for awarding loans or loan guarantees, making reimbursements described in subsection

(g)(4)(A), or as a source of reserve and security for leveraged loans, the proceeds of which are deposited in the Loan Fund established under subsection (a). Loans under this section may be used by a health care provider to—

"(1) facilitate the purchase of certified EHR technology;

"(2) enhance the utilization of certified EHR technology (which may include costs associated with upgrading health information technology so that it meets criteria necessary to be a certified EHR technology);

"(3) train personnel in the use of such technology; or

"(4) improve the secure electronic exchange of health information.

"(f) TYPES OF ASSISTANCE.—Except as otherwise limited by applicable State law, amounts deposited into a Loan Fund under this subsection may only be used for the following:

"(1) To award loans that comply with the following:

"(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).

"(g) ADMINISTRATION OF LOAN FUNDS.—

"(1) COMBINED FINANCIAL ADMINISTRATION.—An eligible entity may (as a convenience and to avoid unnecessary administrative costs) combine, in accord-

ance with applicable State law, the financial administration of a Loan Fund established under this subsection with the financial administration of any other revolving fund established by the entity if otherwise not prohibited by the law under which the Loan Fund was established.

"(2) COST OF ADMINISTERING FUND.—Each eligible entity may annually use not to exceed 4 percent of the funds provided to the entity under a grant under this subsection to pay the reasonable costs of the administration of the programs under this section, including the recovery of reasonable costs expended to establish a Loan Fund which are incurred after the date of the enactment of this title.

"(3) GUIDANCE AND REGULATIONS.—The National Coordinator shall publish guidance and promulgate regulations as may be necessary to carry out the provisions of this section, including—

"(A) provisions to ensure that each eligible entity commits and expends funds allotted to the entity under this subsection as efficiently as possible in accordance with this title and applicable State laws; and

"(B) guidance to prevent waste, fraud, and abuse.

"(4) PRIVATE SECTOR CONTRIBUTIONS.—

"(A) IN GENERAL.—A Loan Fund established under this subsection may accept contributions from private sector entities, except that such entities may not specify the recipient or recipients of any loan issued under this subsection. An eligible entity may agree to reimburse a private sector entity for any contribution made under this subparagraph, except that the amount of such reimbursement may not be greater than the principal amount of the contribution made.

"(B) AVAILABILITY OF INFORMATION.—An eligible entity shall make publicly available the identity of, and amount contributed by, any private sector entity under subparagraph (A) and may issue letters of commendation or make other awards (that have no financial value) to any such entity.

"(h) MATCHING REQUIREMENTS.—

"(1) IN GENERAL.—The National Coordinator may not make a grant under subsection (a) to an eligible entity unless the entity agrees to make available (directly or through donations from public or private entities) non-Federal contributions in cash to the costs of carrying out the activities for which the grant is

awarded in an amount equal to not less than $1 for each $5 of Federal funds provided under the grant.

"(2) DETERMINATION OF AMOUNT OF NON-FEDERAL CONTRIBUTION.—In determining the amount of non-Federal contributions that an eligible entity has provided pursuant to subparagraph (A), the National Coordinator may not include any amounts provided to the entity by the Federal Government.

"(i) EFFECTIVE DATE.—The Secretary may not make an award under this section prior to January 1, 2010.

"SEC. 3015. DEMONSTRATION PROGRAM TO INTEGRATE INFORMATION TECHNOLOGY INTO CLINICAL EDUCATION.

"(a) IN GENERAL.—The Secretary may award grants under this section to carry out demonstration projects to develop academic curricula integrating certified EHR technology in the clinical education of health professionals. Such awards shall be made on a competitive basis and pursuant to peer review.

"(b) ELIGIBILITY.—To be eligible to receive a grant under subsection (a), an entity shall—

"(1) submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require;

"(2) submit to the Secretary a strategic plan for integrating certified EHR technology in the clinical education of health professionals to reduce medical errors, increase access to prevention, reduce chronic diseases, and enhance health care quality;

"(3) be—

"(A) a school of medicine, osteopathic medicine, dentistry, or pharmacy, a graduate program in behavioral or mental health, or any other graduate health professions school;

"(B) a graduate school of nursing or physician assistant studies;

"(C) a consortium of two or more schools described in subparagraph (A) or (B); or

"(D) an institution with a graduate medical education program in medicine, osteopathic medicine, dentistry, pharmacy, nursing, or physician assistance studies.

"(4) provide for the collection of data regarding the effectiveness of the demonstration project to be funded under the grant in improving the safety of patients, the efficiency of health care delivery, and in increasing the likelihood that graduates of the grantee will adopt and incorporate certified EHR technology, in the delivery of health care services; and

"(5) provide matching funds in accordance with subsection (d).

"(c) USE OF FUNDS.—

"(1) IN GENERAL.—With respect to a grant under subsection (a), an eligible entity shall—

"(A) use grant funds in collaboration with 2 or more disciplines; and

"(B) use grant funds to integrate certified EHR technology into community-based clinical education.

"(2) LIMITATION.—An eligible entity shall not use amounts received under a grant under subsection (a) to purchase hardware, software, or services.

"(d) FINANCIAL SUPPORT.—The Secretary may not provide more than 50 percent of the costs of any activity for which assistance is provided under subsection (a), except in an instance of national economic conditions which would render the cost-share requirement under this subsection detrimental to the program and upon notification to Congress as to the justification to waive the cost-share requirement.

"(e) EVALUATION.—The Secretary shall take such action as may be necessary to evaluate the projects funded under this section and publish, make available, and disseminate the results of such evaluations on as wide a basis as is practicable.

"(f) REPORTS.—Not later than 1 year after the date of enactment of this title, and annually thereafter, the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate, and the Committee on Energy and Commerce of the House of Representatives a report that—

"(1) describes the specific projects established under this section; and

"(2) contains recommendations for Congress based on the evaluation conducted under subsection (e).

"SEC. 3016. INFORMATION TECHNOLOGY PROFESSIONALS ON HEALTH CARE.

"(a) IN GENERAL.—The Secretary, in consultation with the Director of the National Science Foundation, shall provide assistance to institutions of higher education (or consortia thereof) to establish or expand medical health informatics education programs, including certification, undergraduate, and masters degree programs, for both health care and information technology students to ensure the rapid and effective utilization and development of health information technologies (in the United States health care infrastructure).

"(b) ACTIVITIES.—Activities for which assistance may be provided under subsection (a) may include the following:

"(1) Developing and revising curricula in medical health informatics and related disciplines.

"(2) Recruiting and retaining students to the program involved.

"(3) Acquiring equipment necessary for student instruction in these programs, including the installation of testbed networks for student use.

"(4) Establishing or enhancing bridge programs in the health informatics fields between community colleges and universities.

"(c) PRIORITY.—In providing assistance under subsection (a), the Secretary shall give preference to the following:

"(1) Existing education and training programs.

"(2) Programs designed to be completed in less than six months.

"(d) FINANCIAL SUPPORT.—The Secretary may not provide more than 50 percent of the costs of any activity for which assistance is provided under subsection (a), except in an instance of national economic conditions which would render the cost-share requirement under this subsection detrimental to the program and upon notification to Congress as to the justification to waive the cost-share requirement.

"SEC. 3017. GENERAL GRANT AND LOAN PROVISIONS.

"(a) REPORTS.—The Secretary may require that an entity receiving assistance under this title shall submit to the Secretary, not later than the date that is 1 year after the date of receipt of such assistance, a report that includes—

"(1) an analysis of the effectiveness of such activities for which the entity receives such assistance, as compared to the goals for such activities; and

"(2) an analysis of the impact of the project on healthcare quality and safety.

"(b) REQUIREMENT TO IMPROVE QUALITY OF CARE AND DECREASE IN COSTS.—The National Coordinator shall annually evaluate the activities conducted under this title and shall, in awarding grants, implement the lessons learned from such evaluation in a manner so that awards made subsequent to each such evaluation are made in a manner that, in the determination of the National Coordinator, will result in the greatest improvement in the quality and efficiency of health care.

"SEC. 3018. AUTHORIZATION FOR APPROPRIATIONS.

"For the purposes of carrying out this subtitle, there is authorized to be appropriated such sums as may be necessary for each of the fiscal years 2009 through 2013. Amounts so appropriated shall remain available until expended.".

Subtitle D—Privacy

SEC. 13400. DEFINITIONS.

In this subtitle, except as specified otherwise:

(1) BREACH.—The term "breach" means the unauthorized acquisition, access, use, or disclosure of protected health information which compromises the security, privacy, or integrity of protected health information maintained by or on behalf of a person. Such term does not include any unintentional acquisition, 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.

(6) HEALTH CARE OPERATIONS.—The term "health care operation" has the meaning given such term in section 164.501 of title 45, Code of Federal Regulations.

(7) HEALTH CARE PROVIDER.—The term "health care provider" has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(8) HEALTH PLAN.—The term "health plan" has the meaning given such term in section 1171(5) of the Social Security Act.

(9) NATIONAL COORDINATOR.—The term "National Coordinator" means the head of the Office of the National Coordinator for Health Information Technology established under section 3001(a) of the Public Health Service Act, as added by section 13101.

(10) PAYMENT.—The term "payment" has the meaning given such term in section 164.501 of title 45, Code of Federal Regulations.

(11) PERSONAL HEALTH RECORD.—The term "personal health record" means an electronic record of individually identifiable health information on an individual that can be drawn from multiple sources and that is managed, shared, and controlled by or for the individual.

(12) PROTECTED HEALTH INFORMATION.—The term "protected health information" has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(13) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

(14) SECURITY.—The term "security" has the meaning given such term in section 164.304 of title 45, Code of Federal Regulations.

(15) STATE.—The term "State" means each of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(16) TREATMENT.—The term "treatment" has the meaning given such term in section 164.501 of title 45, Code of Federal Regulations.

(17) USE.—The term "use" has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(18) VENDOR OF PERSONAL HEALTH RECORDS.—The term "vendor of personal health records" means an entity, other than a covered entity (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 sections apply to a covered entity that violates such security provision.

(c) ANNUAL GUIDANCE.—For the first year beginning after the date of the enactment of this Act and annually thereafter, the Secretary of Health and Human Services shall, in consultation with industry stakeholders, annually issue guidance on the most effective and appropriate technical safeguards for use in carrying out the sections referred to in subsection (a) and the security standards in subpart C of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date before the enactment of this Act.

SEC. 13402. NOTIFICATION IN THE CASE OF BREACH.

(a) IN GENERAL.—A covered entity that accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured protected health information (as defined in subsection (h)(1)) shall, in the case of a breach of such information that is discovered by the covered entity, notify each individual whose unsecured

protected health information has been, or is reasonably believed by the covered entity to have been, accessed, acquired, or disclosed as a result of such breach.

(b) NOTIFICATION OF COVERED ENTITY BY BUSINESS ASSOCIATE.—A business associate of a covered entity that accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured protected health information shall, following the discovery of a breach of such information, notify the covered entity of such breach. Such notice shall include the identification of each individual whose unsecured protected health information has been, or is reasonably believed by the business associate to have been, accessed, acquired, or disclosed during such breach.

(c) BREACHES TREATED AS DISCOVERED.—For purposes of this section, a breach shall be treated as discovered by a covered entity or by a business associate as of the first day on which such breach is known to such entity or associate, respectively, (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of such entity or associate, respectively) or should reasonably have been known to such entity or associate (or person) to have occurred.

(d) TIMELINESS OF NOTIFICATION.—

(1) IN GENERAL.—Subject to subsection (g), all notifications required under this section shall be made without unreasonable delay and in no case later than 60 calendar days after the discovery of a breach by the covered entity involved (or business associate involved in the case of a notification required under subsection (b)).

(2) BURDEN OF PROOF.—The covered entity involved (or business associate involved in the case of a notification required under subsection (b)), shall have the burden of demonstrating that all notifications were made as required under this part, including evidence demonstrating the necessity of any delay.

(e) METHODS OF NOTICE.—

(1) INDIVIDUAL NOTICE.—Notice required under this section to be provided to an individual, with respect to a breach, shall be provided promptly and in the following form:

(A) Written notification by first-class mail to the individual (or the next of kin of the individual if the individual is deceased) at the last known address of the individual or the next of kin, respectively, or, if specified as a preference by the individual, by electronic mail. The notifi-

cation may be provided in one or more mailings as information is available.

(B) In the case in which there is insufficient, or out-of-date contact information (including a phone number, email address, or any other form of appropriate communication) that 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 jurisdiction, following the discovery of a breach described in subsection (a), if the unsecured protected health information of more than 500 residents of such State or jurisdiction is, or is reasonably believed to have been, accessed, acquired, or disclosed during such breach.

(3) NOTICE TO SECRETARY.—Notice shall be provided to the Secretary by covered entities of unsecured protected health information that has been acquired or disclosed in a breach. If the breach was with respect to 500 or more individuals than such notice must be provided immediately. If the breach was with respect to less than 500 individuals, the covered entity may maintain a log of any such breach occurring and annually submit such a log to the Secretary documenting such breaches occurring during the year involved.

(4) POSTING ON HHS PUBLIC WEBSITE.—The Secretary shall make available to the public on the

Internet website of the Department of Health and Human Services a list that identifies each covered entity involved in a breach described in subsection (a) in which the unsecured protected health information of more than 500 individuals is acquired or disclosed.

(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 determines that a notification, notice, or posting required under this section would impede a criminal investigation or cause damage to national security, such notification, notice, or posting shall be delayed in the same manner as provided under section 164.528(a)(2) of title 45, Code of Federal Regulations, in the case of a disclosure covered under such section.

(h) UNSECURED PROTECTED HEALTH INFORMATION.—

(1) DEFINITION.—

(A) IN GENERAL.—Subject to subparagraph (B), for purposes of this section, the term "unsecured protected health information" means protected health information that is not secured through the use of a technology or methodology specified by the Secretary in the guidance issued under paragraph (2).

(B) EXCEPTION IN CASE TIMELY GUIDANCE NOT ISSUED.—In the case that the Secretary does not issue guidance under paragraph (2) by the date specified in such paragraph, for purposes of

this section, the term "unsecured protected health information" shall mean protected health information that is not secured by a technology standard that renders protected health information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.

(2) GUIDANCE.—For purposes of paragraph (1) and section 13407(f)(3), not later than the date that is 60 days after the date of the enactment of this Act, the Secretary shall, after consultation with stakeholders, issue (and annually update) guidance specifying the technologies and methodologies that render protected health information unusable, unreadable, or indecipherable to unauthorized individuals.

(i) REPORT TO CONGRESS ON BREACHES.—

(1) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act and annually thereafter, the Secretary shall prepare and submit to the Committee on Finance and 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 containing the information described in paragraph (2) regarding breaches for which notice was provided to the Secretary under subsection (e)(3).

(2) INFORMATION.—The information described in this paragraph regarding breaches specified in paragraph (1) shall include—

(A) the number and nature of such breaches; and

(B) actions taken in response to such breaches.

(j) 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 title. The provisions of this section shall apply to breaches that are discovered on or after the date that is 30 days after the date of publication of such interim final regulations.

SEC. 13403. EDUCATION ON HEALTH INFORMATION PRIVACY.

(a) REGIONAL OFFICE PRIVACY ADVISORS.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall designate an individual in each regional office of the Department of Health and Human Services to

offer guidance and education to covered entities, business associates, and individuals on their rights and responsibilities related to Federal privacy and security requirements for protected health information.

(b) EDUCATION INITIATIVE ON USES OF HEALTH INFORMATION.—Not later than 12 months after the date of the enactment of this Act, the Office for Civil Rights within the Department of Health and Human Services shall develop and maintain a multi-faceted national education initiative to enhance public transparency regarding the uses of protected health information, including programs to educate individuals about the potential uses of their protected health information, the effects of such uses, and the rights of individuals with respect to such uses. Such programs shall be conducted in a variety of languages and present information in a clear and understandable manner.

SEC. 13404. APPLICATION OF PRIVACY PROVISIONS AND PENALTIES TO BUSINESS ASSOCIATES OF COVERED ENTITIES.

(a) APPLICATION OF CONTRACT REQUIREMENTS.—In the case of a business associate of a covered entity that obtains or creates protected health information pursuant to a written contract (or other written arrangement) described in section 164.502(e)(2) of title 45, Code of Federal Regulations, with such covered entity, the business associate may

use and disclose such protected health information only if such use or disclosure, respectively, is in compliance with each applicable requirement of section 164.504(e) of such title. The additional requirements of this subtitle that relate to privacy 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 KNOWLEDGE ELEMENTS ASSOCIATED WITH CONTRACTS.—Section 164.504(e)(1)(ii) of title 45, Code of Federal Regulations, shall apply to a business associate described in subsection (a), with respect to compliance with such subsection, in the same manner that such section applies to a covered entity, with respect to compliance with the standards in sections 164.502(e) and 164.504(e) of such title, except that in applying such section 164.504(e)(1)(ii) each reference to the business associate, with respect to a contract, shall be treated as a reference to the covered entity involved in such contract.

(c) APPLICATION OF CIVIL AND CRIMINAL PENALTIES.—In the case of a business associate that violates any provision of subsection (a) or (b), the provisions of 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 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.

(b) DISCLOSURES REQUIRED TO BE LIMITED TO THE LIMITED DATA SET OR THE MINIMUM NECESSARY.—

(1) IN GENERAL.—

(A) IN GENERAL.—Subject to subparagraph (B), a covered entity shall be treated as being in compliance with section 164.502(b)(1) of title 45, Code of Federal Regulations, with respect to the use, disclosure, or request of protected health information described in such section, only if the covered entity limits such protected health information, to the extent practicable, to the limited data set (as defined in section 164.514(e)(2) of such title) or, if needed by such entity, to the minimum necessary to accomplish the intended purpose of such use, disclosure, or request, respectively.

(B) GUIDANCE.—Not later than 18 months after the date of the enactment of this section, the Secretary shall issue guidance on what constitutes "minimum necessary" for purposes of subpart E of part 164 of title 45, Code of Federal Regulation. In issuing such guidance the Secretary shall take into consideration the guidance under section 13424(c) and the information

necessary to improve patient outcomes and to detect, prevent, and manage chronic disease.

(C) SUNSET.—Subparagraph (A) shall not apply on and after the effective date on which the Secretary issues the guidance under subparagraph (B).

(2) DETERMINATION OF MINIMUM NECESSARY.—For purposes of paragraph (1), in the case of the disclosure of protected health information, the covered entity or business associate disclosing such information shall determine what constitutes the minimum necessary to accomplish the intended purpose of such disclosure.

(3) APPLICATION OF EXCEPTIONS.—The exceptions described in section 164.502(b)(2) of title 45, Code of Federal Regulations, shall apply to the requirement under paragraph (1) as of the effective date described in section 13423 in the same manner that such exceptions apply to section 164.502(b)(1) of such title before such date.

(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed as affecting the use, disclosure, or request of protected health information that has been de-identified.

(c) ACCOUNTING OF CERTAIN PROTECTED HEALTH INFORMATION DISCLOSURES REQUIRED IF COVERED ENTITY USES ELECTRONIC HEALTH RECORD.—

"(1) IN GENERAL.—In applying section 164.528 of title 45, Code of Federal Regulations, in the case that a covered entity uses or maintains an electronic health record with respect to protected health information—

"(A) the exception under paragraph (a)(1)(i) of such section shall not apply to disclosures through an electronic health record made by such entity of such information; and

"(B) an individual shall have a right to receive an accounting of disclosures described in such paragraph of such information made by such covered entity during only the three years prior to the date on which the accounting is requested.

"(2) REGULATIONS.—The Secretary shall promulgate regulations on what disclosures must be included in an accounting referred to in paragraph (1)(A) and what information must be collected about each such disclosure not later than 18 months after the date on which the Secretary adopts standards on accounting for disclosure described in the section

3002(b)(2)(B)(iv) of the Public Health Service Act, as added by section 13101. Such regulations shall only require such information to be collected through an electronic health record in a manner that takes into account the interests of individuals in learning when their protected health information was disclosed and to whom it was disclosed, and the usefulness of such information to the individual, and takes into account the administrative and cost burden of accounting for such disclosures.

"(3) CONSTRUCTION.—Nothing in this subsection shall be construed as—

"(A) requiring a covered entity to account for disclosures of protected health information that are not made by such covered entity; or

"(B) requiring a business associate of a covered entity to account for disclosures of protected health information that are not made by such business associate.

"(4) REASONABLE FEE.—A covered entity may impose a reasonable fee on an individual for an accounting performed under paragraph (1)(B). Any such fee shall not be greater than the entity's labor costs in responding to the request.

"(5) EFFECTIVE DATE.—

"(A) CURRENT USERS OF ELECTRONIC RECORDS.—In the case of a covered entity insofar as it acquired an electronic health record as of January 1, 2009, paragraph (1) shall apply 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, 2009, 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.

"(C) LATER DATE.—The Secretary may set an effective date that is later that the date specified under subparagraph (A) or (B) if the Secretary determines that such later date it necessary, but in no case may the date specified under—

"(i) subparagraph (A) be later than 2018; or

"(ii) subparagraph (B) be later than 2014.

(d) REVIEW OF HEALTH CARE OPERATIONS.—Not later than 18 months after the date of the enactment of this title, the Secretary shall review and evaluate the definition of health care operations under section 164.501 of title 45, Code of Federal Regulations, and to the extent appropriate, eliminate by regulation 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 shall not require that data be de-identified or require valid authorization for use or disclosure for activities within a covered entity described in paragraph (1) of the definition of health care operations under such section 164.501. 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 into account the report under section 13424(d). In such regulations the Secretary shall specify the date on which such regulations shall apply to disclosures made by a covered entity, but in no case would such date be sooner than the date that is 24 months after the date of the enactment of this section.

Nothing in this subsection may be construed to supersede any provision under subsection (e) or section 13406(a).

(e) PROHIBITION ON SALE OF ELECTRONIC HEALTH RECORDS OR PROTECTED HEALTH INFORMATION OBTAINED FROM ELECTRONIC HEALTH RECORDS.—

(1) IN GENERAL.—Except as provided in paragraph (2), a covered entity or business associate shall not directly or indirectly receive remuneration in exchange for any protected health information of an individual unless the covered entity obtained from the individual, in accordance with section 164.508 of title 45, Code of Federal Regulations, a valid authorization that includes, in accordance with such section, a specification of whether the protected health information can be further exchanged for remuneration by the entity receiving protected health information of that individual.

(2) EXCEPTIONS.—Paragraph (1) shall not apply in the following cases:

(A) The purpose of the exchange is for research or public health activities (as described in sections 164.501, 164.512(i), and 164.512(b) of title 45, Code of Federal Regulations).

(B) The purpose of the exchange is for the treatment of the individual, subject to any regu-

lation that the Secretary may promulgate to prevent protected health information from inappropriate access, use, or disclosure.

(C) The purpose of the exchange is the health care operation specifically described in subparagraph (iv) of paragraph (6) of the definition of healthcare operations in section 164.501 of title 45, Code of Federal Regulations.

(D) The purpose of the exchange is for remuneration that is provided by a covered entity to a business associate for activities involving the exchange of protected health information that the business associate undertakes on behalf of and at the specific request of the covered entity pursuant to a business associate agreement.

(E) The purpose of the exchange is to provide an individual with a copy of the individual's protected health information pursuant to section 164.524 of title 45, Code of Federal Regulations.

(F) The purpose of the exchange is otherwise determined by the Secretary in regulations to be similarly necessary and appropriate as the exceptions provided in subparagraphs (A) through (E).

(3) REGULATIONS.—Not later than 18 months after the date of enactment of this title, the Secretary shall promulgate regulations to carry out this subsection. In promulgating such regulations, the Secretary—

(A) shall evaluate the impact of restricting the exception described in paragraph (2)(A) to require that the price charged for the purposes described in such paragraph reflects the costs of the preparation and transmittal of the data for such purpose, on research or public health activities, including those conducted by or for the use of the Food and Drug Administration; and

(B) may further restrict the exception described in paragraph (2)(A) to require that the price charged for the purposes described in such paragraph reflects the costs of the preparation and transmittal of the data for such purpose, if the Secretary finds that such further restriction will not impede such research or public health activities.

(4) EFFECTIVE DATE.—Paragraph (1) shall apply to exchanges occurring on or after the date that is 6 months after the date of the promulgation of final regulations implementing this subsection.

(f) ACCESS TO CERTAIN INFORMATION IN ELECTRONIC FORMAT.—In applying section 164.524 of title 45, Code of Federal Regulations, in the case that a covered entity uses or maintains an electronic health record with respect to protected health information of an individual—

(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.

(2) PAYMENT FOR CERTAIN COMMUNICATIONS.—A communication by a covered entity or business associate that is described in subparagraph (i), (ii), or (iii) of paragraph (1) of the definition of marketing in section 164.501 of title 45, Code of Federal Regulations, shall not be considered a health care operation for purposes of subpart E of part 164 of title 45, Code of Federal Regulations if the covered entity receives or has received direct or indirect payment in exchange for making such communication, except where—

(A) such communication describes only a health care item or service that has previously been prescribed for or administered to the recipient of the communication, or a family member of such recipient;

(B) each of the following conditions apply—

(i) the communication is made by the covered entity; and

(ii) the covered entity making such communication obtains from the recipient of the communication, in accordance with

section 164.508 of title 45, Code of Federal Regulations, a valid authorization (as described in paragraph (b) of such section) with respect to such communication; or

(C) each of the following conditions apply—

(i) the communication is made on behalf of the covered entity;

(ii) the communication is consistent with the written contract (or other written arrangement described in section 164.502(e)(2) of such title) between such business associate and covered entity; and

(iii) the business associate making such communication, or the covered entity on behalf of which the communication is made, obtains from the recipient of the communication, in accordance with section 164.508 of title 45, Code of Federal Regulations, a valid authorization (as described in paragraph (b) of such section) with respect to such communication.

(c) EFFECTIVE DATE.—This section shall apply to contracting occurring on or after the effective date specified under section 13423.

SEC. 13407. TEMPORARY BREACH NOTIFICATION REQUIREMENT FOR VENDORS OF PERSONAL HEALTH RECORDS AND OTHER NON-HIPAA COVERED ENTITIES.

(a) IN GENERAL.—In accordance with subsection (c), each vendor of personal health records, following the discovery of a breach of security of unsecured PHR identifiable health information that is in a personal health record maintained or offered by such vendor, and each entity described in clause (ii) or (iii) of section 13424(b)(1)(A), following the discovery of a breach of security of such information that is obtained through a product or service provided by such entity, shall—

(1) notify each individual who is a citizen or resident of the United States whose unsecured PHR identifiable health information was acquired by an unauthorized person as a result of such a breach of security; and

(2) notify the Federal Trade Commission.

(b) NOTIFICATION BY THIRD PARTY SERVICE PROVIDERS.—A third party service provider that provides services to a vendor of personal health records or to an entity described in clause (ii) or (iii) of section 13424(b)(1)(A) in connection with the offering or maintenance of a personal health record or a related product or service and that accesses, maintains, retains, modifies, records, stores, de-

stroys, or otherwise holds, uses, or discloses unsecured PHR identifiable health information in such a record as a result of such services shall, following the discovery of a breach of security of such information, notify such vendor or entity, respectively, of such breach. Such notice shall include the identification of each individual whose unsecured PHR identifiable health information has been, or is reasonably believed to have been, accessed, acquired, or disclosed during such breach.

(c) APPLICATION OF REQUIREMENTS FOR TIMELINESS, METHOD, AND CONTENT OF NOTIFICATIONS.—Subsections (c), (d), (e), and (f) of section 13402 shall apply to a notification required under subsection (a) and a vendor of personal health records, an entity described in subsection (a) and a third party service provider described in subsection (b), with respect to a breach of security under subsection (a) of unsecured PHR identifiable health information in such records maintained or offered by such vendor, in a manner specified by the Federal Trade Commission.

(d) NOTIFICATION OF THE SECRETARY.—Upon receipt of a notification of a breach of security under subsection (a)(2), the Federal Trade Commission shall notify the Secretary of such breach.

(e) ENFORCEMENT.—A violation of subsection (a) or (b) shall be treated as an unfair and deceptive act or prac-

tice in violation of a regulation under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) regarding unfair or deceptive acts or practices.

(f) DEFINITIONS.—For purposes of this section:

(1) BREACH OF SECURITY.—The term "breach of security" means, with respect to unsecured PHR identifiable health information of an individual in a personal health record, acquisition of such information without the authorization of the individual.

(2) PHR IDENTIFIABLE HEALTH INFORMATION.—The term "PHR identifiable health information" means individually identifiable health information, as defined in section 1171(6) of the Social Security Act (42 U.S.C. 1320d(6)), and includes, with respect to an individual, information—

(A) that is provided by or on behalf of the individual; and

(B) that identifies the individual or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.

(3) UNSECURED PHR IDENTIFIABLE HEALTH INFORMATION.—

(A) IN GENERAL.—Subject to subparagraph (B), the term "unsecured PHR identifiable health information" means PHR identifiable health information that is not protected through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2).

(B) EXCEPTION IN CASE TIMELY GUIDANCE NOT ISSUED.—In the case that the Secretary does not issue guidance under section 13402(h)(2) by the date specified in such section, for purposes of this section, the term "unsecured PHR identifiable health information" 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 Federal Trade Commission shall, in accordance with section 553 of title 5, United States Code, 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 Regulations, as such provisions are in effect as of the date of enactment of this title.

SEC. 13409. CLARIFICATION OF APPLICATION OF WRONGFUL DISCLOSURES CRIMINAL PENALTIES.

Section 1177(a) of the Social Security Act (42 U.S.C. 1320d–6(a)) is amended by adding at the end the following new sentence: "For purposes of the previous sentence, a person (including an employee or other individual) shall be considered to have obtained or disclosed individually identifiable health information in violation of this part if the information is maintained by a covered entity (as defined in the HIPAA privacy regulation described in section

1180(b)(3)) and the individual obtained or disclosed such information without authorization.".

SEC. 13410. IMPROVED ENFORCEMENT.

(a) IN GENERAL.—Section 1176 of the Social Security Act (42 U.S.C. 1320d–5) is amended—

(1) in subsection (b)(1), by striking "the act constitutes an offense punishable under section 1177" and inserting "a penalty has been imposed under section 1177 with respect to such act"; and

(2) by adding at the end the following new subsection:

"(c) NONCOMPLIANCE DUE TO WILLFUL NEGLECT.—

"(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 subtitle or section 1176 of the Social Security Act (42 U.S.C. 1320d–5) insofar as such section relates to privacy or security shall be transferred to the Office of Civil Rights of the Department of Health and Human Services to be used for purposes of enforcing the provisions of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date of enactment of this Act.

(2) GAO REPORT.—Not later than 18 months after the date of the enactment of this title, the Comptroller General shall submit to the Secretary a report including recommendations for a 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.

(3) ESTABLISHMENT OF METHODOLOGY TO DISTRIBUTE PERCENTAGE OF CMPS COLLECTED TO HARMED INDIVIDUALS.—Not later than 3 years after the date of the enactment of this title, the Secretary shall establish by regulation and based on the recommendations submitted under paragraph (2), a 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 extent 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 requirement 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)".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to violations occurring after the date of the enactment of this Act.

(f) ALLOWING CONTINUED USE OF CORRECTIVE ACTION.—Such section is further amended by adding at the end the following new subsection:

"(e) ALLOWING CONTINUED USE OF CORRECTIVE ACTION.—Nothing in this section shall be construed as preventing the Office of Civil Rights of the Department of Health and Human Services from continuing, in its discretion, to use corrective action without a penalty in cases where the person did not know (and by exercising reasonable diligence would not have known) of the violation involved.".

SEC. 13411. AUDITS.

The Secretary shall provide for periodic audits to ensure that covered entities and business associates that are subject to the requirements of this subtitle and subparts C

and E of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date of 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 such provisions are in effect as of the date of enactment of this Act) relating to privacy and security of health information that are received by the Secretary during the year for which the report is being prepared. Each such report shall include, with respect to such complaints received during the year—

(A) the number of such complaints;

(B) the number of such complaints resolved informally, a summary of the types of such complaints so resolved, and the number of covered entities that received technical assistance from the Secretary during such year in order to achieve compliance with such provisions and the types of such technical assistance provided;

(C) the number of such complaints that have resulted in the imposition of civil monetary penalties or have been resolved through monetary settlements, including the nature of the complaints involved and the amount paid in each penalty or settlement;

(D) the number of compliance reviews conducted and the outcome of each such review;

(E) the number of subpoenas or inquiries 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 individually identifiable health information that has been rendered unusable, unreadable, or indecipherable through technologies or methodologies recognized by appropriate professional organization or standard setting bodies to provide effective security for the information) that should be applied to—

(i) vendors of personal health records;

(ii) entities that offer products or services through the website of a vendor of personal health records;

(iii) entities that are not covered entities and that offer products or services through the websites of covered entities that offer individuals personal health records;

(iv) entities that are not covered entities and that access information in a personal health record or send information to a personal health record; and

(v) third party service providers used by a vendor or entity described in clause (i), (ii), (iii), or (iv) to assist in providing 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.

(d) GAO REPORT ON TREATMENT DISCLOSURES.—Not later than one year after the date of the enactment of this title, the Comptroller General of the United States shall 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 on the best practices related to the disclosure among health care providers of protected health information of an individual for purposes of treatment of such individual. Such report shall include an examination of the best practices implemented by States and by other entities, such as health information exchanges and regional health information organizations, an examination of the extent to which such best practices are successful with respect to the quality of the resulting health care provided to the individual and with respect to the ability of the health care provider to manage such best practices, and an examination of the use of electronic informed consent for disclosing protected health information for treatment, payment, and health care operations.

(e) REPORT REQUIRED.—Not later than 1 year after the date of enactment of this section, the Government Accountability Office shall submit to Congress and the Secretary of Health and Human Services a report on the impact of any of the provisions of, or amendments made by,

this division or division B that are related to the Health Insurance Portability and Accountability Act of 1996 and section 552a of title 5, United States Code, on health insurance premiums and overall health care costs.

TITLE XIV—STATE FISCAL STABILIZATION

DEPARTMENT OF EDUCATION

STATE FISCAL STABILIZATION FUND

For necessary expenses for a State Fiscal Stabilization Fund, $39,000,000,000, 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 $7,500,000,000 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.

EDUCATION FUND.—(a) IN GENERAL.—The Governor shall use 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.

(b) RESTORING 2008 STATE SUPPORT FOR EDUCATION.—

(1) IN GENERAL.—The Governor shall first use the funds described in subsection (a)—

(A) 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

(B) 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.

(2) SHORTFALL.—If the Governor determines that the amount of funds available under subsection (a) is insufficient to restore State support for education to the levels described in subparagraphs (A) and (B) of paragraph (1), the Governor shall allocate those funds between those clauses in proportion to the relative shortfall in State support for the education sectors described in those clauses.

(c) SUBGRANTS TO IMPROVE BASIC PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES.—After carrying out subsection (b), the Governor shall use any funds remaining under subsection (a) 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.

SEC. 1403. USES OF FUNDS BY LOCAL EDUCATIONAL AGENCIES.

(1) 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 system that includes the elements described in section 6401(e)(2)(D) of the America COMPETES Act (20 U.S.C. 9871).

(4) STANDARDS AND ASSESSMENTS.—The State—

(A) will enhance the quality of academic assessments described in section 1111(b)(3) of ESEA (20 U.S.C. 6311(b)(3)) through activities such as those described in section 6112(a) of such Act (20 U.S.C. 7301a(a));

(B) will comply with the requirements of paragraphs (3)(C)(ix) and (6) of section 1111(b) of ESEA (20 U.S.C. 6311(b)) and section 612(a)(16) of IDEA (20 U.S.C. 1412(a)(16)) related to the inclusion of children with disabilities and limited English proficient students in State assessments, the development of valid and reliable assessments for those students, and the provision of accommodations that enable their participation in State assessments; and

(C) will take steps to improve State academic content standards and student academic 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 achieve-

ment 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 Disabil-

ities 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 subpara-

graph (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 at-

torneys' 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 under

paragraph (2) shall be admissible in evidence in any de novo action at law or equity brought in accordance with this subsection.

(4) JUDICIAL ENFORCEMENT OF ORDER.—Whenever a person fails to comply with an order issued under paragraph (1), the head of the agency shall file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

(5) JUDICIAL REVIEW.—Any person adversely affected or aggrieved by an order issued under paragraph (1) may obtain review of the order's conformance with this subsection, and any regulations issued to carry out this section, in the United States court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency. Review shall conform to chapter 7 of title 5, United States Code.

(d) RULE OF CONSTRUCTION.—Nothing in this section may be construed to authorize the discharge of, demotion

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 duties. 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 to the Committees on Appropriations of the Senate and House of Representatives quarterly reports based on the reports required under section 1551 that detail the impact of programs funded through covered funds on employment, estimated economic growth, and other key economic indicators.

(b) SUBMISSION OF REPORTS.—

(1) FIRST REPORT.—The first report submitted under subsection (a) shall be submitted not later than

45 days after the end of the first full quarter following the date of enactment of this Act.

(2) LAST REPORT.—The last report required to be submitted under subsection (a) shall apply to the quarter in which the Board terminates under section 1521.

Subtitle D—Reports on Use of Funds

SEC. 1551. REPORTS ON USE OF FUNDS.

(a) SHORT TITLE.—This section may be cited as the "Jobs Accountability Act".

(b) DEFINITIONS.—In this section:

(1) AGENCY.—The term "agency" has the meaning given under section 551 of title 5, United States Code.

(2) RECIPIENT.—The term "recipient"—

(A) means any entity that receives recovery funds (including recovery funds received through grant, loan, or contract) other than an individual; and

(B) includes a State that receives recovery funds.

(3) RECOVERY FUNDS.—The term "recovery funds" means any funds that are made available—

(A) from appropriations made under this Act; and

(B) under any other authorities provided under this Act.

(c) RECIPIENT REPORTS.—Not later than 10 days after the end of each calendar quarter, each recipient that received recovery funds from an agency shall submit a report to that agency that contains—

(1) the total amount of recovery funds received from that agency;

(2) the amount of recovery funds received that were expended or obligated to projects or activities; and

(3) a detailed list of all projects or activities for which recovery funds were expended or obligated, including—

(A) the name of the project or activity;

(B) a description of the project or activity;

(C) an evaluation of the completion status of the project or activity; and

(D) an analysis of the number of jobs created and the number of jobs retained by the project or activity.

(d) AGENCY REPORTS.—Not later than 30 days after the end of each calendar quarter, each agency that made

recovery funds available to any recipient shall make the information in reports submitted under subsection (c) publicly available by posting the information on a website.

(e) OTHER REPORTS.—The Congressional Budget Office and the Government Accountability Office shall comment on the information described in subsection (c)(3)(D) for any reports submitted under subsection (c). Such comments shall be due within 7 days after such reports are submitted.

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 appropriated 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) This section shall be applied in a manner consistent with United States obligations under international agreements.

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 Economic 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)),''.

SEC. 1607. FINDINGS.—

(1) The National Environmental Policy Act protects public health, safety and environmental quality: by ensuring transparency, accountability and public involvement in federal actions and in the use of public funds;

(2) When President Nixon signed the National Environmental Policy Act into law on January 1, 1970, he said that the Act provided the ''direction'' for the country to ''regain a productive harmony between man and nature'';

(3) The National Environmental Policy Act helps to provide an orderly process for considering federal actions and funding decisions and prevents ligation and delay that would otherwise be inevitable and existed prior to the establishment of the National Environmental Policy Act.

(a) Adequate resources within this bill must be devoted to ensuring that applicable environmental reviews under the National Environmental Policy Act are completed on an expeditious basis and that the shortest existing applica-

ble process under the National Environmental Policy Act shall be utilized.

(b) The President shall report to the Senate Environment and Public Works Committee and the House Natural Resources Committee every 90 days following the date of enactment until September 30, 2011 on the status and progress of projects and activities funded by this Act with respect to compliance with National Environmental Policy Act requirements and documentation.

PROHIBITION ON NO-BID CONTRACTS AND EARMARKS

SEC. 1608. (a) Notwithstanding any other provision of this Act, none of the funds appropriated or otherwise made available by this Act may be used to make any payment in connection with a contract unless the contract is awarded using competitive procedures in accordance with the requirements of section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253), section 2304 of title 10, United States Code, and the Federal Acquisition Regulation.

(b) Notwithstanding any other provision of this Act, none of the funds appropriated or otherwise made available by this Act may be awarded by grant or cooperative agreement unless the process used to award such grant or cooperative agreement uses competitive procedures to select the grantee or award recipient.

SEC. 1609. LIMIT ON FUNDS.

None of the amounts appropriated or otherwise made available by this Act may be used for any casino or other gambling establishment, aquarium, zoo, golf course, swimming pool, stadium, community park, museum, theater, art center, and highway beautification project.

SEC. 1610. HIRING AMERICAN WORKERS IN COMPANIES RECEIVING TARP FUNDING.

(a) SHORT TITLE.—This section may be cited as the "Employ American Workers Act".

(b) PROHIBITION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, it shall be unlawful for any recipient of funding under title I of the Emergency Economic Stabilization Act of 2008 (Public Law 110–343) or section 13 of the Federal Reserve Act (12 U.S.C. 342 et seq.) to hire any nonimmigrant described in section 101(a)(15)(h)(i)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(h)(i)(b)) unless the recipient is in compliance with the requirements for an H–1B dependent employer (as defined in section 212(n)(3) of such Act (8 U.S.C. 1182(n)(3))), except that the second sentence of section 212(n)(1)(E)(ii) of such Act shall not apply.

(2) DEFINED TERM.—In this subsection, the term "hire" means to permit a new employee to commence a period of employment.

(c) SUNSET PROVISION.—This section shall be effective during the 2-year period beginning on the date of the enactment of this Act.

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. Credit for certain home purchases.
Sec. 1007. Suspension of tax on portion of unemployment compensation.
Sec. 1008. Above-the-line deduction for interest on indebtedness with respect to the purchase of certain motor vehicles.
Sec. 1009. Above-the-line deduction for State sales tax and excise tax on the purchase of certain motor vehicles.

PART II—Alternative Minimum Tax Relief

Sec. 1011. Extension of alternative minimum tax relief for nonrefundable personal credits.
Sec. 1012. Extension of increased alternative minimum tax exemption amount.

Subtitle B—Energy Incentives

PART I—Renewable Energy Incentives

Sec. 1101. Extension of credit for electricity produced from certain renewable resources.
Sec. 1102. Election of investment credit in lieu of production credit.
Sec. 1103. Repeal of certain limitations on credit for renewable energy property.

PART II—Increased Allocations of New Clean Renewable Energy Bonds and Qualified Energy Conservation Bonds

Sec. 1111. Increased limitation on issuance of new clean renewable energy bonds.
Sec. 1112. Increased limitation on issuance of qualified energy conservation bonds.

PART III—Energy Conservation Incentives

Sec. 1121. Extension and modification of credit for nonbusiness energy property.
Sec. 1122. Modification of credit for residential energy efficient property.
Sec. 1123. Temporary increase in credit for alternative fuel vehicle refueling property.

PART IV—Energy Research Incentives

Sec. 1131. Increased research credit for energy research.

PART V—Modification of Credit for Carbon Dioxide Sequestration

Sec. 1141. Application of monitoring requirements to carbon dioxide used as a tertiary injectant.

PART VI—Plug-in Electric Drive Motor Vehicles

Sec. 1151. Modification of credit for qualified plug-in electric motor vehicles.

Subtitle C—Tax Incentives for Business

PART I—Temporary Investment Incentives

Sec. 1201. Special allowance for certain property acquired during 2009.
Sec. 1202. Temporary increase in limitations on expensing of certain depreciable business assets.

PART II—5-Year Carryback of Operating Losses

Sec. 1211. 5-year carryback of operating losses.
Sec. 1212. Exception for TARP recipients.

PART III—Incentives for New Jobs

Sec. 1221. Incentives to hire unemployed veterans and disconnected youth.

PART IV—Cancellation of Indebtedness

Sec. 1231. Deferral and ratable inclusion of income arising from indebtedness discharged by the repurchase of a debt instrument.

PART V—Qualified Small Business Stock

Sec. 1241. Special rules applicable to qualified small business stock for 2009 and 2010.

PART VI—Parity for Transportation Fringe Benefits

Sec. 1251. Increased exclusion amount for commuter transit benefits and transit passes.

PART VII—S Corporations

Sec. 1261. Temporary reduction in recognition period for built-in gains tax.

PART VIII—Broadband Incentives

Sec. 1271. Broadband Internet access tax credit.

PART IX—Clarification of Regulations Related to Limitations on Certain Built-in Losses Following an Ownership Change

Sec. 1281. Clarification of regulations related to limitations on certain built-in losses following an ownership change.

Subtitle D—Manufacturing Recovery Provisions

Sec. 1301. Temporary expansion of availability of industrial development bonds to facilities manufacturing intangible property.
Sec. 1302. Credit for investment in advanced energy facilities.

Subtitle E—Economic Recovery Tools

Sec. 1401. Recovery zone bonds.
Sec. 1402. Tribal economic development bonds.
Sec. 1403. Modifications to new markets tax credit.

Subtitle F—Infrastructure Financing Tools

PART I—Improved Marketability for Tax-Exempt Bonds

Sec. 1501. De minimis safe harbor exception for tax-exempt interest expense of financial institutions.
Sec. 1502. Modification of small issuer exception to tax-exempt interest expense allocation rules for financial institutions.
Sec. 1503. Temporary modification of alternative minimum tax limitations on tax-exempt bonds.
Sec. 1504. Modification to high speed intercity rail facility bonds.

PART II—Delay in Application of Withholding Tax on Government Contractors

Sec. 1511. Delay in application of withholding tax on government contractors.

PART III—Tax Credit Bonds for Schools

Sec. 1521. Qualified school construction bonds.
Sec. 1522. Extension and expansion of qualified zone academy bonds.

PART IV—Build America Bonds

Sec. 1531. Build America bonds.

Subtitle G—Economic Recovery Payments to Certain Individuals

Sec. 1601. Economic recovery payment to recipients of Social Security, supplemental security income, railroad retirement benefits, and veterans disability compensation or pension benefits.

Subtitle H—Trade Adjustment Assistance

Sec. 1701. Temporary extension of Trade Adjustment Assistance program.

Subtitle I—Prohibition on Collection of Certain Payments Made Under the Continued Dumping and Subsidy Offset Act of 2000

Sec. 1801. Prohibition on collection of certain payments made under the Continued Dumping and Subsidy Offset Act of 2000.

Subtitle J—Other Provisions

Sec. 1901. Application of certain labor standards to projects financed with certain tax-favored bonds.
Sec. 1902. Increase in public debt limit.
Sec. 1903. Election to accelerate the low-income housing tax credit.

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 $70,000 ($140,000 in the case of a joint return).

"(2) MODIFIED ADJUSTED GROSS INCOME.—For purposes of subparagraph (A), the term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

"(c) REDUCTION FOR CERTAIN OTHER PAYMENTS.—The credit allowed under subsection (a) for any taxable year shall be reduced by the amount of any payments received by the taxpayer during such taxable year under section 1601 of the American Recovery and Reinvestment Tax Act of 2009.

"(d) DEFINITIONS.—For purposes of this section—

"(1) ELIGIBLE INDIVIDUAL.—The term 'eligible individual' means any individual other than—

"(A) any nonresident alien individual,

"(B) any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, and

"(C) an estate or trust.

Such term shall not include any individual unless the requirements of section 32(c)(1)(E) are met with respect 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.

(B) OTHER POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of

the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury as being equal to the aggregate benefits that would have been provided to residents of such possession by reason of the amendments made by this section for taxable years beginning in 2009 and 2010 if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply with respect to any possession of the United States unless such possession has a plan, which has been approved by the Secretary of the Treasury, under which such possession will promptly distribute such payments to the residents of such possession.

(2) COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES.—No credit shall be allowed against United States income taxes for any taxable year under section 36A of the Internal Revenue Code of 1986 (as added by this section) to any person—

(A) to whom a credit is allowed against 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 $8,100.".

(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.

"(6) PORTION OF CREDIT MADE REFUNDABLE.—30 percent of so much of the credit allowed under subsection (a) as is attributable to the Hope Scholarship Credit (determined after application of paragraph (4) and without regard to this paragraph and section 26(a)(2) or paragraph (5), as the case may be) shall be treated as a credit allowable under subpart C (and not allowed under subsection (a)). The preceding sentence shall not apply to any taxpayer for any taxable

year if such taxpayer is a child to whom subsection (g) of section 1 applies for such taxable year.

"(7) COORDINATION WITH MIDWESTERN DISASTER AREA BENEFITS.—In the case of a taxpayer with respect to whom section 702(a)(1)(B) of the Heartland Disaster Tax Relief Act of 2008 applies for any taxable year, such taxpayer may elect to waive the application of this subsection to such taxpayer for such taxable year.".

(b) CONFORMING AMENDMENTS.—

(1) Section 24(b)(3)(B) is amended by inserting "25A(i)," after "23,".

(2) Section 25(e)(1)(C)(ii) is amended by inserting "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 computer 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 hob-

bies 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. CREDIT FOR CERTAIN HOME PURCHASES.

(a) ALLOWANCE OF CREDIT.—Subpart A of part IV of subchapter A of chapter 1 is amended by inserting after section 25D the following new section:

"SEC. 25E. CREDIT FOR CERTAIN HOME PURCHASES.

"(a) ALLOWANCE OF CREDIT.—

"(1) IN GENERAL.—In the case of an individual who is a purchaser of a principal residence during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter an amount equal to 10 percent of the purchase price of the residence.

"(2) DOLLAR LIMITATION.—The amount of the credit allowed under paragraph (1) shall not exceed $15,000.

"(3) ALLOCATION OF CREDIT AMOUNT.—At the election of the taxpayer, the amount of the credit allowed under paragraph (1) (after application of paragraph (2)) may be equally divided among the 2

taxable years beginning with the taxable year in which the purchase of the principal residence is made.

"(b) LIMITATIONS.—

"(1) DATE OF PURCHASE.—The credit allowed under subsection (a) shall be allowed only with respect to purchases made—

"(A) after the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009, and

"(B) on or before the date that is 1 year after such date of enactment.

"(2) LIMITATION BASED ON AMOUNT OF TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for any taxable year 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 section) for the taxable year.

"(3) ONE-TIME ONLY.—

"(A) IN GENERAL.—If a credit is allowed under this section in the case of any individual

(and such individual's spouse, if married) with respect to the purchase of any principal residence, no credit shall be allowed under this section in any taxable year with respect to the purchase of any other principal residence by such individual or a spouse of such individual.

"(B) JOINT PURCHASE.—In the case of a purchase of a principal residence by 2 or more unmarried individuals or by 2 married individuals filing separately, no credit shall be allowed under this section if a credit under this section has been allowed to any of such individuals in any taxable year with respect to the purchase of any other principal residence.

"(c) PRINCIPAL RESIDENCE.—For purposes of this section, the term 'principal residence' has the same meaning as when used in section 121.

"(d) DENIAL OF DOUBLE BENEFIT.—No credit shall be allowed under this section for any purchase for which a credit is allowed under section 36 or section 1400C.

"(e) SPECIAL RULES.—

"(1) JOINT PURCHASE.—

"(A) MARRIED INDIVIDUALS FILING SEPARATELY.—In the case of 2 married individuals filing separately, subsection (a) shall be applied

to each such individual by substituting '$7,500' for '$15,000' in subsection (a)(1).

"(B) UNMARRIED INDIVIDUALS.—If 2 or more individuals who are not married purchase a principal residence, the amount of the credit allowed under subsection (a) shall be allocated among such individuals in such manner as the Secretary may prescribe, except that the total amount of the credits allowed to all such individuals shall not exceed $15,000.

"(2) PURCHASE.—In defining the purchase of a principal residence, rules similar to the rules of paragraphs (2) and (3) of section 1400C(e) (as in effect on the date of the enactment of this section) shall apply.

"(3) REPORTING REQUIREMENT.—Rules similar to the rules of section 1400C(f) (as so in effect) shall apply.

"(f) RECAPTURE OF CREDIT IN THE CASE OF CERTAIN DISPOSITIONS.—

"(1) IN GENERAL.—In the event that a taxpayer—

"(A) disposes of the principal residence with respect to which a credit was allowed under subsection (a), or

"(B) fails to occupy such residence as the taxpayer's principal residence,

at any time within 24 months after the date on which the taxpayer purchased such residence, then the tax imposed by this chapter for the taxable year during which such disposition occurred or in which the taxpayer failed to occupy the residence as a principal residence shall be increased by the amount of such credit.

"(2) EXCEPTIONS.—

"(A) DEATH OF TAXPAYER.—Paragraph (1) shall not apply to any taxable year ending after the date of the taxpayer's death.

"(B) INVOLUNTARY CONVERSION.—Paragraph (1) shall not apply in the case of a residence which is compulsorily or involuntarily converted (within the meaning of section 1033(a)) if the taxpayer acquires a new principal residence within the 2-year period beginning on the date of the disposition or cessation referred to in such paragraph. Paragraph (1) shall apply to such new principal residence during the remainder of the 24-month period described in such paragraph as if such new principal residence were the converted residence.

"(C) TRANSFERS BETWEEN SPOUSES OR INCIDENT TO DIVORCE.—In the case of a transfer of a residence to which section 1041(a) applies—

"(i) paragraph (1) shall not apply to such transfer, and

"(ii) in the case of taxable years ending after such transfer, paragraph (1) shall apply to the transferee in the same manner as if such transferee were the transferor (and shall not apply to the transferor).

"(D) RELOCATION OF MEMBERS OF THE ARMED FORCES.—Paragraph (1) shall not apply in the case of a member of the Armed Forces of the United States on active duty who moves pursuant to a military order and incident to a permanent change of station.

"(3) JOINT RETURNS.—In the case of a credit allowed under subsection (a) with respect to a joint return, half of such credit shall be treated as having been allowed to each individual filing such return for purposes of this subsection.

"(4) RETURN REQUIREMENT.—If the tax imposed by this chapter for the taxable year is increased under this subsection, the taxpayer shall, notwith-

standing section 6012, be required to file a return with respect to the taxes imposed under this subtitle.

"(g) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section with respect to the purchase of any residence, the basis of such residence shall be reduced by the amount of the credit so allowed.

"(h) ELECTION TO TREAT PURCHASE IN PRIOR YEAR.—In the case of a purchase of a principal residence during the period described in subsection (b)(1), a taxpayer may elect to treat such purchase as made on December 31, 2008, for purposes of this section.".

(b) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 25D the following new item:

"Sec. 25E. Credit for certain home purchases.".

(c) SUNSET OF CURRENT FIRST-TIME HOMEBUYER CREDIT.—

(1) IN GENERAL.—Subsection (h) of section 36 is amended by striking "July 1, 2009" and inserting "the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009".

(2) ELECTION TO TREAT PURCHASE IN PRIOR YEAR.—Subsection (g) of section 36 is amended by striking "July 1, 2009" and inserting "the date of the

enactment of the American Recovery and Reinvestment Tax Act of 2009".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to purchases after the date of the enactment of this Act.

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.

SEC. 1008. ABOVE-THE-LINE DEDUCTION FOR INTEREST ON INDEBTEDNESS WITH RESPECT TO THE PURCHASE OF CERTAIN MOTOR VEHICLES.

(a) IN GENERAL.—Paragraph (2) of section 163(h) of the Internal Revenue Code of 1986 is amended—

(1) by striking "and" at the end of subparagraph (E),

(2) by striking the period at the end of subparagraph (F) and inserting ", and", and

(3) by adding at the end the following new subparagraph:

"(G) any qualified motor vehicle interest (within the meaning of paragraph (5)).".

(b) QUALIFIED MOTOR VEHICLE INTEREST.—Section 163(h) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(5) QUALIFIED MOTOR VEHICLE INTEREST.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified motor vehicle interest' means any interest which is paid or accrued during the taxable year on any indebtedness which—

"(i) is incurred after November 12, 2008, and before January 1, 2010, in acquiring any qualified motor vehicle of the taxpayer, and

"(ii) is secured by such qualified motor vehicle.

Such term also includes any indebtedness secured by such qualified motor vehicle resulting from the refinancing of indebtedness meeting the requirements of the preceding sentence (or this sen-

tence); but only to the extent the amount of the indebtedness resulting from such refinancing does not exceed the amount of the refinanced indebtedness.

"(B) DOLLAR LIMITATION.—The aggregate amount of indebtedness treated as described in subparagraph (A) for any period shall not exceed $49,500 ($24,750 in the case of a separate return by a married individual).

"(C) INCOME LIMITATION.—The amount otherwise treated as interest under subparagraph (A) for any taxable year (after the application of subparagraph (B)) shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which is so treated as—

"(i) the excess (if any) of—

"(I) the taxpayer's modified adjusted gross income for such taxable year, over

"(II) $125,000 ($250,000 in the case of a joint return), bears to

"(ii) $10,000.

For purposes of the preceding sentence, the term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the tax-

able year increased by any amount excluded from gross income under section 911, 931, or 933.

"(D) QUALIFIED MOTOR VEHICLE.—The term 'qualified motor vehicle' means a passenger automobile (within the meaning of section 30B(h)(3)) or a light truck (within the meaning of such section)—

"(i) which is acquired for use by the taxpayer and not for resale after November 12, 2008, and before January 1, 2010,

"(ii) the original use of which commences with the taxpayer, and

"(iii) which has a gross vehicle weight rating of not more than 8,500 pounds.".

(c) DEDUCTION ALLOWED ABOVE-THE-LINE.—Section 62(a) of the Internal Revenue Code of 1986 is amended by inserting after paragraph (21) the following new paragraph:

"(22) QUALIFIED MOTOR VEHICLE INTEREST.—The deduction allowed under section 163 by reason of subsection (h)(2)(G) thereof.".

(d) REPORTING OF QUALIFIED MOTOR VEHICLE INTEREST.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

"SEC. 6050X. RETURNS RELATING TO QUALIFIED MOTOR VEHICLE INTEREST RECEIVED IN TRADE OR BUSINESS FROM INDIVIDUALS.

"(a) QUALIFIED MOTOR VEHICLE INTEREST.—Any person—

"(1) who is engaged in a trade or business, and

"(2) who, in the course of such trade or business, receives from any individual interest aggregating $600 or more for any calendar year on any indebtedness secured by a qualified motor vehicle (as defined in section 163(h)(5)(D)),

shall make the return described in subsection (b) with respect to each individual from whom such interest was received at such time as the Secretary may by regulations prescribe.

"(b) FORM AND MANNER OF RETURNS.—A return is described in this subsection if such return—

"(1) is in such form as the Secretary may prescribe,

"(2) contains—

"(A) the name and address of the individual from whom the interest described in subsection (a)(2) was received,

"(B) the amount of such interest received for the calendar year, and

"(C) such other information as the Secretary may prescribe.

"(c) APPLICATION TO GOVERNMENTAL UNITS.—For purposes of subsection (a)—

"(1) TREATED AS PERSONS.—The term 'person' includes any governmental unit (and any agency or instrumentality thereof).

"(2) SPECIAL RULES.—In the case of a governmental unit or any agency or instrumentality thereof—

"(A) subsection (a) shall be applied without regard to the trade or business requirement contained therein, and

"(B) any return required under subsection (a) shall be made by the officer or employee appropriately designated for the purpose of making such return.

"(d) STATEMENTS TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under

subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

"(1) the name, address, and phone number of the information contact of the person required to make such return, and

"(2) the aggregate amount of interest described in subsection (a)(2) received by the person required to make such return from the individual to whom the statement is required to be furnished.

The written statement required under the preceding sentence shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

"(e) RETURNS WHICH WOULD BE REQUIRED TO BE MADE BY 2 OR MORE PERSONS.—Except to the extent provided in regulations prescribed by the Secretary, in the case of interest received by any person on behalf of another person, only the person first receiving such interest shall be required to make the return under subsection (a).".

(2) AMENDMENTS RELATING TO PENALTIES.—

(A) Section 6721(e)(2)(A) of such Code is amended by striking "or 6050L" and inserting "6050L, or 6050X".

(B) Section 6722(c)(1)(A) of such Code is amended by striking "or 6050L(c)" and inserting "6050L(c), or 6050X(d)".

(C) Subparagraph (B) of section 6724(d)(1) of such Code is amended by redesignating clauses (xvi) through (xxii) as clauses (xvii) through (xxiii), respectively, and by inserting after clause (xii) the following new clause:

"(xvi) section 6050X (relating to returns relating to qualified motor vehicle interest received in trade or business from individuals),".

(D) Paragraph (2) of section 6724(d) of such Code is amended by striking the period at the end of subparagraph (DD) and inserting ", or" and by inserting after subparagraph (DD) the following new subparagraph:

"(EE) section 6050X(d) (relating to returns relating to qualified motor vehicle interest received in trade or business from individuals).".

(3) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 of such Code is amended by inserting after the item relating to section 6050W the following new item:

"Sec. 6050X. Returns relating to qualified motor vehicle interest received in trade or business from individuals.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

SEC. 1009. ABOVE-THE-LINE DEDUCTION FOR STATE SALES TAX AND EXCISE TAX ON THE PURCHASE OF CERTAIN MOTOR VEHICLES.

(a) IN GENERAL.—Subsection (a) of section 164 of the Internal Revenue Code of 1986 is amended by inserting after paragraph (5) the following new paragraph:

"(6) Qualified motor vehicle taxes.".

(b) QUALIFIED MOTOR VEHICLE TAXES.—Subsection (b) of section 164 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(6) QUALIFIED MOTOR VEHICLE TAXES.—

"(A) IN GENERAL.—For purposes of this section, the term 'qualified motor vehicle taxes' means any State or local sales or excise tax imposed on the purchase of a qualified motor vehicle (as defined in section 163(h)(5)(D)).

"(B) DOLLAR LIMITATION.—The amount taken into account under subparagraph (A) for any taxable year shall not exceed $49,500 ($24,750 in the case of a separate return by a married individual).

"(C) INCOME LIMITATION.—The amount otherwise taken into account under subparagraph (A) (after the application of subparagraph (B)) for any taxable year shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which is so treated as—

"(i) the excess (if any) of—

"(I) the taxpayer's modified adjusted gross income for such taxable year, over

"(II) $125,000 ($250,000 in the case of a joint return), bears to

"(ii) $10,000.

For purposes of the preceding sentence, the term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

"(D) QUALIFIED MOTOR VEHICLE TAXES NOT INCLUDED IN COST OF ACQUIRED PROPERTY.—The last sentence of subsection (a) shall not apply to any qualified motor vehicle taxes.

"(E) COORDINATION WITH GENERAL SALES TAX.—This paragraph shall not apply in the case of a taxpayer who makes an election under paragraph (5) for the taxable year.".

(c) CONFORMING AMENDMENTS.—Paragraph (5) of section 163(h) of the Internal Revenue Code of 1986, as added by section 1, is amended—

(1) by adding at the end the following new subparagraph:

"(E) EXCLUSION.—If the indebtedness described in subparagraph (A) includes the amounts of any State or local sales or excise taxes paid or accrued by the taxpayer in connection with the acquisition of a qualified motor vehicle, the aggregate amount of such indebtedness taken into account under such subparagraph shall be reduced, but not below zero, by the amount of any such taxes for which a deduction is allowed under section 164(a) by reason of paragraph (6) thereof.", and

(2) by inserting ", after the application of subparagraph (E)," after "for any period" in subparagraph (B).

(d) DEDUCTION ALLOWED ABOVE-THE-LINE.—Section 62(a) of the Internal Revenue Code of 1986, as amended

by section 1, is amended by inserting after paragraph (22) the following new paragraph:

"(23) QUALIFIED MOTOR VEHICLE TAXES.—The deduction allowed under section 164 by reason of subsection (a)(6) thereof.".

(e) EFFECTIVE DATE.—The amendments 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 fa-

cility 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.

(a) IN GENERAL.—Section 54D(d) is amended by striking "800,000,000" and inserting "$3,200,000,000".

(b) CLARIFICATION WITH RESPECT TO GREEN COMMUNITY PROGRAMS.—Clause (ii) of section 54D(f)(1)(A) is amended by inserting "(including the use of loans, grants, or other repayment mechanisms to implement such programs)" after "green community programs".

1 ***PART III—ENERGY CONSERVATION INCENTIVES***

2 ***SEC. 1121. EXTENSION AND MODIFICATION OF CREDIT FOR***
3 ***NONBUSINESS ENERGY PROPERTY.***

4 *(a) IN GENERAL.—Section 25C is amended by striking*
5 *subsections (a) and (b) and inserting the following new sub-*
6 *sections:*

7 *"(a) ALLOWANCE OF CREDIT.—In the case of an indi-*
8 *vidual, there shall be allowed as a credit against the tax*
9 *imposed by this chapter for the taxable year an amount*
10 *equal to 30 percent of the sum of—*

11 *"(1) the amount paid or incurred by the tax-*
12 *payer during such taxable year for qualified energy*
13 *efficiency improvements, and*

14 *"(2) the amount of the residential energy prop-*
15 *erty expenditures paid or incurred by the taxpayer*
16 *during such taxable year.*

17 *"(b) LIMITATION.—The aggregate amount of the cred-*
18 *its allowed under this section for taxable years beginning*
19 *in 2009 and 2010 with respect to any taxpayer shall not*
20 *exceed $1,500.".*

21 *(b) MODIFICATIONS OF STANDARDS FOR ENERGY-EF-*
22 *FICIENT BUILDING PROPERTY.—*

23 *(1) ELECTRIC HEAT PUMPS.—Subparagraph (B)*
24 *of section 25C(d)(3) is amended to read as follows:*

25 *"(B) an electric heat pump which achieves*
26 *the highest efficiency tier established by the Con-*

sortium for Energy Efficiency, as in effect on January 1, 2009.".

(2) CENTRAL AIR CONDITIONERS.—Subparagraph (C) of section 25C(d)(3) is amended by striking "2006" and inserting "2009".

(3) WATER HEATERS.—Subparagraph (D) of section 25C(d)(3) is amended to read as follows:

"(E) a natural gas, propane, or oil water heater which has either an energy factor of at least 0.82 or a thermal efficiency of at least 90 percent.".

(4) WOOD STOVES.—Subparagraph (E) of section 25C(d)(3) is amended by inserting ", as measured using a lower heating value" after "75 percent".

(c) MODIFICATIONS OF STANDARDS FOR OIL FURNACES AND HOT WATER BOILERS.—

(1) IN GENERAL.—Paragraph (4) of section 25C(d) is amended to read as follows:

"(4) QUALIFIED NATURAL GAS, PROPANE, AND OIL FURNACES AND HOT WATER BOILERS.—

"(A) QUALIFIED NATURAL GAS FURNACE.—The term 'qualified natural gas furnace' means any natural gas furnace which achieves an annual fuel utilization efficiency rate of not less than 95.

"(B) QUALIFIED NATURAL GAS HOT WATER BOILER.—The term 'qualified natural gas hot water boiler' means any natural gas hot water boiler which achieves an annual fuel utilization efficiency rate of not less than 90.

"(C) QUALIFIED PROPANE FURNACE.—The term 'qualified propane furnace' means any propane furnace which achieves an annual fuel utilization efficiency rate of not less than 95.

"(D) QUALIFIED PROPANE HOT WATER BOILER.—The term 'qualified propane hot water boiler' means any propane hot water boiler which achieves an annual fuel utilization efficiency rate of not less than 90.

"(E) QUALIFIED OIL FURNACES.—The term 'qualified oil furnace' means any oil furnace which achieves an annual fuel utilization efficiency rate of not less than 90.

"(F) QUALIFIED OIL HOT WATER BOILER.—The term 'qualified oil hot water boiler' means any oil hot water boiler which achieves an annual fuel utilization efficiency rate of not less than 90.".

(2) CONFORMING AMENDMENT.—Clause (ii) of section 25C(d)(2)(A) is amended to read as follows:

"(ii) any qualified natural gas furnace, qualified propane furnace, qualified oil furnace, qualified natural gas hot water boiler, qualified propane hot water boiler, or qualified oil hot water boiler, or".

(d) MODIFICATIONS OF STANDARDS FOR QUALIFIED ENERGY EFFICIENCY IMPROVEMENTS.—

(1) QUALIFICATIONS FOR EXTERIOR WINDOWS, DOORS, AND SKYLIGHTS.—Subsection (c) of section 25C is amended by adding at the end the following new paragraph:

"(4) QUALIFICATIONS FOR EXTERIOR WINDOWS, DOORS, AND SKYLIGHTS.—Such term shall not include any component described in subparagraph (B) or (C) of paragraph (2) unless such component is equal to or below a U factor of 0.30 and SHGC of 0.30.".

(2) ADDITIONAL QUALIFICATION FOR INSULATION.—Subparagraph (A) of section 25C(c)(2) is amended by inserting "and meets the prescriptive criteria for such material or system established by the 2009 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of the American Recovery and

Reinvestment Tax Act of 2009" after "such dwelling unit".

(e) EXTENSION.—Section 25C(g)(2) is amended by striking "December 31, 2009" and inserting "December 31, 2010".

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2008.

(2) EFFICIENCY STANDARDS.—The amendments made by paragraphs (1), (2), and (3) of subsection (b) and subsections (c) and (d) shall apply to property placed in service after December 31, 2009.

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) (determined 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) ENSURING CONSUMER ACCESSIBILITY TO ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY IN THE

CASE OF ELECTRICITY.—Section 179(d)(3) is amended by striking subparagraph (B) and inserting the following:

"(B) for the recharging of motor vehicles propelled by electricity, but only if—

"(i) the property complies with the Society of Automotive Engineers' connection standards,

"(ii) the property provides for non-restrictive access for charging and for payment interoperability with other systems, and

"(iii) the property—

"(I) is located on property owned by the taxpayer, or

"(II) is located on property owned by another person, is placed in service with the permission of such other person, and is fully maintained by the taxpayer.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

SEC. 1124. RECOVERY PERIOD FOR DEPRECIATION OF SMART METERS.

(a) TEMPORARY 5-YEAR RECOVERY PERIOD.—

(1) IN GENERAL.—Subparagraph (B) of section 168(e)(3) is amended by striking "and" at the end of clause (vi), by striking the period at the end of clause (vii) and inserting ", and", and by adding at the end the following new clause:

"(viii) any qualified smart electric meter which is placed in service before January 1, 2011.".

(2) CONFORMING AMENDMENT.—Clause (iii) of section 168(e)(3)(D) is amended by inserting "which is placed in service after December 31, 2010" after "electric meter".

(b) TECHNICAL AMENDMENTS.—Paragraphs (18)(A)(ii) and (19)(A)(ii) of section 168(i) are each amended by striking "16 years" and inserting "10 years".

(c) 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 the date of the enactment of this Act.

(2) TECHNICAL AMENDMENT.—The amendments made by subsection (b) shall take effect as if included in section 306 of the Energy Improvement and Extension Act of 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—MODIFICATION OF CREDIT FOR CARBON DIOXIDE SEQUESTRATION

SEC. 1141. 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 AMENDMENTS.—

(1) Section 45Q(d)(2) is amended—

(A) by striking "subsection (a)(1)(B)" and inserting "paragraph (1)(B) or (2)(C) of subsection (a)",

(B) by striking "and unminable coal seems" and inserting ", oil and gas reservoirs, and unminable coal seams", and

(C) by inserting "the Secretary of Energy, and the Secretary of the Interior," after "Environmental Protection Agency".

(2) Section 45Q(e) is amended by striking "captured and disposed of or used as a tertiary injectant" and inserting "taken into account in accordance with 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 VI—PLUG-IN ELECTRIC DRIVE MOTOR VEHICLES

SEC. 1151. 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) In the case of a specified vehicle which is a 2-or 3-wheeled motor vehicle, subsection (c)(1) shall be applied by substituting '2.5 kilowatt hours' for '4 kilowatt hours'.

"(D) In the case of a specified vehicle which is a low-speed motor vehicle, 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—

"(i) is placed in service after December 31, 2009, and

"(ii) meets the requirements of section 571.500 of title 49, Code of Federal Regulations.".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by subsections (a) and (c) shall take effect on the date of the enactment of this Act.

(2) OTHER MODIFICATIONS.—The amendments made by subsection (b) shall apply to property placed in service after December 31, 2009, in taxable years beginning after such date.

SEC. 1152. CONVERSION KITS.

(a) IN GENERAL.—Section 30B (relating to alternative motor vehicle credit) is amended by redesignating subsections (i) and (j) as subsections (j) and (k), respectively, and by inserting after subsection (h) the following new subsection:

"(i) PLUG-IN CONVERSION CREDIT.—

"(1) IN GENERAL.—For purposes of subsection (a), the plug-in conversion credit determined under this subsection with respect to any motor vehicle which is converted to a qualified plug-in electric drive motor vehicle is 10 percent of so much of the cost of the converting such vehicle as does not exceed $40,000.

"(2) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR VEHICLE.—The term 'qualified plug-in electric drive motor vehicle' means any new qualified plug-in electric drive motor vehicle (as defined in section 30D(c), determined without regard to paragraphs (4) and (6) thereof).

"(B) PLUG-IN TRACTION BATTERY MODULE.—The term 'plug-in traction battery module' means an electro-chemical energy storage device which—

"(i) which has a traction battery capacity of not less than 2.5 kilowatt hours,

"(ii) which is equipped with an electrical plug by means of which it can be energized and recharged when plugged into an external source of electric power,

"(iii) which consists of a standardized configuration and is mass produced,

"(iv) which has been tested and approved by the National Highway Transportation Safety Administration as compliant with applicable motor vehicle and motor vehicle equipment safety standards when installed by a mechanic with standardized training in protocols established by the battery manufacturer as part of a nationwide distribution program,

"(v) which complies with the requirements of section 32918 of title 49, United States Code, and

"(vi) which is certified by a battery manufacturer as meeting the requirements of clauses (i) through (v).

"(C) CREDIT ALLOWED TO LESSOR OF BATTERY MODULE.—In the case of a plug-in traction

battery module which is leased to the taxpayer, the credit allowed under this subsection shall be allowed to the lessor of the plug-in traction battery module.

"(D) CREDIT ALLOWED IN ADDITION TO OTHER CREDITS.—The credit allowed under this subsection shall be allowed with respect to a motor vehicle notwithstanding whether a credit has been allowed with respect to such motor vehicle under this section (other than this subsection) in any preceding taxable year.

"(3) TERMINATION.—This subsection shall not apply to conversions made after December 31, 2012.".

(b) CREDIT TREATED AS PART OF ALTERNATIVE MOTOR VEHICLE CREDIT.—Section 30B(a) is amended by striking "and" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting ", and", and by adding at the end the following new paragraph:

"(5) the plug-in conversion credit determined under subsection (i).".

(c) NO RECAPTURE FOR VEHICLES CONVERTED TO QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR VEHICLES.—Paragraph (8) of section 30B(h) is amended by adding at the end the following: ", except that no benefit shall be recaptured if such property ceases to be eligible for

such credit by reason of conversion to a qualified plug-in electric drive motor vehicle.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2008, 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-JANU-

ARY 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 accel-

erate 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 Re-

investment 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).".

(c) 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.

For purposes of this paragraph, the term "applicable date" means the date which is 60 days after the date of the enactment of this Act.

SEC. 1212. EXCEPTION FOR TARP RECIPIENTS.

The amendments made by this part shall not apply to—

(1) any taxpayer if—

(A) the Federal Government acquires, at any time, an equity interest in the taxpayer pursuant to the Emergency Economic Stabilization Act of 2008, or

(B) the Federal Government acquires, at any time, any warrant (or other right) to acquire any equity interest with respect to the taxpayer pursuant to such Act,

(2) the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, and

(3) any taxpayer which at any time in 2008 or 2009 is a member of the same affiliated group (as defined in section 1504 of the Internal Revenue Code of

1986, determined without regard to subsection (b) thereof) as a taxpayer described in paragraph (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 the period beginning on September 1, 2001, and ending on December 31, 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) the current generation broadband credit, plus

"(2) the next generation broadband credit.

"(b) CURRENT GENERATION BROADBAND CREDIT; NEXT GENERATION BROADBAND CREDIT.—For purposes of this section—

"(1) CURRENT GENERATION BROADBAND CREDIT.—The current generation broadband credit for any taxable year is equal to 10 percent (20 percent in the case of qualified subscribers which are unserved subscribers) of the qualified broadband expenditures incurred with respect to qualified equipment providing current generation broadband services to qualified subscribers and taken into account with respect to such taxable year.

"(2) NEXT GENERATION BROADBAND CREDIT.—The next generation broadband credit for any taxable year is equal to 20 percent of the qualified broadband expenditures incurred with respect to qualified equipment providing next generation broadband services to qualified subscribers and taken into account with respect to such taxable year.

"(c) WHEN EXPENDITURES TAKEN INTO ACCOUNT.—For purposes of this section—

"(1) IN GENERAL.—Qualified broadband expenditures with respect to qualified equipment shall be taken into account with respect to the first taxable year in which—

"(A) current generation broadband services are provided through such equipment to qualified subscribers, or

"(B) next generation broadband services are provided through such equipment to qualified subscribers.

"(2) LIMITATION.—

"(A) IN GENERAL.—Qualified broadband expenditures shall be taken into account under paragraph (1) only with respect to qualified equipment—

"(i) the original use of which commences with the taxpayer, and

"(ii) which is placed in service, after December 31, 2008, and before January 1, 2011.

"(B) SALE-LEASEBACKS.—For purposes of subparagraph (A), if property—

"(i) is originally placed in service after December 31, 2008, by any person, 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

equipment is capable of serving with current generation broadband services.

"(e) DEFINITIONS.—For purposes of this section—

"(1) ANTENNA.—The term 'antenna' means any device used to transmit or receive signals through the electromagnetic spectrum, including satellite equipment.

"(2) CABLE OPERATOR.—The term 'cable operator' has the meaning given such term by section 602(5) of the Communications Act of 1934 (47 U.S.C. 522(5)).

"(3) COMMERCIAL MOBILE SERVICE CARRIER.—The term 'commercial mobile service carrier' means any person authorized to provide commercial mobile radio service as defined in section 20.3 of title 47, Code of Federal Regulations.

"(4) CURRENT GENERATION BROADBAND SERVICE.—The term 'current generation broadband service' means the transmission of signals at a rate of at least 5,000,000 bits per second to the subscriber and at least 1,000,000 bits per second from the subscriber (at least 3,000,000 bits per second to the subscriber and at least 768,000 bits per second from the subscriber in the case of service through radio 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 den-

sity 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.

"(25) UNDERSERVED SUBSCRIBER.—The term 'underserved subscriber' means any residential subscriber residing in a dwelling located in an underserved area or nonresidential subscriber maintaining a permanent place of business located in an underserved area.

"(26) UNSERVED AREA.—The term 'unserved area' means any census tract in which no current generation broadband services are provided, as certified by the State in which such tract is located not later than September 30, 2009.

"(27) UNSERVED SUBSCRIBER.—The term 'unserved subscriber' means any residential subscriber residing in a dwelling located in an unserved area or nonresidential subscriber maintaining a permanent place of business located in an unserved area.".

(b) CREDIT TO BE PART OF INVESTMENT CREDIT.—Section 46 (relating to the amount of investment credit), as amended by this Act, is amended by striking "and" at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting ", and", and by adding at the end the following:

"(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 qualified 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 en-

actment 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.

(f) OTHER REGULATORY MATTERS.—

(1) PROHIBITION.—No Federal or State agency or instrumentality shall adopt regulations or rate-making procedures that would have the effect of eliminating or reducing any credit or portion thereof allowed under section 48D of the Internal Revenue Code of 1986 (as added by this section) or otherwise subverting the purpose of this section.

(2) TREASURY REGULATORY AUTHORITY.—It is the intent of Congress in providing the broadband Internet access credit under section 48D of the Internal Revenue Code of 1986 (as added by this section) to provide incentives for the purchase, installation, and connection of equipment and facilities offering expanded broadband access to the Internet for users in certain low income and rural areas of the United States, as well as to residential users nationwide, in a manner that maintains competitive neutrality among the various classes of providers of broadband services. Accordingly, the Secretary of the Treasury shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 48D of such Code, including—

(A) regulations to determine how and when a taxpayer that incurs qualified broadband expenditures 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 investment credit) is amended by inserting after section 48B the following new section:

"SEC. 48C. QUALIFYING ADVANCED ENERGY PROJECT CREDIT.

"(a) IN GENERAL.—For purposes of section 46, the qualifying advanced energy project credit for any taxable year is an amount equal to 30 percent of the qualified investment for such taxable year with respect to any qualifying advanced energy project of the taxpayer.

"(b) QUALIFIED INVESTMENT.—

"(1) IN GENERAL.—For purposes of subsection (a), the qualified investment for any taxable year is

the basis of eligible property placed in service by the taxpayer during such taxable year which is part of a qualifying advanced energy project—

"(A)(i) the construction, reconstruction, or erection of which is completed by the taxpayer after October 31, 2008, or

"(ii) which is acquired by the taxpayer if the original use of such eligible property commences with the taxpayer after October 31, 2008, and

"(B) with respect to which depreciation (or amortization in lieu of depreciation) is allowable.

"(2) CERTAIN QUALIFIED PROGRESS EXPENDITURES RULES MADE APPLICABLE.—Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this section.

"(3) LIMITATION.—The amount which is treated for all taxable years with respect to any qualifying advanced energy project shall not exceed the amount designated by the Secretary as eligible for the credit under this section.

"(c) DEFINITIONS.—

"(1) QUALIFYING ADVANCED ENERGY PROJECT.—

"(A) IN GENERAL.—The term 'qualifying advanced energy project' means a project—

"(i) which re-equips, expands, or establishes a manufacturing facility for the production of property which is—

"(I) designed to be used to 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, including storage of such energy,

"(IV) designed to capture and sequester carbon dioxide emissions,

"(V) designed to refine or blend renewable fuels or to produce energy

conservation technologies (including energy-conserving lighting technologies and smart grid technologies), or

"(VI) other advanced energy property designed to reduce greenhouse gas emissions as may be determined by the Secretary, 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 production 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 submit an application containing such information as the Secretary may require during the 3-year period beginning on the date the Secretary establishes the program under paragraph (1).

"(B) TIME TO MEET CRITERIA FOR CERTIFICATION.—Each applicant for certification shall have 2 years from the date of acceptance by the Secretary of the application during which to provide to the Secretary evidence that the requirements of the certification have been met.

"(C) PERIOD OF ISSUANCE.—An applicant which receives a certification shall have 5 years from the date of issuance of the certification in order to place the project in service and if such project is not placed in service by that time period then the certification shall no longer be valid.

"(3) SELECTION CRITERIA.—In determining which qualifying advanced energy projects to certify under this section, the Secretary—

"(A) shall take into consideration only those projects where there is a reasonable expectation of commercial viability, and

"(B) shall take into consideration which projects—

"(i) will provide the greatest domestic job creation (both direct and indirect) during the credit period,

"(ii) will provide the greatest net impact in avoiding or reducing air pollutants or anthropogenic emissions of greenhouse gases,

"(iii) have the greatest readiness for commercial employment, replication, and

further commercial use in the United States,

"(iv) will provide the greatest benefit in terms of newness in the commercial market,

"(v) have the lowest levelized cost of generated or stored energy, or of measured reduction in energy consumption or greenhouse gas emission (based on costs of the full supply chain), and

"(vi) have the shortest project time from certification to completion.

"(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).

SEC. 1303. INCENTIVES FOR MANUFACTURING FACILITIES PRODUCING PLUG-IN ELECTRIC DRIVE MOTOR VEHICLES AND COMPONENTS.

(a) DEDUCTION FOR MANUFACTURING FACILITIES.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is amended by inserting after section 179E the following new section:

"SEC. 179F. ELECTION TO EXPENSE MANUFACTURING FACILITIES PRODUCING PLUG-IN ELECTRIC DRIVE MOTOR VEHICLES AND COMPONENTS.

"(a) TREATMENT AS EXPENSES.—A taxpayer may elect to treat the applicable percentage of the cost of any qualified plug-in electric drive motor vehicle manufacturing facility property as an expense which is not chargeable to a capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the qualified manufacturing facility property is placed in service.

"(b) APPLICABLE PERCENTAGE.—For purposes of subsection (a), the applicable percentage is—

"(1) 100 percent, in the case of qualified plug-in electric drive motor vehicle manufacturing facility property which is placed in service before January 1, 2012, and

"(2) 50 percent, in the case of qualified plug-in electric drive motor vehicle manufacturing facility property which is placed in service after December 31, 2011, and before January 1, 2015.

"(c) ELECTION.—

"(1) IN GENERAL.—An election under this section for any taxable year shall be made on the taxpayer's return of the tax imposed by this chapter for the taxable year. Such election shall be made in such

manner as the Secretary may by regulations prescribe.

"(2) ELECTION IRREVOCABLE.—Any election made under this section may not be revoked except with the consent of the Secretary.

"(d) QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR VEHICLE MANUFACTURING FACILITY PROPERTY.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified plug-in electric drive motor vehicle manufacturing facility property' means any qualified property—

"(A) the original use of which commences with the taxpayer,

"(B) which is placed in service by the taxpayer after the date of the enactment of this section and before January 1, 2015, and

"(C) no written binding contract for the construction of which was in effect on or before the date of the enactment of this section.

"(2) QUALIFIED PROPERTY.—

"(A) IN GENERAL.—The term 'qualified property' means any property which is a facility or a portion of a facility used for the production of—

"(i) any new qualified plug-in electric drive motor vehicle (as defined by section 30D(c)), or

"(ii) any eligible component.

"(B) ELIGIBLE COMPONENT.—The term 'eligible component' means any battery, any electric motor or generator, or any power control unit which is designed specifically for use with a new qualified plug-in electric drive motor vehicle (as so defined).

"(e) SPECIAL RULE FOR DUAL USE PROPERTY.—In the case of any qualified plug-in electric drive motor vehicle manufacturing facility property which is used to produce both qualified property and other property which is not qualified property, the amount of costs taken into account under subsection (a) shall be reduced by an amount equal to—

"(1) the total amount of such costs (determined before the application of this subsection), multiplied by

"(2) the percentage of property expected to be produced which is not qualified property.

"(f) ELECTION TO RECEIVE LOAN IN LIEU OF DEDUCTION.—

"(1) IN GENERAL.—If a taxpayer elects to have this subsection apply for any taxable year—

"(A) subsection (a) shall not apply to any qualified plug-in electric drive motor vehicle manufacturing facility property placed in service by the taxpayer,

"(B) such taxpayer shall receive a loan from the Secretary in an amount and under such terms as provided in section 1303(b) of the American Recovery and Reinvestment Tax Act of 2009, and

"(C) in the taxable year in which such qualified loan is repaid, each of the limitations described in paragraph (2) shall be increased by the qualified plug-in electric drive motor vehicle manufacturing facility amount which is—

"(i) determined under paragraph (3), and

"(ii) allocated to such limitation under paragraph (4).

"(2) LIMITATIONS TO BE INCREASED.—The limitations described in this paragraph are—

"(A) the limitation imposed by section 38(c), and

"(B) the limitation imposed by section 53(c).

"(3) QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR VEHICLE MANUFACTURING FACILITY AMOUNT.—For purposes of this paragraph—

"(A) IN GENERAL.—The qualified plug-in electric drive motor vehicle manufacturing facility amount is an amount equal to the applicable percentage of any qualified plug-in electric drive motor vehicle manufacturing facility which is placed in service during the taxable year.

"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage is—

"(i) 35 percent, in the case of qualified plug-in electric drive motor vehicle manufacturing facility property which is placed in service before January 1, 2012, and

"(ii) 17.5 percent, in the case of qualified plug-in electric drive motor vehicle manufacturing facility property which is placed in service after December 31, 2011, and before January 1, 2015.

"(C) SPECIAL RULE FOR DUAL USE PROPERTY.—In the case of any qualified plug-in elec-

tric drive motor vehicle manufacturing facility property which is used to produce both qualified property and other property which is not qualified property, the amount of costs taken into account under subparagraph (A) shall be reduced by an amount equal to—

"(i) the total amount of such costs (determined before the application of this subparagraph), multiplied by

"(ii) the percentage of property expected to be produced which is not qualified property.

"(4) ALLOCATION OF QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR VEHICLE MANUFACTURING FACILITY AMOUNT.—The taxpayer shall, at such time and in such manner as the Secretary may prescribe, specify the portion (if any) of the qualified plug-in electric drive motor vehicle manufacturing facility amount for the taxable year which is to be allocated to each of the limitations described in paragraph (2) for such taxable year.

"(5) ELECTION.—

"(A) IN GENERAL.—An election under this subsection for any taxable year shall be made on the taxpayer's return of the tax imposed by this

chapter for the taxable year. Such election shall be made in such manner as the Secretary may by regulations prescribe.

"(B) ELECTION IRREVOCABLE.—Any election made under this subsection may not be revoked except with the consent of the Secretary.".

(b) LOAN PROGRAM.—

(1) IN GENERAL.—The Secretary of the Treasury (or the Secretary's delegate) shall provide a loan to any person who is allowed a deduction under section 179F of the Internal Revenue Code and who makes an election under section 179F(f) of such Code in an amount equal to the qualified plug-in electric drive motor vehicle manufacturing facility amount (as defined in such section 179F(f)).

(2) TERM.—Such loan shall be in the form of a senior note issued by the taxpayer to the Secretary of the Treasury, secured by the qualified plug-in electric drive motor vehicle manufacturing facility property (as defined in section 179F of the Internal Revenue Code of 1986) of the taxpayer, and having a term of 20 years and interest payable at the applicable Federal rate (as determined under section 1274(d) of the Internal Revenue Code of 1986).

(3) APPROPRIATIONS.—There is hereby appropriated to the Secretary of the Treasury such sums as may be necessary to carry out this subsection.

(c) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 is amended by adding at the end the following new item:

"Sec. 179F. Election to expense manufacturing facilities producing plug-in electric drive motor vehicle and components.".

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

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 $5,000,000,000.

"(B) RECOVERY ZONE FACILITY BONDS.—There is a national recovery zone facility bond limitation of $10,000,000,000.

"(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.

"(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 recovery zone facility bond limitation allocated to such issuer under section 1400U–1.

"(c) RECOVERY ZONE PROPERTY.—For purposes of this section—

"(1) IN GENERAL.—The term 'recovery zone property' means any property to which section 168 applies (or would apply but for section 179) if—

"(A) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after the date on which the designation of the recovery zone took effect,

"(B) the original use of which in the recovery zone commences with the taxpayer, and

"(C) substantially all of the use of which is in the recovery zone and is in the active conduct of a qualified business by the taxpayer in such zone.

"(2) QUALIFIED BUSINESS.—The term 'qualified business' means any trade or business except 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:

"(f) TRIBAL ECONOMIC DEVELOPMENT BONDS.—

"(1) ALLOCATION OF LIMITATION.—

"(A) IN GENERAL.—The Secretary shall allocate the national tribal economic development bond limitation among the Indian tribal governments in such manner as the Secretary, in consultation with the Secretary of the Interior, determines appropriate.

"(B) NATIONAL LIMITATION.—There is a national tribal economic development bond limitation of $2,000,000,000.

"(2) BONDS TREATED AS EXEMPT FROM TAX.—In the case of a tribal economic development bond—

"(A) notwithstanding subsection (c), such bond shall be treated for purposes of this title in

the same manner as if such bond were issued by a State,

"(B) the Indian tribal government issuing such bond and any instrumentality of such Indian tribal government shall be treated as a State for purposes of section 141, and

"(C) section 146 shall not apply.

"(3) TRIBAL ECONOMIC DEVELOPMENT 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 interest 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 sen-

tence, 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 Amer-*
4 *ica bond on one or more interest payment dates of the bond*
5 *during any taxable year, there shall be allowed as a credit*
6 *against the tax imposed by this chapter for the taxable year*
7 *an amount equal to the sum of the credits determined under*
8 *subsection (b) with respect to such dates.*

9 *"(b) AMOUNT OF CREDIT.—The amount of the credit*
10 *determined under this subsection with respect to any inter-*
11 *est payment date for a build America bond is 35 percent*
12 *of the amount of interest payable by the issuer with respect*
13 *to such date (40 percent in the case of an issuer described*
14 *in section 148(f)(4)(D) (determined without regard to*
15 *clauses (v), (vi), and (vii) thereof and by substituting*
16 *'$30,000,000' for '$5,000,000' each place it appears there-*
17 *in).*

18 *"(c) LIMITATION BASED ON AMOUNT OF TAX.—*

19 *"(1) IN GENERAL.—The credit allowed under*
20 *subsection (a) for any taxable year shall not exceed*
21 *the excess of—*

22 *"(A) the sum of the regular tax liability (as*
23 *defined in section 26(b)) plus the tax imposed by*
24 *section 55, over*

"(B) the sum of the credits allowable under this part (other than subpart C and this 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, 2011, and

"(C) the issuer makes an irrevocable election to have this section apply.

"(2) APPLICABLE RULES.—For purposes of applying paragraph (1)—

"(A) for purposes of section 149(b), a build America bond shall not be treated as federally guaranteed by reason of the credit allowed under subsection (a) or section 6431,

"(B) for purposes of section 148, 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 (40 percent in the case of an issuer described in section 148(f)(4)(D) (determined without regard to clauses (v), (vi), and (vii) thereof and by substituting '$30,000,000' for '$5,000,000' each place it appears therein).

"(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 in-

come 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).

(B) BENEFIT PAYMENT DESCRIBED.—For purposes of subparagraph (A):

(i) TITLE II BENEFIT.—A benefit payment described in this clause is a monthly insurance benefit payable (without regard to sections 202(j)(1) and 223(b) of the Social Security Act (42 U.S.C. 402(j)(1), 423(b)) under—

(I) section 202(a) of such Act (42 U.S.C. 402(a));

(II) section 202(b) of such Act (42 U.S.C. 402(b));

(III) section 202(c) of such Act (42 U.S.C. 402(c));

(IV) section 202(d)(1)(B)(ii) of such Act (42 U.S.C. 402(d)(1)(B)(ii));

(V) section 202(e) of such Act (42 U.S.C. 402(e));

(VI) section 202(f) of such Act (42 U.S.C. 402(f));

(VII) section 202(g) of such Act (42 U.S.C. 402(g));

(VIII) section 202(h) of such Act (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 section

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,

and the Secretary of Veterans Affairs shall certify the individuals entitled to receive payments under this section and provide the Secretary of the Treasury with the information needed to disburse such payments. A certification of an individual shall be unaffected by any subsequent determination or redetermination of the individual's entitlement to, or eligibility for, a benefit specified in subparagraph (B) or (C) of subsection (a)(1).

(c) TREATMENT OF PAYMENTS.—

(1) PAYMENT TO BE DISREGARDED FOR PURPOSES OF ALL FEDERAL AND FEDERALLY ASSISTED PROGRAMS.—A payment under subsection (a) shall not be regarded as income and shall not be regarded as a resource for the month of receipt and the following 9 months, for purposes of determining the eligibility of the recipient (or the recipient's spouse or family) 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.

(2) PAYMENT NOT CONSIDERED INCOME FOR PURPOSES OF TAXATION.—A payment under subsection (a) shall not be considered as gross income 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 apply to any payment made on the basis of an entitle-

ment to a benefit specified in paragraph (1)(B)(iii) of subsection (a) in the same manner as those sections apply to a payment under that title.

(e) APPROPRIATION.—Out of any sums in the Treasury of the United States not otherwise appropriated, the following sums are appropriated for the period of fiscal years 2009 and 2010 to carry out this section:

(1) For the Secretary of the Treasury—

(A) such sums as may be necessary to make payments under this section; and

(B) $57,000,000 for administrative costs incurred in carrying out this section and section 36A of the Internal Revenue Code of 1986 (as added by this Act).

(2) For the Commissioner of Social Security, $90,000,000 for the Social Security Administration's Limitation on Administrative Expenses for costs incurred in carrying out this section.

(3) For the Railroad Retirement Board, $1,000,000 for administrative costs incurred in carrying out this section.

(4) For the Secretary of Veterans Affairs, $100,000 for the Information Systems Technology account and $7,100,000 for the General Operating Ex-

penses 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 title

VII of the Deficit Reduction Act of 2005 (Public Law 109–171; 120 Stat. 154))) that were—

(1) assessed and paid on imports of goods from countries that are parties to the North American Free Trade Agreement; and

(2) distributed on or after January 1, 2001, and before January 1, 2006.

(c) PAYMENT OF FUNDS COLLECTED OR WITHHELD.—Not later than the date that is 60 days after the date of the enactment of this Act, the Secretary of Homeland Security shall—

(1) refund any repayments, or any other recoupment, of payments described in subsection (b); and

(2) fully distribute any antidumping or countervailing duties that the U.S. Customs and Border Protection is withholding as an offset as described in subsection (a)(2).

(d) LIMITATION.—Nothing in this section shall be construed to prevent the Secretary of Homeland Security, or any other person, from requiring repayment of, or attempting to otherwise recoup, any payments described in subsection (b) as a result of—

(1) a finding of false statements or other misconduct 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".

SEC. 1903. ELECTION TO ACCELERATE THE LOW-INCOME HOUSING TAX CREDIT.

(a) IN GENERAL.—At the election of the taxpayer, the credit determined under section 42 of the Internal Revenue Code of 1986 for the taxpayer's first three taxable years beginning after December 31, 2008, in which credits are allowable for any non-federally subsidized low-income housing project initially placed in service after such date—

(1) with respect to initial investments made pursuant to a binding agreement by such taxpayer after December 31, 2008, and before January 1, 2011, and

(2) only from allocations of a State housing credit ceiling before 2011,

shall be 200 percent of the amount which would (but for this subsection) be so allowable.

(b) ELIGIBILITY FOR ELECTION.—The election under subsection (a) shall take effect with respect to the first tax-

able year referred to in such subsection only when all rental requirements pursuant to section 42(g)(1) of the Internal Revenue Code of 1986 have been met with respect to such low-income housing project.

(c) REDUCTION IN AGGREGATE CREDIT TO REFLECT ACCELERATED CREDIT.—The aggregate credit allowable to any taxpayer under section 42 of the Internal Revenue Code of 1986 with respect to any investment for taxable years after the first three taxable years referred to in subsection (a) shall be reduced on a pro rata basis by the amount of the increased credit allowable by reason of subsection (a) with respect to such first three taxable years. The preceding sentence shall not be construed to affect whether any taxable year is part of the credit, compliance, or extended use periods under such section 42.

(d) ELECTION.—The election under subsection (a) shall be made at the time and in the manner prescribed by the Secretary of the Treasury or the Secretary's delegate, and, once made, shall be irrevocable. In the case of a partnership, such election shall be made by the partnership.

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 es-

timates 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.

(b) PROVISIONS OF AGREEMENT.—

(1) ADDITIONAL COMPENSATION.—Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive reg-

ular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to the amount determined under the State law (before the application of this paragraph) plus an additional $25.

(2) ALLOWABLE METHODS OF PAYMENT.—Any additional compensation provided for in accordance with paragraph (1) shall be payable either—

(A) as an amount which is paid at the same time and in the same manner as any regular compensation otherwise payable for the week involved; or

(B) at the option of the State, by payments 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:

"Special Transfers for Modernization

"(f)(1)(A) In addition to any other amounts, the Secretary of Labor shall provide for the making of unemployment compensation modernization incentive payments (hereinafter 'incentive payments') to the accounts of the States in the Unemployment Trust Fund, by transfer from amounts reserved for that purpose in the Federal unemployment account, in accordance with succeeding provisions of this subsection.

"(B) The maximum incentive payment allowable under this subsection with respect to any State shall, as determined by the Secretary of Labor, be equal to the amount obtained by multiplying $7,000,000,000 by the same ratio as would apply under subsection (a)(2)(B) for purposes of determining such State's share of any excess amount (as described in subsection (a)(1)) that would have been subject to transfer to State accounts, as of October 1, 2008, under the provisions of subsection (a).

"(C) Of the maximum incentive payment determined under subparagraph (B) with respect to a State—

"(i) one-third 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 (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 because such individual is seeking only part-time (and not full-time) work, except that the State law provisions carrying out this subparagraph may exclude an individual if a majority of the weeks of work in such individual's base period do not include part-time work.

"(B) An individual shall not be disqualified from regular unemployment compensation for separating from employment if that separation is for any compelling family reason. For purposes of this sub-

paragraph, the term 'compelling family reason' means the following:

"(i) Domestic violence, verified by such reasonable and confidential documentation as the State law may require, which causes the individual reasonably to believe that such individual's continued employment would jeopardize the safety of the individual or of any member of the individual's immediate family (as defined by the Secretary of Labor).

"(ii) The illness or disability of a member of the individual's immediate family (as defined by the Secretary of Labor).

"(iii) The need for the individual to accompany 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 require-

ments 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 for certification under section 303 or approvable under section 3304 of the Federal Unemployment Tax Act.

"(ii) No certification of compliance with the requirements of paragraph (3) may be made with respect to any State whose State law is not in compliance with the requirements of paragraph (2).

"(iii) No application under subparagraph (A) may be considered if submitted before the date of the enactment of this subsection or after the latest date necessary (as specified by the Secretary of Labor) to ensure that all incentive payments under this subsection are made before October 1,

2010. In the case of a State in which the first day of the first regularly scheduled session of the State legislature beginning after the date of enactment of this subsection begins after December 31, 2010, the preceding sentence shall be applied by substituting 'October 1, 2011' for 'October 1, 2010'.

"(5)(A) Except as provided in subparagraph (B), any amount transferred to the account of a State under this subsection may be used by such State only in the payment of cash benefits to individuals with respect to their unemployment (including for dependents' allowances and for unemployment compensation under paragraph (3)(C)), exclusive 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 Fed-

eral 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 Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

"Special Transfer in Fiscal Year 2009 for Administration

"(g)(1) In addition to any other amounts, the Secretary of the Treasury shall transfer from the employment security administration account to the account of each State in the Unemployment Trust Fund, within 30 days after the date of the enactment of this subsection, the amount determined with respect to such State under paragraph (2).

"(2) The amount to be transferred under this subsection to a State account shall (as determined by the Secretary of Labor and certified by such Secretary to the Secretary of the Treasury) be equal to the amount obtained by multiplying $500,000,000 by the same ratio as determined under subsection (f)(1)(B) with respect to such State.

"(3) Any amount transferred to the account of a State as a result of the enactment of this subsection may be used by the State agency of such State only in the payment of expenses incurred by it for—

"(A) the administration of the provisions of its State law carrying out the purposes of subsection (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.—

"(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) NON-RECURRENT SHORT TERM EXPENDITURE REQUIREMENT.—A State meets the requirement of this clause for a quarter if the total expenditures of the State for non-recurrent short term benefits in the quarter, whether under the State program funded under this part or as qualified State expenditures, exceeds the total such expendi-

tures of the State for non-recurrent short term benefits in 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 an amount equal to 80 percent of the excess described in clause (ii).

"(C) GRANT RELATED TO INCREASED EXPENDITURES FOR SUBSIDIZED EMPLOYMENT.—

"(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) SUBSIDIZED EMPLOYMENT EXPENDITURE REQUIREMENT.—A State meets the requirement of this clause for a quarter if the total expenditures of the State for subsidized employment in the quarter, whether

under the State program funded under this part or as qualified State expenditures, exceeds the total of such expenditures of the State in 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 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, non-recurrent 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.".

1 ***SEC. 2104. TEMPORARY REINSTATEMENT OF AUTHORITY TO***
2 ***PROVIDE FEDERAL MATCHING PAYMENTS***
3 ***FOR STATE SPENDING OF CHILD SUPPORT***
4 ***INCENTIVE PAYMENTS.***

5 *During the period that begins on October 1, 2008, and*
6 *ends on December 31, 2010, section 455(a)(1) of the Social*
7 *Security Act (42 U.S.C. 655(a)(1)) shall be applied without*
8 *regard to the amendment made by section 7309(a) of the*
9 *Deficit Reduction Act of 2005 (Public Law 109–171, 120*
10 *Stat. 147).*

11 *TITLE III—HEALTH INSURANCE*
12 *ASSISTANCE*

13 ***SEC. 3000. TABLE OF CONTENTS OF TITLE.***

14 *The table of contents for this title is as follows:*

TITLE III—HEALTH INSURANCE ASSISTANCE

Sec. 3000. Table of contents of title.

Subtitle A—Premium Subsidies for COBRA Continuation Coverage for Unemployed Workers

Sec. 3001. Premium assistance for COBRA benefits.

Subtitle B—Transitional Medical Assistance (TMA)

Sec. 3101. Extension of transitional medical assistance (TMA).

Subtitle C—Extension of the Qualified Individual (QI) Program

Sec. 3201. Extension of the qualifying individual (QI) program.

Subtitle D—Other Provisions

Sec. 3301. Premiums and cost sharing protections under Medicaid, eligibility 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 50 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 assistance eligible individual may, not later than 90 days after the date of notice of the plan enrollment option described in this subparagraph, elect to enroll in coverage under a plan offered by the employer involved, or the employee organization involved (including, for this purpose, a joint board of trustees of a multiemployer trust affiliated with one or more multiemployer plans), that is different than coverage under the plan in which such individual was enrolled at the time the qualifying event occurred, and such coverage shall be treated as COBRA continuation coverage for purposes of the applicable COBRA continuation coverage provision.

(ii) REQUIREMENTS.—An assistance eligible individual may elect to enroll in different coverage as described in clause (i) only if—

(I) the employer involved has made a determination that such employer will permit assistance eligible individuals to enroll in different cov-

erage as provided for this subparagraph;

(II) the premium for such different coverage does not exceed the premium for coverage in which the individual was enrolled at the time the qualifying event occurred;

(III) the different coverage in which the individual elects to enroll is coverage that is also offered to the active employees of the employer at the time at which such election is made; and

(IV) the different coverage is not—

(aa) coverage that provides only dental, vision, counseling, or referral services (or a combination of such services);

(bb) a health flexible spending account or health reimbursement arrangement; or

(cc) coverage that provides coverage for services or treatments furnished in an on-site medical

facility maintained by the employer and that consists primarily of first-aid services, prevention and wellness care, or similar care (or a combination of such care).

(C) PREMIUM REIMBURSEMENT.—For provisions providing the balance of such premium, see section 6432 of the Internal Revenue Code of 1986, as added by paragraph (12).

(2) LIMITATION OF PERIOD OF PREMIUM ASSISTANCE.—

(A) IN GENERAL.—Paragraph (1)(A) shall not apply with respect to any assistance eligible individual for months of coverage beginning on or after the earlier of—

(i) the first date that such individual is eligible for coverage under any other group health plan (other than coverage consisting of only dental, vision, counseling, or referral services (or a combination thereof), coverage under a health reimbursement arrangement or a health flexible spending arrangement, or coverage of treatment that is furnished in an on-site medical facility maintained by the employer and that con-

sists primarily of first-aid services, prevention and wellness care, or similar care (or a combination thereof)) or is eligible for benefits under title XVIII of the Social Security Act; or

(ii) the earliest of—

(I) the date which is 12 months after the first day of first month that paragraph (1)(A) applies with respect to such individual,

(II) the date following the expiration of the maximum period of continuation coverage required under the applicable COBRA continuation coverage provision, or

(III) the date following the expiration of the period of continuation coverage allowed under paragraph (4)(B)(ii).

(B) TIMING OF ELIGIBILITY FOR ADDITIONAL COVERAGE.—For purposes of subparagraph (A)(i), an individual shall not be treated as eligible for coverage under a group health plan before the first date on which such individual could be covered under such plan.

(C) NOTIFICATION REQUIREMENT.—An assistance eligible individual shall notify in writing the group health plan with respect to which paragraph (1)(A) applies if such paragraph ceases to apply by reason of subparagraph (A)(i). Such notice shall be provided to the group health plan in such time and manner as may be specified by the Secretary of Labor.

(3) ASSISTANCE ELIGIBLE INDIVIDUAL.—For purposes of this section, the term "assistance eligible individual" means any qualified beneficiary if—

(A) at any time during the period that begins with September 1, 2008, and ends with December 31, 2009, such qualified beneficiary is eligible for COBRA continuation coverage,

(B) such qualified beneficiary elects such coverage, and

(C) the qualifying event with respect to the COBRA continuation coverage consists of the involuntary termination of the covered employee's employment and occurred during such period.

(4) EXTENSION OF ELECTION PERIOD AND EFFECT ON COVERAGE.—

(A) IN GENERAL.—Notwithstanding section 605(a) of the Employee Retirement Income Secu-

rity Act of 1974, section 4980B(f)(5)(A) of the Internal Revenue Code of 1986, section 2205(a) of the Public Health Service Act, and section 8905a(c)(2) of title 5, United States Code, in the case of an individual who is a qualified beneficiary described in paragraph (3)(A) as of the date of the enactment of this Act and has not made the election referred to in paragraph (3)(B) as of such date, such individual may elect the COBRA continuation coverage under the COBRA continuation coverage provisions containing such sections during the 60-day period commencing with the date on which the notification required under paragraph (7)(C) is provided to such individual.

(B) COMMENCEMENT OF COVERAGE; NO REACH-BACK.—Any COBRA continuation coverage elected by a qualified beneficiary during an extended election period under subparagraph (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 applica-

ble 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 continu-

ation 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 Em-

ployee 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 coverage (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

(vi) a description of the option of the qualified beneficiary to enroll in different coverage if the employer permits such beneficiary to elect to enroll in such different coverage under paragraph (1)(B).

(C) NOTICE RELATING TO RETROACTIVE COVERAGE.—In the case of an individual described in paragraph (3)(A) who has elected COBRA continuation coverage as of the date of

enactment of this Act or an individual described in paragraph (4)(A), the administrator of the group health plan (or other person) involved shall provide (within 60 days after the date of enactment of this Act) for the additional notification required to be provided under subparagraph (A).

(D) MODEL NOTICES.—Not later than 30 days after the date of enactment of this Act, the Secretary of the Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall prescribe models for the additional notification required under this paragraph.

(8) SAFEGUARDS.—The Secretary of the Treasury shall provide such rules, procedures, regulations, and other guidance as may be necessary and appropriate to prevent fraud and abuse under this subsection.

(9) OUTREACH.—The Secretary of Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall provide outreach consisting of public education and enrollment assistance relating to premium reduction provided under this subsection. Such outreach shall

target employers, group health plan administrators, public assistance programs, States, insurers, and other entities as determined appropriate by such Secretaries. Such outreach shall include an initial focus on those individuals electing continuation coverage who are referred to in paragraph (7)(C). Information on such premium reduction, including enrollment, shall also be made available on website of the Departments of Labor, Treasury, and Health and Human Services.

(10) DEFINITIONS.—For purposes of this subsection—

(A) ADMINISTRATOR.—The term "administrator" has the meaning given such term in section 3(16) of the Employee Retirement Income 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 pedi-

atric 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 such term in section 607(3) of the Employee Retirement Income Security Act of 1974.

(F) GROUP HEALTH PLAN.—The term "group health plan" has the meaning given such term in section 607(1) of the Employee Retirement Income Security Act of 1974.

(G) STATE.—The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Amer-

ican Samoa, and the Commonwealth of the Northern Mariana Islands.

(11) REPORTS.—

(A) INTERIM REPORT.—The Secretary of the Treasury shall submit an interim report to the Committee on Education and Labor, the Committee on Ways and Means, and the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate regarding the premium reduction provided under this subsection that includes—

(i) the number of individuals provided such assistance as of the date of the report; 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

"(3) amounts of the taxes imposed for the payroll period under section 3111 (relating to FICA employer taxes).

"(c) TREATMENT OF CREDIT.—Except as otherwise provided by the Secretary, the credit described in subsection (a) shall be applied as though the employer had paid to the Secretary, on the day that the qualified beneficiary's premium payment is received, an amount equal to such credit.

"(d) TREATMENT OF PAYMENT.—For purposes of section 1324(b)(2) of title 31, United States Code, any pay-

ment under this subsection shall be treated in the same manner as a refund of the credit under section 35.

"(e) REPORTING.—

"(1) IN GENERAL.—Each person entitled to reimbursement under subsection (a) for any period shall submit such reports as the Secretary may require, including—

"(A) an attestation of involuntary termination of employment for each covered employee on the basis of whose termination entitlement to reimbursement is claimed under subsection (a), and

"(B) a report of the amount of payroll taxes offset under subsection (a) for the reporting 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.

(C) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 65 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

"Sec. 6432. COBRA premium assistance.".

(D) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to premiums to which subsection (a)(1)(A) applies.

(E) SPECIAL RULE.—

(i) IN GENERAL.—In the case of an assistance eligible individual who pays the full premium amount required for COBRA continuation coverage for any month during the 60-day period beginning on the first day of the first month after the date of enact-

ment of this Act, the person to whom such payment is made shall—

(I) make a reimbursement payment to such individual for the amount of such premium paid in excess of the amount required to be paid under subsection (b)(1)(A); or

(II) provide credit to the individual for such amount in a manner that reduces one or more subsequent 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 pay-

ment 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 taxable 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 3 months during the 6 immediately preceding months described in such subparagraph.".

(d) CMS REPORT ON ENROLLMENT AND PARTICIPATION RATES UNDER TMA.—Section 1925 of such Act (42 U.S.C. 1396r–6), as amended by this section, is further amended by adding at the end the following new subsection:

"(g) COLLECTION AND REPORTING OF PARTICIPATION INFORMATION.—

"(1) COLLECTION OF INFORMATION FROM STATES.—Each State shall collect and submit to the Secretary (and make publicly available), in a format specified by the Secretary, information on average monthly enrollment and average monthly participation rates for adults and children under this section and of the number and percentage of children who become ineligible for medical assistance under this section whose medical assistance is continued under another eligibility category or who are enrolled under the State's child health plan under title XXI. Such information shall be submitted at the same time and

frequency in which other enrollment information under this title is submitted to the Secretary.

"(2) ANNUAL REPORTS TO CONGRESS.—Using 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:

"(j) NO PREMIUMS OR COST SHARING FOR INDIANS FURNISHED ITEMS OR SERVICES DIRECTLY BY INDIAN HEALTH PROGRAMS OR THROUGH REFERRAL UNDER CONTRACT HEALTH SERVICES.—

"(1) NO COST SHARING FOR ITEMS OR SERVICES FURNISHED TO INDIANS THROUGH INDIAN HEALTH PROGRAMS.—

"(A) IN GENERAL.—No enrollment fee, premium, or similar charge, and no deduction, copayment, cost sharing, or similar charge shall be imposed against 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 for which payment may be made under this title.

"(B) NO REDUCTION IN AMOUNT OF PAYMENT TO INDIAN HEALTH PROVIDERS.—Payment due under this title to the Indian Health Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization, or a health care provider through referral under contract health services for the furnishing of an item or service to an In-

dian who is eligible for assistance under 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 reservation as des-

ignated 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 condition of re-

ceiving payment under such contract, that the Indian shall be allowed to choose such Indian health care provider as the Indian's primary care provider under the entity.

"(2) ASSURANCE OF PAYMENT TO INDIAN HEALTH CARE PROVIDERS FOR PROVISION OF COVERED SERVICES.—Each contract with a managed care entity under section 1903(m) or under section 1905(t)(3) shall require any such entity, as a condition of receiving payment under such contract, to satisfy the following requirements:

"(A) DEMONSTRATION OF ACCESS TO INDIAN HEALTH CARE PROVIDERS AND APPLICATION OF ALTERNATIVE PAYMENT ARRANGEMENTS.—Subject to subparagraph (C), to—

"(i) demonstrate that the number of Indian health care providers that are participating providers with respect to such entity are sufficient to ensure timely access to covered Medicaid managed care services for those Indian enrollees who are eligible to receive services from such providers; and

"(ii) agree to pay Indian health care providers, whether such providers are participating 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 PROVIDED BY CERTAIN INDIAN HEALTH CARE PROVIDERS.—

"(i) FEDERALLY-QUALIFIED HEALTH CENTERS.—

"(I) MANAGED CARE ENTITY PAYMENT REQUIREMENT.—To agree to pay any Indian health care provider that is a federally-qualified health center under this title but not a participating provider with respect to the entity, for the provision of covered Medicaid managed care services by such provider to an Indian enrollee of the entity at a rate equal to the amount of payment that the entity would pay a federally-qualified health center that is a participating provider with respect to the entity but is not an Indian health care provider for such services.

"(II) CONTINUED APPLICATION OF STATE REQUIREMENT TO MAKE SUPPLEMENTAL PAYMENT.—Nothing in subclause (I) or subparagraph (A) or (B) shall be construed as waiving the application of section 1902(bb)(5) regarding the State plan requirement to make any supplemental payment due

under such section to a federally-qualified health center for services furnished by such center to an enrollee of a managed care entity (regardless of whether the federally-qualified health center is or is not a participating provider with the entity).

"(ii) PAYMENT RATE FOR SERVICES PROVIDED BY CERTAIN INDIAN HEALTH CARE PROVIDERS.—If the amount paid by a managed care entity to an Indian health care provider that is not a federally-qualified health center for services provided by the provider to an Indian enrollee with the managed care entity is less than the rate that applies to the provision of such services by the provider under the State plan, the plan shall provide for payment to the Indian health care provider, whether the provider is a participating or nonparticipating provider with respect to the entity, of the difference between such applicable rate and the amount paid by the managed care entity to the provider for such services.

"(D) CONSTRUCTION.—Nothing in this paragraph shall be construed as waiving the application of section 1902(a)(30)(A) (relating to application of standards to assure that payments are consistent with efficiency, economy, and quality of care).

"(3) SPECIAL RULE FOR ENROLLMENT FOR INDIAN MANAGED CARE ENTITIES.—Regarding the application of a Medicaid managed care program to Indian Medicaid managed care entities, an Indian Medicaid managed care entity may restrict enrollment under such program to Indians and to members of specific Tribes in the same manner as Indian Health Programs may restrict the delivery of services to such Indians and tribal members.

"(4) DEFINITIONS.—For purposes of this subsection:

"(A) INDIAN HEALTH CARE PROVIDER.—The term 'Indian health care provider' means an Indian Health Program or an Urban Indian Organization.

"(B) INDIAN MEDICAID MANAGED CARE ENTITY.—The term 'Indian Medicaid managed care entity' means a managed care entity that is controlled (within the meaning of the last sentence

of section 1903(m)(1)(C)) by the Indian Health Service, a Tribe, Tribal Organization, or Urban Indian Organization, or a consortium, which may be composed of 1 or more Tribes, Tribal Organizations, or Urban Indian Organizations, and which also may include the Service.

"(C) NON-INDIAN MEDICAID MANAGED CARE ENTITY.—The term 'non-Indian Medicaid managed care entity' means a managed care entity that is not an Indian Medicaid managed care entity.

"(D) COVERED MEDICAID MANAGED CARE SERVICES.—The term 'covered Medicaid managed care services' means, with respect to an individual enrolled with a managed care entity, items and services for which benefits are available with respect to the individual under the contract between the entity and the State involved.

"(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 Services shall include in such Group a representative of a national urban Indian health organization and a representative of the Indian Health Service. The inclusion of a representative of a national urban Indian health organization in such Group shall not affect the nonapplication of the Federal Advisory Committee Act (5 U.S.C. App.) to such Group.

(b) SOLICITATION OF ADVICE UNDER MEDICAID AND CHIP.—

(1) MEDICAID STATE PLAN AMENDMENT.—Subject to subsection (d), section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(A) in paragraph (70), by striking "and" at the end;

(B) in paragraph (71), by striking the period at the end and inserting "; and"; and

(C) by inserting after paragraph (71), the following new paragraph:

"(72) in the case of any State in which 1 or more Indian Health Programs or Urban Indian Organizations furnishes health care services, provide for a process under which the State seeks advice on a regular, ongoing basis from designees of such Indian Health Programs and Urban Indian Organizations on matters relating to the application of this title that are likely to have a direct effect on such Indian Health Programs and Urban Indian Organizations and that—

"(A) shall include solicitation of advice prior to submission of any plan amendments, waiver requests, and proposals for demonstration projects likely to have a direct effect on Indians,

Indian Health Programs, or Urban Indian Organizations; and

"(B) may include appointment of an advisory committee and of a designee of such Indian Health Programs and Urban Indian Organizations to the medical care advisory committee advising the State on its State plan under this title.".

(2) APPLICATION TO CHIP.—Subject to subsection (d), section 2107(e)(1) of such Act (42 U.S.C. 1397gg(e)(1)), as amended by section 3302(b)(2), 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(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 Sec-

retary 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) INCENTIVE PAYMENTS.—

"(A) IN GENERAL.—

"(i) IN GENERAL.—Subject to clause (ii) and the succeeding subparagraphs of this paragraph, with respect to covered professional services furnished by an eligible professional during a payment year (as defined in subparagraph (E)), if the eligible professional is a meaningful EHR user (as determined under paragraph (2)) for the reporting period with respect to such year, in

addition to the amount otherwise paid under this part, there also shall be paid to the eligible professional (or to an employer or facility in the cases described in clause (A) of section 1842(b)(6)), from the Federal Supplementary Medical Insurance Trust Fund established under section 1841 an amount equal to 75 percent of the Secretary's estimate (based on claims submitted not later than 2 months after the end of the payment year) of the allowed charges under this part for all such covered professional services furnished by the 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 subpara-

graph 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.

"(III) For the third payment year for such professional, $8,000.

"(IV) For the fourth payment year for such professional, $4,000.

"(V) For the fifth payment year for such professional, $2,000.

"(VI) For any succeeding payment year for such professional, $0.

"(iii) PHASE DOWN FOR ELIGIBLE PROFESSIONALS FIRST ADOPTING EHR IN 2014.—If the first payment year for an eligible professional is 2014, then the amount specified in this subparagraph for a pay-

ment year for such professional is the same as the amount specified in clause (ii) for such payment year for an eligible professional whose first payment year is 2013.

"(iv) INCREASE FOR CERTAIN RURAL ELIGIBLE PROFESSIONALS.—In the case of an eligible professional who predominantly furnishes services under this part in a rural area that is designated by the Secretary (under section 332(a)(1)(A) of the Public Health Service Act) as a health professional 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 spec-

ified 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 professional' means, with respect to covered professional services furnished by an eligible professional during the reporting period for a payment year, an eligible professional, such as a pathologist, anesthesiologist, or emergency physician, who furnishes substantially all of such services in a hospital setting (whether inpatient or outpatient) and through the use of the facilities and equipment, including qualified electronic health records, of the hospital.

"(D) PAYMENT.—

"(i) FORM OF PAYMENT.—The payment under this paragraph may be in the form of a single consolidated payment or in the form of such periodic installments as the Secretary may specify.

"(ii) COORDINATION OF APPLICATION OF LIMITATION FOR PROFESSIONALS IN DIFFERENT PRACTICES.—In the case of an eligible professional furnishing covered professional services in more than one practice (as specified by the Secretary), the Secretary shall establish rules to coordinate the incentive payments, including the application of the limitation on amounts of such incentive payments under this paragraph, among such practices.

"(iii) COORDINATION WITH MEDICAID.—The Secretary shall seek, to the maximum extent practicable, to avoid duplicative requirements from Federal and State Governments to demonstrate meaningful use of certified EHR technology under this title and title XIX. In doing so, the Secretary may deem satisfaction of State requirements for such meaningful use for a

payment year under title XIX to be sufficient to qualify as meaningful use under this subsection and subsection (a)(7) and vice versa. The Secretary may also adjust the reporting periods under such title and such subsections in order to carry out this clause.

"(E) PAYMENT YEAR DEFINED.—

"(i) IN GENERAL.—For purposes of this subsection, the term 'payment year' means a year beginning with 2011.

"(ii) FIRST, SECOND, ETC. PAYMENT 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 professional is using certified EHR technology in a meaningful manner, which shall include the use of electronic prescribing as determined to be appropriate by the Secretary.

"(ii) INFORMATION EXCHANGE.—The eligible professional demonstrates to the satisfaction of the Secretary, in accordance with subparagraph (C)(i), that during such period such certified EHR technology is connected in a manner that provides, in accordance with law and standards applicable to the exchange of information, for the electronic exchange of health information to im-

prove the quality of health care, such as promoting care coordination.

"(iii) REPORTING ON MEASURES USING EHR.—Subject to subparagraph (B)(ii) and using such certified EHR technology, the eligible professional submits information for such period, in a form and manner specified by the Secretary, on such clinical quality measures and such other measures as selected by the Secretary under subparagraph (B)(i).

The Secretary may provide for the use of alternative means for meeting the requirements of clauses (i), (ii), and (iii) in the case of an eligible professional furnishing covered professional services in a group practice (as defined by the Secretary). The Secretary shall seek to improve the use of electronic health records and health care quality over time by requiring more stringent measures of meaningful use selected under this paragraph.

"(B) REPORTING ON MEASURES.—

"(i) SELECTION.—The Secretary shall select measures for purposes of subpara-

graph (A)(iii) but only consistent with the following:

"(I) The Secretary shall provide preference to clinical quality measures that have been endorsed by the entity with a contract with the Secretary under section 1890(a).

"(II) Prior to any measure being selected under this subparagraph, the Secretary shall publish in the Federal 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—

"(I) an attestation;

"(II) the submission of claims with appropriate coding (such as a code indicating that a patient encounter 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).

"(3) APPLICATION.—

"(A) PHYSICIAN REPORTING SYSTEM RULES.—Paragraphs (5), (6), and (8) of subsection (k) shall apply for purposes of this subsection in the same manner as they apply for purposes of such subsection.

"(B) COORDINATION WITH OTHER PAYMENTS.—The provisions of this subsection shall not be taken into account in applying the provisions of subsection (m) of this section and of section 1833(m) and any payment under such provisions shall not be taken into account in computing allowable charges under this subsection.

"(C) 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 (a)(7), including the determination of a meaningful EHR user under paragraph (2), a limitation under paragraph (1)(B), and the exception under subsection (a)(7)(B).

"(D) 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, business addresses, and business phone numbers of the eligible professionals who are meaningful EHR users and, as determined appropriate by the Secretary, of group practices receiving incentive payments under paragraph (1).

"(4) CERTIFIED EHR TECHNOLOGY DEFINED.—For purposes of this section, the term 'certified EHR technology' means a qualified electronic health record (as defined in 3000(13) of the Public Health Service Act) that is certified pursuant to section 3001(c)(5) of such Act as meeting standards adopted under section 3004 of such Act 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).

"(5) DEFINITIONS.—For purposes of this subsection:

"(A) COVERED PROFESSIONAL SERVICES.—The term 'covered professional services' has the meaning given such term in subsection (k)(3).

"(B) ELIGIBLE PROFESSIONAL.—The term 'eligible professional' means a physician, as defined in section 1861(r).

"(C) REPORTING PERIOD.—The term 'reporting 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 deter-

mining 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 application of paragraph (3) but without regard to this paragraph).

"(ii) APPLICABLE PERCENT.—Subject to clause (iii), for purposes of clause (i), the term 'applicable percent' means—

"(I) for 2015, 99 percent (or, in the case of an eligible professional who was subject to the application of the payment adjustment under section 1848(a)(5) for 2014, 98 percent);

"(II) for 2016, 98 percent; and

"(III) for 2017 and each subsequent year, 97 percent.

"(iii) AUTHORITY TO DECREASE APPLICABLE PERCENTAGE FOR 2018 AND SUBSEQUENT YEARS.—For 2018 and each subsequent year, if the Secretary finds that the proportion of eligible professionals who are meaningful EHR users (as determined under subsection (o)(2)) is less than 75 per-

cent, the applicable percent shall be decreased by 1 percentage point from the applicable percent in the preceding year, but in no case shall the applicable percent be less than 95 percent.

"(B) SIGNIFICANT HARDSHIP EXCEPTION.—The Secretary may, on a case-by-case basis, exempt an eligible professional from the application of the payment adjustment under subparagraph (A) if the Secretary determines, subject to annual renewal, that compliance with the requirement for being a meaningful EHR user would result in a significant hardship, such as in the case of an eligible professional who practices in a rural area without sufficient Internet access. In no case may an eligible professional be granted an exemption under this subparagraph for more than 5 years.

"(C) APPLICATION OF PHYSICIAN REPORTING SYSTEM RULES.—Paragraphs (5), (6), and (8) of subsection (k) shall apply for purposes of this paragraph in the same manner as they apply for purposes of such subsection.

"(D) NON-APPLICATION TO HOSPITAL-BASED ELIGIBLE PROFESSIONALS.—No payment

adjustment may be made under subparagraph (A) in the case of hospital-based eligible professionals (as defined in subsection (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 organization attests under paragraph (6) to be meaningful EHR users in a similar manner as they apply to eligible professionals under such sections. Incentive payments under paragraph (3) shall be made to and payment adjustments under paragraph (4) shall apply to such qualifying organizations.

"(2) ELIGIBLE PROFESSIONAL DESCRIBED.—With respect to a qualifying MA organization, an eligible professional described in this paragraph is an eligible professional (as defined for purposes of section 1848(o)) who—

"(A)(i) is employed by the organization; or

"(ii)(I) is employed by, or is a partner of, an entity that through contract with the organization furnishes at least 80 percent of the entity's patient care services to enrollees of such organization; and

"(II) furnishes at least 75 percent of the professional services of the eligible professional to enrollees of the organization; and

"(B) furnishes, on average, at least 20 hours per week of patient care services.

"(3) ELIGIBLE PROFESSIONAL INCENTIVE PAYMENTS.—

"(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 de-

scribed 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 part, that are attributable to expenditures for physicians' services.

"(C) APPLICATION OF PAYMENT ADJUSTMENT.—In the case that a qualifying MA organization attests that not all eligible professionals of the organization are meaningful EHR users with respect to a year, the Secretary shall apply the payment adjustment under this paragraph based on the proportion of all eligible professionals of the organization that are not meaningful EHR users for such year. If the number of eligible professionals of the organization that are not meaningful EHR users for such year exceeds 5,000, such number shall be reduced to 5,000 for purposes of determining the proportion under the preceding sentence.

"(5) QUALIFYING MA ORGANIZATION DEFINED.—In this subsection and subsection (m), the term 'qualifying MA organization' means a Medicare Advantage organization that is organized as a health maintenance organization (as defined in section 2791(b)(3) of the Public Health Service Act).

"(6) MEANINGFUL EHR USER ATTESTATION.—For purposes of this subsection and subsection (m), a qualifying MA organization shall submit an attestation, in a form and manner specified by the Secretary which may include the submission of such attestation

as part of submission of the initial bid under section 1854(a)(1)(A)(iv), identifying—

"(A) whether each eligible professional described in paragraph (2), with respect to such organization is a meaningful EHR user (as defined in section 1848(o)(2)) for a year specified by the Secretary; and

"(B) whether each eligible hospital described in subsection (m)(1), with respect to such organization, is a meaningful EHR user (as defined in section 1886(n)(3)) for an applicable period specified by the Secretary.

"(7) 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, business addresses, and business phone numbers of—

"(A) each qualifying MA organization receiving an incentive payment under this subsection for eligible professionals of the organization; 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) IN GENERAL.—The Secretary of Health and Human Services shall provide assistance to eligible professionals (as defined in section 1848(o)(5), as added by subsection (a)), Medicaid providers (as defined in section 1903(t)(2) of such Act, as added by section 4211(a)), and eligible hospitals (as defined in section 1886(n)(6)(A) of such Act, as added by section

4202(a)) located in rural or other medically underserved areas to successfully choose, implement, and use certified EHR technology (as defined in section 1848(o)(4) of the Social Security Act, as added by section 4201(a)).

(2) USE OF ENTITIES WITH EXPERTISE.—To the extent practicable, the Secretary shall provide such assistance through entities that have expertise in the choice, implementation, and use of such certified EHR technology.

SEC. 4202. INCENTIVES FOR HOSPITALS.

(a) INCENTIVE PAYMENT.—Section 1886 of the Social Security Act (42 U.S.C. 1395ww) is amended by adding at the end the following new subsection:

"(n) INCENTIVES FOR ADOPTION AND MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—

"(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, with respect to inpatient 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).

"(iii) For the 13,801st through the 23,000th discharge, 30 percent of the amount specified in clause (i).

"(D) MEDICARE SHARE.—The Medicare share specified under this subparagraph for a hospital for a period selected by the Secretary for a payment year is equal to the fraction—

"(i) the numerator of which is the sum (for such period and with respect to the hospital) of—

"(I) the number of inpatient-bed-days (as established by the Secretary) which are attributable to individuals with respect to whom payment may be made under part A; and

"(II) the number of inpatient-bed-days (as so established) which are attributable to individuals who are enrolled with a Medicare Advantage organization under part C; and

"(ii) the denominator of which is the product of—

"(I) the total number of inpatient-bed-days with respect to the hospital 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 cal-

culate 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.—

"(i) IN GENERAL.—Subject to clause (ii), the transition factor specified in this subparagraph for an eligible hospital for a payment year is as follows:

"(I) For the first payment year for such hospital, 1.

"(II) For the second payment year for such hospital, 3/4.

"(III) For the third payment year for such hospital, 1/2.

"(IV) For the fourth payment year for such hospital, 1/4.

"(V) For any succeeding payment year for such hospital, 0.

"(ii) PHASE DOWN FOR ELIGIBLE HOSPITALS FIRST ADOPTING EHR AFTER 2013.—If the first payment year for an eligible hospital is after 2013, then the transition factor specified in this subparagraph for a payment year for such hospital is the same as the amount specified in clause (i) for such payment year for an eligible hospital for which the first payment year is 2013. If the first payment year for an eligible hospital is after 2015 then the transition factor specified in this subparagraph for such hospital and for such year and any subsequent year shall be 0.

"(F) FORM OF PAYMENT.—The payment under this subsection for a payment year may be in the form of a single consolidated payment or in the form of such periodic installments as the Secretary may specify.

"(G) PAYMENT YEAR DEFINED.—

"(i) IN GENERAL.—For purposes of this subsection, the term 'payment year' means a fiscal year beginning with fiscal year 2011.

"(ii) FIRST, SECOND, ETC. PAYMENT YEAR.—The term 'first payment year' means, with respect to inpatient hospital services furnished by an eligible hospital, the first fiscal year for which an incentive payment is made for such services under this subsection. The terms 'second payment year', 'third payment year', and 'fourth payment year' mean, with respect to an eligible hospital, each successive year immediately following the first payment year for that hospital.

""(H) LIMITATION FOR CRITICAL ACCESS HOSPITALS.—In no case shall the total amount of payments made under this subsection to a critical access hospital for all payment years exceed $1,500,000.

"(3) MEANINGFUL EHR USER.—

"(A) IN GENERAL.—For purposes of paragraph (1), an eligible hospital shall be treated as a meaningful EHR user for a reporting period

for a payment year (or, for purposes of subsection (b)(3)(B)(ix), for a reporting period under such subsection for a fiscal year) if each of the following requirements are met:

"(i) MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—The eligible hospital demonstrates to the satisfaction of the Secretary, in accordance with subparagraph (C)(i), that during such period the hospital is using certified EHR technology in a meaningful manner.

"(ii) INFORMATION EXCHANGE.—The eligible hospital demonstrates to the satisfaction of the Secretary, in accordance with subparagraph (C)(i), that during such period such certified EHR technology is connected in a manner that provides, in accordance with law and standards applicable to the exchange of information, for the electronic exchange of health information to improve the quality of health care, such as promoting care coordination.

"(iii) REPORTING ON MEASURES USING EHR.—Subject to subparagraph (B)(ii) and using such certified EHR technology, the el-

igible hospital submits information for such period, in a form and manner specified by the Secretary, on such clinical quality measures and such other measures as selected by the Secretary under subparagraph (B)(i).

The Secretary shall seek to improve the use of electronic health records and health care quality over time by requiring more stringent measures of meaningful use selected under this paragraph.

"(B) REPORTING ON MEASURES.—

"(i) SELECTION.—The Secretary shall select measures for purposes of subparagraph (A)(iii) but only consistent with the following:

"(I) The Secretary shall provide preference to clinical quality measures that have been selected for purposes of applying subsection (b)(3)(B)(viii) or that have been endorsed by the entity with a contract with the Secretary under section 1890(a).

"(II) Prior to any measure (other than a clinical quality measure that has been selected for purposes of apply-

ing subsection (b)(3)(B)(viii)) being selected under this subparagraph, the Secretary shall publish in the Federal Register such measure and provide for a period of public comment on such measure.

"(ii) LIMITATIONS.—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 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

(B) by adding at the end the following new clause:

"(ix)(I) For purposes of clause (i) for fiscal year 2015 and each subsequent fiscal year, in the case of an eligible hospital (as defined in subsection (n)(6)(A)) that is not a meaningful EHR user (as defined in subsection (n)(3)) for the reporting period for such fiscal year, three-quarters of

the applicable percentage increase otherwise applicable under clause (i) for such fiscal year shall be reduced by 33⅓ percent for fiscal year 2015, 66⅔ percent for fiscal year 2016, and 100 percent for fiscal year 2017 and each subsequent fiscal year. Such reduction shall apply only with respect to the fiscal year involved and the Secretary shall not take into account such reduction in computing the applicable percentage increase under clause (i) for a subsequent fiscal year.

"(II) The Secretary may, on a case-by-case basis, exempt a subsection (d) hospital from the application of subclause (I) 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 subclause for more than 5 years.

"(III) For fiscal year 2015 and each subsequent fiscal year, a State in which hospitals are paid for services under section 1814(b)(3) shall adjust the payments to each subsection (d) hospital in the State that is not a meaningful EHR user (as defined in subsection (n)(3)) in a manner that is designed to result in an aggregate reduction in payments to hospitals in the State that is equivalent to the ag-

gregate reduction that would have occurred if payments had been reduced to each subsection (d) hospital in the State in a manner comparable to the reduction under the previous provisions of this clause. The State shall report to the Secretary the methodology it will use to make the payment adjustment under the previous sentence.

"(IV) For purposes of this clause, the term 'reporting period' means, with respect to a fiscal year, any period (or periods), with respect to the fiscal year, as specified by the Secretary.".

(2) CRITICAL ACCESS HOSPITALS.—Section 1814(l) of the Social Security Act (42 U.S.C. 1395f(l)) is amended—

(A) in subparagraph (1), by striking "paragraph (2)" and inserting "paragraphs (2) 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 Act (42 U.S.C. 1395w–23), as amended by section 4201(c), is further amended by adding at the end the following new subsection:

"(m) APPLICATION OF ELIGIBLE HOSPITAL INCENTIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION AND MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—

"(1) APPLICATION.—Subject to paragraphs (3) and (4), in the case of a qualifying MA organization,

the provisions of sections 1814(l)(3), 1886(n), and 1886(b)(3)(B)(ix) shall apply with respect to eligible hospitals described in paragraph (2) of the organization which the organization attests under subsection (l)(6) to be meaningful EHR users in a similar manner as they apply to eligible hospitals under such sections. Incentive payments under paragraph (3) shall be made to and payment adjustments under paragraph (4) shall apply to such qualifying organizations.

"(2) ELIGIBLE HOSPITAL DESCRIBED.—With respect to a qualifying MA organization, an eligible hospital described in this paragraph is an eligible hospital (as defined in section 1886(n)(6)(A)) that is under common corporate governance with such organization and serves individuals enrolled under an MA plan offered by such organization.

"(3) ELIGIBLE HOSPITAL INCENTIVE PAYMENTS.—

"(A) IN GENERAL.—In applying section 1886(n)(2) under paragraph (1), instead of the additional payment amount under section 1886(n)(2), there shall be substituted an amount determined by the Secretary to be similar to the estimated amount in the aggregate that would be

payable if payment for services furnished by such hospitals was payable under part A instead of this part. In implementing the previous sentence, the Secretary—

"(i) shall, insofar as data to determine the discharge related amount under section 1886(n)(2)(C) for an eligible hospital are not available to the Secretary, use such alternative data and methodology to estimate such discharge related amount as the Secretary determines appropriate; and

"(ii) shall, insofar as data to determine the medicare share described in section 1886(n)(2)(D) for an eligible hospital are not available to the Secretary, use such alternative data and methodology to estimate such share, which data and methodology may include use of the inpatient bed days (or discharges) with respect to an eligible hospital during the appropriate period which are attributable to both individuals for whom payment may be made under part A or individuals enrolled in an MA plan under a Medicare Advantage organization under this part as a proportion of the

total number of patient-bed-days (or discharges) with respect to such hospital during such period.

"(B) AVOIDING DUPLICATION OF PAYMENTS.—

"(i) IN GENERAL.—In the case of a hospital that for a payment year is an eligible hospital described in paragraph (2) and for which at least one-third of their discharges (or bed-days) of Medicare patients for the year are covered under part A, payment for the payment year shall be made only under section 1886(n) and not under this subsection.

"(ii) METHODS.—In the case of a hospital that is an eligible hospital described in paragraph (2) and also is eligible for an incentive payment under section 1886(n) 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 hospital both under this subsection and under section 1886(n); and

"(II) to collect data from Medicare Advantage organizations to ensure against such duplicate payments.

"(4) PAYMENT ADJUSTMENT.—

"(A) Subject to paragraph (3), in the case of a qualifying MA organization (as defined in section 1853(l)(5)), if, according to the attestation of the organization submitted under subsection (l)(6) for an applicable period, one or more eligible hospitals (as defined in section 1886(n)(6)(A)) that are under common corporate governance with such organization and that serve individuals enrolled under a plan offered by such organization are not meaningful EHR users (as defined in section 1886(n)(3)) with respect to a period, the payment amount payable under this section for such organization for such period shall be the percent specified in subparagraph (B) for such period of the payment amount otherwise provided under this section for such period.

"(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) the number of the percentage point reduction effected under section 1886(b)(3)(B)(ix)(I) for the period; and

"(ii) the Medicare hospital expenditure proportion specified in subparagraph (C) for the year.

"(C) MEDICARE HOSPITAL EXPENDITURE PROPORTION.—The Medicare hospital expenditure proportion under this subparagraph for a year is the Secretary's estimate of the proportion, of the expenditures under parts A and B that are not attributable to this part, that are attributable to expenditures for inpatient hospital services.

"(D) APPLICATION OF PAYMENT ADJUSTMENT.—In the case that a qualifying MA organization attests that not all eligible hospitals are meaningful EHR users with respect to an applicable period, the Secretary shall apply the payment adjustment under this paragraph based on a methodology specified by the Secretary, taking into account the proportion of such eligible hospitals, or discharges from such hospitals, that are not meaningful EHR users for such period.

"(5) POSTING ON WEBSITE.—The Secretary shall post on the Internet website of the Centers for Medicare & Medicaid Services, in an easily understandable format—

"(A) a list of the names, business addresses, and business phone numbers of each qualifying MA organization receiving an incentive payment under this subsection for eligible hospitals described in paragraph (2); and

"(B) a list of the names of the eligible hospitals for which such incentive payment is 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).".

(b) IMPLEMENTATION FUNDING.—In addition to funds otherwise available, out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary of Health and Human Services for the Center for Medicare & Medicaid Services Program Management Account, $100,000,000 for each of fiscal years 2009 through 2015 and $45,000,000 for each succeeding fiscal year through fiscal year 2018, which shall be available for purposes of carrying out the provisions of (and amendments made by) this part. Amounts appropriated under this subsection for a fiscal year shall be available until expended.

SEC. 4204. NON-APPLICATION OF PHASED-OUT INDIRECT MEDICAL EDUCATION (IME) ADJUSTMENT FACTOR FOR FISCAL YEAR 2009.

(a) IN GENERAL.—Section 412.322 of title 42, Code of Federal Regulations, shall be applied without regard to paragraph (c) of such section, and the Secretary of Health and Human Services shall recompute payments for discharges occurring on or after October 1, 2008, as if such paragraph had never been in effect.

(b) NO EFFECT ON SUBSEQUENT YEARS.—Nothing in subsection (a) shall be construed as having any effect on the application of paragraph (d) of section 412.322 of 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, the Administrator of the Health Resources and Services Administration, and the Chairman of the Federal Communications Commission, conduct a study on—

(A) the current availability of open source health information technology systems to Federal safety net providers (including small, rural providers);

(B) the total cost of ownership of such systems in comparison to the cost of proprietary commercial products available;

(C) the ability of such systems to respond to the needs of, and be applied to, various popu-

lations (including children and disabled individuals); and

(D) the capacity of such systems to facilitate interoperability.

(2) CONSIDERATIONS.—In conducting the study under paragraph (1), the Secretary of Health and Human Services shall take into account the circumstances of smaller health care providers, health care providers located in rural or other medically underserved areas, and safety net providers that deliver a significant level of health care to uninsured individuals, Medicaid beneficiaries, SCHIP beneficiaries, and other vulnerable individuals.

(b) REPORT.—Not later than October 1, 2010, the Secretary of Health and Human Services shall submit to Congress a report on the findings and the conclusions of the study conducted under subsection (a), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

Subtitle B—Medicaid Funding

SEC. 4211. MEDICAID PROVIDER EHR ADOPTION AND OPERATION PAYMENTS; IMPLEMENTATION FUNDING.

(a) IN GENERAL.—Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended—

(1) in subsection (a)(3)—

(A) by striking "and" at the end of subparagraph (D);

(B) by striking "plus" at the end of subparagraph (E) and inserting "and"; and

(C) by adding at the end the following new subparagraph:

"(F)(i) 100 percent of so much of the sums expended during such quarter as are attributable to payments for certified EHR technology (and support services including maintenance and training that is for, or is necessary for the adoption and operation of, such technology) by Medicaid providers described in subsection (t)(1); and

"(ii) 90 percent of so much of the sums expended during such quarter as are attributable to payments for reasonable administrative expenses related to the administration of payments described in clause (i) if the State meets the condition described in subsection (t)(9); plus"; and

(2) by inserting after subsection (s) the following new subsection:

"(t)(1)(A) For purposes of subsection (a)(3)(F), the payments for certified EHR technology (and support serv-

ices including maintenance that is for, or is necessary for the operation of, such technology) by Medicaid providers described in this paragraph are payments made by the State in accordance with this subsection of the applicable percent of the net allowable costs of Medicaid providers (as defined in paragraph (2)) for such technology (and support services).

"(B) For purposes of subparagraph (A), the term 'applicable percent' means—

"(i) in the case of a Medicaid provider described in paragraph (2)(A), 85 percent;

"(ii) in the case of a Medicaid provider described in clause (i) or (ii) of paragraph (2)(B), 100 percent; and

"(iii) in the case of a Medicaid provider described in clause (iii) of paragraph (2)(B), a percent specified by the Secretary, but not less than 85 percent.

"(2) In this subsection and subsection (a)(3)(F), the term 'Medicaid provider' means—

"(A) an eligible professional (as defined in paragraph (3)(B)) who is not hospital-based and has at least 30 percent of the professional's patient volume (as estimated in accordance with standards established by the Secretary) attributable to individuals

who are receiving medical assistance under this title; and

"(B)(i) a children's hospital, (ii) an acute-care hospital that is not described in clause (i) and that has at least 10 percent of the hospital's patient volume (as estimated in accordance with standards established by the Secretary) attributable to individuals who are receiving medical assistance under this title, or (iii) a Federally-qualified health center or rural health clinic that has at least 30 percent of the center's or clinic's patient volume (as estimated in accordance with standards established by the Secretary) attributable to individuals who are receiving medical assistance under this title.

An eligible professional shall not qualify as a Medicaid provider under this subsection unless the professional has waived, in a manner specified by the Secretary, any right to payment under section 1848(o) with respect to the adoption or support of certified EHR technology by the eligible professional. In applying clauses (ii) and (iii) of subparagraph (B), the standards established by the Secretary for patient volume shall include individuals enrolled in a Medicaid managed care plan (under section 1903(m) or section 1932).

"(3) In this subsection and subsection (a)(3)(F):

"(A) The term 'certified EHR technology' means a qualified electronic health record (as defined in 3000(13) of the Public Health Service Act) that is certified pursuant to section 3001(c)(5) of such Act as meeting standards adopted under section 3004 of such Act 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).

"(B) The term 'eligible professional' means a physician as defined in paragraphs (1) and (2) of section 1861(r), and includes a nurse mid-wife and a nurse practitioner.

"(C) The term 'hospital-based' means, with respect to an eligible professional, a professional (such as a pathologist, anesthesiologist, or emergency physician) who furnishes substantially all of the individual's professional services in a hospital setting (whether inpatient or outpatient) and through the use of the facilities and equipment, including qualified electronic health records, of the hospital.

"(4)(A) The term 'allowable costs' means, with respect to certified EHR technology of a Medicaid provider, costs of such technology (and support services including mainte-

nance and training that is for, or is necessary for the adoption and operation of, such technology) as determined by the Secretary to be reasonable.

"(B) The term 'net allowable costs' means allowable costs reduced by any payment that is made to the Medicaid provider involved from any other source that is directly attributable to payment for certified EHR technology or services described in subparagraph (A).

"(C) In no case shall—

"(i) the aggregate allowable costs under this subsection (covering one or more years) with respect to a Medicaid provider described in paragraph (2)(A) for purchase and initial implementation of certified EHR technology (and services described in subparagraph (A)) exceed $25,000 or include costs over a period of longer than 5 years;

"(ii) for costs not described in clause (i) relating to the operation, maintenance, or use of certified EHR technology, the annual allowable costs under this subsection with respect to such a Medicaid provider for costs not described in clause (i) for any year exceed $10,000;

"(iii) payment described in paragraph (1) for costs described in clause (ii) be made with respect to

such a Medicaid provider over a period of more than 5 years;

"(iv) the aggregate allowable costs under this subsection with respect to such a Medicaid provider for all costs exceed $75,000; or

"(v) the allowable costs, whether for purchase and initial implementation, maintenance, or otherwise, for a Medicaid provider described in paragraph (2)(B)(iii) exceed such aggregate or annual limitation as the Secretary shall establish, based on an amount determined by the Secretary as being adequate to adopt and maintain certified EHR technology, consistent with paragraph (6).

"(5) Payments described in paragraph (1) are not in accordance with this subsection unless the following requirements are met:

"(A) The State provides assurances satisfactory to the Secretary that amounts received under subsection (a)(3)(F) with respect to costs of a Medicaid provider are paid directly to such provider without any deduction or rebate.

"(B) Such Medicaid provider is responsible for payment of the costs described in such paragraph that are not provided under this title.

"(C) With respect to payments to such Medicaid provider for costs other than costs related to the initial adoption of certified EHR technology, the Medicaid provider demonstrates meaningful use of certified EHR technology through a means that is approved by the State and acceptable to the Secretary, and that may be based upon the methodologies applied under section 1848(o) or 1886(n). In establishing such means, which may include the reporting of clinical quality measures to the State, the State shall ensure that populations with unique needs, such as children, are appropriately addressed.

"(D) To the extent specified by the Secretary, the certified EHR technology is compatible with State or Federal administrative management systems.

"(6)(A) In no case shall the payments described in paragraph (1), with respect to a hospital, exceed in the aggregate the product of—

"(i) the overall hospital EHR amount for the hospital computed under subparagraph (B); and

"(ii) the Medicaid share for such hospital computed under subparagraph (C).

"(B) For purposes of this paragraph, the overall hospital EHR amount, with respect to a hospital, is the sum of the applicable amounts specified in section 1886(n)(2)(A)

for such hospital for the first 4 payment years (as estimated by the Secretary) determined as if the Medicare share specified in clause (ii) of such section were 1. The Secretary shall publish in the Federal Register the overall hospital EHR amount for each hospital eligible for payments under this subsection. In computing amounts under clause (ii) for payment years after the first payment year, the Secretary shall assume that in subsequent payment years discharges increase at the average annual rate of growth of the most recent three years for which discharge data are available.

"(C) The Medicaid share computed under this subparagraph, for a hospital for a period specified by the Secretary, shall be calculated in the same manner as the Medicare share under section 1886(n)(2)(D) for such a hospital and period, except that there shall be substituted for the numerator under clause (i) of such section the amount that is equal to the number of inpatient-bed-days (as established by the Secretary) which are attributable to individuals who are receiving medical assistance under this title and who are not described in section 1886(n)(2)(D)(i). In computing inpatient-bed-days under the previous sentence, the Secretary shall take into account inpatient-bed-days attributable to inpatient-bed-days that are paid for individuals enrolled in a Medicaid managed care plan (under section 1903(m) or section 1932).

"(7) With respect to health care providers other than hospitals, the Secretary shall establish and implement a detailed process to ensure coordination of the different programs for payment of such health care providers for adoption or use of health information technology (including certified EHR technology), as well as payments for such health care providers provided under this title or title XVIII, to assure no duplication of funding. The Secretary shall promulgate regulations to carry out the preceding sentence.

"(8) In carrying out paragraph (5)(C), the State and Secretary shall seek, to the maximum extent practicable, to avoid duplicative requirements from Federal and State Governments to demonstrate meaningful use of certified EHR technology under this title and title XVIII. In doing so, the Secretary may deem satisfaction of requirements for such meaningful use for a payment year under title XVIII to be sufficient to qualify as meaningful use under this subsection. The Secretary may also specify the reporting periods under this subsection in order to carry out this paragraph.

"(9) In order to be provided Federal financial participation under subsection (a)(3)(F)(ii), a State must demonstrate to the satisfaction of the Secretary, that the State—

"(A) is using the funds provided for the purposes of administering payments under this subsection, in-

cluding tracking of meaningful use by Medicaid providers;

"(B) is conducting adequate oversight of the program under this subsection, including routine tracking of meaningful use attestations and reporting mechanisms; and

"(C) is pursuing initiatives to encourage the adoption of certified EHR technology to promote health care quality and the exchange of health care information under this title, subject to applicable laws and regulations governing such exchange.

"(10) The Secretary shall periodically submit reports to the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate on status, progress, and oversight of payments under paragraph (1).".

(b) IMPLEMENTATION FUNDING.—In addition to funds otherwise available, out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary of Health and Human Services for the Center for Medicare & Medicaid Services Program Management Account, $40,000,000 for each of fiscal years 2009 through 2015 and $20,000,000 for each succeeding fiscal year through fiscal year 2018, which shall be available for purposes of carrying out the provisions of (and the amendments

made by) this part. Amounts appropriated under this subsection for a fiscal year shall be available until expended.

(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.

1 *(b) TABLE OF CONTENTS.—The table of contents for*
2 *this title is as follows:*

TITLE V—STATE FISCAL RELIEF

Sec. 5000. Purposes; table of contents.
Sec. 5001. Temporary increase of Medicaid FMAP.
Sec. 5002. Extension and update of special rule for increase of Medicaid DSH allotments for low DSH States.
Sec. 5003. Payment of Medicare liability to States as a result of the Special Disability Workload Project.
Sec. 5004. Funding for the Department of Health and Human Services Office of the Inspector General.
Sec. 5005. GAO study and report regarding State needs during periods of national economic downturn.

3 ***SEC. 5001. TEMPORARY INCREASE OF MEDICAID FMAP.***

4 *(a) PERMITTING MAINTENANCE OF FMAP.—Subject to*
5 *subsections (e), (f), and (g), if the FMAP determined with-*
6 *out regard to this section for a State for—*

7 *(1) fiscal year 2009 is less than the FMAP as so*
8 *determined for fiscal year 2008, the FMAP for the*
9 *State for fiscal year 2008 shall be substituted for the*
10 *State's FMAP for fiscal year 2009, before the applica-*
11 *tion of this section;*

12 *(2) fiscal year 2010 is less than the FMAP as so*
13 *determined for fiscal year 2008 or fiscal year 2009*
14 *(after the application of paragraph (1)), the greater*
15 *of such FMAP for the State for fiscal year 2008 or*
16 *fiscal year 2009 shall be substituted for the State's*
17 *FMAP for fiscal year 2010, before the application of*
18 *this section; and*

19 *(3) fiscal year 2011 is less than the FMAP as so*
20 *determined for fiscal year 2008, fiscal year 2009*

(after the application of paragraph (1)), or fiscal year 2010 (after the application of paragraph (2)), 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 greater, for a previous such calendar quarter, subject to paragraph (4)) .

(2) QUALIFYING CRITERIA.—

(A) IN GENERAL.—For purposes of paragraph (1), a State qualifies for additional relief under this subsection for a calendar quarter occurring during the recession adjustment period if the State is 1 of the 50 States or the District of Columbia and the State satisfies any of the following criteria for the quarter:

(i) An increase of at least 1.5 percentage points, but less than 2.5 percentage points, in the average monthly unemployment rate, seasonally adjusted, for the State or District, as determined by comparing months in the most recent previous 3-consecutive month period for which data are available for the State or District to the lowest average monthly unemployment rate, seasonally adjusted, for the State or District for any 3-consecutive-month period preceding that period and beginning on or after January 1, 2006 (based on the most

recently available monthly publications of the Bureau of Labor Statistics of the Department of Labor).

(ii) An increase of at least 2.5 percentage points, but less than 3.5 percentage points, in the average monthly unemployment rate, seasonally adjusted, for the State or District (as so determined).

(iii) An increase of at least 3.5 percentage points for the State or District, in the average monthly unemployment rate, seasonally adjusted, for the State or District (as so determined).

(B) MAINTENANCE OF STATUS.—If a State qualifies for additional relief under this subsection for a calendar quarter, it shall be deemed to have qualified for such relief for each subsequent calendar quarter ending before July 1, 2010.

(3) APPLICABLE PERCENT.—For purposes of paragraph (1), the applicable percent is—

(A) 2.5 percent, if the State satisfies the criteria described in paragraph (2)(A)(i) for the 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.));

(3) payments under title XXI of such Act (42 U.S.C. 1397aa et seq.);

(4) any payments under title XIX of such Act that are based on the enhanced FMAP described in section 2105(b) of such Act (42 U.S.C. 1397ee(b)); or

(5) any payments under title XIX of such Act that are attributable to expenditures for medical assistance provided to individuals made eligible under a State plan under title XIX of the Social Security Act (including under any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)) because of income standards (expressed as a percentage of the poverty line) for eligibility for medical assistance that are higher than the income standards (as so expressed) for such eligibility as in effect on July 1, 2008.

(f) STATE INELIGIBILITY.—

(1) MAINTENANCE OF ELIGIBILITY REQUIREMENTS.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), a State is not eligible for an increase in its FMAP under subsection (a), (b), or (c), or an increase in a cap amount under subsection (d), if eligibility standards, methodologies, or procedures under its State plan under title XIX of the Social Security Act (including any waiver under such title or under

section 1115 of such Act (42 U.S.C. 1315)) are more restrictive than the eligibility standards, methodologies, or procedures, respectively, under such plan (or waiver) as in effect on July 1, 2008.

(B) STATE REINSTATEMENT OF ELIGIBILITY PERMITTED.—Subject to subparagraph (C), a State that has restricted eligibility standards, methodologies, or procedures under its State plan under title XIX of the Social Security Act (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)) after July 1, 2008, is no longer ineligible under subparagraph (A) beginning with the first calendar quarter in which the State 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.

(C) SPECIAL RULES.—A State shall not be 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 be-

fore 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 accordance 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 toward 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 be-

ginning 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 1/4 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 Act (42 U.S.C. 1395 et seq.) as a result of the Special Disability Workload project shall be eligible to receive a payment under this section while such an action is pending or if such an action is resolved in favor of the State.

(d) DEFINITIONS.—In this section:

(1) COMMISSIONER.—The term "Commissioner" means the Commissioner of Social Security.

(2) MEDICAID PROGRAM.—The term "Medicaid program" means the program of medical assistance established under title XIX of the Social Security Act (42 U.S.C. 1396a et seq.) and includes medical assistance provided under any waiver of that program approved under section 1115 or 1915 of such Act (42 U.S.C. 1315, 1396n) or otherwise.

(3) MEDICARE PROGRAM.—The term "Medicare program" means the program established under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(4) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

(5) SDW CASE.—The term "SDW case" means a case in the Special Disability Workload project involving an individual determined by the Commissioner to have been eligible for benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.) for a period during which such benefits were not provided to the individual and who was, during all or part of such period, enrolled in a State Medicaid program.

(6) SPECIAL DISABILITY WORKLOAD PROJECT.—The term "Special Disability Workload project" means the project described in the 2008 Annual Report of the Board of Trustees of the Federal Old-Age

and Survivors Insurance and Federal Disability Insurance Trust Funds, H.R. Doc. No. 110–104, 110th Cong. (2008).

(7) STATE.—The term "State" means each of the 50 States and the District of Columbia.

SEC. 5004. FUNDING FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE OF THE INSPECTOR GENERAL.

For purposes of ensuring the proper expenditure of Federal funds under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), there is appropriated to the Office of the Inspector General of the Department of Health and Human Services, out of any money in the Treasury not otherwise appropriated and without further appropriation, $31,250,000 for the recession adjustment period (as defined in section 5001(h)(3)). Amounts appropriated under this section shall remain available for expenditure until September 30, 2012, and shall be in addition to any other amounts appropriated or made available to such Office for such purposes.

SEC. 5005. GAO STUDY AND REPORT REGARDING STATE NEEDS DURING PERIODS OF NATIONAL ECONOMIC DOWNTURN.

(a) IN GENERAL.—The Comptroller General of the United States shall study the period of national economic

downturn in effect on the date of enactment of this Act, as well as previous periods of national economic downturn since 1974, for the purpose of developing recommendations for addressing the needs of States during such periods. As part of such analysis, the Comptroller General shall study the past and projected effects of temporary increases in the Federal medical assistance percentage under the Medicaid program with respect to such periods.

(b) REPORT.—Not later than April 1, 2011, the Comptroller General of the United States shall submit a report to the appropriate committees of Congress on the results of the study conducted under paragraph (1). Such report shall include the following:

(1) Such recommendations as the Comptroller General determines appropriate for modifying the national economic downturn assistance formula for temporary adjustment of the Federal medical assistance percentage under Medicaid (also referred to as a "countercyclical FMAP") described in GAO report number GAO–07–97 to improve the effectiveness of the application of such percentage in addressing the needs of States during periods of national economic downturn, including recommendations for—

(A) improvements to the factors that would begin and end the application of such percentage;

(B) how the determination of the amount of such percentage could be adjusted to address State and regional economic variations during such periods; and

(C) how the determination of the amount of such percentage could be adjusted to be more responsive to actual Medicaid costs incurred by States during such periods.

(2) An analysis of the impact on States during such periods of—

(A) declines in private health benefits coverage;

(B) declines in State revenues; and

(C) caseload maintenance and growth under Medicaid, the State Children's Health Insurance Program, or any other publicly-funded programs to provide health benefits coverage for State residents.

(3) Identification of, and recommendations for addressing, the effects on States of any other specific economic indicators that the Comptroller General determines appropriate.

TITLE VI—EXECUTIVE COMPENSATION

SUBTITLE A—OVERSIGHT

TITLE VI—EXECUTIVE COMPENSATION OVERSIGHT

Sec. 6001. Definitions.
Sec. 6002. Executive compensation and corporate governance.
Sec. 6003. Board Compensation Committee.
Sec. 6004. Limitation on luxury expenditures.
Sec. 6005. Shareholder approval of executive compensation.
Sec. 6006. Review of prior payments to executives.

SEC. 6001. DEFINITIONS.

For purposes of this title, the following definitions shall apply:

(1) SENIOR EXECUTIVE OFFICER.—The term "senior executive officer" means an individual who is 1 of the top 5 most highly paid executives of a public company, whose compensation is required to be disclosed pursuant to the Securities Exchange Act of 1934, and any regulations issued thereunder, and non-public company counterparts.

(2) GOLDEN PARACHUTE PAYMENT.—The term "golden parachute payment" means any payment to a senior executive officer for departure from a company for any reason, except for payments for services performed or benefits accrued.

(3) TARP.—The term "TARP" means the Troubled Asset Relief Program established under the

Emergency Economic Stabilization Act of 2008 (Public Law 110–343, 12 U.S.C. 5201 et seq.).

(4) TARP RECIPIENT.—The term "TARP recipient" means any entity that has received or will receive financial assistance under the financial assistance provided under the TARP.

(5) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(6) COMMISSION.—The term "Commission" means the Securities and Exchange Commission.

SEC. 6002. EXECUTIVE COMPENSATION AND CORPORATE GOVERNANCE.

(a) IN GENERAL.—During the period in which any obligation arising from financial assistance provided under the TARP remains outstanding, each TARP recipient shall be subject to—

(1) the standards established by the Secretary under this title; and

(2) the provisions of section 162(m)(5) of the Internal Revenue Code of 1986, as applicable.

(b) STANDARDS REQUIRED.—The Secretary shall require each TARP recipient to meet appropriate standards for executive compensation and corporate governance.

(c) SPECIFIC REQUIREMENTS.—The standards established under subsection (b) shall include—

(1) limits on compensation that exclude incentives for senior executive officers of the TARP recipient to take unnecessary and excessive risks that threaten the value of such recipient during the period that any obligation arising from TARP assistance is outstanding;

(2) a provision for the recovery by such TARP recipient of any bonus, retention award, or incentive compensation paid to a senior executive officer and any of the next 20 most highly-compensated employees of the TARP recipient based on statements of earnings, revenues, gains, or other criteria that are later found to be materially inaccurate;

(3) a prohibition on such TARP recipient making any golden parachute payment to a senior executive officer or any of the next 5 most highly-compensated employees of the TARP recipient during the period that any obligation arising from TARP assistance is outstanding;

(4) a prohibition on such TARP recipient paying or accruing any bonus, retention award, or incentive compensation during the period that the obligation is outstanding to at least the 25 most highly-compensated employees, or such higher number as the

Secretary may determine is in the public interest with respect to any TARP recipient;

(5) a prohibition on any compensation plan that would encourage manipulation of the reported earnings of such TARP recipient to enhance the compensation of any of its employees; and

(6) a requirement for the establishment of a Board Compensation Committee that meets the requirements of section 6003.

(d) CERTIFICATION OF COMPLIANCE.—The chief executive officer and chief financial officer (or the equivalents thereof) of each TARP recipient shall provide a written certification of compliance by the TARP recipient with the requirements of this title—

(1) in the case of a TARP recipient, the securities of which are publicly traded, to the Securities and Exchange Commission, together with annual filings required under the securities laws; and

(2) in the case of a TARP recipient that is not a publicly traded company, to the Secretary.

SEC. 6003. BOARD COMPENSATION COMMITTEE.

(a) ESTABLISHMENT OF BOARD REQUIRED.—Each TARP recipient shall establish a Board Compensation Committee, comprised entirely of independent directors, for the purpose of reviewing employee compensation plans.

(b) MEETINGS.—The Board Compensation Committee of each TARP recipient shall meet at least semiannually to discuss and evaluate employee compensation plans in light of an assessment of any risk posed to the TARP recipient from such plans.

SEC. 6004. LIMITATION ON LUXURY EXPENDITURES.

(a) POLICY REQUIRED.—The board of directors of any TARP recipient shall have in place a company-wide policy regarding excessive or luxury expenditures, as identified by the Secretary, which may include excessive expenditures on—

(1) entertainment or events;

(2) office and facility renovations;

(3) aviation or other transportation services; or

(4) other activities or events that are not reasonable expenditures for conferences, staff development, reasonable performance incentives, or other similar measures conducted in the normal course of the business operations of the TARP recipient.

SEC. 6005. SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.

(a) ANNUAL SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.—Any proxy or consent or authorization for an annual or other meeting of the shareholders of any TARP recipient during the period in which any obligation

arising from financial assistance provided under the TARP remains outstanding shall permit a separate shareholder vote to approve the compensation of executives, as disclosed pursuant to the compensation disclosure rules of the Commission (which disclosure shall include the compensation discussion and analysis, the compensation tables, and any related material).

(b) NONBINDING VOTE.—A shareholder vote described in subsection (a) shall not be binding on the board of directors of a TARP recipient, and may not be construed as overruling a decision by such board, nor to create or imply any additional fiduciary duty by such board, nor shall such vote be construed to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.

(c) DEADLINE FOR RULEMAKING.—Not later than 1 year after the date of enactment of this Act, the Commission shall issue any final rules and regulations required by this section.

SEC. 6006. REVIEW OF PRIOR PAYMENTS TO EXECUTIVES.

(a) IN GENERAL.—The Secretary shall review bonuses, retention awards, and other compensation paid to employees of each entity receiving TARP assistance before the date of enactment of this Act to determine whether any such payments were excessive, inconsistent with the purposes of this

Act or the TARP, or otherwise contrary to the public interest.

(b) NEGOTIATIONS FOR REIMBURSEMENT.—If the Secretary makes a determination described in subsection (a), the Secretary shall seek to negotiate with the TARP recipient and the subject employee for appropriate reimbursements to the Federal Government with respect to compensation or bonuses.

Subtitle B—Limits on Executive Compensation

SEC. 6011. SHORT TITLE.

This subtitle may be cited as the "Cap Executive Officer Pay Act of 2009".

SEC. 6012. LIMIT ON EXECUTIVE COMPENSATION.

(a) IN GENERAL.—Notwithstanding any other provision of law or agreement to the contrary, no person who is an officer, director, executive, or other employee of a financial institution or other entity that receives or has received funds under the Troubled Asset Relief Program (or "TARP"), established under section 101 of the Emergency Economic Stabilization Act of 2008, may receive annual compensation in excess of the amount of compensation paid to the President of the United States.

(b) DURATION.—The limitation in subsection (a) shall be a condition of the receipt of assistance under the TARP,

and of any modification to such assistance that was received on or before the date of enactment of this Act, and shall remain in effect with respect to each financial institution or other entity that receives such assistance or modification for the duration of the assistance or obligation provided under the TARP.

SEC. 6013. RULEMAKING AUTHORITY.

The Secretary shall expeditiously issue such rules as are necessary to carry out this subtitle, including with respect to reimbursement of compensation amounts, as appropriate.

SEC. 6014. COMPENSATION.

As used in this subtitle, the term "compensation" includes wages, salary, deferred compensation, retirement contributions, options, bonuses, property, and any other form of compensation or bonus that the Secretary of the Treasury determines is appropriate.

Subtitle C—Excessive Bonuses

SEC. 6021. TREATMENT OF EXCESSIVE BONUSES BY TARP RECIPIENTS.

(a) IN GENERAL.—If, before the date of enactment of this Act, the preferred stock of a financial institution was purchased by the Government using funds provided under the Troubled Asset Relief Program established pursuant to the Emergency Economic Stabilization Act of 2008, then,

notwithstanding any otherwise applicable restriction on the redeemability of such preferred stock, such financial institution shall redeem an amount of such preferred stock equal to the aggregate amount of all excessive bonuses paid or payable to all covered individuals.

(b) TIMING.—Each financial institution described in subsection (a) shall comply with the requirements of subsection (a)—

(1) not later than 120 days after the date of enactment of this Act, with respect to excessive bonuses (or portions thereof) paid before the date of enactment of this Act; and

(2) not later than the day before an excessive bonus (or portion thereof) is paid, with respect to any excessive bonus (or portion thereof) paid on or after the date of enactment of this Act.

(c) DEFINITIONS.—As used in this section, the following definitions shall apply:

(1) EXCESSIVE BONUS.—

(A) IN GENERAL.—The term "excessive bonus" means the portion of the applicable bonus payments made to a covered individual in excess of $100,000.

(B) APPLICABLE BONUS PAYMENTS.—

(i) IN GENERAL.—The term "applicable bonus payment" means any bonus payment to a covered individual—

(I) which is paid or payable by reason of services performed by such individual in a taxable year of the financial institution (or any member of a controlled group described in subparagraph (D)) ending in 2008, and

(II) the amount of which was first communicated to such individual during the period beginning on January 1, 2008, and ending January 31, 2009, or was based on a resolution of the board of directors of such institution that was adopted before the end of such taxable year.

(ii) CERTAIN PAYMENTS AND CONDITIONS DISREGARDED.—In determining whether a bonus payment is described in clause (i)(I)—

(I) a bonus payment that relates to services performed in any taxable year before the taxable year described in such clause and that is wholly or

partially contingent on the performance of services in the taxable year so described shall be disregarded, and

(II) any condition on a bonus payment for services performed in the taxable year so described that the employee perform services in taxable years after the taxable year so described shall be disregarded.

(C) BONUS PAYMENT.—The term "bonus payment" means any payment which—

(i) is a discretionary payment to a covered individual by a financial institution (or any member of a controlled group described in subparagraph (D)) for services rendered,

(ii) is in addition to any amount payable to such individual for services performed by such individual at a regular hourly, daily, weekly, monthly, or similar periodic rate, and

(iii) is paid or payable in cash or other property other than—

(I) stock in such institution or member, or

(II) an interest in a troubled asset (within the meaning of the Emergency Economic Stabilization Act of 2008) held directly or indirectly by such institution or member.

Such term does not include payments to an employee as commissions, welfare and fringe benefits, or expense reimbursements.

(D) COVERED INDIVIDUAL.—The term "covered individual" means, with respect to any financial institution, any director or officer or other employee of such financial institution or of any member of a controlled group of corporations (within the meaning of section 52(a) of the Internal Revenue Code of 1986) that includes such financial institution.

(2) FINANCIAL INSTITUTION.—The term "financial institution" has the same meaning as in section 3 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5252).

(d) EXCISE TAX ON TARP COMPANIES THAT FAIL TO REDEEM CERTAIN SECURITIES FROM UNITED STATES.—

(1) IN GENERAL.—Chapter 46 of the Internal Revenue Code of 1986 (relating to excise tax on gold-

en parachute payments) is amended by adding at the end the following new section:

"SEC. 4999A. FAILURE TO REDEEM CERTAIN SECURITIES FROM UNITED STATES.

"(a) IMPOSITION OF TAX.—There is hereby imposed a tax on any financial institution which—

"(1) is required to redeem an amount of its preferred stock from the United States pursuant to section 1903(a) of the American Recovery and Reinvestment Tax Act of 2009, and

"(2) fails to redeem all or any portion of such amount within the period prescribed for such redemption.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be equal to 35 percent of the amount which the financial institution failed to redeem within the time prescribed under 1903(b) of the American Recovery and Reinvestment Tax Act of 2009.

"(c) ADMINISTRATIVE PROVISIONS.—

"(1) IN GENERAL.—For purposes of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A for the taxable year in which a deduction is allowed for any excessive bonus with respect to which the redemption described in subsection (a)(1) is required to be made.

"(2) EXTENSION OF TIME.—The due date for payment of tax imposed by this section shall in no event be earlier than the 150th day following the date of the enactment of this section.".

(2) CONFORMING AMENDMENTS.—

(A) The heading for chapter 46 of such Code are amended to read as follows:

"CHAPTER 46-TAXES ON CERTAIN EXCESSIVE REMUNERATION

"Sec. 4999. Golden parachute payments.
"Sec. 4999A. Failure to redeem certain securities from United States.".

(B) The item relating to chapter 46 in the table of chapters for subtitle D of such Code is amended to read as follows:

"Chapter 46. Taxes on excessive remuneration.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to failures described in section 4999A(a)(2) of the Internal Revenue Code of 1986 occurring after the date of the enactment of this Act.

TITLE VII—FORECLOSURE PREVENTION

TITLE VII—FORECLOSURE PREVENTION

Sec. 7001. Mandatory loan modifications.

SEC. 7001. MANDATORY LOAN MODIFICATIONS.

Section 109(a) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5219) is amended—

(1) by striking the last sentence;

(2) by striking "To the extent" and inserting the following:

"(1) IN GENERAL.—To the extent"; and

(3) by adding at the end the following:

"(2) LOAN MODIFICATIONS REQUIRED.—

"(A) IN GENERAL.—In addition to actions required under paragraph (1), the Secretary shall, not later than 15 days after the date of enactment of this paragraph, develop and implement a plan to facilitate loan modifications to prevent avoidable mortgage loan foreclosures.

"(B) FUNDING.—Of amounts made available under section 115 and not otherwise obligated, not less than $50,000,000,000, shall be made available to the Secretary for purposes of carrying out the mortgage loan modification plan required to be developed and implemented under this paragraph.

"(C) CRITERIA.—The loan modification plan required by this paragraph may incorporate the use of—

"(i) loan guarantees and credit enhancements;

"(ii) the reduction of loan principal amounts and interest rates;

"(iii) extension of mortgage loan terms; and

"(iv) any other similar mechanisms or combinations thereof, as determined appropriate by the Secretary.

"(D) DESIGNATION AUTHORITY.—

"(i) FDIC.—The Secretary may designate the Corporation, on a reimbursable basis, to carry out the loan modification plan developed under this paragraph.

"(ii) CONTRACTING AUTHORITY.—If designated under clause (i), the Corporation may use its contracting authority under section 9 of the Federal Deposit Insurance Act.

"(E) CONSULTATION REQUIRED.—In developing the loan modification plan under this paragraph, the Secretary shall consult with the Chairperson of the Board of Directors of the Corporation, the Board, and the Secretary of Housing and Urban Development.

"(F) REPORTS TO CONGRESS.—The Secretary shall provide to the Committee on Bank-

ing, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

"(i) upon development of the plan required by this paragraph, a report describing such plan; and

"(ii) a monthly report on the number and types of loan modifications occurring during the reporting period, and the performance of the loan modification plan overall.".

TITLE VIII—FORECLOSURE MITIGATION

TITLE VIII—FORECLOSURE MITIGATION

Sec. 8001. Short Title.
Sec. 8002. Definitions.
Sec. 8003. Payments to eligible servicers authorized.
Sec. 8004. Authorization of appropriations.
Sec. 8005. Sunset of authority.

SEC. 8001. SHORT TITLE.

This title may be cited as the "Help Families Keep Their Homes Act of 2009".

SEC. 8002. DEFINITIONS.

For purposes of this title—

(1) the term "securitized mortgages" means residential mortgages that have been pooled by a securitization vehicle;

(2) the term "securitization vehicle" means a trust, corporation, partnership, limited liability entity, special purpose entity, or other structure that—

(A) is the issuer, or is created by the issuer, of mortgage pass-through certificates, participation certificates, mortgage-backed securities, or other similar securities backed by a pool of assets that includes residential mortgage loans;

(B) holds all of the mortgage loans which are the basis for any vehicle described in subparagraph (A); and

(C) has not issued securities that are guaranteed by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association;

(3) the term "servicer" means a servicer of securitized mortgages;

(4) the term "eligible servicer" means a servicer of pooled and securitized residential mortgages;

(5) the term "eligible mortgage" means a residential mortgage, the principal amount of which did not exceed the conforming loan size limit that was in existence at the time of origination for a comparable

dwelling, as established by the Federal National Mortgage Association;

(6) the term "Secretary" means the Secretary of the Treasury;

(7) the term "effective term of the Act" means the period beginning on the effective date of this title and ending on December 31, 2011;

(8) the term "incentive fee" means the monthly payment to eligible servicers, as determined under section 7003; and

(9) the term "prepayment fee" means the payment to eligible servicers, as determined under section 7003(b).

SEC. 8003. PAYMENTS TO ELIGIBLE SERVICERS AUTHORIZED.

(a) AUTHORITY.—The Secretary is authorized to make payments to eligible servicers, subject to the terms and conditions established under this title.

(b) FEES PAID TO ELIGIBLE SERVICERS.—

(1) IN GENERAL.—An eligible servicer may collect reasonable incentive fee payments, as established by the Secretary, not to exceed $2,000 per loan.

(2) CONSULTATION.—The fees permitted under this section shall be subject to standards established by the Secretary, in consultation with the Secretary

of Housing and Urban Development and the Chairman of the Board of Directors of the Federal Deposit Insurance Corporation, which standards shall—

(A) include an evaluation of whether an eligible mortgage is affordable for the remainder of its term; and

(B) identify a reasonable fee to be paid to the servicer in the event that an eligible mortgage is prepaid.

(3) FORM OF PAYMENT.—Fees permitted under this section may be paid in a lump sum or on a monthly basis. If paid on a monthly basis, the fee may only be remitted as long as the loan performs.

(c) SAFE HARBOR.—Notwithstanding any other provision of law, and notwithstanding any investment contract between a servicer and a securitization vehicle, a servicer—

(1) owes any duty to maximize the net present value of the pooled mortgages in the securitization vehicle to all investors and parties having a direct or indirect interest in such vehicle, and not to any individual party or group of parties; and

(2) shall be deemed to act in the best interests of all such investors and parties if the servicer agrees to or implements a modification, workout, or other loss mitigation plan for a residential mortgage or a class

of residential mortgages that constitutes a part or all of the pooled mortgages in such securitization vehicle, if—

(A) default on the payment of such mortgage has occurred or is reasonably foreseeable;

(B) the property securing such mortgage is occupied by the mortgagor of such mortgage or the homeowner; and

(C) the servicer reasonably and in good faith believes that the anticipated recovery on the principal outstanding obligation of the mortgage under the modification or workout plan exceeds, on a net present value basis, the anticipated recovery on the principal outstanding obligation of the mortgage through foreclosure;

(3) shall not be obligated to repurchase loans from, or otherwise make payments to, the securitization vehicle on account of a modification, workout, or other loss mitigation plan that satisfies the conditions of paragraph (2); and

(4) if it acts in a manner consistent with the duties set forth in paragraphs (1) and (2), shall not be liable for entering into a modification or workout plan to any person—

(A) based on ownership by that person of a residential mortgage loan or any interest in a pool of residential mortgage loans, or in securities that distribute payments out of the principal, interest, and other payments in loans in the pool;

(B) who is obligated pursuant to a derivative instrument to make payments determined in reference to any loan or any interest referred to in subparagraph (A); or

(C) that insures any loan or any interest referred to in subparagraph (A) under any provision of law or regulation of the United States or any State or political subdivision thereof.

(d) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—Each servicer shall report regularly, not less frequently than monthly, to the Secretary on the extent and scope of the loss mitigation activities of the mortgage owner.

(2) CONTENT.—Each report required by this subsection shall include—

(A) the number and percent of residential mortgage loans receiving loss mitigation that have become performing loans;

(B) the number and percent of residential mortgage loans receiving loss mitigation that have proceeded to foreclosure;

(C) the total number of foreclosures initiated during the reporting period;

(D) data on loss mitigation activities, including the performance of mitigated loans, disagreggated for each form of loss mitigation, which forms may include—

(i) a waiver of any late payment charge, penalty interest, or any other fees or charges, or any combination thereof;

(ii) the establishment of a repayment plan under which the homeowner resumes regularly scheduled payments and pays additional amounts at scheduled intervals to cure the delinquency;

(iii) forbearance under the loan that provides for a temporary reduction in or cessation of monthly payments, followed by a reamortization of the amounts due under the loan, including arrearage, and a new schedule of repayment amounts;

(iv) waiver, modification, or variation of any material term of the loan, including

short-term, long-term, or life-of-loan modifications that change the interest rate, forgive or forbear with respect to the payment of principal or interest, or extend the final maturity date of the loan;

(v) short refinancing of the loan consisting of acceptance of payment from or on behalf of the homeowner of an amount less than the amount alleged to be due and owing under the loan, including principal, interest, and fees, in full satisfaction of the obligation under such loan and as part of a refinance transaction in which the property is intended to remain the principal residence of the homeowner;

(vi) acquisition of the property by the owner or servicer by deed in lieu of foreclosure;

(vii) short sale of the principal residence that is subject to the lien securing the loan;

(viii) assumption of the obligation of the homeowner under the loan by a third party;

(ix) cancellation or postponement of a foreclosure sale to allow the homeowner additional time to sell the property; or

(x) any other loss mitigation activity not covered; and

(E) such other information as the Secretary determines to be relevant.

(3) PUBLIC AVAILABILITY OF REPORTS.—After removing information that would compromise the privacy interests of mortgagors, the Secretary shall make public the reports required by this subsection and summary data.

SEC. 8004. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary, such sums as may be necessary to carry out this title.

SEC. 8005. SUNSET OF AUTHORITY.

The authority of the Secretary to provide assistance under this title shall terminate on December 31, 2011.

Passed the House of Representatives January 28, 2009.

Attest: LORRAINE C. MILLER,
Clerk.

Passed the Senate February 10, 2009.

Attest: NANCY ERICKSON,
Secretary.