To rebuild the American middle class by creating jobs, investing in our future, building opportunity for working families, and restoring balance to the tax code.

IN THE HOUSE OF REPRESENTATIVES
MAY 10, 2012

Ms. DeLauro (for herself and Mr. Braley of Iowa) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Education and the Workforce, Energy and Commerce, Agriculture, Transportation and Infrastructure, Financial Services, Science, Space, and Technology, Small Business, the Judiciary, Rules, Oversight and Government Reform, and House Administration, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL
To rebuild the American middle class by creating jobs, investing in our future, building opportunity for working families, and restoring balance to the tax code.

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

3 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

4 (a) Short Title.—This Act may be cited as the “Rebuild America Act”. 

5
(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—INVESTING IN AMERICA TO CREATE JOBS AND FUTURE GROWTH**

Subtitle A—Investing in America’s Roads, Bridges, and Infrastructure

Sec. 101. Modernization, renovation, and repair of educational facilities.
Sec. 102. National energy renovation and retrofit program.
Sec. 103. Rebuilding America’s infrastructure.

Subtitle B—Rebuilding America’s Manufacturing Power

Sec. 111. National manufacturing strategy.
Sec. 112. Sectoral technology and innovation centers.
Sec. 113. Capital for small manufacturers with firm orders.
Sec. 114. Manufacturing Extension Partnership.
Sec. 115. Extension of research credit; increase in alternative simplified research credit.
Sec. 116. Inclusion of certain provisions in trade agreements.
Sec. 117. Funding for Interagency Trade Enforcement Center.
Sec. 118. Imposition of countervailing duties for subsidies relating to fundamentally undervalued currencies.

Subtitle C—Preparing Americans for the Jobs of the Future

Sec. 121. Short title.
Sec. 122. Definitions.
Sec. 123. Program.
Sec. 124. Eligible entities.
Sec. 125. Applications.
Sec. 126. Priority and distribution.
Sec. 127. Use of funds.
Sec. 128. Matching requirement.
Sec. 129. Funding.

Subtitle D—Supporting Great Teachers

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Sec. 132. Findings.
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Subtitle E—Creating Middle Class Jobs
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Sec. 214. Duties.
Sec. 215. Commission personnel matters.
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Sec. 221. Determination of taxable wages and self-employment income above contribution and benefit base after 2012.
Sec. 222. Adjustments to bend points in determining primary insurance amount.
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Sec. 225. Non-application of increase in Social Security benefits for other Federal or federally assisted programs.
Subtitle C—Protecting Overtime Pay for Working Americans
Sec. 231. Salary thresholds, highly compensated employees, and primary duties.

Subtitle D—Preventing Americans From Having To Choose Between Their Health and Their Paycheck
Sec. 241. Short title.
Sec. 242. Findings.
Sec. 243. Purposes.
Sec. 244. Definitions.
Sec. 245. Provision of paid sick time.
Sec. 246. Posting requirement.
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Sec. 248. Enforcement authority.
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Sec. 250. Effect on other laws.
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Subtitle E—Establishing a Fair Minimum Wage
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Subtitle G—Increasing Job Opportunities for Americans With Disabilities
Sec. 281. Modification of work opportunity credit.

TITLE III—RESTORING BALANCE AND FAIRNESS TO THE TAX CODE
Sec. 300. Amendment of 1986 Code.

Subtitle A—Instituting the “Buffett Rule”
Sec. 301. Fair share tax on high-income taxpayers.

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Sec. 311. Transaction tax.

Subtitle C—Ending Tax Breaks for Companies That Ship Jobs Overseas
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Sec. 322. Excess income from transfers of intangibles to low-taxed affiliates treated as subpart F income.
Sec. 323. Modifications of foreign tax credit rules applicable to dual capacity taxpayers.

Subtitle D—Making Wall Street Take Responsibility
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Subtitle E—Closing the Carried Interest Loophole
Sec. 341. Partnership interests transferred in connection with performance of services.
Sec. 342. Special rules for partners providing investment management services to partnerships.

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Subtitle G—Pension Guaranty Improvement
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Sec. 362. Findings.
Sec. 363. Pension Benefit Guaranty Corporation Governance Improvement.
Sec. 364. Participant and plan sponsor advocate.
Sec. 365. Increase in multiemployer plan benefit guarantee and annual premium rates.
Sec. 366. Improving single employer program solvency.

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Sec. 372. Findings.
Sec. 373. Pension funding stabilization.
Sec. 374. Congressional commitment to encouraging pensions.
Sec. 375. Participant protection in bankruptcy.

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Sec. 381. Short title; findings; purposes.
Sec. 382. Authority to issue guidance clarifying employment status for purposes of employment taxes.

TITLE IV—REBUILD AMERICA TRUST FUND
Sec. 401. Establish Rebuild America Trust Fund.

TITLE I—INVESTING IN AMERICA
TO CREATE JOBS AND FUTURE GROWTH
Subtitle A—Investing in America’s Roads, Bridges, and Infrastructure
SEC. 101. MODERNIZATION, RENOVATION, AND REPAIR OF EDUCATIONAL FACILITIES.
(a) PURPOSE.—The purpose of this section is to provide assistance for the modernization, renovation, and re-
pair of eligible educational facilities, including early learning facilities, public elementary school and secondary school facilities, and community college facilities.

(b) DEFINITIONS.—In this section:

(1) ESEA DEFINITIONS.—The terms “elementary school”, “local educational agency”, “outlying area”, “secondary school”, “Secretary”, and “State” have the meanings given the terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(2) CHPS CRITERIA.—The term “CHPS Criteria” means the green building rating criteria developed by the Collaborative for High Performance Schools.

(3) COMMUNITY COLLEGE.—The term “community college” means—

(A) a junior or community college, as defined in section 312(f) of the Higher Education Act of 1965 (20 U.S.C. 1058(f)); or

(B) a 4-year public institution of higher education, as defined under section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001), that awards a significant number of degrees and certificates, as determined by the Secretary, that are not—
(i) baccalaureate degrees, or the equivalent of such degrees; or

(ii) masters, professional, or other advanced degrees.

(4) **ELIGIBLE ENTITY.**—The term “eligible entity” means the following:

(A) In reference to the modernization, renovation, or repair of an early learning facility, the term “eligible entity” means—

(i) an eligible child care provider as defined in paragraph (5)(A) of section 658P of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858n(5)(A)); or

(ii) a Head Start center under the Head Start Act (42 U.S.C. 9831 et seq.).

(B) In reference to the modernization, renovation, or repair of a public elementary school or secondary school facility, the term “eligible entity” means a local educational agency.

(C) In reference to the modernization, renovation, or repair of a community college facility, the term “eligible entity” means the community college.
(5) ENERGY STAR.—The term “Energy Star” means the Energy Star program of the Department of Energy and the Environmental Protection Agency.

(6) GREEN GLOBES.—The term “Green Globes” means the Green Building Initiative environmental design and rating system.


(e) GRANTS TO STATES.—

(1) IN GENERAL.—The Secretary shall allocate funds to each State, as described in paragraph (3), to enable the State to award subgrants, on a competitive basis, to eligible entities for the purpose of modernizing, renovating, and repairing eligible educational facilities. Grant funds may be used for direct payments, payment of interest on bonds, or payments for other financing instruments that are newly issued for the purpose of financing school modernization, renovation, or repair.

(2) RESERVATIONS.—From the funds made available under subsection (i) for a fiscal year, the
Secretary shall reserve for the purposes of this section—

(A) 0.5 percent for payments to the Secretary of the Interior to provide assistance to schools funded by the Bureau of Indian Education;

(B) 0.75 percent to provide assistance to the outlying areas; and

(C) 0.25 percent for grants to institutions that are eligible to receive a grant under section 316 of the Higher Education Act of 1965 (20 U.S.C. 1059e).

(3) AMOUNT OF FUNDS.—From the funds made available under subsection (i) for any fiscal year and remaining after the Secretary makes reservations under paragraph (2) for the fiscal year, the Secretary shall allot to each State the sum of—

(A) an amount that bears the same relationship to 35 percent of the remaining amount as the number of individuals who have not yet attained age 25 in the State, as determined by the Secretary on the basis of the most recent satisfactory data, bears to the number of those individuals in all such States, as so determined; and
(B) an amount that bears the same relationship to 65 percent of the remaining amount as the number of individuals who have not yet attained age 25 who are from families with incomes below the poverty line, in the State, as determined by the Secretary on the basis of the most recent satisfactory data, bears to the number of those individuals in all such States, as so determined.

(4) REALLOCATION.—If a State does not apply for its allocation under this section, applies for less than the full allocation for which it is eligible, or does not use the allocation in a timely manner, the Secretary may reallocate all or a portion of the allocation to the other States.

(d) SUBGRANTS.—

(1) IN GENERAL.—From the funds allocated to a State under subsection (c) for any fiscal year and remaining after the State makes any reservations under paragraph (2) for the fiscal year, each State receiving a grant under this section shall distribute—

(A) 10 percent to award subgrants to eligible entities for the modernization, renovation, and repair of early learning facilities;
(B) 65 percent to award subgrants to eligible entities for the modernization, renovation, and repair of public elementary school and secondary school facilities; and

(C) 25 percent to award subgrants to eligible entities for the modernization, renovation, and repair of community college facilities.

(2) STATE ADMINISTRATION AND OTHER COSTS.—Each State that receives a grant under this section may reserve not more than 1 percent of the grant allocation under subsection (c) for the purposes of administering the distribution of subgrants under this section, including the provision of technical assistance to eligible entities.

(3) MATCHING REQUIREMENT.—

(A) IN GENERAL.—A State shall require eligible entities to match funds awarded under this subsection.

(B) AMOUNT OF MATCHING FUNDS REQUIREMENT.—The amount of a match described in subparagraph (A) may be established by using a sliding scale that takes into account the relative poverty of the population served by the eligible entity.
(c) STATE APPLICATIONS.—A State that desires to receive a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information and assurances as the Secretary may require. Such application shall include the following:

(1) An identification of the State agency or entity that will administer the grant program.

(2) A description of the State’s process for determining how subgrant funds will be distributed and administered, including—

(A) how the State will determine the criteria for awarding subgrants under subsection (d); and

(B) how the State will consider—

(i) the needs of each eligible entity, or each population served by an eligible entity, for assistance under this section;

(ii) the impact of potential projects on job creation in the State;

(iii) the fiscal capacity of the eligible entity applying for assistance; and

(iv) the percentage of individuals served by the eligible entity who are from low-income families.
(3) If the State plans to award subgrants to early learning facilities, a description of how the State will—

(A) coordinate, to the extent feasible, with State early childhood advisory councils established under section 642B(b)(1)(A) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)); and

(B) encourage eligible entities to coordinate with organizations that have demonstrated experience in providing technical or financial assistance for the modernization, renovation, or repair of child care facilities.

(4) A description of how the State will ensure that eligible entities receiving subgrants under this section meet the requirements of this section.

(5) A description of how the State will give priority to eligible entities that serve the highest percentage of low-income individuals.

(6) A description of how the State will give priority to eligible entities that use green practices 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 eligible entity.

(7) A description of the steps that the State
will take to ensure that eligible entities receiving
subgrants will adequately maintain any facilities
that are modernized, renovated, or repaired with
subgrant funds awarded under subsection (d).

(f) USE OF FUNDS.—With respect to funds made
available under this section that are used for the mod-
erization, renovation, and repair of eligible educational
facilities the following rules shall apply:

(1) PERMISSIBLE USES OF FUNDS.—Facility
modernization, renovation, and repair shall be lim-
ited to 1 or more of the following:

(A) Upgrades, repair, or replacement of
building systems or components to improve the
quality of education and ensure the health and
safety of students and staff.

(B) Modifications necessary to render eligi-
ble educational facilities accessible in order to
comply with the Americans with Disabilities Act
of 1990 (42 U.S.C. 12101 et seq.) and section

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

(D) Measures designed to reduce or eliminate human exposure to classroom noise and environmental noise pollution.

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

(F) Upgrades or installations of educational technology infrastructure or training equipment.

(2) Impermissible Uses of Funds.—Funds received under this section shall not be used for—

(A) payment of maintenance costs;

(B) purchase or upgrade of vehicles;

(C) improvement or construction of stand-alone facilities whose purpose is not the education or care of children or other students, including central office administration or operations or logistical support facilities;

(D) athletic facilities;
(E) purchase of carbon offsets; or

(F) the facilities of a sectarian institution, or facilities that are used primarily for sectarian purposes.

(3) SUPPLEMENT, NOT SUPPLANT.—A local educational agency or State-operated or State-supported eligible entity shall use Federal funds subject to this subsection only to supplement the amount of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for school modernization, renovation, and repair.

(g) GENERAL PROVISION.—Each eligible entity that receives subgrant funds under subsection (d) shall ensure that, if such eligible entity carries out modernization, renovation, and repair through a contract, any such contract process ensures the maximum number of qualified bidders, including small, minority, and women-owned businesses, through full and open competition.

(h) REPORT.—The Secretary shall submit to the appropriations committees and the authorizing committees (as defined in section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003)) of the House of Representatives and the Senate an annual report regarding the grants made under this section.
(i) FUNDING.—There shall be made available from the Rebuild America Trust Fund under section 9512 of the Internal Revenue Code of 1986, $2,000,000,000 for each of fiscal years 2013 through 2022 to carry out this section.

SEC. 102. NATIONAL ENERGY RENOVATION AND RETROFIT PROGRAM.

Part D of title III of the Energy Policy and Conservation Act is amended by inserting after section 364 (42 U.S.C. 6324) the following:

“SEC. 364A. NATIONAL ENERGY RENOVATION AND RETROFIT PROGRAM.

“(a) IN GENERAL.—The Secretary shall provide grants to eligible entities to pay the Federal share of the cost of carrying out comprehensive energy systems renovation, including—

“(1) energy systems planning and assessment; and

“(2) implementation of energy efficiency and renewable energy projects.

“(b) ELIGIBLE ENTITIES.—An entity shall be eligible to obtain a grant under this section if the entity is a residential, commercial, industrial, manufacturing, institutional, educational, nonprofit, or other type of entity, organization, or consortia that is approved by the Secretary.
“(c) Use.—A grant provided under this section may be used by an eligible entity—

“(1) to conduct entity energy assessments that cover total energy use across all members and activities of the entity;

“(2) to analyze and summarize the major sources and impacts of the energy use described in paragraph (1);

“(3) to identify alternative approaches to modifying energy systems to reduce energy use, reduce the environmental and climatic impact of the energy use, and increase the use of clean, domestic energy;

“(4) to formulate an entity strategy for changing the overall energy usage of the entity;

“(5) to implement the strategy described in paragraph (4) through the purchase and installation of energy efficiency and renewable energy systems and other actions, as determined by the entity; and

“(6) to track and evaluate the effects of the entity energy renovation and retrofit efforts.

“(d) Administration.—The Secretary, in collaboration with State energy offices, shall establish procedures for soliciting and evaluating proposals from entities, overseeing grants to eligible entities, and otherwise administering this section, including procedures for—
“(1) annual solicitation and grant cycles;
“(2) education and technical assistance pro-
grams; and
“(3) reporting and information-sharing activi-
ties.
“(e) ALLOCATION OF FUNDS.—The Secretary shall—
“(1) determine the amount of funds that are al-
located for grants for States and political subdivi-
sions of States for a fiscal year under this section;
“(2) provide a Federal share of not more than
50 percent of the cost of carrying out energy renova-
tion programs under this section; and
“(3) permit an eligible entity to provide the
non-Federal share of the cost of carrying out energy
renovation and retrofit programs under this section
in the form of in-kind services.
“(f) FUNDING.—There shall be made available from
the Rebuild America Trust Fund under section 9512 of
the Internal Revenue Code of 1986, $1,500,000,000 for
each of fiscal years 2013 through 2022 to carry out this
section.”.

SEC. 103. REBUILDING AMERICA’S INFRASTRUCTURE.

(a) IN GENERAL.—For fiscal years 2013 through
2022 and subject to the limitations provided in subsection
(b), the following amounts shall be provided from the Re-
build America Trust Fund (referred to in this section as the “trust fund”):

(1) **Rural community facilities program account of the Department of Agriculture.**—For additional amounts for the cost of direct loans and grants for rural community facilities programs as provided for under section 306 and described in section 381E(d)(1) of the Consolidated Farm and Rural Development Act, $400,000,000 in each of fiscal years 2013 and 2014 and $200,000,000 in each of fiscal years 2015 through fiscal year 2021.

(2) **Rural water and waste disposal program account of the rural utilities service.**—For an additional amount for the cost of direct loans and grants for the rural water, waste water, and waste disposal programs as provide for under sections 306 and 310B and described in section 381E(d)(2) of the Consolidated Farm and Rural Development Act, $1,200,000,000 in each of fiscal years 2013 and 2014 and $600,000,000 in each of fiscal years 2015 through fiscal year 2021. For the calculation of ability to pay for the determination of the grant loan ratio under this para-
graph, only the community receiving the benefit for
a project shall be considered.

(3) ECONOMIC DEVELOPMENT ADMINISTRATION
OF THE DEPARTMENT OF COMMERCE.—For an addi-
tional amount for “Economic Development Assist-
ance Programs”, $500,000,000 in each of fiscal
years 2013 and 2014 and $250,000,000 in each of
fiscal years 2015 through fiscal year 2021. Of the
sum provided by the preceding sentence, 10 percent
of those funds provided may be transferred to feder-
ally authorized regional economic development com-
missions.

(4) CORPS OF ENGINEERS CIVIL OF THE DE-
PARTMENT OF THE ARMY OF THE DEPARTMENT OF
DEFENSE.—

(A) INVESTIGATIONS.—For an additional
amount for “Investigations”, $200,000,000 in
each of fiscal years 2013 and 2014 and
$100,000,000 in each of fiscal years 2015
through fiscal year 2021.

(B) CONSTRUCTION.—For additional
amounts for construction, $1,800,000,000 in
each of fiscal years 2013 and 2014 and
$900,000,000 in each of fiscal years 2015
through fiscal year 2021.
(C) Sharing.—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.

(5) Energy efficiency and renewable energy program of the Department of Energy.—

(A) Efficiency.—$2,000,000,000 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.) in each of fiscal years 2013 and 2014 and $1,000,000,000 in each of fiscal years 2015 through fiscal year 2021. Provided further, that 40 percent of these funds shall be awarded on a competitive basis.

(B) Weatherization.—

(i) In general.—$2,000,000,000 shall be available 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.) in
each of fiscal years 2013 and 2014 and $1,000,000,000 in each of fiscal years 2015 through fiscal year 2021.

(ii) WEATHERIZATION ASSISTANCE PROGRAM AMENDMENTS.—

(I) 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”.

(II) 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 “$7,000”.

(C) STATES.—$2,000,000,000 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) in each of fiscal years 2013 and 2014 and $1,000,000,000 in each of fiscal years 2015 through fiscal year 2022.
(6) Mitigation for the Federal Emergency Management Agency of the Department of Homeland Security.—$1,500,000,000 shall be available for the Hazard Mitigation Program in each of fiscal years 2013 and 2014 and $750,000,000 in each of fiscal years 2015 through fiscal year 2021. These funds shall be allocated by the Administrator in proportion to the hazard mitigation grants that were allocated to the states in the prior 5 years through Stafford Act allocations.

(7) State and Tribal Assistance Grants of the Environmental Protection Agency.—For State and Tribal Assistance Grants, $8,000,000,000 shall be provided in each of fiscal years 2013 and 2014 and $4,000,000,000 in each of fiscal years 2015 through fiscal year 2022 to be allocated as grants under section 1452 of the Safe Drinking Water Act. The funds appropriated by this paragraph shall not be subject to the matching or cost share requirements of sections 602(b)(2), 602(b)(3) or 202 of the Federal Water Pollution Control Act nor the matching requirements of section 1452(e) of the Safe Drinking Water Act.

(8) Supplemental Discretionary Grants for a National Surface Transportation Sys-
TEM OF THE DEPARTMENT OF TRANSPORTATION.—

For an additional amount for capital investments in surface transportation infrastructure, $1,500,000,000 in each of fiscal years 2013 and 2014 and $750,000,000 in each of fiscal years 2015 through fiscal year 2021 to be awarded by the Secretary of Transportation to State and local governments or transit agencies on a competitive basis for projects that will have a significant impact on the United States, a metropolitan area, or a region: Provided further, That projects eligible for funding provided under this heading shall include 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 con-
nect ports to other modes of transportation and im-
prove the efficiency of freight movement. Not more
than 20 percent of the funds made available under
this paragraph may be awarded to projects in a sin-
gle State.

(9) Federal Aviation Administration.—$300,000,000 for necessary investments in Federal Aviation Administration 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 in each of fiscal years 2013 and 2014 and $150,000,000 in each of fiscal years 2015 through fiscal year 2021.

(10) Grants-In-Aid for Airports.—$600,000,000 for “Grants-In-Aid for Airports” to make grants for discretionary projects as authorized by subchapter 1 of chapter 471 and subchapter 1 of chapter 475 of title 49, United States Code, and for the procurement, installation and commissioning of runway incursion prevention devices and systems at airports in each of fiscal years 2013 and 2014 and $300,000,000 in each of fiscal years 2015 through fiscal year 2021.

(11) Federal Highway Administration.—
(A) Highway Infrastructure Investment.—$24,000,000,000 in each of fiscal years 2013 and 2014 and $12,000,000,000 in each of fiscal years 2015 through fiscal year 2021 to be allocated to the States in proportion to the allocations provided for programs under the administration of the Federal Highway Administration under SAFTEA–LU.

(B) Capital Assistance for High-Speed Rail Corridors and Intercity Passenger Rail Service.—For an additional amount for section 501 of Public Law 110–432 and 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, subsection (b) of section 24105 of such title, $2,000,000,000 in each of fiscal years 2013 through fiscal year 2021. Not less than 80 percent of these funds shall be allocated to the Federal Railroad Administration for projects that are expected to achieve 125 miles per hour on not less than 50 percent of the route.

(12) Transit Capital Assistance of the Federal Transit Administration.—For transit
capital grants under the allocations provided for under SAFTEA–LU and its extensions by both formula and competitively, $3,000,000,000 in each of fiscal years 2013 and 2014 and $1,500,000,000 in each of fiscal years 2015 through fiscal year 2021. Not less than one-third of these funds shall be allocated under the discretionary bus program.

(13) Community Development Fund of the Community Planning and Development Administration.—For an additional amount for “Community Development Fund”, $2,000,000,000 in each of fiscal years 2013 and 2014 and $1,000,000,000 in each of fiscal years 2015 through fiscal year 2021 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 pursuant to 42 U.S.C. 5306 to grantees that received funding in fiscal year 2012. These funds shall be used for capital projects.

(b) Supplement Not Supplant.—

(1) In general.—An entity shall use Federal funds made available under this section only to supplement the amount of funds that would, in the ab-
sence of such Federal funds, be made available from
non-Federal sources for the activities involved.

(2) MAINTENANCE OF EFFORT.—An entity
shall ensure that for each fiscal year in which the
entity receives Federal funds under this section, the
entity will maintain existing non-Federal support for
the activities for which such funds are provided at
not less than the level of such support for the fiscal
year preceding the year for which the funds are
being provided.

(c) GENERAL PROVISION.—Each entity that receives
assistance with amounts made available under this section
shall ensure that, if such entity carries out modernization,
renovation, and repair through a contract, any such con-
tract process ensures the maximum number of qualified
bidders, including small, minority, and women-owned busi-
nesses, through full and open competition.

Subtitle B—Rebuilding America’s
Manufacturing Power

SEC. 111. NATIONAL MANUFACTURING STRATEGY.

(a) STRATEGY REQUIRED.—

(1) IN GENERAL.—Not later than 180 days
after the date of the enactment of this Act, the
President shall develop a comprehensive national
manufacturing strategy.
(2) BIENNIAL REVISIONS.—Not less frequently than once every 2 years after the date on which the President completes the strategy required by paragraph (1), the President shall revise such strategy.

(b) GOALS OF STRATEGY.—The President shall include in the national manufacturing strategy required by subsection (a) short- and long-term goals for United States manufacturing, including goals—

(1) to increase the aggregate number of manufacturing jobs in the United States so that such number is not less than 20 percent of the sum of all nonfarm jobs in the United States;

(2) to identify emerging technologies to strengthen the competitiveness of United States manufacturing in the global marketplace; and

(3) to strengthen the manufacturing sectors of the United States in which the United States is most competitive in the global economy.

(c) INFORMATION REQUIRED.—The national manufacturing strategy required by subsection (a) shall include the following:

(1) A survey of all persons with headquarters in the United States that maintain manufacturing facilities outside of the United States to identify—
(A) the categories of products manufactured at such facilities; and

(B) the number of manufacturing jobs located at such facilities.

(2) A survey of all Federal agencies that provide assistance to United States manufacturers, including the following:

(A) The Department of Commerce.

(B) The Department of Defense.

(C) The Department of Energy.

(D) The Department of Labor.

(E) The Department of the Treasury.

(F) The Small Business Administration.

(G) The Office of Management and Budget.

(H) The Office of Science and Technology Policy.

(I) The Office of the United States Trade Representative.

(J) The National Science Foundation.

(K) Such other Federal agencies as the President considers appropriate.

(3) A survey of manufacturing goods produced in the United States and where such goods are produced.
(4) The number of people in the United States employed by manufacturers operating in the United States.

(5) An evaluation of the global competitiveness of United States manufacturing, including the following:

(A) A comparison of the manufacturing policies and strategies of the United States with the policies and strategies of other counties, including the countries that are the top 5 trading partners of the United States.

(B) A comparison of the productivity of each sector of the manufacturing industry in the United States with comparable sectors of manufacturing industries in other countries.

(d) RECOMMENDATIONS.—The President shall include in the national manufacturing strategy required by subsection (a) recommendations for achieving the goals included in the strategy pursuant to subsection (b). Such recommendations may include proposals as follows:

(1) Actions to be taken by the President, Congress, State, local, and territorial governments, the private sector, universities, industry associations, and other stakeholders.
(2) Ways to improve Government policies, coordination among entities developing such policies, and Government interaction with the manufacturing sector, including interagency communications regarding the effects of proposed or active Government regulations or other executive actions on the United States manufacturing sector and its workforce.

(3) How each Federal agency surveyed under subsection (e)(2) can best support the national manufacturing strategy required by subsection (a).

(4) Adoption of strategies that have been implemented by other countries and proven successful.

(e) SUBMITTAL OF STRATEGY.—Not later than 180 days after the date of the enactment of this Act and each time the President revises under paragraph (2) of subsection (a) the strategy required by paragraph (1) of such subsection, the President shall submit to Congress such strategy.

SEC. 112. SECTORAL TECHNOLOGY AND INNOVATION CENTERS.

The National Institute of Standards and Technology Act (15 U.S.C. 271 et seq.) is amended by inserting after section 26 (15 U.S.C. 271l) the following:
“SEC. 27. SECTORAL TECHNOLOGY AND INNOVATION CENTERS.

“(a) DEFINITIONS.—In this section:

“(1) ELIGIBLE ENTITIES.—The term ‘eligible entities’ means a consortia that—

“(A) is comprised of representatives from various organizations, such as State and local governments, institutions of higher education, nonprofit organization, and businesses;

“(B) has an expertise in either a specific area of technology or a specific aspect of the manufacturing process; and

“(C) has a capacity to serve small- or medium-sized manufacturers across the United States.

“(2) INDUSTRY CLUSTER.—The term ‘industry cluster’ means a geographic concentration of interconnected companies, specialized suppliers, service providers, and associated institutions in a particular industry sector.

“(3) INSTITUTION OF HIGHER EDUCATION.—The term ‘institution of higher education’ has the meaning given the term in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002).

“(4) SMALL- OR MEDIUM-SIZED MANUFACTURER.—The term ‘small- or medium-sized manu-
facturer’ means a manufacturer that is a small busi-
ness concern (as such term is defined in section 3
of the Small Business Act (15 U.S.C. 632)).

“(b) GRANTS AUTHORIZED.—

“(1) IN GENERAL.—The Secretary may award
grants to eligible entities to establish sectoral tech-

ology and innovation centers—

“(A) to improve the capacity of small- or

medium-sized manufacturers to innovate;

“(B) to provide assistance to small- or me-
dium-sized manufacturers with early-stage

product development;

“(C) to help small- or medium-sized manu-

facturers improve the speed with which they

commercialize new products, processes, and

technologies;

“(D) to help small- or medium-sized manu-

facturers reduce costs by improving efficiencies

in the manufacturing process, including through

reduced energy use and environmental waste;

“(E) to link small- or medium-sized manu-

facturers with cutting edge research and tech-

nologies developed by employees of institutions

of higher education or other institutions that

conduct scientific research; and
“(F) to facilitate the sharing of information and best practices relating to manufacturing and product development among the following:

“(i) Small- or medium-sized manufacturers.

“(ii) Federal and State agencies that provide assistance to small- or medium-sized manufacturers.

“(iii) Nongovernmental organizations that provide assistance to small- or medium-sized manufacturers.

“(iv) Institutions of higher education.

“(2) Minimum number of sectoral technology and innovation centers.—In awarding grants under paragraph (1), the Secretary shall ensure that not fewer than 25 sectoral technology and innovation centers are established under this section before the date that is 2 years after the date of the enactment of this section.

“(c) Use of Funds.—

“(1) In general.—Grants awarded pursuant to subsection (b)(1) shall be used to establish a sectoral technology and innovation center that offers a range of services for the purposes described in para-
graphs (1) through (6) of such subsection, including services relating to the following:

“(A) Applied research and development.

“(B) Proof-of-concept development and prototyping.

“(C) Manufacturing process development and efficiency enhancements.

“(D) Other technical business matters.

“(2) Focus.—Each technology innovation center established with a grant awarded under subsection (b)(1) shall be established with a focus on a specific technology area or specific aspect of the manufacturing process corresponding with—

“(A) the expertise of the eligible entity establishing the center; and

“(B) the needs of an industry cluster located in geographic proximity to the center.

“(3) Change in Services Provided.—The Secretary may allow a recipient of a grant under subsection (b)(1) to modify the range of services offered by the recipient’s technology innovation center under paragraph (1) of this subsection.

“(4) Affiliation with Institutions of Higher Education and National Laboratories.—Services offered by a technology innova-
tion center under paragraph (1) shall be offered in affiliation with an institution of higher education or a national laboratory.

“(d) Application for grants.—

“(1) In general.—An eligible entity seeking a grant under subsection (b)(1) shall submit to the Secretary an application therefor in such form and in such manner as the Secretary considers appropriate.

“(2) Process required.—The Secretary shall establish a standardized application process for purposes of awarding grants under subsection (b)(1).

“(3) Solicitation of applications.—The Secretary shall solicit applications for grants under subsection (b) from eligible entities.

“(e) Selection of grant recipients.—

“(1) Competitive basis.—Grants awarded under subsection (b)(1) shall be awarded on a competitive basis.

“(2) Preferences.—In selecting grant recipients, the Secretary shall give preference to an eligible entity that—

“(A) has an expertise in a specific technology area or manufacturing process that is needed by an industry cluster;
“(B) agrees to establish a technology innovation center in the geographical area of such industry cluster;

“(C) represents a broad range of stakeholders; and

“(D) can demonstrate that the non-Federal contributions for the operation of the technology innovation center will be significant.

“(3) CONSULTATION.—In selecting grant recipients, the Secretary shall consult with the Secretary of Agriculture, the Secretary of Defense, the Secretary of Energy, the Secretary of Labor, the Assistant Secretary for Economic Development, the National Science Foundation, the Office of Innovation and Entrepreneurship, and such other Federal agencies as may be appropriate to determine whether applicants have sufficient expertise to establish a technology innovation center as described in paragraphs (1) and (2) of subsection (c).

“(f) FEDERAL SHARE.—An eligible entity that receives a grant under subsection (b)(1) shall provide such non-Federal contributions for the operation of the sectoral technology and innovation center established with such grant as the Secretary considers appropriate.
“(g) USER FEES.—An eligible entity that establishes a technology innovation center with a grant awarded under subsection (b)(1) may establish user fees to be paid by recipients of services provided by the center to meet the operating costs of the center or for purposes of providing non-Federal contributions as required by subsection (f).

“(h) FUNDING.—There shall be made available from the Rebuild America Trust Fund under section 9512 of the Internal Revenue Code of 1986, the following amount to carry out this section:

“(1) $1,000,000,000 for fiscal year 2013.
“(2) $2,500,000,000 for fiscal year 2014.
“(3) $2,500,000,000 for fiscal year 2015.
“(4) $1,000,000,000 for each of fiscal years 2016 through 2022.”.

SEC. 113. CAPITAL FOR SMALL MANUFACTURERS WITH FIRM ORDERS.

(a) In general.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by adding at the end the following:

“(36) CAPITAL FOR SMALL MANUFACTURERS WITH FIRM ORDERS.—

“(A) Definitions.—In this paragraph—
“(i) the term ‘firm order’ means an order for goods placed by a person that the Administrator determines is—

“(I) required by law or contract to pay for the goods upon receipt of the goods; and

“(II) likely to make the payment described in subclause (I); and

“(ii) the term ‘manufacturer’ means a small business concern the primary business of which is classified in sector 31, 32, or 33 of the North American Industrial Classification System.

“(B) IN GENERAL.—The Administrator may guarantee a loan under this subsection to a manufacturer, to provide capital for the production of goods for a firm order, if the Administrator determines that the manufacturer will be able to produce the goods using the capital.

“(C) AMOUNT.—A loan guaranteed under this paragraph shall be in an amount that is not more than $10,000,000.

“(D) GUARANTEE PERCENTAGE.—The Administrator may guarantee not more than 95
percent of the amount of a loan under this paragraph.”.

(b) **TECHNICAL AND CONFORMING AMENDMENTS.**—

Section 1133(b) of the Small Business Jobs Act of 2010 (15 U.S.C. 636 note) is amended—

(1) in paragraph (1), by striking “and” at the end;

(2) in paragraph (2), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(3) by redesignating paragraph (36), as added by section 113 of the Rebuild America Act, as paragraph (35).”.

**SEC. 114. MANUFACTURING EXTENSION PARTNERSHIP.**

(a) **IN GENERAL.**—There shall be made available from the Rebuild America Trust Fund under section 9512 of the Internal Revenue Code of 1986, $130,000,000 for each of fiscal years 2013 through 2022 for the Hollings Manufacturing Extension Partnership of the National Institute of Standards and Technology.

(b) **ADJUSTMENTS FOR INFLATION.**—For fiscal year 2014 and each fiscal year thereafter, the amount specified in subsection (a) shall be adjusted to reflect the percentage (if any) of the increase or decrease (as the case may be) in the average of the Consumer Price Index for the
12-month period ending on the April 30 preceding the beginning of the fiscal year compared to the average of the Consumer Price Index for the 12-month period ending April 30, 2012.

SEC. 115. EXTENSION OF RESEARCH CREDIT; INCREASE IN ALTERNATIVE SIMPLIFIED RESEARCH CREDIT.

(a) Extension of Credit.—

(1) In general.—Subparagraph (B) of section 41(h)(1) of the Internal Revenue Code of 1986 is amended by striking “December 31, 2011” and inserting “December 31, 2016”.

(2) Conforming Amendment.—Subparagraph (D) of section 45C(b)(1) of such Code is amended by striking “December 31, 2011” and inserting “December 31, 2016”.

(3) Effective Date.—The amendments made by this subsection shall apply to amounts paid or incurred after December 31, 2011.

(b) Alternative Simplified Research Credit Increased.—

(1) Increased credit.—Subparagraph (A) of section 41(c)(5) of the Internal Revenue Code of 1986 is amended to read as follows:

“(A) Determination of credit.—
“(i) IN GENERAL.—At the election of the taxpayer, the credit determined under subsection (a)(1) shall be equal to the applicable percentage of so much of the qualified research expenses for the taxable year as exceeds 50 percent of the average qualified research expenses for the 3 taxable years preceding the taxable year for which the credit is being determined.

“(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage for any taxable year is equal to—

“(I) 14 percent, increased by

“(II) 1 percentage point (not to exceed 6 percentage points) for each 2 percent increase in the taxpayer’s qualified manufacturing full-time equivalent employees during the 5-taxable-year period ending immediately before such taxable year.

“(iii) LIMITATION.—The increase in the amount of the credit determined under subsection (a)(1) by reason of the application of clause (ii)(II) shall not exceed the product of—
“(I) $5,000, multiplied by

“(II) the number of qualified manufacturing full-time equivalent employees taken into account for purposes of determining the increase described in clause (ii)(II).

“(iv) QUALIFIED MANUFACTURING FULL-TIME EQUIVALENT EMPLOYEES.—

For purposes of this subparagraph, the term ‘qualified manufacturing full-time equivalent employees’ means full-time equivalent employees (as defined in section 45R(d)(2)) who provide the taxpayer manufacturing services in the United States.

“(v) EMPLOYEES EXCLUDED FOR CHANGES IN OWNERSHIP OF TRADES OR BUSINESSES.—In determining the number of qualified manufacturing full-time equivalent employees for any 5-taxable-year period referred to in clause (ii)(II), the taxpayer shall not take into account—

“(I) any individual who was an employee, on the date of acquisition, of any trade or business acquired by the taxpayer during such period, and
“(II) any individual who was an employee of any trade or business disposed of by the taxpayer during such period.

“(vi) MANUFACTURING SERVICES.—For purposes of this subparagraph, the term ‘manufacturing services’ means qualified production activities within the meaning of section 199(e) other than the extraction of fossil fuels or minerals, agricultural production, activities described in section 199(b)(2)(D), or activities described in 199(e)(4)(B).”.

(2) CONFORMING AMENDMENT.—Section 41(c)(5)(B)(ii) of such Code is amended by striking “6 percent” and inserting “one-half of the applicable percentage”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 2016.

(c) TECHNICAL CORRECTIONS.—

(1) IN GENERAL.—Section 409 of the Internal Revenue Code of 1986 is amended—

(A) by inserting “, as in effect before the enactment of the Tax Reform Act of 1984)”
after “section 41(c)(1)(B)” in subsection (b)(1)(A),

(B) by inserting “as in effect before the enactment of the Tax Reform Act of 1984” after “relating to the employee stock ownership credit” in subsection (b)(4),

(C) by inserting “(as in effect before the enactment of the Tax Reform Act of 1984)” after “section 41(c)(1)(B)” in subsection (i)(1)(A),

(D) by inserting “(as in effect before the enactment of the Tax Reform Act of 1984)” after “section 41(c)(1)(B)” in subsection (m),

(E) by inserting “(as so in effect)” after “section 48(n)(1)” in subsection (m),

(F) by inserting “(as in effect before the enactment of the Tax Reform Act of 1984)” after “section 48(n)” in subsection (q)(1), and

(G) by inserting “(as in effect before the enactment of the Tax Reform Act of 1984)” after “section 41” in subsection (q)(3).

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.
SEC. 116. INCLUSION OF CERTAIN PROVISIONS IN TRADE AGREEMENTS.

(a) Definitions.—In this section:

(1) Core labor rights.—The term “core labor rights” means the core labor rights as stated in the International Labour Organization conventions dealing with—

(A) freedom of association and the effective recognition of the right to collective bargaining;

(B) the elimination of all forms of forced or compulsory labor;

(C) the effective abolition of child labor; and

(D) the elimination of discrimination with respect to employment and occupation.

(2) Multilateral environmental agreement.—The term “multilateral environmental agreement” means any international agreement or provision thereof to which the United States is a party and that is intended to protect, or has the effect of protecting, the environment or human health.

(b) Limitation on Consideration of Bills Implementing Trade Agreements.—Notwithstanding section 151 of the Trade Act of 1974 (19 U.S.C. 2191) or any other provision of law, any bill implementing a
trade agreement between the United States and another
country that is introduced in Congress after the date of
the enactment of this Act shall be subject to a point of
order pursuant to subsection (d) unless the trade agree-
ment meets the requirements described in subsection (c).

(c) REQUIREMENTS.—Each trade agreement between
the United States and another country with respect to
which an implementing bill is introduced on or after the
date of the enactment of this Act shall meet the following
requirements:

(1) LABOR STANDARDS.—The labor provisions
of the agreement shall—

(A) be included in the core text of the
agreement;

(B) require each country that is a party to
the agreement—

(i) to adopt and maintain laws and
regulations (including laws applicable to
any designated zone in the country) that
establish core labor rights; and

(ii) to effectively enforce laws relating
to core labor rights and laws relating to
acceptable conditions of work (including
laws relating to minimum wages, hours of
work, and occupational safety and health);
(C) prohibit a country that is a party to the agreement from waiving or otherwise derogating from, or offering to waive or otherwise derogate from, the country’s laws and regulations relating to the core labor rights and acceptable conditions of work described in subparagraph (B);

(D) provide that failures to meet the labor requirements of the agreement, regardless of the effect that failure has on trade, shall be subject to the dispute resolution and enforcement mechanisms and penalties of the agreement;

(E) provide that enforcement mechanisms and penalties for failures described in subparagraph (D) are included in the core text of the agreement and are at least as effective as the mechanisms and penalties that apply to the commercial provisions of the agreement; and

(F) strengthen the capacity of each country that is a party to the agreement to promote, protect, and enforce core labor rights.

(2) ENVIRONMENTAL AND PUBLIC SAFETY STANDARDS.—The environmental provisions of the agreement shall—
(A) be included in the text of the agreement;

(B) prohibit each country that is a party to the agreement from weakening, eliminating, or failing to enforce domestic environmental or other public interest standards to promote trade or attract investment;

(C) require each such country to implement and enforce fully and effectively the country’s obligations under multilateral environmental agreements and provide for the enforcement of such obligations under the agreement;

(D) prohibit the trade of products that are illegally harvested or extracted and the trade of goods derived from illegally harvested or extracted natural resources, including timber and timber products, fish, wildlife, and associated products, mineral resources, or other environmentally sensitive goods;

(E) provide that the failure to meet the environmental standards required by the agreement be subject to dispute resolution and enforcement mechanisms and penalties that are at least as effective as the mechanisms and pen-
alties that apply to the commercial provisions of
the agreement; and

(F) allow each country that is a party to
the agreement to adopt and implement environ-
mental, health, and safety standards, recognize-
ning the legitimate right of governments to
protect the environment and public health and
safety.

(3) INVESTMENT PROVISIONS.—If the agree-
ment contains provisions relating to investment,
such provisions shall—

(A) ensure that foreign investors operating
in the United States are not afforded greater
procedural or substantive rights under the trade
agreement than those afforded to domestic in-
vestors under the Constitution and laws of the
United States;

(B) include strong and enforceable commit-
ments that an entity owned or controlled by a
foreign government that invests in operations in
the United States—

(i) will make such investments and
will conduct such operations on a commer-
cial basis only; and
(ii) will not receive benefits, such as financing, at below market rates, or components or materials at below market prices, from the foreign government for such operations; and

(C) define the standard of minimum treatment to provide that foreign investors do not have greater legal rights than United States citizens possess under the due process clause of section 1 of the 14th Amendment to the Constitution.

(d) POINT OF ORDER IN SENATE.—The Senate shall cease consideration of a bill to implement a trade agreement introduced on or after the date of enactment of this Act if—

(1) a point of order is made by any Senator against the bill based on the noncompliance of the trade agreement with the requirements of subsection (c); and

(2) the point of order is sustained by the Presiding Officer.

(e) WAIVERS AND APPEALS.—

(1) WAIVERS.—Before the Presiding Officer rules on a point of order described in subsection (d), any Senator may move to waive the point of order
and the motion to waive shall not be subject to
amendment. A point of order described in subsection
(d) is waived only by the affirmative vote of 60
Members of the Senate, duly chosen and sworn.

(2) APPEALS.—After the Presiding Officer
rules on a point of order described in subsection (d),
any Senator may appeal the ruling of the Presiding
Officer on the point of order as it applies to some
or all of the provisions on which the Presiding Offi-
cer ruled. A ruling of the Presiding Officer on a
point of order described in subsection (d) is sus-
tained unless 60 Members of the Senate, duly cho-
sen and sworn, vote not to sustain the ruling.

(3) DEBATE.—Debate on the motion to waive
under paragraph (1) or on an appeal of the ruling
of the Presiding Officer under paragraph (2) shall
be limited to 1 hour. The time shall be equally di-
vided between, and controlled by, the majority leader
and the minority leader of the Senate, or their des-
ignees.

SEC. 117. FUNDING FOR INTERAGENCY TRADE ENFORCE-
MENT CENTER.

(a) IN GENERAL.—There shall be made available
from the Rebuild America Trust Fund under section 9512
of the Internal Revenue Code of 1986, the following
amounts for the Interagency Trade Enforcement Center established by Executive Order of February 28, 2012, entitled “Establishment of the Interagency Trade Enforcement Center”:

(1) For fiscal year 2013, $26,000,000.

(2) For fiscal year 2014 and each fiscal year thereafter, the amount specified in paragraph (1), as adjusted to reflect the percentage (if any) of the increase or decrease (as the case may be) in the average of the Consumer Price Index for the 12-month period ending on the April 30 preceding the beginning of the fiscal year compared to the average of the Consumer Price Index for the 12-month period ending April 30, 2012.

(b) Consumer Price Index Defined.—In this section, the term “Consumer Price Index” means the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

SEC. 118. IMPOSITION OF COUNTERVAILING DUTIES FOR SUBSIDIES RELATING TO FUNDAMENTALLY UNDERVALUED CURRENCIES.

(a) Benefit Conferred.—Section 771(5)(E) of the Tariff Act of 1930 (19 U.S.C. 1677(5)(E)) is amended—
(1) in clause (iii), by striking “and” at the end;
(2) in clause (iv), by striking the period at the end and inserting “, and”; and
(3) by inserting after clause (iv) the following new clause:

“(v) in the case in which the currency of a country in which the subject merchandise is produced is exchanged for foreign currency obtained from export transactions, and the currency of such country is a fundamentally undervalued currency, as defined in paragraph (37), if there is a difference between the amount of the currency of such country provided and the amount of the currency of such country that would have been provided if the real effective exchange rate of the currency of such country were not undervalued, as determined pursuant to paragraph (38).”.

(b) EXPORT SUBSIDY.—Section 771(5A)(B) of the Tariff Act of 1930 (19 U.S.C. 1677(5A)(B)) is amended by adding at the end the following new sentence: “In the case of a subsidy relating to a fundamentally undervalued currency, the fact that the subsidy may also be provided in circumstances not involving export shall not, for that
reason alone, mean that the subsidy cannot be considered contingent upon export performance.”.

(c) Definition of Fundamentally Undervalued Currency.—Section 771 of the Tariff Act of 1930 (19 U.S.C. 1677) is amended by adding at the end the following new paragraph:

“(37) Fundamentally Undervalued Currency.—The administering authority shall determine that the currency of a country in which the subject merchandise is produced is a ‘fundamentally undervalued currency’ if—

“(A) the government of the country (including any public entity within the territory of the country) engages in protracted, large-scale intervention in one or more foreign exchange markets during part or all of the 18-month period that represents the most recent 18 months for which the information required under paragraph (38) is reasonably available, but that does not include any period of time later than the final month in the period of investigation or the period of review, as applicable;

“(B) the real effective exchange rate of the currency is undervalued by at least 5 percent, on average and as calculated under paragraph
(38), relative to the equilibrium real effective exchange rate for the country’s currency during the 18-month period;

“(C) during the 18-month period, the country has experienced significant and persistent global current account surpluses; and

“(D) during the 18-month period, the foreign asset reserves held by the government of the country exceed—

“(i) the amount necessary to repay all debt obligations of the government falling due within the coming 12 months;

“(ii) 20 percent of the country’s money supply, using standard measures of M2; and

“(iii) the value of the country’s imports during the previous 4 months.”.

(d) Definition of Real Effective Exchange Rate Undervaluation.—Section 771 of the Tariff Act of 1930 (19 U.S.C. 1677), as amended by subsection (c) of this section, is further amended by adding at the end the following new paragraph:

“(38) Real effective exchange rate undervaluation.—The calculation of real effective
exchange rate undervaluation, for purposes of para-
graph (5)(E)(v) and paragraph (37), shall—

“(A)(i) rely upon, and where appropriate
be the simple average of, the results yielded
from application of the approaches described in
the guidelines of the International Monetary
Fund’s Consultative Group on Exchange Rate
Issues; or

“(ii) if the guidelines of the International
Monetary Fund’s Consultative Group on Ex-
change Rate Issues are not available, be based
on generally accepted economic and econometric
techniques and methodologies to measure the
level of undervaluation;

“(B) rely upon data that are publicly avail-
able, reliable, and compiled and maintained by
the International Monetary Fund or, if the
International Monetary Fund cannot provide
the data, by other international organizations or
by national governments; and

“(C) use inflation-adjusted, trade-weighted
exchange rates.”.

(e) Application to Goods From Canada and
Mexico.—Pursuant to article 1902 of the North Amer-
ican Free Trade Agreement and section 408 of the North
American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3438), the amendments made by this section shall apply to goods from Canada and Mexico.

**Subtitle C—Preparing Americans for the Jobs of the Future**

**SEC. 121. SHORT TITLE.**

This subtitle may be cited as the “Regional Partnerships for High-Quality Jobs Act”.

**SEC. 122. DEFINITIONS.**

In this subtitle:

1. (1) **CAREER AND TECHNICAL EDUCATION SYSTEM.**—The term “career and technical education system” means, with respect to a State, the eligible agency (as defined in section 3 of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302)) for the State, and the eligible recipients (as so defined) in the State that receive funds under section 131 or 132 of such Act (20 U.S.C. 2351, 2352).

2. (2) **CAREER PATHWAY.**—

   (A) **IN GENERAL.**—The term “career pathway” means a set of rigorous, engaging, and high-quality education, occupational training, and other services to prepare individuals to
meet a set of career-related objectives as referenced in subparagraph (C).

(B) SERVICES.—The services referred to in subparagraph (A) shall be—

(i) aligned with the skill needs of industries in the economy of the service area involved; and

(ii) designed to increase an individual’s educational and skill attainment, and improve the individual’s employment outcomes and ability to meet career-related objectives, by—

(I) preparing individuals for the full range of secondary or postsecondary education options, including apprenticeships registered under the Act of August 16, 1937 (commonly known as the “National Apprenticeship Act”; 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.) (referred to individually in this subtitle as an “apprenticeship”);

(II) including counseling and support services to help individuals
achieve their education and career goals;

(III) including, as appropriate for an individual, education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster; and

(IV) organizing education, occupational training, and other services to meet the particular needs of the individual in a manner that accelerates the educational and career advancement of the individual to the extent practicable.

(C) Objectives.—The objectives referred to in subparagraph (A) include—

(i) enabling a worker to attain a secondary school diploma or its recognized equivalent, and at least 1 recognized post-secondary credential; and

(ii) helping a worker enter or advance within a specific occupation or occupational cluster.
(3) Community college.—The term “community college” has the same meaning as the term “junior or community college”, as defined in section 312(f) of the Higher Education Act of 1965 (20 U.S.C. 1058(f)).

(4) Education terms.—The term “adult education” has the meaning given the term in section 203 of the Adult Education and Family Literacy Act (20 U.S.C. 9202). The terms “State educational agency” and “local educational agency” have the meanings given the terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(5) High-quality employment.—The term “high-quality employment” means employment with, at a minimum, family-sustaining compensation (as determined by the Secretaries) and opportunities for advancement (as so determined).

(6) Individual with a disability; individuals with disabilities.—

(A) Individual with a disability.—The term “individual with a disability” has the meaning given the term in section 7(20)(A) of the Rehabilitation Act of 1973 (29 U.S.C. 705(20)(A)).
(B) **INDIVIDUALS WITH DISABILITIES.**—

The term “individuals with disabilities” means more than 1 individual with a disability.

(7) **INDUSTRY-RECOGNIZED CREDENTIAL.**—The term “industry-recognized credential” means such a credential within the meaning of section 3 of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302).

(8) **LABOR ORGANIZATION.**—The term “labor organization” has the meaning given the term in section 2 of the National Labor Relations Act (29 U.S.C. 152).

(9) **OCCUPATIONAL TRAINING.**—The term “occupational training” means training services, as described in section 134(d)(4)(D) of the Workforce Investment Act of 1998 (29 U.S.C. 2864(d)(4)(D)).

(10) **PRIORITY WORKERS.**—The term “priority workers” means individuals who are—

(A) individuals unemployed for 52 weeks or more;

(B) youth age 16 through 24 who have been out of school or out of work, as appropriate, for more than 6 months and do not possess a secondary school diploma or its recognized equivalent;
(C) individuals with disabilities;

(D) individuals with low literacy levels; or

(E) veterans, as defined in section 101 of title 38, United States Code.

(11) RECOGNIZED POSTSECONDARY CREDENTIAL.—The term “recognized postsecondary credential” means a credential consisting of an industry-recognized credential, a certificate of completion of an apprenticeship registered under the Act of August 16, 1937 (commonly known as the “National Apprenticeship Act”; 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.), or an associate or baccalaureate degree.

(12) SECRETARIES.—The term “Secretaries” means the Secretary of Education and the Secretary of Labor, acting in accordance with the agreement described in section 123(c).

(13) SERVICE AREA.—The term “service area”—

(A) used with respect to a regional partnership, means a labor market area; and

(B) used with respect to a State partnership, means 2 or more labor market areas in the State that are identified by the State partnership.
SEC. 123. PROGRAM.

(a) IN GENERAL.—The Secretary of Labor and the Secretary of Education shall establish a program to educate and train workers for high-quality employment.

(b) GRANTS.—

(1) IN GENERAL.—In carrying out the program, the Secretaries shall award grants, on a competitive basis, to eligible entities to develop or enhance, and provide, career pathways and adult learning strategies that integrate education, occupational training, and supportive services. The career pathways and learning strategies shall prepare individuals for existing or emerging employment opportunities in a service area, which shall include such preparation through the attainment of a recognized postsecondary credential.

(2) GRANT PERIOD.—A grant awarded to an eligible entity under this section shall be awarded for a period of not more than 5 years. The grant may be renewed for not more than 1 such additional grant period, contingent on satisfactory performance of the eligible entity relating to the expected outcomes described in section 125(1).

(3) PARTNERSHIPS.—The eligible entities shall provide the career pathways and learning strategies
through industry-focused, employer-linked regional or State partnerships described in section 124.

(c) AGREEMENT.—The Secretary of Labor and the Secretary of Education shall enter into an interagency agreement that describes how the Secretaries will jointly administer the program.

SEC. 124. ELIGIBLE ENTITIES.

(a) IN GENERAL.—To be eligible to receive a grant under section 123 for a service area, an entity shall consist of a partnership described in section 123(b)—

(1) that shall include—

(A) employers of various sizes in the service area, whose job vacancies represent a significant share of current or future job vacancies, and that pledge to train or employ participants in the project carried out under the grant; and

(B) community colleges that will provide education and occupational training, aligned with current or future job vacancies, through the project; and

(2) that shall include at least 1 of the following:

(A) A State agency.
(B) A chief elected official, as defined in section 101 of the Workforce Investment Act of 1998 (29 U.S.C. 2801).

(C) A nonprofit organization with a demonstrated record of serving priority workers.

(D) Local boards or State boards as such terms are defined in section 101 of the Workforce Investment Act of 1998 (29 U.S.C. 2801), or designated State units, as defined in section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705) or other vocational rehabilitation offices.

(E) An economic development agency.

(F) A local educational agency.

(G) A labor organization or labor-management partnership.

(H) An adult education provider.

(I) An agency, which may be a public library, that provides occupational training or supportive services.

(b) STATE OR REGIONAL PARTNERSHIP.—The partnership described in subsection (a) may be—

(1) a State partnership, serving 2 or more labor market areas in the State; or

(2) a regional partnership, serving a labor market area.
SEC. 125. APPLICATIONS.

To be eligible to receive a grant under section 123, an entity described in section 124 shall submit an application to the Secretaries at such time, in such manner, and containing such information as the Secretaries may determine to be appropriate, including, at a minimum, a plan for the project to be carried out under the grant, with information describing each of the following:

(1) How the partnership will address the objectives of the project, including identifying a fiscal agent and expected outcomes for the partnership.

(2) How the partnership will develop or enhance career pathways that result in the attainment of a recognized postsecondary credential and high-quality employment in the service area, including—

(A) a description of how the partnership has used labor market information (including projections of job openings, job growth, wages, and skill and certification requirements related to the credential) to ensure the education and occupational training provided through the grant are aligned with employment needs in the service area;

(B) a description of how the partnership has incorporated best practices in adult education and occupational training, such as use of
cohort models, compressed course schedules, integrated adult basic education, and work readiness training and certificates;

(C) information on how the partnership will identify and prepare workers for employment opportunities;

(D) an analysis of how the partnership will engage the entities described in section 124(a)(2), to leverage resources and optimize outcomes, including by coordinating existing (as of the date the grant is received) education and occupational training efforts; and

(E) a description of how the partnership will conduct data collection, monitoring, reporting, and information sharing to continuously evaluate and improve outcomes for the project.

(3) The commitment of members of the partnership, including—

(A) each partner’s financial and programmatic commitment to the strategies described in the application;

(B) each partner’s capacity, such as capacity to provide staff and facilities, to leverage State and local investments, to coordinate activities with related agencies, and to establish
linkages among employment and labor market information data systems, to support the strategies described in the application;

(C) each partner’s long-term commitment to the partnership that, at a minimum, accounts for the cost of supporting the project, including providing support after grant funds are no longer available; and

(D) each partner’s commitment to ensure sound fiscal management and controls, including evidence of a related system of supports and personnel.

(4) How the partnership will make work experiences available to all priority workers, including—

(A) the types of paid internships, on-the-job training, or other work experiences the partnership will make available to all priority workers; and

(B) how the partnership will provide any developmental education or supportive services necessary to ensure priority workers receive and succeed in work experiences.

(5) How the partnership will engage community-based organizations with experience providing education, occupational training, and related sup-
portive services to individuals in the service area, with particular attention to such organizations that have experience supporting priority workers.

(6) The Federal and non-Federal sources of funding that the partnership will secure to comply with the matching funds requirement set forth in section 128.

(7) In the case of a State partnership, how the partnership will carry out goals described in section 127(b)(1)(B).

SEC. 126. PRIORITY AND DISTRIBUTION.

(a) PRIORITY.—The Secretaries shall give priority consideration to a partnership that—

(1) includes in the partnership involved a labor organization, labor-management partnership, or community-based organization that represents the interests of workers, especially priority workers; or

(2) is a partnership serving at least 1 labor market area with 1 of the highest levels of unemployment or poverty, as defined by the Secretaries, in the Nation.

(b) GEOGRAPHIC DIVERSITY.—In administering the grants awarded under section 123, the Secretaries shall ensure geographic diversity in the distribution of funds to regional and State partnerships.
SEC. 127. USE OF FUNDS.

(a) In General.—An eligible entity that receives a grant under section 123 shall use the grant funds to implement the plan described in the entity’s application, submitted under section 125.

(b) Partnerships.—

(1) Partnerships, career pathways, and learning strategies.—

(A) In General.—A partnership that receives a grant under section 123 shall use the grant funds for investments designed to develop or enhance, and provide, through an industry-focused, employer-linked partnership, career pathways and adult learning strategies that connect individuals with existing or emerging employment opportunities.

(B) Additional Uses.—In addition, a partnership described in section 124(b)(1) shall use the grant funds to support the activities described in subparagraph (A) by—

(i) supporting programs of tuition assistance, using funding resources, and through other evidence-based strategies, except that such support shall not supplant other Federal funds for such tuition assistance;
(ii) providing incentives and technical support to employers who, through participation in industry-focused, employer-linked partnerships, or through provision of career pathways or adult learning strategies, retain and promote incumbent workers, employ new workers, or upgrade jobs for program participants; and

(iii) for State partnerships, enhancing linkages among employment and labor market information data systems in the State.

(2) Services for Priority Workers.—The partnership shall use at least 50 percent of the grant funds to support the pathways and strategies and provide supportive services for priority workers.

(3) Conditions of Education and Occupational Training.—

(A) Training Leading to Jobs.—All education and occupational training provided through the project shall lead to high-quality employment provided by, at a minimum, the employers represented in the partnership, and also including other employers of all sizes in the service area.
(B) **INTERNSHIPS.**—Paid internship positions provided through the project shall be primarily occupational training positions, and the internships may not permit interns to spend a significant amount of time doing work for which an employee would otherwise be compensated.

(C) **ON-THE-JOB TRAINING.**—On-the-job training placements—

   (i) provided through the project shall pay wages comparable to the wages provided for similar positions in the sector involved for the service area; and

   (ii) may be placements in new or vacant positions, but a participant in such a placement shall not displace any currently employed employee, consistent with section 181(b) of the Workforce Investment Act of 1998 (29 U.S.C. 2931(b)).

**SEC. 128. MATCHING REQUIREMENT.**

(a) **REQUIREMENT.**—The Secretaries shall require that each eligible entity receiving a grant under section 123 contribute, toward the cost of the project for which the grant was awarded, matching funds in an amount equal to not less than 50 percent of the amount of the
grant. The eligible entity may contribute such matching funds from non-Federal sources or Federal sources (other than this subtitle), in cash or in-kind, fairly evaluated (including plant, equipment, or services).

(b) WAIVER OR REDUCTION.—The Secretary may waive or reduce the matching requirement described in subsection (a) for an eligible entity if the eligible entity demonstrates a need due to significant financial hardship.

SEC. 129. FUNDING.

There shall be made available from the Rebuild America Trust Fund under section 9512 of the Internal Revenue Code of 1986, $5,000,000,000 for each of fiscal years 2013 through 2022 to carry out this subtitle.

Subtitle D—Supporting Great Teachers

SEC. 131. SHORT TITLE.

This subtitle may be cited as the “College and Career Ready Classrooms Act”.

SEC. 132. FINDINGS.

Congress finds the following:

(1) According to the Department of Labor, almost 90 percent of new jobs in occupations with both high growth and high wages require at least some postsecondary training. The majority of new jobs that offer a wage sufficient to support a family
and provide opportunity for career advancement re-
quire some postsecondary education. Moreover, re-
search shows that the skill level required to enter
college or a work-training program is the same.

(2) Implementing college- and career-ready
State standards is a complex undertaking, requiring
that teachers utilize a wide array of knowledge and
skills.

(3) Peer learning among small groups of teach-
ers is one of the most powerful predictors of im-
proved student academic achievement. Students
achieve more in mathematics and reading when they
attend schools characterized by high levels of teacher
collaboration for school improvement.

(4) Other nations that outperform the United
States on international assessments invest more
heavily in professional development for teachers and
build time for ongoing, sustained collaboration and
professional development into the school day and
year. Teachers in the United States spend about 80
percent of their working time engaged in classroom
instruction compared to teachers in other countries
where 60 percent of their time is spent in classroom
instruction.
SEC. 133. PURPOSES.

The purposes of this subtitle are to—

(1) support the successful implementation of college- and career-ready State academic standards; and

(2) strengthen the capacity of States and local educational agencies to provide professional development that increases the effectiveness of all teachers in the instruction of college- and career-ready State standards and the development and use of curriculum and assessments that are aligned with college- and career-ready State standards.

SEC. 134. DEFINITIONS.

In this subtitle:

(1) ESEA DEFINITIONS.—Unless otherwise specified, the terms used in this subtitle have the meanings given the terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(2) COLLEGE- AND CAREER-READY PROFESSIONAL DEVELOPMENT LEADERSHIP TEAM.—The term “college- and career-ready professional development leadership team” means a group of educators, teacher association representatives, leaders, and specialists convened by an eligible entity pursuant to section 136(b)(1)(C).
(3) College- and career-ready staff network.—The term “college- and career-ready staff network” means a group of specialists, convened by a local entity, including school-based teachers and leaders, teacher association representatives, and specialists in relevant content areas, in teaching English learners, and in teaching children with disabilities, who are serving as mentors, coaches, or facilitators and who are responsible for—

(A) establishing professional development goals;

(B) aligning the instructional work for individual schools;

(C) supporting the implementation of inquiry-based models of professional development;

(D) identifying and sharing best practices;

(E) coordinating with the college- and career-ready professional development leadership team; and

(F) building and sustaining professional development capacity within the local entity.

(4) Eligible entity.—The term “eligible entity” means a State educational agency or a consortium of State educational agencies that has adopted standards in mathematics and English language arts
that are aligned with college and career readiness, as demonstrated to the Secretary.

(5) LOCAL ENTITY.—The term “local entity” means a local educational agency or a consortium of local educational agencies.

SEC. 135. GRANTS AUTHORIZED.

(a) IN GENERAL.—The Secretary is authorized to award grants on a competitive basis to eligible entities for the development, implementation, and monitoring of comprehensive, statewide professional development that—

(1) is aligned with local professional development efforts; and

(2) increases the effectiveness of all teachers in the—

(A) instruction of college- and career-ready State standards; and

(B) development and use of curriculum and assessments and other instructional supports that are aligned with college- and career-ready State standards.

(b) DURATION.—Each grant awarded under subsection (a)—

(1) shall be for a minimum of a 3-year period and a maximum of a 5-year period; and
(2) may be renewed based on performance, as
determined by the Secretary.

(c) Grant Amount.—The Secretary shall ensure
that grants are of sufficient size and scope to enable
grantees to carry out grant activities.

(d) Geographic Distribution.—The Secretary
shall ensure that grantees represent different geographic
regions of the United States, including urban and rural
areas.

(e) Reservation of Funds.—From the amount
made available under section 142 for a fiscal year, the Sec-
etary shall reserve not more than 5 percent for the eval-
uation of activities implemented pursuant to grants
awarded under subsection (a) and the dissemination of in-
formation on effective professional development activities,
curriculum, assessments, and other instructional supports
developed with such grant funds.

SEC. 136. Application.

(a) In General.—An eligible entity that desires to
receive a grant under section 135 shall submit an applica-
tion to the Secretary at such time, in such manner, and
containing such information as the Secretary may reason-
ably require.

(b) Contents.—
(1) IN GENERAL.—Each application submitted under subsection (a) shall include a comprehensive strategy for implementing professional development aligned to college- and career-ready State standards and related instructional supports that shall include—

(A) a description of how the professional development will increase teacher, principal, and other school leader knowledge and understanding of college- and career-ready State standards that is differentiated, including by grade level and subject area, specific to the teacher;

(B) a description of how the professional development will increase teacher expertise beyond basic content knowledge for subject-area teachers;

(C) the creation of a college- and career-ready professional development leadership team responsible for establishing statewide goals, providing model frameworks to local college- and career-ready staff networks, leaders, or specialists, for meeting statewide goals, identifying and sharing best practices around the implementation of college- and career-ready State...
standards, curriculum alignment, and assessments, and supporting local comprehensive college- and career-ready professional development strategy activities;

(D) dissemination to local college- and career-ready staff networks in an easily accessible format that may include the use of technology, such as a web-based statewide instructional performance support system, exemplary professional development activities, opportunities to participate in professional learning networks, technical assistance, and other professional development resources designed to support the successful implementation of college- and career-ready State standards;

(E) a description of how the professional development will be developed in collaboration with nonprofit organizations, which may include institutions of higher education, with a demonstrated record of expertise, and other education stakeholders; and

(F) a description of how the professional development will be based on an analysis of data and evidence that indicates the needs of leaders, teachers, and students.
(2) Development of strategy.—The comprehensive strategy described in paragraph (1) shall be developed in collaboration with the representative organizations for teachers in the State.

SEC. 137. STATE USE OF GRANT FUNDS.

An eligible entity that receives a grant under section 135 shall carry out the following:

(1) Professional development implementation activities.—

(A) Impact on teaching practice and student achievement.—

(i) In general.—The eligible entity shall reserve not less than 2 percent of the grant funds—

(I) to conduct an evaluation by a knowledgeable, skilled, and impartial evaluator of the impact of the comprehensive college- and career-ready professional development strategy on teaching practice and student achievement; and

(II) to inform continuous improvement of professional development activities and, if applicable, re-directing professional development re-
sources towards those activities that
are most beneficial to teachers and
students.

(ii) Conduct of Evaluation and
Informing Improvement.—The activities
described in subclauses (I) and (II) of
clause (i) shall be conducted by an entity
other than the State educational agency.

(B) Strategy Activities.—

(i) In General.—Except as provided
in clause (ii), the eligible entity shall re-
serve not more than 13 percent of the
grant funds to carry out the comprehensive
college- and career-ready professional de-
development activities described under sec-
tion 136.

(ii) Exception for Small or Rural
States.—The Secretary may allow a small
or rural State, upon application by such
State, to reserve more than 13 percent of
the grant funds to carry out the com-
prehensive college- and career-ready pro-
fessional development activities described
under section 136, and activities described
under section 138(c)(4) as the activities
apply to the State, if the State demonstrates to the Secretary that it would be more efficient and effective for the State to carry out such activities rather than local entities.

(C) IMPLEMENTATION ACTIVITIES.—From the amount reserved under subparagraph (B), the eligible entity may implement activities described under section 138(c)(4) as the activities apply to the State educational agency.

(2) SUBGRANTS.—The eligible entity shall reserve not less than 85 percent of the grant funds to award subgrants to local entities under section 138.

SEC. 138. SUBGRANTS TO LOCAL ENTITIES.

(a) AUTHORIZATION.—

(1) IN GENERAL.—An eligible entity that receives a grant under section 135 shall award subgrants, on a competitive basis, to local entities.

(2) APPLICATION.—A local entity that desires to receive a subgrant under this section shall submit an application to the eligible entity at such time, in such manner, and containing such information as the eligible entity may reasonably require.

(3) CONTENTS OF APPLICATION.—
(A) LOCAL COMPREHENSIVE COLLEGE-
AND CAREER-READY PROFESSIONAL DEVELOP-
MENT IMPLEMENTATION.—Each application
submitted under paragraph (2) shall include a
comprehensive strategy for implementing pro-
fessional development aligned to college- and
career-ready State standards and related in-
structional supports at the local level (referred
to in this subtitle as the “local strategy”) that
will improve teacher practice and increase stu-
dent learning. Such local strategy shall in-
clude—

(i) a description of how the local
strategy was developed in consultation with
the exclusive representative organization
for teachers in the school district or, where
there is no exclusive representative, teach-
ers who shall be selected by teachers in the
school district pursuant to a fair and
democratic election process open to all
teachers in the school district, principals,
and other school leaders, and teacher-edu-
cators;

(ii) the clear learning goals to be
achieved under the local strategy based on
student, teacher, and leader learning needs
and how they are aligned with the State
goals established in the comprehensive
college- and career-ready professional de-
development strategy described under section
136;

(iii) a description of the tools that will
be developed under the local strategy to
enable teachers to easily access college-
and career-ready professional development
materials and related resources, including
model lesson plans and assessments, and
other professional development materials
relevant to teacher practice;

(iv) a description of how the profes-
ional development provided with funds
under this section will—

(I) be delivered in a format that
is job-embedded, ongoing, sustained,
and collaborative;

(II) foster individual and collec-
tive responsibility for improving teach-
er effectiveness and student academic
achievement and provide ongoing op-
portunities for teachers to assess the
impact of teaching strategies on student learning and reflect on practice; and

(III) support the use of technology to personalize instruction and use technology for professional development, consistent with subsection (c)(3);

(v) a description of how the professional development provided with funds under this section will strengthen the ability of teachers to analyze student data, including through the use of a statewide longitudinal data system, if available, to adjust teaching strategies in a timely and effective manner and improve practice; and

(vi) a description of how external partners, including content area experts, nonprofit organizations (including institutions of higher education), and teacher preparation programs, will be included in the implementation of the local strategy.

(B) ASSURANCE.—Each application submitted under paragraph (2) shall include an assurance that—
(i) a minimum of 50 hours of relevant and high-quality professional development per school year will be provided to each teacher responsible for implementing, or assisting in the implementation of, college- and career-ready State standards, including opportunities for ongoing, job-embedded collaboration and participation in peer observations; and

(ii) participating local educational agencies and schools, in collaboration with the exclusive representative organization for teachers in the school district or, where there is no exclusive representative, teachers who shall be selected by teachers in the school district pursuant to a fair and democratic election process open to all teachers in the school district, will negotiate or agree to restructure or extend the length of the school day, week, or year, to accommodate additional professional development hours in a manner that meets the requirements of this subtitle over the course of the school year.
(b) PRIORITY.—In awarding subgrants under this section, an eligible entity shall give priority to local entities—

(1) that serves not fewer than 10,000 children as described in section 1124(c)(1)(A) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(c)(1)(A));

(2) for which not less than 20 percent of the children served by the local entity are children as described in section 1124(c)(1)(A) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(c)(1)(A));

(3) that meets the eligibility requirements for funding under the Small, Rural School Achievement Program under section 6211(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7345(b)); or

(4) that meets the eligibility requirements for funding under the Rural and Low-Income School Program under section 6221(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7351(b)).

(e) LOCAL USE OF FUNDS.—A local entity awarded a subgrant under this section shall use the subgrant funds to implement, in consultation with teachers or other rep-
resentative organizations selected or identified to rep-
resent the teachers, a local strategy, which shall include—

(1) assisting local educational agencies in imple-
menting college- and career-ready standards, specifi-
cally in the areas of increasing content area expertise, curriculum development and alignment, and as-
essment practices;

(2) creating and supporting a college- and ca-
reer-ready staff network;

(3) providing, to the extent practicable, a hy-
brid model for professional learning that combines
technology-based and in-person professional learning experiences and support, such as the use of a web-
based local, regional, or statewide instructional per-
formance support system that includes exemplary professional development activities, opportunities to participate in professional learning networks, training programs, technical assistance, and other profes-
sional development resources designed to support the successful implementation of college- and career-
ready standards;

(4) providing frequent and sustained opportuni-
ties for teachers to develop, implement, and assess—

(A) strategies for aligning the curriculum
with college- and career-ready standards, in-
cluding lesson planning and instructional strategies that reflect the rigor of the standards;

(B) instructional strategies, such as interdisciplinary or project-based learning approaches, that enhance students’ ability to think critically, problem-solve, complete complex tasks, conduct research and inquiry, communicate and demonstrate skills, and think independently;

(C) instructional strategies and assessments that meet the needs of English learners and children with disabilities; and

(D) formative students assessments and other student assessments that measure student mastery of the relevant college- and career-ready State standards;

(5) providing in-service activities for school principals and other school administrators that support instructional leadership around the implementation of college- and career-ready standards;

(6) changing the structure and length of the school day, week, or year, to allow for additional time for teacher collaboration, planning, and observation;
(7) coordinating or sharing information with pre-service teacher preparation programs to support the successful implementation of college- and career-ready State standards; and

(8) developing tools to assist teachers in evaluating student work.

(d) EVALUATION.—

(1) IN GENERAL.—Each local entity that receives a subgrant under this section shall reserve not less than 5 percent of the subgrant funds to—

(A) conduct an evaluation of the impact of the local strategy on teaching practice and student growth and learning; and

(B) inform continuous improvement of professional development activities.

(2) CONDUCT OF EVALUATION AND INFORMING IMPROVEMENT.—The activities described in subparagraphs (A) and (B) of paragraph (1) shall be conducted by an entity other than the local entity.

SEC. 139. REPORTING.

(a) STATE REPORTING.—Each eligible entity that receives a grant under section 135 shall annually, for each year of the grant, submit to the Secretary and make available to the public a report that shall include—
(1) information on the number of local educational agencies, schools, and teachers that received professional development supported with grant funds under section 135;

(2) the professional development activities funded under this subtitle; and

(3) a description of the impact of the comprehensive college- and career-ready professional development strategy, including results from the evaluation conducted under section 137(1)(A)(i)(I).

(b) REPORT TO CONGRESS.—The Secretary shall annually submit to Congress and make available to the public a summary of the eligible entity reports required under subsection (a).

(c) LOCAL REPORTING.—Each local entity that receives a subgrant under section 138 shall annually, for each year of the subgrant, submit to the eligible entity and make available to the public a report that shall include—

(1) information on the number of local educational agencies, schools, and teachers that received professional development supported with subgrant funds under section 138;

(2) the professional development activities funded under section 138; and
(3) a description of the impact of the local strategy, including results from the evaluation conducted under section 138(d).

SEC. 140. TEACHER PRIVACY.

No State or local educational agency shall be required to publicly report information in compliance with this subtitle in a case in which the results would reveal personally identifiable information about an individual teacher.

SEC. 141. RULE OF CONSTRUCTION.

Nothing in this section shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employees and their employers.

SEC. 142. FUNDING.

There shall be made available from the Rebuild America Trust Fund under section 9512 of the Internal Revenue Code of 1986, $2,000,000,000 for each of the fiscal years 2013 through 2017, to carry out this subtitle.
Subtitle E—Creating Middle Class Jobs

PART I—TEACHER STABILIZATION

SEC. 151. PURPOSE.

The purpose of this part is to provide funds to States to prevent teacher layoffs in public schools and support the creation of additional jobs in public early childhood education and care programs and public elementary and secondary education in the 2012–2013, 2013–2014, and 2014–2015 school years.

SEC. 152. DEFINITIONS.

(1) ESEA DEFINITIONS.—Except as otherwise provided, the terms “local educational agency”, “outlying area”, “Secretary”, and “State educational agency” have the meanings given those terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(2) EARLY CHILDHOOD EDUCATOR.—The term “early childhood educator” means an individual who—

(A) works directly with children in a State or local funded early childhood education and care program in a low-income community; and

(B) in the course of such employment, is involved directly in the care, development, and
education of infants, toddlers, or children ages 15 and under.

(3) State.—The term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(4) State funded early childhood program.—The term “State funded early childhood program” means a program that provides educational services to children from ages birth through kindergarten entry and receives funding from a State.

(5) State or local funded early childhood program.—The term “State or local funded early childhood program” means a program that provides educational services to children from ages birth through kindergarten entry and receives funding from a State or local government.

SEC. 153. RESERVATIONS FOR THE OUTLYING AREAS AND THE SECRETARY OF THE INTERIOR.

From the amount appropriated to carry out this part under section 159 for each fiscal year, the Secretary—

(1) shall reserve 0.5 percent to provide assistance to the outlying areas on the basis of their respective needs, as determined by the Secretary, for activities consistent with this part and under such
terms and conditions as the Secretary may determine; and

(2) shall reserve 0.5 percent to provide assistance to the Secretary of the Interior to carry out activities consistent with this part in schools operated or funded by the Bureau of Indian Education.

SEC. 154. STATE ALLOTMENTS.

(a) IN GENERAL.—From the amounts appropriated to carry out this part for a fiscal year that remain after the reservations under section 153, the Secretary shall allot to each State—

(1) an amount that bears the same relation to 60 percent of such remaining funds as the State’s population of individuals aged 5 through 17 bears to the total population of individuals aged 5 through 17 in all States; and

(2) an amount that bears the same relation to 40 percent on such remaining funds as the State’s population bears to the total population of all States.

(b) AWARDS TO STATES.—In order for a State to receive an allotment under subsection (a), the Governor of the State shall submit an approvable application under section 155(a).

(c) REALLOTMENT.—If a State does not apply for funding under this part or only uses a portion of its allot-
ment, the Secretary shall reallocate the State’s entire allotment or the remaining portion of its allotment, as the case may be, to the remaining States in accordance with subsection (a).

SEC. 155. STATE APPLICATION, RESERVATION, AND RESPONSIBILITIES.

(a) Application.—The Governor of a State desiring to receive a grant under this part shall submit an application to the Secretary not later than 30 days after the date of enactment of this Act, in such manner, and containing such information as the Secretary may reasonably require to determine the State’s compliance with applicable provisions of law.

(b) State Reservations, Allocations, and Responsibilities.—

(1) Reservation.—Each State receiving an allotment under this part may reserve, for each fiscal year—

(A) not more than 2 percent of the grant funds for the administrative costs of carrying out the State’s responsibilities under this part; and

(B) not more than 10 percent of the grant funds to award subgrants to State funded early childhood care and education programs to en-
able the programs to carry out the activities de-
scribed in section 156(b).

(2) **Allocations to Local Educational Agencies.**—From amounts remaining after reserv-
ing funds under paragraph (1), each State receiving
an allotment under this part for a fiscal year shall
use such remaining funds only for awarding sub-
grants to local educational agencies in the State for
the support of high-quality early childhood education
and care programs and elementary and secondary
education by allocating to each local educational
agency—

(A) an amount that bears the same rela-
tion to 35 percent of such remaining funds as
the number of students enrolled in the schools
served by the local educational agency bears to
the number of students enrolled in the schools
served by all local educational agencies in the
State; and

(B) an amount that bears the same rela-
tion to 65 percent of such remaining funds as
the number of individuals age 5 through 17
from families below the poverty line in the geo-
graphic area served by the local educational
agency, as determined by the Secretary on the
basis of the most recent satisfactory data, bears
to the total number of those individuals in the
geographic area served by all local educational
agencies in the State, as so determined.

(3) TIMING.—Each State receiving an allotment
under this part for a fiscal year shall make the sub-
grants described in paragraphs (1)(B) and (2) avail-
able to the subgrantees not later than 100 days
after receiving the allotment from the Secretary.

(4) PROHIBITIONS.—A State shall not use
funds received under this part to directly or indi-
rectly—

(A) establish, restore, or supplement a
rainy-day fund;

(B) supplant State funds in a manner that
has the effect of establishing, restoring, or
supplementing a rainy-day fund;

(C) reduce or retire debt obligations in-
curred by the State; or

(D) supplant State funds in a manner that
has the effect of reducing or retiring debt obli-
gations incurred by the State.
SEC. 156. SUBGRANTS.

(a) Local Educational Agency Responsibilities.—Each local educational agency that receives a subgrant under this part shall—

(1) use the subgrant funds only for compensation and benefits and other expenses, such as support services, necessary to retain existing employees, recall or rehire former employees, or hire new employees to provide high-quality early childhood education and care, elementary or secondary education, or related services;

(2) obligate such funds not later than September 30 of the fiscal year for which the funds are received; and

(3) not use such funds for general administrative expenses or for other support services or expenditures, as those terms are defined by the National Center for Education Statistics in the Common Core of Data as of the date of enactment of this Act.

(b) Early Childhood Education and Care Program Responsibilities.—Each State or local funded early childhood education and care program that receives a subgrant under this part shall—

(1) use the subgrant funds only for compensation, benefits, and other expenses, such as support
services, necessary to retain early childhood educators, recall or rehire former early childhood educators, or hire new early childhood educators to provide high-quality early childhood education and care services; and

(2) obligate such funds not later than September 30 of the fiscal year for which the funds are received.

SEC. 157. MAINTENANCE OF EFFORT.

(a) IN GENERAL.—The Secretary shall not award an allotment to a State under this part unless the State provides an assurance to the Secretary that, for each fiscal year of the grant, the State will maintain State support for early childhood education and care, elementary, and secondary education programs and services (in the aggregate or on the basis of expenditure per pupil) and for public institutions of higher education (not including support for capital projects or for research and development or tuition and fees paid by students) at not less than the level of such support for each of the 2 categories for the State fiscal year preceding the year for which the determination is being made.

(b) SUPPLEMENT NOT SUPPLANT.—A State educational agency or local educational agency shall use Federal funds received under this part only to supplement the
funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs assisted under this part, and not to supplant such funds.

(c) WAIVER.—The Secretary may waive the requirements of this section if the Secretary determines that a waiver would be equitable due to—

(1) exceptional or uncontrollable circumstances, such as a natural disaster; or

(2) a precipitous decline in the financial resources of the State.

SEC. 158. REPORTING.

Each State that receives an allotment under this part shall submit, on an annual basis, a report to the Secretary that contains—

(1) a description of how funds received under this part were expended or obligated; and

(2) an estimate of the number of jobs supported by the State using funds received under this part.

SEC. 159. FUNDING.

(a) IN GENERAL.—There shall be made available from the Rebuild America Trust Fund under section 9512 of the Internal Revenue Code of 1986, the following amounts to carry out this part:

(1) For fiscal year 2013, $30,000,000,000.
(2) For fiscal year 2014, $20,000,000,000.

(3) For fiscal year 2015, $10,000,000,000.

(b) Availability of Funds.—Funds made available under subsection (a) shall remain available to the Secretary until September 30, 2015.

PART II—FIRST RESPONDER STABILIZATION

SEC. 161. PURPOSE.

The purpose of this part is to provide funds to States and localities to prevent layoffs of, and support the creation of additional jobs for, law enforcement officers and other first responders.

SEC. 162. CAREER LAW ENFORCEMENT OFFICERS GRANT PROGRAM.

(a) In General.—The Attorney General shall make competitive grants under section 1701 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd) for the hiring, rehiring, or retention of career law enforcement officers under part Q of such title.

(b) Applicability of Grant Requirements.—Grants awarded under subsection (a) shall not be subject to—

(1) subsection (g) or (i) of section 1701 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd); or
(2) section 1704 of such Act (42 U.S.C. 3796dd–3).

(c) FUNDING.—

(1) IN GENERAL.—There shall be made available from the Rebuild America Trust Fund under section 9512 of the Internal Revenue Code of 1986, the following amounts to the Community Oriented Policing Stabilization Fund to enable the Attorney General to carry out the competitive grant program under this section:

(A) $4,000,000,000 for fiscal year 2013.

(B) $2,400,000,000 for fiscal year 2014.

(C) $800,000,000 for fiscal year 2015.

(2) LIMITATION.—Of the amounts made available pursuant to paragraph (1), not to exceed $8,000,000 shall be for administrative costs of the Attorney General.

SEC. 163. FIRST RESPONDER GRANT PROGRAM.

(a) IN GENERAL.—There shall be made available from the Rebuild America Trust Fund under section 9512 of the Internal Revenue Code of 1986, the following amounts to the Secretary of Homeland Security to award grants under section 34 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229a):

(1) $1,000,000,000 for fiscal year 2013.
(2) $600,000,000 for fiscal year 2014.

(3) $200,000,000 for fiscal year 2015.

(b) LIMITATION.—Of the amounts made available pursuant to subsection (a), not to exceed $2,000,000 shall be for administrative costs of the Secretary of Homeland Security.

(c) WAIVERS.—In making grants with amounts made available under subsection (a), the Secretary may grant waivers from the requirements in subsections (a)(1)(A), (a)(1)(B), (a)(1)(E), (c)(1), (c)(2), and (c)(4)(A) of section 34 of the Federal Fire Prevention and Control Act of 1974.

PART III—MAINTAINING CRITICAL COMMUNITY SERVICES

SEC. 171. DEFINITIONS.

In this part:

(1) BENEFITS.—The term “benefits” has the meaning given the term “employment benefits” in section 101 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611).

(2) EMPLOYEE COMPENSATION.—The term “employee compensation” includes wages and benefits.

(3) SECRETARY.—The term “Secretary” means the Secretary of Labor.
STATE.—The term “State” means any State of the United States and the Commonwealth of Puerto Rico.

UNIT OF GENERAL LOCAL GOVERNMENT.— The term “unit of general local government” means—

(A) any city, county, town, township, parish, village, or other general purpose political subdivision of a State;

(B) Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa, or a general purpose political subdivision thereof;

(C) a combination of such political subdivisions that is recognized by the Secretary; or

(D) the District of Columbia.

WAGE.—The term “wage” has the meaning given such term in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

SEC. 172. MAINTAINING CRITICAL COMMUNITY SERVICES.

(a) PROGRAM AUTHORIZED.—From the amount made available for this part under section 178 and not reserved under subsection (b), the Secretary of Labor, acting through the Employment and Training Administration and in consultation with the Secretary of Housing and Urban Development, shall award grants, on a competitive
basis in accordance with section 174, to units of general local government to save and create local jobs through the retention, restoration, or expansion of critical services needed by local communities.

(b) Reservations by the Secretary.—Of the amount made available for this part under section 178 for each fiscal year, the Secretary may reserve not more than 1 percent to administer this part.

SEC. 173. APPLICATION.

(a) Application.—In order to receive funds under this part for a fiscal year, a unit of general local government shall submit to the Secretary, at such time and in such manner as determined by the Secretary, an application that includes the information described in subsection (b) for such fiscal year.

(b) Contents.—An application submitted under subsection (a) shall include the following information:

(1) A certification by the unit of general local government of—

(A) the amount of funds requested by the unit of general local government;

(B) the number of individuals who will receive employee compensation with such funds; and
(C) whether the positions supported with
funds under this part will assist in retaining,
restoring, or expanding an existing local public
service.

(2) A statement documenting the need for the
critical services to be carried out by the individuals
hired for the positions.

(3) In the case of a unit of general local govern-
ment that desires to use funds received under this
part to continue to provide employee compensation
for existing employees of the unit, a statement docu-
menting the fiscal constraints of the unit that would
result in the termination or reduction of the posi-
tions of such employees.

(4) An assurance by the unit of general local
government that the unit will comply with all provi-
sions of this part and with all applicable Federal,
State, and local labor laws, including laws con-
cerning wages and hours, labor relations, family and
medical leave, occupational safety and health, and
nondiscrimination.

(5) Such additional information as the Sec-
retary determines necessary, including information
regarding the criteria described in section 174(a).
SEC. 174. AWARD BASIS.

(a) CRITERIA.—Subject to subsection (b), the Secretary shall award grants under this part by taking into consideration—

(1) the unemployment rate in the local community served by the unit of general local government;

(2) the poverty rate in such local community;

(3) the population of such local community;

(4) excess unemployment in such local community; and

(5) other factors as the Secretary determines necessary.

(b) MAXIMUM AMOUNT.—

(1) IN GENERAL.—In no case shall the ratio of the amount of grant funds awarded under this part to all units of general local government in the State, as compared to the total amount of grant funds available under this part, be greater than the ratio of the State’s population, as compared to the total population of all States and all areas described in paragraph (2).

(2) APPLICATION TO TERRITORIES AND THE DISTRICT OF COLUMBIA.—For the areas of Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the District of Columbia, in no case shall the ratio of the amount of grant funds
awarded to any such area, as compared to the total amount of grant funds available under this part, be greater than the ratio of the population of such area as compared to the total population of all States and all such areas.

(c) TIMING.—For each fiscal year, the Secretary shall award the grants under this part by not later than 30 days after the end of the application period.

SEC. 175. USES OF FUNDS.

(a) IN GENERAL.—A unit of general local government that receives a grant under this part—

(1) shall use the funds to provide employee compensation to retain or hire individuals to continue, restore, or expand public services; and

(2) may not use more than 5 percent for administrative purposes under the grant.

(b) NONDISPLACEMENT.—A unit of general local government may not employ an individual for a position funded under this part, if—

(1) employing such individual will result in the layoff or partial displacement (such as a reduction in hours, wages, or employee benefits) of an existing employee of the unit of general local government; or
(2) such individual will perform the same or substantially similar work that had previously been performed by an employee of the unit who—

(A) has been laid off or partially displaced (as such term is described in paragraph (1));

and

(B) has not been offered, by the unit or organization, to be restored to the position the employee had immediately prior to being laid off or partially displaced.

SEC. 176. EMPLOYEE STATUS, COMPLIANCE WITH LOCAL LAWS, AND CONTRACTS.

(a) EMPLOYEE STATUS.—An individual hired for a position funded under this part shall be considered an employee of the unit of general local government by which such individual was hired and receive the same employee compensation, have the same rights and responsibilities and job classifications, and be subject to the same job standards, employer policies, and collective bargaining agreements as if such individual was hired without assistance under this part.

(b) COMPLIANCE WITH LOCAL LAWS AND CONTRACTS.—In hiring individuals for positions funded under this part, or using funds under this part to continue to provide employee compensation for existing employees, a
unit of general local government shall comply with all applicable Federal, State, and local laws, personnel policies and regulations, and collective bargaining agreements, as if such individual was hired, or such employee compensation was provided, without assistance under this part.

SEC. 177. SUPPLEMENT, NOT SUPPLANT.

Funds made available under this part shall be used to supplement, and not supplant, other Federal, State, and local funds that would otherwise be expended to carry out activities under this part.

SEC. 178. FUNDING PROVIDED.

There shall be made available from the Rebuild America Trust Fund under section 9512 of the Internal Revenue Code of 1986, the following amounts to enable the Secretary of Labor to carry out the purposes of this part:

17 (1) $5,000,000,000 for fiscal year 2013.
18 (2) $5,000,000,000 for fiscal year 2014.
TITLE II—CREATING FINANCIAL STABILITY AND A BETTER FUTURE FOR MIDDLE CLASS FAMILIES

Subtitle A—Alleviating the High Cost of Child Care

SEC. 201. CCDBG PLUS.

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE CHILD.—The term “eligible child” means a child who has not attained the age of 13 and whose family income is equal to or less than the State median income for a family of the same size.

(2) LOW-INCOME.—The term “low-income”, when used in reference to an individual, means an individual with a family income that is less than or equal to 200 percent of the poverty line, as defined in section 673 of the Community Services Block Grant Act (42 U.S.C. 9902), applicable to a family of the size involved.

(3) SECRETARY.—The term “Secretary” means the Secretary of Health and Human Services.

(4) STATE.—The term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.
(b) Program Authorized.—

(1) In general.—The Secretary of Health and Human Services is authorized to award grants, in allotments described in subsection (c)(2), to States to enable the States to increase the availability of high-quality early childhood care and education programs to enable more people of the United States to enter into and advance within the middle class.

(2) Duration of grant.—A grant awarded under this section shall be for a period of not more than 5 years.

(3) Contingent funding.—After the third year of the grant period of a grant under this section, funding for each additional year of the grant period shall be contingent on the State’s progress toward meeting the performance indicators and benchmarks established under subsection (g).

(4) Eligibility.—In order to receive an allotment under this section, a State shall establish or certify, to the satisfaction of the Secretary, that the State’s payments for the grant or contracts to provide early childhood care and education programs under subsection (f)(1) are sufficient to ensure that programs and providers that serve eligible children
from birth through age 5 can meet the standards est-
established under subsection (f)(2).

(c) Amounts Reserved; Allotments.—

(1) Reservations.—From the amounts appro-
priated to carry out this section, the Secretary shall
reserve—

(A) 2 percent of such amounts to make
grants or enter into contracts with Indian tribes
or tribal organizations (as such terms are de-
defined in section 658P of the Child Care Devel-
opment Block Grant Act of 1990 (42 U.S.C.
9858n)) for programs or activities consistent
with the purposes of this section; and

(B) 0.5 percent of such amounts to award
grants to Guam, American Samoa, the Virgin
Islands of the United States, and the Common-
wealth of the Northern Mariana Islands for
programs or activities consistent with the pur-
poses of this section, to be allotted in accord-
ance with their respective needs.

(2) Allotments.—From the amounts appro-
priated to carry out this section and not reserved
under paragraph (1), the Secretary shall make allot-
ments to each eligible State with an approved appli-
cation using the formula established under section
6580(b) of the Child Care Development Block Grant Act of 1990 (42 U.S.C. 9858m(b)), except that any calculation in such formula that refers all States shall, for purposes of this section, be calculated based on all eligible States that have submitted an approved application.

(d) Application.—

(1) In general.—A State desiring a grant under this section shall submit an application at such time, in such manner, and containing such information as the Secretary may require, including the following:

(A) A description of how, by not later than 3 years after the date of receipt of the grant, the State will ensure the health and safety of early childhood care and education programs by inspecting and monitoring all regulated child care providers in the State not less than 2 times each year, in accordance with subsection (e)(2).

(B) A description of the process the State proposes to use to ensure that investments made to increase access to programs providing high-quality early childhood care and education programs are prioritized first in local economic
areas with significant concentrations of poverty and unemployment that do not have such programs.

(C) A description of the strategies the State will employ to build on the capacity of State early childhood care and education programs, and communities, to promote parents’ and families’ understanding of the State’s early childhood care and education system and the importance of high-quality early learning opportunities.

(D) A description of the proposed time-frame to develop and implement the elements of the grant program described in the application.

(E) An assurance that the grant funds will only be used to supplement, and not to supplant, Federal, State, and local funds otherwise available to support existing (as of the date of the application) early childhood care and education programs described in subsection (e)(3).

(F) A certification that the State will provide assistance for the provision of early childhood care and education programs under subsection (f), and provides assistance for child care services under the Child Care and Develop-
ment Block Grant Act of 1990 (42 U.S.C. 9858 et seq.), for families by using a sliding fee scale that provides for cost sharing by the families, in order to prioritize increasing the number and percentage of low-income and otherwise dis-advantaged children and families in high-quality early childhood care and education programs described in subsection (e)(3).

(G) An assurance that the State will peri-
odically revise the sliding fee scale used to pro-
vide assistance under this section.

(H) A description of how the State will co-
ordinate the program supported under this sec-
tion with the program supported under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.), Head Start and Early Head Start programs under the Head Start Act (42 U.S.C. 9832), the 21st cen-
tury community learning center program under part B of title IV of the Elementary and Sec-
ondary Education Act of 1965 (20 U.S.C. 7171 et seq.), part C and section 619 of the Individ-
uals with Disabilities Education Act (20 U.S.C. 1431 et seq.), and, as applicable, activities funded under the Race to The Top-Early

(2) CONSULTATION.—A State shall develop its application under this subsection in consultation with the State Advisory Council on Early Education and Care established pursuant to section 642B(b)(1)(A) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)).

(e) USE OF FUNDS.—A State that receives a grant under this section shall use grant funds to carry out the following:

(1) RESERVATION FOR ENHANCING CHILD CARE QUALITY.—The State shall reserve 10 percent of the grant funds to support—

(A) activities that enhance the skills, knowledge, credentials, and compensation of the child care workforce, including in ways that support career advancement through career ladders; and

(B) other activities to enhance child care quality and support child care providers, including family child care providers, in meeting the standards described in subsection (f)(2).
(2) USE FOR INSPECTION AND MONITORING.—From the amount of grant funds remaining after the reservation under paragraph (1), the State shall use not less than 10 percent of funds to ensure that the State inspects and monitors all State-regulated child care providers, to include site visits not less frequently than 2 times each year. At a minimum, 1 such visit shall address health and safety and 1 visit shall address child care quality, and at least 1 of the visits shall be unannounced.

(3) USE FOR SUBSIDIES FOR EARLY CHILDHOOD CARE AND EDUCATION PROGRAMS.—From the amount of grant funds remaining after carrying out paragraphs (1) and (2), the State shall make high-quality early childhood care and education programs more affordable to families of eligible children by—

(A) using two-thirds of such remaining amounts to provide assistance for the provision of high-quality early childhood care and education programs under subsection (f) for eligible children who are infants and toddlers; and

(B) using the remaining funds to provide assistance for eligible children who have not attained the age of 13 for the provision of high-quality early childhood care and education pro-
grams (which, for purposes of serving school-age children under this subparagraph, shall be deemed to include high-quality after-school programs) under subsection (f).

(f) More Affordable Quality Child Care.—

(1) In General.—To provide the assistance described in subsection (e)(3), a State shall award grants or contracts to eligible providers that allow parents of eligible children who are provided assistance under this section to enroll such children with the eligible providers in high-quality early childhood care and education programs described in such subsection.

(2) Eligible Providers.—

(A) In General.—In order for a provider that serves eligible children from birth through age 5 to be an eligible provider for purposes of this section, the provider shall be a child care center, Head Start or Early Head Start program, or family child care home or system that—

(i) offers full-day, full-year care or before- or after-school care; and

(ii)(I) meets Head Start program performance standards, or standards estab-
lished for the top tier of a State’s quality rating and improvement system, as appropriate; or

(II) is accredited by a national early childhood body with demonstrated valid and reliable program standards of high quality.

(B) SPECIAL RULE.—The Secretary may adjust the requirements of subparagraph (A), to the extent the Secretary determines necessary to carry out the purposes of this section, for high-quality early childhood care and education programs providing care to eligible children during nontraditional hours.

(3) SUPPORT FOR CHILDREN WITH DISABILITIES.—Not less than 15 percent of the funds described in each of subparagraphs (A) and (B) of subsection (e)(3) shall be used to support high-quality early childhood care and education programs through eligible providers for eligible children who are children with disabilities, as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401), or infants or toddlers with disabilities, as defined in section 632 of such Act (20 U.S.C. 1432).
(4) Support for quality care during non-traditional hours.—Not less than 10 percent of the funds described in each of subparagraphs (A) and (B) of subsection (e)(3) shall be used to support the provision of high-quality early childhood care and education programs described in such subsection to eligible children during nontraditional hours.

(g) Accountability.—

(1) In general.—The Secretary shall define, by regulation, indicators to be used to measure success on the activities carried out under a grant under this section, the primary indicator of which shall be increasing the number and percentage of low-income children in high-quality, State early childhood care and education programs, as described in subsection (e)(3).

(2) Quantifiable benchmarks.—Each State receiving a grant under this section shall—

(A) develop quantifiable benchmarks for the State and the activities supported under the grant based on indicators described in paragraph (1) that are applicable to the State; and

(B) submit such benchmarks for approval to the Secretary.
(3) DISAGGREGATION.—The indicators and benchmarks shall include, at a minimum, indicators and benchmarks for all eligible children served by the program and for the categories of children described in paragraphs (2), (3), and (4) of subsection (i).

(h) MAINTENANCE OF EFFORT.—With respect to each period for which a State is awarded a grant under this section, the expenditures by the State on State early childhood care and education programs described in subsection (e)(3), and supports, shall not be less than the greater of the level of the expenditures for such programs and supports in the prior fiscal year or in the full fiscal year preceding the date of enactment of the Rebuilding America Act.

(i) REPORTS.—Each State that receives a grant under this section shall submit to the Secretary an annual report, which the Secretary shall make publicly available, that includes information on the activities carried out by the State under this section for the year, including—

(1) the number of eligible children, and families, that were assisted under this section;

(2) the number and percentage of low-income children assisted;
(3) the number and percentage of English learners assisted;

(4) the number and percentage of children with disabilities assisted; and

(5) the number of early childhood care and education programs, as described in subsection (e)(3) and disaggregated by type, that received assistance under this section.

(j) **FUNDING.**—There shall be made available from the Rebuild America Trust Fund under section 9512 of the Internal Revenue Code of 1986, $5,000,000,000 for each of fiscal years 2013 through 2022 to carry out this section.

(k) **SUNSET PROVISION.**—The authority under this section shall expire on the date that is 10 years after the date of enactment of this Act.

**Subtitle B—Helping Americans Enjoy Their Golden Years**

**PART I—COMMISSION ON RETIREMENT SECURITY**

**SEC. 211. SHORT TITLE.**

This part may be cited as the “Retirement Security Act of 2012”.

**SEC. 212. FINDINGS.**

Congress makes the following findings:
(1) The United States is facing a retirement crisis. The difference between what people need for retirement and what they actually have is approximately $6,600,000,000,000.

(2) Social Security is the bedrock of retirement security, but Social Security must be supplemented by a strong and vibrant private retirement system.

(3) The private retirement system is not doing enough to help families prepare for retirement. Only ½ of the workforce has access to an employer provided retirement plan, and the number of workers covered by defined benefit pension plans has fallen from 50 percent to 20 percent in just 30 years. Consequently, retirement is getting less and less secure for middle class families.

(4) In order to address the retirement crisis, the United States needs a retirement system that embodies the following principles:

   (A) The private retirement system must be universal and automatic.

   (B) The private retirement system must provide people with income certainty.

   (C) The private retirement system must be one of shared responsibility.
(D) The private retirement system must be pooled and professionally managed.

SEC. 213. COMMISSION ON RETIREMENT SECURITY.

(a) Establishment.—There is established a commission to be known as the “Commission on Retirement Security” (referred to in this part as the “Commission”).

(b) Membership.—

(1) In general.—The Commission shall be composed of 31 members. Such members shall be appointed in accordance with the following:

(A) Two members appointed by the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate.

(B) Two members appointed by the Ranking Member of the Committee on Health, Education, Labor, and Pensions of the Senate.

(C) Two members appointed by the Chairman of the Committee on Finance of the Senate.

(D) Two members appointed by the Ranking Member of the Committee on Finance of the Senate.

(E) Two members appointed by the Chairman of the Committee on Education and the Workforce of the House of Representatives.
(F) Two members appointed by the Ranking Member of the Committee on Education and the Workforce of the House of Representatives.

(G) Two members appointed by the Chairman of the Committee on Ways and Means of the House of Representatives.

(H) Two members appointed by the Ranking Member of the Committee on Ways and Means of the House of Representatives.

(I) Fifteen members appointed by the President from among officers or employees of the Executive Branch, private citizens of the United States, or both. Not more than 8 such members appointed by the President may be from 1 political party.

(2) DATE OF APPOINTMENTS.—The appointment of a member of the Commission shall be made not later than 30 days after the date of enactment of this Act.

(c) TERM; VACANCIES.—

(1) TERM.—A member shall be appointed for the life of the Commission.

(2) VACANCIES.—A vacancy on the Commission—
(A) shall not affect the powers of the Com-
mission; and

(B) shall be filled in the same manner as
the original appointment was made.

(d) INITIAL MEETING.—Not later than 15 days after
the date on which all members of the Commission have
been appointed, the Commission shall hold the initial
meeting of the Commission.

(e) MEETINGS.—The Commission shall meet at the
call of the co-chairpersons. Meetings shall be open to the
public unless designated otherwise by the co-chairpersons.

(f) QUORUM.—A majority of the members of the
Commission shall constitute a quorum, but a lesser num-
ber of members may hold hearings.

(g) CO-CHAIRPERSONS.—The Chairman of the Com-
mittee on Health, Education, Labor, and Pensions of the
Senate and the Chairman of the Committee on Education
and the Workforce of the House of Representatives shall
each select 1 member to be co-chairperson of the Com-
mission.

SEC. 214. DUTIES.

(a) REVIEW AND ANALYSIS.—The Commission
shall—

(1) review relevant analyses of the private re-
tirement system;
(2) identify problems that threaten retirement security; and

(3) analyze potential solutions to such problems.

(b) RECOMMENDATIONS.—The Commission shall develop recommendations on improving the private retirement system in the United States.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit to Congress a report that contains—

1. a detailed statement of the findings and conclusions of the Commission; and

2. the recommendations of the Commission for such legislation (which shall include proposed legislative language) and administrative actions as the Commission considers appropriate.

SEC. 215. COMMISSION PERSONNEL MATTERS.

(a) NO COMPENSATION OF MEMBERS.—Members of the Commission shall serve without compensation.

(b) TRAVEL EXPENSES.—A member of the Commission who is not an officer or employee of the Federal Government shall be allowed travel expenses, including per diem in lieu of subsistence, while away from their homes or regular places of business in the performance of services for the Commission in the same manner as persons em-
ployed intermittently in the Government service are al-
lowed such expenses under section 5703 of title 5, United
States Code.

(c) STAFF.—

(1) IN GENERAL.—The co-chairpersons of the
Commission may, without regard to the civil service
laws (including regulations), appoint and terminate
an executive director and such other additional per-
sonnel as are necessary to enable the Commission to
perform the duties of the Commission.

(2) CONFIRMATION OF EXECUTIVE DIREC-
TOR.—The employment of an executive director shall
be subject to confirmation by the Commission.

(3) COMPENSATION.—

(A) IN GENERAL.—Except as provided in
subparagraph (B), the co-chairpersons of the
Commission may fix the compensation of the
executive director and other personnel without
regard to the provisions of chapter 51 and sub-
chapter III of chapter 53 of title 5, United
States Code, relating to classification of posi-
tions and General Schedule pay rates.

(B) MAXIMUM RATE OF PAY.—The rate of
pay for the executive director and other per-
sonnel shall not exceed the rate payable for
level V of the Executive Schedule under section 5316 of title 5, United States Code.

(d) **Detail of Federal Government Employees.**—

(1) **In general.**—An employee of the Federal Government may be detailed to the Commission without reimbursement.

(2) **Civil service status.**—The detail of the employee shall be without interruption or loss of civil service status or privilege.

(e) **Procurement of Temporary and Intermittent Services.**—The co-chairpersons of the Commission may procure temporary and intermittent services in accordance with section 3109(b) of title 5, United States Code, at rates for individuals that 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 that title.

**SEC. 216. TERMINATION OF COMMISSION.**

The Commission shall terminate 30 days after the date on which the Commission submits the report of the Commission under section 214(c).
PART II—SOCIAL SECURITY

SEC. 221. DETERMINATION OF TAXABLE WAGES AND SELF-EMPLOYMENT INCOME ABOVE CONTRIBUTION AND BENEFIT BASE AFTER 2012.

(a) Determination of Taxable Wages Above Contribution and Benefit Base After 2012.—

(1) Amendments to the internal revenue code of 1986.—Section 3121 of the Internal Revenue Code of 1986 is amended—

(A) in subsection (a)(1), by inserting “the applicable percentage (determined under subsection (c)(1)) of” before “that part of the remuneration”; and

(B) in subsection (c), by striking “(c) INCLUDED AND EXCLUDED SERVICE.—For purposes of this chapter, if” and inserting the following:

“(c) SPECIAL RULES FOR WAGES AND EMPLOYMENT.—

“(1) APPLICABLE PERCENTAGE OF REMUNERATION IN DETERMINING TAXABLE WAGES.—For purposes of subsection (a)(1), the applicable percentage for a calendar year shall be equal to—

“(A) for 2013, 90 percent;

“(B) for 2014 through 2021, the applicable percentage under this paragraph for the
previous year, decreased by 10 percentage points; and

“(C) for 2022 and each year thereafter, 0 percent.

“(2) INCLUDED AND EXCLUDED SERVICE.—For purposes of this chapter, if

(2) AMENDMENTS TO THE SOCIAL SECURITY ACT.—Section 209 of the Social Security Act (42 U.S.C. 409) is amended—

(A) in subsection (a)(1)(I)—

(i) by inserting “and before 2013” after “1974”; and

(ii) by inserting “and” after the semi-colon;

(B) in subsection (a)(1), by adding at the end the following new subparagraph:

“(J) The applicable percentage (determined under subsection (l)) of that part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to the contribution and benefit base (determined under section 230) with respect to employment has been paid to an individual during any calendar year after 2012 with respect to which such con-
tribution and benefit base is effective, is paid to such individual during such calendar year;”;
and
(C) by adding at the end the following new subsection:
“(l) For purposes of subsection (a)(1)(J), the applicable percentage for a calendar year shall be equal to—
“(1) for 2013, 90 percent;
“(2) for 2014 through 2021, the applicable percentage under this subsection for the previous year, decreased by 10 percentage points; and
“(3) for 2022 and each year thereafter, 0 percent.”.

(3) Effective date.—The amendments made by this subsection shall apply with respect to remuneration paid in calendar years after 2012.

(b) Determination of Taxable Self-Employment Income Above Contribution and Benefit Base After 2012.—

(1) Amendments to the internal revenue code of 1986.—Section 1402 of the Internal Revenue Code of 1986 is amended—
(A) in subsection (b)(1), by striking “that part of the net earnings” and all that follows through “minus” and inserting the following:
“an amount equal to the applicable percentage
(as determined under subsection (d)(2)) of that
part of the net earnings from self-employment
which is in excess of the difference (not to be
less than zero) between (i) an amount equal to
the contribution and benefit base (as deter-
mined under section 230 of the Social Security
Act) which is effective for the calendar year in
which such taxable year begins, and”; and

(B) in subsection (d)—

(i) by striking “(d) EMPLOYEE AND
WAGES.—The term” and inserting the fol-
lowing:

“(d) RULES AND DEFINITIONS.—

“(1) EMPLOYEE AND WAGES.—The term”; and

(ii) by adding at the end the fol-
lowing:

“(2) APPLICABLE PERCENTAGE OF NET EARN-
INGS FROM SELF-EMPLOYMENT IN DETERMINING
TAXABLE SELF-EMPLOYMENT INCOME.—For pur-
poses of subsection (b)(1), the applicable percentage
for a taxable year beginning in any calendar year re-
ferred to in such paragraph shall be equal to—

“(A) for 2013, 90 percent;
“(B) for 2014 through 2021, the applicable percentage under this paragraph for the previous year, decreased by 10 percentage points; and

“(C) for 2022 and each year thereafter, 0 percent.”.

(2) AMENDMENTS TO THE SOCIAL SECURITY ACT.—Section 211 of the Social Security Act (42 U.S.C. 411) is amended—

(A) in subsection (b)—

(i) in paragraph (1)(I)—

(I) by striking “or” after the semicolon; and

(II) by inserting “and before 2013” after “1974”;

(ii) by redesignating paragraph (2) as paragraph (3); and

(iii) by inserting after paragraph (1) the following:

“(2) For any taxable year beginning in any calendar year after 2012, an amount equal to the applicable percentage (as determined under subsection (l)) of that part of net earnings from self-employment which is in excess of the difference (not to be less than zero) between—
“(A) an amount equal to the contribution and benefit base (as determined under section 230) that is effective for such calendar year, and

“(B) the amount of the wages paid to such individual during such taxable year; or”; and

(B) by adding at the end the following:

“(l) For purposes of subsection (b)(2), the applicable percentage for a taxable year beginning in any calendar year referred to in such paragraph shall be equal to—

“(1) for 2013, 90 percent;

“(2) for 2014 through 2021, the applicable percentage under this subsection for the previous year, decreased by 10 percentage points; and

“(3) for 2022 and each year thereafter, 0 percent.”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to taxable years beginning during or after calendar year 2013.

SEC. 222. ADJUSTMENTS TO BEND POINTS IN DETERMINING PRIMARY INSURANCE AMOUNT.

(a) IN GENERAL.—Section 215(a)(1) of the Social Security Act (42 U.S.C. 415(a)(1)) is amended—

(1) in subparagraph (A)—
(A) in clause (ii), by striking “and” at the end;

(B) in clause (iii), by striking the comma at the end and inserting the following: “but do not exceed the amount established for purposes of this clause by subparagraph (B), and”; and

(C) by adding at the end the following new clause:

“(iv) 5 percent of the individual’s average indexed monthly earnings to the extent that such earnings exceed the amount established for purposes of clause (iii),”; and

(2) in subparagraph (B)—

(A) in clause (i), by striking “clause (i) and (ii) of subparagraph (A) shall be $180 and $1,085” and inserting “clauses (i), (ii), and (iii) of subparagraph (A) shall be $180, $1,085, and $2,000”;

(B) by redesignating clause (iii) as clause (iv); and

(C) by inserting after clause (ii) the following new clause:

“(iii) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming eligible for such benefits)
in any calendar year after 2012, the amount determined under clause (i) of this subparagraph for purposes of subparagraph (A)(i) for such calendar year shall be increased by—

“(I) for calendar year 2013, 1.5 percent;
“(II) for each of calendar years 2014 through 2021, the percent determined under this clause for the preceding year increased by 1.5 percentage points; and
“(III) for calendar year 2022 and each year thereafter, 15 percent.”.

(b) TECHNICAL AMENDMENT.—Section 215(e)(1) of such Act (42 U.S.C. 415(e)(1)) is amended—

(1) by striking “before 1975, and the excess” and inserting “before 1975, the excess”; and

(2) by inserting “and for years after 2012, the amount of remuneration and net earnings from self-employment paid to or derived by such individual during such year after application of sections 209(a)(1)(J) and 211(b)(2),” after “such contribution and benefit base is effective,”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to individuals who initially become eligible (within the meaning of section 215(a)(3)(B) of the Social Security Act) for old-age or dis-
ability insurance benefits under title II of the Social Security Act, or who die (before becoming eligible for such benefits), in any calendar year after 2012.

SEC. 223. CONSUMER PRICE INDEX FOR ELDERLY CONSUMERS.

(a) In General.—The Bureau of Labor Statistics of the Department of Labor shall prepare and publish an index for each calendar month to be known as the “Consumer Price Index for Elderly Consumers” that indicates changes over time in expenditures for consumption which are typical for individuals in the United States who have attained early retirement age (as defined under section 216(l)(2) of the Social Security Act (42 U.S.C. 416(l)(2)), for purposes of an old-age, wife’s, or husband’s insurance benefit).

(b) Effective Date.—Subsection (a) shall apply with respect to calendar months ending on or after June 30 of the calendar year in which this Act is enacted.

(c) Authorization of Appropriations.—There are authorized to be appropriated such sums as are necessary to carry out the provisions of this section.

SEC. 224. COMPUTATION OF COST-OF-LIVING INCREASES FOR SOCIAL SECURITY BENEFITS.

(a) In General.—Section 215(i) of the Social Security Act (42 U.S.C. 415(i)) is amended—
(1) in paragraph (1)(G), by inserting before the period the following: “, and, with respect to any monthly insurance benefit payable under this title, effective for adjustments under this subsection to the primary insurance amount on which such benefit is based (or to any such benefit under section 227 or 228), the applicable Consumer Price Index shall be deemed to be the Consumer Price Index for Elderly Consumers and such primary insurance amount shall be deemed adjusted under this subsection using such Index”; and

(2) in paragraph (4), by striking “and by section 9001” and inserting “, by section 9001”, and by inserting after “1986,” the following: “and by section 224(a) of the Rebuild America Act,”.

(b) CONFORMING AMENDMENTS IN APPLICABLE FORMER LAW.—Section 215(i)(1)(C) of the Social Security Act, as in effect in December 1978 and applied in certain cases under the provisions of such Act in effect after December 1978, is amended by inserting before the period the following: “, and, with respect to any monthly insurance benefit payable under this title, effective for adjustments under this subsection to the primary insurance amount on which such benefit is based (or to any such benefit under section 227 or 228), the applicable Con-
sumer Price Index shall be deemed to be the Consumer Price Index for Elderly Consumers and such primary insurance amount shall be deemed adjusted under this subsection using such Index’.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to determinations made by the Commissioner of Social Security under section 215(i)(2) of the Social Security Act (42 U.S.C. 415(i)(2)), with respect to cost-of-living computation quarters ending on or after September 30, 2013.

SEC. 225. NON-APPLICATION OF INCREASE IN SOCIAL SECURITY BENEFITS FOR OTHER FEDERAL OR FEDERALLY ASSISTED PROGRAMS.

Any increase in old-age or disability insurance benefits under title II of the Social Security Act as a result of the amendments made by this Act shall not be regarded as income and shall not be regarded as a resource for any month after December 2012, 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.
Subtitle C—Protecting Overtime Pay for Working Americans

SEC. 231. SALARY THRESHOLDS, HIGHLY COMPENSATED EMPLOYEES, AND PRIMARY DUTIES.

(a) SALARY THRESHOLDS FOR EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES.—Section 13 of the Fair Labor Standards Act of 1938 (29 U.S.C. 213) is amended—

(1) in subsection (a)(1), by inserting before “; or” the following: “, subject to the requirement that any employee who the Secretary determines is required to be paid on a salary or fee basis in order to be exempt under this subsection shall, in order to be exempt, be compensated at a rate of not less than the salary rate (or equivalent fee basis) determined under subsection (k)”; and

(2) by adding at the end the following:

“(k) SALARY RATES.—

“(1) IN GENERAL.—The salary rate (or equivalent fee basis) determined under this subsection for purposes of subsection (a)(1) shall be—

“(A) beginning 1 year after the first day of the third month that begins after the date of enactment of the Rebuild America Act, $655 per week;
“(B) beginning 2 years after that first day, $855 per week;

“(C) beginning 3 years after that first day, $1,045 per week; and

“(D) beginning on the date that is 4 years after that first day, and on that first day in each succeeding year, an adjusted amount that is—

“(i) not less than the amount in effect under this paragraph on the day before the date the adjustment is being made;

“(ii) increased from such amount by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers; and

“(iii) rounded to the nearest multiple of $1.00.

“(2) SPECIAL RULE.—Notwithstanding paragraph (1), for any employee for whom the minimum wage would otherwise be determined pursuant to section 8103(b) of the Fair Minimum Wage Act of 2007 (29 U.S.C. 206 note), the Secretary may determine, through regulations, the salary rate (or equivalent fee basis).”.

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(b) **Definitions.**—Section 13 of the Fair Labor Standards Act of 1938 (as amended by subsection (a)) (29 U.S.C. 213) is further amended by adding at the end the following:

“(l) **Definitions.**—

“(1) **Annual percentage increase; consumer price index.**—For purposes of this section—

“(A) the term ‘annual percentage increase’, when used in reference to the Consumer Price Index for Urban Wage Earners and Clerical Workers, means the annual percentage increase calculated by the Secretary under section 6(h)(2), as amended by section 231 of the Rebuild America Act; and

“(B) the term ‘Consumer Price Index for Urban Wage Earners and Clerical Workers’ means the Consumer Price Index for Urban Wage Earners and Clerical Workers (United States city average, all items, not seasonally adjusted), or its successor publication, as determined by the Bureau of Labor Statistics.

“(2) **Primary duty.**—For purposes of paragraphs (1) and (17) of subsection (a), including the regulations interpreting such paragraphs, any ref-
ereference to the term ‘primary duty’ (or a successor term) when used with respect to determining if an employee is employed in a bona fide executive, administrative, or professional capacity, or in a position described in subsection (a)(17), means the duty that an employee spends more than 50 percent of the employee’s work hours per week performing.”.

(c) **HIGHLY COMPENSATED EMPLOYEES.**—

(1) **IN GENERAL.**—If the Secretary of Labor, in the Secretary’s discretion, determines that an employee may be exempt for purposes of section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)), as a highly compensated employee (as such term is defined and delimited by the Secretary), then the level of total annual compensation necessary for such exemption shall be—

(A) for the calendar year that includes the effective date of this subsection, $120,000; and

(B) for each succeeding calendar year, an adjusted amount that is—

(i) not less than the amount in effect under this paragraph on the day before the date such adjustment is being made;

(ii) increased from such amount by the annual percentage increase in the Con-
sumer Price Index for Urban Wage Earn-
ers and Clerical Workers; and

(iii) rounded to the nearest multiple of

$1.00.

(2) DEFINITIONS.—For purposes of this sub-
section, the terms “annual percentage increase” and

“Consumer Price Index for Urban Wage Earners
and Clerical Workers” have the meanings given the
terms in section 13(l) of the Fair Labor Standards
Act of 1938 (29 U.S.C. 213(l)), as added by sub-
section (b).

(3) RULE OF CONSTRUCTION.—Nothing in this
subsection or the regulations promulgated by the
Secretary of Labor under this subsection shall over-
ride any provision of a collective bargaining agree-
ment that provides for overtime employment com-
pensation, or rights to such compensation, that ex-
ceed the requirements of the Fair Labor Standards
Act of 1938 (29 U.S.C. 201 et seq.).

(d) PUBLICATION OF NOTICE.—Not later than 60
days before the date any increase in the salary rate (or
equivalent fee basis) required under section 13(k)(1)(D)
213(a)(k)(1)(D)) takes effect, or any increase in the
amount of compensation required for highly compensated
employee exemption required under subsection (e) takes

effect, the Secretary of Labor shall publish, in the Federal
Register and on the website of the Department of Labor,
a notice announcing the adjusted salary rate (or equiva-

tent fee basis) requirement or adjusted amount of com-

pensation, respectively. The provisions of section 553 of
title 5, United States Code, shall not apply to any notice
required under this subsection.

(e) EFFECTIVE DATE.—This section, and the amend-
ments made by this section, shall take effect on the date
that is 1 year after the first day of the third month that
begins after the date of enactment of the Rebuild America
Act.

Subtitle D—Preventing Americans
From Having To Choose Be-
tween Their Health and Their
Paycheck

SEC. 241. SHORT TITLE.

This subtitle may be cited as the “Healthy Families
Act”.

SEC. 242. FINDINGS.

Congress makes the following findings:

(1) Working Americans need time to meet their

own health care needs and to care for family mem-

bers, including their children, spouse, parents, and
parents-in-law, and other children and adults for whom they are caregivers.

(2) Health care needs include preventive health care, diagnostic procedures, medical treatment, and recovery in response to short- and long-term illnesses and injuries.

(3) Providing employees time off to meet health care needs ensures that they will be healthier in the long run. Preventive care helps avoid illnesses and injuries and routine medical care helps detect illnesses early and shorten their duration.

(4) When parents are available to care for their children who become sick, children recover faster, more serious illnesses are prevented, and children’s overall mental and physical health improve. In a 2009 study published in the American Journal of Public Health, 81 percent of parents of a child with special health care needs reported that taking leave from work to be with their child had a “good” or “very good” effect on their child’s physical health. Similarly, 85 percent of parents of such a child found that taking such leave had a “good” or “very good” effect on their child’s emotional health.

(5) When parents cannot afford to miss work and must send children with contagious illnesses to
child care centers or schools, infection can spread rapidly through child care centers and schools.

(6) Providing paid sick time improves public health by reducing infectious disease. Policies that make it easier for sick adults and children to be isolated at home reduce the spread of infectious disease.

(7) Routine medical care reduces medical costs by detecting and treating illness and injury early, decreasing the need for emergency care. These savings benefit public and private payers of health insurance, including private businesses.

(8) The provision of individual and family sick time by large and small businesses, both here in the United States and elsewhere, demonstrates that policy solutions are both feasible and affordable in a competitive economy. A 2009 study by the Center for Economic and Policy Research found that, of 22 countries with comparable economies, the United States was 1 of only 3 countries that did not provide any paid time off for workers with short-term illnesses.

(9) Measures that ensure that employees are in good health and do not need to worry about unmet
family health problems help businesses by promoting productivity and reducing employee turnover.

(10) The American Productivity Audit completed in 2003 found that lost productivity due to illness costs $226,000,000,000 annually, and that 71 percent of that cost stems from presenteeism, the practice of employees coming to work despite illness. Studies in the Journal of Occupational and Environmental Medicine, the Employee Benefit News, and the Harvard Business Review show that presenteeism is a larger productivity drain than either absenteeism or short-term disability.

(11) The absence of paid sick time has forced Americans to make untenable choices between needed income and jobs on the one hand and caring for their own and their family’s health on the other.

(12) Nearly 40 percent of the private-sector workforce (about 40,000,000 workers) lack paid sick time. Another 4,000,000 theoretically have access to sick time, but have not been on the job long enough to use it. Millions more lack sick time they can use to care for a sick child or ill family member.

(13) Workers’ access to paid sick time varies dramatically by wage level. For private-sector workers in the lowest quartile of earners, 68 percent lack
paid sick time. For workers in the next 2 quartiles, 34 and 25 percent, respectively, lack paid sick time. Even for workers in the highest income quartile, 16 percent lack paid sick time. In addition, millions of workers cannot use paid sick time to care for ill family members.

(14) Due to the roles of men and women in society, the primary responsibility for family caregiving often falls on women, and such responsibility affects the working lives of women more than it affects the working lives of men.

(15) An increasing number of men are also taking on caregiving obligations, and men who request paid time for caregiving purposes are often denied accommodation or penalized because of stereotypes that caregiving is only “women’s work”.

(16) Employers’ reliance on persistent stereotypes about the “proper” roles of both men and women in the workplace and in the home continues a cycle of discrimination and fosters stereotypical views about women’s commitment to work and their value as employees.

(17) Employment standards that apply to only one gender have serious potential for encouraging
employers to discriminate against employees and applicants for employment who are of that gender.

(18) It is in the national interest to ensure that all Americans can care for their own health and the health of their families while prospering at work.

(19) Nearly 1 in 3 American women report physical or sexual abuse by a husband or boyfriend at some point in their lives. Domestic violence also affects men. Women account for about 85 percent of the victims of domestic violence and men account for approximately 15 percent of the victims. Therefore, women disproportionately need time off to care for their health or to find solutions, such as obtaining a restraining order or finding housing, to avoid or prevent physical or sexual abuse.

(20) One study showed that 85 percent of domestic violence victims at a women’s shelter who were employed missed work because of abuse. The mean number of days of paid work lost by a rape victim is 8.1 days, by a victim of physical assault is 7.2 days, and by a victim of stalking is 10.1 days. Nationwide, domestic violence victims lose almost 8,000,000 days of paid work per year.

(21) Without paid sick days that can be used to address the effects of domestic violence, these vic-
tims are in grave danger of losing their jobs. One survey found that 96 percent of employed domestic violence victims experienced problems at work related to the violence. The Government Accountability Office similarly found that 24 to 52 percent of victims report losing a job due, at least in part, to domestic violence. The loss of employment can be particularly devastating for victims of domestic violence, who often need economic security to ensure safety. 

(22) The Centers for Disease Control and Prevention has estimated that domestic violence costs over $700,000,000 annually due to the victims’ lost productivity in employment.

(23) Efforts to assist abused employees result in positive outcomes for employers as well as employees because employers can retain workers who might otherwise be compelled to leave.

SEC. 243. PURPOSES.

The purposes of this subtitle are—

(1) to ensure that all working Americans can address their own health needs and the health needs of their families by requiring employers to permit employees to earn up to 56 hours of paid sick time including paid time for family care;
(2) to diminish public and private health care costs by enabling workers to seek early and routine medical care for themselves and their family members;

(3) to assist employees who are, or whose family members are, victims of domestic violence, sexual assault, or stalking, by providing the employees with paid time away from work to allow the victims to receive treatment and to take the necessary steps to ensure their protection;

(4) to accomplish the purposes described in paragraphs (1) through (3) in a manner that is feasible for employers; and

(5) consistent with the provision of the 14th Amendment to the Constitution relating to equal protection of the laws, and pursuant to Congress’ power to enforce that provision under section 5 of that Amendment—

(A) to accomplish the purposes described in paragraphs (1) through (3) in a manner that minimizes the potential for employment discrimination on the basis of sex by ensuring generally that paid sick time is available for eligible medical reasons on a gender-neutral basis; and
(B) to promote the goal of equal employment opportunity for women and men.

SEC. 244. DEFINITIONS.

In this subtitle:

(1) CHILD.—The term “child” means a biological, foster, or adopted child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is—

(A) under 18 years of age; or

(B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

(2) DOMESTIC VIOLENCE.—The term “domestic violence” has the meaning given the term in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)), except that the reference in such section to the term “jurisdiction receiving grant monies” shall be deemed to mean the jurisdiction in which the victim lives or the jurisdiction in which the employer involved is located.

(3) EMPLOYEE.—The term “employee” means an individual who is—

(A)(i) an employee, as defined in section 3(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(e)), who is not covered under
subparagraph (E), including such an employee of the Library of Congress, except that a reference in such section to an employer shall be considered to be a reference to an employer described in clauses (i)(I) and (ii) of paragraph (4)(A); or

(ii) an employee of the Government Accountability Office;

(B) a State employee described in section 304(a) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16c(a));

(C) a covered employee, as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301), other than an applicant for employment;

(D) a covered employee, as defined in section 411(c) of title 3, United States Code; or

(E) a Federal officer or employee covered under subchapter V of chapter 63 of title 5, United States Code.

(4) EMPLOYER.—

(A) IN GENERAL.—The term “employer” means a person who is—
(i)(I) a covered employer, as defined in subparagraph (B), who is not covered under subclause (V);

(II) an entity employing a State employee described in section 304(a) of the Government Employee Rights Act of 1991;

(III) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995;

(IV) an employing office, as defined in section 411(c) of title 3, United States Code; or

(V) an employing agency covered under subchapter V of chapter 63 of title 5, United States Code; and

(ii) is engaged in commerce (including government), or an industry or activity affecting commerce (including government), as defined in subparagraph (B)(iii).

(B) COVERED EMPLOYER.—

(i) IN GENERAL.—In subparagraph (A)(i)(I), the term “covered employer”—

(I) means any person engaged in commerce or in any industry or activity affecting commerce who employs
15 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year;

   (II) includes—

      (aa) any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer; and

      (bb) any successor in interest of an employer;

   (III) includes any “public agency”, as defined in section 3(x) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(x)); and

   (IV) includes the Government Accountability Office and the Library of Congress.

(ii) **PUBLIC AGENCY.**—For purposes of clause (i)(III), a public agency shall be considered to be a person engaged in commerce or in an industry or activity affecting commerce.

(iii) **DEFINITIONS.**—For purposes of this subparagraph:
(I) **Commerce.**—The terms “commerce” and “industry or activity affecting commerce” mean any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include “commerce” and any “industry affecting commerce”, as defined in paragraphs (1) and (3) of section 501 of the Labor Management Relations Act, 1947 (29 U.S.C. 142 (1) and (3)).

(II) **Employee.**—The term “employee” has the same meaning given such term in section 3(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(e)).

(III) **Person.**—The term “person” has the same meaning given such term in section 3(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(a)).

(C) **Predecessors.**—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.
(5) Employment Benefits.—The term “employment benefits” means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer or through an “employee benefit plan”, as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3)).

(6) Health care provider.—The term “health care provider” means a provider who—

(A)(i) is a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

(ii) is any other person determined by the Secretary to be capable of providing health care services; and

(B) is not employed by an employer for whom the provider issues certification under this subtitle.

(7) Paid Sick Time.—The term “paid sick time” means an increment of compensated leave that
can be earned by an employee for use during an absence from employment for any of the reasons described in paragraphs (1) through (4) of section 245(b).

(8) PARENT.—The term “parent” means a biological, foster, or adoptive parent of an employee, a stepparent of an employee, or a legal guardian or other person who stood in loco parentis to an employee when the employee was a child.

(9) SECRETARY.—The term “Secretary” means the Secretary of Labor.

(10) SEXUAL ASSAULT.—The term “sexual assault” has the meaning given the term in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)).

(11) SPOUSE.—The term “spouse”, with respect to an employee, has the meaning given such term by the marriage laws of the State in which the employee resides.

(12) STALKING.—The term “stalking” has the meaning given the term in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)).

(13) VICTIM SERVICES ORGANIZATION.—The term “victim services organization” means a non-
profit, nongovernmental organization that provides assistance to victims of domestic violence, sexual assault, or stalking or advocates for such victims, including a rape crisis center, an organization carrying out a domestic violence, sexual assault, or stalking prevention or treatment program, an organization operating a shelter or providing counseling services, or a legal services organization or other organization providing assistance through the legal process.

SEC. 245. PROVISION OF PAID SICK TIME.

(a) Accrual of Paid Sick Time.—

(1) In general.—An employer shall permit each employee employed by the employer to earn not less than 1 hour of paid sick time for every 30 hours worked, to be used as described in subsection (b). An employer shall not be required to permit an employee to earn, under this section, more than 56 hours of paid sick time in a calendar year, unless the employer chooses to set a higher limit.

(2) Exempt employees.—

(A) In general.—Except as provided in paragraph (3), for purposes of this section, an employee who is exempt from overtime requirements under section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1))
shall be assumed to work 40 hours in each workweek.

(B) SHORTER NORMAL WORKWEEK.—If the normal workweek of such an employee is less than 40 hours, the employee shall earn paid sick time based upon that normal workweek.

(3) DATES OF ACCRUAL AND USE.—Employees shall begin to earn paid sick time under this section at the commencement of their employment. An employee shall be entitled to use the earned paid sick time beginning on the 60th calendar day following commencement of the employee’s employment. After that 60th calendar day, the employee may use the paid sick time as the time is earned. An employer may, at the discretion of the employer, loan paid sick time to an employee in advance of the earning of such time under this section by such employee.

(4) CARRYOVER.—

(A) IN GENERAL.—Except as provided in subparagraph (B), paid sick time earned under this section shall carry over from 1 calendar year to the next.

(B) CONSTRUCTION.—This subtitle shall not be construed to require an employer to per-
mit an employee to accrue more than 56 hours of earned paid sick time at a given time.

(5) Employers with existing policies.—Any employer with a paid leave policy who makes available an amount of paid leave that is sufficient to meet the requirements of this section and that may be used for the same purposes and under the same conditions as the purposes and conditions outlined in subsection (b) shall not be required to permit an employee to earn additional paid sick time under this section.

(6) Construction.—Nothing in this section shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee’s termination, resignation, retirement, or other separation from employment for earned paid sick time that has not been used.

(7) Reinstatement.—If an employee is separated from employment with an employer and is rehired, within 12 months after that separation, by the same employer, the employer shall reinstate the employee’s previously earned paid sick time. The employee shall be entitled to use the earned paid sick time and earn additional paid sick time at the recommencement of employment with the employer.
(8) Prohibition.—An employer may not re-
quire, as a condition of providing paid sick time
under this subtitle, that the employee involved
search for or find a replacement worker to cover the
hours during which the employee is using paid sick
time.

(b) Uses.—Paid sick time earned under this section
may be used by an employee for any of the following:

(1) An absence resulting from a physical or
mental illness, injury, or medical condition of the
employee.

(2) An absence resulting from obtaining profes-
sional medical diagnosis or care, or preventive med-
ical care, for the employee.

(3) An absence for the purpose of caring for a
child, a parent, a spouse, or any other individual re-
lated by blood or affinity whose close association
with the employee is the equivalent of a family rela-
tionship, who—

(A) has any of the conditions or needs for
diagnosis or care described in paragraph (1) or
(2); and

(B) in the case of someone who is not a
child, is otherwise in need of care.
(4) An absence resulting from domestic violence, sexual assault, or stalking, if the time is to—

(A) seek medical attention for the employee or the employee’s child, parent, or spouse, or an individual related to the employee as described in paragraph (3), to recover from physical or psychological injury or disability caused by domestic violence, sexual assault, or stalking;

(B) obtain or assist a related person described in paragraph (3) in obtaining services from a victim services organization;

(C) obtain or assist a related person described in paragraph (3) in obtaining psychological or other counseling;

(D) seek relocation; or

(E) take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from domestic violence, sexual assault, or stalking.

(c) SCHEDULING.—An employee shall make a reasonable effort to schedule a period of paid sick time under this subtitle in a manner that does not unduly disrupt the operations of the employer.

(d) PROCEDURES.—
(1) IN GENERAL.—Paid sick time shall be pro-
vided upon the oral or written request of an em-
ployee. Such request shall—

(A) include the expected duration of the
period of such time;

(B) in a case in which the need for such
period of time is foreseeable at least 7 days in
advance of such period, be provided at least 7
days in advance of such period; and

(C) otherwise, be provided as soon as prac-
ticable after the employee is aware of the need
for such period.

(2) CERTIFICATION IN GENERAL.—

(A) PROVISION.—

(i) IN GENERAL.—Subject to subpara-
graph (C), an employer may require that a
request for paid sick time under this sec-
tion for a purpose described in paragraph
(1), (2), or (3) of subsection (b) be sup-
ported by a certification issued by the
health care provider of the eligible em-
ployee or of an individual described in sub-
section (b)(3), as appropriate, if the period
of such time covers more than 3 consecu-
tive workdays.
(ii) **Timeliness.**—The employee shall provide a copy of such certification to the employer in a timely manner, not later than 30 days after the first day of the period of time. The employer shall not delay the commencement of the period of time on the basis that the employer has not yet received the certification.

(B) **Sufficient Certification.**—

(i) **In General.**—A certification provided under subparagraph (A) shall be sufficient if it states—

(I) the date on which the period of time will be needed;

(II) the probable duration of the period of time;

(III) the appropriate medical facts within the knowledge of the health care provider regarding the condition involved, subject to clause (ii); and

(IV)(aa) for purposes of paid sick time under subsection (b)(1), a statement that absence from work is medically necessary;
(bb) for purposes of such time under subsection (b)(2), the dates on which testing for a medical diagnosis or care is expected to be given and the duration of such testing or care; and

(cc) for purposes of such time under subsection (b)(3), in the case of time to care for someone who is not a child, a statement that care is needed for an individual described in such subsection, and an estimate of the amount of time that such care is needed for such individual.

(ii) LIMITATION.—In issuing a certification under subparagraph (A), a health care provider shall make reasonable efforts to limit the medical facts described in clause (i)(III) that are disclosed in the certification to the minimum necessary to establish a need for the employee to utilize paid sick time.

(C) REGULATIONS.—Regulations prescribed under section 253 shall specify the manner in which an employee who does not have
health insurance shall provide a certification for purposes of this paragraph.

(D) CONFIDENTIALITY AND NONDISCLOSURE.—

(i) PROTECTED HEALTH INFORMATION.—Nothing in this subtitle shall be construed to require a health care provider to disclose information in violation of section 1177 of the Social Security Act (42 U.S.C. 1320d–6) or the regulations promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

(ii) HEALTH INFORMATION RECORDS.—If an employer possesses health information about an employee or an employee’s child, parent, spouse or other individual described in subsection (b)(3), such information shall—

(I) be maintained on a separate form and in a separate file from other personnel information;

(II) be treated as a confidential medical record; and
(III) not be disclosed except to
the affected employee or with the per-
mission of the affected employee.

(3) Certification in the case of domestic
violence, sexual assault, or stalking.—

(A) In General.—An employer may re-
quire that a request for paid sick time under
this section for a purpose described in sub-
section (b)(4) be supported by 1 of the fol-
lowing forms of documentation:

(i) A police report indicating that the
employee, or a member of the employee’s
family described in subsection (b)(4), was
a victim of domestic violence, sexual assa-
tault, or stalking.

(ii) A court order protecting or sepa-
rating the employee or a member of the
employee’s family described in subsection
(b)(4) from the perpetrator of an act of
domestic violence, sexual assault, or stalk-
ing, or other evidence from the court or
prosecuting attorney that the employee or
a member of the employee’s family de-
scribed in subsection (b)(4) has appeared
in court or is scheduled to appear in court
in a proceeding related to domestic violence, sexual assault, or stalking.

(iii) Other documentation signed by an employee or volunteer working for a victim services organization, an attorney, a police officer, a medical professional, a social worker, an antiviolence counselor, or a member of the clergy, affirming that the employee or a member of the employee’s family described in subsection (b)(4) is a victim of domestic violence, sexual assault, or stalking.

(B) Requirements.—The requirements of paragraph (2) shall apply to certifications under this paragraph, except that—

(i) subclauses (III) and (IV) of subparagraph (B)(i) and subparagraph (B)(ii) of such paragraph shall not apply;

(ii) the certification shall state the reason that the leave is required with the facts to be disclosed limited to the minimum necessary to establish a need for the employee to be absent from work, and the employee shall not be required to explain
the details of the domestic violence, sexual assault, or stalking involved; and

(iii) with respect to confidentiality under subparagraph (D) of such paragraph, any information provided to the employer under this paragraph shall be confidential, except to the extent that any disclosure of such information is—

(I) requested or consented to in writing by the employee; or

(II) otherwise required by applicable Federal or State law.

SEC. 246. POSTING REQUIREMENT.

(a) In General.—Each employer shall post and keep posted a notice, to be prepared or approved in accordance with procedures specified in regulations prescribed under section 253, setting forth excerpts from, or summaries of, the pertinent provisions of this subtitle including—

(1) information describing paid sick time available to employees under this subtitle;

(2) information pertaining to the filing of an action under this subtitle;
(3) the details of the notice requirement for a foreseeable period of time under section 245(d)(1)(B); and

(4) information that describes—

(A) the protections that an employee has in exercising rights under this subtitle; and

(B) how the employee can contact the Secretary (or other appropriate authority as described in section 248) if any of the rights are violated.

(b) LOCATION.—The notice described under subsection (a) shall be posted—

(1) in conspicuous places on the premises of the employer, where notices to employees (including applicants) are customarily posted; or

(2) in employee handbooks.

(c) VIOLATION; PENALTY.—Any employer who willfully violates the posting requirements of this section shall be subject to a civil fine in an amount not to exceed $100 for each separate offense.

SEC. 247. PROHIBITED ACTS.

(a) INTERFERENCE WITH RIGHTS.—

(1) EXERCISE OF RIGHTS.—It shall be unlawful for any employer to interfere with, restrain, or deny
the exercise of, or the attempt to exercise, any right provided under this subtitle, including—

(A) discharging or discriminating against (including retaliating against) any individual, including a job applicant, for exercising, or attempting to exercise, any right provided under this subtitle;

(B) using the taking of paid sick time under this subtitle as a negative factor in an employment action, such as hiring, promotion, or a disciplinary action; or

(C) counting the paid sick time under a no-fault attendance policy or any other absence control policy.

(2) DISCRIMINATION.—It shall be unlawful for any employer to discharge or in any other manner discriminate against (including retaliating against) any individual, including a job applicant, for opposing any practice made unlawful by this subtitle.

(b) INTERFERENCE WITH PROCEEDINGS OR INQUIRIES.—It shall be unlawful for any person to discharge or in any other manner discriminate against (including retaliating against) any individual, including a job applicant, because such individual—
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(1) has filed an action, or has instituted or
caused to be instituted any proceeding, under or re-
lated to this subtitle;

(2) has given, or is about to give, any informa-
tion in connection with any inquiry or proceeding re-
lating to any right provided under this subtitle; or

(3) has testified, or is about to testify, in any
inquiry or proceeding relating to any right provided
under this subtitle.

(c) CONSTRUCTION.—Nothing in this section shall be
construed to state or imply that the scope of the activities
prohibited by section 105 of the Family and Medical Leave
Act of 1993 (29 U.S.C. 2615) is less than the scope of
the activities prohibited by this section.

SEC. 248. ENFORCEMENT AUTHORITY.

(a) IN GENERAL.—

(1) DEFINITION.—In this subsection:

(A) the term “employee” means an em-
ployee described in subparagraph (A) or (B) of
section 244(3); and

(B) the term “employer” means an em-
ployer described in subclause (I) or (II) of sec-
tion 244(4)(A)(i).

(2) INVESTIGATIVE AUTHORITY.—
(A) **IN GENERAL.**—To ensure compliance with the provisions of this subtitle, or any regulation or order issued under this subtitle, the Secretary shall have, subject to subparagraph (C), the investigative authority provided under section 11(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(a)), with respect to employers, employees, and other individuals affected.

(B) **OBLIGATION TO KEEP AND PRESERVE RECORDS.**—An employer shall make, keep, and preserve records pertaining to compliance with this subtitle in accordance with section 11(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(c)) and in accordance with regulations prescribed by the Secretary.

(C) **REQUIRED SUBMISSIONS GENERALLY LIMITED TO AN ANNUAL BASIS.**—The Secretary shall not require, under the authority of this paragraph, an employer to submit to the Secretary any books or records more than once during any 12-month period, unless the Secretary has reasonable cause to believe there may exist a violation of this subtitle or any regulation or order issued pursuant to this subtitle,
or is investigating a charge pursuant to paragraph (4).

(D) SUBPOENA AUTHORITY.—For the purposes of any investigation provided for in this paragraph, the Secretary shall have the subpoena authority provided for under section 9 of the Fair Labor Standards Act of 1938 (29 U.S.C. 209).

(3) CIVIL ACTION BY EMPLOYEES OR INDIVIDUALS.—

(A) RIGHT OF ACTION.—An action to recover the damages or equitable relief prescribed in subparagraph (B) may be maintained against any employer in any Federal or State court of competent jurisdiction by one or more employees or individuals or their representative for and on behalf of—

(i) the employees or individuals; or

(ii) the employees or individuals and others similarly situated.

(B) LIABILITY.—Any employer who violates section 247 (including a violation relating to rights provided under section 245) shall be liable to any employee or individual affected—

(i) for damages equal to—
(I) the amount of—

(aa) any wages, salary, employment benefits, or other compensation denied or lost by reason of the violation; or

(bb) in a case in which wages, salary, employment benefits, or other compensation have not been denied or lost, any actual monetary losses sustained as a direct result of the violation up to a sum equal to 56 hours of wages or salary for the employee or individual;

(II) the interest on the amount described in subclause (I) calculated at the prevailing rate; and

(III) an additional amount as liquidated damages; and

(ii) for such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(C) FEES AND COSTS.—The court in an action under this paragraph shall, in addition to any judgment awarded to the plaintiff, allow a
reasonable attorney’s fee, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

(4) ACTION BY THE SECRETARY.—

(A) ADMINISTRATIVE ACTION.—The Secretary shall receive, investigate, and attempt to resolve complaints of violations of section 247 (including a violation relating to rights provided under section 245) in the same manner that the Secretary receives, investigates, and attempts to resolve complaints of violations of sections 6 and 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206 and 207).

(B) CIVIL ACTION.—The Secretary may bring an action in any court of competent jurisdiction to recover the damages described in paragraph (3)(B)(i).

(C) SUMS RECOVERED.—Any sums recovered by the Secretary pursuant to subparagraph (B) shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to each employee or individual affected. Any such sums not paid to an employee or individual affected because of inability to do so within a period of 3 years shall be deposited
into the Treasury of the United States as miscellaneous receipts.

(5) LIMITATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), an action may be brought under paragraph (3), (4), or (6) not later than 2 years after the date of the last event constituting the alleged violation for which the action is brought.

(B) WILLFUL VIOLATION.—In the case of an action brought for a willful violation of section 247 (including a willful violation relating to rights provided under section 245), such action may be brought within 3 years of the date of the last event constituting the alleged violation for which such action is brought.

(C) COMMENCEMENT.—In determining when an action is commenced under paragraph (3), (4), or (6) for the purposes of this paragraph, it shall be considered to be commenced on the date when the complaint is filed.

(6) ACTION FOR INJUNCTION BY SECRETARY.—

The district courts of the United States shall have jurisdiction, for cause shown, in an action brought by the Secretary—
(A) to restrain violations of section 247
(including a violation relating to rights provided
under section 245), including the restraint of
any withholding of payment of wages, salary,
employment benefits, or other compensation,
plus interest, found by the court to be due to
employees or individuals eligible under this sub-
title; or

(B) to award such other equitable relief as
may be appropriate, including employment, re-
instatement, and promotion.

(7) SOLICITOR OF LABOR.—The Solicitor of
Labor may appear for and represent the Secretary
on any litigation brought under paragraph (4) or
(6).

(8) GOVERNMENT ACCOUNTABILITY OFFICE
AND LIBRARY OF CONGRESS.—Notwithstanding any
other provision of this subsection, in the case of the
Government Accountability Office and the Library of
Congress, the authority of the Secretary of Labor
under this subsection shall be exercised respectively
by the Comptroller General of the United States and
the Librarian of Congress.

(b) EMPLOYEES COVERED BY CONGRESSIONAL AC-
COUNTABILITY ACT OF 1995.—The powers, remedies, and
procedures provided in the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) to the Board (as defined in section 101 of that Act (2 U.S.C. 1301)), or any person, alleging a violation of section 202(a)(1) of that Act (2 U.S.C. 1312(a)(1)) shall be the powers, remedies, and procedures this subtitle provides to that Board, or any person, alleging an unlawful employment practice in violation of this subtitle against an employee described in section 244(3)(C).

(c) Employees Covered by Chapter 5 of Title 3, United States Code.—The powers, remedies, and procedures provided in chapter 5 of title 3, United States Code, to the President, the Merit Systems Protection Board, or any person, alleging a violation of section 412(a)(1) of that title, shall be the powers, remedies, and procedures this subtitle provides to the President, that Board, or any person, respectively, alleging an unlawful employment practice in violation of this subtitle against an employee described in section 244(3)(D).

(d) Employees Covered by Chapter 63 of Title 5, United States Code.—The powers, remedies, and procedures provided in title 5, United States Code, to an employing agency, provided in chapter 12 of that title to the Merit Systems Protection Board, or provided in that title to any person, alleging a violation of chapter 63 of
that title, shall be the powers, remedies, and procedures
this subtitle provides to that agency, that Board, or any
person, respectively, alleging an unlawful employment
practice in violation of this subtitle against an employee
described in section 244(3)(E).

(c) Remedies for State Employees.—

(1) Waiver of sovereign immunity.—A
State’s receipt or use of Federal financial assistance
for any program or activity of a State shall con-
stitute a waiver of sovereign immunity, under the
11th Amendment to the Constitution or otherwise,
to a suit brought by an employee of that program
or activity under this subtitle for equitable, legal, or
other relief authorized under this subtitle.

(2) Official capacity.—An official of a State
may be sued in the official capacity of the official by
any employee who has complied with the procedures
under subsection (a)(3), for injunctive relief that is
authorized under this subtitle. In such a suit the
court may award to the prevailing party those costs
authorized by section 722 of the Revised Statutes

(3) Applicability.—With respect to a par-
ticular program or activity, paragraph (1) applies to
conduct occurring on or after the day, after the date
'of enactment of this Act, on which a State first re-
receives or uses Federal financial assistance for that
program or activity.

(4) DEFINITION OF PROGRAM OR ACTIVITY.—In
this subsection, the term “program or activity” has
the meaning given the term in section 606 of the

SEC. 249. COLLECTION OF DATA ON PAID SICK TIME AND
FURTHER STUDY.

(a) COMPILATION OF INFORMATION.—Effective 90
days after the date of enactment of this Act, the Commis-
sioner of Labor Statistics shall annually compile informa-
tion on the following:

(1) The number of employees who used paid
sick time.

(2) The number of hours of paid sick time
used.

(3) The number of employees who used paid
sick time for absences necessary due to domestic vio-
ience, sexual assault, or stalking.

(4) The demographic characteristics of employ-
ees who were eligible for and who used paid sick
time.

(b) GAO STUDY.—
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(1) IN GENERAL.—The Comptroller General of the United States shall annually conduct a study to determine the following:

(A)(i) The number of days employees used paid sick time and the reasons for the use.

(ii) The number of employees who used the paid sick time for periods of time covering more than 3 consecutive workdays.

(B) The cost and benefits to employers of implementing the paid sick time policies.

(C) The cost to employees of providing certification to obtain the paid sick time.

(D) The benefits of the paid sick time to employees and their family members, including effects on employees’ ability to care for their family members or to provide for their own health needs.

(E) Whether the paid sick time affected employees’ ability to sustain an adequate income while meeting needs of the employees and their family members.

(F) Whether employers who administered paid sick time policies prior to the date of enactment of this Act were affected by the provisions of this subtitle.
(G) Whether other types of leave were affected by this subtitle.

(H) Whether paid sick time affected retention and turnover and costs of presenteeism.

(I) Whether the paid sick time increased the use of less costly preventive medical care and lowered the use of emergency room care.

(J) Whether the paid sick time reduced the number of children sent to school when the children were sick.

(2) AGGREGATING DATA.—The data collected under subparagraphs (A) and (D) of paragraph (1) shall be aggregated by gender, race, disability, earnings level, age, marital status, family type, including parental status, and industry.

(3) REPORTS.—

(A) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall prepare and submit a report to the appropriate committees of Congress concerning the results of the study conducted pursuant to paragraph (1) and the data aggregated under paragraph (2).
(B) FOLLOWUP REPORT.—Not later than 5 years after the date of enactment of this Act, the Comptroller General of the United States shall prepare and submit a followup report to the appropriate committees of Congress concerning the results of the study conducted pursuant to paragraph (1) and the data aggregated under paragraph (2).

SEC. 250. EFFECT ON OTHER LAWS.

(a) FEDERAL AND STATE ANTIDISCRIMINATION LAWS.—Nothing in this subtitle shall be construed to modify or affect any Federal or State law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability.

(b) STATE AND LOCAL LAWS.—Nothing in this subtitle shall be construed to supersede (including preempting) any provision of any State or local law that provides greater paid sick time or leave rights (including greater paid sick time or leave, or greater coverage of those eligible for paid sick time or leave) than the rights established under this subtitle.

SEC. 251. EFFECT ON EXISTING EMPLOYMENT BENEFITS.

(a) MORE PROTECTIVE.—Nothing in this subtitle shall be construed to diminish the obligation of an employer to comply with any contract, collective bargaining
1 agreement, or any employment benefit program or plan
2 that provides greater paid sick leave or other leave rights
3 to employees or individuals than the rights established
4 under this subtitle.
5 (b) LESS PROTECTIVE.—The rights established for
6 employees under this subtitle shall not be diminished by
7 any contract, collective bargaining agreement, or any em-
8 ployment benefit program or plan.
9 SEC. 252. ENCOURAGEMENT OF MORE GENEROUS LEAVE
10 POLICIES.
11 Nothing in this subtitle shall be construed to discour-
12 age employers from adopting or retaining leave policies
13 more generous than policies that comply with the require-
14 ments of this subtitle.
15 SEC. 253. REGULATIONS.
16 (a) IN GENERAL.—
17 (1) AUTHORITY.—Except as provided in para-
18 graph (2), not later than 180 days after the date of
19 enactment of this Act, the Secretary shall prescribe
20 such regulations as are necessary to carry out this
21 subtitle with respect to employees described in sub-
22 paragraph (A) or (B) of section 244(3) and other in-
23 dividuals affected by employers described in sub-
24 clause (I) or (II) of section 244(4)(A)(i).
(2) Government Accountability Office; Library of Congress.—The Comptroller General of the United States and the Librarian of Congress shall prescribe the regulations with respect to employees of the Government Accountability Office and the Library of Congress, respectively, and other individuals affected by the Comptroller General of the United States and the Librarian of Congress, respectively.

(b) Employees Covered by Congressional Accountability Act of 1995.—

(1) Authority.—Not later than 120 days after the date of enactment of this Act, the Board of Directors of the Office of Compliance shall prescribe (in accordance with section 304 of the Congressional Accountability Act of 1995 (2 U.S.C. 1384)) such regulations as are necessary to carry out this subtitle with respect to employees described in section 244(3)(C) and other individuals affected by employers described in section 244(4)(A)(i)(III).

(2) Agency Regulations.—The regulations prescribed under paragraph (1) shall be the same as substantive regulations promulgated by the Secretary to carry out this subtitle except insofar as the Board may determine, for good cause shown and
stated together with the regulations prescribed under paragraph (1), that a modification of such regulations would be more effective for the implementation of the rights and protections involved under this section.

(c) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE 3, UNITED STATES CODE.—

(1) AUTHORITY.—Not later than 120 days after the date of enactment of this Act, the President (or the designee of the President) shall prescribe such regulations as are necessary to carry out this subtitle with respect to employees described in section 244(3)(D) and other individuals affected by employers described in section 244(4)(A)(i)(IV).

(2) AGENCY REGULATIONS.—The regulations prescribed under paragraph (1) shall be the same as substantive regulations promulgated by the Secretary to carry out this subtitle except insofar as the President (or designee) may determine, for good cause shown and stated together with the regulations prescribed under paragraph (1), that a modification of such regulations would be more effective for the implementation of the rights and protections involved under this section.
(d) Employees Covered by Chapter 63 of Title 5, United States Code.—

(1) Authority.—Not later than 120 days after the date of enactment of this Act, the Director of the Office of Personnel Management shall prescribe such regulations as are necessary to carry out this subtitle with respect to employees described in section 244(3)(E) and other individuals affected by employers described in section 244(4)(A)(i)(V).

(2) Agency Regulations.—The regulations prescribed under paragraph (1) shall be the same as substantive regulations promulgated by the Secretary to carry out this subtitle except insofar as the Director may determine, for good cause shown and stated together with the regulations prescribed under paragraph (1), that a modification of such regulations would be more effective for the implementation of the rights and protections involved under this section.

SEC. 254. EFFECTIVE DATES.

(a) Effective Date.—This subtitle shall take effect 6 months after the date of issuance of regulations under section 253(a)(1).

(b) Collective Bargaining Agreements.—In the case of a collective bargaining agreement in effect on the
effective date prescribed by subsection (a), this subtitle shall take effect on the earlier of—

(1) the date of the termination of such agreement; or

(2) the date that occurs 18 months after the date of issuance of regulations under section 253(a)(1).

Subtitle E—Establishing a Fair Minimum Wage

SEC. 261. MINIMUM WAGE INCREASES.

(a) MINIMUM WAGE.—

(1) IN GENERAL.—Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

“(1) except as otherwise provided in this section, not less than—

“(A) $8.10 an hour, beginning on the first day of the third month that begins after the date of enactment of the Rebuild America Act;

“(B) $8.95 an hour, beginning 1 year after that first day;

“(C) $9.80 an hour, beginning 2 years after that first day; and

“(D) beginning on the date that is 3 years after that first day, and annually thereafter, the
amount determined by the Secretary pursuant to subsection (h);”.

(2) Determination based on increase in the consumer price index.—Section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) is amended by adding at the end the following:

“(h)(1) Each year, by not later than the date that is 90 days before a new minimum wage determined under subsection (a)(1)(D) is to take effect, the Secretary shall determine the minimum wage to be in effect pursuant to this subsection for the subsequent 1-year period. The wage determined pursuant to this subsection for a year shall be—

“(A) not less than the amount in effect under subsection (a)(1) on the date of such determination;

“(B) increased from such amount by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (United States city average, all items, not seasonally adjusted), or its successor publication, as determined by the Bureau of Labor Statistics; and

“(C) rounded to the nearest multiple of $0.05.

“(2) In calculating the annual percentage increase in the Consumer Price Index for purposes of paragraph (1)(B), the Secretary shall compare such Consumer Price
Index for the most recent month, quarter, or year available (as selected by the Secretary prior to the first year for which a minimum wage is in effect pursuant to this subsection) with the Consumer Price Index for the same month in the preceding year, the same quarter in the preceding year, or the preceding year, respectively.”.

(b) Base Minimum Wage for Tipped Employees.—Section 3(m)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)(1)) is amended to read as follows:

“(1) the cash wage paid such employee, which for purposes of such determination shall be not less than—

“(A) for the 1-year period beginning on the first day of the third month that begins after the date of enactment of the Rebuild America Act, $3.00 an hour;

“(B) for each succeeding 1-year period until the hourly wage under this paragraph equals 70 percent of the wage in effect under section 6(a)(1) for such period, an hourly wage equal to the amount determined under this paragraph for the preceding year, increased by the lesser of—

“(i) $0.85; or
“(ii) the amount necessary for the wage in effect under this paragraph to equal 70 percent of the wage in effect under section 6(a)(1) for such period, rounded to the nearest multiple of $0.05; and

“(C) for each succeeding 1-year period after the year in which the hourly wage under this paragraph first equals 70 percent of the wage in effect under section 6(a)(1) for the same period, the amount necessary to ensure that the wage in effect under this paragraph remains equal to 70 percent of the wage in effect under section 6(a)(1), rounded to the nearest multiple of $0.05; and”.

(e) PUBLICATION OF NOTICE.—Section 6 of the Fair Labor Standards Act of 1938 (as amended by subsection (a) (29 U.S.C. 206) is further amended by adding at the end the following:

“(i) Not later than 60 days prior to the effective date of any increase in the minimum wage determined under subsection (h) or required for tipped employees in accordance with subparagraph (B) or (C) of section 3(m)(1), as amended by section 261 of the Rebuild America Act, the Secretary shall publish in the Federal Register and on the
website of the Department of Labor a notice announcing
the adjusted required wage.”.

(d) Effective Date.—The amendments made by
subsections (a) and (b) shall take effect on the first day
of the third month that begins after the date of enactment
of this Act.

Subtitle F—Empowering
Hardworking Americans

SEC. 271. AMENDMENTS TO THE NATIONAL LABOR RELA-
tions Act.

(a) Coverage.—

(1) Supervisors.—Section 2(11) of the Na-
tional Labor Relations Act (29 U.S.C. 152(11)) is
amended—

(A) by inserting “and for a majority of the
individual’s worktime” after “interest of the
employer”;

(B) by striking “assign,”; and

(C) by striking “or responsibly to direct
them”.

(2) Independent Contractors.—Section 2
of the National Labor Relations Act (29 U.S.C.
152) is amended by adding at the end the following:

“(15) The term ‘independent contractor’ means
an individual who performs services for an employer
for remuneration and for whom it is found, to the
satisfaction of the Board, that—

“(A) the individual has been and will con-
tinue to be free from direction and control of
the employer, both under the individual’s con-
tract of service and in fact;

“(B) the service is outside the usual course
of business of the employer; and

“(C) the individual is customarily engaged
in an independently established trade, occupa-
tion, profession, or business, both under the in-
dividual’s contract of service and in fact.”.

(b) Remedies.—

(1) In general.—Section 10(l) of the National
Labor Relations Act (29 U.S.C. 160(l)) is amend-
ed—

(A) in the first sentence—

(i) by inserting after “charged that” the following: “any person that is an em-
ployer has engaged in an unfair labor prac-
tice within the meaning of section 8(a)
which results in the discharge of an em-
ployee or other serious economic loss, or
that”; and
(ii) by striking “case of like character” and inserting “other cases described in this sentence”; and

(B) in the third sentence, by striking “as it deems just and proper, notwithstanding any other provision of law;” and inserting the following: “to protect the rights guaranteed by this Act, notwithstanding any other provision of law. The district court shall grant the relief requested if the court finds that there is reasonable cause to believe that the alleged violation of the Act has occurred and, giving deference to the Board’s expertise in labor policy, there exists a reasonable probability that the purposes of the Act will be frustrated unless temporary relief is granted, or temporary relief is reasonably necessary to preserve the effectiveness of the remedy or forestall further violations.”.

(2) Civil Penalties.—Section 12 of the National Labor Relations Act (29 U.S.C. 162) is amended—

(A) by striking “SEC. 12. Any” and inserting the following:

“SEC. 12. PENALTIES.

“(a) Criminal Penalties.—Any”; and
(B) by adding at the end the following:

“(b) CIVIL PENALTIES.—Any employer who engages in a violation of section 8 that results in the discharge of an employee or other serious economic loss, shall, in addition to any remedy ordered, be subject to a civil penalty not to exceed $20,000 for each violation. In determining the amount of any penalty under this subsection, the Board shall consider—

“(1) the gravity of the unfair labor practice;

“(2) the impact of the unfair labor practice on the charging party, on other persons seeking to exercise rights guaranteed by this Act, and on the public interest; and

“(3) the size of the employer.”.

Subtitle G—Increasing Job Opportunities for Americans With Disabilities

SEC. 281. MODIFICATION OF WORK OPPORTUNITY CREDIT.

(a) QUALIFIED DISABILITY INSURANCE RECIPIENTS TREATED AS MEMBERS OF TARGETED GROUPS.—

(1) IN GENERAL.—Paragraph (1) of section 51(d) of the Internal Revenue Code of 1986 is amended by striking “or” at the end of subparagraph (H), by striking the period at the end of sub-
paragraph (I) and inserting “, or”, and by adding at the end the following new subparagraph:

“(J) a qualified disability insurance recipient.”.

(2) QUALIFIED DISABILITY INSURANCE RECIPIENT DEFINED.—Subsection (d) of section 51 of such Code is amended by adding at the end the following new paragraph:

“(15) QUALIFIED DISABILITY INSURANCE RECIPIENT.—The term ‘qualified disability insurance recipient’ means any individual who is certified by the local designated agency as receiving disability insurance benefits under title II of the Social Security Act for any month ending within the 60-day period ending on the hiring date.”.

(b) MODIFICATION OF VOCATIONAL REHABILITATION REFERRALS.—Section 51(d)(6) of the Internal Revenue Code of 1986 is amended by striking subparagraphs (A) and (B) and inserting the following:

“(A) having a physical or mental disability which, for such individual, constitutes or results in a substantial impediment to employment, and
“(B)(i) having been referred to the employer upon completion of (or while receiving) rehabilitative services pursuant to—

“(I) an individualized plan for employment under title I of the Rehabilitation Act of 1973, or

“(II) a program of vocational rehabilitation carried out under chapter 31 of title 38, United States Code, or

“(III) an individual work plan developed and implemented by an employment network pursuant to subsection (g) of section 1148 of the Social Security Act with respect to which the requirements of such subsection are met, or

“(ii) eligible to receive rehabilitative services pursuant to a plan described in clause (i)(I) or a program described in clause (i)(II) but not receiving such services.”.

(c) Increased Credit for Certain Disabled Workers.—Section 51 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(l) Increased Credit for Certain Disabled Workers.—
“(1) IN GENERAL.—In the case of any qualified
disabled worker, subsection (b) shall be applied by
substituting—

“(A) ‘2-year period’ for ‘1-year period’ in
paragraph (2), and

“(B) ‘$30,000’ for ‘$6,000’ in paragraph
(3).

“(2) QUALIFIED DISABLED WORKER.—For pur-
poses of this subsection, the term ‘qualified disabled
worker’ means any individual who is—

“(A) a qualified SSI recipient who is cer-
tified by the local designated agency as an indi-
vidual who is receiving benefits described in
subsection (d)(9) as the result of being a blind
or disabled individual (as defined in section
1614 of the Social Security Act),

“(B) a qualified disability insurance recipi-
ent, or

“(C) a vocational rehabilitation referral.”.

(d) EXTENSION OF CREDIT.—Subparagraph (B) of
section 51(e)(4) of the Internal Revenue Code of 1986 is
amended to read as follows:

“(B) after December 31, 2015.”.
(e) Reporting.—Section 51 of the Internal Revenue Code of 1986, as amended by subsection (c), is amended by adding at the end the following new subsection:

“(m) Reporting.—The Secretary of the Treasury shall require each taxpayer which is allowed a credit under this section to report—

“(1) the number of employees hired by the taxpayer who are members of a targeted group,

“(2) the number of employees hired by the taxpayer who have a disability,

“(3) the length of retention of employees who are members of a targeted group, and

“(4) such other information as the Secretary may require.”.

(f) Effective Date.—The amendments made by this section shall apply to individuals who begin work for an employer after the date of the enactment of this Act.

TITLE III—RESTORING BALANCE AND FAIRNESS TO THE TAX CODE

SEC. 300. AMENDMENT OF 1986 CODE.

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
Subtitle A—Instituting the “Buffett Rule”

SEC. 301. FAIR SHARE TAX ON HIGH-INCOME TAXPAYERS.

(a) In General.—Subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new part:

“PART VIII—FAIR SHARE TAX ON HIGH-INCOME TAXPAYERS

“Sec. 59B. Fair share tax.

“SEC. 59B. FAIR SHARE TAX.

“(a) General Rule.—

“(1) Phase-in of Tax.—In the case of any high-income taxpayer, there is hereby imposed for a taxable year (in addition to any other tax imposed by this subtitle) a tax equal to the product of—

“(A) the amount determined under paragraph (2), and

“(B) a fraction (not to exceed 1)—

“(i) the numerator of which is the excess of—

“(I) the taxpayer’s adjusted gross income, over
“(II) the dollar amount in effect under subsection (e)(1), and

“(ii) the denominator of which is the dollar amount in effect under subsection (c)(1).

“(2) AMOUNT OF TAX.—The amount of tax determined under this paragraph is an amount equal to the excess (if any) of—

“(A) the tentative fair share tax for the taxable year, over

“(B) the excess of—

“(i) the sum of—

“(I) the regular tax liability (as defined in section 26(b)) for the taxable year,

“(II) the tax imposed by section 55 for the taxable year, plus

“(III) the payroll tax for the taxable year, over

“(ii) the credits allowable under part IV of subchapter A (other than sections 27(a), 31, and 34).

“(b) TENTATIVE FAIR SHARE TAX.—For purposes of this section—
“(1) IN GENERAL.—The tentative fair share tax for the taxable year is 30 percent of the excess of—

“(A) the adjusted gross income of the taxpayer, over

“(B) the modified charitable contribution deduction for the taxable year.

“(2) MODIFIED CHARITABLE CONTRIBUTION DEDUCTION.—For purposes of paragraph (1)—

“(A) IN GENERAL.—The modified charitable contribution deduction for any taxable year is an amount equal to the amount which bears the same ratio to the deduction allowable under section 170 (section 642(c) in the case of a trust or estate) for such taxable year as—

“(i) the amount of itemized deductions allowable under the regular tax (as defined in section 55) for such taxable year, determined after the application of section 68, bears to

“(ii) such amount, determined before the application of section 68.

“(B) TAXPAYER MUST ITEMIZE.—In the case of any individual who does not elect to itemize deductions for the taxable year, the
modified charitable contribution deduction shall be zero.

“(c) **HIGH-INCOME TAXPAYER.**—For purposes of this section—

“(1) **IN GENERAL.**—The term ‘high-income taxpayer’ means, with respect to any taxable year, any taxpayer (other than a corporation) with an adjusted gross income for such taxable year in excess of $1,000,000 (50 percent of such amount in the case of a married individual who files a separate return).

“(2) **INFLATION ADJUSTMENT.**—

“(A) **IN GENERAL.**—In the case of a taxable year beginning after 2013, the $1,000,000 amount under paragraph (1) 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 2012’ for ‘calendar year 1992’ in subparagraph (B) thereof.

“(B) **ROUNDING.**—If any amount as adjusted under subparagraph (A) is not a multiple
of $10,000, such amount shall be rounded to
the next lowest multiple of $10,000.

“(d) PAYROLL TAX.—For purposes of this section,
the payroll tax for any taxable year is an amount equal
to the excess of—

“(1) the taxes imposed on the taxpayer under
sections 1401, 1411, 3101, 3201, and 3211(a) (to
the extent such taxes are attributable to the rate of
tax in effect under section 3101) with respect to
such taxable year or wages or compensation received
during the taxable year, over

“(2) the deduction allowable under section
164(f) for such taxable year.

“(e) SPECIAL RULE FOR ESTATES AND TRUSTS.—
For purposes of this section, in the case of an estate or
trust, adjusted gross income shall be computed in the
manner described in section 67(e).

“(f) NOT TREATED AS TAX IMPOSED BY THIS CHAP-
TER FOR CERTAIN PURPOSES.—The tax imposed under
this section shall not be treated as tax imposed by this
chapter for purposes of determining the amount of any
credit under this chapter (other than the credit allowed
under section 27(a)) or for purposes of section 55.”.

(b) CONFORMING AMENDMENT.—Section 26(b)(2) of
such Code is amended by redesignating subparagraphs (C)
through (X) as subparagraphs (D) through (Y), respectively, and by inserting after subparagraph (B) the following new subparagraph:

“(C) section 59B (relating to fair share tax),”.

(c) Clerical Amendment.—The table of parts for subchapter A of chapter 1 of such Code is amended by adding at the end the following new item:

“PART VIII. FAIR SHARE TAX ON HIGH-INCOME TAXPAYERS.”.

(d) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2012.

Subtitle B—Adopting a Wall Street Trading and Speculators Tax

SEC. 311. TRANSACTION TAX.

(a) In General.—Chapter 36 of the Internal Revenue Code of 1986 is amended by inserting after subchapter B the following new subchapter:

“Subchapter C—Tax on Trading Transactions

Sec. 4475. Tax on trading transactions.

“SEC. 4475. TAX ON TRADING TRANSACTIONS.

“(a) Imposition of Tax.—There is hereby imposed a tax on each covered transaction with respect to any security.

“(b) Rate of Tax.—The tax imposed under subsection (a) with respect to any covered transaction shall
be 0.03 percent of the specified base amount with respect
to such covered transaction.

“(c) Specified Base Amount.—For purposes of
this section, the term ‘specified base amount’ means—

“(1) except as provided in paragraph (2), the
fair market value of the security (determined as of
the time of the covered transaction), and

“(2) in the case of any payment described in
subsection (h), the amount of such payment.

“(d) Covered Transaction.—For purposes of this
section, the term ‘covered transaction’ means—

“(1) except as provided in paragraph (2), any
purchase if—

“(A) such purchase occurs or is cleared on
a facility located in the United States, or

“(B) the purchaser or seller is a United
States person, and

“(2) any transaction with respect to a security
described in subparagraph (D), (E), or (F) of sub-
section (e)(1), if—

“(A) such security is traded or cleared on
a facility located in the United States, or

“(B) any party with rights under such se-
curity is a United States person.
“(e) Security and Other Definitions.—For purposes of this section—

“(1) In general.—The term ‘security’ means—

“(A) any share of stock in a corporation,

“(B) any partnership or beneficial ownership interest in a partnership or trust,

“(C) any note, bond, debenture, or other evidence of indebtedness,

“(D) any evidence of an interest in, or a derivative financial instrument with respect to, any security or securities described in subparagraph (A), (B), or (C),

“(E) any derivative financial instrument with respect to any currency or commodity, and

“(F) any other derivative financial instrument any payment with respect to which is calculated by reference to any specified index.

“(2) Derivative Financial Instrument.—The term ‘derivative financial instrument’ includes any option, forward contract, futures contract, notional principal contract, or any similar financial instrument.

“(3) Specified Index.—The term ‘specified index’ means any 1 or more of any combination of—

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“(A) a fixed rate, price, or amount, or

“(B) a variable rate, price, or amount,

which is based on any current objectively determinable information which is not within the control of any of the parties to the contract or instrument and is not unique to any of the parties’ circumstances.

“(4) TREATMENT OF EXCHANGES.—

“(A) IN GENERAL.—An exchange shall be treated as the sale of the property transferred and a purchase of the property received by each party to the exchange.

“(B) CERTAIN DEEMED EXCHANGES.—In the case of a distribution treated as an exchange for stock under section 302 or 331, the corporation making such distribution shall be treated as having purchased such stock for purposes of this section.

“(f) EXCEPTIONS.—

“(1) EXCEPTION FOR INITIAL ISSUES.—No tax shall be imposed under subsection (a) on any covered transaction with respect to the initial issuance of any security described in subparagraph (A), (B), or (C) of subsection (e)(1).
“(2) Exception for certain traded short-term indebtedness.—A note, bond, debenture, or other evidence of indebtedness which—

“(A) is traded on a trading facility located in the United States, and

“(B) has a fixed maturity of not more than 100 days,

shall not be treated as described in subsection (e)(1)(C).

“(3) Exception for securities lending arrangements.—No tax shall be imposed under subsection (a) on any covered transaction with respect to which gain or loss is not recognized by reason of section 1058.

“(g) By whom paid.—

“(1) In general.—The tax imposed by this section shall be paid by—

“(A) in the case of a transaction which occurs or is cleared on a facility located in the United States, such facility, and

“(B) in the case of a purchase not described in subparagraph (A) which is executed by a broker (as defined in section 6045(e)(1)) which is a United States person, such broker.
“(2) Special rules for direct, etc., transactions.—In the case of any transaction to which paragraph (1) does not apply, the tax imposed by this section shall be paid by—

“(A) in the case of a transaction described in subsection (d)(1)—

“(i) the purchaser if the purchaser is a United States person, and

“(ii) the seller if the purchaser is not a United States person, and

“(B) in the case of a transaction described in subsection (d)(2)—

“(i) the payor if the payor is a United States person, and

“(ii) the payee if the payor is not a United States person.

“(h) Certain payments treated as separate transactions.—Except as otherwise provided by the Secretary, any payment with respect to a security described in subparagraph (D), (E), or (F) of subsection (e)(1) shall be treated as a separate transaction for purposes of this section, including—

“(1) any net initial payment, net final or terminating payment, or net periodical payment with re-
spect to a notional principal contract (or similar financial instrument),

“(2) any payment with respect to any forward contract (or similar financial instrument), and

“(3) any premium paid with respect to any option (or similar financial instrument).

“(i) Administration.—The Secretary shall carry out this section in consultation with the Securities and Exchange Commission and the Commodity Futures Trading Commission.

“(j) Guidance; Regulations.—The Secretary shall—

“(1) provide guidance regarding such information reporting concerning covered transactions as the Secretary deems appropriate, and

“(2) prescribe such regulations as are necessary or appropriate to prevent avoidance of the purposes of this section, including the use of non-United States persons in such transactions.”.

(b) Clerical Amendment.—The table of subchapters for chapter 36 of such Code is amended by inserting after the item relating to subchapter B the following new item:

“Subchapter C. Tax on trading transactions.”.
(c) **Effective Date.**—The amendments made by this section shall apply to transactions after December 31, 2012.

**Subtitle C—Ending Tax Breaks for Companies That Ship Jobs Overseas**

**SEC. 321. ALLOCATION OF EXPENSES AND TAXES ON BASIS OF REPATRIATION OF FOREIGN INCOME.**

(a) **In General.**—Part III of subchapter N of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after subpart G the following new subpart:

"**Subpart H—Special Rules for Allocation of Foreign-Related Deductions and Foreign Tax Credits**

"Sec. 975. Deductions allocated to deferred foreign income may not offset United States source income.

"Sec. 976. Amount of foreign taxes computed on overall basis.

"Sec. 977. Application of subpart.

"**SEC. 975. DEDUCTIONS ALLOCATED TO DEFERRED FOREIGN INCOME MAY NOT OFFSET UNITED STATES SOURCE INCOME.**

"(a) **Current Year Deductions.**—For purposes of this chapter, foreign-related deductions for any taxable year—

"(1) shall be taken into account for such taxable year only to the extent that such deductions are allocable to currently-taxed foreign income, and
“(2) to the extent not so allowed, shall be taken into account in subsequent taxable years as provided in subsection (b).

Foreign-related deductions shall be allocated to currently-taxed foreign income in the same proportion which currently-taxed foreign income bears to the sum of currently-taxed foreign income and deferred foreign income.

“(b) DEDUCTIONS RELATED TO REPATRIATED DEFERRED FOREIGN INCOME.—

“(1) IN GENERAL.—If there is repatriated foreign income for a taxable year, the portion of the previously deferred deductions allocated to the repatriated foreign income shall be taken into account for the taxable year as a deduction allocated to income from sources outside the United States. Any such amount shall not be included in foreign-related deductions for purposes of applying subsection (a) to such taxable year.

“(2) PORTION OF PREVIOUSLY DEFERRED DEDUCTIONS.—For purposes of paragraph (1), the portion of the previously deferred deductions allocated to repatriated foreign income is—

“(A) the amount which bears the same proportion to such deductions, as
“(B) the repatriated income bears to the previously deferred foreign income.

“(c) Definitions and Special Rule.—For purposes of this section—

“(1) Foreign-related deductions.—The term ‘foreign-related deductions’ means the total amount of deductions and expenses which would be allocated or apportioned to gross income from sources without the United States for the taxable year if both the currently-taxed foreign income and deferred foreign income were taken into account.

“(2) Currently-taxed foreign income.—The term ‘currently-taxed foreign income’ means the amount of gross income from sources without the United States for the taxable year (determined without regard to repatriated foreign income for such year).

“(3) Deferred foreign income.—The term ‘deferred foreign income’ means the excess of—

“(A) the amount that would be includible in gross income under subpart F of this part for the taxable year if—

“(i) all controlled foreign corporations were treated as one controlled foreign corporation, and
“(ii) all earnings and profits of all controlled foreign corporations were sub-
part F income (as defined in section 952), over
“(B) the sum of—
“(i) all dividends received during the taxable year from controlled foreign cor-
porations, plus
“(ii) amounts includible in gross in-
come under section 951(a).
“(4) Previously deferred foreign in-
come.—The term ‘previously deferred foreign in-
come’ means the aggregate amount of deferred for-
gain income for all prior taxable years to which this part applies, determined as of the beginning of the taxable year, reduced by the repatriated foreign in-
come for all such prior taxable years.
“(5) Repatriated foreign income.—The term ‘repatriated foreign income’ means the amount included in gross income on account of distributions out of previously deferred foreign income.
“(6) Previously deferred deductions.—The term ‘previously deferred deductions’ means the aggregate amount of foreign-related deductions not taken into account under subsection (a) for all prior
taxable years (determined as of the beginning of the taxable year), reduced by any amounts taken into account under subsection (b) for such prior taxable years.

“(7) Treatment of certain foreign taxes.—

“(A) Paid by controlled foreign corporation.—Section 78 shall not apply for purposes of determining currently-taxed foreign income and deferred foreign income.

“(B) Paid by taxpayer.—For purposes of determining currently-taxed foreign income, gross income from sources without the United States shall be reduced by the aggregate amount of taxes described in the applicable paragraph of section 901(b) which are paid by the taxpayer (without regard to sections 902 and 960) during the taxable year.

“(8) Coordination with section 976.—In determining currently-taxed foreign income and deferred foreign income, the amount of deemed foreign tax credits shall be determined with regard to section 976.
SEC. 976. AMOUNT OF FOREIGN TAXES COMPUTED ON
OVERALL BASIS.

(a) Current Year Allowance.—For purposes of this chapter, the amount taken into account as foreign income taxes for any taxable year shall be an amount which bears the same ratio to the total foreign income taxes for that taxable year as—

(1) the currently-taxed foreign income for such taxable year, bears to

(2) the sum of the currently-taxed foreign income and deferred foreign income for such year.

The portion of the total foreign income taxes for any taxable year not taken into account under the preceding sentence for a taxable year shall only be taken into account as provided in subsection (b) (and shall not be taken into account for purposes of applying sections 902 and 960).

(b) Allowance Related to Repatriated Deferred Foreign Income.—

(1) In General.—If there is repatriated foreign income for any taxable year, the portion of the previously deferred foreign income taxes paid or accrued during such taxable year shall be taken into account for the taxable year as foreign taxes paid or accrued. Any such taxes so taken into account shall not be included in foreign income taxes for purposes of applying subsection (a) to such taxable year.
“(2) Portion of previously deferred foreign income taxes.—For purposes of paragraph (1), the portion of the previously deferred foreign income taxes allocated to repatriated deferred foreign income is—

“(A) the amount which bears the same proportion to such taxes, as

“(B) the repatriated deferred income bears to the previously deferred foreign income.

“(c) Definitions and Special Rule.—For purposes of this section—

“(1) Previously deferred foreign income taxes.—The term ‘previously deferred foreign income taxes’ means the aggregate amount of total foreign income taxes not taken into account under subsection (a) for all prior taxable years (determined as of the beginning of the taxable year), reduced by any amounts taken into account under subsection (b) for such prior taxable years.

“(2) Total foreign income taxes.—The term ‘total foreign income taxes’ means the sum of foreign income taxes paid or accrued during the taxable year (determined without regard to section 904(c)) plus the increase in foreign income taxes
that would be paid or accrued during the taxable year under sections 902 and 960 if—

“(A) all controlled foreign corporations were treated as one controlled foreign corporation, and

“(B) all earnings and profits of all controlled foreign corporations were subpart F income (as defined in section 952).

“(3) FOREIGN INCOME TAXES.—The term ‘foreign income taxes’ means any income, war profits, or excess profits taxes paid by the taxpayer to any foreign country or possession of the United States.

“(4) CURRENTLY-TAXED FOREIGN INCOME AND DEFERRED FOREIGN INCOME.—The terms ‘currently-taxed foreign income’ and ‘deferred foreign income’ have the meanings given such terms by section 975(c)).

“SEC. 977. APPLICATION OF SUBPART.

“This subpart—

“(1) shall be applied before subpart A, and

“(2) shall be applied separately with respect to the categories of income specified in section 904(d)(1).”.

(b) CLERICAL AMENDMENT.—The table of subparts for part III of subpart N of chapter 1 of such Code is
amended by inserting after the item relating to subpart

G the following new item:

“SUBPART H. SPECIAL RULES FOR ALLOCATION OF FOREIGN-RELATED DEDUCTIONS AND FOREIGN TAX CREDITS.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2012.

SEC. 322. EXCESS INCOME FROM TRANSFERS OF INTANGIBLES TO LOW-TAXED AFFILIATES TREATED AS SUBPART F INCOME.

(a) IN GENERAL.—Subsection (a) of section 954 of the Internal Revenue Code of 1986 is amended by inserting after paragraph (3) the following new paragraph:

“(4) the foreign base company excess intangible income for the taxable year (determined under subsection (f) and reduced as provided in subsection (b)(5)), and”.

(b) FOREIGN BASE COMPANY EXCESS INTANGIBLE INCOME.—Section 954 of such Code is amended by inserting after subsection (e) the following new subsection:

“(f) FOREIGN BASE COMPANY EXCESS INTANGIBLE INCOME.—For purposes of subsection (a)(4) and this subsection:

“(1) FOREIGN BASE COMPANY EXCESS INTANGIBLE INCOME DEFINED.—
“(A) IN GENERAL.—The term ‘foreign base company excess intangible income’ means, with respect to any covered intangible, the excess of—

“(i) the sum of—

“(I) gross income from the sale, lease, license, or other disposition of property in which such covered intangible is used directly or indirectly, and

“(II) gross income from the provision of services related to such covered intangible or in connection with property in which such covered intangible is used directly or indirectly, over

“(ii) 150 percent of the costs properly allocated and apportioned to the gross income taken into account under clause (i) other than expenses for interest and taxes and any expenses which are not directly allocable to such gross income.

“(B) SAME COUNTRY INCOME NOT TAKEN INTO ACCOUNT.—If—

“(i) the sale, lease, license, or other disposition of the property referred to in
subparagraph (A)(i)(I) is for use, consumption, or disposition in the country under the laws of which the controlled foreign corporation is created or organized, or "(ii) the services referred to in subparagraph (A)(i)(II) are performed in such country,

the gross income from such sale, lease, license, or other disposition, or provision of services, shall not be taken into account under subparagraph (A)(i).

"(C) Special rule for research and development expenses.—Research and development costs for any taxable year shall be treated for purposes of subparagraph (A) as properly allocable to gross income derived from a covered intangible if such costs are properly allocable to the line of business in which such gross income is earned.

"(2) Exception based on effective foreign income tax rate.—

"(A) In general.—Foreign base company excess intangible income shall not include the applicable percentage of any item of income received by a controlled foreign corporation if the
taxpayer establishes to the satisfaction of the Secretary that such income was subject to an effective rate of income tax imposed by a foreign country in excess of 10 percent.

“(B) Applicable percentage.—For purposes of subparagraph (A), the term ‘applicable percentage’ means the ratio (expressed as a percentage), not greater than 100 percent, of—

“(i) the number of percentage points by which the effective rate of income tax referred to in subparagraph (A) exceeds 10 percentage points, over

“(ii) 5 percentage points.

“(C) Treatment of losses in determining effective rate of foreign income tax.—For purposes of determining the effective rate of income tax imposed by any foreign country—

“(i) such effective rate shall be determined without regard to any losses carried to the relevant taxable year, and

“(ii) to the extent the income with respect to such intangible reduces losses in the relevant taxable year, such effective
rate shall be treated as being the effective rate which would have been imposed on such income without regard to such losses.

“(3) COVERED INTANGIBLE.—The term ‘covered intangible’ means, with respect to any controlled foreign corporation, any intangible property (as defined in section 936(h)(3)(B))—

“(A) which is sold, leased, licensed, or otherwise transferred (directly or indirectly) to such controlled foreign corporation from a United States related person, or

“(B) with respect to which such controlled foreign corporation and one or more related persons has (directly or indirectly) entered into any shared risk or development agreement (including any cost sharing agreement).

“(4) RELATED PERSON.—The term ‘related person’ has the meaning given such term in subsection (d)(3).”.

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (4) of section 954(b) of such Code is amended by inserting “foreign base company excess intangible income described in subsection (a)(4) or” before “foreign base company oil-related income” in the last sentence thereof.
(2) Paragraph (5) of section 954(b) of such Code is amended by inserting “the foreign base company excess intangible income,” before “and the foreign base company oil related income”.

(3) Subsection (b) of section 954 of such Code is amended by adding at the end the following new paragraph:

“(7) FOREIGN BASE COMPANY EXCESS INTANGIBLE INCOME NOT TREATED AS ANOTHER KIND OF BASE COMPANY INCOME.—Income of a corporation which is foreign base company excess intangible income shall not be considered foreign base company income of such corporation under paragraph (2), (3), or (5) of subsection (a).”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to income from transactions connected with or benefitting from covered intangibles in taxable years beginning on or after January 1, 2013.

SEC. 323. MODIFICATIONS OF FOREIGN TAX CREDIT RULES APPLICABLE TO DUAL CAPACITY TAXPAYERS.

(a) IN GENERAL.—Section 901 of the Internal Revenue Code of 1986 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:
“(n) Special Rules Relating to Dual Capacity Taxpayers.—

“(1) General rule.—Notwithstanding any other provision of this chapter, any amount paid or accrued by a dual capacity taxpayer or any member of the worldwide affiliated group of which such dual capacity taxpayer is also a member to any foreign country or to any possession of the United States for any period shall not be considered a tax to the extent such amount exceeds the amount (determined in accordance with regulations) which would have been required to be paid if the taxpayer were not a dual capacity taxpayer.

“(2) Dual capacity taxpayer.—For purposes of this subsection, the term ‘dual capacity taxpayer’ means, with respect to any foreign country or possession of the United States, a person who—

“(A) is subject to a levy of such country or possession, and

“(B) receives (or will receive) directly or indirectly a specific economic benefit (as determined in accordance with regulations) from such country or possession.

“(3) Regulations.—The Secretary may issue such regulations or other guidance as is necessary or
appropriate to carry out the purposes of this sub-
section.”.

(b) CONTRARY TREATY OBLIGATIONS UPHELD.—
The amendments made by this section shall not apply to
the extent contrary to any treaty obligation of the United
States.

(c) EFFECTIVE DATE.—The amendments made by
this section shall apply to amounts that, if such amounts
were an amount of tax paid or accrued, would be consid-
ered paid or accrued in taxable years beginning after De-

Subtitle D—Making Wall Street
Take Responsibility

SEC. 331. FINANCIAL CRISIS RESPONSIBILITY FEE.

(a) AMOUNT TO BE COLLECTED.—In order to cover
the costs to the Federal Government of assistance pro-
vided through the Emergency Economic Stabilization Act
of 2008, including the Troubled Asset Relief Program, the
Secretary of the Treasury, during the 10-year period be-
ning on the first day of fiscal year 2013 and continuing
through the end of fiscal year 2022, shall assess a Finan-
cial Crisis Responsibility Fee to collect a total of
$65,000,000,000.

(b) ASSESSMENT AND SCHEDULE.—To collect the
Financial Crisis Responsibility Fee, the Secretary of the
Treasury shall establish, by regulation, an assessment schedule by fiscal year, including assessment base and rates, that—

(1) is designed, in the judgment of the Secretary of the Treasury, to result in the collection of $65,000,000,000; and

(2) shall apply to any financial institution with $50,000,000,000 or more in total consolidated assets that received taxpayer assistance under the Emergency Economic Stabilization Act of 2008, including the Troubled Asset Relief Program.

(c) Consideration of Economic Recovery.—To minimize any adverse impact to, and to promote the full recovery of, the economy and financial sector, the Secretary of the Treasury shall phase in the assessment rate required under this part over the 10-year period described in subsection (a), in a manner determined by the Secretary of the Treasury.

**Subtitle E—Closing the Carried Interest Loophole**

**SEC. 341. PARTNERSHIP INTERESTS TRANSFERRED IN CONNECTION WITH PERFORMANCE OF SERVICES.**

(a) Modification to Election to Include Partnership Interest in Gross Income in Year of
TRANSFER.—Subsection (c) of section 83 of the Internal Revenue Code of 1986 is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

“(4) PARTNERSHIP INTERESTS.—Except as provided by the Secretary—

“(A) IN GENERAL.—In the case of any transfer of an interest in a partnership in connection with the provision of services to (or for the benefit of) such partnership—

“(i) the fair market value of such interest shall be treated for purposes of this section as being equal to the amount of the distribution which the partner would receive if the partnership sold (at the time of the transfer) all of its assets at fair market value and distributed the proceeds of such sale (reduced by the liabilities of the partnership) to its partners in liquidation of the partnership, and

“(ii) the person receiving such interest shall be treated as having made the election under subsection (b)(1) unless such person makes an election under this paragraph to have such subsection not apply.
“(B) ELECTION.—The election under sub-
paragraph (A)(ii) shall be made under rules
similar to the rules of subsection (b)(2).”.

(b) EFFECTIVE DATE.—The amendments made by
this section shall apply to interests in partnerships trans-
ferred after the date of the enactment of this Act.

SEC. 342. SPECIAL RULES FOR PARTNERS PROVIDING IN-
VESTMENT MANAGEMENT SERVICES TO
PARTNERSHIPS.

(a) IN GENERAL.—Part I of subchapter K of chapter
1 of the Internal Revenue Code of 1986 is amended by
adding at the end the following new section:

“SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING IN-
VESTMENT MANAGEMENT SERVICES TO
PARTNERSHIPS.

“(a) TREATMENT OF DISTRIBUTIVE SHARE OF
PARTNERSHIP ITEMS.—For purposes of this title, in the
case of an investment services partnership interest—

“(1) IN GENERAL.—Notwithstanding section
702(b)—

“(A) an amount equal to the net capital
gain with respect to such interest for any part-
nership taxable year shall be treated as ordi-
nary income, and
“(B) subject to the limitation of paragraph (2), an amount equal to the net capital loss with respect to such interest for any partnership taxable year shall be treated as an ordinary loss.

“(2) Recharacterization of losses limited to recharacterized gains.—The amount treated as ordinary loss under paragraph (1)(B) for any taxable year shall not exceed the excess (if any) of—

“(A) the aggregate amount treated as ordinary income under paragraph (1)(A) with respect to the investment services partnership interest for all preceding partnership taxable years to which this section applies, over

“(B) the aggregate amount treated as ordinary loss under paragraph (1)(B) with respect to such interest for all preceding partnership taxable years to which this section applies.

“(3) Allocation to items of gain and loss.—

“(A) Net capital gain.—The amount treated as ordinary income under paragraph (1)(A) shall be allocated ratably among the
items of long-term capital gain taken into account in determining such net capital gain.

“(B) Net capital loss.—The amount treated as ordinary loss under paragraph (1)(B) shall be allocated ratably among the items of long-term capital loss and short-term capital loss taken into account in determining such net capital loss.

“(4) Terms relating to capital gains and losses.—For purposes of this section—

“(A) In general.—Net capital gain, long-term capital gain, and long-term capital loss, with respect to any investment services partnership interest for any taxable year, shall be determined under section 1222, except that such section shall be applied—

“(i) without regard to the recharacterization of any item as ordinary income or ordinary loss under this section,

“(ii) by only taking into account items of gain and loss taken into account by the holder of such interest under section 702 with respect to such interest for such taxable year, and
“(iii) by treating property which is taken into account in determining gains and losses to which section 1231 applies as capital assets held for more than 1 year.

“(B) NET CAPITAL LOSS.—The term ‘net capital loss’ means the excess of the losses from sales or exchanges of capital assets over the gains from such sales or exchanges. Rules similar to the rules of clauses (i) through (iii) of subparagraph (A) shall apply for purposes of the preceding sentence.

“(5) SPECIAL RULES FOR DIVIDENDS.—

“(A) INDIVIDUALS.—Any dividend allocated to any investment services partnership interest shall not be treated as qualified dividend income for purposes of section 1(h).

“(B) CORPORATIONS.—No deduction shall be allowed under section 243 or 245 with respect to any dividend allocated to any investment services partnership interest.

“(6) SPECIAL RULE FOR QUALIFIED SMALL BUSINESS STOCK.—Section 1202 shall not apply to any gain from the sale or exchange of qualified small business stock (as defined in section 1202(c)) allo-
cated with respect to any investment services part-
nership interest.

“(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—

“(1) GAIN.—

“(A) IN GENERAL.—Any gain on the dis-
position of an investment services partnership
interest shall be—

“(i) treated as ordinary income, and
“(ii) recognized notwithstanding any
other provision of this subtitle.

“(B) GIFT AND TRANSFERS AT DEATH.—

In the case of a disposition of an investment
services partnership interest by gift or by rea-
son of death of the taxpayer—

“(i) subparagraph (A) shall not apply,
“(ii) such interest shall be treated as
an investment services partnership interest
in the hands of the person acquiring such
interest, and
“(iii) any amount that would have
been treated as ordinary income under this
subsection had the decedent sold such in-
terest immediately before death shall be
treated as an item of income in respect of
a decedent under section 691.
“(2) Loss.—Any loss on the disposition of an
investment services partnership interest shall be
treated as an ordinary loss to the extent of the ex-
cess (if any) of—

“(A) the aggregate amount treated as ordi-
nary income under subsection (a) with respect
to such interest for all partnership taxable
years to which this section applies, over

“(B) the aggregate amount treated as or-
dinary loss under subsection (a) with respect to
such interest for all partnership taxable years
to which this section applies.

“(3) Election with respect to certain ex-
changes.—Paragraph (1)(A)(ii) shall not apply to
the contribution of an investment services partner-
ship interest to a partnership in exchange for an in-
terest in such partnership if—

“(A) the taxpayer makes an irrevocable
election to treat the partnership interest re-
ceived in the exchange as an investment serv-
ices partnership interest, and

“(B) the taxpayer agrees to comply with
such reporting and recordkeeping requirements
as the Secretary may prescribe.
“(4) Distributions of partnership property.—

“(A) In general.—In the case of any distribution of property by a partnership with respect to any investment services partnership interest held by a partner, the partner receiving such property shall recognize gain equal to the excess (if any) of—

“(i) the fair market value of such property at the time of such distribution, over

“(ii) the adjusted basis of such property in the hands of such partner (determined without regard to subparagraph (C)).

“(B) Treatment of gain as ordinary income.—Any gain recognized by such partner under subparagraph (A) shall be treated as ordinary income to the same extent and in the same manner as the increase in such partner’s distributive share of the taxable income of the partnership would be treated under subsection (a) if, immediately prior to the distribution, the partnership had sold the distributed property at fair market value and all of the gain from such
disposition were allocated to such partner. For purposes of applying subsection (a)(2), any gain treated as ordinary income under this subpara-
graph shall be treated as an amount treated as ordinary income under subsection (a)(1)(A).

“(C) Adjustment of Basis.—In the case a distribution to which subparagraph (A) ap-
plies, the basis of the distributed property in the hands of the distributee partner shall be the fair market value of such property.

“(D) Special Rules with Respect to Mergers, Divisions, and Technical Terminations.—In the case of a taxpayer which sat-
ishes requirements similar to the requirements of subparagraphs (A) and (B) of paragraph (3), this paragraph and paragraph (1)(A)(ii) shall not apply to the distribution of a partnership interest if such distribution is in connection with a contribution (or deemed contribution) of any property of the partnership to which sec-
tion 721 applies pursuant to a transaction de-
scribed in paragraph (1)(B) or (2) of section 708(b).

“(c) Investment Services Partnership Inter-
est.—For purposes of this section—
“(1) IN GENERAL.—The term ‘investment services partnership interest’ means any interest in an investment partnership acquired or held by any person in connection with the conduct of a trade or business described in paragraph (2) by such person (or any person related to such person). An interest in an investment partnership held by any person—

“(A) shall not be treated as an investment services partnership interest for any period before the first date on which it is so held in connection with such a trade or business,

“(B) shall not cease to be an investment services partnership interest merely because such person holds such interest other than in connection with such a trade or business, and

“(C) shall be treated as an investment services partnership interest if acquired from a related person in whose hands such interest was an investment services partnership interest.

“(2) BUSINESSES TO WHICH THIS SECTION APPLIES.—A trade or business is described in this paragraph if such trade or business primarily involves the performance of any of the following services with respect to assets held (directly or indi-
rectly) by the investment partnership referred to in paragraph (1):

“(A) Advising as to the advisability of investing in, purchasing, or selling any specified asset.

“(B) Managing, acquiring, or disposing of any specified asset.

“(C) Arranging financing with respect to acquiring specified assets.

“(D) Any activity in support of any service described in subparagraphs (A) through (C).

“(3) INVESTMENT PARTNERSHIP.—

“(A) IN GENERAL.—The term ‘investment partnership’ means any partnership if, at the end of any calendar quarter ending after the date of enactment of this section—

“(i) substantially all of the assets of the partnership are specified assets (determined without regard to any section 197 intangible within the meaning of section 197(d)), and

“(ii) more than half of the capital of the partnership is attributable to qualified capital interests which (in the hands of the owners of such interests) constitute prop-
property not held in connection with a trade or business.

“(B) Special rules for determining if property not held in connection with trade or business.—Except as otherwise provided by the Secretary, for purposes of determining whether any interest in a partnership constitutes property not held in connection with a trade or business under subparagraph (A)(ii)—

“(i) any election under subsection (e) or (f) of section 475 shall be disregarded, and

“(ii) paragraph (5)(B) shall not apply.

“(C) Antiabuse rules.—The Secretary may issue regulations or other guidance which prevent the avoidance of the purposes of subparagraph (A), including regulations or other guidance which treat convertible and contingent debt (and other debt having the attributes of equity) as a capital interest in the partnership.

“(D) Controlled groups of entities.—

“(i) In general.—In the case of a controlled group of entities, if an interest
in the partnership received in exchange for
a contribution to the capital of the part-
nership by any member of such controlled
group would (in the hands of such mem-
ber) constitute property held in connection
with a trade or business, then any interest
in such partnership held by any member of
such group shall be treated for purposes of
subparagraph (A) as constituting (in the
hands of such member) property held in
connection with a trade or business.

“(ii) CONTROLLED GROUP OF ENTI-
ties.—For purposes of clause (i), the term
‘controlled group of entities’ means a con-
trolled group of corporations as defined in
section 1563(a)(1), applied without regard
to subsections (a)(4) and (b)(2) of section
1563. A partnership or any other entity
(other than a corporation) shall be treated
as a member of a controlled group of enti-
ties if such entity is controlled (within the
meaning of section 954(d)(3)) by members
of such group (including any entity treated
as a member of such group by reason of
this sentence).
“(E) Special rule for corporations.—For purposes of this paragraph, in the case of a corporation, the determination of whether property is held in connection with a trade or business shall be determined as if the taxpayer were an individual.

“(4) Specified asset.—The term ‘specified asset’ means securities (as defined in section 475(e)(2) without regard to the last sentence thereof), real estate held for rental or investment, interests in partnerships, commodities (as defined in section 475(e)(2)), cash or cash equivalents, or options or derivative contracts with respect to any of the foregoing.

“(5) Related persons.—

“(A) In general.—A person shall be treated as related to another person if the relationship between such persons is described in section 267(b) or 707(b).

“(B) Attribution of partner services.—Any service described in paragraph (2) which is provided by a partner of a partnership shall be treated as also provided by such partnership.
“(d) Exception for Certain Capital Interests.—

“(1) In General.—In the case of any portion of an investment services partnership interest which is a qualified capital interest, all items of gain and loss (and any dividends) which are allocated to such qualified capital interest shall not be taken into account under subsection (a) if—

“(A) allocations of items are made by the partnership to such qualified capital interest in the same manner as such allocations are made to other qualified capital interests held by partners who do not provide any services described in subsection (c)(2) and who are not related to the partner holding the qualified capital interest, and

“(B) the allocations made to such other interests are significant compared to the allocations made to such qualified capital interest.

“(2) Authority to Provide Exceptions to Allocation Requirements.—To the extent provided by the Secretary in regulations or other guidance—

“(A) Allocations to Portion of Qualified Capital Interest.—Paragraph (1) may
be applied separately with respect to a portion
of a qualified capital interest.

“(B) No or insignificant allocations
to nonservice providers.—In any case in
which the requirements of paragraph (1)(B) are
not satisfied, items of gain and loss (and any
dividends) shall not be taken into account under
subsection (a) to the extent that such items are
properly allocable under such regulations or
other guidance to qualified capital interests.

“(C) Allocations to service pro-
viders’ qualified capital interests which
are less than other allocations.—Alloca-
tions shall not be treated as failing to meet the
requirement of paragraph (1)(A) merely be-
cause the allocations to the qualified capital in-
terest represent a lower return than the alloca-
tions made to the other qualified capital inter-
ests referred to in such paragraph.

“(3) Special rule for changes in services
and capital contributions.—In the case of an
interest in a partnership which was not an invest-
ment services partnership interest and which, by
reason of a change in the services with respect to as-
sets held (directly or indirectly) by the partnership
or by reason of a change in the capital contributions to such partnership, becomes an investment services partnership interest, the qualified capital interest of the holder of such partnership interest immediately after such change shall not, for purposes of this subsection, be less than the fair market value of such interest (determined immediately before such change).

“(4) Special rule for tiered partnerships.—Except as otherwise provided by the Secretary, in the case of tiered partnerships, all items which are allocated in a manner which meets the requirements of paragraph (1) to qualified capital interests in a lower-tier partnership shall retain such character to the extent allocated on the basis of qualified capital interests in any upper-tier partnership.

“(5) Exception for no-self-charged carry and management fee provisions.—Except as otherwise provided by the Secretary, an interest shall not fail to be treated as satisfying the requirement of paragraph (1)(A) merely because the allocations made by the partnership to such interest do not reflect the cost of services described in subsection (c)(2) which are provided (directly or indi-
(6) Special rule for dispositions.—In the case of any investment services partnership interest any portion of which is a qualified capital interest, subsection (b) shall not apply to so much of any gain or loss as bears the same proportion to the entire amount of such gain or loss as—

(A) the distributive share of gain or loss that would have been allocated to the qualified capital interest (consistent with the requirements of paragraph (1)) if the partnership had sold all of its assets at fair market value immediately before the disposition, bears to

(B) the distributive share of gain or loss that would have been so allocated to the investment services partnership interest of which such qualified capital interest is a part.

(7) Qualified capital interest.—For purposes of this section—

(A) In general.—The term ‘qualified capital interest’ means so much of a partner’s interest in the capital of the partnership as is attributable to—
“(i) the fair market value of any money or other property contributed to the partnership in exchange for such interest (determined without regard to section 752(a)),

“(ii) any amounts which have been included in gross income under section 83 with respect to the transfer of such interest, and

“(iii) the excess (if any) of—

“(I) any items of income and gain taken into account under section 702 with respect to such interest, over

“(II) any items of deduction and loss so taken into account.

“(B) ADJUSTMENT TO QUALIFIED CAPITAL INTEREST.—

“(i) DISTRIBUTIONS AND LOSSES.—

The qualified capital interest shall be reduced by distributions from the partnership with respect to such interest and by the excess (if any) of the amount described in subparagraph (A)(iii)(II) over the amount described in subparagraph (A)(iii)(I).
“(ii) Special rule for contributions of property.—In the case of any contribution of property described in subparagraph (A)(i) with respect to which the fair market value of such property is not equal to the adjusted basis of such property immediately before such contribution, proper adjustments shall be made to the qualified capital interest to take into account such difference consistent with such regulations or other guidance as the Secretary may provide.

“(C) Technical terminations, etc., disregarded.—No increase or decrease in the qualified capital interest of any partner shall result from a termination, merger, consolidation, or division described in section 708, or any similar transaction.

“(8) Treatment of certain loans.—

“(A) Proceeds of partnership loans not treated as qualified capital interest of service providing partners.—For purposes of this subsection, an investment services partnership interest shall not be treated as a qualified capital interest to the extent that
such interest is acquired in connection with the proceeds of any loan or other advance made or guaranteed, directly or indirectly, by any other partner or the partnership (or any person related to any such other partner or the partnership). The preceding sentence shall not apply to the extent the loan or other advance is repaid before the date of the enactment of this section unless such repayment is made with the proceeds of a loan or other advance described in the preceding sentence.

“(B) REDUCTION IN ALLOCATIONS TO QUALIFIED CAPITAL INTERESTS FOR LOANS FROM NONSERVICE-PROVIDING PARTNERS TO THE PARTNERSHIP.—For purposes of this subsection, any loan or other advance to the partnership made or guaranteed, directly or indirectly, by a partner not providing services described in subsection (c)(2) to the partnership (or any person related to such partner) shall be taken into account in determining the qualified capital interests of the partners in the partnership.

“(e) OTHER INCOME AND GAIN IN CONNECTION WITH INVESTMENT MANAGEMENT SERVICES.—
“(1) IN GENERAL.—If—

“(A) a person performs (directly or indirectly) investment management services for any investment entity,

“(B) such person holds (directly or indirectly) a disqualified interest with respect to such entity, and

“(C) the value of such interest (or payments thereunder) is substantially related to the amount of income or gain (whether or not realized) from the assets with respect to which the investment management services are performed,

any income or gain with respect to such interest shall be treated as ordinary income. Rules similar to the rules of subsections (a)(5) and (d) shall apply for purposes of this subsection.

“(2) DEFINITIONS.—For purposes of this subsection—

“(A) DISQUALIFIED INTEREST.—

“(i) IN GENERAL.—The term ‘disqualified interest’ means, with respect to any investment entity—

“(I) any interest in such entity other than indebtedness,
“(II) convertible or contingent debt of such entity,

“(III) any option or other right to acquire property described in sub-clause (I) or (II), and

“(IV) any derivative instrument entered into (directly or indirectly) with such entity or any investor in such entity.

“(ii) EXCEPTIONS.—Such term shall not include—

“(I) a partnership interest,

“(II) except as provided by the Secretary, any interest in a taxable corporation, and

“(III) except as provided by the Secretary, stock in an S corporation.

“(B) TAXABLE CORPORATION.—The term ‘taxable corporation’ means—

“(i) a domestic C corporation, or

“(ii) a foreign corporation substantially all of the income of which is—

“(I) effectively connected with the conduct of a trade or business in the United States, or
“(II) subject to a comprehensive foreign income tax (as defined in section 457A(d)(2)).

“(C) INVESTMENT MANAGEMENT SERVICES.—The term ‘investment management services’ means a substantial quantity of any of the services described in subsection (c)(2).

“(D) INVESTMENT ENTITY.—The term ‘investment entity’ means any entity which, if it were a partnership, would be an investment partnership.

“(f) REGULATIONS.—The Secretary shall prescribe such regulations or other guidance as is necessary or appropriate to carry out the purposes of this section, including regulations or other guidance to—

“(1) provide modifications to the application of this section (including treating related persons as not related to one another) to the extent such modification is consistent with the purposes of this section,

“(2) prevent the avoidance of the purposes of this section, and

“(3) coordinate this section with the other provisions of this title.
“(g) Cross Reference.—For 40 percent penalty on certain underpayments due to the avoidance of this section, see section 6662.”.

(b) Application of Section 751 to Indirect Dispositions of Investment Services Partnership Interests.—

(1) In General.—Subsection (a) of section 751 of such Code is amended by striking “or” at the end of paragraph (1), by inserting “or” at the end of paragraph (2), and by inserting after paragraph (2) the following new paragraph:

“(3) investment services partnership interests held by the partnership.”.

(2) Certain Distributions Treated as Sales or Exchanges.—Subparagraph (A) of section 751(b)(1) of such Code is amended by striking “or” at the end of clause (i), by inserting “or” at the end of clause (ii), and by inserting after clause (ii) the following new clause:

“(iii) investment services partnership interests held by the partnership.”.

(3) Application of Special Rules in the Case of Tiered Partnerships.—Subsection (f) of section 751 of such Code is amended—
(A) by striking “or” at the end of paragraph (1), by inserting “or” at the end of paragraph (2), and by inserting after paragraph (2) the following new paragraph:

“(3) an investment services partnership interest held by the partnership,”, and

(B) by striking “partner.” and inserting “partner (other than a partnership in which it holds an investment services partnership interest).”.

(4) Investment services partnership interests; qualified capital interests.—Section 751 of such Code is amended by adding at the end the following new subsection:

“(g) Investment Services Partnership Interests.—For purposes of this section—

“(1) In general.—The term ‘investment services partnership interest’ has the meaning given such term by section 710(c).

“(2) Adjustments for qualified capital interests.—The amount to which subsection (a) applies by reason of paragraph (3) thereof shall not include so much of such amount as is attributable to any portion of the investment services partnership interest which is a qualified capital interest (deter-
mined under rules similar to the rules of section 710(d)).

“(3) Exception for publicly traded partnerships.—In the case of an exchange of an interest in a publicly traded partnership (as defined in section 7704) to which subsection (a) applies—

“(A) this section shall be applied without regard to subsections (a)(3), (b)(1)(A)(iii), and (f)(3), and

“(B) such partnership shall be treated as owning its proportionate share of the property of any other partnership in which it is a partner.

“(4) Recognition of gains.—Any gain with respect to which subsection (a) applies by reason of paragraph (3) thereof shall be recognized notwithstanding any other provision of this title.

“(5) Coordination with inventory items.—An investment services partnership interest held by the partnership shall not be treated as an inventory item of the partnership.

“(6) Prevention of double counting.—Under regulations or other guidance prescribed by the Secretary, subsection (a)(3) shall not apply with respect to any amount to which section 710 applies.
“(7) VALUATION METHODS.—The Secretary shall prescribe regulations or other guidance which provide the acceptable methods for valuing investment services partnership interests for purposes of this section.”.

(c) TREATMENT FOR PURPOSES OF SECTION 7704.—Subsection (d) of section 7704 of such Code is amended by adding at the end the following new paragraph:

“(6) INCOME FROM CERTAIN CARRIED INTERESTS NOT QUALIFIED.—

“(A) IN GENERAL.—Specified carried interest income shall not be treated as qualifying income.

“(B) SPECIFIED CARRIED INTEREST INCOME.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘specified carried interest income’ means—

“(I) any item of income or gain allocated to an investment services partnership interest (as defined in section 710(c)) held by the partnership,

“(II) any gain on the disposition of an investment services partnership
interest (as so defined) or a partnership interest to which (in the hands of the partnership) section 751 applies, and

“(III) any income or gain taken into account by the partnership under subsection (b)(4) or (e) of section 710.

“(ii) Exception for qualified capital interests.—A rule similar to the rule of section 710(d) shall apply for purposes of clause (i).

“(C) Coordination with other provisions.—Subparagraph (A) shall not apply to any item described in paragraph (1)(E) (or so much of paragraph (1)(F) as relates to paragraph (1)(E)).

“(D) Special rules for certain partnerships.—

“(i) Certain partnerships owned by real estate investment trusts.—Subparagraph (A) shall not apply in the case of a partnership which meets each of the following requirements:
“(I) Such partnership is treated as publicly traded under this section solely by reason of interests in such partnership being convertible into interests in a real estate investment trust which is publicly traded.

“(II) Fifty percent or more of the capital and profits interests of such partnership are owned, directly or indirectly, at all times during the taxable year by such real estate investment trust (determined with the application of section 267(e)).

“(III) Such partnership meets the requirements of paragraphs (2), (3), and (4) of section 856(c).

“(ii) CERTAIN PARTNERSHIPS OWN-ING OTHER PUBLICLY TRADED PARTNER-SHIPS.—Subparagraph (A) shall not apply in the case of a partnership which meets each of the following requirements:

“(I) Substantially all of the assets of such partnership consist of inter-est in one or more publicly traded
partnerships (determined without regard to subsection (b)(2)).

“(II) Substantially all of the income of such partnership is ordinary income or section 1231 gain (as defined in section 1231(a)(3)).

“(E) Transitional rule.—Subparagraph (A) shall not apply to any taxable year of the partnership beginning before the date which is 10 years after the date of the enactment of this paragraph.”.

(d) Imposition of Penalty on Underpayments.—

(1) In General.—Subsection (b) of section 6662 of such Code is amended by inserting after paragraph (7) the following new paragraph:

“(8) The application of section 710(e) or the regulations or other guidance prescribed under section 710(f) to prevent the avoidance of the purposes of section 710.”.

(2) Amount of Penalty.—

(A) In General.—Section 6662 of such Code is amended by adding at the end the following new subsection:
“(k) Increase in Penalty in Case of Property Transferred for Investment Management Services.—In the case of any portion of an underpayment to which this section applies by reason of subsection (b)(8), subsection (a) shall be applied with respect to such portion by substituting ‘40 percent’ for ‘20 percent’.”.

(B) Conforming Amendment.—Subparagraph (B) of section 6662A(e)(2) of such Code is amended by striking “or (i)” and inserting “, (i), or (k)”.

(3) Special Rules for Application of Reasonable Cause Exception.—Subsection (c) of section 6664 of such Code is amended—

(A) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively;

(B) by striking “paragraph (3)” in paragraph (5)(A), as so redesignated, and inserting “paragraph (4)”;

(C) by inserting after paragraph (2) the following new paragraph:

“(3) Special Rule for Underpayments Attributable to Investment Management Services.—

“(A) In General.—Paragraph (1) shall not apply to any portion of an underpayment to
which section 6662 applies by reason of subsection (b)(8) unless—

“(i) the relevant facts affecting the tax treatment of the item are adequately disclosed,

“(ii) there is or was substantial authority for such treatment, and

“(iii) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

“(B) RULES RELATING TO REASONABLE BELIEF.—Rules similar to the rules of subsection (d)(3) shall apply for purposes of subparagraph (A)(iii).”.

(c) INCOME AND LOSS FROM INVESTMENT SERVICES

PARTNERSHIP INTERESTS TAKEN INTO ACCOUNT IN DETERMINING NET EARNINGS FROM SELF-EMPLOYMENT.—

(1) INTERNAL REVENUE CODE.—

(A) IN GENERAL.—Section 1402(a) of such Code is amended by striking “and” at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting “; and”, and by inserting after paragraph (17) the following new paragraph:
“(18) notwithstanding the preceding provisions of this subsection, in the case of any individual engaged in the trade or business of providing services described in section 710(e)(2) with respect to any entity, investment services partnership income or loss (as defined in subsection (m)) of such individual with respect to such entity shall be taken into account in determining the net earnings from self-employment of such individual.”.

(B) INVESTMENT SERVICES PARTNERSHIP INCOME OR LOSS.—Section 1402 of such Code is amended by adding at the end the following new subsection:

“(m) INVESTMENT SERVICES PARTNERSHIP INCOME OR LOSS.—For purposes of subsection (a)—

“(1) IN GENERAL.—The term ‘investment services partnership income or loss’ means, with respect to any investment services partnership interest (as defined in section 710(c)) or disqualified interest (as defined in section 710(e)), the net of—

“(A) the amounts treated as ordinary income or ordinary loss under subsections (b) and (e) of section 710 with respect to such interest,

“(B) all items of income, gain, loss, and deduction allocated to such interest, and
“(C) the amounts treated as realized from
the sale or exchange of property other than a
capital asset under section 751 with respect to
such interest.

“(2) Exception for qualified capital in-
terests.—A rule similar to the rule of section
710(d) shall apply for purposes of applying para-
graph (1)(B).”.

(2) Social Security Act.—Section 211(a) of
the Social Security Act is amended by striking
“and” at the end of paragraph (15), by striking the
period at the end of paragraph (16) and inserting “; and”, and by inserting after paragraph (16) the fol-
lowing new paragraph:

“(17) Notwithstanding the preceding provisions
of this subsection, in the case of any individual en-
gaged in the trade or business of providing services
described in section 710(c)(2) of the Internal Rev-
ue Code of 1986 with respect to any entity, invest-
ment services partnership income or loss (as defined
in section 1402(m) of such Code) shall be taken into
account in determining the net earnings from self-
employment of such individual.”.

(f) Conforming Amendments.—
(1) Subsection (d) of section 731 of such Code is amended by inserting “section 710(b)(4) (relating to distributions of partnership property),” after “to the extent otherwise provided by”.

(2) Section 741 of such Code is amended by inserting “or section 710 (relating to special rules for partners providing investment management services to partnerships)” before the period at the end.

(3) The table of sections for part I of subchapter K of chapter 1 of such Code is amended by adding at the end the following new item:

“Sec. 710. Special rules for partners providing investment management services to partnerships.”.

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

(2) PARTNERSHIP TAXABLE YEARS WHICH INCLUDE EFFECTIVE DATE.—In applying section 710(a) of the Internal Revenue Code of 1986 (as added by this section) in the case of any partnership taxable year which includes the date of the enactment of this Act, the amount of the net capital gain referred to in such section shall be treated as being the lesser of the net capital gain for the entire part-
partnership taxable year or the net capital gain determined by only taking into account items attributable to the portion of the partnership taxable year which is after such date.

(3) Dispositions of Partnership Interests.—

(A) In General.—Section 710(b) of such Code (as added by this section) shall apply to dispositions and distributions after the date of the enactment of this Act.

(B) Indirect Dispositions.—The amendments made by subsection (b) shall apply to transactions after the date of the enactment of this Act.

(4) Other Income and Gain in Connection with Investment Management Services.—Section 710(e) of such Code (as added by this section) shall take effect on the date of the enactment of this Act.

Subtitle F—Raising the Capital Gains Rate

SEC. 351. INCREASED CAPITAL GAINS RATE FOR HIGH-INCOME INDIVIDUALS.

(a) In General.—Paragraph (1) of section 1(h) of the Internal Revenue Code of 1986 is amended—
(1) in subparagraph (C), by striking “of the adjusted net capital gain” and all that follows and inserting “of the lesser of—

“(i) so much of the adjusted net capital gain (or, if less, taxable income) as exceeds the amount on which a tax is determined under subparagraph (B), or

“(ii) the excess (if any) of—

“(I) $50,000 ($100,000 in the case of a joint return), over

“(II) the sum of the amounts on which a tax is determined under subparagraphs (A) and (B), and”, and

(2) by striking subparagraphs (D) and (E) and inserting the following:

“(D) the lesser of—

“(i) 28 percent, or

“(ii) the highest marginal tax rate determined under this section (determined without regard to this subsection) which would be imposed on the taxable income of the taxpayer in excess of the sum of the amount on which tax is determined under the preceding subparagraphs of this paragraph,
multiplied by such amount of taxable income.”.

(b) **MINIMUM TAX.**—Paragraph (3) of section 55(b) of such Code is amended—

(1) in subparagraph (C), by striking “of the adjusted net capital gain” and all that follows, and inserting “of the lesser of—

“(i) so much of the adjusted net capital gain (or, if less, taxable excess) as exceeds the amount on which tax is determined under subparagraph (B), or”.

“(ii) the excess described in section 1(h)(1)(C)(ii), plus”, and

(2) by striking subparagraphs (D) inserting the following:

“(D) the lesser of—

“(i) 28 percent, or

“(ii) the highest marginal tax rate determined under section 1 (determined without regard to subsection (h)) which would be imposed on the taxable excess of the taxpayer in excess of the sum of the amount on which tax is determined under the preceding subparagraphs of this paragraph,

multiplied by such amount of taxable excess.”.
(c) Conforming Amendments.—

(1) The following provisions of such Code are amended by striking “15 percent” and inserting “28 percent”:

(A) Section 1445(e)(1).

(B) The second sentence of section 7518(g)(6)(A).

(C) Section 53511(f)(2) of title 46, United States Code.

(2) Section 1445(e)(6) of such Code is amended by striking “15 percent (20 percent in the case of taxable years beginning after December 31, 2010)” and inserting “28 percent”.

(d) 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, 2012.

(2) Withholding.—The amendments made by paragraphs (1)(A) and (2) of subsection (e) shall apply to amounts paid on or after January 1, 2013.
Subtitle G—Pension Guaranty Improvement

SEC. 361. SHORT TITLE.

This subtitle may be cited as the “Pension Guaranty Improvement Act of 2012”.

SEC. 362. FINDINGS.

Congress makes the following findings:

(1) The Pension Benefit Guaranty Corporation (referred to in this section as the “Corporation”) plays a critical role in helping to protect the retirement security of the 44,000,000 workers and retirees with defined benefit pension plans.

(2) The Corporation has struggled over the years to address deficiencies and implement long-term strategies for success.

(3) The Corporation faces long-term fiscal challenges, which have been exacerbated by the recent financial crisis.

(4) It is necessary for Congress to take immediate steps to improve the governance of the Corporation and ensure appropriate oversight by, and accountability to, key stakeholders, including labor, plan sponsors, and retirees.

(5) It is further necessary to take steps to ensure that the guaranty provided by the Corporation...
is fair to participants and that the Corporation has
sufficient resources to satisfy its obligations.

SEC. 363. PENSION BENEFIT GUARANTY CORPORATION

GOVERNANCE IMPROVEMENT.

(a) Board of Directors of the Pension Benefit Guaranty Corporation.—

(1) In general.—Section 4002(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302(d)) is amended to read as follows:

“(d)(1) The board of directors of the corporation consists of—

“(A) the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Commerce; and

“(B) 4 other members.

“(2)(A) The members of the board of directors described under paragraph (1)(B)—

“(i) shall be appointed by the President; and

“(ii) shall have expertise relevant to business of the corporation, which may include experience with insurance programs, defined benefit pension plans, or institutional asset management.

“(B) Except as provided in subparagraph (C)(ii), each member of the board of directors described under paragraph (1)(B) shall be appointed for a term of 4 years.
“(C)(i) The initial members of the board of directors described under paragraph (1)(B) shall be appointed as soon as practicable after the date of enactment of the Pension Guaranty Improvement Act of 2012.

“(ii) Of the initial members of the board of directors described under paragraph (1)(B) and appointed under clause (i)—

“(I) the term of one such member shall end on December 31, 2013;

“(II) the term of one such member shall end on December 31, 2014;

“(III) the term of one such member shall end on December 31, 2015; and

“(IV) the term of one such member shall end on December 31, 2016.

“(D)(i) Not more than 2 members of the board of directors described under paragraph (1)(B) may be members of the same political party.

“(ii) At least 1 member of the board of directors shall be an enrolled actuary or other financial expert.

“(iii) At least 1 member of the board of directors shall have experience with the issues unique to retired plan participants.
“(E)(i) Any vacancy on the board of directors shall be filled in the manner in which the original appointment was made.

“(ii) In the event of vacancy in the office of the Secretary of the Treasury, the Secretary of Labor, or the Secretary of Commerce and pending the appointment of a successor, or during the absence or disability of such a Secretary, the applicable acting Secretary shall be a member of the board of directors.

“(iii) A member of the board of directors appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of such member was appointed shall be appointed for the remainder of such term.

“(iv) A member of the board of directors described under paragraph (1)(B) may continue to serve after the expiration of the term of office for which such member was appointed until a successor has been appointed.

“(F) A member of the board of directors described under paragraph (1)(B) may be removed for good cause by the President or by unanimous decision of the other members of the board of directors.

“(G) A majority of the members of the board of directors in office shall constitute a quorum for the transaction of business. The vote of the majority of the members
present and voting at a meeting at which a quorum is present shall be the act of the board of directors.

“(3) Each member of the board of directors described under paragraph (1)(A) shall designate in writing an official, not below the level of Assistant Secretary, to serve as the voting representative of such member on the board. Such designation shall be effective until revoked or until a date or event specified therein. Any such representative may refer for board action any matter under consideration by the designating board member.

“(4) The members of the board of directors described under—

“(A) subparagraph (A) of paragraph (1), shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the board; and

“(B) subparagraph (B) of paragraph (1) shall, for each day (including traveltime) during which they are attending meetings or conferences of the board or otherwise engaged in the business of the board, be compensated at a rate fixed by the corporation which is not in excess of the daily equivalent of the annual rate of basic pay for a position at level IV of the Executive Schedule under section
5315 of title 5, United States Code, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.

“(5)(A) The Secretary of Labor is the chairman of the board of directors.

“(B) The President shall designate 1 of the members appointed under paragraph (2) as the vice-chairman of the board of directors.

“(6) The Inspector General of the corporation shall report to the board of directors, and not less than twice a year, shall attend a meeting of the board of directors to provide a report on the activities and findings of the Inspector General, including with respect to monitoring and review of the operations of the corporation.

“(7) The General Counsel of the corporation shall—

“(A) serve as the secretary to the board of directors, and shall advise such board as needed; and

“(B) have overall responsibility for all legal matters affecting the corporation and provide the corporation with legal advice and opinions on all matters of law affecting the corporation, except that the authority of the General Counsel shall not ex-
tend to the Office of Inspector General and the independent legal counsel of such Office.

“(8) Notwithstanding any other provision of this Act, the Office of Inspector General and the legal counsel of such Office is independent of the management of the corporation and the General Counsel of the corporation.

“(9) The board of directors may appoint and fix the compensation of employees as may be required to enable the board of directors to perform its duties. The board of directors shall determine the qualifications and duties of such employees and may appoint and fix the compensation of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code.”.

(2) Number of Meetings; Public Availability.—Section 4002(e) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302(e)) is amended—

(A) by striking “The board” and inserting “(1) The board”;

(B) by striking “the corporation.” and inserting “the corporation, but in no case less than 4 times a year with not less than 5 members present. Not less than 1 meeting of the board of directors during each year shall be a
joint meeting with the advisory committee under subsection (h).”; and

(C) by adding at the end the following:

“(2)(A) Except as provided in subparagraph (B), the chairman of the board of directors shall make available to the public the minutes from each meeting of the board of directors.

“(B) The minutes of a meeting of the board of directors, or a portion thereof, shall not be subject to disclosure under subparagraph (A) if the chairman reasonably determines that such minutes, or portion thereof, contain confidential information relating to financial activities or personnel decisions of the corporation.

“(C) The minutes of a meeting, or portion thereof, exempt from disclosure pursuant to subparagraph (B) shall be exempt from disclosure under section 552(b) of title 5, United States Code. For purposes of such section 552 of title 5, United States Code, this subparagraph shall be considered a statute described in subsection (b)(3) of such section 552.”.

(3) ADVISORY COMMITTEE.—

(A) ISSUES CONSIDERED BY THE COMMITTEE.—Section 4002(h)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302(h)(1)) is amended—
(i) by striking “, and (D)” and inserting “, (D)”;

(ii) by striking “time to time.” and inserting “time to time, and (E) other issues as determined appropriate by the advisory committee.”.

(B) JOINT MEETING.—Section 4002(h)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302(h)(3)) is amended by adding at the end the following: “Not less than 1 meeting of the advisory committee during each year shall be a joint meeting with the board of directors under subsection (e).”.

(b) AVOIDING CONFLICTS OF INTEREST.—Section 4002 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302) is amended by adding at the end the following:

“(j) CONFLICTS OF INTEREST.—

“(1) IN GENERAL.—The Director of the corporation and each member of the board of directors shall not participate in a decision of the corporation in which the Director or such member has a direct financial interest. The Director of the corporation shall not participate in any activities that would present a potential conflict of interest or appearance
of a conflict of interest without approval of the board of directors.

“(2) Establishment of policy.—The board of directors shall establish a policy that will inform the identification of potential conflicts of interests of the members of the board of directors and mitigate perceived conflicts of interest of such members and the Director of the corporation.”.

(c) Risk Mitigation.—Section 4002 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302), as amended by subsection (b), is further amended by adding at the end the following:

“(k) Risk Management Officer.—The corporation shall have a risk management officer whose duties include evaluating and mitigating the risk that the corporation might experience. The individual in such position shall coordinate the risk management efforts of the corporation, explain risks and controls to senior management and the board of directors of the corporation, and make recommendations.”.

(d) Director.—Section 4002(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302(c)) is amended to read as follows:

“(c) The Director shall be accountable to the board of directors. The Director shall serve for a term of 5 years
unless removed by the President or the board of directors before the expiration of such 5-year term.”.

(c) **Senses of Congress.**—

(1) **Formation of committees.**—It is the sense of Congress that the board of directors of the Pension Benefit Guaranty Corporation established under section 4002 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302), as amended by this section, should form committees, including an audit committee and an investment committee, to enhance the overall effectiveness of the board of directors.

(2) **Advisory committee.**—It is the sense of Congress that the advisory committee to the Pension Benefit Guaranty Corporation established under section 4002 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302), as amended by this section, should provide to the board of directors of such corporation policy recommendations regarding changes to the law that would be beneficial to the corporation or the voluntary private pension system.

**SEC. 364. PARTICIPANT AND PLAN SPONSOR ADVOCATE.**

(a) **In general.**—Title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301 et
sec.) is amended by inserting after section 4003 the fol-
lowing:

“SEC. 4004. PARTICIPANT AND PLAN SPONSOR ADVOCATE.

“(a) IN GENERAL.—The Secretary of Labor, in con-
sultation with the Director of the corporation and pension
participant and plan sponsor advocacy groups, shall select
a Participant and Plan Sponsor Advocate. Such selected
individual shall have demonstrated experience in the area
of pensions and pension participant assistance.

“(b) DUTIES.—The Participant and Plan Sponsor
Advocate shall—

“(1) act as a liaison between the corporation,
sponsors of defined benefit pension plans insured by
the corporation, and participants in pension plans
trusteed by the corporation;

“(2) advocate for the full attainment of the
rights of participants in plans trusteed by the cor-
poration;

“(3) assist pension plan sponsors and partici-
pants in resolving disputes with the corporation;

“(4) identify areas in which participants and
plan sponsors have persistent problems in dealings
with the corporation;
“(5) to the extent possible, propose changes in the administrative practices of the corporation to mitigate problems;

“(6) identify potential legislative changes which may be appropriate to mitigate problems; and

“(7) refer instances of fraud, waste, and abuse, and violations of law to the Office of the Inspector General of the corporation.

“(c) REMOVAL.—If the Participant and Plan Sponsor Advocate is removed from office or is transferred to another position or location within the Department of Labor, the Secretary shall communicate in writing the reasons for any such removal or transfer to Congress not less than 30 days before the removal or transfer. Nothing in this subsection shall prohibit a personnel action otherwise authorized by law, other than transfer or removal.

“(d) COMPENSATION.—The annual rate of basic pay for the Participant and Plan Sponsor Advocate shall be the rate payable for level III of the Executive Schedule under section 5314 of title 5, United States Code, plus 3 percent.

“(e) ANNUAL REPORT.—

“(1) IN GENERAL.—Not later than December 31 of each calendar year, the Participant and Plan Sponsor Advocate shall report to the Health, Edu-
cation, Labor, and Pensions Committee of the Senate, the Committee on Finance of the Senate, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Ways and Means of the House of Representatives on the activities of the Office of the Participant and Plan Sponsor Advocate during the fiscal year ending during such calendar year.

“(2) CONTENT.—Each report submitted under paragraph (1) shall—

“(A) describe the activities, and evaluate the effectiveness of the Participant and Plan Sponsor Advocate during the preceding year;

“(B) identify significant problems the Participant and Plan Sponsor Advocate has identified;

“(C) include specific legislative and regulatory changes to address the problems; and

“(D) identify any actions taken to correct problems identified in any previous report.

“(3) CONCURRENT SUBMISSION.—The Participant and Plan Sponsor Advocate shall submit a copy of each report to the Secretary of Labor, the Director of the corporation, and any other appropriate of-
ficial at the same time such report is submitted to
the committees of Congress under paragraph (1).”.

(b) CLERICAL AMENDMENT.—The table of contents
in section 1 of the Employee Retirement Income Security
Act of 1974 is amended by inserting after the item relat-
ing to section 4003 the following new item:

“4004. Participant and Plan Sponsor Advocate.”.

SEC. 365. INCREASE IN MULTIEMPLOYER PLAN BENEFIT
GUARANTEE AND ANNUAL PREMIUM RATES.

(a) MONTHLY BENEFIT GUARANTEE.—

(1) IN GENERAL.—Subparagraph (A) of section
4022A(c)(1) of the Employee Retirement Income Se-
curity Act of 1974 (29 U.S.C. 1322a(c)(1)) is
amended to read as follows:

“(A) 100 percent of the accrual rate up to $11,
plus the sum of—

“(i) 75 percent of the lesser of—

“(I) $33, or

“(II) the accrual rate, if any, in ex-
cess of $11 and up to $44, and

“(ii) 50 percent of the lesser of—

“(I) $40, or

“(II) the accrual rate, if any, in ex-
cess of $44, and”.

(2) ADJUSTMENT FOR INFLATION.—Section
4022A(c) of such Act (29 U.S.C. 1322a(c)) is
amended by adding at the end the following new paragraph:

“(4) For each plan year beginning in a calendar year after 2011, there shall be substituted for each dollar amount specified in subparagraph (A) of paragraph (1) an amount equal to the greater of—

“(A) the product derived by multiplying such dollar amount specified in subparagraph (A) of paragraph (1) by the ratio of—

“(i) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years preceding the calendar year in which such plan year begins, to

“(ii) the national average wage index (as so defined) for 2009; and

“(B) such dollar amount in effect under subparagraph (A) of paragraph (1) for plan years beginning in the preceding calendar year.

If the amount determined under this paragraph is not a multiple of $1, such product shall be rounded to the nearest multiple of $1.”.

(3) EFFECTIVE DATE.—The amendment made by this subsection shall apply to plans terminating or first receiving financial assistance from the Pen-
sion Benefit Guaranty Corporation (within the meaning under section 4261 of the Employee Retire-

(b) REQUIRED REPORT.—Section 4022A(f) of such Act (29 U.S.C. 1322a(f)) is amended by adding at the end the following new paragraph:

“(5) Notwithstanding any other provision of this sub-
section, the next report required to be submitted to Con-
gress under this subsection after the date of enactment of the Pension Guaranty Improvement Act of 2012 shall be submitted not later than December 31, 2013.”.

(c) ANNUAL PREMIUM RATE.—

(1) IN GENERAL.—Subparagraph (A) of section 4006(a)(3) of the Employee Retirement Income Se-
curity Act of 1974 (29 U.S.C. 1306(a)(3)) is amend-
ed—

(A) by inserting “and before January 1, 2012,” after “December 31, 2005,” in clause (iv),

(B) by striking “or” at the end of clause (iii),

(C) by striking the period at the end of clause (iv) and inserting “, or”, and
(D) by adding at the end the following new clause:

“(v) in the case of a multiemployer plan, for plan years beginning after December 31, 2011, $18.00 for each individual who is a participant in such plan during the applicable plan year.”.

(2) INFLATION ADJUSTMENT.—Paragraph (3) of section 4006(a) of such Act (29 U.S.C. 1306(a)) is amended by adding at the end the following new subparagraph:

“(I) For each plan year beginning in a calendar year after 2011, there shall be substituted for the premium rate specified in clause (v) of subparagraph (A) an amount equal to the greater of—

“(i) the product derived by multiplying the premium rate specified in clause (v) of subparagraph (A) by the ratio of—

“(I) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years preceding the calendar year in which such plan year begins, to

“(II) the national average wage index (as so defined) for 2009; and
“(ii) the premium rate in effect under clause (v) of subparagraph (A) for plan years beginning in the preceding calendar year.

If the amount determined under this subparagraph is not a multiple of $1, such product shall be rounded to the nearest multiple of $1.”.

sec. 366. Improving Single Employer Program Solvency.

(a) flat-rate premium.—

(1) in general.—Clause (i) of section 4006(a)(3)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended to read as follows:

“(i) in the case of a single-employer plan, an amount for each individual who is a participant in such plan during the plan year equal to the sum of the additional premium (if any) determined under subparagraph (E) and—

“(I) for plan years beginning after December 31, 2005 and before January 1, 2012, $30;

“(II) for plan years beginning after December 31, 2011, and before January 1, 2013, $42;
“(III) for plan years beginning after December 31, 2012, and before January 1, 2014, $48; and
“(IV) for plan years beginning after December 31, 2013, $54;”.

(2) ADJUSTMENT FOR INFLATION.—Subparagraph (F) of section 4006(a)(3) of such Act (29 U.S.C. 1306(a)(3)) is amended by adding at the end the following: “For each plan year beginning in a calendar year after 2011, clause (i)(II) shall be applied by substituting ‘2009’ for ‘2004’.”.

(b) VARIABLE-RATE PREMIUM ADJUSTMENT FOR INFLATION.—Section 4006(a)(3) of such Act (29 U.S.C. 1306(a)(3)), as amended by section 365, is further amended by adding at the end the following new subparagraph:

“(J) For each plan year beginning in a calendar year after 2011, there shall be substituted for the premium rate specified in clause (ii) of subparagraph (E) an amount equal to the greater of—

“(i) the product derived by multiplying the premium rate specified in clause (ii) of subparagraph (E) by the ratio of—

“(I) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years
preceding the calendar year in which such plan
year begins, to
“(II) the national average wage index (as
so defined) for 2009; and
“(ii) the premium rate in effect under clause
(ii) of subparagraph (E) for plan years beginning in
the preceding calendar year.
If the amount determined under this subparagraph is not
a multiple of $1, such product shall be rounded to the
nearest multiple of $1.”.

Subtitle H—Pension and
Participant Protection

SEC. 371. SHORT TITLE.
This subtitle may be cited as the “Pension and Par-
ticipant Protect Act”.

SEC. 372. FINDINGS.
Congress makes the following findings:
(1) The ongoing effects of the financial crisis
have put enormous stress on the defined benefit pen-
sion system.
(2) It is in the best interest of plan participants
for Congress to take immediate steps to relieve that
stress by ensuring that pension contributions are
less volatile and more predictable, provided that par-
participants are afforded additional protections should their pensions be terminated in bankruptcy.

(3) It is further in the best interest of participants for Congress to take future steps to both reduce the volatility in pension funding requirements and better protect plan participants and retirees from loss.

SEC. 373. PENSION FUNDING STABILIZATION.

(a) Amendments to Employee Retirement Income Security Act of 1974.—

(1) In general.—Subparagraph (C) of section 303(h)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1083(h)(2)) is amended by adding at the end the following new clause:

“(iv) Segment rate stabilization.—

“(I) In general.—If a segment rate described in clause (i), (ii), or (iii) with respect to any applicable month (determined without regard to this clause) is less than the applicable minimum percentage, or more than the applicable maximum percentage, of the average of the segment rates described in such clause for years in
the 25-year period ending with September 30 of the calendar year preceding the calendar year in which the plan year begins, then the segment rate described in such clause with respect to the applicable month shall be equal to the applicable minimum percentage or the applicable maximum percentage of such average, whichever is closest. The Secretary of the Treasury shall determine such average on an annual basis and may prescribe equivalent rates for years in any such 25-year period for which the rates described in any such clause are not available.

“(II) APPLICABLE MINIMUM PERCENTAGE; APPLICABLE MAXIMUM PERCENTAGE.—For purposes of subclause (I), the applicable minimum percentage and the applicable maximum percentage for a plan year beginning in a calendar year shall be determined in accordance with the following table:
If the calendar year is: | The applicable minimum percentage is: | The applicable maximum percentage is:
--- | --- | ---
2012 | 90% | 110%
2013 | 85% | 115%
2014 | 80% | 120%
2015 | 75% | 125%
After 2015 | 70% | 130%.

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (F) of section 303(h)(2) of such Act (29 U.S.C. 1083(h)(2)) is amended by inserting “and the averages determined under subparagraph (C)(iv)” after “subparagraph (C)”.

(B) Clauses (ii) and (iii) of section 205(g)(3)(B) of such Act (29 U.S.C. 1055(g)(3)(B)) are each amended by striking “section 303(h)(2)(C)” and inserting “section 303(h)(2)(C) (determined by not taking into account any adjustment under clause (iv) thereof)”.}

(C) Clause (iv) of section 4006(a)(3)(E) of such Act (29 U.S.C. 1306(a)(3)(E)) is amended by striking “section 303(h)(2)(C)” and inserting “section 303(h)(2)(C) (notwithstanding any regulations issued by the corporation, determined by not taking into account any adjustment under clause (iv) thereof)”.

•HR 5727 IH
(b) Amendments to Internal Revenue Code of 1986.—

(1) In general.—Subparagraph (C) of section 430(h)(2) of the Internal Revenue Code of 1986 is amended by adding at the end the following new clause:

“(iv) Segment rate stabilization.—

“(I) In general.—If a segment rate described in clause (i), (ii), or (iii) with respect to any applicable month (determined without regard to this clause) is less than the applicable minimum percentage, or more than the applicable maximum percentage, of the average of the segment rates described in such clause for years in the 25-year period ending with September 30 of the calendar year preceding the calendar year in which the plan year begins, then the segment rate described in such clause with respect to the applicable month shall be equal to the applicable minimum percentage or the applicable maximum.
percentage of such average, whichever
is closest. The Secretary shall deter-
mine such average on an annual basis
and may prescribe equivalent rates for
years in any such 25-year period for
which the rates described in any such
clause are not available.

“(II) APPLICABLE MINIMUM PER-
CENTAGE; APPLICABLE MAXIMUM
PERCENTAGE.—For purposes of sub-
clause (I), the applicable minimum
percentage and the applicable max-
imum percentage for a plan year be-
inning in a calendar year shall be de-
termined in accordance with the fol-
lowing table:

<table>
<thead>
<tr>
<th>“If the calendar year is:</th>
<th>The applicable minimum percentage is:</th>
<th>The applicable maximum percentage is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>90%</td>
<td>110%</td>
</tr>
<tr>
<td>2013</td>
<td>85%</td>
<td>115%</td>
</tr>
<tr>
<td>2014</td>
<td>80%</td>
<td>120%</td>
</tr>
<tr>
<td>2015</td>
<td>75%</td>
<td>125%</td>
</tr>
<tr>
<td>After 2015</td>
<td>70%</td>
<td>130%</td>
</tr>
</tbody>
</table>

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (6) of section 404(o) of
such Code is amended by inserting “(deter-
mined by not taking into account any adjust-
ment under clause (iv) of subsection (h)(2)(C)
thereof)” before the period.

(B) Subparagraph (F) of section 430(h)(2)
of such Code is amended by inserting “and the
averages determined under subparagraph
(C)(iv)” after “subparagraph (C)”.

(C) Subparagraphs (C) and (D) of section
417(e)(3) of such Code are each amended by
striking “section 430(h)(2)(C)” and inserting
“section 430(h)(2)(C) (determined by not tak-
ing into account any adjustment under clause
(iv) thereof)”.

(e) Effective Date.—

(1) In General.—The amendments made by
this section shall apply with respect to plan years be-
eginning after December 31, 2011.

(2) Exception.—A plan sponsor may elect not
to have the amendments made by this section apply
to any plan year beginning on or before the date of
the enactment of this Act solely for purposes of de-
termining the adjusted funding target attainment
percentage under sections 436 of the Internal Rev-
enue Code of 1986 and 206(g) of the Employee Re-
tirement Income Security Act of 1974 for such plan
year, provided that the plan sponsor made such de-
determination in good faith and without an intent to
trigger any statutorily required restrictions on bene-
fits. A plan shall not be treated as failing to meet
the requirements of sections 411(d)(6) of such Code
and 204(g) of such Act solely by reason of an elec-
tion under this paragraph.

SEC. 374. CONGRESSIONAL COMMITMENT TO ENCOUR-
AGING PENSIONS.

Not later than December 31, 2012, the Committee
on Health, Education, Labor, and Pensions of the Senate
and the Committee on Education and the Workforce of
the House of Representatives shall issue a report pro-
viding recommendations to improve and expand the de-
fined benefit pension system. Such report shall include
recommendations concerning—

(1) measures to further stabilize pension con-
tribution rates;

(2) additional or expanded options to improve
pension funding flexibility for plan sponsors suf-
fering a temporary business hardship;

(3) incentives for plans sponsors to establish or
maintain pension plans permitting new entrants and
to encourage plan sponsors to unfreeze their pension
plans; and
(4) modifications to the pension guaranty system and bankruptcy law necessary or appropriate to protect plan participants and retirees from inequitable treatment.

SEC. 375. PARTICIPANT PROTECTION IN BANKRUPTCY.

Sections 4022(g) and 4044(e) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322(g) and 1344(e)), as added by section 404 of the Pension Protection Act of 2006, are repealed as of October 1, 2011, and shall not apply with respect to proceedings initiated under title 11, United States Code, or under any similar Federal law or law of a State or political subdivision, on or after such date.

Subtitle I—Fair Playing Field

SEC. 381. SHORT TITLE; FINDINGS; PURPOSES.

(a) SHORT TITLE.—This subtitle may be cited as the “Fair Playing Field Act of 2012”.

(b) FINDINGS.—Congress makes the following findings:

(1) In 1978, Congress was concerned that lack of clarity as to the proper classification of some workers, increased IRS enforcement activity, and retroactive application by IRS of interpretations that were arguably new had caused hardships for some
small businesses and other taxpayers and confusion
as to the applicable rules.

(2) To allow time to develop a comprehensive
approach to the problem, Congress enacted section
530 of the Revenue Act of 1978 as an interim meas-
ure protecting taxpayers from liability for
misclassification if the taxpayer has a reasonable
basis for classifying a worker as an independent con-
tractor and meets certain other conditions. In addi-
tion, the Act prohibited the Secretary of the Treas-
ury from publishing regulations or revenue rulings
on workers’ employment tax status pending the ex-
pected near-term enactment of clarifying legislation.

(3) During the ensuing 33 years, Congress
made section 530 of the Revenue Act of 1978 per-
manent, however, changes in working relationships
and the continued prohibition on new guidance have
increased the uncertainty as to the proper classifica-
tion of workers.

(4) Many workers are properly classified as
independent contractors. In other instances, workers
who are employees are being treated as independent
contractors. Such misclassification for tax purposes
contributes to inequities in the competitive positions
of businesses and to the Federal and State tax gap,
and may also result in misclassification for other purposes, such as denial of unemployment benefits, workplace health and safety protections, and retirement or other benefits or protections available to employees.

(5) Workers, businesses, and other taxpayers will benefit from clear guidance regarding employment tax status. In the interest of fairness and in view of many service recipients’ reliance on current section 530, such guidance should apply only prospectively.

(c) PURPOSES.—The purposes of this subtitle are to permit the Secretary of the Treasury to provide guidance allowing workers and businesses to clearly understand the proper Federal tax classification of workers and to provide relief allowing an orderly transition to new rules designed to increase certainty and uniformity of treatment.

SEC. 382. AUTHORITY TO ISSUE GUIDANCE CLARIFYING EMPLOYMENT STATUS FOR PURPOSES OF EMPLOYMENT TAXES.

(a) IN GENERAL.—Chapter 25 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:
“SEC. 3511. AUTHORITY TO ISSUE GUIDANCE CLARIFYING
EMPLOYMENT STATUS.

“(a) IN GENERAL.—The Secretary shall issue such
regulations or other guidance as the Secretary determines
to be necessary or appropriate to clarify the proper em-
ployment status of individuals for purposes of any tax im-
posed by this subtitle.

“(b) PROHIBITION ON RETROACTIVE ASSESS-
MENTS.—

“(1) IN GENERAL.—If—

“(A) for purposes of any tax imposed by
this subtitle, the taxpayer did not treat an indi-
vidual as an employee for any period before the
reclassification date with respect to such indi-
vidual, and

“(B) in the case of periods after December
31, 1978, and before such reclassification date,
all Federal tax returns (including information
returns) required to be filed by the taxpayer
with respect to such individual for such period
are filed on a basis consistent with the tax-
payer’s treatment of such individual as not
being an employee,

then, for purposes of applying such taxes for periods
before such reclassification date with respect to the
taxpayer, the individual shall be deemed not to be an
employee unless the taxpayer had no reasonable basis for not treating such individual as an employee.

“(2) **Statutory standards providing one method of satisfying the requirements of paragraph (1).**—For purposes of paragraph (1), a taxpayer shall in any case be treated as having a reasonable basis for not treating an individual as an employee for a period if the taxpayer’s treatment of such individual for such period was in reasonable reliance on any of the following:

“(A) Judicial precedent, published rulings, technical advice with respect to the taxpayer, or a letter ruling to the taxpayer.

“(B) A past Internal Revenue Service audit of the taxpayer in which there was no assessment attributable to the treatment (for purposes of any tax imposed by this subtitle) of the individuals holding positions substantially similar to the position held by such individual.

“(C) Long-standing recognized practice of a significant segment of the industry in which such individual was engaged.

“(3) **Consistency required in the case of prior tax treatment.**—Paragraph (1) shall not
apply with respect to the treatment of any individual (hereafter in this paragraph referred to as the reclassified individual) for purposes of any tax imposed by this subtitle for any period ending after December 31, 1978, if the taxpayer (or a predecessor) has treated any individual holding a substantially similar position as an employee for purposes of any tax imposed by this subtitle for any period beginning after December 31, 1977, and ending before the reclassification date with respect to such reclassified individual.

“(c) DEFINITIONS.—For purposes of this section—

“(1) RECLASSIFICATION DATE.—

“(A) IN GENERAL.—The term ‘reclassification date’ means, with respect to any individual, the earlier of—

“(i) the first day of the first calendar quarter beginning more than 180 days after the date of an employee classification determination with respect to such individual, or

“(ii) the effective date of the first applicable final regulation issued by the Secretary under subsection (a) with respect to such individual (or, if later, the first day of
the first calendar quarter beginning more than 180 days after such regulation is issued).

“(B) EMPLOYEE CLASSIFICATION DETERMINATION.—The term ‘employee classification determination’ means, with respect to any individual, a determination by the Secretary, in connection with an audit of the taxpayer which is described in section 7436 and which commences after the date which is 1 year after the date of the enactment of this section, that a class of individuals holding positions with such taxpayer which are substantially similar to the position held by such individual are employees.

“(C) FIRST APPLICABLE FINAL REGULATION.—The term ‘first applicable final regulation’ means, with respect to any individual, the first final regulation (or other guidance of general applicability) which sets forth the factors for determining the employment status of a class of individuals holding positions substantially similar to the position held by such individual.

“(2) EMPLOYMENT STATUS.—The term ‘employment status’ means the status of an individual,
under the usual common law rules applicable in de-
dermining the employer-employee relationship, as an
employee or as an independent contractor (or other
individual who is not an employee).

“(d) CONTINUATION OF CERTAIN SPECIAL RULES.—

“(1) EXCEPTION FOR CERTAIN SKILLED WORK-
ERS.—Subsection (b) shall not apply in the case of
an individual who, pursuant to an arrangement be-
tween the taxpayer and another person, provides
services for such other person as an engineer, de-
signer, drafter, computer programmer, systems ana-
lyst, or other similarly skilled worker engaged in a
similar line of work.

“(2) NOTICE OF AVAILABILITY OF SECTION.—
An officer or employee of the Internal Revenue Serv-
ice shall, before or at the commencement of any
audit inquiry relating to the employment status of
one or more individuals who perform services for the
taxpayer, provide the taxpayer with a written notice
of the provisions of this section.

“(3) RULES RELATING TO STATUTORY STAND-
ARDS.—For purposes of subsection (b)(2)—

“(A) a taxpayer may not rely on an audit
commenced after December 31, 1996, for pur-
poses of subparagraph (B) thereof unless such
audit included an examination for purposes of any tax imposed by this subtitle whether the individual involved (or any individual holding a position substantially similar to the position held by the individual involved) should be treated as an employee of the taxpayer,

“(B) in no event shall the significant segment requirement of subparagraph (C) thereof be construed to require a reasonable showing of the practice of more than 25 percent of the industry (determined by not taking into account the taxpayer), and

“(C) in applying the long-standing recognized practice requirement of subparagraph (C) thereof—

“(i) such requirement shall not be construed as requiring the practice to have continued for more than 10 years, and

“(ii) a practice shall not fail to be treated as long-standing merely because such practice began after 1978.

“(4) AVAILABILITY OF SAFE HARBORS.—Nothing in this section shall be construed to provide that subsection (b) only applies where the individual involved is otherwise an employee of the taxpayer.
“(5) Burden of proof.—

“(A) In general.—If—

“(i) a taxpayer establishes a prima facie case that it was reasonable not to treat an individual as an employee for purposes of subsection (b), and

“(ii) the taxpayer has fully cooperated with reasonable requests from the Secretary,

then the burden of proof with respect to such treatment shall be on the Secretary.

“(B) Exception for other reasonable basis.—In the case of any issue involving whether the taxpayer had a reasonable basis not to treat an individual as an employee for purposes of subsection (b), subparagraph (A) shall only apply for purposes of determining whether the taxpayer meets the requirements of subparagraph (A), (B), or (C) of subsection (b)(2).

“(6) Preservation of prior period safe harbor.—If—

“(A) an individual would (but for the treatment referred to in subparagraph (B)) be
deemed not to be an employee of the taxpayer under subsection (b) for any prior period, and

“(B) such individual is treated by the taxpayer as an employee for purposes of the taxes imposed by this subtitle for any subsequent period,

then, for purposes of applying such taxes for such prior period with respect to the taxpayer, the individual shall be deemed not to be an employee.

“(7) SUBSTANTIALLY SIMILAR POSITION.—For purposes of subsection (b) and this subsection, the determination as to whether an individual holds a position substantially similar to a position held by another individual shall include consideration of the relationship between the taxpayer and such individuals.

“(8) TREATMENT OF TEST ROOM SUPERVISORS AND PROCTORS WHO ASSIST IN THE ADMINISTRATION OF COLLEGE ENTRANCE AND PLACEMENT EXAMS.—

“(A) IN GENERAL.—In the case of an individual described in subparagraph (B) who is providing services as a test proctor or room supervisor by assisting in the administration of college entrance or placement examinations,
subsection (b) shall be applied to such services performed after December 31, 2006 (and remu-
neration paid for such services) without regard to paragraph (3) thereof.

“(B) APPLICABILITY.—An individual is de-
scribed in this subparagraph if the individual—

“(i) is providing the services described in subsection (b) to an organization de-
scribed in section 501(e) and exempt from tax under section 501(a), and

“(ii) is not otherwise treated as an employee of such organization for purposes of this subtitle.

“(9) TREATMENT OF SECURITIES BROKER DEALERS.—In determining for purposes of this title whether a registered representative of a securities broker-dealer is an employee (as defined in section 3121(d)), no weight shall be given to instructions from the service recipient which are imposed only in compliance with investor protection standards imposed by the Federal Government, any State government, or a governing body pursuant to a delegation by a Federal or State agency.

“(e) STATEMENTS TO INDEPENDENT CONTRACTORS.—
“(1) IN GENERAL.—Each person who contracts for the services of an independent contractor on a regular and ongoing basis, within the scope of such person’s trade or business, shall provide a written statement to such independent contractor notifying such independent contractor of the Federal tax obligations of an independent contractor, the labor and employment law protections that do not apply to independent contractors, and the right of such independent contractor to seek a status determination from the Internal Revenue Service.

“(2) INDEPENDENT CONTRACTOR.—For purposes of this subsection, the term ‘independent contractor’ means any individual who is not treated as an employee by the person receiving the services referred to in paragraph (1).

“(3) TIMING OF STATEMENT.—Except as otherwise provided by the Secretary, the statement required under paragraph (1) shall be provided within a reasonable period of entering into the contract referred to in paragraph (1).

“(4) DEVELOPMENT OF MODEL STATEMENT.—The Secretary shall develop model materials for providing the statement required under paragraph (1).”
(b) Reduced Penalty Not Applicable in Cases of Noncompliance With Guidance Without Reasonable Basis.—Subsection (c) of section 3509 of the Internal Revenue Code of 1986 is amended—

(1) by striking “if such liability” and inserting “if—

“(1) such liability”, and

(2) by striking the period at the end and inserting “, or

“(2) such liability relates to an individual who is treated as an employee under regulations or other guidance issued by the Secretary under section 3511(a) and the taxpayer lacks a reasonable basis for treating the individual as other than an employee.

In the case of a taxpayer which has received a final written determination from the Internal Revenue Service holding that the individual referred to in paragraph (2) (or another individual who holds a position with the taxpayer substantially similar to the position held by such individual) is an employee, such taxpayer shall be treated for purposes of paragraph (2) as lacking a reasonable basis for treating such individual as other than an employee with respect to periods beginning on and after the first day of the first calendar quarter beginning more than 180
days after the date of such written determination unless
the taxpayer establishes by clear and convincing evidence
that the taxpayer has a reasonable basis for such treat-
ment.”.

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 6724(d) of the In-
ternal Revenue Code of 1986 is amended by striking
“or” at the end of subparagraph (GG), by striking
the period at the end of subparagraph (HH) and in-
serting “, or”, and by inserting after subparagraph
(HH) the following new subparagraph:

“(II) section 3511(e) (relating to state-
ments to independent contractors).”).

(2) Paragraph (2) of section 7436(a) of such
Code is amended by striking “subsection (a) of sec-
tion 530 of the Revenue Act of 1978” and inserting
“section 3511(b)”.

(3) The table of sections for chapter 25 of such
Code is amended by adding at the end the following
new item:

“Sec. 3511. Authority to issue guidance clarifying employment status.”.

(d) TERMINATION OF SECTION 530 OF THE REV-
ENUE ACT OF 1978.—The Revenue Act of 1978 is amend-
ed by striking section 530.

(e) REPORTS ON WORKER MISCLASSIFICATION.—Be-
ing with the first fiscal year beginning after the date
the first regulation or other guidance is issued for public
comment under section 3511(a) of the Internal Revenue
Code of 1986 (as added by this section):

(1) A report each fiscal year on worker classi-
fication which shall include the total number of ex-
aminations of employers initiated because of sus-
pected worker classification issues, the total number
of examinations that included determinations on
worker classification issues, the amount of additional
tax liabilities associated with worker classification
enforcement actions, the number of workers reclassi-
fied as a result of these actions, the number of re-
quests for Determination of Worker Status (Form
SS–8), and technical guidance on how to understand
the data provided in the report.

(2) A report each fiscal year in which new sta-
istically valid data is compiled and interpreted on
worker classification, prepared on the basis of infor-
mation gathered during an Employment Tax Study
conducted by the National Research Program (NRP)
of the Internal Revenue Service. Such report shall
provide statistical estimates of the number of em-
ployers misclassifying workers, the number of work-
ers misclassified, the industries involved, data inter-
pretations and conclusions, and a description of the
impact of improper worker classification on the employment tax gap.

(f) Effective Dates.—

(1) Delayed Effective Date of Regulations and Guidance.—Except as provided in paragraph (2), any regulation or other guidance issued under section 3511(a) of the Internal Revenue Code of 1986, as added by this section, shall not apply to services rendered before the date which is 1 year after the date of the enactment of this Act.

(2) Treatment of Securities Broker Dealers.—Paragraph (9) of section 3511(d) of the Internal Revenue Code of 1986, as added by this section, shall apply to services performed after December 31, 1997.

(3) Authority to Issue Regulations and Guidance Immediately.—So much of the amendment made by subsection (d) as relates to subsection (b) of section 530 of the Revenue Act of 1978 shall take effect on the date of the enactment of this Act.

(4) Delayed Termination of Remainder of Section 530 of the Revenue Act of 1978.—Except as provided in paragraph (3), the amendments made by subsections (c)(1) and (d) shall apply to
services rendered on or after the date which is 1 year after the date of the enactment of this Act.

**TITLE IV—REBUILD AMERICA TRUST FUND**

**SEC. 401. ESTABLISH REBUILD AMERICA TRUST FUND.**

(a) In General.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

“**SEC. 9512. REBUILD AMERICA TRUST FUND.**

“(a) Creation of Trust Fund.—There is established in the Treasury of the United States a trust fund to be known as the ‘Rebuild America Trust Fund’, consisting of such amounts as may be appropriated or credited to such fund as provided in this section or section 9602(b).

“(b) Transfers to Trust Fund.—There are hereby appropriated to the Rebuild America Trust Fund amounts equivalent to the revenues resulting from the amendments made by title III of the Rebuild America Act.

“(c) Authority To Borrow.—

“(1) In General.—There are authorized to be appropriated to the Rebuild America Trust Fund, as repayable advances, such sums as may be necessary to carry out the other purposes of the Rebuild America Act as described in subsection (d)(2).
“(2) LIMITATION ON AGGREGATE ADVANCES.—

The maximum aggregate amount of repayable advances to the Rebuild America Trust Fund which is outstanding at any one time shall not exceed an amount equal to the amount which the Secretary estimates will be equal to the sum of the amounts appropriated to the Rebuild America Trust Fund under subsection (b) during the following 60 months.

“(3) REPAYMENT OF ADVANCES.—

“(A) IN GENERAL.—Advances made to the Rebuild America Trust Fund shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Rebuild America Trust Fund.

“(B) FINAL REPAYMENT.—No advance shall be made to the Rebuild America Trust Fund after September 30, 2022, and all advances to such Trust Fund shall be repaid on or before September 30, 2024.

“(C) RATE OF INTEREST.—Interest on advances made to the Rebuild America Trust Fund shall be at a rate determined by the Sec-
retary of the Treasury (as of the close of the
calendar month preceding the month in which
the advance is made) to be equal to the current
average market yield on outstanding marketable
obligations of the United States with remaining
periods to maturity comparable to the antici-
pated period during which the advance will be
outstanding and shall be compounded annually.

“(d) EXPENDITURES.—

“(1) IN GENERAL.—Amounts in the Rebuild
America Trust Fund shall be available, without fur-
ther appropriation—

“(A) to transfer to accounts specified by,
and to carry out the provisions of, section 103
of the Rebuild America Act, and

“(B) as provided for in the Rebuild Amer-
ica Act (and the amendments made by that
Act).

“(2) ALLOCATION OF FUNDS.—The Secretary
shall allocate funds from the Rebuild America Trust
Fund to the responsible Departments for distribu-
tion to the States and subdivisions within 15 days
of the beginning of each fiscal year as set in section
103 of the Rebuild America Act. Each Secretary of
such a Department shall allocate the funds set by
formula to the States or local receiving entities within 90 days of the beginning of such fiscal year.

“(3) ADMINISTRATIVE FUNDS.—The portion of funds allowed for administrative costs for any account may not exceed the percentage used for administering those funds at both the Federal and the State levels under the underlying regular program that is in effect for the latest appropriations measure expiring at the end of a fiscal year.

“(4) MAINTENANCE OF EFFORT.—

“(A) FEDERAL LEVEL.—The funds provided from the Rebuild America Trust Fund shall not be provided by the Secretary to an account if the appropriations for that account are to be funded at not less than the sum provided in fiscal year 2012, not including emergency funds.

“(B) STATE LEVEL.—A State or local government shall not receive funds for an account provided by the Rebuild America Trust Fund unless that State maintains the same level of funding for that function as the State and local governments provided in State fiscal year 2011. The Secretary shall, by rule define the State programs representing the function for each ac-
count for which funds are provided by the
Trust Fund.

“(5) USE OF AMERICAN IRON, STEEL, MANUFACTURED GOODS, AND EQUIPMENT.—

“(A) IN GENERAL.—None of the funds made available by the Rebuild America Trust Fund 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, manufactured goods, and equipment used in the project are produced in the United States.

“(B) EXCEPTIONS.—Subparagraph (A) shall not apply in any case or category of cases in which the head of the Federal department or agency involved finds that—

“(i) applying subparagraph (A) would be inconsistent with the public interest,

“(ii) iron, steel, the relevant manufactured goods, or the relevant equipment are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality, or

“(iii) inclusion of iron, steel, manufactured goods, and equipment produced in
the United States will increase the cost of
the overall project by more than 25 per-
cent.

“(C) Publication of Justification.—If
the head of a Federal department or agency de-
determines that it is necessary to waive the appli-
cation of subparagraph (A) based on a finding
under subparagraph (B), the head of the de-
partment or agency shall publish in the Federal
Register a detailed written justification as to
why the provision is being waived.

“(D) Consistency with International
Agreements.—This paragraph shall be applied
in a manner consistent with United States obli-
gations under international agreements.

“(6) Wage Rate Requirements.—Notwith-
standing any other provision of law and in a manner
consistent with other provisions in this section and
in the Rebuild America Act, all laborers and me-
chanics 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 funds made available by the Rebuild
America Act shall be paid wages at rates not less
than those prevailing on projects of a character simi-
lar 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 paragraph, 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.”.

(b) CONFORMING AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding at the end the following new item:

“Sec. 9512. Rebuild America Trust Fund.”.