

112TH CONGRESS
2D SESSION

S. 2252

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 SENATE OF THE UNITED STATES

MARCH 29, 2012

Mr. HARKIN introduced the following bill; which was read twice and referred to the Committee on Finance

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 Representa-*
2 *tives 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
5 “Rebuild America Act”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 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

- Sec. 131. Short title.
- Sec. 132. Findings.
- Sec. 133. Purposes.
- Sec. 134. Definitions.
- Sec. 135. Grants authorized.
- Sec. 136. Application.
- Sec. 137. State use of grant funds.
- Sec. 138. Subgrants to local entities.
- Sec. 139. Reporting.
- Sec. 140. Teacher privacy.
- Sec. 141. Rule of construction.
- Sec. 142. Funding.

Subtitle E—Creating Middle Class Jobs

PART I—TEACHER STABILIZATION

- Sec. 151. Purpose.
- Sec. 152. Definitions.
- Sec. 153. Reservations for the outlying areas and the Secretary of the Interior.
- Sec. 154. State allotments.
- Sec. 155. State application, reservation, and responsibilities.
- Sec. 156. Subgrants.
- Sec. 157. Maintenance of effort.

- Sec. 158. Reporting.
- Sec. 159. Funding.

PART II—FIRST RESPONDER STABILIZATION

- Sec. 161. Purpose.
- Sec. 162. Career law enforcement officers grant program.
- Sec. 163. First responder grant program.

PART III—MAINTAINING CRITICAL COMMUNITY SERVICES

- Sec. 171. Definitions.
- Sec. 172. Maintaining critical community services.
- Sec. 173. Application.
- Sec. 174. Award basis.
- Sec. 175. Uses of funds.
- Sec. 176. Employee status, compliance with local laws, and contracts.
- Sec. 177. Supplement, not supplant.
- Sec. 178. Funding provided.

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.

Subtitle B—Helping Americans Enjoy Their Golden Years

PART I—COMMISSION ON RETIREMENT SECURITY

- Sec. 211. Short title.
- Sec. 212. Findings.
- Sec. 213. Commission on Retirement Security.
- Sec. 214. Duties.
- Sec. 215. Commission personnel matters.
- Sec. 216. Termination of Commission.

PART II—SOCIAL SECURITY

- 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.
- Sec. 223. Consumer Price Index for Elderly Consumers.
- Sec. 224. Computation of cost-of-living increases for Social Security benefits.
- 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.
- Sec. 247. Prohibited acts.
- Sec. 248. Enforcement authority.
- Sec. 249. Collection of data on paid sick time and further study.
- Sec. 250. Effect on other laws.
- Sec. 251. Effect on existing employment benefits.
- Sec. 252. Encouragement of more generous leave policies.
- Sec. 253. Regulations.
- Sec. 254. Effective dates.

Subtitle E—Establishing a Fair Minimum Wage

- Sec. 261. Minimum wage increases.

Subtitle F—Empowering Hardworking Americans

- Sec. 271. Amendments to the National Labor Relations Act.

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.

Subtitle B—Adopting a Wall Street Trading and Speculators Tax

- Sec. 311. Transaction tax.

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.
- 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

- Sec. 331. Financial Crisis Responsibility Fee.

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.

Subtitle F—Raising the Capital Gains Rate

- Sec. 351. Increased capital gains rate for high-income individuals.

Subtitle G—Pension Guaranty Improvement

- Sec. 361. Short title.
 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.

Subtitle H—Pension and Participant Protection

- Sec. 371. Short title.
 Sec. 372. Findings.
 Sec. 373. Pension funding stabilization.
 Sec. 374. Congressional commitment to encouraging pensions.
 Sec. 375. Participant protection in bankruptcy.

Subtitle I—Fair Playing Field

- 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.

1 **TITLE I—INVESTING IN AMERICA**
 2 **TO CREATE JOBS AND FU-**
 3 **TURE GROWTH**

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

6 **SEC. 101. MODERNIZATION, RENOVATION, AND REPAIR OF**
 7 **EDUCATIONAL FACILITIES.**

8 (a) PURPOSE.—The purpose of this section is to pro-
 9 vide assistance for the modernization, renovation, and re-
 10 pair of eligible educational facilities, including early learn-
 11 ing facilities, public elementary school and secondary
 12 school facilities, and community college facilities.

13 (b) DEFINITIONS.—In this section:

1 (1) ESEA DEFINITIONS.—The terms “elemen-
 2 tary school”, “local educational agency”, “outlying
 3 area”, “secondary school”, “Secretary”, and “State”
 4 have the meanings given the terms in section 9101
 5 of the Elementary and Secondary Education Act of
 6 1965 (20 U.S.C. 7801).

7 (2) CHPS CRITERIA.—The term “CHPS Cri-
 8 teria” means the green building rating criteria devel-
 9 oped by the Collaborative for High Performance
 10 Schools.

11 (3) COMMUNITY COLLEGE.—The term “commu-
 12 nity college” means—

13 (A) a junior or community college, as de-
 14 fined in section 312(f) of the Higher Education
 15 Act of 1965 (20 U.S.C. 1058(f)); or

16 (B) a 4-year public institution of higher
 17 education, as defined under section 101 of the
 18 Higher Education Act of 1965 (20 U.S.C.
 19 1001), that awards a significant number of de-
 20 grees and certificates, as determined by the
 21 Secretary, that are not—

22 (i) baccalaureate degrees, or the
 23 equivalent of such degrees; or

24 (ii) masters, professional, or other ad-
 25 vanced degrees.

1 (4) ELIGIBLE ENTITY.—The term “eligible enti-
2 ty” means the following:

3 (A) In reference to the modernization, ren-
4 ovation, or repair of an early learning facility,
5 the term “eligible entity” means—

6 (i) an eligible child care provider as
7 defined in paragraph (5)(A) of section
8 658P of the Child Care and Development
9 Block Grant Act of 1990 (42 U.S.C.
10 9858n(5)(A)); or

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

13 (B) In reference to the modernization, ren-
14 ovation, or repair of a public elementary school
15 or secondary school facility, the term “eligible
16 entity” means a local educational agency.

17 (C) In reference to the modernization, ren-
18 ovation, or repair of a community college facil-
19 ity, the term “eligible entity” means the com-
20 munity college.

21 (5) ENERGY STAR.—The term “Energy Star”
22 means the Energy Star program of the Department
23 of Energy and the Environmental Protection Agen-
24 cy.

1 (6) GREEN GLOBES.—The term “Green
2 Globes” means the Green Building Initiative envi-
3 ronmental design and rating system.

4 (7) LEED GREEN BUILDING RATING SYS-
5 TEM.—The term “LEED Green Building Rating
6 System” means the United States Green Building
7 Council Leadership in Energy and Environmental
8 Design green building rating system.

9 (c) GRANTS TO STATES.—

10 (1) IN GENERAL.—The Secretary shall allocate
11 funds to each State, as described in paragraph (3),
12 to enable the State to award subgrants, on a com-
13 petitive basis, to eligible entities for the purpose of
14 modernizing, renovating, and repairing eligible edu-
15 cational facilities. Grant funds may be used for di-
16 rect payments, payment of interest on bonds, or pay-
17 ments for other financing instruments that are
18 newly issued for the purpose of financing school
19 modernization, renovation, or repair.

20 (2) RESERVATIONS.—From the funds made
21 available under subsection (i) for a fiscal year, the
22 Secretary shall reserve for the purposes of this sec-
23 tion—

24 (A) 0.5 percent for payments to the Sec-
25 retary of the Interior to provide assistance to

1 schools funded by the Bureau of Indian Edu-
2 cation;

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

5 (C) 0.25 percent for grants to institutions
6 that are eligible to receive a grant under section
7 316 of the Higher Education Act of 1965 (20
8 U.S.C. 1059e).

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

14 (A) an amount that bears the same rela-
15 tionship to 35 percent of the remaining amount
16 as the number of individuals who have not yet
17 attained age 25 in the State, as determined by
18 the Secretary on the basis of the most recent
19 satisfactory data, bears to the number of those
20 individuals in all such States, as so determined;
21 and

22 (B) an amount that bears the same rela-
23 tionship to 65 percent of the remaining amount
24 as the number of individuals who have not yet
25 attained age 25 who are from families with in-

1 comes below the poverty line, in the State, as
2 determined by the Secretary on the basis of the
3 most recent satisfactory data, bears to the num-
4 ber of those individuals in all such States, as so
5 determined.

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

12 (d) SUBGRANTS.—

13 (1) IN GENERAL.—From the funds allocated to
14 a State under subsection (c) for any fiscal year and
15 remaining after the State makes any reservations
16 under paragraph (2) for the fiscal year, each State
17 receiving a grant under this section shall dis-
18 tribute—

19 (A) 10 percent to award subgrants to eligi-
20 ble entities for the modernization, renovation,
21 and repair of early learning facilities;

22 (B) 65 percent to award subgrants to eligi-
23 ble entities for the modernization, renovation,
24 and repair of public elementary school and sec-
25 ondary school facilities; and

1 (C) 25 percent to award subgrants to eligi-
2 ble entities for the modernization, renovation,
3 and repair of community college facilities.

4 (2) STATE ADMINISTRATION AND OTHER
5 COSTS.—Each State that receives a grant under this
6 section may reserve not more than 1 percent of the
7 grant allocation under subsection (c) for the pur-
8 poses of administering the distribution of subgrants
9 under this section, including the provision of tech-
10 nical assistance to eligible entities.

11 (3) MATCHING REQUIREMENT.—

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

15 (B) AMOUNT OF MATCHING FUNDS RE-
16 QUIREMENT.—The amount of a match de-
17 scribed in subparagraph (A) may be established
18 by using a sliding scale that takes into account
19 the relative poverty of the population served by
20 the eligible entity.

21 (e) STATE APPLICATIONS.—A State that desires to
22 receive a grant under this section shall submit an applica-
23 tion to the Secretary at such time, in such manner, and
24 containing such information and assurances as the Sec-

1 retary may require. Such application shall include the fol-
2 lowing:

3 (1) An identification of the State agency or en-
4 tity that will administer the grant program.

5 (2) A description of the State's process for de-
6 termining how subgrant funds will be distributed
7 and administered, including—

8 (A) how the State will determine the cri-
9 teria for awarding subgrants under subsection
10 (d); and

11 (B) how the State will consider—

12 (i) the needs of each eligible entity, or
13 each population served by an eligible enti-
14 ty, for assistance under this section;

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

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

19 (iv) the percentage of individuals
20 served by the eligible entity who are from
21 low-income families.

22 (3) If the State plans to award subgrants to
23 early learning facilities, a description of how the
24 State will—

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

5 (B) encourage eligible entities to coordi-
6 nate with organizations that have demonstrated
7 experience in providing technical or financial
8 assistance for the modernization, renovation, or
9 repair of child care facilities.

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

13 (5) A description of how the State will give pri-
14 ority to eligible entities that serve the highest per-
15 centage of low-income individuals.

16 (6) A description of how the State will give pri-
17 ority to eligible entities that use green practices that
18 are certified, verified, or consistent with any applica-
19 ble provisions of—

20 (A) the LEED Green Building Rating Sys-
21 tem;

22 (B) Energy Star;

23 (C) the CHPS Criteria;

24 (D) Green Globes; or

1 (E) an equivalent program adopted by the
2 State or another jurisdiction with authority over
3 the eligible entity.

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

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

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

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

20 (B) Modifications necessary to render eligi-
21 ble educational facilities accessible in order to
22 comply with the Americans with Disabilities Act
23 of 1990 (42 U.S.C. 12101 et seq.) and section
24 504 of the Rehabilitation Act of 1973 (29
25 U.S.C. 794).

1 (C) Improvements to environmental condi-
2 tions, including asbestos abatement or removal,
3 and the reduction or elimination of human ex-
4 posure to lead-based paint, mold, or mildew.

5 (D) Measures designed to reduce or elimi-
6 nate human exposure to classroom noise and
7 environmental noise pollution.

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

11 (F) Upgrades or installations of edu-
12 cational technology infrastructure or training
13 equipment.

14 (2) IMPERMISSIBLE USES OF FUNDS.—Funds
15 received under this section shall not be used for—

16 (A) payment of maintenance costs;

17 (B) purchase or upgrade of vehicles;

18 (C) improvement or construction of stand-
19 alone facilities whose purpose is not the edu-
20 cation or care of children or other students, in-
21 cluding central office administration or oper-
22 ations or logistical support facilities;

23 (D) athletic facilities;

24 (E) purchase of carbon offsets; or

1 (F) the facilities of a sectarian institution,
2 or facilities that are used primarily for sec-
3 tarian purposes.

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

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

18 (h) REPORT.—The Secretary shall submit to the ap-
19 propriations committees and the authorizing committees
20 (as defined in section 103 of the Higher Education Act
21 of 1965 (20 U.S.C. 1003)) of the House of Representa-
22 tives and the Senate an annual report regarding the
23 grants made under this section.

24 (i) FUNDING.—There shall be made available from
25 the Rebuild America Trust Fund under section 9512 of

1 the Internal Revenue Code of 1986, \$2,000,000,000 for
2 each of fiscal years 2013 through 2022 to carry out this
3 section.

4 **SEC. 102. NATIONAL ENERGY RENOVATION AND RETROFIT**
5 **PROGRAM.**

6 Part D of title III of the Energy Policy and Conserva-
7 tion Act is amended by inserting after section 364 (42
8 U.S.C. 6324) the following:

9 **“SEC. 364A. NATIONAL ENERGY RENOVATION AND RET-**
10 **ROFIT PROGRAM.**

11 “(a) IN GENERAL.—The Secretary shall provide
12 grants to eligible entities to pay the Federal share of the
13 cost of carrying out comprehensive energy systems renova-
14 tion, including—

15 “(1) energy systems planning and assessment;
16 and

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

19 “(b) ELIGIBLE ENTITIES.—An entity shall be eligible
20 to obtain a grant under this section if the entity is a resi-
21 dential, commercial, industrial, manufacturing, institu-
22 tional, educational, nonprofit, or other type of entity, orga-
23 nization, or consortia that is approved by the Secretary.

24 “(c) USE.—A grant provided under this section may
25 be used by an eligible entity—

1 “(1) to conduct entity energy assessments that
2 cover total energy use across all members and activi-
3 ties of the entity;

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

7 “(3) to identify alternative approaches to modi-
8 fying energy systems to reduce energy use, reduce
9 the environmental and climatic impact of the energy
10 use, and increase the use of clean, domestic energy;

11 “(4) to formulate an entity strategy for chang-
12 ing the overall energy usage of the entity;

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

17 “(6) to track and evaluate the effects of the en-
18 tity energy renovation and retrofit efforts.

19 “(d) ADMINISTRATION.—The Secretary, in collabora-
20 tion with State energy offices, shall establish procedures
21 for soliciting and evaluating proposals from entities, over-
22 seeing grants to eligible entities, and otherwise admin-
23 istering this section, including procedures for—

24 “(1) annual solicitation and grant cycles;

1 “(2) education and technical assistance pro-
2 grams; and

3 “(3) reporting and information-sharing activi-
4 ties.

5 “(e) ALLOCATION OF FUNDS.—The Secretary shall—

6 “(1) determine the amount of funds that are al-
7 located for grants for States and political subdivi-
8 sions of States for a fiscal year under this section;

9 “(2) provide a Federal share of not more than
10 50 percent of the cost of carrying out energy renova-
11 tion programs under this section; and

12 “(3) permit an eligible entity to provide the
13 non-Federal share of the cost of carrying out energy
14 renovation and retrofit programs under this section
15 in the form of in-kind services.

16 “(f) FUNDING.—There shall be made available from
17 the Rebuild America Trust Fund under section 9512 of
18 the Internal Revenue Code of 1986, \$1,500,000,000 for
19 each of fiscal years 2013 through 2022 to carry out this
20 section.”.

21 **SEC. 103. REBUILDING AMERICA’S INFRASTRUCTURE.**

22 (a) IN GENERAL.—For fiscal years 2013 through
23 2022 and subject to the limitations provided in subsection
24 (b), the following amounts shall be provided from the Re-

1 build America Trust Fund (referred to in this section as
2 the “trust fund”):

3 (1) RURAL COMMUNITY FACILITIES PROGRAM
4 ACCOUNT OF THE DEPARTMENT OF AGRICULTURE.—For additional amounts for the cost of
5 CULTURE.—For additional amounts for the cost of
6 direct loans and grants for rural community facilities programs as provided for under section 306 and
7 described in section 381E(d)(1) of the Consolidated
8 Farm and Rural Development Act, \$400,000,000 in
9 each of fiscal years 2013 and 2014 and
10 \$200,000,000 in each of fiscal years 2015 through
11 fiscal year 2021.

12 (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
13 under sections 306 and 310B and described in section 381E(d)(2) of the Consolidated Farm and
14 Rural Development Act, \$1,200,000,000 in each of
15 fiscal years 2013 and 2014 and \$600,000,000 in
16 each of fiscal years 2015 through fiscal year 2021.
17 For the calculation of ability to pay for the determination of the grant loan ratio under this para-
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1 graph, only the community receiving the benefit for
2 a project shall be considered.

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

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

16 (A) INVESTIGATIONS.—For an additional
17 amount for “Investigations”, \$200,000,000 in
18 each of fiscal years 2013 and 2014 and
19 \$100,000,000 in each of fiscal years 2015
20 through fiscal year 2021.

21 (B) CONSTRUCTION.—For additional
22 amounts for construction, \$1,800,000,000 in
23 each of fiscal years 2013 and 2014 and
24 \$900,000,000 in each of fiscal years 2015
25 through fiscal year 2021.

1 (C) SHARING.—Notwithstanding any other
2 provision of law, funds provided in this para-
3 graph shall not be cost shared with the Inland
4 Waterways Trust Fund as authorized in Public
5 Law 99–662.

6 (5) ENERGY EFFICIENCY AND RENEWABLE EN-
7 ERGY PROGRAM OF THE DEPARTMENT OF EN-
8 ERGY.—

9 (A) EFFICIENCY.—\$2,000,000,000 shall
10 be available for Energy Efficiency and Con-
11 servation Block Grants for implementation of
12 programs authorized under subtitle E of title V
13 of the Energy Independence and Security Act
14 of 2007 (42 U.S.C. 17151 et seq.) in each of
15 fiscal years 2013 and 2014 and \$1,000,000,000
16 in each of fiscal years 2015 through fiscal year
17 2021. Provided further, that 40 percent of
18 these funds shall be awarded on a competitive
19 basis.

20 (B) WEATHERIZATION.—

21 (i) IN GENERAL.—\$2,000,000,000
22 shall be available for the Weatherization
23 Assistance Program under part A of title
24 IV of the Energy Conservation and Pro-
25 duction Act (42 U.S.C. 6861 et seq.) in

1 each of fiscal years 2013 and 2014 and
2 \$1,000,000,000 in each of fiscal years
3 2015 through fiscal year 2021.

4 (ii) WEATHERIZATION ASSISTANCE
5 PROGRAM AMENDMENTS.—

6 (I) INCOME LEVEL.—Section
7 412(7) of the Energy Conservation
8 and Production Act (42 U.S.C.
9 6862(7)) is amended by striking “150
10 percent” both places it appears and
11 inserting “200 percent”.

12 (II) ASSISTANCE LEVEL PER
13 DWELLING UNIT.—Section 415(c)(1)
14 of the Energy Conservation and Pro-
15 duction Act (42 U.S.C. 6865(c)(1)) is
16 amended by striking “\$2,500” and in-
17 serting “\$7,000”.

18 (C) STATES.—\$2,000,000,000 shall be for
19 the State Energy Program authorized under
20 part D of title III of the Energy Policy and
21 Conservation Act (42 U.S.C. 6321) in each of
22 fiscal years 2013 and 2014 and \$1,000,000,000
23 in each of fiscal years 2015 through fiscal year
24 2022.

1 (6) MITIGATION FOR THE FEDERAL EMER-
2 GENCY MANAGEMENT AGENCY OF THE DEPARTMENT
3 OF HOMELAND SECURITY.—\$1,500,000,000 shall be
4 available for the Hazard Mitigation Program in each
5 of fiscal years 2013 and 2014 and \$750,000,000 in
6 each of fiscal years 2015 through fiscal year 2021.
7 These funds shall be allocated by the Administrator
8 in proportion to the hazard mitigation grants that
9 were allocated to the states in the prior 5 years
10 through Stafford Act allocations.

11 (7) STATE AND TRIBAL ASSISTANCE GRANTS OF
12 THE ENVIRONMENTAL PROTECTION AGENCY.—For
13 State and Tribal Assistance Grants, \$8,000,000,000
14 shall be provided in each of fiscal years 2013 and
15 2014 and \$4,000,000,000 in each of fiscal years
16 2015 through fiscal year 2022 to be allocated as
17 grants under section 1452 of the Safe Drinking
18 Water Act. The funds appropriated by this para-
19 graph shall not be subject to the matching or cost
20 share requirements of sections 602(b)(2), 602(b)(3)
21 or 202 of the Federal Water Pollution Control Act
22 nor the matching requirements of section 1452(e) of
23 the Safe Drinking Water Act.

24 (8) SUPPLEMENTAL DISCRETIONARY GRANTS
25 FOR A NATIONAL SURFACE TRANSPORTATION SYS-

1 TEM OF THE DEPARTMENT OF TRANSPORTATION.—
2 For an additional amount for capital investments in
3 surface transportation infrastructure,
4 \$1,500,000,000 in each of fiscal years 2013 and
5 2014 and \$750,000,000 in each of fiscal years 2015
6 through fiscal year 2021 to be awarded by the Sec-
7 retary of Transportation to State and local govern-
8 ments or transit agencies on a competitive basis for
9 projects that will have a significant impact on the
10 United States, a metropolitan area, or a region: *Pro-*
11 *vided further,* That projects eligible for funding pro-
12 vided under this heading shall include highway or
13 bridge projects eligible under title 23, United States
14 Code, including interstate rehabilitation, improve-
15 ments to the rural collector road system, the recon-
16 struction of overpasses and interchanges, bridge re-
17 placements, seismic retrofit projects for bridges, and
18 road realignments; public transportation projects eli-
19 gible under chapter 53 of title 49, United States
20 Code, including investments in projects participating
21 in the New Starts or Small Starts programs that
22 will expedite the completion of those projects and
23 their entry into revenue service; passenger and
24 freight rail transportation projects; and port infra-
25 structure investments, including projects that con-

1 nect ports to other modes of transportation and im-
2 prove the efficiency of freight movement. Not more
3 than 20 percent of the funds made available under
4 this paragraph may be awarded to projects in a sin-
5 gle State.

6 (9) FEDERAL AVIATION ADMINISTRATION.—
7 \$300,000,000 for necessary investments in Federal
8 Aviation Administration to make improvements to
9 power systems, air route traffic control centers, air
10 traffic control towers, terminal radar approach con-
11 trol facilities, and navigation and landing equipment
12 in each of fiscal years 2013 and 2014 and
13 \$150,000,000 in each of fiscal years 2015 through
14 fiscal year 2021.

15 (10) GRANTS-IN-AID FOR AIRPORTS.—
16 \$600,000,000 for “Grants-In-Aid for Airports” to
17 make grants for discretionary projects as authorized
18 by subchapter 1 of chapter 471 and subchapter 1 of
19 chapter 475 of title 49, United States Code, and for
20 the procurement, installation and commissioning of
21 runway incursion prevention devices and systems at
22 airports in each of fiscal years 2013 and 2014 and
23 \$300,000,000 in each of fiscal years 2015 through
24 fiscal year 2021.

25 (11) FEDERAL HIGHWAY ADMINISTRATION.—

1 (A) HIGHWAY INFRASTRUCTURE INVEST-
2 MENT.—\$24,000,000,000 in each of fiscal years
3 2013 and 2014 and \$12,000,000,000 in each of
4 fiscal years 2015 through fiscal year 2021 to be
5 allocated to the States in proportion to the allo-
6 cations provided for programs under the admin-
7 istration of the Federal Highway Administra-
8 tion under SAFTEA–LU.

9 (B) CAPITAL ASSISTANCE FOR HIGH
10 SPEED RAIL CORRIDORS AND INTERCITY PAS-
11 SENGER RAIL SERVICE.—For an additional
12 amount for section 501 of Public Law 110–432
13 and discretionary grants to States to pay for
14 the cost of projects described in paragraphs
15 (2)(A) and (2)(B) of section 24401 of title 49,
16 United States Code, subsection (b) of section
17 24105 of such title, \$2,000,000,000 in each of
18 fiscal years 2013 through fiscal year 2021. Not
19 less than 80 percent of these funds shall be al-
20 located to the Federal Railroad Administration
21 for projects that are expected to achieve 125
22 miles per hour on not less than 50 percent of
23 the route.

24 (12) TRANSIT CAPITAL ASSISTANCE OF THE
25 FEDERAL TRANSIT ADMINISTRATION.—For transit

1 capital grants under the allocations provided for
2 under SAFTEA–LU and its extensions by both for-
3 mula and competitively, \$3,000,000,000 in each of
4 fiscal years 2013 and 2014 and \$1,500,000,000 in
5 each of fiscal years 2015 through fiscal year 2021.
6 Not less than one-third of these funds shall be allo-
7 cated under the discretionary bus program.

8 (13) COMMUNITY DEVELOPMENT FUND OF THE
9 COMMUNITY PLANNING AND DEVELOPMENT ADMIN-
10 STRATION.—For an additional amount for “Com-
11 munity Development Fund”, \$2,000,000,000 in each
12 of fiscal years 2013 and 2014 and \$1,000,000,000
13 in each of fiscal years 2015 through fiscal year 2021
14 to carry out the community development block grant
15 program under title I of the Housing and Commu-
16 nity Development Act of 1974 (42 U.S.C. 5301 et
17 seq.): *Provided*, That the amount appropriated in
18 this paragraph shall be distributed pursuant to 42
19 U.S.C. 5306 to grantees that received funding in fis-
20 cal year 2012. These funds shall be used for capital
21 projects.

22 (b) SUPPLEMENT NOT SUPPLANT.—

23 (1) IN GENERAL.—An entity shall use Federal
24 funds made available under this section only to sup-
25 plement the amount of funds that would, in the ab-

1 sence of such Federal funds, be made available from
2 non-Federal sources for the activities involved.

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

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

18 **Subtitle B—Rebuilding America’s** 19 **Manufacturing Power**

20 **SEC. 111. NATIONAL MANUFACTURING STRATEGY.**

21 (a) STRATEGY REQUIRED.—

22 (1) IN GENERAL.—Not later than 180 days
23 after the date of the enactment of this Act, the
24 President shall develop a comprehensive national
25 manufacturing strategy.

1 (2) BIENNIAL REVISIONS.—Not less frequently
2 than once every 2 years after the date on which the
3 President completes the strategy required by para-
4 graph (1), the President shall revise such strategy.

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

9 (1) to increase the aggregate number of manu-
10 facturing jobs in the United States so that such
11 number is not less than 20 percent of the sum of all
12 nonfarm jobs in the United States;

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

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

19 (c) INFORMATION REQUIRED.—The national manu-
20 facturing strategy required by subsection (a) shall include
21 the following:

22 (1) A survey of all persons with headquarters in
23 the United States that maintain manufacturing fa-
24 cilities outside of the United States to identify—

1 (A) the categories of products manufac-
2 tured at such facilities; and

3 (B) the number of manufacturing jobs lo-
4 cated at such facilities.

5 (2) A survey of all Federal agencies that pro-
6 vide assistance to United States manufacturers, in-
7 cluding the following:

8 (A) The Department of Commerce.

9 (B) The Department of Defense.

10 (C) The Department of Energy.

11 (D) The Department of Labor.

12 (E) The Department of the Treasury.

13 (F) The Small Business Administration.

14 (G) The Office of Management and Budg-

15 et.

16 (H) The Office of Science and Technology
17 Policy.

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

20 (J) The National Science Foundation.

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

23 (3) A survey of manufacturing goods produced
24 in the United States and where such goods are pro-
25 duced.

1 (4) The number of people in the United States
2 employed by manufacturers operating in the United
3 States.

4 (5) An evaluation of the global competitiveness
5 of United States manufacturing, including the fol-
6 lowing:

7 (A) A comparison of the manufacturing
8 policies and strategies of the United States with
9 the policies and strategies of other countries, in-
10 cluding the countries that are the top 5 trading
11 partners of the United States.

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

16 (d) RECOMMENDATIONS.—The President shall in-
17 clude in the national manufacturing strategy required by
18 subsection (a) recommendations for achieving the goals in-
19 cluded in the strategy pursuant to subsection (b). Such
20 recommendations may include proposals as follows:

21 (1) Actions to be taken by the President, Con-
22 gress, State, local, and territorial governments, the
23 private sector, universities, industry associations,
24 and other stakeholders.

1 (2) Ways to improve Government policies, co-
 2 ordination among entities developing such policies,
 3 and Government interaction with the manufacturing
 4 sector, including interagency communications re-
 5 garding the effects of proposed or active Government
 6 regulations or other executive actions on the United
 7 States manufacturing sector and its workforce.

8 (3) How each Federal agency surveyed under
 9 subsection (c)(2) can best support the national man-
 10 ufacturing strategy required by subsection (a).

11 (4) Adoption of strategies that have been imple-
 12 mented by other countries and proven successful.

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

19 **SEC. 112. SECTORAL TECHNOLOGY AND INNOVATION CEN-**
 20 **TERS.**

21 The National Institute of Standards and Technology
 22 Act (15 U.S.C. 271 et seq.) is amended by inserting after
 23 section 26 (15 U.S.C. 2711) the following:

1 **“SEC. 27. SECTORAL TECHNOLOGY AND INNOVATION CEN-**
2 **TERS.**

3 “(a) DEFINITIONS.—In this section:

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

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

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

13 “(C) has a capacity to serve small- or me-
14 dium-sized manufacturers across the United
15 States.

16 “(2) INDUSTRY CLUSTER.—The term ‘industry
17 cluster’ means a geographic concentration of inter-
18 connected companies, specialized suppliers, service
19 providers, and associated institutions in a particular
20 industry sector.

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

25 “(4) SMALL- OR MEDIUM-SIZED MANUFAC-
26 Turer.—The term ‘small- or medium-sized manu-

1 factorer’ means a manufacturer that is a small busi-
2 ness concern (as such term is defined in section 3
3 of the Small Business Act (15 U.S.C. 632)).

4 “(b) GRANTS AUTHORIZED.—

5 “(1) IN GENERAL.—The Secretary may award
6 grants to eligible entities to establish sectoral tech-
7 nology and innovation centers—

8 “(A) to improve the capacity of small- or
9 medium-sized manufacturers to innovate;

10 “(B) to provide assistance to small- or me-
11 dium-sized manufacturers with early-stage
12 product development;

13 “(C) to help small- or medium-sized manu-
14 facturers improve the speed with which they
15 commercialize new products, processes, and
16 technologies;

17 “(D) to help small- or medium-sized manu-
18 facturers reduce costs by improving efficiencies
19 in the manufacturing process, including through
20 reduced energy use and environmental waste;

21 “(E) to link small- or medium-sized manu-
22 facturers with cutting edge research and tech-
23 nologies developed by employees of institutions
24 of higher education or other institutions that
25 conduct scientific research; and

1 “(F) to facilitate the sharing of informa-
2 tion and best practices relating to manufac-
3 turing and product development among the fol-
4 lowing:

5 “(i) Small- or medium-sized manufac-
6 turers.

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

10 “(iii) Nongovernmental organizations
11 that provide assistance to small- or me-
12 dium-sized manufacturers.

13 “(iv) Institutions of higher education.

14 “(2) MINIMUM NUMBER OF SECTORAL TECH-
15 NOLOGY AND INNOVATION CENTERS.—In awarding
16 grants under paragraph (1), the Secretary shall en-
17 sure that not fewer than 25 sectoral technology and
18 innovation centers are established under this section
19 before the date that is 2 years after the date of the
20 enactment of this section.

21 “(c) USE OF FUNDS.—

22 “(1) IN GENERAL.—Grants awarded pursuant
23 to subsection (b)(1) shall be used to establish a sec-
24 toral technology and innovation center that offers a
25 range of services for the purposes described in para-

1 graphs (1) through (6) of such subsection, including
2 services relating to the following:

3 “(A) Applied research and development.

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

6 “(C) Manufacturing process development
7 and efficiency enhancements.

8 “(D) Other technical business matters.

9 “(2) FOCUS.—Each technology innovation cen-
10 ter established with a grant awarded under sub-
11 section (b)(1) shall be established with a focus on a
12 specific technology area or specific aspect of the
13 manufacturing process corresponding with—

14 “(A) the expertise of the eligible entity es-
15 tablishing the center; and

16 “(B) the needs of an industry cluster lo-
17 cated in geographic proximity to the center.

18 “(3) CHANGE IN SERVICES PROVIDED.—The
19 Secretary may allow a recipient of a grant under
20 subsection (b)(1) to modify the range of services of-
21 fered by the recipient’s technology innovation center
22 under paragraph (1) of this subsection.

23 “(4) AFFILIATION WITH INSTITUTIONS OF
24 HIGHER EDUCATION AND NATIONAL LABORA-
25 TORIES.—Services offered by a technology innova-

1 tion center under paragraph (1) shall be offered in
2 affiliation with an institution of higher education or
3 a national laboratory.

4 “(d) APPLICATION FOR GRANTS.—

5 “(1) IN GENERAL.—An eligible entity seeking a
6 grant under subsection (b)(1) shall submit to the
7 Secretary an application therefor in such form and
8 in such manner as the Secretary considers appro-
9 priate.

10 “(2) PROCESS REQUIRED.—The Secretary shall
11 establish a standardized application process for pur-
12 poses of awarding grants under subsection (b)(1).

13 “(3) SOLICITATION OF APPLICATIONS.—The
14 Secretary shall solicit applications for grants under
15 subsection (b) from eligible entities.

16 “(e) SELECTION OF GRANT RECIPIENTS.—

17 “(1) COMPETITIVE BASIS.—Grants awarded
18 under subsection (b)(1) shall be awarded on a com-
19 petitive basis.

20 “(2) PREFERENCES.—In selecting grant recipi-
21 ents, the Secretary shall give preference to an eligi-
22 ble entity that—

23 “(A) has an expertise in a specific tech-
24 nology area or manufacturing process that is
25 needed by an industry cluster;

1 “(B) agrees to establish a technology inno-
2 vation center in the geographical area of such
3 industry cluster;

4 “(C) represents a broad range of stake-
5 holders; and

6 “(D) can demonstrate that the non-Fed-
7 eral contributions for the operation of the tech-
8 nology innovation center will be significant.

9 “(3) CONSULTATION.—In selecting grant recipi-
10 ents, the Secretary shall consult with the Secretary
11 of Agriculture, the Secretary of Defense, the Sec-
12 retary of Energy, the Secretary of Labor, the Assist-
13 ant Secretary for Economic Development, the Na-
14 tional Science Foundation, the Office of Innovation
15 and Entrepreneurship, and such other Federal agen-
16 cies as may be appropriate to determine whether ap-
17 plicants have sufficient expertise to establish a tech-
18 nology innovation center as described in paragraphs
19 (1) and (2) of subsection (c).

20 “(f) FEDERAL SHARE.—An eligible entity that re-
21 ceives a grant under subsection (b)(1) shall provide such
22 non-Federal contributions for the operation of the sectoral
23 technology and innovation center established with such
24 grant as the Secretary considers appropriate.

1 “(g) USER FEES.—An eligible entity that establishes
 2 a technology innovation center with a grant awarded
 3 under subsection (b)(1) may establish user fees to be paid
 4 by recipients of services provided by the center to meet
 5 the operating costs of the center or for purposes of pro-
 6 viding non-Federal contributions as required by subsection
 7 (f).

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

12 “(1) \$1,000,000,000 for fiscal year 2013.

13 “(2) \$2,500,000,000 for fiscal year 2014.

14 “(3) \$2,500,000,000 for fiscal year 2015.

15 “(4) \$1,000,000,000 for each of fiscal years
 16 2016 through 2022.”.

17 **SEC. 113. CAPITAL FOR SMALL MANUFACTURERS WITH**
 18 **FIRM ORDERS.**

19 (a) IN GENERAL.—Section 7(a) of the Small Busi-
 20 ness Act (15 U.S.C. 636(a)) is amended by adding at the
 21 end the following:

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

24 “(A) DEFINITIONS.—In this paragraph—

1 “(i) the term ‘firm order’ means an
2 order for goods placed by a person that the
3 Administrator determines is—

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

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

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

14 “(B) IN GENERAL.—The Administrator
15 may guarantee a loan under this subsection to
16 a manufacturer, to provide capital for the pro-
17 duction of goods for a firm order, if the Admin-
18 istrator determines that the manufacturer will
19 be able to produce the goods using the capital.

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

23 “(D) GUARANTEE PERCENTAGE.—The Ad-
24 ministrator may guarantee not more than 95

1 percent of the amount of a loan under this
2 paragraph.”.

3 (b) **TECHNICAL AND CONFORMING AMENDMENTS.**—
4 Section 1133(b) of the Small Business Jobs Act of 2010
5 (15 U.S.C. 636 note) is amended—

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

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

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

11 “(3) by redesignating paragraph (36), as added
12 by section 113 of the Rebuild America Act, as para-
13 graph (35).”.

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

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

21 (b) **ADJUSTMENTS FOR INFLATION.**—For fiscal year
22 2014 and each fiscal year thereafter, the amount specified
23 in subsection (a) shall be adjusted to reflect the percent-
24 age (if any) of the increase or decrease (as the case may
25 be) in the average of the Consumer Price Index for the

1 12-month period ending on the April 30 preceding the be-
2 ginning of the fiscal year compared to the average of the
3 Consumer Price Index for the 12-month period ending
4 April 30, 2012.

5 **SEC. 115. EXTENSION OF RESEARCH CREDIT; INCREASE IN**
6 **ALTERNATIVE SIMPLIFIED RESEARCH CRED-**
7 **IT.**

8 (a) EXTENSION OF CREDIT.—

9 (1) IN GENERAL.—Subparagraph (B) of section
10 41(h)(1) of the Internal Revenue Code of 1986 is
11 amended by striking “December 31, 2011” and in-
12 serting “December 31, 2016”.

13 (2) CONFORMING AMENDMENT.—Subparagraph
14 (D) of section 45C(b)(1) of such Code is amended
15 by striking “December 31, 2011” and inserting
16 “December 31, 2016”.

17 (3) EFFECTIVE DATE.—The amendments made
18 by this subsection shall apply to amounts paid or in-
19 curred after December 31, 2011.

20 (b) ALTERNATIVE SIMPLIFIED RESEARCH CREDIT
21 INCREASED.—

22 (1) INCREASED CREDIT.—Subparagraph (A) of
23 section 41(c)(5) of the Internal Revenue Code of
24 1986 is amended to read as follows:

25 “(A) DETERMINATION OF CREDIT.—

1 “(i) IN GENERAL.—At the election of
2 the taxpayer, the credit determined under
3 subsection (a)(1) shall be equal to the ap-
4 plicable percentage of so much of the
5 qualified research expenses for the taxable
6 year as exceeds 50 percent of the average
7 qualified research expenses for the 3 tax-
8 able years preceding the taxable year for
9 which the credit is being determined.

10 “(ii) APPLICABLE PERCENTAGE.—For
11 purposes of clause (i), the applicable per-
12 centage for any taxable year is equal to—

13 “(I) 14 percent, increased by

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

21 “(iii) LIMITATION.—The increase in
22 the amount of the credit determined under
23 subsection (a)(1) by reason of the applica-
24 tion of clause (ii)(II) shall not exceed the
25 product of—

1 “(I) \$5,000, multiplied by

2 “(II) the number of qualified
3 manufacturing full-time equivalent
4 employees taken into account for pur-
5 poses of determining the increase de-
6 scribed in clause (ii)(II).

7 “(iv) QUALIFIED MANUFACTURING
8 FULL-TIME EQUIVALENT EMPLOYEES.—
9 For purposes of this subparagraph, the
10 term ‘qualified manufacturing full-time
11 equivalent employees’ means full-time
12 equivalent employees (as defined in section
13 45R(d)(2)) who provide the taxpayer man-
14 ufacturing services in the United States.

15 “(v) EMPLOYEES EXCLUDED FOR
16 CHANGES IN OWNERSHIP OF TRADES OR
17 BUSINESSES.—In determining the number
18 of qualified manufacturing full-time equiv-
19 alent employees for any 5-taxable-year pe-
20 riod referred to in clause (ii)(II), the tax-
21 payer shall not take into account—

22 “(I) any individual who was an
23 employee, on the date of acquisition,
24 of any trade or business acquired by
25 the taxpayer during such period, and

1 “(II) any individual who was an
2 employee of any trade or business dis-
3 posed of by the taxpayer during such
4 period.

5 “(vi) MANUFACTURING SERVICES.—
6 For purposes of this subparagraph, the
7 term ‘manufacturing services’ means quali-
8 fied production activities within the mean-
9 ing of section 199(c) other than the extrac-
10 tion of fossil fuels or minerals, agricultural
11 production, activities described in section
12 199(b)(2)(D), or activities described in
13 199(c)(4)(B).”.

14 (2) CONFORMING AMENDMENT.—Section
15 41(c)(5)(B)(ii) of such Code is amended by striking
16 “6 percent” and inserting “one-half of the applicable
17 percentage”.

18 (3) EFFECTIVE DATE.—The amendments made
19 by this subsection shall apply to taxable years begin-
20 ning after December 31, 2016.

21 (c) TECHNICAL CORRECTIONS.—

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

24 (A) by inserting “, as in effect before the
25 enactment of the Tax Reform Act of 1984)”

1 after “section 41(c)(1)(B)” in subsection
2 (b)(1)(A),

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

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

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

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

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

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

22 (2) EFFECTIVE DATE.—The amendments made
23 by this subsection shall take effect on the date of the
24 enactment of this Act.

1 **SEC. 116. INCLUSION OF CERTAIN PROVISIONS IN TRADE**
2 **AGREEMENTS.**

3 (a) DEFINITIONS.—In this section:

4 (1) CORE LABOR RIGHTS.—The term “core
5 labor rights” means the core labor rights as stated
6 in the International Labour Organization conven-
7 tions dealing with—

8 (A) freedom of association and the effec-
9 tive recognition of the right to collective bar-
10 gaining;

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

13 (C) the effective abolition of child labor;
14 and

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

17 (2) MULTILATERAL ENVIRONMENTAL AGREE-
18 MENT.—The term “multilateral environmental
19 agreement” means any international agreement or
20 provision thereof to which the United States is a
21 party and that is intended to protect, or has the ef-
22 fect of protecting, the environment or human health.

23 (b) LIMITATION ON CONSIDERATION OF BILLS IM-
24 PLEMENTING TRADE AGREEMENTS.—Notwithstanding
25 section 151 of the Trade Act of 1974 (19 U.S.C. 2191)
26 or any other provision of law, any bill implementing a

1 trade agreement between the United States and another
2 country that is introduced in Congress after the date of
3 the enactment of this Act shall be subject to a point of
4 order pursuant to subsection (d) unless the trade agree-
5 ment meets the requirements described in subsection (c).

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

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

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

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

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

21 (ii) to effectively enforce laws relating
22 to core labor rights and laws relating to
23 acceptable conditions of work (including
24 laws relating to minimum wages, hours of
25 work, and occupational safety and health);

1 (C) prohibit a country that is a party to
2 the agreement from waiving or otherwise dero-
3 gating from, or offering to waive or otherwise
4 derogate from, the country's laws and regula-
5 tions relating to the core labor rights and ac-
6 ceptable conditions of work described in sub-
7 paragraph (B);

8 (D) provide that failures to meet the labor
9 requirements of the agreement, regardless of
10 the effect that failure has on trade, shall be
11 subject to the dispute resolution and enforce-
12 ment mechanisms and penalties of the agree-
13 ment;

14 (E) provide that enforcement mechanisms
15 and penalties for failures described in subpara-
16 graph (D) are included in the core text of the
17 agreement and are at least as effective as the
18 mechanisms and penalties that apply to the
19 commercial provisions of the agreement; and

20 (F) strengthen the capacity of each coun-
21 try that is a party to the agreement to promote,
22 protect, and enforce core labor rights.

23 (2) ENVIRONMENTAL AND PUBLIC SAFETY
24 STANDARDS.—The environmental provisions of the
25 agreement shall—

1 (A) be included in the text of the agree-
2 ment;

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

8 (C) require each such country to imple-
9 ment and enforce fully and effectively the coun-
10 try's obligations under multilateral environ-
11 mental agreements and provide for the enforce-
12 ment of such obligations under the agreement;

13 (D) prohibit the trade of products that are
14 illegally harvested or extracted and the trade of
15 goods derived from illegally harvested or ex-
16 tracted natural resources, including timber and
17 timber products, fish, wildlife, and associated
18 products, mineral resources, or other environ-
19 mentally sensitive goods;

20 (E) provide that the failure to meet the en-
21 vironmental standards required by the agree-
22 ment be subject to dispute resolution and en-
23 forcement mechanisms and penalties that are at
24 least as effective as the mechanisms and pen-

1 alties that apply to the commercial provisions of
2 the agreement; and

3 (F) allow each country that is a party to
4 the agreement to adopt and implement environ-
5 mental, health, and safety standards, recog-
6 nizing the legitimate right of governments to
7 protect the environment and public health and
8 safety.

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

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

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

22 (i) will make such investments and
23 will conduct such operations on a commer-
24 cial basis only; and

1 (ii) will not receive benefits, such as
2 financing, at below market rates, or com-
3 ponents or materials at below market
4 prices, from the foreign government for
5 such operations; and

6 (C) define the standard of minimum treat-
7 ment to provide that foreign investors do not
8 have greater legal rights than United States
9 citizens possess under the due process clause of
10 section 1 of the 14th Amendment to the Con-
11 stitution.

12 (d) POINT OF ORDER IN SENATE.—The Senate shall
13 cease consideration of a bill to implement a trade agree-
14 ment introduced on or after the date of enactment of this
15 Act if—

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

20 (2) the point of order is sustained by the Pre-
21 siding Officer.

22 (e) WAIVERS AND APPEALS.—

23 (1) WAIVERS.—Before the Presiding Officer
24 rules on a point of order described in subsection (d),
25 any Senator may move to waive the point of order

1 and the motion to waive shall not be subject to
2 amendment. A point of order described in subsection
3 (d) is waived only by the affirmative vote of 60
4 Members of the Senate, duly chosen and sworn.

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

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

21 **SEC. 117. FUNDING FOR INTERAGENCY TRADE ENFORCE-**
22 **MENT CENTER.**

23 (a) IN GENERAL.—There shall be made available
24 from the Rebuild America Trust Fund under section 9512
25 of the Internal Revenue Code of 1986, the following

1 amounts for the Interagency Trade Enforcement Center
2 established by Executive Order of February 28, 2012, en-
3 titled “Establishment of the Interagency Trade Enforce-
4 ment Center”:

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

6 (2) For fiscal year 2014 and each fiscal year
7 thereafter, the amount specified in paragraph (1), as
8 adjusted to reflect the percentage (if any) of the in-
9 crease or decrease (as the case may be) in the aver-
10 age of the Consumer Price Index for the 12-month
11 period ending on the April 30 preceding the begin-
12 ning of the fiscal year compared to the average of
13 the Consumer Price Index for the 12-month period
14 ending April 30, 2012.

15 (b) CONSUMER PRICE INDEX DEFINED.—In this sec-
16 tion, the term “Consumer Price Index” means the Con-
17 sumer Price Index for All Urban Consumers published by
18 the Bureau of Labor Statistics of the Department of
19 Labor.

20 **SEC. 118. IMPOSITION OF COUNTERVAILING DUTIES FOR**
21 **SUBSIDIES RELATING TO FUNDAMENTALLY**
22 **UNDERVALUED CURRENCIES.**

23 (a) BENEFIT CONFERRED.—Section 771(5)(E) of
24 the Tariff Act of 1930 (19 U.S.C. 1677(5)(E)) is amend-
25 ed—

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

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

4 (3) by inserting after clause (iv) the following
5 new clause:

6 “(v) in the case in which the currency
7 of a country in which the subject merchan-
8 dise is produced is exchanged for foreign
9 currency obtained from export trans-
10 actions, and the currency of such country
11 is a fundamentally undervalued currency,
12 as defined in paragraph (37), if there is a
13 difference between the amount of the cur-
14 rency of such country provided and the
15 amount of the currency of such country
16 that would have been provided if the real
17 effective exchange rate of the currency of
18 such country were not undervalued, as de-
19 termined pursuant to paragraph (38).”.

20 (b) EXPORT SUBSIDY.—Section 771(5A)(B) of the
21 Tariff Act of 1930 (19 U.S.C. 1677(5A)(B)) is amended
22 by adding at the end the following new sentence: “In the
23 case of a subsidy relating to a fundamentally undervalued
24 currency, the fact that the subsidy may also be provided
25 in circumstances not involving export shall not, for that

1 reason alone, mean that the subsidy cannot be considered
2 contingent upon export performance.”.

3 (c) DEFINITION OF FUNDAMENTALLY UNDER-
4 VALUED CURRENCY.—Section 771 of the Tariff Act of
5 1930 (19 U.S.C. 1677) is amended by adding at the end
6 the following new paragraph:

7 “(37) FUNDAMENTALLY UNDERVALUED CUR-
8 RENCY.—The administering authority shall deter-
9 mine that the currency of a country in which the
10 subject merchandise is produced is a ‘fundamentally
11 undervalued currency’ if—

12 “(A) the government of the country (in-
13 cluding any public entity within the territory of
14 the country) engages in protracted, large-scale
15 intervention in one or more foreign exchange
16 markets during part or all of the 18-month pe-
17 riod that represents the most recent 18 months
18 for which the information required under para-
19 graph (38) is reasonably available, but that
20 does not include any period of time later than
21 the final month in the period of investigation or
22 the period of review, as applicable;

23 “(B) the real effective exchange rate of the
24 currency is undervalued by at least 5 percent,
25 on average and as calculated under paragraph

1 (38), relative to the equilibrium real effective
 2 exchange rate for the country's currency during
 3 the 18-month period;

4 “(C) during the 18-month period, the
 5 country has experienced significant and per-
 6 sistent global current account surpluses; and

7 “(D) during the 18-month period, the for-
 8 eign asset reserves held by the government of
 9 the country exceed—

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

13 “(ii) 20 percent of the country's
 14 money supply, using standard measures of
 15 M2; and

16 “(iii) the value of the country's im-
 17 ports during the previous 4 months.”.

18 (d) DEFINITION OF REAL EFFECTIVE EXCHANGE
 19 RATE UNDERVALUATION.—Section 771 of the Tariff Act
 20 of 1930 (19 U.S.C. 1677), as amended by subsection (c)
 21 of this section, is further amended by adding at the end
 22 the following new paragraph:

23 “(38) REAL EFFECTIVE EXCHANGE RATE
 24 UNDERVALUATION.—The calculation of real effective

1 exchange rate undervaluation, for purposes of para-
2 graph (5)(E)(v) and paragraph (37), shall—

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

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

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

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

23 (e) APPLICATION TO GOODS FROM CANADA AND
24 MEXICO.—Pursuant to article 1902 of the North Amer-
25 ican Free Trade Agreement and section 408 of the North

1 American Free Trade Agreement Implementation Act of
 2 1993 (19 U.S.C. 3438), the amendments made by this sec-
 3 tion shall apply to goods from Canada and Mexico.

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

6 **SEC. 121. SHORT TITLE.**

7 This subtitle may be cited as the “Regional Partner-
 8 ships for High-Quality Jobs Act”.

9 **SEC. 122. DEFINITIONS.**

10 In this subtitle:

11 (1) CAREER AND TECHNICAL EDUCATION SYS-
 12 TEM.—The term “career and technical education
 13 system” means, with respect to a State, the eligible
 14 agency (as defined in section 3 of the Carl D. Per-
 15 kins Career and Technical Education Act of 2006
 16 (20 U.S.C. 2302)) for the State, and the eligible re-
 17 cipients (as so defined) in the State that receive
 18 funds under section 131 or 132 of such Act (20
 19 U.S.C. 2351, 2352).

20 (2) CAREER PATHWAY.—

21 (A) IN GENERAL.—The term “career path-
 22 way” means a set of rigorous, engaging, and
 23 high-quality education, occupational training,
 24 and other services to prepare individuals to

1 meet a set of career-related objectives as ref-
2 erenced in subparagraph (C).

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

5 (i) aligned with the skill needs of in-
6 dustries in the economy of the service area
7 involved; and

8 (ii) designed to increase an individ-
9 ual’s educational and skill attainment, and
10 improve the individual’s employment out-
11 comes and ability to meet career-related
12 objectives, by—

13 (I) preparing individuals for the
14 full range of secondary or postsec-
15 ondary education options, including
16 apprenticeships registered under the
17 Act of August 16, 1937 (commonly
18 known as the “National Apprentice-
19 ship Act”; 50 Stat. 664, chapter 663;
20 29 U.S.C. 50 et seq.) (referred to in-
21 dividually in this subtitle as an “ap-
22 prenticeship”);

23 (II) including counseling and
24 support services to help individuals

1 achieve their education and career
2 goals;

3 (III) including, as appropriate for
4 an individual, education offered con-
5 currently with and in the same con-
6 text as workforce preparation activi-
7 ties and training for a specific occupa-
8 tion or occupational cluster; and

9 (IV) organizing education, occu-
10 pational training, and other services
11 to meet the particular needs of the in-
12 dividual in a manner that accelerates
13 the educational and career advance-
14 ment of the individual to the extent
15 practicable.

16 (C) OBJECTIVES.—The objectives referred
17 to in subparagraph (A) include—

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

22 (ii) helping a worker enter or advance
23 within a specific occupation or occupational
24 cluster.

1 (3) COMMUNITY COLLEGE.—The term “commu-
2 nity college” has the same meaning as the term
3 “junior or community college”, as defined in section
4 312(f) of the Higher Education Act of 1965 (20
5 U.S.C. 1058(f)).

6 (4) EDUCATION TERMS.—The term “adult edu-
7 cation” has the meaning given the term in section
8 203 of the Adult Education and Family Literacy Act
9 (20 U.S.C. 9202). The terms “State educational
10 agency” and “local educational agency” have the
11 meanings given the terms in section 9101 of the Ele-
12 mentary and Secondary Education Act of 1965 (20
13 U.S.C. 7801).

14 (5) HIGH-QUALITY EMPLOYMENT.—The term
15 “high-quality employment” means employment with,
16 at a minimum, family-sustaining compensation (as
17 determined by the Secretaries) and opportunities for
18 advancement (as so determined).

19 (6) INDIVIDUAL WITH A DISABILITY; INDIVID-
20 UALS WITH DISABILITIES.—

21 (A) INDIVIDUAL WITH A DISABILITY.—The
22 term “individual with a disability” has the
23 meaning given the term in section 7(20)(A) of
24 the Rehabilitation Act of 1973 (29 U.S.C.
25 705(20)(A)).

1 (B) INDIVIDUALS WITH DISABILITIES.—

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

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

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

13 (9) OCCUPATIONAL TRAINING.—The term “oc-
14 cupational training” means training services, as de-
15 scribed in section 134(d)(4)(D) of the Workforce In-
16 vestment Act of 1998 (29 U.S.C. 2864(d)(4)(D)).

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

19 (A) individuals unemployed for 52 weeks
20 or more;

21 (B) youth age 16 through 24 who have
22 been out of school or out of work, as appro-
23 priate, for more than 6 months and do not pos-
24 sess a secondary school diploma or its recog-
25 nized equivalent;

1 (C) individuals with disabilities;

2 (D) individuals with low literacy levels; or

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

5 (11) RECOGNIZED POSTSECONDARY CREDEN-
6 TIAL.—The term “recognized postsecondary creden-
7 tial” means a credential consisting of an industry-
8 recognized credential, a certificate of completion of
9 an apprenticeship registered under the Act of Au-
10 gust 16, 1937 (commonly known as the “National
11 Apprenticeship Act”; 50 Stat. 664, chapter 663; 29
12 U.S.C. 50 et seq.), or an associate or baccalaureate
13 degree.

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

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

20 (A) used with respect to a regional part-
21 nership, means a labor market area; and

22 (B) used with respect to a State partner-
23 ship, means 2 or more labor market areas in
24 the State that are identified by the State part-
25 nership.

1 **SEC. 123. PROGRAM.**

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

5 (b) GRANTS.—

6 (1) IN GENERAL.—In carrying out the program,
7 the Secretaries shall award grants, on a competitive
8 basis, to eligible entities to develop or enhance, and
9 provide, career pathways and adult learning strate-
10 gies that integrate education, occupational training,
11 and supportive services. The career pathways and
12 learning strategies shall prepare individuals for ex-
13 isting or emerging employment opportunities in a
14 service area, which shall include such preparation
15 through the attainment of a recognized postsec-
16 ondary credential.

17 (2) GRANT PERIOD.—A grant awarded to an el-
18 igible entity under this section shall be awarded for
19 a period of not more than 5 years. The grant may
20 be renewed for not more than 1 such additional
21 grant period, contingent on satisfactory performance
22 of the eligible entity relating to the expected out-
23 comes described in section 125(1).

24 (3) PARTNERSHIPS.—The eligible entities shall
25 provide the career pathways and learning strategies

1 through industry-focused, employer-linked regional
2 or State partnerships described in section 124.

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

7 **SEC. 124. ELIGIBLE ENTITIES.**

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

11 (1) that shall include—

12 (A) employers of various sizes in the serv-
13 ice area, whose job vacancies represent a sig-
14 nificant share of current or future job vacan-
15 cies, and that pledge to train or employ partici-
16 pants in the project carried out under the
17 grant; and

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

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

23 (A) A State agency.

1 (B) A chief elected official, as defined in
2 section 101 of the Workforce Investment Act of
3 1998 (29 U.S.C. 2801).

4 (C) A nonprofit organization with a dem-
5 onstrated record of serving priority workers.

6 (D) Local boards or State boards as such
7 terms are defined in section 101 of the Work-
8 force Investment Act of 1998 (29 U.S.C. 2801),
9 or designated State units, as defined in section
10 7 of the Rehabilitation Act of 1973 (29 U.S.C.
11 705) or other vocational rehabilitation offices.

12 (E) An economic development agency.

13 (F) A local educational agency.

14 (G) A labor organization or labor-manage-
15 ment partnership.

16 (H) An adult education provider.

17 (I) An agency, which may be a public li-
18 brary, that provides occupational training or
19 supportive services.

20 (b) STATE OR REGIONAL PARTNERSHIP.—The part-
21 nership described in subsection (a) may be—

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

24 (2) a regional partnership, serving a labor mar-
25 ket area.

1 **SEC. 125. APPLICATIONS.**

2 To be eligible to receive a grant under section 123,
3 an entity described in section 124 shall submit an applica-
4 tion to the Secretaries at such time, in such manner, and
5 containing such information as the Secretaries may deter-
6 mine to be appropriate, including, at a minimum, a plan
7 for the project to be carried out under the grant, with
8 information describing each of the following:

9 (1) How the partnership will address the objec-
10 tives of the project, including identifying a fiscal
11 agent and expected outcomes for the partnership.

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

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

24 (B) a description of how the partnership
25 has incorporated best practices in adult edu-
26 cation and occupational training, such as use of

1 cohort models, compressed course schedules, in-
2 tegrated adult basic education, and work readi-
3 ness training and certificates;

4 (C) information on how the partnership
5 will identify and prepare workers for employ-
6 ment opportunities;

7 (D) an analysis of how the partnership will
8 engage the entities described in section
9 124(a)(2), to leverage resources and optimize
10 outcomes, including by coordinating existing (as
11 of the date the grant is received) education and
12 occupational training efforts; and

13 (E) a description of how the partnership
14 will conduct data collection, monitoring, report-
15 ing, and information sharing to continuously
16 evaluate and improve outcomes for the project.

17 (3) The commitment of members of the part-
18 nership, including—

19 (A) each partner's financial and pro-
20 grammatic commitment to the strategies de-
21 scribed in the application;

22 (B) each partner's capacity, such as capac-
23 ity to provide staff and facilities, to leverage
24 State and local investments, to coordinate ac-
25 tivities with related agencies, and to establish

1 linkages among employment and labor market
2 information data systems, to support the strate-
3 gies described in the application;

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

9 (D) each partner’s commitment to ensure
10 sound fiscal management and controls, includ-
11 ing evidence of a related system of supports and
12 personnel.

13 (4) How the partnership will make work experi-
14 ences available to all priority workers, including—

15 (A) the types of paid internships, on-the-
16 job training, or other work experiences the part-
17 nership will make available to all priority work-
18 ers; and

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

23 (5) How the partnership will engage commu-
24 nity-based organizations with experience providing
25 education, occupational training, and related sup-

1 portive services to individuals in the service area,
2 with particular attention to such organizations that
3 have experience supporting priority workers.

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

8 (7) In the case of a State partnership, how the
9 partnership will carry out goals described in section
10 127(b)(1)(B).

11 **SEC. 126. PRIORITY AND DISTRIBUTION.**

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

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

18 (2) is a partnership serving at least 1 labor
19 market area with 1 of the highest levels of unem-
20 ployment or poverty, as defined by the Secretaries,
21 in the Nation.

22 (b) GEOGRAPHIC DIVERSITY.—In administering the
23 grants awarded under section 123, the Secretaries shall
24 ensure geographic diversity in the distribution of funds to
25 regional and State partnerships.

1 **SEC. 127. USE OF FUNDS.**

2 (a) IN GENERAL.—An eligible entity that receives a
3 grant under section 123 shall use the grant funds to im-
4 plement the plan described in the entity’s application, sub-
5 mitted under section 125.

6 (b) PARTNERSHIPS.—

7 (1) PARTNERSHIPS, CAREER PATHWAYS, AND
8 LEARNING STRATEGIES.—

9 (A) IN GENERAL.—A partnership that re-
10 ceives a grant under section 123 shall use the
11 grant funds for investments designed to develop
12 or enhance, and provide, through an industry-
13 focused, employer-linked partnership, career
14 pathways and adult learning strategies that
15 connect individuals with existing or emerging
16 employment opportunities.

17 (B) ADDITIONAL USES.—In addition, a
18 partnership described in section 124(b)(1) shall
19 use the grant funds to support the activities de-
20 scribed in subparagraph (A) by—

21 (i) supporting programs of tuition as-
22 sistance, using funding resources, and
23 through other evidence-based strategies,
24 except that such support shall not supplant
25 other Federal funds for such tuition assist-
26 ance;

1 (ii) providing incentives and technical
2 support to employers who, through partici-
3 pation in industry-focused, employer-linked
4 partnerships, or through provision of ca-
5 reer pathways or adult learning strategies,
6 retain and promote incumbent workers,
7 employ new workers, or upgrade jobs for
8 program participants; and

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

13 (2) SERVICES FOR PRIORITY WORKERS.—The
14 partnership shall use at least 50 percent of the
15 grant funds to support the pathways and strategies
16 and provide supportive services for priority workers.

17 (3) CONDITIONS OF EDUCATION AND OCCUPA-
18 TIONAL TRAINING.—

19 (A) TRAINING LEADING TO JOBS.—All
20 education and occupational training provided
21 through the project shall lead to high-quality
22 employment provided by, at a minimum, the
23 employers represented in the partnership, and
24 also including other employers of all sizes in the
25 service area.

1 (B) INTERNSHIPS.—Paid internship posi-
2 tions provided through the project shall be pri-
3 marily occupational training positions, and the
4 internships may not permit interns to spend a
5 significant amount of time doing work for
6 which an employee would otherwise be com-
7 pensated.

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

10 (i) provided through the project shall
11 pay wages comparable to the wages pro-
12 vided for similar positions in the sector in-
13 volved for the service area; and

14 (ii) may be placements in new or va-
15 cant positions, but a participant in such a
16 placement shall not displace any currently
17 employed employee, consistent with section
18 181(b) of the Workforce Investment Act of
19 1998 (29 U.S.C. 2931(b)).

20 **SEC. 128. MATCHING REQUIREMENT.**

21 (a) REQUIREMENT.—The Secretaries shall require
22 that each eligible entity receiving a grant under section
23 123 contribute, toward the cost of the project for which
24 the grant was awarded, matching funds in an amount
25 equal to not less than 50 percent of the amount of the

1 grant. The eligible entity may contribute such matching
2 funds from non-Federal sources or Federal sources (other
3 than this subtitle), in cash or in-kind, fairly evaluated (in-
4 cluding plant, equipment, or services).

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

9 **SEC. 129. FUNDING.**

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

14 **Subtitle D—Supporting Great**
15 **Teachers**

16 **SEC. 131. SHORT TITLE.**

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

19 **SEC. 132. FINDINGS.**

20 Congress finds the following:

21 (1) According to the Department of Labor, al-
22 most 90 percent of new jobs in occupations with
23 both high growth and high wages require at least
24 some postsecondary training. The majority of new
25 jobs that offer a wage sufficient to support a family

1 and provide opportunity for career advancement re-
2 quire some postsecondary education. Moreover, re-
3 search shows that the skill level required to enter
4 college or a work-training program is the same.

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

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

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

1 **SEC. 133. PURPOSES.**

2 The purposes of this subtitle are to—

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

6 (2) strengthen the capacity of States and local
7 educational agencies to provide professional develop-
8 ment that increases the effectiveness of all teachers
9 in the instruction of college- and career-ready State
10 standards and the development and use of cur-
11 riculum and assessments that are aligned with
12 college- and career-ready State standards.

13 **SEC. 134. DEFINITIONS.**

14 In this subtitle:

15 (1) **ESEA DEFINITIONS.**—Unless otherwise
16 specified, the terms used in this subtitle have the
17 meanings given the terms in section 9101 of the Ele-
18 mentary and Secondary Education Act of 1965 (20
19 U.S.C. 7801).

20 (2) **COLLEGE- AND CAREER-READY PROFES-**
21 **SIONAL DEVELOPMENT LEADERSHIP TEAM.**—The
22 term “college- and career-ready professional develop-
23 ment leadership team” means a group of educators,
24 teacher association representatives, leaders, and spe-
25 cialists convened by an eligible entity pursuant to
26 section 136(b)(1)(C).

1 (3) COLLEGE- AND CAREER-READY STAFF NET-
2 WORK.—The term “college- and career-ready staff
3 network” means a group of specialists, convened by
4 a local entity, including school-based teachers and
5 leaders, teacher association representatives, and spe-
6 cialists in relevant content areas, in teaching English
7 learners, and in teaching children with disabilities,
8 who are serving as mentors, coaches, or facilitators
9 and who are responsible for—

10 (A) establishing professional development
11 goals;

12 (B) aligning the instructional work for in-
13 dividual schools;

14 (C) supporting the implementation of in-
15 quiry-based models of professional development;

16 (D) identifying and sharing best practices;

17 (E) coordinating with the college- and ca-
18 reer-ready professional development leadership
19 team; and

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

22 (4) ELIGIBLE ENTITY.—The term “eligible enti-
23 ty” means a State educational agency or a consor-
24 tium of State educational agencies that has adopted
25 standards in mathematics and English language arts

1 that are aligned with college and career readiness, as
2 demonstrated to the Secretary.

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

6 **SEC. 135. GRANTS AUTHORIZED.**

7 (a) IN GENERAL.—The Secretary is authorized to
8 award grants on a competitive basis to eligible entities for
9 the development, implementation, and monitoring of com-
10 prehensive, statewide professional development that—

11 (1) is aligned with local professional develop-
12 ment efforts; and

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

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

17 (B) development and use of curriculum
18 and assessments and other instructional sup-
19 ports that are aligned with college- and career-
20 ready State standards.

21 (b) DURATION.—Each grant awarded under sub-
22 section (a)—

23 (1) shall be for a minimum of a 3-year period
24 and a maximum of a 5-year period; and

1 (2) may be renewed based on performance, as
2 determined by the Secretary.

3 (c) GRANT AMOUNT.—The Secretary shall ensure
4 that grants are of sufficient size and scope to enable
5 grantees to carry out grant activities.

6 (d) GEOGRAPHIC DISTRIBUTION.—The Secretary
7 shall ensure that grantees represent different geographic
8 regions of the United States, including urban and rural
9 areas.

10 (e) RESERVATION OF FUNDS.—From the amount
11 made available under section 142 for a fiscal year, the Sec-
12 retary shall reserve not more than 5 percent for the eval-
13 uation of activities implemented pursuant to grants
14 awarded under subsection (a) and the dissemination of in-
15 formation on effective professional development activities,
16 curriculum, assessments, and other instructional supports
17 developed with such grant funds.

18 **SEC. 136. APPLICATION.**

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

24 (b) CONTENTS.—

1 (1) IN GENERAL.—Each application submitted
2 under subsection (a) shall include a comprehensive
3 strategy for implementing professional development
4 aligned to college- and career-ready State standards
5 and related instructional supports that shall in-
6 clude—

7 (A) a description of how the professional
8 development will increase teacher, principal,
9 and other school leader knowledge and under-
10 standing of college- and career-ready State
11 standards that is differentiated, including by
12 grade level and subject area, specific to the
13 teacher;

14 (B) a description of how the professional
15 development will increase teacher expertise be-
16 yond basic content knowledge for subject-area
17 teachers;

18 (C) the creation of a college- and career-
19 ready professional development leadership team
20 responsible for establishing statewide goals, pro-
21 viding model frameworks to local college- and
22 career-ready staff networks, leaders, or special-
23 ists, for meeting statewide goals, identifying
24 and sharing best practices around the imple-
25 mentation of college- and career-ready State

1 standards, curriculum alignment, and assess-
2 ments, and supporting local comprehensive
3 college- and career-ready professional develop-
4 ment strategy activities;

5 (D) dissemination to local college- and ca-
6 reer-ready staff networks in an easily accessible
7 format that may include the use of technology,
8 such as a web-based statewide instructional per-
9 formance support system, exemplary profes-
10 sional development activities, opportunities to
11 participate in professional learning networks,
12 technical assistance, and other professional de-
13 velopment resources designed to support the
14 successful implementation of college- and ca-
15 reer-ready State standards;

16 (E) a description of how the professional
17 development will be developed in collaboration
18 with nonprofit organizations, which may include
19 institutions of higher education, with a dem-
20 onstrated record of expertise, and other edu-
21 cation stakeholders; and

22 (F) a description of how the professional
23 development will be based on an analysis of
24 data and evidence that indicates the needs of
25 leaders, teachers, and students.

1 (2) DEVELOPMENT OF STRATEGY.—The com-
2 prehensive strategy described in paragraph (1) shall
3 be developed in collaboration with the representative
4 organizations for teachers in the State.

5 **SEC. 137. STATE USE OF GRANT FUNDS.**

6 An eligible entity that receives a grant under section
7 135 shall carry out the following:

8 (1) PROFESSIONAL DEVELOPMENT IMPLEMEN-
9 TATION ACTIVITIES.—

10 (A) IMPACT ON TEACHING PRACTICE AND
11 STUDENT ACHIEVEMENT.—

12 (i) IN GENERAL.—The eligible entity
13 shall reserve not less than 2 percent of the
14 grant funds—

15 (I) to conduct an evaluation by a
16 knowledgeable, skilled, and impartial
17 evaluator of the impact of the com-
18 prehensive college- and career-ready
19 professional development strategy on
20 teaching practice and student achieve-
21 ment; and

22 (II) to inform continuous im-
23 provement of professional development
24 activities and, if applicable, re-
25 directing professional development re-

1 sources towards those activities that
2 are most beneficial to teachers and
3 students.

4 (ii) CONDUCT OF EVALUATION AND
5 INFORMING IMPROVEMENT.—The activities
6 described in subclauses (I) and (II) of
7 clause (i) shall be conducted by an entity
8 other than the State educational agency.

9 (B) STRATEGY ACTIVITIES.—

10 (i) IN GENERAL.—Except as provided
11 in clause (ii), the eligible entity shall re-
12 serve not more than 13 percent of the
13 grant funds to carry out the comprehensive
14 college- and career-ready professional de-
15 velopment activities described under sec-
16 tion 136.

17 (ii) EXCEPTION FOR SMALL OR RURAL
18 STATES.—The Secretary may allow a small
19 or rural State, upon application by such
20 State, to reserve more than 13 percent of
21 the grant funds to carry out the com-
22 prehensive college- and career-ready pro-
23 fessional development activities described
24 under section 136, and activities described
25 under section 138(c)(4) as the activities

1 apply to the State, if the State dem-
2 onstrates to the Secretary that it would be
3 more efficient and effective for the State to
4 carry out such activities rather than local
5 entities.

6 (C) IMPLEMENTATION ACTIVITIES.—From
7 the amount reserved under subparagraph (B),
8 the eligible entity may implement activities de-
9 scribed under section 138(c)(4) as the activities
10 apply to the State educational agency.

11 (2) SUBGRANTS.—The eligible entity shall re-
12 serve not less than 85 percent of the grant funds to
13 award subgrants to local entities under section 138.

14 **SEC. 138. SUBGRANTS TO LOCAL ENTITIES.**

15 (a) AUTHORIZATION.—

16 (1) IN GENERAL.—An eligible entity that re-
17 ceives a grant under section 135 shall award sub-
18 grants, on a competitive basis, to local entities.

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

24 (3) CONTENTS OF APPLICATION.—

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

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

24 (ii) the clear learning goals to be
25 achieved under the local strategy based on

1 student, teacher, and leader learning needs
2 and how they are aligned with the State
3 goals established in the comprehensive
4 college- and career-ready professional de-
5 velopment strategy described under section
6 136;

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

15 (iv) a description of how the profes-
16 sional development provided with funds
17 under this section will—

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

21 (II) foster individual and collec-
22 tive responsibility for improving teach-
23 er effectiveness and student academic
24 achievement and provide ongoing op-
25 portunities for teachers to assess the

1 impact of teaching strategies on stu-
2 dent learning and reflect on practice;
3 and

4 (III) support the use of tech-
5 nology to personalize instruction and
6 use technology for professional devel-
7 opment, consistent with subsection
8 (c)(3);

9 (v) a description of how the profes-
10 sional development provided with funds
11 under this section will strengthen the abil-
12 ity of teachers to analyze student data, in-
13 cluding through the use of a statewide lon-
14 gitudinal data system, if available, to ad-
15 just teaching strategies in a timely and ef-
16 fective manner and improve practice; and

17 (vi) a description of how external
18 partners, including content area experts,
19 nonprofit organizations (including institu-
20 tions of higher education), and teacher
21 preparation programs, will be included in
22 the implementation of the local strategy.

23 (B) ASSURANCE.—Each application sub-
24 mitted under paragraph (2) shall include an as-
25 surance that—

1 (i) a minimum of 50 hours of relevant
2 and high-quality professional development
3 per school year will be provided to each
4 teacher responsible for implementing, or
5 assisting in the implementation of, college-
6 and career-ready State standards, includ-
7 ing opportunities for ongoing, job-embed-
8 ded collaboration and participation in peer
9 observations; and

10 (ii) participating local educational
11 agencies and schools, in collaboration with
12 the exclusive representative organization
13 for teachers in the school district or, where
14 there is no exclusive representative, teach-
15 ers who shall be selected by teachers in the
16 school district pursuant to a fair and
17 democratic election process open to all
18 teachers in the school district, will nego-
19 tiate or agree to restructure or extend the
20 length of the school day, week, or year, to
21 accommodate additional professional devel-
22 opment hours in a manner that meets the
23 requirements of this subtitle over the
24 course of the school-year.

1 (b) PRIORITY.—In awarding subgrants under this
2 section, an eligible entity shall give priority to local enti-
3 ties—

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

8 (2) for which not less than 20 percent of the
9 children served by the local entity are children as de-
10 scribed in section 1124(c)(1)(A) of the Elementary
11 and Secondary Education Act of 1965 (20 U.S.C.
12 6333(c)(1)(A));

13 (3) that meets the eligibility requirements for
14 funding under the Small, Rural School Achievement
15 Program under section 6211(b) of the Elementary
16 and Secondary Education Act of 1965 (20 U.S.C.
17 7345(b)); or

18 (4) that meets the eligibility requirements for
19 funding under the Rural and Low-Income School
20 Program under section 6221(b) of the Elementary
21 and Secondary Education Act of 1965 (20 U.S.C.
22 7351(b)).

23 (c) LOCAL USE OF FUNDS.—A local entity awarded
24 a subgrant under this section shall use the subgrant funds
25 to implement, in consultation with teachers or other rep-

1 representative organizations selected or identified to rep-
2 resent the teachers, a local strategy, which shall include—

3 (1) assisting local educational agencies in imple-
4 menting college- and career-ready standards, specifi-
5 cally in the areas of increasing content area exper-
6 tise, curriculum development and alignment, and as-
7 sessment practices;

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

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

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

24 (A) strategies for aligning the curriculum
25 with college- and career-ready standards, in-

1 including lesson planning and instructional strat-
2 egies that reflect the rigor of the standards;

3 (B) instructional strategies, such as inter-
4 disciplinary or project-based learning ap-
5 proaches, that enhance students' ability to
6 think critically, problem-solve, complete complex
7 tasks, conduct research and inquiry, commu-
8 nicate and demonstrate skills, and think inde-
9 pendently;

10 (C) instructional strategies and assess-
11 ments that meet the needs of English learners
12 and children with disabilities; and

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

17 (5) providing in-service activities for school
18 principals and other school administrators that sup-
19 port instructional leadership around the implementa-
20 tion of college- and career-ready standards;

21 (6) changing the structure and length of the
22 school day, week, or year, to allow for additional
23 time for teacher collaboration, planning, and obser-
24 vation;

1 (7) coordinating or sharing information with
 2 pre-service teacher preparation programs to support
 3 the successful implementation of college- and career-
 4 ready State standards; and

5 (8) developing tools to assist teachers in evalu-
 6 ating student work.

7 (d) EVALUATION.—

8 (1) IN GENERAL.—Each local entity that re-
 9 ceives a subgrant under this section shall reserve not
 10 less than 5 percent of the subgrant funds to—

11 (A) conduct an evaluation of the impact of
 12 the local strategy on teaching practice and stu-
 13 dent growth and learning; and

14 (B) inform continuous improvement of pro-
 15 fessional development activities.

16 (2) CONDUCT OF EVALUATION AND INFORMING
 17 IMPROVEMENT.—The activities described in subpara-
 18 graphs (A) and (B) of paragraph (1) shall be con-
 19 ducted by an entity other than the local entity.

20 **SEC. 139. REPORTING.**

21 (a) STATE REPORTING.—Each eligible entity that re-
 22 ceives a grant under section 135 shall annually, for each
 23 year of the grant, submit to the Secretary and make avail-
 24 able to the public a report that shall include—

1 (1) information on the number of local edu-
2 cational agencies, schools, and teachers that received
3 professional development supported with grant funds
4 under section 135;

5 (2) the professional development activities fund-
6 ed under this subtitle; and

7 (3) a description of the impact of the com-
8 prehensive college- and career-ready professional de-
9 velopment strategy, including results from the eval-
10 uation conducted under section 137(1)(A)(i)(I).

11 (b) REPORT TO CONGRESS.—The Secretary shall an-
12 nually submit to Congress and make available to the pub-
13 lic a summary of the eligible entity reports required under
14 subsection (a).

15 (c) LOCAL REPORTING.—Each local entity that re-
16 ceives a subgrant under section 138 shall annually, for
17 each year of the subgrant, submit to the eligible entity
18 and make available to the public a report that shall in-
19 clude—

20 (1) information on the number of local edu-
21 cational agencies, schools, and teachers that received
22 professional development supported with subgrant
23 funds under section 138;

24 (2) the professional development activities fund-
25 ed under section 138; and

1 (3) a description of the impact of the local
2 strategy, including results from the evaluation con-
3 ducted under section 138(d).

4 **SEC. 140. TEACHER PRIVACY.**

5 No State or local educational agency shall be required
6 to publicly report information in compliance with this sub-
7 title in a case in which the results would reveal personally
8 identifiable information about an individual teacher.

9 **SEC. 141. RULE OF CONSTRUCTION.**

10 Nothing in this section shall be construed to alter or
11 otherwise affect the rights, remedies, and procedures af-
12 forded school or school district employees under Federal,
13 State, or local laws (including applicable regulations or
14 court orders) or under the terms of collective bargaining
15 agreements, memoranda of understanding, or other agree-
16 ments between such employees and their employers.

17 **SEC. 142. FUNDING.**

18 There shall be made available from the Rebuild
19 America Trust Fund under section 9512 of the Internal
20 Revenue Code of 1986, \$2,000,000,000 for each of the
21 fiscal years 2013 through 2017, to carry out this subtitle.

1 **Subtitle E—Creating Middle Class**
2 **Jobs**

3 **PART I—TEACHER STABILIZATION**

4 **SEC. 151. PURPOSE.**

5 The purpose of this part is to provide funds to States
6 to prevent teacher layoffs in public schools and support
7 the creation of additional jobs in public early childhood
8 education and care programs and public elementary and
9 secondary education in the 2012–2013, 2013–2014, and
10 2014–2015 school years.

11 **SEC. 152. DEFINITIONS.**

12 (1) ESEA DEFINITIONS.—Except as otherwise
13 provided, the terms “local educational agency”,
14 “outlying area”, “Secretary”, and “State edu-
15 cational agency” have the meanings given those
16 terms in section 9101 of the Elementary and Sec-
17 ondary Education Act of 1965 (20 U.S.C. 7801).

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

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

24 (B) in the course of such employment, is
25 involved directly in the care, development, and

1 education of infants, toddlers, or children ages
2 5 and under.

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

6 (4) STATE FUNDED EARLY CHILDHOOD PRO-
7 GRAM.—The term “State funded early childhood
8 program” means a program that provides edu-
9 cational services to children from ages birth through
10 kindergarten entry and receives funding from a
11 State.

12 (5) STATE OR LOCAL FUNDED EARLY CHILD-
13 HOOD PROGRAM.—The term “State or local funded
14 early childhood program” means a program that
15 provides educational services to children from ages
16 birth through kindergarten entry and receives fund-
17 ing from a State or local government.

18 **SEC. 153. RESERVATIONS FOR THE OUTLYING AREAS AND**

19 **THE SECRETARY OF THE INTERIOR.**

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

22 (1) shall reserve 0.5 percent to provide assist-
23 ance to the outlying areas on the basis of their re-
24 spective needs, as determined by the Secretary, for
25 activities consistent with this part and under such

1 terms and conditions as the Secretary may deter-
2 mine; and

3 (2) shall reserve 0.5 percent to provide assist-
4 ance to the Secretary of the Interior to carry out ac-
5 tivities consistent with this part in schools operated
6 or funded by the Bureau of Indian Education.

7 **SEC. 154. STATE ALLOTMENTS.**

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

12 (1) an amount that bears the same relation to
13 60 percent of such remaining funds as the State's
14 population of individuals aged 5 through 17 bears to
15 the total population of individuals aged 5 through 17
16 in all States; and

17 (2) an amount that bears the same relation to
18 40 percent on such remaining funds as the State's
19 population bears to the total population of all States.

20 (b) AWARDS TO STATES.—In order for a State to re-
21 ceive an allotment under subsection (a), the Governor of
22 the State shall submit an approvable application under
23 section 155(a).

24 (c) REALLOTMENT.—If a State does not apply for
25 funding under this part or only uses a portion of its allot-

1 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).

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

7 (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.

14 (b) STATE RESERVATIONS, ALLOCATIONS, AND RESPONSIBILITIES.—

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

19 (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

23 (B) not more than 10 percent of the grant funds to award subgrants to State funded early childhood care and education programs to en-

1 able the programs to carry out the activities de-
2 scribed in section 156(b).

3 (2) ALLOCATIONS TO LOCAL EDUCATIONAL
4 AGENCIES.—From amounts remaining after reserv-
5 ing funds under paragraph (1), each State receiving
6 an allotment under this part for a fiscal year shall
7 use such remaining funds only for awarding sub-
8 grants to local educational agencies in the State for
9 the support of high-quality early childhood education
10 and care programs and elementary and secondary
11 education by allocating to each local educational
12 agency—

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

20 (B) an amount that bears the same rela-
21 tion to 65 percent of such remaining funds as
22 the number of individuals age 5 through 17
23 from families below the poverty line in the geo-
24 graphic area served by the local educational
25 agency, as determined by the Secretary on the

1 basis of the most recent satisfactory data, bears
2 to the total number of those individuals in the
3 geographic area served by all local educational
4 agencies in the State, as so determined.

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

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

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

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

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

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

1 **SEC. 156. SUBGRANTS.**

2 (a) LOCAL EDUCATIONAL AGENCY RESPONSIBIL-
3 ITIES.—Each local educational agency that receives a
4 subgrant under this part shall—

5 (1) use the subgrant funds only for compensa-
6 tion and benefits and other expenses, such as sup-
7 port services, necessary to retain existing employees,
8 recall or rehire former employees, or hire new em-
9 ployees to provide high-quality early childhood edu-
10 cation and care, elementary or secondary education,
11 or related services;

12 (2) obligate such funds not later than Sep-
13 tember 30 of the fiscal year for which the funds are
14 received; and

15 (3) not use such funds for general administra-
16 tive expenses or for other support services or ex-
17 penditures, as those terms are defined by the Na-
18 tional Center for Education Statistics in the Com-
19 mon Core of Data as of the date of enactment of
20 this Act.

21 (b) EARLY CHILDHOOD EDUCATION AND CARE PRO-
22 GRAM RESPONSIBILITIES.—Each State or local funded
23 early childhood education and care program that receives
24 a subgrant under this part shall—

25 (1) use the subgrant funds only for compensa-
26 tion, benefits, and other expenses, such as support

1 services, necessary to retain early childhood edu-
2 cators, recall or rehire former early childhood edu-
3 cators, or hire new early childhood educators to pro-
4 vide high-quality early childhood education and care
5 services; and

6 (2) obligate such funds not later than Sep-
7 tember 30 of the fiscal year for which the funds are
8 received.

9 **SEC. 157. MAINTENANCE OF EFFORT.**

10 (a) IN GENERAL.—The Secretary shall not award an
11 allotment to a State under this part unless the State pro-
12 vides an assurance to the Secretary that, for each fiscal
13 year of the grant, the State will maintain State support
14 for early childhood education and care, elementary, and
15 secondary education programs and services (in the aggre-
16 gate or on the basis of expenditure per pupil) and for pub-
17 lic institutions of higher education (not including support
18 for capital projects or for research and development or tui-
19 tion and fees paid by students) at not less than the level
20 of such support for each of the 2 categories for the State
21 fiscal year preceding the year for which the determination
22 is being made.

23 (b) SUPPLEMENT NOT SUPPLANT.—A State edu-
24 cational agency or local educational agency shall use Fed-
25 eral funds received under this part only to supplement the

1 funds that would, in the absence of such Federal funds,
2 be made available from non-Federal sources for the edu-
3 cation of pupils participating in programs assisted under
4 this part, and not to supplant such funds.

5 (c) WAIVER.—The Secretary may waive the require-
6 ments of this section if the Secretary determines that a
7 waiver would be equitable due to—

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

10 (2) a precipitous decline in the financial re-
11 sources of the State.

12 **SEC. 158. REPORTING.**

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

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

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

20 **SEC. 159. FUNDING.**

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

25 (1) For fiscal year 2013, \$30,000,000,000.

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

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

3 (b) AVAILABILITY OF FUNDS.—Funds made avail-
4 able under subsection (a) shall remain available to the Sec-
5 retary until September 30, 2015.

6 **PART II—FIRST RESPONDER STABILIZATION**

7 **SEC. 161. PURPOSE.**

8 The purpose of this part is to provide funds to States
9 and localities to prevent layoffs of, and support the cre-
10 ation of additional jobs for, law enforcement officers and
11 other first responders.

12 **SEC. 162. CAREER LAW ENFORCEMENT OFFICERS GRANT**
13 **PROGRAM.**

14 (a) IN GENERAL.—The Attorney General shall make
15 competitive grants under section 1701 of title I of the Om-
16 nibus Crime Control and Safe Streets Act of 1968 (42
17 U.S.C. 3796dd) for the hiring, rehiring, or retention of
18 career law enforcement officers under part Q of such title.

19 (b) APPLICABILITY OF GRANT REQUIREMENTS.—
20 Grants awarded under subsection (a) shall not be subject
21 to—

22 (1) subsection (g) or (i) of section 1701 of title
23 I of the Omnibus Crime Control and Safe Streets
24 Act of 1968 (42 U.S.C. 3796dd); or

1 (2) section 1704 of such Act (42 U.S.C.
2 3796dd-3).

3 (c) FUNDING.—

4 (1) IN GENERAL.—There shall be made avail-
5 able from the Rebuild America Trust Fund under
6 section 9512 of the Internal Revenue Code of 1986,
7 the following amounts to the Community Oriented
8 Policing Stabilization Fund to enable the Attorney
9 General to carry out the competitive grant program
10 under this section:

11 (A) \$4,000,000,000 for fiscal year 2013,

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

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

14 (2) LIMITATION.—Of the amounts made avail-
15 able pursuant to paragraph (1), not to exceed
16 \$8,000,000 shall be for administrative costs of the
17 Attorney General.

18 **SEC. 163. FIRST RESPONDER GRANT PROGRAM.**

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

25 (1) \$1,000,000,000 for fiscal year 2013.

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

2 (3) \$200,000,000 for fiscal year 2015.

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

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

13 **PART III—MAINTAINING CRITICAL COMMUNITY**
14 **SERVICES**

15 **SEC. 171. DEFINITIONS.**

16 In this part:

17 (1) BENEFITS.—The term “benefits” has the
18 meaning given the term “employment benefits” in
19 section 101 of the Family and Medical Leave Act of
20 1993 (29 U.S.C. 2611).

21 (2) EMPLOYEE COMPENSATION.—The term
22 “employee compensation” includes wages and bene-
23 fits.

24 (3) SECRETARY.—The term “Secretary” means
25 the Secretary of Labor.

1 (4) STATE.—The term “State” means any
2 State of the United States and the Commonwealth
3 of Puerto Rico.

4 (5) UNIT OF GENERAL LOCAL GOVERNMENT.—
5 The term “unit of general local government”
6 means—

7 (A) any city, county, town, township, par-
8 ish, village, or other general purpose political
9 subdivision of a State;

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

13 (C) a combination of such political subdivi-
14 sions that is recognized by the Secretary; or

15 (D) the District of Columbia.

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

19 **SEC. 172. MAINTAINING CRITICAL COMMUNITY SERVICES.**

20 (a) PROGRAM AUTHORIZED.—From the amount
21 made available for this part under section 178 and not
22 reserved under subsection (b), the Secretary of Labor, act-
23 ing through the Employment and Training Administration
24 and in consultation with the Secretary of Housing and
25 Urban Development, shall award grants, on a competitive

1 basis in accordance with section 174, to units of general
2 local government to save and create local jobs through the
3 retention, restoration, or expansion of critical services
4 needed by local communities.

5 (b) RESERVATIONS BY THE SECRETARY.—Of the
6 amount made available for this part under section 178 for
7 each fiscal year, the Secretary may reserve not more than
8 1 percent to administer this part.

9 **SEC. 173. APPLICATION.**

10 (a) APPLICATION.—In order to receive funds under
11 this part for a fiscal year, a unit of general local govern-
12 ment shall submit to the Secretary, at such time and in
13 such manner as determined by the Secretary, an applica-
14 tion that includes the information described in subsection
15 (b) for such fiscal year.

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

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

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

22 (B) the number of individuals who will re-
23 ceive employee compensation with such funds;

24 and

1 (C) whether the positions supported with
2 funds under this part will assist in retaining,
3 restoring, or expanding an existing local public
4 service.

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

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

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

22 (5) Such additional information as the Sec-
23 retary determines necessary, including information
24 regarding the criteria described in section 174(a).

1 **SEC. 174. AWARD BASIS.**

2 (a) CRITERIA.—Subject to subsection (b), the Sec-
3 retary shall award grants under this part by taking into
4 consideration—

5 (1) the unemployment rate in the local commu-
6 nity served by the unit of general local government;

7 (2) the poverty rate in such local community;

8 (3) the population of such local community;

9 (4) excess unemployment in such local commu-
10 nity; and

11 (5) other factors as the Secretary determines
12 necessary.

13 (b) MAXIMUM AMOUNT.—

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

22 (2) APPLICATION TO TERRITORIES AND THE
23 DISTRICT OF COLUMBIA.—For the areas of Guam,
24 the Northern Mariana Islands, the Virgin Islands,
25 American Samoa, and the District of Columbia, in
26 no case shall the ratio of the amount of grant funds

1 awarded to any such area, as compared to the total
2 amount of grant funds available under this part, be
3 greater than the ratio of the population of such area
4 as compared to the total population of all States and
5 all such areas.

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

9 **SEC. 175. USES OF FUNDS.**

10 (a) IN GENERAL.—A unit of general local govern-
11 ment that receives a grant under this part—

12 (1) shall use the funds to provide employee
13 compensation to retain or hire individuals to con-
14 tinue, restore, or expand public services; and

15 (2) may not use more than 5 percent for ad-
16 ministrative purposes under the grant.

17 (b) NONDISPLACEMENT.—A unit of general local gov-
18 ernment may not employ an individual for a position fund-
19 ed under this part, if—

20 (1) employing such individual will result in the
21 layoff or partial displacement (such as a reduction
22 in hours, wages, or employee benefits) of an existing
23 employee of the unit of general local government; or

1 (2) such individual will perform the same or
 2 substantially similar work that had previously been
 3 performed by an employee of the unit who—

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

7 (B) has not been offered, by the unit or or-
 8 ganization, to be restored to the position the
 9 employee had immediately prior to being laid
 10 off or partially displaced.

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

13 (a) EMPLOYEE STATUS.—An individual hired for a
 14 position funded under this part shall be considered an em-
 15 ployee of the unit of general local government by which
 16 such individual was hired and receive the same employee
 17 compensation, have the same rights and responsibilities
 18 and job classifications, and be subject to the same job
 19 standards, employer policies, and collective bargaining
 20 agreements as if such individual was hired without assist-
 21 ance under this part.

22 (b) COMPLIANCE WITH LOCAL LAWS AND CON-
 23 TRACTS.—In hiring individuals for positions funded under
 24 this part, or using funds under this part to continue to
 25 provide employee compensation for existing employees, a

1 unit of general local government shall comply with all ap-
2 plicable Federal, State, and local laws, personnel policies
3 and regulations, and collective bargaining agreements, as
4 if such individual was hired, or such employee compensa-
5 tion was provided, without assistance under this part.

6 **SEC. 177. SUPPLEMENT, NOT SUPPLANT.**

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

11 **SEC. 178. FUNDING PROVIDED.**

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

17 (1) \$5,000,000,000 for fiscal year 2013.

18 (2) \$5,000,000,000 for fiscal year 2014.

1 **TITLE II—CREATING FINANCIAL**
2 **STABILITY AND A BETTER FU-**
3 **TURE FOR MIDDLE CLASS**
4 **FAMILIES**

5 **Subtitle A—Alleviating the High**
6 **Cost of Child Care**

7 **SEC. 201. CCDBG PLUS.**

8 (a) DEFINITIONS.—In this section:

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

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

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

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

1 (b) PROGRAM AUTHORIZED.—

2 (1) IN GENERAL.—The Secretary of Health and
3 Human Services is authorized to award grants, in
4 allotments described in subsection (c)(2), to States
5 to enable the States to increase the availability of
6 high-quality early childhood care and education pro-
7 grams to enable more people of the United States to
8 enter into and advance within the middle class.

9 (2) DURATION OF GRANT.—A grant awarded
10 under this section shall be for a period of not more
11 than 5 years.

12 (3) CONTINGENT FUNDING.—After the third
13 year of the grant period of a grant under this sec-
14 tion, funding for each additional year of the grant
15 period shall be contingent on the State's progress to-
16 ward meeting the performance indicators and bench-
17 marks established under subsection (g).

18 (4) ELIGIBILITY.—In order to receive an allot-
19 ment under this section, a State shall establish or
20 certify, to the satisfaction of the Secretary, that the
21 State's payments for the grant or contracts to pro-
22 vide early childhood care and education programs
23 under subsection (f)(1) are sufficient to ensure that
24 programs and providers that serve eligible children

1 from birth through age 5 can meet the standards es-
2 tablished under subsection (f)(2).

3 (c) AMOUNTS RESERVED; ALLOTMENTS.—

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

7 (A) 2 percent of such amounts to make
8 grants or enter into contracts with Indian tribes
9 or tribal organizations (as such terms are de-
10 fined in section 658P of the Child Care Devel-
11 opment Block Grant Act of 1990 (42 U.S.C.
12 9858n)) for programs or activities consistent
13 with the purposes of this section; and

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

21 (2) ALLOTMENTS.—From the amounts appro-
22 priated to carry out this section and not reserved
23 under paragraph (1), the Secretary shall make allot-
24 ments to each eligible State with an approved appli-
25 cation using the formula established under section

1 6580(b) of the Child Care Development Block Grant
2 Act of 1990 (42 U.S.C. 9858m(b)), except that any
3 calculation in such formula that refers all States
4 shall, for purposes of this section, be calculated
5 based on all eligible States that have submitted an
6 approved application.

7 (d) APPLICATION.—

8 (1) IN GENERAL.—A State desiring a grant
9 under this section shall submit an application at
10 such time, in such manner, and containing such in-
11 formation as the Secretary may require, including
12 the following:

13 (A) A description of how, by not later than
14 3 years after the date of receipt of the grant,
15 the State will ensure the health and safety of
16 early childhood care and education programs by
17 inspecting and monitoring all regulated child
18 care providers in the State not less than 2
19 times each year, in accordance with subsection
20 (e)(2).

21 (B) A description of the process the State
22 proposes to use to ensure that investments
23 made to increase access to programs providing
24 high-quality early childhood care and education
25 programs are prioritized first in local economic

1 areas with significant concentrations of poverty
2 and unemployment that do not have such pro-
3 grams.

4 (C) A description of the strategies the
5 State will employ to build on the capacity of
6 State early childhood care and education pro-
7 grams, and communities, to promote parents'
8 and families' understanding of the State's early
9 childhood care and education system and the
10 importance of high-quality early learning oppor-
11 tunities.

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

15 (E) An assurance that the grant funds will
16 only be used to supplement, and not to sup-
17 plant, Federal, State, and local funds otherwise
18 available to support existing (as of the date of
19 the application) early childhood care and edu-
20 cation programs described in subsection (e)(3).

21 (F) A certification that the State will pro-
22 vide assistance for the provision of early child-
23 hood care and education programs under sub-
24 section (f), and provides assistance for child
25 care services under the Child Care and Develop-

1 ment Block Grant Act of 1990 (42 U.S.C. 9858
2 et seq.), for families by using a sliding fee scale
3 that provides for cost sharing by the families,
4 in order to prioritize increasing the number and
5 percentage of low-income and otherwise dis-
6 advantaged children and families in high-quality
7 early childhood care and education programs
8 described in subsection (e)(3).

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

12 (H) A description of how the State will co-
13 ordinate the program supported under this sec-
14 tion with the program supported under the
15 Child Care and Development Block Grant Act
16 of 1990 (42 U.S.C. 9858 et seq.), Head Start
17 and Early Head Start programs under the
18 Head Start Act (42 U.S.C. 9832), the 21st cen-
19 tury community learning center program under
20 part B of title IV of the Elementary and Sec-
21 ondary Education Act of 1965 (20 U.S.C. 7171
22 et seq.), part C and section 619 of the Individ-
23 uals with Disabilities Education Act (20 U.S.C.
24 1431 et seq.), and, as applicable, activities
25 funded under the Race to The Top-Early

1 Learning Challenge program under section
2 14006 of the American Recovery and Reinvest-
3 ment Act of 2009 (Public Law 111–5; 123
4 Stat. 283).

5 (2) CONSULTATION.—A State shall develop its
6 application under this subsection in consultation
7 with the State Advisory Council on Early Education
8 and Care established pursuant to section
9 642B(b)(1)(A) of the Head Start Act (42 U.S.C.
10 9837b(b)(1)(A)).

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

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

17 (A) activities that enhance the skills,
18 knowledge, credentials, and compensation of the
19 child care workforce, including in ways that
20 support career advancement through career lad-
21 ders; and

22 (B) other activities to enhance child care
23 quality and support child care providers, includ-
24 ing family child care providers, in meeting the
25 standards described in subsection (f)(2).

1 (2) USE FOR INSPECTION AND MONITORING.—

2 From the amount of grant funds remaining after the
3 reservation under paragraph (1), the State shall use
4 not less than 10 percent of funds to ensure that the
5 State inspects and monitors all State-regulated child
6 care providers, to include site visits not less fre-
7 quently than 2 times each year. At a minimum, 1
8 such visit shall address health and safety and 1 visit
9 shall address child care quality, and at least 1 of the
10 visits shall be unannounced.

11 (3) USE FOR SUBSIDIES FOR EARLY CHILD-

12 HOOD CARE AND EDUCATION PROGRAMS.—From the
13 amount of grant funds remaining after carrying out
14 paragraphs (1) and (2), the State shall make high-
15 quality early childhood care and education programs
16 more affordable to families of eligible children by—

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

22 (B) using the remaining funds to provide
23 assistance for eligible children who have not at-
24 tained the age of 13 for the provision of high-
25 quality early childhood care and education pro-

1 grams (which, for purposes of serving school-
2 age children under this subparagraph, shall be
3 deemed to include high-quality after-school pro-
4 grams) under subsection (f).

5 (f) MORE AFFORDABLE QUALITY CHILD CARE.—

6 (1) IN GENERAL.—To provide the assistance
7 described in subsection (e)(3), a State shall award
8 grants or contracts to eligible providers that allow
9 parents of eligible children who are provided assist-
10 ance under this section to enroll such children with
11 the eligible providers in high-quality early childhood
12 care and education programs described in such sub-
13 section.

14 (2) ELIGIBLE PROVIDERS.—

15 (A) IN GENERAL.—In order for a provider
16 that serves eligible children from birth through
17 age 5 to be an eligible provider for purposes of
18 this section, the provider shall be a child care
19 center, Head Start or Early Head Start pro-
20 gram, or family child care home or system
21 that—

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

24 (ii)(I) meets Head Start program per-
25 formance standards, or standards estab-

1 lished for the top tier of a State’s quality
2 rating and improvement system, as appro-
3 priate; or

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

8 (B) SPECIAL RULE.—The Secretary may
9 adjust the requirements of subparagraph (A),
10 to the extent the Secretary determines nec-
11 essary to carry out the purposes of this section,
12 for high-quality early childhood care and edu-
13 cation programs providing care to eligible chil-
14 dren during nontraditional hours.

15 (3) SUPPORT FOR CHILDREN WITH DISABIL-
16 ITIES.—Not less than 15 percent of the funds de-
17 scribed in each of subparagraphs (A) and (B) of
18 subsection (e)(3) shall be used to support high-qual-
19 ity early childhood care and education programs
20 through eligible providers for eligible children who
21 are children with disabilities, as defined in section
22 602 of the Individuals with Disabilities Education
23 Act (20 U.S.C. 1401), or infants or toddlers with
24 disabilities, as defined in section 632 of such Act (20
25 U.S.C. 1432).

1 (4) SUPPORT FOR QUALITY CARE DURING NON-
2 TRADITIONAL HOURS.—Not less than 10 percent of
3 the funds described in each of subparagraphs (A)
4 and (B) of subsection (e)(3) shall be used to support
5 the provision of high-quality early childhood care
6 and education programs described in such subsection
7 to eligible children during nontraditional hours.

8 (g) ACCOUNTABILITY.—

9 (1) IN GENERAL.—The Secretary shall define,
10 by regulation, indicators to be used to measure suc-
11 cess on the activities carried out under a grant
12 under this section, the primary indicator of which
13 shall be increasing the number and percentage of
14 low-income children in high-quality, State early
15 childhood care and education programs, as described
16 in subsection (e)(3).

17 (2) QUANTIFIABLE BENCHMARKS.—Each State
18 receiving a grant under this section shall—

19 (A) develop quantifiable benchmarks for
20 the State and the activities supported under the
21 grant based on indicators described in para-
22 graph (1) that are applicable to the State; and

23 (B) submit such benchmarks for approval
24 to the Secretary.

1 (3) DISAGGREGATION.—The indicators and
2 benchmarks shall include, at a minimum, indicators
3 and benchmarks for all eligible children served by
4 the program and for the categories of children de-
5 scribed in paragraphs (2), (3), and (4) of subsection
6 (i).

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

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

21 (1) the number of eligible children, and fami-
22 lies, that were assisted under this section;

23 (2) the number and percentage of low-income
24 children assisted;

1 (3) the number and percentage of English
2 learners assisted;

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

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

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

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

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

19 **PART I—COMMISSION ON RETIREMENT**

20 **SECURITY**

21 **SEC. 211. SHORT TITLE.**

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

24 **SEC. 212. FINDINGS.**

25 Congress makes the following findings:

1 (1) The United States is facing a retirement
2 crisis. The difference between what people need for
3 retirement and what they actually have is approxi-
4 mately \$6,600,000,000,000.

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

8 (3) The private retirement system is not doing
9 enough to help families prepare for retirement. Only
10 $\frac{1}{2}$ of the workforce has access to an employer pro-
11 vided retirement plan, and the number of workers
12 covered by defined benefit pension plans has fallen
13 from 50 percent to 20 percent in just 30 years. Con-
14 sequently, retirement is getting less and less secure
15 for middle class families.

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

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

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

23 (C) The private retirement system must be
24 one of shared responsibility.

1 (D) The private retirement system must be
2 pooled and professionally managed.

3 **SEC. 213. COMMISSION ON RETIREMENT SECURITY.**

4 (a) ESTABLISHMENT.—There is established a com-
5 mission to be known as the “Commission on Retirement
6 Security” (referred to in this part as the “Commission”).

7 (b) MEMBERSHIP.—

8 (1) IN GENERAL.—The Commission shall be
9 composed of 31 members. Such members shall be
10 appointed in accordance with the following:

11 (A) Two members appointed by the Chair-
12 man of the Committee on Health, Education,
13 Labor, and Pensions of the Senate.

14 (B) Two members appointed by the Rank-
15 ing Member of the Committee on Health, Edu-
16 cation, Labor, and Pensions of the Senate.

17 (C) Two members appointed by the Chair-
18 man of the Committee on Finance of the Sen-
19 ate.

20 (D) Two members appointed by the Rank-
21 ing Member of the Committee on Finance of
22 the Senate.

23 (E) Two members appointed by the Chair-
24 man of the Committee on Education and the
25 Workforce of the House of Representatives.

1 (F) Two members appointed by the Rank-
2 ing Member of the Committee on Education
3 and the Workforce of the House of Representa-
4 tives.

5 (G) Two members appointed by the Chair-
6 man of the Committee on Ways and Means of
7 the House of Representatives.

8 (H) Two members appointed by the Rank-
9 ing Member of the Committee on Ways and
10 Means of the House of Representatives.

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

17 (2) DATE OF APPOINTMENTS.—The appoint-
18 ment of a member of the Commission shall be made
19 not later than 30 days after the date of enactment
20 of this Act.

21 (c) TERM; VACANCIES.—

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

24 (2) VACANCIES.—A vacancy on the Commis-
25 sion—

1 (A) shall not affect the powers of the Com-
2 mission; and

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

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

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

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

15 (g) CO-CHAIRPERSONS.—The Chairman of the Com-
16 mittee on Health, Education, Labor, and Pensions of the
17 Senate and the Chairman of the Committee on Education
18 and the Workforce of the House of Representatives shall
19 each select 1 member to be co-chairperson of the Commis-
20 sion.

21 **SEC. 214. DUTIES.**

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

24 (1) review relevant analyses of the private re-
25 tirement system;

1 (2) identify problems that threaten retirement
2 security; and

3 (3) analyze potential solutions to such prob-
4 lems.

5 (b) RECOMMENDATIONS.—The Commission shall de-
6 velop recommendations on improving the private retire-
7 ment system in the United States.

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

11 (1) a detailed statement of the findings and
12 conclusions of the Commission; and

13 (2) the recommendations of the Commission for
14 such legislation (which shall include proposed legisla-
15 tive language) and administrative actions as the
16 Commission considers appropriate.

17 **SEC. 215. COMMISSION PERSONNEL MATTERS.**

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

20 (b) TRAVEL EXPENSES.—A member of the Commis-
21 sion who is not an officer or employee of the Federal Gov-
22 ernment shall be allowed travel expenses, including per
23 diem in lieu of subsistence, while away from their homes
24 or regular places of business in the performance of services
25 for the Commission in the same manner as persons em-

1 ployed intermittently in the Government service are al-
2 lowed such expenses under section 5703 of title 5, United
3 States Code.

4 (c) STAFF.—

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

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

14 (3) COMPENSATION.—

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

23 (B) MAXIMUM RATE OF PAY.—The rate of
24 pay for the executive director and other per-
25 sonnel shall not exceed the rate payable for

1 level V of the Executive Schedule under section
2 5316 of title 5, United States Code.

3 (d) DETAIL OF FEDERAL GOVERNMENT EMPLOY-
4 EES.—

5 (1) IN GENERAL.—An employee of the Federal
6 Government may be detailed to the Commission
7 without reimbursement.

8 (2) CIVIL SERVICE STATUS.—The detail of the
9 employee shall be without interruption or loss of civil
10 service status or privilege.

11 (e) PROCUREMENT OF TEMPORARY AND INTERMIT-
12 TENT SERVICES.—The co-chairpersons of the Commission
13 may procure temporary and intermittent services in ac-
14 cordance with section 3109(b) of title 5, United States
15 Code, at rates for individuals that do not exceed the daily
16 equivalent of the annual rate of basic pay prescribed for
17 level V of the Executive Schedule under section 5316 of
18 that title.

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

20 The Commission shall terminate 30 days after the
21 date on which the Commission submits the report of the
22 Commission under section 214(c).

1 **PART II—SOCIAL SECURITY**

2 **SEC. 221. DETERMINATION OF TAXABLE WAGES AND SELF-**
 3 **EMPLOYMENT INCOME ABOVE CONTRIBU-**
 4 **TION AND BENEFIT BASE AFTER 2012.**

5 (a) DETERMINATION OF TAXABLE WAGES ABOVE
 6 CONTRIBUTION AND BENEFIT BASE AFTER 2012.—

7 (1) AMENDMENTS TO THE INTERNAL REVENUE
 8 CODE OF 1986.—Section 3121 of the Internal Rev-
 9 enue Code of 1986 is amended—

10 (A) in subsection (a)(1), by inserting “the
 11 applicable percentage (determined under sub-
 12 section (c)(1)) of” before “that part of the re-
 13 muneration”; and

14 (B) in subsection (c), by striking “(c) IN-
 15 CLUDED AND EXCLUDED SERVICE.—For pur-
 16 poses of this chapter, if” and inserting the fol-
 17 lowing:

18 “(c) SPECIAL RULES FOR WAGES AND EMPLOY-
 19 MENT.—

20 “(1) APPLICABLE PERCENTAGE OF REMUNERA-
 21 TION IN DETERMINING TAXABLE WAGES.—For pur-
 22 poses of subsection (a)(1), the applicable percentage
 23 for a calendar year shall be equal to—

24 “(A) for 2013, 90 percent;

25 “(B) for 2014 through 2021, the applica-
 26 ble percentage under this paragraph for the

1 previous year, decreased by 10 percentage
2 points; and

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

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

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

10 (A) in subsection (a)(1)(I)—

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

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

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

17 “(J) The applicable percentage (deter-
18 mined under subsection (I)) of that part of re-
19 munerations which, after remuneration (other
20 than remuneration referred to in the succeeding
21 subsections of this section) equal to the con-
22 tribution and benefit base (determined under
23 section 230) with respect to employment has
24 been paid to an individual during any calendar
25 year after 2012 with respect to which such con-

1 tribution and benefit base is effective, is paid to
 2 such individual during such calendar year;”;
 3 and

4 (C) by adding at the end the following new
 5 subsection:

6 “(1) For purposes of subsection (a)(1)(J), the applica-
 7 ble percentage for a calendar year shall be equal to—

8 “(1) for 2013, 90 percent;

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

12 “(3) for 2022 and each year thereafter, 0 per-
 13 cent.”.

14 (3) EFFECTIVE DATE.—The amendments made
 15 by this subsection shall apply with respect to remun-
 16 eration paid in calendar years after 2012.

17 (b) DETERMINATION OF TAXABLE SELF-EMPLOY-
 18 MENT INCOME ABOVE CONTRIBUTION AND BENEFIT
 19 BASE AFTER 2012.—

20 (1) AMENDMENTS TO THE INTERNAL REVENUE
 21 CODE OF 1986.—Section 1402 of the Internal Rev-
 22 enue Code of 1986 is amended—

23 (A) in subsection (b)(1), by striking “that
 24 part of the net earnings” and all that follows
 25 through “minus” and inserting the following:

1 “an amount equal to the applicable percentage
 2 (as determined under subsection (d)(2)) of that
 3 part of the net earnings from self-employment
 4 which is in excess of the difference (not to be
 5 less than zero) between (i) an amount equal to
 6 the contribution and benefit base (as deter-
 7 mined under section 230 of the Social Security
 8 Act) which is effective for the calendar year in
 9 which such taxable year begins, and”;

10 (B) in subsection (d)—

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

14 “(d) RULES AND DEFINITIONS.—

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

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

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

24 “(A) for 2013, 90 percent;

1 “(B) for 2014 through 2021, the applica-
2 ble percentage under this paragraph for the
3 previous year, decreased by 10 percentage
4 points; and

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

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

10 (A) in subsection (b)—

11 (i) in paragraph (1)(I)—

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

14 (II) by inserting “and before
15 2013” after “1974”;

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

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

20 “(2) For any taxable year beginning in any cal-
21 endar year after 2012, an amount equal to the appli-
22 cable percentage (as determined under subsection
23 (l)) of that part of net earnings from self-employ-
24 ment which is in excess of the difference (not to be
25 less than zero) between—

1 “(A) an amount equal to the contribution
2 and benefit base (as determined under section
3 230) that is effective for such calendar year,
4 and

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

7 (B) by adding at the end the following:

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

11 “(1) for 2013, 90 percent;

12 “(2) for 2014 through 2021, the applicable per-
13 centage under this subsection for the previous year,
14 decreased by 10 percentage points; and

15 “(3) for 2022 and each year thereafter, 0 per-
16 cent.”.

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

20 **SEC. 222. ADJUSTMENTS TO BEND POINTS IN DETER-**
21 **MINING PRIMARY INSURANCE AMOUNT.**

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

24 (1) in subparagraph (A)—

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

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

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

9 “(iv) 5 percent of the individual’s average in-
10 dexed monthly earnings to the extent that such
11 earnings exceed the amount established for purposes
12 of clause (iii),”; and

13 (2) in subparagraph (B)—

14 (A) in clause (i), by striking “clause (i)
15 and (ii) of subparagraph (A) shall be \$180 and
16 \$1,085” and inserting “clauses (i), (ii), and (iii)
17 of subparagraph (A) shall be \$180, \$1,085, and
18 \$2,000”;

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

21 (C) by inserting after clause (ii) the fol-
22 lowing new clause:

23 “(iii) For individuals who initially become eligi-
24 ble for old-age or disability insurance benefits, or
25 who die (before becoming eligible for such benefits)

1 in any calendar year after 2012, the amount deter-
2 mined under clause (i) of this subparagraph for pur-
3 poses of subparagraph (A)(i) for such calendar year
4 shall be increased by—

5 “(I) for calendar year 2013, 1.5 percent;

6 “(II) for each of calendar years 2014
7 through 2021, the percent determined under
8 this clause for the preceding year increased by
9 1.5 percentage points; and

10 “(III) for calendar year 2022 and each
11 year thereafter, 15 percent.”.

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

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

16 (2) by inserting “and for years after 2012, the
17 amount of remuneration and net earnings from self-
18 employment paid to or derived by such individual
19 during such year after application of sections
20 209(a)(1)(J) and 211(b)(2),” after “such contribu-
21 tion and benefit base is effective,”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply with respect to individuals who ini-
24 tially become eligible (within the meaning of section
25 215(a)(3)(B) of the Social Security Act) for old-age or dis-

1 ability insurance benefits under title II of the Social Secu-
 2 rity Act, or who die (before becoming eligible for such ben-
 3 efits), in any calendar year after 2012.

4 **SEC. 223. CONSUMER PRICE INDEX FOR ELDERLY CON-**
 5 **SUMERS.**

6 (a) IN GENERAL.—The Bureau of Labor Statistics
 7 of the Department of Labor shall prepare and publish an
 8 index for each calendar month to be known as the “Con-
 9 sumer Price Index for Elderly Consumers” that indicates
 10 changes over time in expenditures for consumption which
 11 are typical for individuals in the United States who have
 12 attained early retirement age (as defined under section
 13 216(l)(2) of the Social Security Act (42 U.S.C. 416(l)(2)),
 14 for purposes of an old-age, wife’s, or husband’s insurance
 15 benefit).

16 (b) EFFECTIVE DATE.—Subsection (a) shall apply
 17 with respect to calendar months ending on or after June
 18 30 of the calendar year in which this Act is enacted.

19 (c) AUTHORIZATION OF APPROPRIATIONS.—There
 20 are authorized to be appropriated such sums as are nec-
 21 essary to carry out the provisions of this section.

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

24 (a) IN GENERAL.—Section 215(i) of the Social Secu-
 25 rity Act (42 U.S.C. 415(i)) is amended—

1 (1) in paragraph (1)(G), by inserting before the
2 period the following: “, and, with respect to any
3 monthly insurance benefit payable under this title,
4 effective for adjustments under this subsection to
5 the primary insurance amount on which such benefit
6 is based (or to any such benefit under section 227
7 or 228), the applicable Consumer Price Index shall
8 be deemed to be the Consumer Price Index for El-
9 derly Consumers and such primary insurance
10 amount shall be deemed adjusted under this sub-
11 section using such Index”; and

12 (2) in paragraph (4), by striking “and by sec-
13 tion 9001” and inserting “, by section 9001”, and
14 by inserting after “1986,” the following: “and by
15 section 224(a) of the Rebuild America Act,”.

16 (b) CONFORMING AMENDMENTS IN APPLICABLE
17 FORMER LAW.—Section 215(i)(1)(C) of the Social Secu-
18 rity Act, as in effect in December 1978 and applied in
19 certain cases under the provisions of such Act in effect
20 after December 1978, is amended by inserting before the
21 period the following: “, and, with respect to any monthly
22 insurance benefit payable under this title, effective for ad-
23 justments under this subsection to the primary insurance
24 amount on which such benefit is based (or to any such
25 benefit under section 227 or 228), the applicable Con-

1 sumer Price Index shall be deemed to be the Consumer
2 Price Index for Elderly Consumers and such primary in-
3 surance amount shall be deemed adjusted under this sub-
4 section using such Index”.

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

11 **SEC. 225. NON-APPLICATION OF INCREASE IN SOCIAL SE-**
12 **CURITY BENEFITS FOR OTHER FEDERAL OR**
13 **FEDERALLY ASSISTED PROGRAMS.**

14 Any increase in old-age or disability insurance bene-
15 fits under title II of the Social Security Act as a result
16 of the amendments made by this Act shall not be regarded
17 as income and shall not be regarded as a resource for any
18 month after December 2012, for purposes of determining
19 the eligibility of the recipient (or the recipient’s spouse or
20 family) for benefits or assistance, or the amount or extent
21 of benefits or assistance, under any Federal program or
22 under any State or local program financed in whole or in
23 part with Federal funds.

1 **Subtitle C—Protecting Overtime**
2 **Pay for Working Americans**

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

5 (a) SALARY THRESHOLDS FOR EXECUTIVE, ADMIN-
6 ISTRATIVE, AND PROFESSIONAL EMPLOYEES.—Section
7 13 of the Fair Labor Standards Act of 1938 (29 U.S.C.
8 213) is amended—

9 (1) in subsection (a)(1), by inserting before “;
10 or” the following: “, subject to the requirement that
11 any employee who the Secretary determines is re-
12 quired to be paid on a salary or fee basis in order
13 to be exempt under this subsection shall, in order to
14 be exempt, be compensated at a rate of not less than
15 the salary rate (or equivalent fee basis) determined
16 under subsection (k)”;

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

18 “(k) SALARY RATES.—

19 “(1) IN GENERAL.—The salary rate (or equiva-
20 lent fee basis) determined under this subsection for
21 purposes of subsection (a)(1) shall be—

22 “(A) beginning 1 year after the first day
23 of the third month that begins after the date of
24 enactment of the Rebuild America Act, \$655
25 per week;

1 “(B) beginning 2 years after that first day,
2 \$855 per week;

3 “(C) beginning 3 years after that first day,
4 \$1,045 per week; and

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

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

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

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

18 “(2) SPECIAL RULE.—Notwithstanding para-
19 graph (1), for any employee for whom the minimum
20 wage would otherwise be determined pursuant to
21 section 8103(b) of the Fair Minimum Wage Act of
22 2007 (29 U.S.C. 206 note), the Secretary may de-
23 termine, through regulations, the salary rate (or
24 equivalent fee basis).”.

1 (b) DEFINITIONS.—Section 13 of the Fair Labor
2 Standards Act of 1938 (as amended by subsection (a))
3 (29 U.S.C. 213) is further amended by adding at the end
4 the following:

5 “(1) DEFINITIONS.—

6 “(1) ANNUAL PERCENTAGE INCREASE; CON-
7 SUMER PRICE INDEX.—For purposes of this sec-
8 tion—

9 “(A) the term ‘annual percentage in-
10 crease’, when used in reference to the Con-
11 sumer Price Index for Urban Wage Earners
12 and Clerical Workers, means the annual per-
13 centage increase calculated by the Secretary
14 under section 6(h)(2), as amended by section
15 231 of the Rebuild America Act; and

16 “(B) the term ‘Consumer Price Index for
17 Urban Wage Earners and Clerical Workers’
18 means the Consumer Price Index for Urban
19 Wage Earners and Clerical Workers (United
20 States city average, all items, not seasonally ad-
21 justed), or its successor publication, as deter-
22 mined by the Bureau of Labor Statistics.

23 “(2) PRIMARY DUTY.—For purposes of para-
24 graphs (1) and (17) of subsection (a), including the
25 regulations interpreting such paragraphs, any ref-

1 erence to the term ‘primary duty’ (or a successor
2 term) when used with respect to determining if an
3 employee is employed in a bona fide executive, ad-
4 ministrative, or professional capacity, or in a posi-
5 tion described in subsection (a)(17), means the duty
6 that an employee spends more than 50 percent of
7 the employee’s work hours per week performing.”.

8 (c) HIGHLY COMPENSATED EMPLOYEES.—

9 (1) IN GENERAL.—If the Secretary of Labor, in
10 the Secretary’s discretion, determines that an em-
11 ployee may be exempt for purposes of section
12 13(a)(1) of the Fair Labor Standards Act of 1938
13 (29 U.S.C. 213(a)(1)), as a highly compensated em-
14 ployee (as such term is defined and delimited by the
15 Secretary), then the level of total annual compensa-
16 tion necessary for such exemption shall be—

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

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

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

24 (ii) increased from such amount by
25 the annual percentage increase in the Con-

1 sumer Price Index for Urban Wage Earn-
2 ers and Clerical Workers; and

3 (iii) rounded to the nearest multiple of
4 \$1.00.

5 (2) DEFINITIONS.—For purposes of this sub-
6 section, the terms “annual percentage increase” and
7 “Consumer Price Index for Urban Wage Earners
8 and Clerical Workers” have the meanings given the
9 terms in section 13(l) of the Fair Labor Standards
10 Act of 1938 (29 U.S.C. 213(l)), as added by sub-
11 section (b).

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

20 (d) PUBLICATION OF NOTICE.—Not later than 60
21 days before the date any increase in the salary rate (or
22 equivalent fee basis) required under section 13(k)(1)(D)
23 of the Fair Labor Standards Act of 1938 (29 U.S.C.
24 213(a)(k)(1)(D)) takes effect, or any increase in the
25 amount of compensation required for highly compensated

1 employee exemption required under subsection (c) takes
2 effect, the Secretary of Labor shall publish, in the Federal
3 Register and on the website of the Department of Labor,
4 a notice announcing the adjusted salary rate (or equiva-
5 lent fee basis) requirement or adjusted amount of com-
6 pensation, respectively. The provisions of section 553 of
7 title 5, United States Code, shall not apply to any notice
8 required under this subsection.

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

14 **Subtitle D—Preventing Americans**
15 **From Having To Choose Be-**
16 **tween Their Health and Their**
17 **Paycheck**

18 **SEC. 241. SHORT TITLE.**

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

21 **SEC. 242. FINDINGS.**

22 Congress makes the following findings:

- 23 (1) Working Americans need time to meet their
24 own health care needs and to care for family mem-
25 bers, including their children, spouse, parents, and

1 parents-in-law, and other children and adults for
2 whom they are caregivers.

3 (2) Health care needs include preventive health
4 care, diagnostic procedures, medical treatment, and
5 recovery in response to short- and long-term ill-
6 nesses and injuries.

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

12 (4) When parents are available to care for their
13 children who become sick, children recover faster,
14 more serious illnesses are prevented, and children's
15 overall mental and physical health improve. In a
16 2009 study published in the American Journal of
17 Public Health, 81 percent of parents of a child with
18 special health care needs reported that taking leave
19 from work to be with their child had a "good" or
20 "very good" effect on their child's physical health.
21 Similarly, 85 percent of parents of such a child
22 found that taking such leave had a "good" or "very
23 good" effect on their child's emotional health.

24 (5) When parents cannot afford to miss work
25 and must send children with contagious illnesses to

1 child care centers or schools, infection can spread
2 rapidly through child care centers and schools.

3 (6) Providing paid sick time improves public
4 health by reducing infectious disease. Policies that
5 make it easier for sick adults and children to be iso-
6 lated at home reduce the spread of infectious dis-
7 ease.

8 (7) Routine medical care reduces medical costs
9 by detecting and treating illness and injury early,
10 decreasing the need for emergency care. These sav-
11 ings benefit public and private payers of health in-
12 surance, including private businesses.

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

23 (9) Measures that ensure that employees are in
24 good health and do not need to worry about unmet

1 family health problems help businesses by promoting
2 productivity and reducing employee turnover.

3 (10) The American Productivity Audit com-
4 pleted in 2003 found that lost productivity due to ill-
5 ness costs \$226,000,000,000 annually, and that 71
6 percent of that cost stems from presenteeism, the
7 practice of employees coming to work despite illness.
8 Studies in the Journal of Occupational and Environ-
9 mental Medicine, the Employee Benefit News, and
10 the Harvard Business Review show that
11 presenteeism is a larger productivity drain than ei-
12 ther absenteeism or short-term disability.

13 (11) The absence of paid sick time has forced
14 Americans to make untenable choices between need-
15 ed income and jobs on the one hand and caring for
16 their own and their family's health on the other.

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

23 (13) Workers' access to paid sick time varies
24 dramatically by wage level. For private-sector work-
25 ers in the lowest quartile of earners, 68 percent lack

1 paid sick time. For workers in the next 2 quartiles,
2 34 and 25 percent, respectively, lack paid sick time.
3 Even for workers in the highest income quartile, 16
4 percent lack paid sick time. In addition, millions of
5 workers cannot use paid sick time to care for ill
6 family members.

7 (14) Due to the roles of men and women in so-
8 ciety, the primary responsibility for family caregiving
9 often falls on women, and such responsibility affects
10 the working lives of women more than it affects the
11 working lives of men.

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

17 (16) Employers’ reliance on persistent stereo-
18 types about the “proper” roles of both men and
19 women in the workplace and in the home continues
20 a cycle of discrimination and fosters stereotypical
21 views about women’s commitment to work and their
22 value as employees.

23 (17) Employment standards that apply to only
24 one gender have serious potential for encouraging

1 employers to discriminate against employees and ap-
2 plicants for employment who are of that gender.

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

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

16 (20) One study showed that 85 percent of do-
17 mestic violence victims at a women's shelter who
18 were employed missed work because of abuse. The
19 mean number of days of paid work lost by a rape
20 victim is 8.1 days, by a victim of physical assault is
21 7.2 days, and by a victim of stalking is 10.1 days.
22 Nationwide, domestic violence victims lose almost
23 8,000,000 days of paid work per year.

24 (21) Without paid sick days that can be used
25 to address the effects of domestic violence, these vic-

1 tims are in grave danger of losing their jobs. One
2 survey found that 96 percent of employed domestic
3 violence victims experienced problems at work re-
4 lated to the violence. The Government Accountability
5 Office similarly found that 24 to 52 percent of vic-
6 tims report losing a job due, at least in part, to do-
7 mestic violence. The loss of employment can be par-
8 ticularly devastating for victims of domestic violence,
9 who often need economic security to ensure safety.

10 (22) The Centers for Disease Control and Pre-
11 vention has estimated that domestic violence costs
12 over \$700,000,000 annually due to the victims' lost
13 productivity in employment.

14 (23) Efforts to assist abused employees result
15 in positive outcomes for employers as well as em-
16 ployees because employers can retain workers who
17 might otherwise be compelled to leave.

18 **SEC. 243. PURPOSES.**

19 The purposes of this subtitle are—

20 (1) to ensure that all working Americans can
21 address their own health needs and the health needs
22 of their families by requiring employers to permit
23 employees to earn up to 56 hours of paid sick time
24 including paid time for family care;

1 (2) to diminish public and private health care
2 costs by enabling workers to seek early and routine
3 medical care for themselves and their family mem-
4 bers;

5 (3) to assist employees who are, or whose fam-
6 ily members are, victims of domestic violence, sexual
7 assault, or stalking, by providing the employees with
8 paid time away from work to allow the victims to re-
9 ceive treatment and to take the necessary steps to
10 ensure their protection;

11 (4) to accomplish the purposes described in
12 paragraphs (1) through (3) in a manner that is fea-
13 sible for employers; and

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

19 (A) to accomplish the purposes described
20 in paragraphs (1) through (3) in a manner that
21 minimizes the potential for employment dis-
22 crimination on the basis of sex by ensuring gen-
23 erally that paid sick time is available for eligible
24 medical reasons on a gender-neutral basis; and

1 (B) to promote the goal of equal employ-
2 ment opportunity for women and men.

3 **SEC. 244. DEFINITIONS.**

4 In this subtitle:

5 (1) CHILD.—The term “child” means a biologi-
6 cal, foster, or adopted child, a stepchild, a legal
7 ward, or a child of a person standing in loco
8 parentis, who is—

9 (A) under 18 years of age; or

10 (B) 18 years of age or older and incapable
11 of self-care because of a mental or physical dis-
12 ability.

13 (2) DOMESTIC VIOLENCE.—The term “domestic
14 violence” has the meaning given the term in section
15 40002(a) of the Violence Against Women Act of
16 1994 (42 U.S.C. 13925(a)), except that the ref-
17 erence in such section to the term “jurisdiction re-
18 ceiving grant monies” shall be deemed to mean the
19 jurisdiction in which the victim lives or the jurisdic-
20 tion in which the employer involved is located.

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

23 (A)(i) an employee, as defined in section
24 3(e) of the Fair Labor Standards Act of 1938
25 (29 U.S.C. 203(e)), who is not covered under

1 subparagraph (E), including such an employee
2 of the Library of Congress, except that a ref-
3 erence in such section to an employer shall be
4 considered to be a reference to an employer de-
5 scribed in clauses (i)(I) and (ii) of paragraph
6 (4)(A); or

7 (ii) an employee of the Government Ac-
8 countability Office;

9 (B) a State employee described in section
10 304(a) of the Government Employee Rights Act
11 of 1991 (42 U.S.C. 2000e-16c(a));

12 (C) a covered employee, as defined in sec-
13 tion 101 of the Congressional Accountability
14 Act of 1995 (2 U.S.C. 1301), other than an ap-
15 plicant for employment;

16 (D) a covered employee, as defined in sec-
17 tion 411(c) of title 3, United States Code; or

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

21 (4) EMPLOYER.—

22 (A) IN GENERAL.—The term “employer”
23 means a person who is—

1 (i)(I) a covered employer, as defined
 2 in subparagraph (B), who is not covered
 3 under subclause (V);

4 (II) an entity employing a State em-
 5 ployee described in section 304(a) of the
 6 Government Employee Rights Act of 1991;

7 (III) an employing office, as defined
 8 in section 101 of the Congressional Ac-
 9 countability Act of 1995;

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

13 (V) an employing agency covered
 14 under subchapter V of chapter 63 of title
 15 5, United States Code; and

16 (ii) is engaged in commerce (including
 17 government), or an industry or activity af-
 18 fecting commerce (including government),
 19 as defined in subparagraph (B)(iii).

20 (B) COVERED EMPLOYER.—

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

23 (I) means any person engaged in
 24 commerce or in any industry or activ-
 25 ity affecting commerce who employs

1 15 or more employees for each work-
2 ing day during each of 20 or more
3 calendar workweeks in the current or
4 preceding calendar year;

5 (II) includes—

6 (aa) any person who acts,
7 directly or indirectly, in the inter-
8 est of an employer to any of the
9 employees of such employer; and

10 (bb) any successor in inter-
11 est of an employer;

12 (III) includes any “public agen-
13 cy”, as defined in section 3(x) of the
14 Fair Labor Standards Act of 1938
15 (29 U.S.C. 203(x)); and

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

19 (ii) PUBLIC AGENCY.—For purposes
20 of clause (i)(III), a public agency shall be
21 considered to be a person engaged in com-
22 merce or in an industry or activity affect-
23 ing commerce.

24 (iii) DEFINITIONS.—For purposes of
25 this subparagraph:

1 (I) COMMERCE.—The terms
2 “commerce” and “industry or activity
3 affecting commerce” mean any activ-
4 ity, business, or industry in commerce
5 or in which a labor dispute would
6 hinder or obstruct commerce or the
7 free flow of commerce, and include
8 “commerce” and any “industry affect-
9 ing commerce”, as defined in para-
10 graphs (1) and (3) of section 501 of
11 the Labor Management Relations Act,
12 1947 (29 U.S.C. 142 (1) and (3)).

13 (II) EMPLOYEE.—The term “em-
14 ployee” has the same meaning given
15 such term in section 3(e) of the Fair
16 Labor Standards Act of 1938 (29
17 U.S.C. 203(e)).

18 (III) PERSON.—The term “per-
19 son” has the same meaning given
20 such term in section 3(a) of the Fair
21 Labor Standards Act of 1938 (29
22 U.S.C. 203(a)).

23 (C) PREDECESSORS.—Any reference in
24 this paragraph to an employer shall include a
25 reference to any predecessor of such employer.

1 (5) EMPLOYMENT BENEFITS.—The term “em-
2 ployment benefits” means all benefits provided or
3 made available to employees by an employer, includ-
4 ing group life insurance, health insurance, disability
5 insurance, sick leave, annual leave, educational bene-
6 fits, and pensions, regardless of whether such bene-
7 fits are provided by a practice or written policy of
8 an employer or through an “employee benefit plan”,
9 as defined in section 3(3) of the Employee Retirement
10 Income Security Act of 1974 (29 U.S.C.
11 1002(3)).

12 (6) HEALTH CARE PROVIDER.—The term
13 “health care provider” means a provider who—

14 (A)(i) is a doctor of medicine or osteopathy
15 who is authorized to practice medicine or sur-
16 gery (as appropriate) by the State in which the
17 doctor practices; or

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

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

24 (7) PAID SICK TIME.—The term “paid sick
25 time” means an increment of compensated leave that

1 can be earned by an employee for use during an ab-
2 sence from employment for any of the reasons de-
3 scribed in paragraphs (1) through (4) of section
4 245(b).

5 (8) PARENT.—The term “parent” means a bio-
6 logical, foster, or adoptive parent of an employee, a
7 stepparent of an employee, or a legal guardian or
8 other person who stood in loco parentis to an em-
9 ployee when the employee was a child.

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

12 (10) SEXUAL ASSAULT.—The term “sexual as-
13 sault” has the meaning given the term in section
14 40002(a) of the Violence Against Women Act of
15 1994 (42 U.S.C. 13925(a)).

16 (11) SPOUSE.—The term “spouse”, with re-
17 spect to an employee, has the meaning given such
18 term by the marriage laws of the State in which the
19 employee resides.

20 (12) STALKING.—The term “stalking” has the
21 meaning given the term in section 40002(a) of the
22 Violence Against Women Act of 1994 (42 U.S.C.
23 13925(a)).

24 (13) VICTIM SERVICES ORGANIZATION.—The
25 term “victim services organization” means a non-

1 profit, nongovernmental organization that provides
2 assistance to victims of domestic violence, sexual as-
3 sault, or stalking or advocates for such victims, in-
4 cluding a rape crisis center, an organization carrying
5 out a domestic violence, sexual assault, or stalking
6 prevention or treatment program, an organization
7 operating a shelter or providing counseling services,
8 or a legal services organization or other organization
9 providing assistance through the legal process.

10 **SEC. 245. PROVISION OF PAID SICK TIME.**

11 (a) ACCRUAL OF PAID SICK TIME.—

12 (1) IN GENERAL.—An employer shall permit
13 each employee employed by the employer to earn not
14 less than 1 hour of paid sick time for every 30 hours
15 worked, to be used as described in subsection (b).
16 An employer shall not be required to permit an em-
17 ployee to earn, under this section, more than 56
18 hours of paid sick time in a calendar year, unless
19 the employer chooses to set a higher limit.

20 (2) EXEMPT EMPLOYEES.—

21 (A) IN GENERAL.—Except as provided in
22 paragraph (3), for purposes of this section, an
23 employee who is exempt from overtime require-
24 ments under section 13(a)(1) of the Fair Labor
25 Standards Act of 1938 (29 U.S.C. 213(a)(1))

1 shall be assumed to work 40 hours in each
2 workweek.

3 (B) SHORTER NORMAL WORKWEEK.—If
4 the normal workweek of such an employee is
5 less than 40 hours, the employee shall earn
6 paid sick time based upon that normal work-
7 week.

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

19 (4) CARRYOVER.—

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

24 (B) CONSTRUCTION.—This subtitle shall
25 not be construed to require an employer to per-

1 mit an employee to accrue more than 56 hours
2 of earned paid sick time at a given time.

3 (5) EMPLOYERS WITH EXISTING POLICIES.—

4 Any employer with a paid leave policy who makes
5 available an amount of paid leave that is sufficient
6 to meet the requirements of this section and that
7 may be used for the same purposes and under the
8 same conditions as the purposes and conditions out-
9 lined in subsection (b) shall not be required to per-
10 mit an employee to earn additional paid sick time
11 under this section.

12 (6) CONSTRUCTION.—Nothing in this section
13 shall be construed as requiring financial or other re-
14 imbursement to an employee from an employer upon
15 the employee's termination, resignation, retirement,
16 or other separation from employment for earned
17 paid sick time that has not been used.

18 (7) REINSTATEMENT.—If an employee is sepa-
19 rated from employment with an employer and is re-
20 hired, within 12 months after that separation, by the
21 same employer, the employer shall reinstate the em-
22 ployee's previously earned paid sick time. The em-
23 ployee shall be entitled to use the earned paid sick
24 time and earn additional paid sick time at the re-
25 commencement of employment with the employer.

1 (8) PROHIBITION.—An employer may not re-
2 quire, as a condition of providing paid sick time
3 under this subtitle, that the employee involved
4 search for or find a replacement worker to cover the
5 hours during which the employee is using paid sick
6 time.

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

9 (1) An absence resulting from a physical or
10 mental illness, injury, or medical condition of the
11 employee.

12 (2) An absence resulting from obtaining profes-
13 sional medical diagnosis or care, or preventive med-
14 ical care, for the employee.

15 (3) An absence for the purpose of caring for a
16 child, a parent, a spouse, or any other individual re-
17 lated by blood or affinity whose close association
18 with the employee is the equivalent of a family rela-
19 tionship, who—

20 (A) has any of the conditions or needs for
21 diagnosis or care described in paragraph (1) or
22 (2); and

23 (B) in the case of someone who is not a
24 child, is otherwise in need of care.

1 (4) An absence resulting from domestic vio-
2 lence, sexual assault, or stalking, if the time is to—

3 (A) seek medical attention for the em-
4 ployee or the employee's child, parent, or
5 spouse, or an individual related to the employee
6 as described in paragraph (3), to recover from
7 physical or psychological injury or disability
8 caused by domestic violence, sexual assault, or
9 stalking;

10 (B) obtain or assist a related person de-
11 scribed in paragraph (3) in obtaining services
12 from a victim services organization;

13 (C) obtain or assist a related person de-
14 scribed in paragraph (3) in obtaining psycho-
15 logical or other counseling;

16 (D) seek relocation; or

17 (E) take legal action, including preparing
18 for or participating in any civil or criminal legal
19 proceeding related to or resulting from domestic
20 violence, sexual assault, or stalking.

21 (c) SCHEDULING.—An employee shall make a reason-
22 able effort to schedule a period of paid sick time under
23 this subtitle in a manner that does not unduly disrupt the
24 operations of the employer.

25 (d) PROCEDURES.—

1 (1) IN GENERAL.—Paid sick time shall be pro-
2 vided upon the oral or written request of an em-
3 ployee. Such request shall—

4 (A) include the expected duration of the
5 period of such time;

6 (B) in a case in which the need for such
7 period of time is foreseeable at least 7 days in
8 advance of such period, be provided at least 7
9 days in advance of such period; and

10 (C) otherwise, be provided as soon as prac-
11 ticable after the employee is aware of the need
12 for such period.

13 (2) CERTIFICATION IN GENERAL.—

14 (A) PROVISION.—

15 (i) IN GENERAL.—Subject to subpara-
16 graph (C), an employer may require that a
17 request for paid sick time under this sec-
18 tion for a purpose described in paragraph
19 (1), (2), or (3) of subsection (b) be sup-
20 ported by a certification issued by the
21 health care provider of the eligible em-
22 ployee or of an individual described in sub-
23 section (b)(3), as appropriate, if the period
24 of such time covers more than 3 consecu-
25 tive workdays.

1 (ii) TIMELINESS.—The employee shall
2 provide a copy of such certification to the
3 employer in a timely manner, not later
4 than 30 days after the first day of the pe-
5 riod of time. The employer shall not delay
6 the commencement of the period of time on
7 the basis that the employer has not yet re-
8 ceived the certification.

9 (B) SUFFICIENT CERTIFICATION.—

10 (i) IN GENERAL.—A certification pro-
11 vided under subparagraph (A) shall be suf-
12 ficient if it states—

13 (I) the date on which the period
14 of time will be needed;

15 (II) the probable duration of the
16 period of time;

17 (III) the appropriate medical
18 facts within the knowledge of the
19 health care provider regarding the
20 condition involved, subject to clause
21 (ii); and

22 (IV)(aa) for purposes of paid sick
23 time under subsection (b)(1), a state-
24 ment that absence from work is medi-
25 cally necessary;

1 (bb) for purposes of such time
2 under subsection (b)(2), the dates on
3 which testing for a medical diagnosis
4 or care is expected to be given and the
5 duration of such testing or care; and

6 (cc) for purposes of such time
7 under subsection (b)(3), in the case of
8 time to care for someone who is not a
9 child, a statement that care is needed
10 for an individual described in such
11 subsection, and an estimate of the
12 amount of time that such care is
13 needed for such individual.

14 (ii) LIMITATION.—In issuing a certifi-
15 cation under subparagraph (A), a health
16 care provider shall make reasonable efforts
17 to limit the medical facts described in
18 clause (i)(III) that are disclosed in the cer-
19 tification to the minimum necessary to es-
20 tablish a need for the employee to utilize
21 paid sick time.

22 (C) REGULATIONS.—Regulations pre-
23 scribed under section 253 shall specify the man-
24 ner in which an employee who does not have

1 health insurance shall provide a certification for
2 purposes of this paragraph.

3 (D) CONFIDENTIALITY AND NONDISCLO-
4 SURE.—

5 (i) PROTECTED HEALTH INFORMA-
6 TION.—Nothing in this subtitle shall be
7 construed to require a health care provider
8 to disclose information in violation of sec-
9 tion 1177 of the Social Security Act (42
10 U.S.C. 1320d–6) or the regulations pro-
11 mulgated pursuant to section 264(c) of the
12 Health Insurance Portability and Account-
13 ability Act of 1996 (42 U.S.C. 1320d–2
14 note).

15 (ii) HEALTH INFORMATION
16 RECORDS.—If an employer possesses
17 health information about an employee or
18 an employee’s child, parent, spouse or
19 other individual described in subsection
20 (b)(3), such information shall—

21 (I) be maintained on a separate
22 form and in a separate file from other
23 personnel information;

24 (II) be treated as a confidential
25 medical record; and

1 (III) not be disclosed except to
2 the affected employee or with the per-
3 mission of the affected employee.

4 (3) CERTIFICATION IN THE CASE OF DOMESTIC
5 VIOLENCE, SEXUAL ASSAULT, OR STALKING.—

6 (A) IN GENERAL.—An employer may re-
7 quire that a request for paid sick time under
8 this section for a purpose described in sub-
9 section (b)(4) be supported by 1 of the fol-
10 lowing forms of documentation:

11 (i) A police report indicating that the
12 employee, or a member of the employee's
13 family described in subsection (b)(4), was
14 a victim of domestic violence, sexual as-
15 sault, or stalking.

16 (ii) A court order protecting or sepa-
17 rating the employee or a member of the
18 employee's family described in subsection
19 (b)(4) from the perpetrator of an act of
20 domestic violence, sexual assault, or stalk-
21 ing, or other evidence from the court or
22 prosecuting attorney that the employee or
23 a member of the employee's family de-
24 scribed in subsection (b)(4) has appeared
25 in court or is scheduled to appear in court

1 in a proceeding related to domestic vio-
2 lence, sexual assault, or stalking.

3 (iii) Other documentation signed by
4 an employee or volunteer working for a vic-
5 tim services organization, an attorney, a
6 police officer, a medical professional, a so-
7 cial worker, an antiviolence counselor, or a
8 member of the clergy, affirming that the
9 employee or a member of the employee's
10 family described in subsection (b)(4) is a
11 victim of domestic violence, sexual assault,
12 or stalking.

13 (B) REQUIREMENTS.—The requirements
14 of paragraph (2) shall apply to certifications
15 under this paragraph, except that—

16 (i) subclauses (III) and (IV) of sub-
17 paragraph (B)(i) and subparagraph (B)(ii)
18 of such paragraph shall not apply;

19 (ii) the certification shall state the
20 reason that the leave is required with the
21 facts to be disclosed limited to the min-
22 imum necessary to establish a need for the
23 employee to be absent from work, and the
24 employee shall not be required to explain

1 the details of the domestic violence, sexual
2 assault, or stalking involved; and

3 (iii) with respect to confidentiality
4 under subparagraph (D) of such para-
5 graph, any information provided to the em-
6 ployer under this paragraph shall be con-
7 fidential, except to the extent that any dis-
8 closure of such information is—

9 (I) requested or consented to in
10 writing by the employee; or

11 (II) otherwise required by appli-
12 cable Federal or State law.

13 **SEC. 246. POSTING REQUIREMENT.**

14 (a) IN GENERAL.—Each employer shall post and
15 keep posted a notice, to be prepared or approved in ac-
16 cordance with procedures specified in regulations pre-
17 scribed under section 253, setting forth excerpts from, or
18 summaries of, the pertinent provisions of this subtitle in-
19 cluding—

20 (1) information describing paid sick time avail-
21 able to employees under this subtitle;

22 (2) information pertaining to the filing of an
23 action under this subtitle;

1 (3) the details of the notice requirement for a
2 foreseeable period of time under section
3 245(d)(1)(B); and

4 (4) information that describes—

5 (A) the protections that an employee has
6 in exercising rights under this subtitle; and

7 (B) how the employee can contact the Sec-
8 retary (or other appropriate authority as de-
9 scribed in section 248) if any of the rights are
10 violated.

11 (b) LOCATION.—The notice described under sub-
12 section (a) shall be posted—

13 (1) in conspicuous places on the premises of the
14 employer, where notices to employees (including ap-
15 plicants) are customarily posted; or

16 (2) in employee handbooks.

17 (c) VIOLATION; PENALTY.—Any employer who will-
18 fully violates the posting requirements of this section shall
19 be subject to a civil fine in an amount not to exceed \$100
20 for each separate offense.

21 **SEC. 247. PROHIBITED ACTS.**

22 (a) INTERFERENCE WITH RIGHTS.—

23 (1) EXERCISE OF RIGHTS.—It shall be unlawful
24 for any employer to interfere with, restrain, or deny

1 the exercise of, or the attempt to exercise, any right
2 provided under this subtitle, including—

3 (A) discharging or discriminating against
4 (including retaliating against) any individual,
5 including a job applicant, for exercising, or at-
6 tempting to exercise, any right provided under
7 this subtitle;

8 (B) using the taking of paid sick time
9 under this subtitle as a negative factor in an
10 employment action, such as hiring, promotion,
11 or a disciplinary action; or

12 (C) counting the paid sick time under a
13 no-fault attendance policy or any other absence
14 control policy.

15 (2) DISCRIMINATION.—It shall be unlawful for
16 any employer to discharge or in any other manner
17 discriminate against (including retaliating against)
18 any individual, including a job applicant, for oppos-
19 ing any practice made unlawful by this subtitle.

20 (b) INTERFERENCE WITH PROCEEDINGS OR INQUIR-
21 IES.—It shall be unlawful for any person to discharge or
22 in any other manner discriminate against (including retali-
23 ating against) any individual, including a job applicant,
24 because such individual—

1 (1) has filed an action, or has instituted or
2 caused to be instituted any proceeding, under or re-
3 lated to this subtitle;

4 (2) has given, or is about to give, any informa-
5 tion in connection with any inquiry or proceeding re-
6 lating to any right provided under this subtitle; or

7 (3) has testified, or is about to testify, in any
8 inquiry or proceeding relating to any right provided
9 under this subtitle.

10 (c) CONSTRUCTION.—Nothing in this section shall be
11 construed to state or imply that the scope of the activities
12 prohibited by section 105 of the Family and Medical Leave
13 Act of 1993 (29 U.S.C. 2615) is less than the scope of
14 the activities prohibited by this section.

15 **SEC. 248. ENFORCEMENT AUTHORITY.**

16 (a) IN GENERAL.—

17 (1) DEFINITION.—In this subsection:

18 (A) the term “employee” means an em-
19 ployee described in subparagraph (A) or (B) of
20 section 244(3); and

21 (B) the term “employer” means an em-
22 ployer described in subclause (I) or (II) of sec-
23 tion 244(4)(A)(i).

24 (2) INVESTIGATIVE AUTHORITY.—

1 (A) IN GENERAL.—To ensure compliance
2 with the provisions of this subtitle, or any regu-
3 lation or order issued under this subtitle, the
4 Secretary shall have, subject to subparagraph
5 (C), the investigative authority provided under
6 section 11(a) of the Fair Labor Standards Act
7 of 1938 (29 U.S.C. 211(a)), with respect to em-
8 ployers, employees, and other individuals af-
9 fected.

10 (B) OBLIGATION TO KEEP AND PRESERVE
11 RECORDS.—An employer shall make, keep, and
12 preserve records pertaining to compliance with
13 this subtitle in accordance with section 11(c) of
14 the Fair Labor Standards Act of 1938 (29
15 U.S.C. 211(c)) and in accordance with regula-
16 tions prescribed by the Secretary.

17 (C) REQUIRED SUBMISSIONS GENERALLY
18 LIMITED TO AN ANNUAL BASIS.—The Secretary
19 shall not require, under the authority of this
20 paragraph, an employer to submit to the Sec-
21 retary any books or records more than once
22 during any 12-month period, unless the Sec-
23 retary has reasonable cause to believe there
24 may exist a violation of this subtitle or any reg-
25 ulation or order issued pursuant to this subtitle,

1 or is investigating a charge pursuant to para-
2 graph (4).

3 (D) SUBPOENA AUTHORITY.—For the pur-
4 poses of any investigation provided for in this
5 paragraph, the Secretary shall have the sub-
6 poena authority provided for under section 9 of
7 the Fair Labor Standards Act of 1938 (29
8 U.S.C. 209).

9 (3) CIVIL ACTION BY EMPLOYEES OR INDIVID-
10 UALS.—

11 (A) RIGHT OF ACTION.—An action to re-
12 cover the damages or equitable relief prescribed
13 in subparagraph (B) may be maintained
14 against any employer in any Federal or State
15 court of competent jurisdiction by one or more
16 employees or individuals or their representative
17 for and on behalf of—

18 (i) the employees or individuals; or
19 (ii) the employees or individuals and
20 others similarly situated.

21 (B) LIABILITY.—Any employer who vio-
22 lates section 247 (including a violation relating
23 to rights provided under section 245) shall be
24 liable to any employee or individual affected—

25 (i) for damages equal to—

1 (I) the amount of—

2 (aa) any wages, salary, em-
3 ployment benefits, or other com-
4 pensation denied or lost by rea-
5 son of the violation; or

6 (bb) in a case in which
7 wages, salary, employment bene-
8 fits, or other compensation have
9 not been denied or lost, any ac-
10 tual monetary losses sustained as
11 a direct result of the violation up
12 to a sum equal to 56 hours of
13 wages or salary for the employee
14 or individual;

15 (II) the interest on the amount
16 described in subclause (I) calculated
17 at the prevailing rate; and

18 (III) an additional amount as liq-
19 uidated damages; and

20 (ii) for such equitable relief as may be
21 appropriate, including employment, rein-
22 statement, and promotion.

23 (C) FEES AND COSTS.—The court in an
24 action under this paragraph shall, in addition to
25 any judgment awarded to the plaintiff, allow a

1 reasonable attorney's fee, reasonable expert wit-
2 ness fees, and other costs of the action to be
3 paid by the defendant.

4 (4) ACTION BY THE SECRETARY.—

5 (A) ADMINISTRATIVE ACTION.—The Sec-
6 retary shall receive, investigate, and attempt to
7 resolve complaints of violations of section 247
8 (including a violation relating to rights provided
9 under section 245) in the same manner that the
10 Secretary receives, investigates, and attempts to
11 resolve complaints of violations of sections 6
12 and 7 of the Fair Labor Standards Act of 1938
13 (29 U.S.C. 206 and 207).

14 (B) CIVIL ACTION.—The Secretary may
15 bring an action in any court of competent juris-
16 diction to recover the damages described in
17 paragraph (3)(B)(i).

18 (C) SUMS RECOVERED.—Any sums recov-
19 ered by the Secretary pursuant to subparagraph
20 (B) shall be held in a special deposit account
21 and shall be paid, on order of the Secretary, di-
22 rectly to each employee or individual affected.
23 Any such sums not paid to an employee or indi-
24 vidual affected because of inability to do so
25 within a period of 3 years shall be deposited

1 into the Treasury of the United States as mis-
2 cellaneous receipts.

3 (5) LIMITATION.—

4 (A) IN GENERAL.—Except as provided in
5 subparagraph (B), an action may be brought
6 under paragraph (3), (4), or (6) not later than
7 2 years after the date of the last event consti-
8 tuting the alleged violation for which the action
9 is brought.

10 (B) WILLFUL VIOLATION.—In the case of
11 an action brought for a willful violation of sec-
12 tion 247 (including a willful violation relating to
13 rights provided under section 245), such action
14 may be brought within 3 years of the date of
15 the last event constituting the alleged violation
16 for which such action is brought.

17 (C) COMMENCEMENT.—In determining
18 when an action is commenced under paragraph
19 (3), (4), or (6) for the purposes of this para-
20 graph, it shall be considered to be commenced
21 on the date when the complaint is filed.

22 (6) ACTION FOR INJUNCTION BY SECRETARY.—

23 The district courts of the United States shall have
24 jurisdiction, for cause shown, in an action brought
25 by the Secretary—

1 (A) to restrain violations of section 247
2 (including a violation relating to rights provided
3 under section 245), including the restraint of
4 any withholding of payment of wages, salary,
5 employment benefits, or other compensation,
6 plus interest, found by the court to be due to
7 employees or individuals eligible under this sub-
8 title; or

9 (B) to award such other equitable relief as
10 may be appropriate, including employment, re-
11 instatement, and promotion.

12 (7) SOLICITOR OF LABOR.—The Solicitor of
13 Labor may appear for and represent the Secretary
14 on any litigation brought under paragraph (4) or
15 (6).

16 (8) GOVERNMENT ACCOUNTABILITY OFFICE
17 AND LIBRARY OF CONGRESS.—Notwithstanding any
18 other provision of this subsection, in the case of the
19 Government Accountability Office and the Library of
20 Congress, the authority of the Secretary of Labor
21 under this subsection shall be exercised respectively
22 by the Comptroller General of the United States and
23 the Librarian of Congress.

24 (b) EMPLOYEES COVERED BY CONGRESSIONAL AC-
25 COUNTABILITY ACT OF 1995.—The powers, remedies, and

1 procedures provided in the Congressional Accountability
2 Act of 1995 (2 U.S.C. 1301 et seq.) to the Board (as de-
3 fined in section 101 of that Act (2 U.S.C. 1301)), or any
4 person, alleging a violation of section 202(a)(1) of that
5 Act (2 U.S.C. 1312(a)(1)) shall be the powers, remedies,
6 and procedures this subtitle provides to that Board, or any
7 person, alleging an unlawful employment practice in viola-
8 tion of this subtitle against an employee described in sec-
9 tion 244(3)(C).

10 (c) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE
11 3, UNITED STATES CODE.—The powers, remedies, and
12 procedures provided in chapter 5 of title 3, United States
13 Code, to the President, the Merit Systems Protection
14 Board, or any person, alleging a violation of section
15 412(a)(1) of that title, shall be the powers, remedies, and
16 procedures this subtitle provides to the President, that
17 Board, or any person, respectively, alleging an unlawful
18 employment practice in violation of this subtitle against
19 an employee described in section 244(3)(D).

20 (d) EMPLOYEES COVERED BY CHAPTER 63 OF TITLE
21 5, UNITED STATES CODE.—The powers, remedies, and
22 procedures provided in title 5, United States Code, to an
23 employing agency, provided in chapter 12 of that title to
24 the Merit Systems Protection Board, or provided in that
25 title to any person, alleging a violation of chapter 63 of

1 that title, shall be the powers, remedies, and procedures
2 this subtitle provides to that agency, that Board, or any
3 person, respectively, alleging an unlawful employment
4 practice in violation of this subtitle against an employee
5 described in section 244(3)(E).

6 (e) REMEDIES FOR STATE EMPLOYEES.—

7 (1) WAIVER OF SOVEREIGN IMMUNITY.—A
8 State's receipt or use of Federal financial assistance
9 for any program or activity of a State shall con-
10 stitute a waiver of sovereign immunity, under the
11 11th Amendment to the Constitution or otherwise,
12 to a suit brought by an employee of that program
13 or activity under this subtitle for equitable, legal, or
14 other relief authorized under this subtitle.

15 (2) OFFICIAL CAPACITY.—An official of a State
16 may be sued in the official capacity of the official by
17 any employee who has complied with the procedures
18 under subsection (a)(3), for injunctive relief that is
19 authorized under this subtitle. In such a suit the
20 court may award to the prevailing party those costs
21 authorized by section 722 of the Revised Statutes
22 (42 U.S.C. 1988).

23 (3) APPLICABILITY.—With respect to a par-
24 ticular program or activity, paragraph (1) applies to
25 conduct occurring on or after the day, after the date

1 of enactment of this Act, on which a State first re-
2 ceives or uses Federal financial assistance for that
3 program or activity.

4 (4) DEFINITION OF PROGRAM OR ACTIVITY.—In
5 this subsection, the term “program or activity” has
6 the meaning given the term in section 606 of the
7 Civil Rights Act of 1964 (42 U.S.C. 2000d–4a).

8 **SEC. 249. COLLECTION OF DATA ON PAID SICK TIME AND**
9 **FURTHER STUDY.**

10 (a) COMPILATION OF INFORMATION.—Effective 90
11 days after the date of enactment of this Act, the Commis-
12 sioner of Labor Statistics shall annually compile informa-
13 tion on the following:

14 (1) The number of employees who used paid
15 sick time.

16 (2) The number of hours of paid sick time
17 used.

18 (3) The number of employees who used paid
19 sick time for absences necessary due to domestic vio-
20 lence, sexual assault, or stalking.

21 (4) The demographic characteristics of employ-
22 ees who were eligible for and who used paid sick
23 time.

24 (b) GAO STUDY.—

1 (1) IN GENERAL.—The Comptroller General of
2 the United States shall annually conduct a study to
3 determine the following:

4 (A)(i) The number of days employees used
5 paid sick time and the reasons for the use.

6 (ii) The number of employees who used the
7 paid sick time for periods of time covering more
8 than 3 consecutive workdays.

9 (B) The cost and benefits to employers of
10 implementing the paid sick time policies.

11 (C) The cost to employees of providing cer-
12 tification to obtain the paid sick time.

13 (D) The benefits of the paid sick time to
14 employees and their family members, including
15 effects on employees' ability to care for their
16 family members or to provide for their own
17 health needs.

18 (E) Whether the paid sick time affected
19 employees' ability to sustain an adequate in-
20 come while meeting needs of the employees and
21 their family members.

22 (F) Whether employers who administered
23 paid sick time policies prior to the date of en-
24 actment of this Act were affected by the provi-
25 sions of this subtitle.

1 (G) Whether other types of leave were af-
2 fected by this subtitle.

3 (H) Whether paid sick time affected reten-
4 tion and turnover and costs of presenteeism.

5 (I) Whether the paid sick time increased
6 the use of less costly preventive medical care
7 and lowered the use of emergency room care.

8 (J) Whether the paid sick time reduced the
9 number of children sent to school when the chil-
10 dren were sick.

11 (2) AGGREGATING DATA.—The data collected
12 under subparagraphs (A) and (D) of paragraph (1)
13 shall be aggregated by gender, race, disability, earn-
14 ings level, age, marital status, family type, including
15 parental status, and industry.

16 (3) REPORTS.—

17 (A) IN GENERAL.—Not later than 18
18 months after the date of enactment of this Act,
19 the Comptroller General of the United States
20 shall prepare and submit a report to the appro-
21 priate committees of Congress concerning the
22 results of the study conducted pursuant to
23 paragraph (1) and the data aggregated under
24 paragraph (2).

1 (B) FOLLOWUP REPORT.—Not later than
2 5 years after the date of enactment of this Act,
3 the Comptroller General of the United States
4 shall prepare and submit a followup report to
5 the appropriate committees of Congress con-
6 cerning the results of the study conducted pur-
7 suant to paragraph (1) and the data aggregated
8 under paragraph (2).

9 **SEC. 250. EFFECT ON OTHER LAWS.**

10 (a) FEDERAL AND STATE ANTIDISCRIMINATION
11 LAWS.—Nothing in this subtitle shall be construed to
12 modify or affect any Federal or State law prohibiting dis-
13 crimination on the basis of race, religion, color, national
14 origin, sex, age, or disability.

15 (b) STATE AND LOCAL LAWS.—Nothing in this sub-
16 title shall be construed to supersede (including pre-
17 empting) any provision of any State or local law that pro-
18 vides greater paid sick time or leave rights (including
19 greater paid sick time or leave, or greater coverage of
20 those eligible for paid sick time or leave) than the rights
21 established under this subtitle.

22 **SEC. 251. EFFECT ON EXISTING EMPLOYMENT BENEFITS.**

23 (a) MORE PROTECTIVE.—Nothing in this subtitle
24 shall be construed to diminish the obligation of an em-
25 ployer 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).

1 (2) GOVERNMENT ACCOUNTABILITY OFFICE; LI-
2 BRARY OF CONGRESS.—The Comptroller General of
3 the United States and the Librarian of Congress
4 shall prescribe the regulations with respect to em-
5 ployees of the Government Accountability Office and
6 the Library of Congress, respectively, and other indi-
7 viduals affected by the Comptroller General of the
8 United States and the Librarian of Congress, re-
9 spectively.

10 (b) EMPLOYEES COVERED BY CONGRESSIONAL AC-
11 COUNTABILITY ACT OF 1995.—

12 (1) AUTHORITY.—Not later than 120 days
13 after the date of enactment of this Act, the Board
14 of Directors of the Office of Compliance shall pre-
15 scribe (in accordance with section 304 of the Con-
16 gressional Accountability Act of 1995 (2 U.S.C.
17 1384)) such regulations as are necessary to carry
18 out this subtitle with respect to employees described
19 in section 244(3)(C) and other individuals affected
20 by employers described in section 244(4)(A)(i)(III).

21 (2) AGENCY REGULATIONS.—The regulations
22 prescribed under paragraph (1) shall be the same as
23 substantive regulations promulgated by the Sec-
24 retary to carry out this subtitle except insofar as the
25 Board may determine, for good cause shown and

1 stated together with the regulations prescribed
2 under paragraph (1), that a modification of such
3 regulations would be more effective for the imple-
4 mentation of the rights and protections involved
5 under this section.

6 (c) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE
7 3, UNITED STATES CODE.—

8 (1) AUTHORITY.—Not later than 120 days
9 after the date of enactment of this Act, the Presi-
10 dent (or the designee of the President) shall pre-
11 scribe such regulations as are necessary to carry out
12 this subtitle with respect to employees described in
13 section 244(3)(D) and other individuals affected by
14 employers described in section 244(4)(A)(i)(IV).

15 (2) AGENCY REGULATIONS.—The regulations
16 prescribed under paragraph (1) shall be the same as
17 substantive regulations promulgated by the Sec-
18 retary to carry out this subtitle except insofar as the
19 President (or designee) may determine, for good
20 cause shown and stated together with the regula-
21 tions prescribed under paragraph (1), that a modi-
22 fication of such regulations would be more effective
23 for the implementation of the rights and protections
24 involved under this section.

1 (d) EMPLOYEES COVERED BY CHAPTER 63 OF TITLE
2 5, UNITED STATES CODE.—

3 (1) AUTHORITY.—Not later than 120 days
4 after the date of enactment of this Act, the Director
5 of the Office of Personnel Management shall pre-
6 scribe such regulations as are necessary to carry out
7 this subtitle with respect to employees described in
8 section 244(3)(E) and other individuals affected by
9 employers described in section 244(4)(A)(i)(V).

10 (2) AGENCY REGULATIONS.—The regulations
11 prescribed under paragraph (1) shall be the same as
12 substantive regulations promulgated by the Sec-
13 retary to carry out this subtitle except insofar as the
14 Director may determine, for good cause shown and
15 stated together with the regulations prescribed
16 under paragraph (1), that a modification of such
17 regulations would be more effective for the imple-
18 mentation of the rights and protections involved
19 under this section.

20 **SEC. 254. EFFECTIVE DATES.**

21 (a) EFFECTIVE DATE.—This subtitle shall take effect
22 6 months after the date of issuance of regulations under
23 section 253(a)(1).

24 (b) COLLECTIVE BARGAINING AGREEMENTS.—In the
25 case of a collective bargaining agreement in effect on the

1 effective date prescribed by subsection (a), this subtitle
2 shall take effect on the earlier of—

3 (1) the date of the termination of such agree-
4 ment; or

5 (2) the date that occurs 18 months after the
6 date of issuance of regulations under section
7 253(a)(1).

8 **Subtitle E—Establishing a Fair** 9 **Minimum Wage**

10 **SEC. 261. MINIMUM WAGE INCREASES.**

11 (a) MINIMUM WAGE.—

12 (1) IN GENERAL.—Section 6(a)(1) of the Fair
13 Labor Standards Act of 1938 (29 U.S.C. 206(a)(1))
14 is amended to read as follows:

15 “(1) except as otherwise provided in this sec-
16 tion, not less than—

17 “(A) \$8.10 an hour, beginning on the first
18 day of the third month that begins after the
19 date of enactment of the Rebuild America Act;

20 “(B) \$8.95 an hour, beginning 1 year after
21 that first day;

22 “(C) \$9.80 an hour, beginning 2 years
23 after that first day; and

24 “(D) beginning on the date that is 3 years
25 after that first day, and annually thereafter, the

1 amount determined by the Secretary pursuant
2 to subsection (h);”.

3 (2) DETERMINATION BASED ON INCREASE IN
4 THE CONSUMER PRICE INDEX.—Section 6 of the
5 Fair Labor Standards Act of 1938 (29 U.S.C. 206)
6 is amended by adding at the end the following:

7 “(h)(1) Each year, by not later than the date that
8 is 90 days before a new minimum wage determined under
9 subsection (a)(1)(D) is to take effect, the Secretary shall
10 determine the minimum wage to be in effect pursuant to
11 this subsection for the subsequent 1-year period. The wage
12 determined pursuant to this subsection for a year shall
13 be—

14 “(A) not less than the amount in effect under
15 subsection (a)(1) on the date of such determination;

16 “(B) increased from such amount by the annual
17 percentage increase in the Consumer Price Index for
18 Urban Wage Earners and Clerical Workers (United
19 States city average, all items, not seasonally ad-
20 justed), or its successor publication, as determined
21 by the Bureau of Labor Statistics; and

22 “(C) rounded to the nearest multiple of \$0.05.

23 “(2) In calculating the annual percentage increase in
24 the Consumer Price Index for purposes of paragraph
25 (1)(B), the Secretary shall compare such Consumer Price

1 Index for the most recent month, quarter, or year avail-
2 able (as selected by the Secretary prior to the first year
3 for which a minimum wage is in effect pursuant to this
4 subsection) with the Consumer Price Index for the same
5 month in the preceding year, the same quarter in the pre-
6 ceding year, or the preceding year, respectively.”.

7 (b) BASE MINIMUM WAGE FOR TIPPED EMPLOY-
8 EES.—Section 3(m)(1) of the Fair Labor Standards Act
9 of 1938 (29 U.S.C. 203(m)(1)) is amended to read as fol-
10 lows:

11 “(1) the cash wage paid such employee, which
12 for purposes of such determination shall be not less
13 than—

14 “(A) for the 1-year period beginning on
15 the first day of the third month that begins
16 after the date of enactment of the Rebuild
17 America Act, \$3.00 an hour;

18 “(B) for each succeeding 1-year period
19 until the hourly wage under this paragraph
20 equals 70 percent of the wage in effect under
21 section 6(a)(1) for such period, an hourly wage
22 equal to the amount determined under this
23 paragraph for the preceding year, increased by
24 the lesser of—

25 “(i) \$0.85; or

1 “(ii) the amount necessary for the
2 wage in effect under this paragraph to
3 equal 70 percent of the wage in effect
4 under section 6(a)(1) for such period,
5 rounded to the nearest multiple of \$0.05;
6 and

7 “(C) for each succeeding 1-year period
8 after the year in which the hourly wage under
9 this paragraph first equals 70 percent of the
10 wage in effect under section 6(a)(1) for the
11 same period, the amount necessary to ensure
12 that the wage in effect under this paragraph re-
13 mains equal to 70 percent of the wage in effect
14 under section 6(a)(1), rounded to the nearest
15 multiple of \$0.05; and”.

16 (c) PUBLICATION OF NOTICE.—Section 6 of the Fair
17 Labor Standards Act of 1938 (as amended by subsection
18 (a)) (29 U.S.C. 206) is further amended by adding at the
19 end the following:

20 “(i) Not later than 60 days prior to the effective date
21 of any increase in the minimum wage determined under
22 subsection (h) or required for tipped employees in accord-
23 ance with subparagraph (B) or (C) of section 3(m)(1), as
24 amended by section 261 of the Rebuild America Act, the
25 Secretary shall publish in the Federal Register and on the

1 website of the Department of Labor a notice announcing
2 the adjusted required wage.”.

3 (d) EFFECTIVE DATE.—The amendments made by
4 subsections (a) and (b) shall take effect on the first day
5 of the third month that begins after the date of enactment
6 of this Act.

7 **Subtitle F—Empowering** 8 **Hardworking Americans**

9 **SEC. 271. AMENDMENTS TO THE NATIONAL LABOR RELA-** 10 **TIONS ACT.**

11 (a) COVERAGE.—

12 (1) SUPERVISORS.—Section 2(11) of the Na-
13 tional Labor Relations Act (29 U.S.C. 152(11)) is
14 amended—

15 (A) by inserting “and for a majority of the
16 individual’s worktime” after “interest of the
17 employer”;

18 (B) by striking “assign,”; and

19 (C) by striking “or responsibly to direct
20 them”.

21 (2) INDEPENDENT CONTRACTORS.—Section 2
22 of the National Labor Relations Act (29 U.S.C.
23 152) is amended by adding at the end the following:

24 “(15) The term ‘independent contractor’ means
25 an individual who performs services for an employer

1 for remuneration and for whom it is found, to the
2 satisfaction of the Board, that—

3 “(A) the individual has been and will con-
4 tinue to be free from direction and control of
5 the employer, both under the individual’s con-
6 tract of service and in fact;

7 “(B) the service is outside the usual course
8 of business of the employer; and

9 “(C) the individual is customarily engaged
10 in an independently established trade, occupa-
11 tion, profession, or business, both under the in-
12 dividual’s contract of service and in fact.”.

13 (b) REMEDIES.—

14 (1) IN GENERAL.—Section 10(l) of the National
15 Labor Relations Act (29 U.S.C. 160(l)) is amend-
16 ed—

17 (A) in the first sentence—

18 (i) by inserting after “charged that”
19 the following: “any person that is an em-
20 ployer has engaged in an unfair labor prac-
21 tice within the meaning of section 8(a)
22 which results in the discharge of an em-
23 ployee or other serious economic loss, or
24 that”; and

1 (ii) by striking “case of like char-
2 acter” and inserting “other cases described
3 in this sentence”; and

4 (B) in the third sentence, by striking “as
5 it deems just and proper, notwithstanding any
6 other provision of law:” and inserting the fol-
7 lowing: “to protect the rights guaranteed by
8 this Act, notwithstanding any other provision of
9 law. The district court shall grant the relief re-
10 quested if the court finds that there is reason-
11 able cause to believe that the alleged violation
12 of the Act has occurred and, giving deference to
13 the Board’s expertise in labor policy, there ex-
14 ists a reasonable probability that the purposes
15 of the Act will be frustrated unless temporary
16 relief is granted, or temporary relief is reason-
17 ably necessary to preserve the effectiveness of
18 the remedy or forestall further violations:”.

19 (2) CIVIL PENALTIES.—Section 12 of the Na-
20 tional Labor Relations Act (29 U.S.C. 162) is
21 amended—

22 (A) by striking “**SEC. 12.** Any” and insert-
23 ing the following:

24 “**SEC. 12. PENALTIES.**

25 “(a) CRIMINAL PENALTIES.—Any”; and

1 (B) by adding at the end the following:

2 “(b) CIVIL PENALTIES.—Any employer who engages
3 in a violation of section 8 that results in the discharge
4 of an employee or other serious economic loss, shall, in
5 addition to any remedy ordered, be subject to a civil pen-
6 alty not to exceed \$20,000 for each violation. In deter-
7 mining the amount of any penalty under this subsection,
8 the Board shall consider—

9 “(1) the gravity of the unfair labor practice;

10 “(2) the impact of the unfair labor practice on
11 the charging party, on other persons seeking to exer-
12 cise rights guaranteed by this Act, and on the public
13 interest; and

14 “(3) the size of the employer.”.

15 **Subtitle G—Increasing Job Oppor-**
16 **tunities for Americans With Dis-**
17 **abilities**

18 **SEC. 281. MODIFICATION OF WORK OPPORTUNITY CREDIT.**

19 (a) QUALIFIED DISABILITY INSURANCE RECIPIENTS
20 TREATED AS MEMBERS OF TARGETED GROUPS.—

21 (1) IN GENERAL.—Paragraph (1) of section
22 51(d) of the Internal Revenue Code of 1986 is
23 amended by striking “or” at the end of subpara-
24 graph (H), by striking the period at the end of sub-

1 paragraph (I) and inserting “, or”, and by adding
2 at the end the following new subparagraph:

3 “(J) a qualified disability insurance recipi-
4 ent.”.

5 (2) QUALIFIED DISABILITY INSURANCE RECIPI-
6 ENT DEFINED.—Subsection (d) of section 51 of such
7 Code is amended by adding at the end the following
8 new paragraph:

9 “(15) QUALIFIED DISABILITY INSURANCE RE-
10 CIPIENT.—The term ‘qualified disability insurance
11 recipient’ means any individual who is certified by
12 the local designated agency as receiving disability in-
13 surance benefits under title II of the Social Security
14 Act for any month ending within the 60-day period
15 ending on the hiring date.”.

16 (b) MODIFICATION OF VOCATIONAL REHABILITA-
17 TION REFERRALS.—Section 51(d)(6) of the Internal Rev-
18 enue Code of 1986 is amended by striking subparagraphs
19 (A) and (B) and inserting the following:

20 “(A) having a physical or mental disability
21 which, for such individual, constitutes or results
22 in a substantial impediment to employment,
23 and

1 “(B)(i) having been referred to the em-
2 ployer upon completion of (or while receiving)
3 rehabilitative services pursuant to—

4 “(I) an individualized plan for employ-
5 ment under title I of the Rehabilitation Act
6 of 1973, or

7 “(II) a program of vocational rehabili-
8 tation carried out under chapter 31 of title
9 38, United States Code, or

10 “(III) an individual work plan devel-
11 oped and implemented by an employment
12 network pursuant to subsection (g) of sec-
13 tion 1148 of the Social Security Act with
14 respect to which the requirements of such
15 subsection are met, or

16 “(ii) eligible to receive rehabilitative serv-
17 ices pursuant to a plan described in clause
18 (i)(I) or a program described in clause (i)(II)
19 but not receiving such services.”.

20 (c) INCREASED CREDIT FOR CERTAIN DISABLED
21 WORKERS.—Section 51 of the Internal Revenue Code of
22 1986 is amended by adding at the end the following new
23 subsection:

24 “(l) INCREASED CREDIT FOR CERTAIN DISABLED
25 WORKERS.—

1 “(1) IN GENERAL.—In the case of any qualified
2 disabled worker, subsection (b) shall be applied by
3 substituting—

4 “(A) ‘2-year period’ for ‘1-year period’ in
5 paragraph (2), and

6 “(B) ‘\$30,000’ for ‘\$6,000’ in paragraph
7 (3).

8 “(2) QUALIFIED DISABLED WORKER.—For pur-
9 poses of this subsection, the term ‘qualified disabled
10 worker’ means any individual who is—

11 “(A) a qualified SSI recipient who is cer-
12 tified by the local designated agency as an indi-
13 vidual who is receiving benefits described in
14 subsection (d)(9) as the result of being a blind
15 or disabled individual (as defined in section
16 1614 of the Social Security Act),

17 “(B) a qualified disability insurance recipi-
18 ent, or

19 “(C) a vocational rehabilitation referral.”.

20 (d) EXTENSION OF CREDIT.—Subparagraph (B) of
21 section 51(c)(4) of the Internal Revenue Code of 1986 is
22 amended to read as follows:

23 “(B) after December 31, 2015.”.

1 (e) REPORTING.—Section 51 of the Internal Revenue
2 Code of 1986, as amended by subsection (c), is amended
3 by adding at the end the following new subsection:

4 “(m) REPORTING.—The Secretary of the Treasury
5 shall require each taxpayer which is allowed a credit under
6 this section to report—

7 “(1) the number of employees hired by the tax-
8 payer who are members of a targeted group,

9 “(2) the number of employees hired by the tax-
10 payer who have a disability,

11 “(3) the length of retention of employees who
12 are members of a targeted group, and

13 “(4) such other information as the Secretary
14 may require.”.

15 (f) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to individuals who begin work for
17 an employer after the date of the enactment of this Act.

18 **TITLE III—RESTORING BALANCE**
19 **AND FAIRNESS TO THE TAX**
20 **CODE**

21 **SEC. 300. AMENDMENT OF 1986 CODE.**

22 Except as otherwise expressly provided, whenever in
23 this title an amendment or repeal is expressed in terms
24 of an amendment to, or repeal of, a section or other provi-
25 sion, the reference shall be considered to be made to a

1 section or other provision of the Internal Revenue Code
2 of 1986.

3 **Subtitle A—Instituting the “Buffett**
4 **Rule”**

5 **SEC. 301. FAIR SHARE TAX ON HIGH-INCOME TAXPAYERS.**

6 (a) IN GENERAL.—Subchapter A of chapter 1 is
7 amended by adding at the end the following new part:

8 **“PART VII—FAIR SHARE TAX ON HIGH-INCOME**
9 **TAXPAYERS**

“Sec. 59B. Fair share tax.

10 **“SEC. 59B. FAIR SHARE TAX.**

11 “(a) GENERAL RULE.—

12 “(1) PHASE-IN OF TAX.—In the case of any
13 high-income taxpayer, there is hereby imposed for a
14 taxable year (in addition to any other tax imposed
15 by this subtitle) a tax equal to the product of—

16 “(A) the amount determined under para-
17 graph (2), and

18 “(B) a fraction (not to exceed 1)—

19 “(i) the numerator of which is the ex-
20 cess of—

21 “(I) the taxpayer’s adjusted
22 gross income, over

23 “(II) the dollar amount in effect
24 under subsection (c)(1), and

1 “(ii) the denominator of which is the
2 dollar amount in effect under subsection
3 (c)(1).

4 “(2) AMOUNT OF TAX.—The amount of tax de-
5 termined under this paragraph is an amount equal
6 to the excess (if any) of—

7 “(A) the tentative fair share tax for the
8 taxable year, over

9 “(B) the excess of—

10 “(i) the sum of—

11 “(I) the regular tax liability (as
12 defined in section 26(b)) for the tax-
13 able year,

14 “(II) the tax imposed by section
15 55 for the taxable year, plus

16 “(III) the payroll tax for the tax-
17 able year, over

18 “(ii) the credits allowable under part
19 IV of subchapter A (other than sections
20 27(a), 31, and 34).

21 “(b) TENTATIVE FAIR SHARE TAX.—For purposes
22 of this section—

23 “(1) IN GENERAL.—The tentative fair share tax
24 for the taxable year is 30 percent of the excess of—

1 “(A) the adjusted gross income of the tax-
2 payer, over

3 “(B) the modified charitable contribution
4 deduction for the taxable year.

5 “(2) MODIFIED CHARITABLE CONTRIBUTION
6 DEDUCTION.—For purposes of paragraph (1)—

7 “(A) IN GENERAL.—The modified chari-
8 table contribution deduction for any taxable
9 year is an amount equal to the amount which
10 bears the same ratio to the deduction allowable
11 under section 170 (section 642(c) in the case of
12 a trust or estate) for such taxable year as—

13 “(i) the amount of itemized deduc-
14 tions allowable under the regular tax (as
15 defined in section 55) for such taxable
16 year, determined after the application of
17 section 68, bears to

18 “(ii) such amount, determined before
19 the application of section 68.

20 “(B) TAXPAYER MUST ITEMIZE.—In the
21 case of any individual who does not elect to
22 itemize deductions for the taxable year, the
23 modified charitable contribution deduction shall
24 be zero.

1 “(c) HIGH-INCOME TAXPAYER.—For purposes of this
2 section—

3 “(1) IN GENERAL.—The term ‘high-income tax-
4 payer’ means, with respect to any taxable year, any
5 taxpayer (other than a corporation) with an adjusted
6 gross income for such taxable year in excess of
7 \$1,000,000 (50 percent of such amount in the case
8 of a married individual who files a separate return).

9 “(2) INFLATION ADJUSTMENT.—

10 “(A) IN GENERAL.—In the case of a tax-
11 able year beginning after 2013, the \$1,000,000
12 amount under paragraph (1) shall be increased
13 by an amount equal to—

14 “(i) such dollar amount, multiplied by

15 “(ii) the cost-of-living adjustment de-
16 termined under section 1(f)(3) for the cal-
17 endar year in which the taxable year be-
18 gins, determined by substituting ‘calendar
19 year 2012’ for ‘calendar year 1992’ in sub-
20 paragraph (B) thereof.

21 “(B) ROUNDING.—If any amount as ad-
22 justed under subparagraph (A) is not a multiple
23 of \$10,000, such amount shall be rounded to
24 the next lowest multiple of \$10,000.

1 “(d) PAYROLL TAX.—For purposes of this section,
2 the payroll tax for any taxable year is an amount equal
3 to the excess of—

4 “(1) the taxes imposed on the taxpayer under
5 sections 1401, 1411, 3101, 3201, and 3211(a) (to
6 the extent such taxes are attributable to the rate of
7 tax in effect under section 3101) with respect to
8 such taxable year or wages or compensation received
9 during the taxable year, over

10 “(2) the deduction allowable under section
11 164(f) for such taxable year.

12 “(e) SPECIAL RULE FOR ESTATES AND TRUSTS.—
13 For purposes of this section, in the case of an estate or
14 trust, adjusted gross income shall be computed in the
15 manner described in section 67(e).

16 “(f) NOT TREATED AS TAX IMPOSED BY THIS CHAP-
17 TER FOR CERTAIN PURPOSES.—The tax imposed under
18 this section shall not be treated as tax imposed by this
19 chapter for purposes of determining the amount of any
20 credit under this chapter (other than the credit allowed
21 under section 27(a)) or for purposes of section 55.”.

22 (b) CONFORMING AMENDMENT.—Section 26(b)(2) is
23 amended by redesignating subparagraphs (C) through (X)
24 as subparagraphs (D) through (Y), respectively, and by

1 inserting after subparagraph (B) the following new sub-
2 paragraph:

3 “(C) section 59B (relating to fair share
4 tax),”.

5 (c) CLERICAL AMENDMENT.—The table of parts for
6 subchapter A of chapter 1 is amended by adding at the
7 end the following new item:

 “PART VII—FAIR SHARE TAX ON HIGH-INCOME TAXPAYERS”.

8 (d) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to taxable years beginning after
10 December 31, 2012.

11 **Subtitle B—Adopting a Wall Street** 12 **Trading and Speculators Tax**

13 **SEC. 311. TRANSACTION TAX.**

14 (a) IN GENERAL.—Chapter 36 is amended by insert-
15 ing after subchapter B the following new subchapter:

16 **“Subchapter C—Tax on Trading Transactions**

 “Sec. 4475. Tax on trading transactions.

17 **“SEC. 4475. TAX ON TRADING TRANSACTIONS.**

18 “(a) IMPOSITION OF TAX.—There is hereby imposed
19 a tax on each covered transaction with respect to any secu-
20 rity.

21 “(b) RATE OF TAX.—The tax imposed under sub-
22 section (a) with respect to any covered transaction shall
23 be 0.03 percent of the specified base amount with respect
24 to such covered transaction.

1 “(c) SPECIFIED BASE AMOUNT.—For purposes of
2 this section, the term ‘specified base amount’ means—

3 “(1) except as provided in paragraph (2), the
4 fair market value of the security (determined as of
5 the time of the covered transaction), and

6 “(2) in the case of any payment described in
7 subsection (h), the amount of such payment.

8 “(d) COVERED TRANSACTION.—For purposes of this
9 section, the term ‘covered transaction’ means—

10 “(1) except as provided in paragraph (2), any
11 purchase if—

12 “(A) such purchase occurs or is cleared on
13 a facility located in the United States, or

14 “(B) the purchaser or seller is a United
15 States person, and

16 “(2) any transaction with respect to a security
17 described in subparagraph (D), (E), or (F) of sub-
18 section (e)(1), if—

19 “(A) such security is traded or cleared on
20 a facility located in the United States, or

21 “(B) any party with rights under such se-
22 curity is a United States person.

23 “(e) SECURITY AND OTHER DEFINITIONS.—For pur-
24 poses of this section—

1 “(1) IN GENERAL.—The term ‘security’
2 means—

3 “(A) any share of stock in a corporation,

4 “(B) any partnership or beneficial owner-
5 ship interest in a partnership or trust,

6 “(C) any note, bond, debenture, or other
7 evidence of indebtedness,

8 “(D) any evidence of an interest in, or a
9 derivative financial instrument with respect to,
10 any security or securities described in subpara-
11 graph (A), (B), or (C),

12 “(E) any derivative financial instrument
13 with respect to any currency or commodity, and

14 “(F) any other derivative financial instru-
15 ment any payment with respect to which is cal-
16 culated by reference to any specified index.

17 “(2) DERIVATIVE FINANCIAL INSTRUMENT.—
18 The term ‘derivative financial instrument’ includes
19 any option, forward contract, futures contract, no-
20 tional principal contract, or any similar financial in-
21 strument.

22 “(3) SPECIFIED INDEX.—The term ‘specified
23 index’ means any 1 or more of any combination of—

24 “(A) a fixed rate, price, or amount, or

25 “(B) a variable rate, price, or amount,

1 which is based on any current objectively deter-
2 minable information which is not within the control
3 of any of the parties to the contract or instrument
4 and is not unique to any of the parties' cir-
5 cumstances.

6 “(4) TREATMENT OF EXCHANGES.—

7 “(A) IN GENERAL.—An exchange shall be
8 treated as the sale of the property transferred
9 and a purchase of the property received by each
10 party to the exchange.

11 “(B) CERTAIN DEEMED EXCHANGES.—In
12 the case of a distribution treated as an ex-
13 change for stock under section 302 or 331, the
14 corporation making such distribution shall be
15 treated as having purchased such stock for pur-
16 poses of this section.

17 “(f) EXCEPTIONS.—

18 “(1) EXCEPTION FOR INITIAL ISSUES.—No tax
19 shall be imposed under subsection (a) on any cov-
20 ered transaction with respect to the initial issuance
21 of any security described in subparagraph (A), (B),
22 or (C) of subsection (e)(1).

23 “(2) EXCEPTION FOR CERTAIN TRADED SHORT-
24 TERM INDEBTEDNESS.—A note, bond, debenture, or
25 other evidence of indebtedness which—

1 “(A) is traded on a trading facility located
2 in the United States, and

3 “(B) has a fixed maturity of not more
4 than 100 days,
5 shall not be treated as described in subsection
6 (e)(1)(C).

7 “(3) EXCEPTION FOR SECURITIES LENDING AR-
8 RANGEMENTS.—No tax shall be imposed under sub-
9 section (a) on any covered transaction with respect
10 to which gain or loss is not recognized by reason of
11 section 1058.

12 “(g) BY WHOM PAID.—

13 “(1) IN GENERAL.—The tax imposed by this
14 section shall be paid by—

15 “(A) in the case of a transaction which oc-
16 curs or is cleared on a facility located in the
17 United States, such facility, and

18 “(B) in the case of a purchase not de-
19 scribed in subparagraph (A) which is executed
20 by a broker (as defined in section 6045(c)(1))
21 which is a United States person, such broker.

22 “(2) SPECIAL RULES FOR DIRECT, ETC.,
23 TRANSACTIONS.—In the case of any transaction to
24 which paragraph (1) does not apply, the tax imposed
25 by this section shall be paid by—

1 “(A) in the case of a transaction described
2 in subsection (d)(1)—

3 “(i) the purchaser if the purchaser is
4 a United States person, and

5 “(ii) the seller if the purchaser is not
6 a United States person, and

7 “(B) in the case of a transaction described
8 in subsection (d)(2)—

9 “(i) the payor if the payor is a United
10 States person, and

11 “(ii) the payee if the payor is not a
12 United States person.

13 “(h) CERTAIN PAYMENTS TREATED AS SEPARATE
14 TRANSACTIONS.—Except as otherwise provided by the
15 Secretary, any payment with respect to a security de-
16 scribed in subparagraph (D), (E), or (F) of subsection
17 (e)(1) shall be treated as a separate transaction for pur-
18 poses of this section, including—

19 “(1) any net initial payment, net final or termi-
20 nating payment, or net periodical payment with re-
21 spect to a notional principal contract (or similar fi-
22 nancial instrument),

23 “(2) any payment with respect to any forward
24 contract (or similar financial instrument), and

1 “(3) any premium paid with respect to any op-
2 tion (or similar financial instrument).

3 “(i) ADMINISTRATION.—The Secretary shall carry
4 out this section in consultation with the Securities and Ex-
5 change Commission and the Commodity Futures Trading
6 Commission.

7 “(j) GUIDANCE; REGULATIONS.—The Secretary
8 shall—

9 “(1) provide guidance regarding such informa-
10 tion reporting concerning covered transactions as the
11 Secretary deems appropriate, and

12 “(2) prescribe such regulations as are necessary
13 or appropriate to prevent avoidance of the purposes
14 of this section, including the use of non-United
15 States persons in such transactions.”.

16 (b) CLERICAL AMENDMENT.—The table of sub-
17 chapters for chapter 36 is amended by inserting after the
18 item relating to subchapter B the following new item:

 “Subchapter C. Tax on trading transactions.”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to transactions after December 31,
21 2012.

1 **Subtitle C—Ending Tax Breaks for**
 2 **Companies That Ship Jobs**
 3 **Overseas**

4 **SEC. 321. ALLOCATION OF EXPENSES AND TAXES ON BASIS**
 5 **OF REPATRIATION OF FOREIGN INCOME.**

6 (a) IN GENERAL.—Part III of subchapter N of chap-
 7 ter 1 is amended by inserting after subpart G the following
 8 new subpart:

9 **“Subpart H—Special Rules for Allocation of Foreign-**
 10 **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.

11 **“SEC. 975. DEDUCTIONS ALLOCATED TO DEFERRED FOR-**
 12 **EIGN INCOME MAY NOT OFFSET UNITED**
 13 **STATES SOURCE INCOME.**

14 “(a) CURRENT YEAR DEDUCTIONS.—For purposes
 15 of this chapter, foreign-related deductions for any taxable
 16 year—

17 “(1) shall be taken into account for such tax-
 18 able year only to the extent that such deductions are
 19 allocable to currently-taxed foreign income, and

20 “(2) to the extent not so allowed, shall be taken
 21 into account in subsequent taxable years as provided
 22 in subsection (b).

1 Foreign-related deductions shall be allocated to currently-
2 taxed foreign income in the same proportion which cur-
3 rently-taxed foreign income bears to the sum of currently-
4 taxed foreign income and deferred foreign income.

5 “(b) DEDUCTIONS RELATED TO REPATRIATED DE-
6 FERRED FOREIGN INCOME.—

7 “(1) IN GENERAL.—If there is repatriated for-
8 eign income for a taxable year, the portion of the
9 previously deferred deductions allocated to the repa-
10 triated foreign income shall be taken into account
11 for the taxable year as a deduction allocated to in-
12 come from sources outside the United States. Any
13 such amount shall not be included in foreign-related
14 deductions for purposes of applying subsection (a) to
15 such taxable year.

16 “(2) PORTION OF PREVIOUSLY DEFERRED DE-
17 Ductions.—For purposes of paragraph (1), the por-
18 tion of the previously deferred deductions allocated
19 to repatriated foreign income is—

20 “(A) the amount which bears the same
21 proportion to such deductions, as

22 “(B) the repatriated income bears to the
23 previously deferred foreign income.

24 “(c) DEFINITIONS AND SPECIAL RULE.—For pur-
25 poses of this section—

1 “(1) FOREIGN-RELATED DEDUCTIONS.—The
2 term ‘foreign-related deductions’ means the total
3 amount of deductions and expenses which would be
4 allocated or apportioned to gross income from
5 sources without the United States for the taxable
6 year if both the currently-taxed foreign income and
7 deferred foreign income were taken into account.

8 “(2) CURRENTLY-TAXED FOREIGN INCOME.—
9 The term ‘currently-taxed foreign income’ means the
10 amount of gross income from sources without the
11 United States for the taxable year (determined with-
12 out regard to repatriated foreign income for such
13 year).

14 “(3) DEFERRED FOREIGN INCOME.—The term
15 ‘deferred foreign income’ means the excess of—

16 “(A) the amount that would be includible
17 in gross income under subpart F of this part
18 for the taxable year if—

19 “(i) all controlled foreign corporations
20 were treated as one controlled foreign cor-
21 poration, and

22 “(ii) all earnings and profits of all
23 controlled foreign corporations were sub-
24 part F income (as defined in section 952),
25 over

1 “(B) the sum of—

2 “(i) all dividends received during the
3 taxable year from controlled foreign cor-
4 porations, plus

5 “(ii) amounts includible in gross in-
6 come under section 951(a).

7 “(4) PREVIOUSLY DEFERRED FOREIGN IN-
8 COME.—The term ‘previously deferred foreign in-
9 come’ means the aggregate amount of deferred for-
10 eign income for all prior taxable years to which this
11 part applies, determined as of the beginning of the
12 taxable year, reduced by the repatriated foreign in-
13 come for all such prior taxable years.

14 “(5) REPATRIATED FOREIGN INCOME.—The
15 term ‘repatriated foreign income’ means the amount
16 included in gross income on account of distributions
17 out of previously deferred foreign income.

18 “(6) PREVIOUSLY DEFERRED DEDUCTIONS.—
19 The term ‘previously deferred deductions’ means the
20 aggregate amount of foreign-related deductions not
21 taken into account under subsection (a) for all prior
22 taxable years (determined as of the beginning of the
23 taxable year), reduced by any amounts taken into
24 account under subsection (b) for such prior taxable
25 years.

1 “(7) TREATMENT OF CERTAIN FOREIGN
2 TAXES.—

3 “(A) PAID BY CONTROLLED FOREIGN COR-
4 PORATION.—Section 78 shall not apply for pur-
5 poses of determining currently-taxed foreign in-
6 come and deferred foreign income.

7 “(B) PAID BY TAXPAYER.—For purposes
8 of determining currently-taxed foreign income,
9 gross income from sources without the United
10 States shall be reduced by the aggregate
11 amount of taxes described in the applicable
12 paragraph of section 901(b) which are paid by
13 the taxpayer (without regard to sections 902
14 and 960) during the taxable year.

15 “(8) COORDINATION WITH SECTION 976.—In
16 determining currently-taxed foreign income and de-
17 ferred foreign income, the amount of deemed foreign
18 tax credits shall be determined with regard to sec-
19 tion 976.

20 **“SEC. 976. AMOUNT OF FOREIGN TAXES COMPUTED ON**
21 **OVERALL BASIS.**

22 “(a) CURRENT YEAR ALLOWANCE.—For purposes of
23 this chapter, the amount taken into account as foreign in-
24 come taxes for any taxable year shall be an amount which

1 bears the same ratio to the total foreign income taxes for
2 that taxable year as—

3 “(1) the currently-taxed foreign income for such
4 taxable year, bears to

5 “(2) the sum of the currently-taxed foreign in-
6 come and deferred foreign income for such year.

7 The portion of the total foreign income taxes for any tax-
8 able year not taken into account under the preceding sen-
9 tence for a taxable year shall only be taken into account
10 as provided in subsection (b) (and shall not be taken into
11 account for purposes of applying sections 902 and 960).

12 “(b) ALLOWANCE RELATED TO REPATRIATED DE-
13 FERRED FOREIGN INCOME.—

14 “(1) IN GENERAL.—If there is repatriated for-
15 eign income for any taxable year, the portion of the
16 previously deferred foreign income taxes paid or ac-
17 crued during such taxable year shall be taken into
18 account for the taxable year as foreign taxes paid or
19 accrued. Any such taxes so taken into account shall
20 not be included in foreign income taxes for purposes
21 of applying subsection (a) to such taxable year.

22 “(2) PORTION OF PREVIOUSLY DEFERRED FOR-
23 EIGN INCOME TAXES.—For purposes of paragraph
24 (1), the portion of the previously deferred foreign in-

1 come taxes allocated to repatriated deferred foreign
2 income is—

3 “(A) the amount which bears the same
4 proportion to such taxes, as

5 “(B) the repatriated deferred income bears
6 to the previously deferred foreign income.

7 “(c) DEFINITIONS AND SPECIAL RULE.—For pur-
8 poses of this section—

9 “(1) PREVIOUSLY DEFERRED FOREIGN INCOME
10 TAXES.—The term ‘previously deferred foreign in-
11 come taxes’ means the aggregate amount of total
12 foreign income taxes not taken into account under
13 subsection (a) for all prior taxable years (determined
14 as of the beginning of the taxable year), reduced by
15 any amounts taken into account under subsection
16 (b) for such prior taxable years.

17 “(2) TOTAL FOREIGN INCOME TAXES.—The
18 term ‘total foreign income taxes’ means the sum of
19 foreign income taxes paid or accrued during the tax-
20 able year (determined without regard to section
21 904(c)) plus the increase in foreign income taxes
22 that would be paid or accrued during the taxable
23 year under sections 902 and 960 if—

1 “(A) all controlled foreign corporations
2 were treated as one controlled foreign corpora-
3 tion, and

4 “(B) all earnings and profits of all con-
5 trolled foreign corporations were subpart F in-
6 come (as defined in section 952).

7 “(3) FOREIGN INCOME TAXES.—The term ‘for-
8 eign income taxes’ means any income, war profits, or
9 excess profits taxes paid by the taxpayer to any for-
10 eign country or possession of the United States.

11 “(4) CURRENTLY-TAXED FOREIGN INCOME AND
12 DEFERRED FOREIGN INCOME.—The terms ‘cur-
13 rently-taxed foreign income’ and ‘deferred foreign in-
14 come’ have the meanings given such terms by sec-
15 tion 975(c).

16 **“SEC. 977. APPLICATION OF SUBPART.**

17 “‘This subpart—

18 “(1) shall be applied before subpart A, and

19 “(2) shall be applied separately with respect to
20 the categories of income specified in section
21 904(d)(1).”.

22 (b) CLERICAL AMENDMENT.—The table of subparts
23 for part III of subpart N of chapter 1 is amended by in-
24 serting after the item relating to subpart G the following
25 new item:

“SUBPART H. SPECIAL RULES FOR ALLOCATION OF FOREIGN-RELATED DEDUCTIONS AND FOREIGN TAX CREDITS.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2012.

4 **SEC. 322. EXCESS INCOME FROM TRANSFERS OF INTANGI-**
5 **BLES TO LOW-TAXED AFFILIATES TREATED**
6 **AS SUBPART F INCOME.**

7 (a) IN GENERAL.—Subsection (a) of section 954 is
8 amended by inserting after paragraph (3) the following
9 new paragraph:

10 “(4) the foreign base company excess intangible
11 income for the taxable year (determined under sub-
12 section (f) and reduced as provided in subsection
13 (b)(5)), and”.

14 (b) FOREIGN BASE COMPANY EXCESS INTANGIBLE
15 INCOME.—Section 954 is amended by inserting after sub-
16 section (e) the following new subsection:

17 “(f) FOREIGN BASE COMPANY EXCESS INTANGIBLE
18 INCOME.—For purposes of subsection (a)(4) and this sub-
19 section:

20 “(1) FOREIGN BASE COMPANY EXCESS INTAN-
21 GIBLE INCOME DEFINED.—

22 “(A) IN GENERAL.—The term ‘foreign
23 base company excess intangible income’ means,

1 with respect to any covered intangible, the ex-
2 cess of—

3 “(i) the sum of—

4 “(I) gross income from the sale,
5 lease, license, or other disposition of
6 property in which such covered intan-
7 gible is used directly or indirectly, and

8 “(II) gross income from the pro-
9 vision of services related to such cov-
10 ered intangible or in connection with
11 property in which such covered intan-
12 gible is used directly or indirectly,
13 over

14 “(ii) 150 percent of the costs properly
15 allocated and apportioned to the gross in-
16 come taken into account under clause (i)
17 other than expenses for interest and taxes
18 and any expenses which are not directly al-
19 locable to such gross income.

20 “(B) SAME COUNTRY INCOME NOT TAKEN
21 INTO ACCOUNT.—If—

22 “(i) the sale, lease, license, or other
23 disposition of the property referred to in
24 subparagraph (A)(i)(I) is for use, con-
25 sumption, or disposition in the country

1 under the laws of which the controlled for-
2 eign corporation is created or organized, or

3 “(ii) the services referred to in sub-
4 paragraph (A)(i)(II) are performed in such
5 country,

6 the gross income from such sale, lease, license,
7 or other disposition, or provision of services,
8 shall not be taken into account under subpara-
9 graph (A)(i).

10 “(C) SPECIAL RULE FOR RESEARCH AND
11 DEVELOPMENT EXPENSES.—Research and de-
12 velopment costs for any taxable year shall be
13 treated for purposes of subparagraph (A) as
14 properly allocable to gross income derived from
15 a covered intangible if such costs are properly
16 allocable to the line of business in which such
17 gross income is earned.

18 “(2) EXCEPTION BASED ON EFFECTIVE FOR-
19 EIGN INCOME TAX RATE.—

20 “(A) IN GENERAL.—Foreign base company
21 excess intangible income shall not include the
22 applicable percentage of any item of income re-
23 ceived by a controlled foreign corporation if the
24 taxpayer establishes to the satisfaction of the
25 Secretary that such income was subject to an

1 effective rate of income tax imposed by a for-
2 eign country in excess of 10 percent.

3 “(B) APPLICABLE PERCENTAGE.—For
4 purposes of subparagraph (A), the term ‘appli-
5 cable percentage’ means the ratio (expressed as
6 a percentage), not greater than 100 percent,
7 of—

8 “(i) the number of percentage points
9 by which the effective rate of income tax
10 referred to in subparagraph (A) exceeds 10
11 percentage points, over

12 “(ii) 5 percentage points.

13 “(C) TREATMENT OF LOSSES IN DETER-
14 MINING EFFECTIVE RATE OF FOREIGN INCOME
15 TAX.—For purposes of determining the effective
16 rate of income tax imposed by any foreign
17 country—

18 “(i) such effective rate shall be deter-
19 mined without regard to any losses carried
20 to the relevant taxable year, and

21 “(ii) to the extent the income with re-
22 spect to such intangible reduces losses in
23 the relevant taxable year, such effective
24 rate shall be treated as being the effective

1 rate which would have been imposed on
2 such income without regard to such losses.

3 “(3) COVERED INTANGIBLE.—The term ‘cov-
4 ered intangible’ means, with respect to any con-
5 trolled foreign corporation, any intangible property
6 (as defined in section 936(h)(3)(B))—

7 “(A) which is sold, leased, licensed, or oth-
8 erwise transferred (directly or indirectly) to
9 such controlled foreign corporation from a
10 United States related person, or

11 “(B) with respect to which such controlled
12 foreign corporation and one or more related
13 persons has (directly or indirectly) entered into
14 any shared risk or development agreement (in-
15 cluding any cost sharing agreement).

16 “(4) RELATED PERSON.—The term ‘related
17 person’ has the meaning given such term in sub-
18 section (d)(3).”.

19 (c) CONFORMING AMENDMENTS.—

20 (1) Paragraph (4) of section 954(b) is amended
21 by inserting “foreign base company excess intangible
22 income described in subsection (a)(4) or” before
23 “foreign base company oil-related income” in the
24 last sentence thereof.

1 (2) Paragraph (5) of section 954(b) is amended
2 by inserting “the foreign base company excess intan-
3 gible income,” before “and the foreign base company
4 oil related income”.

5 (3) Subsection (b) of section 954 is amended by
6 adding at the end the following new paragraph:

7 “(7) FOREIGN BASE COMPANY EXCESS INTAN-
8 GIBLE INCOME NOT TREATED AS ANOTHER KIND OF
9 BASE COMPANY INCOME.—Income of a corporation
10 which is foreign base company excess intangible in-
11 come shall not be considered foreign base company
12 income of such corporation under paragraph (2),
13 (3), or (5) of subsection (a).”.

14 (d) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to income from transactions con-
16 nected with or benefitting from covered intangibles in tax-
17 able years beginning on or after January 1, 2013.

18 **SEC. 323. MODIFICATIONS OF FOREIGN TAX CREDIT RULES**

19 **APPLICABLE TO DUAL CAPACITY TAXPAYERS.**

20 (a) IN GENERAL.—Section 901 is amended by redesh-
21 ignating subsection (n) as subsection (o) and by inserting
22 after subsection (m) the following new subsection:

23 “(n) SPECIAL RULES RELATING TO DUAL CAPACITY
24 TAXPAYERS.—

1 “(1) GENERAL RULE.—Notwithstanding any
2 other provision of this chapter, any amount paid or
3 accrued by a dual capacity taxpayer or any member
4 of the worldwide affiliated group of which such dual
5 capacity taxpayer is also a member to any foreign
6 country or to any possession of the United States
7 for any period shall not be considered a tax to the
8 extent such amount exceeds the amount (determined
9 in accordance with regulations) which would have
10 been required to be paid if the taxpayer were not a
11 dual capacity taxpayer.

12 “(2) DUAL CAPACITY TAXPAYER.—For pur-
13 poses of this subsection, the term ‘dual capacity tax-
14 payer’ means, with respect to any foreign country or
15 possession of the United States, a person who—

16 “(A) is subject to a levy of such country or
17 possession, and

18 “(B) receives (or will receive) directly or
19 indirectly a specific economic benefit (as deter-
20 mined in accordance with regulations) from
21 such country or possession.

22 “(3) REGULATIONS.—The Secretary may issue
23 such regulations or other guidance as is necessary or
24 appropriate to carry out the purposes of this sub-
25 section.”.

1 (b) CONTRARY TREATY OBLIGATIONS UPHELD.—
2 The amendments made by this section shall not apply to
3 the extent contrary to any treaty obligation of the United
4 States.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to amounts that, if such amounts
7 were an amount of tax paid or accrued, would be consid-
8 ered paid or accrued in taxable years beginning after De-
9 cember 31, 2012.

10 **Subtitle D—Making Wall Street** 11 **Take Responsibility**

12 **SEC. 331. FINANCIAL CRISIS RESPONSIBILITY FEE.**

13 (a) AMOUNT TO BE COLLECTED.—In order to cover
14 the costs to the Federal Government of assistance pro-
15 vided through the Emergency Economic Stabilization Act
16 of 2008, including the Troubled Asset Relief Program, the
17 Secretary of the Treasury, during the 10-year period be-
18 ginning on the first day of fiscal year 2013 and continuing
19 through the end of fiscal year 2022, shall assess a Finan-
20 cial Crisis Responsibility Fee to collect a total of
21 \$65,000,000,000.

22 (b) ASSESSMENT AND SCHEDULE.—To collect the
23 Financial Crisis Responsibility Fee, the Secretary of the
24 Treasury shall establish, by regulation, an assessment

1 schedule by fiscal year, including assessment base and
2 rates, that—

3 (1) is designed, in the judgment of the Sec-
4 retary of the Treasury, to result in the collection of
5 \$65,000,000,000; and

6 (2) shall apply to any financial institution with
7 \$50,000,000,000 or more in total consolidated assets
8 that received taxpayer assistance under the Emer-
9 gency Economic Stabilization Act of 2008, including
10 the Troubled Asset Relief Program.

11 (c) CONSIDERATION OF ECONOMIC RECOVERY.—To
12 minimize any adverse impact to, and to promote the full
13 recovery of, the economy and financial sector, the Sec-
14 retary of the Treasury shall phase in the assessment rate
15 required under this part over the 10-year period described
16 in subsection (a), in a manner determined by the Sec-
17 retary of the Treasury.

18 **Subtitle E—Closing the Carried**
19 **Interest Loophole**

20 **SEC. 341. PARTNERSHIP INTERESTS TRANSFERRED IN**
21 **CONNECTION WITH PERFORMANCE OF SERV-**
22 **ICES.**

23 (a) MODIFICATION TO ELECTION TO INCLUDE PART-
24 NERSHIP INTEREST IN GROSS INCOME IN YEAR OF
25 TRANSFER.—Subsection (c) of section 83 is amended by

1 redesignating paragraph (4) as paragraph (5) and by in-
2 serting after paragraph (3) the following new paragraph:

3 “(4) PARTNERSHIP INTERESTS.—Except as
4 provided by the Secretary—

5 “(A) IN GENERAL.—In the case of any
6 transfer of an interest in a partnership in con-
7 nection with the provision of services to (or for
8 the benefit of) such partnership—

9 “(i) the fair market value of such in-
10 terest shall be treated for purposes of this
11 section as being equal to the amount of the
12 distribution which the partner would re-
13 ceive if the partnership sold (at the time of
14 the transfer) all of its assets at fair market
15 value and distributed the proceeds of such
16 sale (reduced by the liabilities of the part-
17 nership) to its partners in liquidation of
18 the partnership, and

19 “(ii) the person receiving such interest
20 shall be treated as having made the elec-
21 tion under subsection (b)(1) unless such
22 person makes an election under this para-
23 graph to have such subsection not apply.

1 “(B) ELECTION.—The election under sub-
 2 paragraph (A)(ii) shall be made under rules
 3 similar to the rules of subsection (b)(2).”.

4 (b) EFFECTIVE DATE.—The amendments made by
 5 this section shall apply to interests in partnerships trans-
 6 ferred after the date of the enactment of this Act.

7 **SEC. 342. SPECIAL RULES FOR PARTNERS PROVIDING IN-**
 8 **VESTMENT MANAGEMENT SERVICES TO**
 9 **PARTNERSHIPS.**

10 (a) IN GENERAL.—Part I of subchapter K of chapter
 11 1 is amended by adding at the end the following new sec-
 12 tion:

13 **“SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING IN-**
 14 **VESTMENT MANAGEMENT SERVICES TO**
 15 **PARTNERSHIPS.**

16 “(a) TREATMENT OF DISTRIBUTIVE SHARE OF
 17 PARTNERSHIP ITEMS.—For purposes of this title, in the
 18 case of an investment services partnership interest—

19 “(1) IN GENERAL.—Notwithstanding section
 20 702(b)—

21 “(A) an amount equal to the net capital
 22 gain with respect to such interest for any part-
 23 nership taxable year shall be treated as ordi-
 24 nary income, and

1 “(B) subject to the limitation of paragraph
2 (2), an amount equal to the net capital loss
3 with respect to such interest for any partner-
4 ship taxable year shall be treated as an ordi-
5 nary loss.

6 “(2) RECHARACTERIZATION OF LOSSES LIM-
7 ITED TO RECHARACTERIZED GAINS.—The amount
8 treated as ordinary loss under paragraph (1)(B) for
9 any taxable year shall not exceed the excess (if any)
10 of—

11 “(A) the aggregate amount treated as ordi-
12 nary income under paragraph (1)(A) with re-
13 spect to the investment services partnership in-
14 terest for all preceding partnership taxable
15 years to which this section applies, over

16 “(B) the aggregate amount treated as or-
17 dinary loss under paragraph (1)(B) with re-
18 spect to such interest for all preceding partner-
19 ship taxable years to which this section applies.

20 “(3) ALLOCATION TO ITEMS OF GAIN AND
21 LOSS.—

22 “(A) NET CAPITAL GAIN.—The amount
23 treated as ordinary income under paragraph
24 (1)(A) shall be allocated ratably among the

1 items of long-term capital gain taken into ac-
2 count in determining such net capital gain.

3 “(B) NET CAPITAL LOSS.—The amount
4 treated as ordinary loss under paragraph (1)(B)
5 shall be allocated ratably among the items of
6 long-term capital loss and short-term capital
7 loss taken into account in determining such net
8 capital loss.

9 “(4) TERMS RELATING TO CAPITAL GAINS AND
10 LOSSES.—For purposes of this section—

11 “(A) IN GENERAL.—Net capital gain, long-
12 term capital gain, and long-term capital loss,
13 with respect to any investment services partner-
14 ship interest for any taxable year, shall be de-
15 termined under section 1222, except that such
16 section shall be applied—

17 “(i) without regard to the recharacter-
18 ization of any item as ordinary income or
19 ordinary loss under this section,

20 “(ii) by only taking into account items
21 of gain and loss taken into account by the
22 holder of such interest under section 702
23 with respect to such interest for such tax-
24 able year, and

1 “(iii) by treating property which is
2 taken into account in determining gains
3 and losses to which section 1231 applies as
4 capital assets held for more than 1 year.

5 “(B) NET CAPITAL LOSS.—The term ‘net
6 capital loss’ means the excess of the losses from
7 sales or exchanges of capital assets over the
8 gains from such sales or exchanges. Rules simi-
9 lar to the rules of clauses (i) through (iii) of
10 subparagraph (A) shall apply for purposes of
11 the preceding sentence.

12 “(5) SPECIAL RULES FOR DIVIDENDS.—

13 “(A) INDIVIDUALS.—Any dividend allo-
14 cated to any investment services partnership in-
15 terest shall not be treated as qualified dividend
16 income for purposes of section 1(h).

17 “(B) CORPORATIONS.—No deduction shall
18 be allowed under section 243 or 245 with re-
19 spect to any dividend allocated to any invest-
20 ment services partnership interest.

21 “(6) SPECIAL RULE FOR QUALIFIED SMALL
22 BUSINESS STOCK.—Section 1202 shall not apply to
23 any gain from the sale or exchange of qualified small
24 business stock (as defined in section 1202(c)) allo-

1 cated with respect to any investment services part-
2 nership interest.

3 “(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—

4 “(1) GAIN.—

5 “(A) IN GENERAL.—Any gain on the dis-
6 position of an investment services partnership
7 interest shall be—

8 “(i) treated as ordinary income, and

9 “(ii) recognized notwithstanding any
10 other provision of this subtitle.

11 “(B) GIFT AND TRANSFERS AT DEATH.—

12 In the case of a disposition of an investment
13 services partnership interest by gift or by rea-
14 son of death of the taxpayer—

15 “(i) subparagraph (A) shall not apply,

16 “(ii) such interest shall be treated as
17 an investment services partnership interest
18 in the hands of the person acquiring such
19 interest, and

20 “(iii) any amount that would have
21 been treated as ordinary income under this
22 subsection had the decedent sold such in-
23 terest immediately before death shall be
24 treated as an item of income in respect of
25 a decedent under section 691.

1 “(2) LOSS.—Any loss on the disposition of an
2 investment services partnership interest shall be
3 treated as an ordinary loss to the extent of the ex-
4 cess (if any) of—

5 “(A) the aggregate amount treated as ordi-
6 nary income under subsection (a) with respect
7 to such interest for all partnership taxable
8 years to which this section applies, over

9 “(B) the aggregate amount treated as or-
10 dinary loss under subsection (a) with respect to
11 such interest for all partnership taxable years
12 to which this section applies.

13 “(3) ELECTION WITH RESPECT TO CERTAIN EX-
14 CHANGES.—Paragraph (1)(A)(ii) shall not apply to
15 the contribution of an investment services partner-
16 ship interest to a partnership in exchange for an in-
17 terest in such partnership if—

18 “(A) the taxpayer makes an irrevocable
19 election to treat the partnership interest re-
20 ceived in the exchange as an investment serv-
21 ices partnership interest, and

22 “(B) the taxpayer agrees to comply with
23 such reporting and recordkeeping requirements
24 as the Secretary may prescribe.

1 “(4) DISTRIBUTIONS OF PARTNERSHIP PROP-
2 ERTY.—

3 “(A) IN GENERAL.—In the case of any dis-
4 tribution of property by a partnership with re-
5 spect to any investment services partnership in-
6 terest held by a partner, the partner receiving
7 such property shall recognize gain equal to the
8 excess (if any) of—

9 “(i) the fair market value of such
10 property at the time of such distribution,
11 over

12 “(ii) the adjusted basis of such prop-
13 erty in the hands of such partner (deter-
14 mined without regard to subparagraph
15 (C)).

16 “(B) TREATMENT OF GAIN AS ORDINARY
17 INCOME.—Any gain recognized by such partner
18 under subparagraph (A) shall be treated as or-
19 dinary income to the same extent and in the
20 same manner as the increase in such partner’s
21 distributive share of the taxable income of the
22 partnership would be treated under subsection
23 (a) if, immediately prior to the distribution, the
24 partnership had sold the distributed property at
25 fair market value and all of the gain from such

1 disposition were allocated to such partner. For
2 purposes of applying subsection (a)(2), any gain
3 treated as ordinary income under this subpara-
4 graph shall be treated as an amount treated as
5 ordinary income under subsection (a)(1)(A).

6 “(C) ADJUSTMENT OF BASIS.—In the case
7 a distribution to which subparagraph (A) ap-
8 plies, the basis of the distributed property in
9 the hands of the distributee partner shall be the
10 fair market value of such property.

11 “(D) SPECIAL RULES WITH RESPECT TO
12 MERGERS, DIVISIONS, AND TECHNICAL TERMI-
13 NATIONS.—In the case of a taxpayer which sat-
14 isfies requirements similar to the requirements
15 of subparagraphs (A) and (B) of paragraph (3),
16 this paragraph and paragraph (1)(A)(ii) shall
17 not apply to the distribution of a partnership
18 interest if such distribution is in connection
19 with a contribution (or deemed contribution) of
20 any property of the partnership to which sec-
21 tion 721 applies pursuant to a transaction de-
22 scribed in paragraph (1)(B) or (2) of section
23 708(b).

24 “(e) INVESTMENT SERVICES PARTNERSHIP INTER-
25 EST.—For purposes of this section—

1 “(1) IN GENERAL.—The term ‘investment serv-
2 ices partnership interest’ means any interest in an
3 investment partnership acquired or held by any per-
4 son in connection with the conduct of a trade or
5 business described in paragraph (2) by such person
6 (or any person related to such person). An interest
7 in an investment partnership held by any person—

8 “(A) shall not be treated as an investment
9 services partnership interest for any period be-
10 fore the first date on which it is so held in con-
11 nection with such a trade or business,

12 “(B) shall not cease to be an investment
13 services partnership interest merely because
14 such person holds such interest other than in
15 connection with such a trade or business, and

16 “(C) shall be treated as an investment
17 services partnership interest if acquired from a
18 related person in whose hands such interest was
19 an investment services partnership interest.

20 “(2) BUSINESSES TO WHICH THIS SECTION AP-
21 PLIES.—A trade or business is described in this
22 paragraph if such trade or business primarily in-
23 volves the performance of any of the following serv-
24 ices with respect to assets held (directly or indi-

1 rectly) by the investment partnership referred to in
2 paragraph (1):

3 “(A) Advising as to the advisability of in-
4 vesting in, purchasing, or selling any specified
5 asset.

6 “(B) Managing, acquiring, or disposing of
7 any specified asset.

8 “(C) Arranging financing with respect to
9 acquiring specified assets.

10 “(D) Any activity in support of any service
11 described in subparagraphs (A) through (C).

12 “(3) INVESTMENT PARTNERSHIP.—

13 “(A) IN GENERAL.—The term ‘investment
14 partnership’ means any partnership if, at the
15 end of any calendar quarter ending after the
16 date of enactment of this section—

17 “(i) substantially all of the assets of
18 the partnership are specified assets (deter-
19 mined without regard to any section 197
20 intangible within the meaning of section
21 197(d)), and

22 “(ii) more than half of the capital of
23 the partnership is attributable to qualified
24 capital interests which (in the hands of the
25 owners of such interests) constitute prop-

1 erty not held in connection with a trade or
2 business.

3 “(B) SPECIAL RULES FOR DETERMINING
4 IF PROPERTY NOT HELD IN CONNECTION WITH
5 TRADE OR BUSINESS.—Except as otherwise
6 provided by the Secretary, for purposes of de-
7 termining whether any interest in a partnership
8 constitutes property not held in connection with
9 a trade or business under subparagraph
10 (A)(ii)—

11 “(i) any election under subsection (e)
12 or (f) of section 475 shall be disregarded,
13 and

14 “(ii) paragraph (5)(B) shall not apply.

15 “(C) ANTIABUSE RULES.—The Secretary
16 may issue regulations or other guidance which
17 prevent the avoidance of the purposes of sub-
18 paragraph (A), including regulations or other
19 guidance which treat convertible and contingent
20 debt (and other debt having the attributes of
21 equity) as a capital interest in the partnership.

22 “(D) CONTROLLED GROUPS OF ENTI-
23 TIES.—

24 “(i) IN GENERAL.—In the case of a
25 controlled group of entities, if an interest

1 in the partnership received in exchange for
2 a contribution to the capital of the part-
3 nership by any member of such controlled
4 group would (in the hands of such mem-
5 ber) constitute property held in connection
6 with a trade or business, then any interest
7 in such partnership held by any member of
8 such group shall be treated for purposes of
9 subparagraph (A) as constituting (in the
10 hands of such member) property held in
11 connection with a trade or business.

12 “(ii) CONTROLLED GROUP OF ENTI-
13 TIES.—For purposes of clause (i), the term
14 ‘controlled group of entities’ means a con-
15 trolled group of corporations as defined in
16 section 1563(a)(1), applied without regard
17 to subsections (a)(4) and (b)(2) of section
18 1563. A partnership or any other entity
19 (other than a corporation) shall be treated
20 as a member of a controlled group of enti-
21 ties if such entity is controlled (within the
22 meaning of section 954(d)(3)) by members
23 of such group (including any entity treated
24 as a member of such group by reason of
25 this sentence).

1 “(E) SPECIAL RULE FOR CORPORA-
2 TIONS.—For purposes of this paragraph, in the
3 case of a corporation, the determination of
4 whether property is held in connection with a
5 trade or business shall be determined as if the
6 taxpayer were an individual.

7 “(4) SPECIFIED ASSET.—The term ‘specified
8 asset’ means securities (as defined in section
9 475(c)(2) without regard to the last sentence there-
10 of), real estate held for rental or investment, inter-
11 ests in partnerships, commodities (as defined in sec-
12 tion 475(e)(2)), cash or cash equivalents, or options
13 or derivative contracts with respect to any of the
14 foregoing.

15 “(5) RELATED PERSONS.—

16 “(A) IN GENERAL.—A person shall be
17 treated as related to another person if the rela-
18 tionship between such persons is described in
19 section 267(b) or 707(b).

20 “(B) CONTRIBUTION OF PARTNER SERV-
21 ICES.—Any service described in paragraph (2)
22 which is provided by a partner of a partnership
23 shall be treated as also provided by such part-
24 nership.

1 “(d) EXCEPTION FOR CERTAIN CAPITAL INTER-
2 ESTS.—

3 “(1) IN GENERAL.—In the case of any portion
4 of an investment services partnership interest which
5 is a qualified capital interest, all items of gain and
6 loss (and any dividends) which are allocated to such
7 qualified capital interest shall not be taken into ac-
8 count under subsection (a) if—

9 “(A) allocations of items are made by the
10 partnership to such qualified capital interest in
11 the same manner as such allocations are made
12 to other qualified capital interests held by part-
13 ners who do not provide any services described
14 in subsection (c)(2) and who are not related to
15 the partner holding the qualified capital inter-
16 est, and

17 “(B) the allocations made to such other in-
18 terests are significant compared to the alloca-
19 tions made to such qualified capital interest.

20 “(2) AUTHORITY TO PROVIDE EXCEPTIONS TO
21 ALLOCATION REQUIREMENTS.—To the extent pro-
22 vided by the Secretary in regulations or other guid-
23 ance—

24 “(A) ALLOCATIONS TO PORTION OF QUALI-
25 FIED CAPITAL INTEREST.—Paragraph (1) may

1 be applied separately with respect to a portion
2 of a qualified capital interest.

3 “(B) NO OR INSIGNIFICANT ALLOCATIONS
4 TO NONSERVICE PROVIDERS.—In any case in
5 which the requirements of paragraph (1)(B) are
6 not satisfied, items of gain and loss (and any
7 dividends) shall not be taken into account under
8 subsection (a) to the extent that such items are
9 properly allocable under such regulations or
10 other guidance to qualified capital interests.

11 “(C) ALLOCATIONS TO SERVICE PRO-
12 VIDERS’ QUALIFIED CAPITAL INTERESTS WHICH
13 ARE LESS THAN OTHER ALLOCATIONS.—Alloca-
14 tions shall not be treated as failing to meet the
15 requirement of paragraph (1)(A) merely be-
16 cause the allocations to the qualified capital in-
17 terest represent a lower return than the alloca-
18 tions made to the other qualified capital inter-
19 ests referred to in such paragraph.

20 “(3) SPECIAL RULE FOR CHANGES IN SERVICES
21 AND CAPITAL CONTRIBUTIONS.—In the case of an
22 interest in a partnership which was not an invest-
23 ment services partnership interest and which, by
24 reason of a change in the services with respect to as-
25 sets held (directly or indirectly) by the partnership

1 or by reason of a change in the capital contributions
2 to such partnership, becomes an investment services
3 partnership interest, the qualified capital interest of
4 the holder of such partnership interest immediately
5 after such change shall not, for purposes of this sub-
6 section, be less than the fair market value of such
7 interest (determined immediately before such
8 change).

9 “(4) SPECIAL RULE FOR TIERED PARTNER-
10 SHIPS.—Except as otherwise provided by the Sec-
11 retary, in the case of tiered partnerships, all items
12 which are allocated in a manner which meets the re-
13 quirements of paragraph (1) to qualified capital in-
14 terests in a lower-tier partnership shall retain such
15 character to the extent allocated on the basis of
16 qualified capital interests in any upper-tier partner-
17 ship.

18 “(5) EXCEPTION FOR NO-SELF-CHARGED
19 CARRY AND MANAGEMENT FEE PROVISIONS.—Ex-
20 cept as otherwise provided by the Secretary, an in-
21 terest shall not fail to be treated as satisfying the
22 requirement of paragraph (1)(A) merely because the
23 allocations made by the partnership to such interest
24 do not reflect the cost of services described in sub-
25 section (c)(2) which are provided (directly or indi-

1 rectly) to the partnership by the holder of such in-
2 terest (or a related person).

3 “(6) SPECIAL RULE FOR DISPOSITIONS.—In the
4 case of any investment services partnership interest
5 any portion of which is a qualified capital interest,
6 subsection (b) shall not apply to so much of any
7 gain or loss as bears the same proportion to the en-
8 tire amount of such gain or loss as—

9 “(A) the distributive share of gain or loss
10 that would have been allocated to the qualified
11 capital interest (consistent with the require-
12 ments of paragraph (1)) if the partnership had
13 sold all of its assets at fair market value imme-
14 diately before the disposition, bears to

15 “(B) the distributive share of gain or loss
16 that would have been so allocated to the invest-
17 ment services partnership interest of which such
18 qualified capital interest is a part.

19 “(7) QUALIFIED CAPITAL INTEREST.—For pur-
20 poses of this section—

21 “(A) IN GENERAL.—The term ‘qualified
22 capital interest’ means so much of a partner’s
23 interest in the capital of the partnership as is
24 attributable to—

1 “(i) the fair market value of any
2 money or other property contributed to the
3 partnership in exchange for such interest
4 (determined without regard to section
5 752(a)),

6 “(ii) any amounts which have been in-
7 cluded in gross income under section 83
8 with respect to the transfer of such inter-
9 est, and

10 “(iii) the excess (if any) of—

11 “(I) any items of income and
12 gain taken into account under section
13 702 with respect to such interest, over

14 “(II) any items of deduction and
15 loss so taken into account.

16 “(B) ADJUSTMENT TO QUALIFIED CAPITAL
17 INTEREST.—

18 “(i) DISTRIBUTIONS AND LOSSES.—

19 The qualified capital interest shall be re-
20 duced by distributions from the partner-
21 ship with respect to such interest and by
22 the excess (if any) of the amount described
23 in subparagraph (A)(iii)(II) over the
24 amount described in subparagraph
25 (A)(iii)(I).

1 “(ii) SPECIAL RULE FOR CONTRIBU-
2 TIONS OF PROPERTY.—In the case of any
3 contribution of property described in sub-
4 paragraph (A)(i) with respect to which the
5 fair market value of such property is not
6 equal to the adjusted basis of such prop-
7 erty immediately before such contribution,
8 proper adjustments shall be made to the
9 qualified capital interest to take into ac-
10 count such difference consistent with such
11 regulations or other guidance as the Sec-
12 retary may provide.

13 “(C) TECHNICAL TERMINATIONS, ETC.,
14 DISREGARDED.—No increase or decrease in the
15 qualified capital interest of any partner shall re-
16 sult from a termination, merger, consolidation,
17 or division described in section 708, or any
18 similar transaction.

19 “(8) TREATMENT OF CERTAIN LOANS.—

20 “(A) PROCEEDS OF PARTNERSHIP LOANS
21 NOT TREATED AS QUALIFIED CAPITAL INTER-
22 EST OF SERVICE PROVIDING PARTNERS.—For
23 purposes of this subsection, an investment serv-
24 ices partnership interest shall not be treated as
25 a qualified capital interest to the extent that

1 such interest is acquired in connection with the
2 proceeds of any loan or other advance made or
3 guaranteed, directly or indirectly, by any other
4 partner or the partnership (or any person re-
5 lated to any such other partner or the partner-
6 ship). The preceding sentence shall not apply to
7 the extent the loan or other advance is repaid
8 before the date of the enactment of this section
9 unless such repayment is made with the pro-
10 ceeds of a loan or other advance described in
11 the preceding sentence.

12 “(B) REDUCTION IN ALLOCATIONS TO
13 QUALIFIED CAPITAL INTERESTS FOR LOANS
14 FROM NONSERVICE-PROVIDING PARTNERS TO
15 THE PARTNERSHIP.—For purposes of this sub-
16 section, any loan or other advance to the part-
17 nership made or guaranteed, directly or indi-
18 rectly, by a partner not providing services de-
19 scribed in subsection (c)(2) to the partnership
20 (or any person related to such partner) shall be
21 taken into account in determining the qualified
22 capital interests of the partners in the partner-
23 ship.

24 “(e) OTHER INCOME AND GAIN IN CONNECTION
25 WITH INVESTMENT MANAGEMENT SERVICES.—

1 “(1) IN GENERAL.—If—

2 “(A) a person performs (directly or indi-
3 rectly) investment management services for any
4 investment entity,

5 “(B) such person holds (directly or indi-
6 rectly) a disqualified interest with respect to
7 such entity, and

8 “(C) the value of such interest (or pay-
9 ments thereunder) is substantially related to
10 the amount of income or gain (whether or not
11 realized) from the assets with respect to which
12 the investment management services are per-
13 formed,

14 any income or gain with respect to such interest
15 shall be treated as ordinary income. Rules similar to
16 the rules of subsections (a)(5) and (d) shall apply
17 for purposes of this subsection.

18 “(2) DEFINITIONS.—For purposes of this sub-
19 section—

20 “(A) DISQUALIFIED INTEREST.—

21 “(i) IN GENERAL.—The term ‘dis-
22 qualified interest’ means, with respect to
23 any investment entity—

24 “(I) any interest in such entity
25 other than indebtedness,

1 “(II) convertible or contingent
2 debt of such entity,

3 “(III) any option or other right
4 to acquire property described in sub-
5 clause (I) or (II), and

6 “(IV) any derivative instrument
7 entered into (directly or indirectly)
8 with such entity or any investor in
9 such entity.

10 “(ii) EXCEPTIONS.—Such term shall
11 not include—

12 “(I) a partnership interest,

13 “(II) except as provided by the
14 Secretary, any interest in a taxable
15 corporation, and

16 “(III) except as provided by the
17 Secretary, stock in an S corporation.

18 “(B) TAXABLE CORPORATION.—The term
19 ‘taxable corporation’ means—

20 “(i) a domestic C corporation, or

21 “(ii) a foreign corporation substan-
22 tially all of the income of which is—

23 “(I) effectively connected with
24 the conduct of a trade or business in
25 the United States, or

1 “(II) subject to a comprehensive
2 foreign income tax (as defined in sec-
3 tion 457A(d)(2)).

4 “(C) INVESTMENT MANAGEMENT SERV-
5 ICES.—The term ‘investment management serv-
6 ices’ means a substantial quantity of any of the
7 services described in subsection (c)(2).

8 “(D) INVESTMENT ENTITY.—The term ‘in-
9 vestment entity’ means any entity which, if it
10 were a partnership, would be an investment
11 partnership.

12 “(f) REGULATIONS.—The Secretary shall prescribe
13 such regulations or other guidance as is necessary or ap-
14 propriate to carry out the purposes of this section, includ-
15 ing regulations or other guidance to—

16 “(1) provide modifications to the application of
17 this section (including treating related persons as
18 not related to one another) to the extent such modi-
19 fication is consistent with the purposes of this sec-
20 tion,

21 “(2) prevent the avoidance of the purposes of
22 this section, and

23 “(3) coordinate this section with the other pro-
24 visions of this title.

1 “(g) CROSS REFERENCE.—For 40 percent penalty on
2 certain underpayments due to the avoidance of this sec-
3 tion, see section 6662.”.

4 (b) APPLICATION OF SECTION 751 TO INDIRECT DIS-
5 POSITIONS OF INVESTMENT SERVICES PARTNERSHIP IN-
6 TERESTS.—

7 (1) IN GENERAL.—Subsection (a) of section
8 751 is amended by striking “or” at the end of para-
9 graph (1), by inserting “or” at the end of paragraph
10 (2), and by inserting after paragraph (2) the fol-
11 lowing new paragraph:

12 “(3) investment services partnership interests
13 held by the partnership,”.

14 (2) CERTAIN DISTRIBUTIONS TREATED AS
15 SALES OR EXCHANGES.—Subparagraph (A) of sec-
16 tion 751(b)(1) is amended by striking “or” at the
17 end of clause (i), by inserting “or” at the end of
18 clause (ii), and by inserting after clause (ii) the fol-
19 lowing new clause:

20 “(iii) investment services partnership
21 interests held by the partnership,”.

22 (3) APPLICATION OF SPECIAL RULES IN THE
23 CASE OF TIERED PARTNERSHIPS.—Subsection (f) of
24 section 751 is amended—

1 (A) by striking “or” at the end of para-
2 graph (1), by inserting “or” at the end of para-
3 graph (2), and by inserting after paragraph (2)
4 the following new paragraph:

5 “(3) an investment services partnership interest
6 held by the partnership,” and

7 (B) by striking “partner.” and inserting
8 “partner (other than a partnership in which it
9 holds an investment services partnership inter-
10 est).”.

11 (4) INVESTMENT SERVICES PARTNERSHIP IN-
12 TERESTS; QUALIFIED CAPITAL INTERESTS.—Section
13 751 is amended by adding at the end the following
14 new subsection:

15 “(g) INVESTMENT SERVICES PARTNERSHIP INTER-
16 ESTS.—For purposes of this section—

17 “(1) IN GENERAL.—The term ‘investment serv-
18 ices partnership interest’ has the meaning given
19 such term by section 710(c).

20 “(2) ADJUSTMENTS FOR QUALIFIED CAPITAL
21 INTERESTS.—The amount to which subsection (a)
22 applies by reason of paragraph (3) thereof shall not
23 include so much of such amount as is attributable
24 to any portion of the investment services partnership
25 interest which is a qualified capital interest (deter-

1 mined under rules similar to the rules of section
2 710(d)).

3 “(3) EXCEPTION FOR PUBLICLY TRADED PART-
4 NERSHIPS.—In the case of an exchange of an inter-
5 est in a publicly traded partnership (as defined in
6 section 7704) to which subsection (a) applies—

7 “(A) this section shall be applied without
8 regard to subsections (a)(3), (b)(1)(A)(iii), and
9 (f)(3), and

10 “(B) such partnership shall be treated as
11 owning its proportionate share of the property
12 of any other partnership in which it is a part-
13 ner.

14 “(4) RECOGNITION OF GAINS.—Any gain with
15 respect to which subsection (a) applies by reason of
16 paragraph (3) thereof shall be recognized notwith-
17 standing any other provision of this title.

18 “(5) COORDINATION WITH INVENTORY
19 ITEMS.—An investment services partnership interest
20 held by the partnership shall not be treated as an
21 inventory item of the partnership.

22 “(6) PREVENTION OF DOUBLE COUNTING.—
23 Under regulations or other guidance prescribed by
24 the Secretary, subsection (a)(3) shall not apply with
25 respect to any amount to which section 710 applies.

1 “(7) VALUATION METHODS.—The Secretary
2 shall prescribe regulations or other guidance which
3 provide the acceptable methods for valuing invest-
4 ment services partnership interests for purposes of
5 this section.”.

6 (c) TREATMENT FOR PURPOSES OF SECTION
7 7704.—Subsection (d) of section 7704 is amended by add-
8 ing at the end the following new paragraph:

9 “(6) INCOME FROM CERTAIN CARRIED INTER-
10 ESTS NOT QUALIFIED.—

11 “(A) IN GENERAL.—Specified carried in-
12 terest income shall not be treated as qualifying
13 income.

14 “(B) SPECIFIED CARRIED INTEREST IN-
15 COME.—For purposes of this paragraph—

16 “(i) IN GENERAL.—The term ‘speci-
17 fied carried interest income’ means—

18 “(I) any item of income or gain
19 allocated to an investment services
20 partnership interest (as defined in
21 section 710(c)) held by the partner-
22 ship,

23 “(II) any gain on the disposition
24 of an investment services partnership
25 interest (as so defined) or a partner-

1 ship interest to which (in the hands of
2 the partnership) section 751 applies,
3 and

4 “(III) any income or gain taken
5 into account by the partnership under
6 subsection (b)(4) or (e) of section
7 710.

8 “(ii) EXCEPTION FOR QUALIFIED CAP-
9 ITAL INTERESTS.—A rule similar to the
10 rule of section 710(d) shall apply for pur-
11 poses of clause (i).

12 “(C) COORDINATION WITH OTHER PROVI-
13 SIONS.—Subparagraph (A) shall not apply to
14 any item described in paragraph (1)(E) (or so
15 much of paragraph (1)(F) as relates to para-
16 graph (1)(E)).

17 “(D) SPECIAL RULES FOR CERTAIN PART-
18 NERSHIPS.—

19 “(i) CERTAIN PARTNERSHIPS OWNED
20 BY REAL ESTATE INVESTMENT TRUSTS.—
21 Subparagraph (A) shall not apply in the
22 case of a partnership which meets each of
23 the following requirements:

24 “(I) Such partnership is treated
25 as publicly traded under this section

1 solely by reason of interests in such
2 partnership being convertible into in-
3 terests in a real estate investment
4 trust which is publicly traded.

5 “(II) Fifty percent or more of
6 the capital and profits interests of
7 such partnership are owned, directly
8 or indirectly, at all times during the
9 taxable year by such real estate in-
10 vestment trust (determined with the
11 application of section 267(c)).

12 “(III) Such partnership meets
13 the requirements of paragraphs (2),
14 (3), and (4) of section 856(c).

15 “(ii) CERTAIN PARTNERSHIPS OWN-
16 ING OTHER PUBLICLY TRADED PARTNER-
17 SHIPS.—Subparagraph (A) shall not apply
18 in the case of a partnership which meets
19 each of the following requirements:

20 “(I) Substantially all of the as-
21 sets of such partnership consist of in-
22 terests in one or more publicly traded
23 partnerships (determined without re-
24 gard to subsection (b)(2)).

1 “(II) Substantially all of the in-
2 come of such partnership is ordinary
3 income or section 1231 gain (as de-
4 fined in section 1231(a)(3)).

5 “(E) TRANSITIONAL RULE.—Subpara-
6 graph (A) shall not apply to any taxable year
7 of the partnership beginning before the date
8 which is 10 years after the date of the enact-
9 ment of this paragraph.”.

10 (d) IMPOSITION OF PENALTY ON UNDERPAY-
11 MENTS.—

12 (1) IN GENERAL.—Subsection (b) of section
13 6662 is amended by inserting after paragraph (7)
14 the following new paragraph:

15 “(8) The application of section 710(e) or the
16 regulations or other guidance prescribed under sec-
17 tion 710(f) to prevent the avoidance of the purposes
18 of section 710.”.

19 (2) AMOUNT OF PENALTY.—

20 (A) IN GENERAL.—Section 6662 is amend-
21 ed by adding at the end the following new sub-
22 section:

23 “(k) INCREASE IN PENALTY IN CASE OF PROPERTY
24 TRANSFERRED FOR INVESTMENT MANAGEMENT SERV-
25 ICES.—In the case of any portion of an underpayment to

1 which this section applies by reason of subsection (b)(8),
2 subsection (a) shall be applied with respect to such portion
3 by substituting ‘40 percent’ for ‘20 percent’.”.

4 (B) CONFORMING AMENDMENT.—Subpara-
5 graph (B) of section 6662A(e)(2) is amended
6 by striking “or (i)” and inserting “, (i), or (k)”.

7 (3) SPECIAL RULES FOR APPLICATION OF REA-
8 SONABLE CAUSE EXCEPTION.—Subsection (c) of sec-
9 tion 6664 is amended—

10 (A) by redesignating paragraphs (3) and
11 (4) as paragraphs (4) and (5), respectively;

12 (B) by striking “paragraph (3)” in para-
13 graph (5)(A), as so redesignated, and inserting
14 “paragraph (4)”; and

15 (C) by inserting after paragraph (2) the
16 following new paragraph:

17 “(3) SPECIAL RULE FOR UNDERPAYMENTS AT-
18 TRIBUTABLE TO INVESTMENT MANAGEMENT SERV-
19 ICES.—

20 “(A) IN GENERAL.—Paragraph (1) shall
21 not apply to any portion of an underpayment to
22 which section 6662 applies by reason of sub-
23 section (b)(8) unless—

1 “(i) the relevant facts affecting the
2 tax treatment of the item are adequately
3 disclosed,

4 “(ii) there is or was substantial au-
5 thority for such treatment, and

6 “(iii) the taxpayer reasonably believed
7 that such treatment was more likely than
8 not the proper treatment.

9 “(B) RULES RELATING TO REASONABLE
10 BELIEF.—Rules similar to the rules of sub-
11 section (d)(3) shall apply for purposes of sub-
12 paragraph (A)(iii).”.

13 (e) INCOME AND LOSS FROM INVESTMENT SERVICES
14 PARTNERSHIP INTERESTS TAKEN INTO ACCOUNT IN DE-
15 TERMINING NET EARNINGS FROM SELF-EMPLOYMENT.—

16 (1) INTERNAL REVENUE CODE.—

17 (A) IN GENERAL.—Section 1402(a) is
18 amended by striking “and” at the end of para-
19 graph (16), by striking the period at the end of
20 paragraph (17) and inserting “; and”, and by
21 inserting after paragraph (17) the following
22 new paragraph:

23 “(18) notwithstanding the preceding provisions
24 of this subsection, in the case of any individual en-
25 gaged in the trade or business of providing services

1 described in section 710(c)(2) with respect to any
2 entity, investment services partnership income or
3 loss (as defined in subsection (m)) of such individual
4 with respect to such entity shall be taken into ac-
5 count in determining the net earnings from self-em-
6 ployment of such individual.”.

7 (B) INVESTMENT SERVICES PARTNERSHIP
8 INCOME OR LOSS.—Section 1402 is amended by
9 adding at the end the following new subsection:
10 “(m) INVESTMENT SERVICES PARTNERSHIP INCOME
11 OR LOSS.—For purposes of subsection (a)—

12 “(1) IN GENERAL.—The term ‘investment serv-
13 ices partnership income or loss’ means, with respect
14 to any investment services partnership interest (as
15 defined in section 710(c)) or disqualified interest (as
16 defined in section 710(e)), the net of—

17 “(A) the amounts treated as ordinary in-
18 come or ordinary loss under subsections (b) and
19 (e) of section 710 with respect to such interest,

20 “(B) all items of income, gain, loss, and
21 deduction allocated to such interest, and

22 “(C) the amounts treated as realized from
23 the sale or exchange of property other than a
24 capital asset under section 751 with respect to
25 such interest.

1 “(2) EXCEPTION FOR QUALIFIED CAPITAL IN-
2 TERESTS.—A rule similar to the rule of section
3 710(d) shall apply for purposes of applying para-
4 graph (1)(B).”.

5 (2) SOCIAL SECURITY ACT.—Section 211(a) of
6 the Social Security Act is amended by striking
7 “and” at the end of paragraph (15), by striking the
8 period at the end of paragraph (16) and inserting “;
9 and”, and by inserting after paragraph (16) the fol-
10 lowing new paragraph:

11 “(17) Notwithstanding the preceding provisions
12 of this subsection, in the case of any individual en-
13 gaged in the trade or business of providing services
14 described in section 710(c)(2) of the Internal Rev-
15 enue Code of 1986 with respect to any entity, invest-
16 ment services partnership income or loss (as defined
17 in section 1402(m) of such Code) shall be taken into
18 account in determining the net earnings from self-
19 employment of such individual.”.

20 (f) CONFORMING AMENDMENTS.—

21 (1) Subsection (d) of section 731 is amended by
22 inserting “section 710(b)(4) (relating to distribu-
23 tions of partnership property),” after “to the extent
24 otherwise provided by”.

1 (2) Section 741 is amended by inserting “or
2 section 710 (relating to special rules for partners
3 providing investment management services to part-
4 nerships)” before the period at the end.

5 (3) The table of sections for part I of sub-
6 chapter K of chapter 1 is amended by adding at the
7 end the following new item:

“Sec. 710. Special rules for partners providing investment management services
to partnerships.”.

8 (g) EFFECTIVE DATE.—

9 (1) IN GENERAL.—Except as otherwise pro-
10 vided in this subsection, the amendments made by
11 this section shall apply to taxable years ending after
12 the date of the enactment of this Act.

13 (2) PARTNERSHIP TAXABLE YEARS WHICH IN-
14 CLUDE EFFECTIVE DATE.—In applying section
15 710(a) of the Internal Revenue Code of 1986 (as
16 added by this section) in the case of any partnership
17 taxable year which includes the date of the enact-
18 ment of this Act, the amount of the net capital gain
19 referred to in such section shall be treated as being
20 the lesser of the net capital gain for the entire part-
21 nership taxable year or the net capital gain deter-
22 mined by only taking into account items attributable
23 to the portion of the partnership taxable year which
24 is after such date.

1 (3) DISPOSITIONS OF PARTNERSHIP INTER-
2 ESTS.—

3 (A) IN GENERAL.—Section 710(b) of such
4 Code (as added by this section) shall apply to
5 dispositions and distributions after the date of
6 the enactment of this Act.

7 (B) INDIRECT DISPOSITIONS.—The amend-
8 ments made by subsection (b) shall apply to
9 transactions after the date of the enactment of
10 this Act.

11 (4) OTHER INCOME AND GAIN IN CONNECTION
12 WITH INVESTMENT MANAGEMENT SERVICES.—Sec-
13 tion 710(e) of such Code (as added by this section)
14 shall take effect on the date of the enactment of this
15 Act.

16 **Subtitle F—Raising the Capital**
17 **Gains Rate**

18 **SEC. 351. INCREASED CAPITAL GAINS RATE FOR HIGH-IN-**
19 **COME INDIVIDUALS.**

20 (a) IN GENERAL.—Paragraph (1) of section 1(h) is
21 amended—

22 (1) in subparagraph (C), by striking “of the ad-
23 justed net capital gain” and all that follows, and in-
24 serting “of the lesser of—

1 “(i) so much of the adjusted net cap-
2 ital gain (or, if less, taxable income) as ex-
3 ceeds the amount on which a tax is deter-
4 mined under subparagraph (B), or

5 “(ii) the excess (if any) of—

6 “(I) \$50,000 (\$100,000 in the
7 case of a joint return), over

8 “(II) the sum of the amounts on
9 which a tax is determined under sub-
10 paragraphs (A) and (B), and”, and

11 (2) by striking subparagraphs (D) and (E) and
12 inserting the following:

13 “(D) the lesser of—

14 “(i) 28 percent, or

15 “(ii) the highest marginal tax rate de-
16 termined under this section (determined
17 without regard to this subsection) which
18 would be imposed on the taxable income of
19 the taxpayer in excess of the sum of the
20 amount on which tax is determined under
21 the preceding subparagraphs of this para-
22 graph,

23 multiplied by such amount of taxable income.”.

24 (b) MINIMUM TAX.—Paragraph (3) of section 55(b)
25 is amended—

1 (1) in subparagraph (C), by striking “of the ad-
2 justed net capital gain” and all that follows, and in-
3 serting “of the lesser of—

4 “(i) so much of the adjusted net cap-
5 ital gain (or, if less, taxable excess) as ex-
6 ceeds the amount on which tax is deter-
7 mined under subparagraph (B), or”.

8 “(ii) the excess described in section
9 1(h)(1)(C)(ii), plus”, and

10 (2) by striking subparagraphs (D) inserting the
11 following:

12 “(D) the lesser of—

13 “(i) 28 percent, or

14 “(ii) the highest marginal tax rate de-
15 termined under section 1 (determined with-
16 out regard to subsection (h)) which would
17 be imposed on the taxable excess of the
18 taxpayer in excess of the sum of the
19 amount on which tax is determined under
20 the preceding subparagraphs of this para-
21 graph,

22 multiplied by such amount of taxable excess.”.

23 (c) CONFORMING AMENDMENTS.—

24 (1) The following provisions are amended by
25 striking “15 percent” and inserting “28 percent”:

1 (A) Section 1445(e)(1).

2 (B) The second sentence of section
3 7518(g)(6)(A).

4 (C) Section 53511(f)(2) of title 46, United
5 States Code.

6 (2) Section 1445(e)(6) is amended by striking
7 “15 percent (20 percent in the case of taxable years
8 beginning after December 31, 2010)” and inserting
9 “28 percent”.

10 (d) EFFECTIVE DATES.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), the amendments made by this section
13 shall apply to taxable years beginning after Decem-
14 ber 31, 2012.

15 (2) WITHHOLDING.—The amendments made by
16 paragraphs (1)(A) and (2) of subsection (c) shall
17 apply to amounts paid on or after January 1, 2013.

18 **Subtitle G—Pension Guaranty**
19 **Improvement**

20 **SEC. 361. SHORT TITLE.**

21 This subtitle may be cited as the “Pension Guaranty
22 Improvement Act of 2012”.

23 **SEC. 362. FINDINGS.**

24 Congress makes the following findings:

1 (1) The Pension Benefit Guaranty Corporation
2 (referred to in this section as the “Corporation”)
3 plays a critical role in helping to protect the retire-
4 ment security of the 44,000,000 workers and retir-
5 ees with defined benefit pension plans.

6 (2) The Corporation has struggled over the
7 years to address deficiencies and implement long-
8 term strategies for success.

9 (3) The Corporation faces long-term fiscal chal-
10 lenges, which have been exacerbated by the recent fi-
11 nancial crisis.

12 (4) It is necessary for Congress to take imme-
13 diate steps to improve the governance of the Cor-
14 poration and ensure appropriate oversight by, and
15 accountability to, key stakeholders, including labor,
16 plan sponsors, and retirees.

17 (5) It is further necessary to takes steps to en-
18 sure that the guaranty provided by the Corporation
19 is fair to participants and that the Corporation has
20 sufficient resources to satisfy its obligations.

21 **SEC. 363. PENSION BENEFIT GUARANTY CORPORATION**

22 **GOVERNANCE IMPROVEMENT.**

23 (a) BOARD OF DIRECTORS OF THE PENSION BEN-
24 EFIT GUARANTY CORPORATION.—

1 (1) IN GENERAL.—Section 4002(d) of the Em-
2 ployee Retirement Income Security Act of 1974 (29
3 U.S.C. 1302(d)) is amended to read as follows:

4 “(d)(1) The board of directors of the corporation con-
5 sists of—

6 “(A) the Secretary of the Treasury, the Sec-
7 retary of Labor, and the Secretary of Commerce;
8 and

9 “(B) 4 other members.

10 “(2)(A) The members of the board of directors de-
11 scribed under paragraph (1)(B)—

12 “(i) shall be appointed by the President; and

13 “(ii) shall have expertise relevant to business of
14 the corporation, which may include experience with
15 insurance programs, defined benefit pension plans,
16 or institutional asset management.

17 “(B) Except as provided in subparagraph (C)(ii),
18 each member of the board of directors described under
19 paragraph (1)(B) shall be appointed for a term of 4 years.

20 “(C)(i) The initial members of the board of directors
21 described under paragraph (1)(B) shall be appointed as
22 soon as practicable after the date of enactment of the Pen-
23 sion Guaranty Improvement Act of 2012.

1 “(ii) Of the initial members of the board of directors
2 described under paragraph (1)(B) and appointed under
3 clause (i)—

4 “(I) the term of one such member shall end on
5 December 31, 2013;

6 “(II) the term of one such member shall end on
7 December 31, 2014;

8 “(III) the term of one such member shall end
9 on December 31, 2015; and

10 “(IV) the term of one such member shall end
11 on December 31, 2016.

12 “(D)(i) Not more than 2 members of the board of
13 directors described under paragraph (1)(B) may be mem-
14 bers of the same political party.

15 “(ii) At least 1 member of the board of directors shall
16 be an enrolled actuary or other financial expert.

17 “(iii) At least 1 member of the board of directors
18 shall have experience with the issues unique to retired plan
19 participants.

20 “(E)(i) Any vacancy on the board of directors shall
21 be filled in the manner in which the original appointment
22 was made.

23 “(ii) In the event of vacancy in the office of the Sec-
24 retary of the Treasury, the Secretary of Labor, or the Sec-
25 retary of Commerce and pending the appointment of a

1 successor, or during the absence or disability of such a
2 Secretary, the applicable acting Secretary shall be a mem-
3 ber of the board of directors.

4 “(iii) A member of the board of directors appointed
5 to fill a vacancy occurring before the expiration of the
6 term for which the predecessor of such member was ap-
7 pointed shall be appointed for the remainder of such term.

8 “(iv) A member of the board of directors described
9 under paragraph (1)(B) may continue to serve after the
10 expiration of the term of office for which such member
11 was appointed until a successor has been appointed.

12 “(F) A member of the board of directors described
13 under paragraph (1)(B) may be removed for good cause
14 by the President or by unanimous decision of the other
15 members of the board of directors.

16 “(G) A majority of the members of the board of direc-
17 tors in office shall constitute a quorum for the transaction
18 of business. The vote of the majority of the members
19 present and voting at a meeting at which a quorum is
20 present shall be the act of the board of directors.

21 “(3) Each member of the board of directors described
22 under paragraph (1)(A) shall designate in writing an offi-
23 cial, not below the level of Assistant Secretary, to serve
24 as the voting representative of such member on the board.
25 Such designation shall be effective until revoked or until

1 a date or event specified therein. Any such representative
2 may refer for board action any matter under consideration
3 by the designating board member.

4 “(4) The members of the board of directors described
5 under—

6 “(A) subparagraph (A) of paragraph (1), shall
7 serve without compensation, but shall be reimbursed
8 for travel, subsistence, and other necessary expenses
9 incurred in the performance of their duties as mem-
10 bers of the board; and

11 “(B) subparagraph (B) of paragraph (1) shall,
12 for each day (including traveltime) during which
13 they are attending meetings or conferences of the
14 board or otherwise engaged in the business of the
15 board, be compensated at a rate fixed by the cor-
16 poration which is not in excess of the daily equiva-
17 lent of the annual rate of basic pay for a position
18 at level IV of the Executive Schedule under section
19 5315 of title 5, United States Code, and while away
20 from their homes or regular places of business they
21 may be allowed travel expenses, including per diem
22 in lieu of subsistence, as authorized by section 5703
23 of title 5, United States Code.

24 “(5)(A) The Secretary of Labor is the chairman of
25 the board of directors.

1 “(B) The President shall designate 1 of the members
2 appointed under paragraph (2) as the vice-chairman of the
3 board of directors.

4 “(6) The Inspector General of the corporation shall
5 report to the board of directors, and not less than twice
6 a year, shall attend a meeting of the board of directors
7 to provide a report on the activities and findings of the
8 Inspector General, including with respect to monitoring
9 and review of the operations of the corporation.

10 “(7) The General Counsel of the corporation shall—

11 “(A) serve as the secretary to the board of di-
12 rectors, and shall advise such board as needed; and

13 “(B) have overall responsibility for all legal
14 matters affecting the corporation and provide the
15 corporation with legal advice and opinions on all
16 matters of law affecting the corporation, except that
17 the authority of the General Counsel shall not ex-
18 tend to the Office of Inspector General and the inde-
19 pendent legal counsel of such Office.

20 “(8) Notwithstanding any other provision of this Act,
21 the Office of Inspector General and the legal counsel of
22 such Office is independent of the management of the cor-
23 poration and the General Counsel of the corporation.

24 “(9) The board of directors may appoint and fix the
25 compensation of employees as may be required to enable

1 the board of directors to perform its duties. The board
2 of directors shall determine the qualifications and duties
3 of such employees and may appoint and fix the compensa-
4 tion of experts and consultants in accordance with the pro-
5 visions of section 3109 of title 5, United States Code.”.

6 (2) NUMBER OF MEETINGS; PUBLIC AVAIL-
7 ABILITY.—Section 4002(e) of the Employee Retire-
8 ment Income Security Act of 1974 (29 U.S.C.
9 1302(e)) is amended—

10 (A) by striking “The board” and inserting
11 “(1) The board”;

12 (B) by striking “the corporation.” and in-
13 serting “the corporation, but in no case less
14 than 4 times a year with not less than 5 mem-
15 bers present. Not less than 1 meeting of the
16 board of directors during each year shall be a
17 joint meeting with the advisory committee
18 under subsection (h).”; and

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

20 “(2)(A) Except as provided in subparagraph (B), the
21 chairman of the board of directors shall make available
22 to the public the minutes from each meeting of the board
23 of directors.

24 “(B) The minutes of a meeting of the board of direc-
25 tors, or a portion thereof, shall not be subject to disclosure

1 under subparagraph (A) if the chairman reasonably deter-
2 mines that such minutes, or portion thereof, contain con-
3 fidential information relating to financial activities or per-
4 sonnel decisions of the corporation.

5 “(C) The minutes of a meeting, or portion of thereof,
6 exempt from disclosure pursuant to subparagraph (B)
7 shall be exempt from disclosure under section 552(b) of
8 title 5, United States Code. For purposes of such section
9 552 of title 5, United States Code, this subparagraph shall
10 be considered a statute described in subsection (b)(3) of
11 such section 552.”

12 (3) ADVISORY COMMITTEE.—

13 (A) ISSUES CONSIDERED BY THE COM-
14 MITTEE.—Section 4002(h)(1) of the Employee
15 Retirement Income Security Act of 1974 (29
16 U.S.C. 1302(h)(1)) is amended—

17 (i) by striking “, and (D)” and insert-
18 ing “, (D)”; and

19 (ii) by striking “time to time.” and in-
20 sserting “time to time, and (E) other issues
21 as determined appropriate by the advisory
22 committee.”

23 (B) JOINT MEETING.—Section 4002(h)(3)
24 of the Employee Retirement Income Security
25 Act of 1974 (29 U.S.C. 1302(h)(3)) is amended

1 by adding at the end the following: “Not less
2 than 1 meeting of the advisory committee dur-
3 ing each year shall be a joint meeting with the
4 board of directors under subsection (e).”.

5 (b) AVOIDING CONFLICTS OF INTEREST.—Section
6 4002 of the Employee Retirement Income Security Act of
7 1974 (29 U.S.C. 1302) is amended by adding at the end
8 the following:

9 “(j) CONFLICTS OF INTEREST.—

10 “(1) IN GENERAL.—The Director of the cor-
11 poration and each member of the board of directors
12 shall not participate in a decision of the corporation
13 in which the Director or such member has a direct
14 financial interest. The Director of the corporation
15 shall not participate in any activities that would
16 present a potential conflict of interest or appearance
17 of a conflict of interest without approval of the
18 board of directors.

19 “(2) ESTABLISHMENT OF POLICY.—The board
20 of directors shall establish a policy that will inform
21 the identification of potential conflicts of interests of
22 the members of the board of directors and mitigate
23 perceived conflicts of interest of such members and
24 the Director of the corporation.”.

1 (c) RISK MITIGATION.—Section 4002 of the Em-
2 ployee Retirement Income Security Act of 1974 (29
3 U.S.C. 1302), as amended by subsection (b), is further
4 amended by adding at the end the following:

5 “(k) RISK MANAGEMENT OFFICER.—The corpora-
6 tion shall have a risk management officer whose duties
7 include evaluating and mitigating the risk that the cor-
8 poration might experience. The individual in such position
9 shall coordinate the risk management efforts of the cor-
10 poration, explain risks and controls to senior management
11 and the board of directors of the corporation, and make
12 recommendations.”.

13 (d) DIRECTOR.—Section 4002(c) of the Employee
14 Retirement Income Security Act of 1974 (29 U.S.C.
15 1302(c)) is amended to read as follows:

16 “(c) The Director shall be accountable to the board
17 of directors. The Director shall serve for a term of 5 years
18 unless removed by the President or the board of directors
19 before the expiration of such 5-year term.”.

20 (e) SENSES OF CONGRESS.—

21 (1) FORMATION OF COMMITTEES.—It is the
22 sense of Congress that the board of directors of the
23 Pension Benefit Guaranty Corporation established
24 under section 4002 of the Employee Retirement In-
25 come Security Act of 1974 (29 U.S.C. 1302), as

1 amended by this section, should form committees,
2 including an audit committee and an investment
3 committee, to enhance the overall effectiveness of the
4 board of directors.

5 (2) **ADVISORY COMMITTEE.**—It is the sense of
6 Congress that the advisory committee to the Pension
7 Benefit Guaranty Corporation established under sec-
8 tion 4002 of the Employee Retirement Income Secu-
9 rity Act of 1974 (29 U.S.C. 1302), as amended by
10 this section, should provide to the board of directors
11 of such corporation policy recommendations regard-
12 ing changes to the law that would be beneficial to
13 the corporation or the voluntary private pension sys-
14 tem.

15 **SEC. 364. PARTICIPANT AND PLAN SPONSOR ADVOCATE.**

16 (a) **IN GENERAL.**—Title IV of the Employee Retire-
17 ment Income Security Act of 1974 (29 U.S.C. 1301 et
18 seq.) is amended by inserting after section 4003 the fol-
19 lowing:

20 **“SEC. 4004. PARTICIPANT AND PLAN SPONSOR ADVOCATE.**

21 “(a) **IN GENERAL.**—The Secretary of Labor, in con-
22 sultation with the Director of the corporation and pension
23 participant and plan sponsor advocacy groups, shall select
24 a Participant and Plan Sponsor Advocate. Such selected

1 individual shall have demonstrated experience in the area
2 of pensions and pension participant assistance.

3 “(b) DUTIES.—The Participant and Plan Sponsor
4 Advocate shall—

5 “(1) act as a liaison between the corporation,
6 sponsors of defined benefit pension plans insured by
7 the corporation, and participants in pension plans
8 trusted by the corporation;

9 “(2) advocate for the full attainment of the
10 rights of participants in plans trusted by the cor-
11 poration;

12 “(3) assist pension plan sponsors and partici-
13 pants in resolving disputes with the corporation;

14 “(4) identify areas in which participants and
15 plan sponsors have persistent problems in dealings
16 with the corporation;

17 “(5) to the extent possible, propose changes in
18 the administrative practices of the corporation to
19 mitigate problems;

20 “(6) identify potential legislative changes which
21 may be appropriate to mitigate problems; and

22 “(7) refer instances of fraud, waste, and abuse,
23 and violations of law to the Office of the Inspector
24 General of the corporation.

1 “(c) REMOVAL.—If the Participant and Plan Sponsor
2 Advocate is removed from office or is transferred to an-
3 other position or location within the Department of Labor,
4 the Secretary shall communicate in writing the reasons for
5 any such removal or transfer to Congress not less than
6 30 days before the removal or transfer. Nothing in this
7 subsection shall prohibit a personnel action otherwise au-
8 thorized by law, other than transfer or removal.

9 “(d) COMPENSATION.—The annual rate of basic pay
10 for the Participant and Plan Sponsor Advocate shall be
11 the rate payable for level III of the Executive Schedule
12 under section 5314 of title 5, United States Code, plus
13 3 percent.

14 “(e) ANNUAL REPORT.—

15 “(1) IN GENERAL.—Not later than December
16 31 of each calendar year, the Participant and Plan
17 Sponsor Advocate shall report to the Health, Edu-
18 cation, Labor, and Pensions Committee of the Sen-
19 ate, the Committee on Finance of the Senate, the
20 Committee on Education and the Workforce of the
21 House of Representatives, and the Committee on
22 Ways and Means of the House of Representatives on
23 the activities of the Office of the Participant and
24 Plan Sponsor Advocate during the fiscal year ending
25 during such calendar year.

1 “(2) CONTENT.—Each report submitted under
2 paragraph (1) shall—

3 “(A) describe the activities, and evaluate
4 the effectiveness of the Participant and Plan
5 Sponsor Advocate during the preceding year;

6 “(B) identify significant problems the Par-
7 ticipant and Plan Sponsor Advocate has identi-
8 fied;

9 “(C) include specific legislative and regu-
10 latory changes to address the problems; and

11 “(D) identify any actions taken to correct
12 problems identified in any previous report.

13 “(3) CONCURRENT SUBMISSION.—The Partici-
14 pant and Plan Sponsor Advocate shall submit a copy
15 of each report to the Secretary of Labor, the Direc-
16 tor of the corporation, and any other appropriate of-
17 ficial at the same time such report is submitted to
18 the committees of Congress under paragraph (1).”.

19 (b) CLERICAL AMENDMENT.—The table of contents
20 in section 1 of the Employee Retirement Income Security
21 Act of 1974 is amended by inserting after the item relat-
22 ing to section 4003 the following new item:

“4004. Participant and Plan Sponsor Advocate.”.

23 **SEC. 365. INCREASE IN MULTIEMPLOYER PLAN BENEFIT**
24 **GUARANTEE AND ANNUAL PREMIUM RATES.**

25 (a) MONTHLY BENEFIT GUARANTEE.—

1 (1) IN GENERAL.—Subparagraph (A) of section
2 4022A(c)(1) of the Employee Retirement Income Se-
3 curity Act of 1974 (29 U.S.C. 1322a(c)(1)) is
4 amended to read as follows:

5 “(A) 100 percent of the accrual rate up to \$11,
6 plus the sum of—

7 “(i) 75 percent of the lesser of—

8 “(I) \$33, or

9 “(II) the accrual rate, if any, in ex-
10 cess of \$11 and up to \$44, and

11 “(ii) 50 percent of the lesser of—

12 “(I) \$40, or

13 “(II) the accrual rate, if any, in ex-
14 cess of \$44, and”.

15 (2) ADJUSTMENT FOR INFLATION.—Section
16 4022A(c) of such Act (29 U.S.C. 1322a(c)) is
17 amended by adding at the end the following new
18 paragraph:

19 “(4) For each plan year beginning in a calendar year
20 after 2011, there shall be substituted for each dollar
21 amount specified in subparagraph (A) of paragraph (1)
22 an amount equal to the greater of—

23 “(A) the product derived by multiplying such
24 dollar amount specified in subparagraph (A) of
25 paragraph (1) by the ratio of—

1 “(i) the national average wage index (as
2 defined in section 209(k)(1) of the Social Secu-
3 rity Act) for the first of the 2 calendar years
4 preceding the calendar year in which such plan
5 year begins, to

6 “(ii) the national average wage index (as
7 so defined) for 2009; and

8 “(B) such dollar amount in effect under sub-
9 paragraph (A) of paragraph (1) for plan years be-
10 ginning in the preceding calendar year.

11 If the amount determined under this paragraph is not a
12 multiple of \$1, such product shall be rounded to the near-
13 est multiple of \$1.”.

14 (3) EFFECTIVE DATE.—The amendment made
15 by this subsection shall apply to plans terminating
16 or first receiving financial assistance from the Pen-
17 sion Benefit Guaranty Corporation (within the
18 meaning under section 4261 of the Employee Retire-
19 ment Income Security Act of 1974 (29 U.S.C.
20 1431)) after the date of the enactment of this Act.

21 (b) REQUIRED REPORT.—Section 4022A(f) of such
22 Act (29 U.S.C. 1322a(f)) is amended by adding at the
23 end the following new paragraph:

24 “(5) Notwithstanding any other provision of this sub-
25 section, the next report required to be submitted to Con-

1 gress under this subsection after the date of enactment
2 of the Pension Guaranty Improvement Act of 2012 shall
3 be submitted not later than December 31, 2013.”.

4 (c) ANNUAL PREMIUM RATE.—

5 (1) IN GENERAL.—Subparagraph (A) of section
6 4006(a)(3) of the Employee Retirement Income Se-
7 curity Act of 1974 (29 U.S.C. 1306(a)(3)) is amend-
8 ed—

9 (A) by inserting “and before January 1,
10 2012,” after “December 31, 2005,” in clause
11 (iv),

12 (B) by striking “or” at the end of clause
13 (iii),

14 (C) by striking the period at the end of
15 clause (iv) and inserting “, or”, and

16 (D) by adding at the end the following new
17 clause:

18 “(v) in the case of a multiemployer plan, for
19 plan years beginning after December 31, 2011,
20 \$18.00 for each individual who is a participant in
21 such plan during the applicable plan year.”.

22 (2) INFLATION ADJUSTMENT.—Paragraph (3)
23 of section 4006(a) of such Act (29 U.S.C. 1306(a))
24 is amended by adding at the end the following new
25 subparagraph:

1 “(I) For each plan year beginning in a calendar year
 2 after 2011, there shall be substituted for the premium rate
 3 specified in clause (v) of subparagraph (A) an amount
 4 equal to the greater of—

5 “(i) the product derived by multiplying the pre-
 6 mium rate specified in clause (v) of subparagraph
 7 (A) by the ratio of—

8 “(I) the national average wage index (as
 9 defined in section 209(k)(1) of the Social Secu-
 10 rity Act) for the first of the 2 calendar years
 11 preceding the calendar year in which such plan
 12 year begins, to

13 “(II) the national average wage index (as
 14 so defined) for 2009; and

15 “(ii) the premium rate in effect under clause (v)
 16 of subparagraph (A) for plan years beginning in the
 17 preceding calendar year.

18 If the amount determined under this subparagraph is not
 19 a multiple of \$1, such product shall be rounded to the
 20 nearest multiple of \$1.”.

21 **SEC. 366. IMPROVING SINGLE EMPLOYER PROGRAM SOL-**
 22 **VENCY.**

23 (a) FLAT-RATE PREMIUM.—

24 (1) IN GENERAL.—Clause (i) of section
 25 4006(a)(3)(A) of the Employee Retirement Income

1 Security Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is
2 amended to read as follows:

3 “(i) in the case of a single-employer plan, an
4 amount for each individual who is a participant in
5 such plan during the plan year equal to the sum of
6 the additional premium (if any) determined under
7 subparagraph (E) and—

8 “(I) for plan years beginning after Decem-
9 ber 31, 2005 and before January 1, 2012, \$30;

10 “(II) for plan years beginning after De-
11 cember 31, 2011, and before January 1, 2013,
12 \$42;

13 “(III) for plan years beginning after De-
14 cember 31, 2012, and before January 1, 2014,
15 \$48; and

16 “(IV) for plan years beginning after De-
17 cember 31, 2013, \$54;”.

18 (2) ADJUSTMENT FOR INFLATION.—Subpara-
19 graph (F) of section 4006(a)(3) of such Act (29
20 U.S.C. 1306(a)(3)) is amended by adding at the end
21 the following flush sentence: “For each plan year be-
22 ginning in a calendar year after 2011, clause (i)(II)
23 shall be applied by substituting ‘2009’ for ‘2004’.”.

24 (b) VARIABLE-RATE PREMIUM ADJUSTMENT FOR IN-
25 FLATION.—Section 4006(a)(3) of such Act (29 U.S.C.

1 1306(a)(3)), as amended by section 365, is further amend-
2 ed by adding at the end the following new subparagraph:

3 “(J) For each plan year beginning in a calendar year
4 after 2011, there shall be substituted for the premium rate
5 specified in clause (ii) of subparagraph (E) an amount
6 equal to the greater of—

7 “(i) the product derived by multiplying the pre-
8 mium rate specified in clause (ii) of subparagraph
9 (E) by the ratio of—

10 “(I) the national average wage index (as
11 defined in section 209(k)(1) of the Social Secu-
12 rity Act) for the first of the 2 calendar years
13 preceding the calendar year in which such plan
14 year begins, to

15 “(II) the national average wage index (as
16 so defined) for 2009; and

17 “(ii) the premium rate in effect under clause
18 (ii) of subparagraph (E) for plan years beginning in
19 the preceding calendar year.

20 If the amount determined under this subparagraph is not
21 a multiple of \$1, such product shall be rounded to the
22 nearest multiple of \$1.”.

1 **Subtitle H—Pension and**
2 **Participant Protection**

3 **SEC. 371. SHORT TITLE.**

4 This subtitle may be cited as the “Pension and Par-
5 ticipant Protect Act”.

6 **SEC. 372. FINDINGS.**

7 Congress makes the following findings:

8 (1) The ongoing effects of the financial crisis
9 have put enormous stress on the defined benefit pen-
10 sion system.

11 (2) It is in the best interest of plan participants
12 for Congress to take immediate steps to relieve that
13 stress by ensuring that pension contributions are
14 less volatile and more predictable, provided that par-
15 ticipants are afforded additional protections should
16 their pensions be terminated in bankruptcy.

17 (3) It is further in the best interest of partici-
18 pants for Congress to take future steps to both re-
19 duce the volatility in pension funding requirements
20 and better protect plan participants and retirees
21 from loss.

22 **SEC. 373. PENSION FUNDING STABILIZATION.**

23 (a) AMENDMENTS TO EMPLOYEE RETIREMENT IN-
24 COME SECURITY ACT OF 1974.—

1 (1) IN GENERAL.—Subparagraph (C) of section
2 303(h)(2) of the Employee Retirement Income Secu-
3 rity Act of 1974 (29 U.S.C. 1083(h)(2)) is amended
4 by adding at the end the following new clause:

5 “(iv) SEGMENT RATE STABILIZA-
6 TION.—

7 “(I) IN GENERAL.—If a segment
8 rate described in clause (i), (ii), or
9 (iii) with respect to any applicable
10 month (determined without regard to
11 this clause) is less than the applicable
12 minimum percentage, or more than
13 the applicable maximum percentage,
14 of the average of the segment rates
15 described in such clause for years in
16 the 25-year period ending with Sep-
17 tember 30 of the calendar year pre-
18 ceding the calendar year in which the
19 plan year begins, then the segment
20 rate described in such clause with re-
21 spect to the applicable month shall be
22 equal to the applicable minimum per-
23 centage or the applicable maximum
24 percentage of such average, whichever
25 is closest. The Secretary of the Treas-

1 ury shall determine such average on
2 an annual basis and may prescribe
3 equivalent rates for years in any such
4 25-year period for which the rates de-
5 scribed in any such clause are not
6 available.

7 “(II) APPLICABLE MINIMUM PER-
8 CENTAGE; APPLICABLE MAXIMUM
9 PERCENTAGE.—For purposes of sub-
10 clause (I), the applicable minimum
11 percentage and the applicable max-
12 imum percentage for a plan year be-
13 ginning in a calendar year shall be de-
14 termined in accordance with the fol-
15 lowing 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%.”. |

16 (2) CONFORMING AMENDMENTS.—

17 (A) Subparagraph (F) of section 303(h)(2)
18 of such Act (29 U.S.C. 1083(h)(2)) is amended
19 by inserting “and the averages determined

1 under subparagraph (C)(iv)” after “subpara-
2 graph (C)”.

3 (B) Clauses (ii) and (iii) of section
4 205(g)(3)(B) of such Act (29 U.S.C.
5 1055(g)(3)(B)) are each amended by striking
6 “section 303(h)(2)(C)” and inserting “section
7 303(h)(2)(C) (determined by not taking into ac-
8 count any adjustment under clause (iv) there-
9 of)”.

10 (C) Clause (iv) of section 4006(a)(3)(E) of
11 such Act (29 U.S.C. 1306(a)(3)(E)) is amended
12 by striking “section 303(h)(2)(C)” and insert-
13 ing “section 303(h)(2)(C) (notwithstanding any
14 regulations issued by the corporation, deter-
15 mined by not taking into account any adjust-
16 ment under clause (iv) thereof)”.

17 (b) AMENDMENTS TO INTERNAL REVENUE CODE OF
18 1986.—

19 (1) IN GENERAL.—Subparagraph (C) of section
20 430(h)(2) of the Internal Revenue Code of 1986 is
21 amended by adding at the end the following new
22 clause:

23 “(iv) SEGMENT RATE STABILIZA-
24 TION.—

1 “(I) IN GENERAL.—If a segment
2 rate described in clause (i), (ii), or
3 (iii) with respect to any applicable
4 month (determined without regard to
5 this clause) is less than the applicable
6 minimum percentage, or more than
7 the applicable maximum percentage,
8 of the average of the segment rates
9 described in such clause for years in
10 the 25-year period ending with Sep-
11 tember 30 of the calendar year pre-
12 ceding the calendar year in which the
13 plan year begins, then the segment
14 rate described in such clause with re-
15 spect to the applicable month shall be
16 equal to the applicable minimum per-
17 centage or the applicable maximum
18 percentage of such average, whichever
19 is closest. The Secretary shall deter-
20 mine such average on an annual basis
21 and may prescribe equivalent rates for
22 years in any such 25-year period for
23 which the rates described in any such
24 clause are not available.

1 “(II) APPLICABLE MINIMUM PER-
 2 CENTAGE; APPLICABLE MAXIMUM
 3 PERCENTAGE.—For purposes of sub-
 4 clause (I), the applicable minimum
 5 percentage and the applicable max-
 6 imum percentage for a plan year be-
 7 ginning in a calendar year shall be de-
 8 termined in accordance with the fol-
 9 lowing 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%.”. |

10 (2) CONFORMING AMENDMENTS.—

11 (A) Paragraph (6) of section 404(o) of
 12 such Code is amended by inserting “(deter-
 13 mined by not taking into account any adjust-
 14 ment under clause (iv) of subsection (h)(2)(C)
 15 thereof)” before the period.

16 (B) Subparagraph (F) of section 430(h)(2)
 17 of such Code is amended by inserting “and the
 18 averages determined under subparagraph
 19 (C)(iv)” after “subparagraph (C)”.

1 (C) Subparagraphs (C) and (D) of section
2 417(e)(3) of such Code are each amended by
3 striking “section 430(h)(2)(C)” and inserting
4 “section 430(h)(2)(C) (determined by not tak-
5 ing into account any adjustment under clause
6 (iv) thereof)”.

7 (c) EFFECTIVE DATE.—

8 (1) IN GENERAL.—The amendments made by
9 this section shall apply with respect to plan years be-
10 ginning after December 31, 2011.

11 (2) EXCEPTION.—A plan sponsor may elect not
12 to have the amendments made by this section apply
13 to any plan year beginning on or before the date of
14 the enactment of this Act solely for purposes of de-
15 termining the adjusted funding target attainment
16 percentage under sections 436 of the Internal Rev-
17 enue Code of 1986 and 206(g) of the Employee Re-
18 tirement Income Security Act of 1974 for such plan
19 year, provided that the plan sponsor made such de-
20 termination in good faith and without an intent to
21 trigger any statutorily required restrictions on bene-
22 fits. A plan shall not be treated as failing to meet
23 the requirements of sections 411(d)(6) of such Code
24 and 204(g) of such Act solely by reason of an elec-
25 tion under this paragraph.

1 **SEC. 374. CONGRESSIONAL COMMITMENT TO ENCOUR-**
2 **AGING PENSIONS.**

3 Not later than December 31, 2012, the Committee
4 on Health, Education, Labor, and Pensions of the Senate
5 and the Committee on Education and the Workforce of
6 the House of Representatives shall issue a report pro-
7 viding recommendations to improve and expand the de-
8 fined benefit pension system. Such report shall include
9 recommendations concerning—

10 (1) measures to further stabilize pension con-
11 tribution rates;

12 (2) additional or expanded options to improve
13 pension funding flexibility for plan sponsors suf-
14 fering a temporary business hardship;

15 (3) incentives for plans sponsors to establish or
16 maintain pension plans permitting new entrants and
17 to encourage plan sponsors to unfreeze their pension
18 plans; and

19 (4) modifications to the pension guaranty sys-
20 tem and bankruptcy law necessary or appropriate to
21 protect plan participants and retirees from inequi-
22 table treatment.

23 **SEC. 375. PARTICIPANT PROTECTION IN BANKRUPTCY.**

24 Sections 4022(g) and 4044(e) of the Employee Re-
25 tirement Income Security Act of 1974 (29 U.S.C. 1322(g)
26 and 1344(e)), as added by section 404 of the Pension Pro-

1 tection Act of 2006, are repealed as of October 1, 2011,
2 and shall not apply with respect to proceedings initiated
3 under title 11, United States Code, or under any similar
4 Federal law or law of a State or political subdivision, on
5 or after such date.

6 **Subtitle I—Fair Playing Field**

7 **SEC. 381. SHORT TITLE; FINDINGS; PURPOSES.**

8 (a) **SHORT TITLE.**—This subtitle may be cited as the
9 “Fair Playing Field Act of 2012”.

10 (b) **FINDINGS.**—Congress makes the following find-
11 ings:

12 (1) In 1978, Congress was concerned that lack
13 of clarity as to the proper classification of some
14 workers, increased IRS enforcement activity, and
15 retroactive application by IRS of interpretations that
16 were arguably new had caused hardships for some
17 small businesses and other taxpayers and confusion
18 as to the applicable rules.

19 (2) To allow time to develop a comprehensive
20 approach to the problem, Congress enacted section
21 530 of the Revenue Act of 1978 as an interim meas-
22 ure protecting taxpayers from liability for misclassi-
23 fication if the taxpayer has a reasonable basis for
24 classifying a worker as an independent contractor
25 and meets certain other conditions. In addition, the

1 Act prohibited the Secretary of the Treasury from
2 publishing regulations or revenue rulings on work-
3 ers' employment tax status pending the expected
4 near-term enactment of clarifying legislation.

5 (3) During the ensuing 33 years, Congress
6 made section 530 of the Revenue Act of 1978 per-
7 manent, however, changes in working relationships
8 and the continued prohibition on new guidance have
9 increased the uncertainty as to the proper classifica-
10 tion of workers.

11 (4) Many workers are properly classified as
12 independent contractors. In other instances, workers
13 who are employees are being treated as independent
14 contractors. Such misclassification for tax purposes
15 contributes to inequities in the competitive positions
16 of businesses and to the Federal and State tax gap,
17 and may also result in misclassification for other
18 purposes, such as denial of unemployment benefits,
19 workplace health and safety protections, and retire-
20 ment or other benefits or protections available to
21 employees.

22 (5) Workers, businesses, and other taxpayers
23 will benefit from clear guidance regarding employ-
24 ment tax status. In the interest of fairness and in
25 view of many service recipients' reliance on current

1 section 530, such guidance should apply only pro-
2 spectively.

3 (c) PURPOSES.—The purposes of this subtitle are to
4 permit the Secretary of the Treasury to provide guidance
5 allowing workers and businesses to clearly understand the
6 proper Federal tax classification of workers and to provide
7 relief allowing an orderly transition to new rules designed
8 to increase certainty and uniformity of treatment.

9 **SEC. 382. AUTHORITY TO ISSUE GUIDANCE CLARIFYING**
10 **EMPLOYMENT STATUS FOR PURPOSES OF**
11 **EMPLOYMENT TAXES.**

12 (a) IN GENERAL.—Chapter 25 of the Internal Rev-
13 enue Code of 1986 is amended by adding at the end the
14 following new section:

15 **“SEC. 3511. AUTHORITY TO ISSUE GUIDANCE CLARIFYING**
16 **EMPLOYMENT STATUS.**

17 “(a) IN GENERAL.—The Secretary shall issue such
18 regulations or other guidance as the Secretary determines
19 to be necessary or appropriate to clarify the proper em-
20 ployment status of individuals for purposes of any tax im-
21 posed by this subtitle.

22 “(b) PROHIBITION ON RETROACTIVE ASSESS-
23 MENTS.—

24 “(1) IN GENERAL.—If—

1 “(A) for purposes of any tax imposed by
2 this subtitle, the taxpayer did not treat an indi-
3 vidual as an employee for any period before the
4 reclassification date with respect to such indi-
5 vidual, and

6 “(B) in the case of periods after December
7 31, 1978, and before such reclassification date,
8 all Federal tax returns (including information
9 returns) required to be filed by the taxpayer
10 with respect to such individual for such period
11 are filed on a basis consistent with the tax-
12 payer’s treatment of such individual as not
13 being an employee,

14 then, for purposes of applying such taxes for periods
15 before such reclassification date with respect to the
16 taxpayer, the individual shall be deemed not to be an
17 employee unless the taxpayer had no reasonable
18 basis for not treating such individual as an em-
19 ployee.

20 “(2) STATUTORY STANDARDS PROVIDING ONE
21 METHOD OF SATISFYING THE REQUIREMENTS OF
22 PARAGRAPH (1).—For purposes of paragraph (1), a
23 taxpayer shall in any case be treated as having a
24 reasonable basis for not treating an individual as an
25 employee for a period if the taxpayer’s treatment of

1 such individual for such period was in reasonable re-
2 liance on any of the following:

3 “(A) Judicial precedent, published rulings,
4 technical advice with respect to the taxpayer, or
5 a letter ruling to the taxpayer.

6 “(B) A past Internal Revenue Service
7 audit of the taxpayer in which there was no as-
8 sessment attributable to the treatment (for pur-
9 poses of any tax imposed by this subtitle) of the
10 individuals holding positions substantially simi-
11 lar to the position held by such individual.

12 “(C) Long-standing recognized practice of
13 a significant segment of the industry in which
14 such individual was engaged.

15 “(3) CONSISTENCY REQUIRED IN THE CASE OF
16 PRIOR TAX TREATMENT.—Paragraph (1) shall not
17 apply with respect to the treatment of any individual
18 (hereafter in this paragraph referred to as the re-
19 classified individual) for purposes of any tax im-
20 posed by this subtitle for any period ending after
21 December 31, 1978, if the taxpayer (or a prede-
22 cessor) has treated any individual holding a substan-
23 tially similar position as an employee for purposes of
24 any tax imposed by this subtitle for any period be-
25 ginning after December 31, 1977, and ending before

1 the reclassification date with respect to such reclass-
2 sified individual.

3 “(c) DEFINITIONS.—For purposes of this section—

4 “(1) RECLASSIFICATION DATE.—

5 “(A) IN GENERAL.—The term ‘reclassifica-
6 tion date’ means, with respect to any individual,
7 the earlier of—

8 “(i) the first day of the first calendar
9 quarter beginning more than 180 days
10 after the date of an employee classification
11 determination with respect to such indi-
12 vidual, or

13 “(ii) the effective date of the first ap-
14 plicable final regulation issued by the Sec-
15 retary under subsection (a) with respect to
16 such individual (or, if later, the first day of
17 the first calendar quarter beginning more
18 than 180 days after such regulation is
19 issued).

20 “(B) EMPLOYEE CLASSIFICATION DETER-
21 MINATION.—The term ‘employee classification
22 determination’ means, with respect to any indi-
23 vidual, a determination by the Secretary, in
24 connection with an audit of the taxpayer which
25 is described in section 7436 and which com-

1 mences after the date which is 1 year after the
2 date of the enactment of this section, that a
3 class of individuals holding positions with such
4 taxpayer which are substantially similar to the
5 position held by such individual are employees.

6 “(C) FIRST APPLICABLE FINAL REGULA-
7 TION.—The term ‘first applicable final regula-
8 tion’ means, with respect to any individual, the
9 first final regulation (or other guidance of gen-
10 eral applicability) which sets forth the factors
11 for determining the employment status of a
12 class of individuals holding positions substan-
13 tially similar to the position held by such indi-
14 vidual.

15 “(2) EMPLOYMENT STATUS.—The term ‘em-
16 ployment status’ means the status of an individual,
17 under the usual common law rules applicable in de-
18 termining the employer-employee relationship, as an
19 employee or as an independent contractor (or other
20 individual who is not an employee).

21 “(d) CONTINUATION OF CERTAIN SPECIAL RULES.—

22 “(1) EXCEPTION FOR CERTAIN SKILLED WORK-
23 ERS.—Subsection (b) shall not apply in the case of
24 an individual who, pursuant to an arrangement be-
25 tween the taxpayer and another person, provides

1 services for such other person as an engineer, de-
2 signer, drafter, computer programmer, systems ana-
3 lyst, or other similarly skilled worker engaged in a
4 similar line of work.

5 “(2) NOTICE OF AVAILABILITY OF SECTION.—

6 An officer or employee of the Internal Revenue Serv-
7 ice shall, before or at the commencement of any
8 audit inquiry relating to the employment status of
9 one or more individuals who perform services for the
10 taxpayer, provide the taxpayer with a written notice
11 of the provisions of this section.

12 “(3) RULES RELATING TO STATUTORY STAND-
13 ARDS.—For purposes of subsection (b)(2)—

14 “(A) a taxpayer may not rely on an audit
15 commenced after December 31, 1996, for pur-
16 poses of subparagraph (B) thereof unless such
17 audit included an examination for purposes of
18 any tax imposed by this subtitle whether the in-
19 dividual involved (or any individual holding a
20 position substantially similar to the position
21 held by the individual involved) should be treat-
22 ed as an employee of the taxpayer,

23 “(B) in no event shall the significant seg-
24 ment requirement of subparagraph (C) thereof
25 be construed to require a reasonable showing of

1 the practice of more than 25 percent of the in-
2 dustry (determined by not taking into account
3 the taxpayer), and

4 “(C) in applying the long-standing recog-
5 nized practice requirement of subparagraph (C)
6 thereof—

7 “(i) such requirement shall not be
8 construed as requiring the practice to have
9 continued for more than 10 years, and

10 “(ii) a practice shall not fail to be
11 treated as long-standing merely because
12 such practice began after 1978.

13 “(4) AVAILABILITY OF SAFE HARBORS.—Noth-
14 ing in this section shall be construed to provide that
15 subsection (b) only applies where the individual in-
16 volved is otherwise an employee of the taxpayer.

17 “(5) BURDEN OF PROOF.—

18 “(A) IN GENERAL.—If—

19 “(i) a taxpayer establishes a prima
20 facie case that it was reasonable not to
21 treat an individual as an employee for pur-
22 poses of subsection (b), and

23 “(ii) the taxpayer has fully cooperated
24 with reasonable requests from the Sec-
25 retary,

1 then the burden of proof with respect to such
2 treatment shall be on the Secretary.

3 “(B) EXCEPTION FOR OTHER REASONABLE
4 BASIS.—In the case of any issue involving
5 whether the taxpayer had a reasonable basis
6 not to treat an individual as an employee for
7 purposes of subsection (b), subparagraph (A)
8 shall only apply for purposes of determining
9 whether the taxpayer meets the requirements of
10 subparagraph (A), (B), or (C) of subsection
11 (b)(2).

12 “(6) PRESERVATION OF PRIOR PERIOD SAFE
13 HARBOR.—If—

14 “(A) an individual would (but for the
15 treatment referred to in subparagraph (B)) be
16 deemed not to be an employee of the taxpayer
17 under subsection (b) for any prior period, and

18 “(B) such individual is treated by the tax-
19 payer as an employee for purposes of the taxes
20 imposed by this subtitle for any subsequent pe-
21 riod,

22 then, for purposes of applying such taxes for such
23 prior period with respect to the taxpayer, the indi-
24 vidual shall be deemed not to be an employee.

1 “(7) SUBSTANTIALLY SIMILAR POSITION.—For
2 purposes of subsection (b) and this subsection, the
3 determination as to whether an individual holds a
4 position substantially similar to a position held by
5 another individual shall include consideration of the
6 relationship between the taxpayer and such individ-
7 uals.

8 “(8) TREATMENT OF TEST ROOM SUPERVISORS
9 AND PROCTORS WHO ASSIST IN THE ADMINISTRA-
10 TION OF COLLEGE ENTRANCE AND PLACEMENT
11 EXAMS.—

12 “(A) IN GENERAL.—In the case of an indi-
13 vidual described in subparagraph (B) who is
14 providing services as a test proctor or room su-
15 pervisor by assisting in the administration of
16 college entrance or placement examinations,
17 subsection (b) shall be applied to such services
18 performed after December 31, 2006 (and remu-
19 neration paid for such services) without regard
20 to paragraph (3) thereof.

21 “(B) APPLICABILITY.—An individual is de-
22 scribed in this subparagraph if the individual—

23 “(i) is providing the services described
24 in subsection (b) to an organization de-

1 scribed in section 501(c) and exempt from
2 tax under section 501(a), and

3 “(ii) is not otherwise treated as an
4 employee of such organization for purposes
5 of this subtitle.

6 “(9) TREATMENT OF SECURITIES BROKER
7 DEALERS.—In determining for purposes of this title
8 whether a registered representative of a securities
9 broker-dealer is an employee (as defined in section
10 3121(d)), no weight shall be given to instructions
11 from the service recipient which are imposed only in
12 compliance with investor protection standards im-
13 posed by the Federal Government, any State govern-
14 ment, or a governing body pursuant to a delegation
15 by a Federal or State agency.

16 “(e) STATEMENTS TO INDEPENDENT CONTRAC-
17 TORS.—

18 “(1) IN GENERAL.—Each person who contracts
19 for the services of an independent contractor on a
20 regular and ongoing basis, within the scope of such
21 person’s trade or business, shall provide a written
22 statement to such independent contractor notifying
23 such independent contractor of the Federal tax obli-
24 gations of an independent contractor, the labor and
25 employment law protections that do not apply to

1 independent contractors, and the right of such inde-
2 pendent contractor to seek a status determination
3 from the Internal Revenue Service.

4 “(2) INDEPENDENT CONTRACTOR.—For pur-
5 poses of this subsection, the term ‘independent con-
6 tractor’ means any individual who is not treated as
7 an employee by the person receiving the services re-
8 ferred to in paragraph (1).

9 “(3) TIMING OF STATEMENT.—Except as other-
10 wise provided by the Secretary, the statement re-
11 quired under paragraph (1) shall be provided within
12 a reasonable period of entering into the contract re-
13 ferred to in paragraph (1).

14 “(4) DEVELOPMENT OF MODEL STATEMENT.—
15 The Secretary shall develop model materials for pro-
16 viding the statement required under paragraph
17 (1).”.

18 (b) REDUCED PENALTY NOT APPLICABLE IN CASES
19 OF NONCOMPLIANCE WITH GUIDANCE WITHOUT REA-
20 SONABLE BASIS.—Subsection (c) of section 3509 of the
21 Internal Revenue Code of 1986 is amended—

22 (1) by striking “if such liability” and inserting

23 “if—

24 “(1) such liability”, and

1 (2) by striking the period at the end and insert-
2 ing “, or

3 “(2) such liability relates to an individual who
4 is treated as an employee under regulations or other
5 guidance issued by the Secretary under section
6 3511(a) and the taxpayer lacks a reasonable basis
7 for treating the individual as other than an em-
8 ployee.

9 In the case of a taxpayer which has received a final written
10 determination from the Internal Revenue Service holding
11 that the individual referred to in paragraph (2) (or an-
12 other individual who holds a position with the taxpayer
13 substantially similar to the position held by such indi-
14 vidual) is an employee, such taxpayer shall be treated for
15 purposes of paragraph (2) as lacking a reasonable basis
16 for treating such individual as other than an employee
17 with respect to periods beginning on and after the first
18 day of the first calendar quarter beginning more than 180
19 days after the date of such written determination unless
20 the taxpayer establishes by clear and convincing evidence
21 that the taxpayer has a reasonable basis for such treat-
22 ment.”.

23 (c) CONFORMING AMENDMENTS.—

24 (1) Paragraph (2) of section 6724(d) of the In-
25 ternal Revenue Code of 1986 is amended by striking

1 “or” at the end of subparagraph (GG), by striking
 2 the period at the end of subparagraph (HH) and in-
 3 serting “, or”, and by inserting after subparagraph
 4 (HH) the following new subparagraph:

5 “(II) section 3511(e) (relating to state-
 6 ments to independent contractors).”.

7 (2) Paragraph (2) of section 7436(a) of such
 8 Code is amended by striking “subsection (a) of sec-
 9 tion 530 of the Revenue Act of 1978” and inserting
 10 “section 3511(b)”.

11 (3) The table of sections for chapter 25 of such
 12 Code is amended by adding at the end the following
 13 new item:

“Sec. 3511. Authority to issue guidance clarifying employment status.”.

14 (d) TERMINATION OF SECTION 530 OF THE REV-
 15 ENUE ACT OF 1978.—The Revenue Act of 1978 is amend-
 16 ed by striking section 530.

17 (e) REPORTS ON WORKER MISCLASSIFICATION.—Be-
 18 ginning with the first fiscal year beginning after the date
 19 the first regulation or other guidance is issued for public
 20 comment under section 3511(a) of the Internal Revenue
 21 Code of 1986 (as added by this section):

22 (1) A report each fiscal year on worker classi-
 23 fication which shall include the total number of ex-
 24 aminations of employers initiated because of sus-
 25 pected worker classification issues, the total number

1 of examinations that included determinations on
2 worker classification issues, the amount of additional
3 tax liabilities associated with worker classification
4 enforcement actions, the number of workers reclassi-
5 fied as a result of these actions, the number of re-
6 quests for Determination of Worker Status (Form
7 SS-8), and technical guidance on how to understand
8 the data provided in the report.

9 (2) A report each fiscal year in which new sta-
10 tistically valid data is compiled and interpreted on
11 worker classification, prepared on the basis of infor-
12 mation gathered during an Employment Tax Study
13 conducted by the National Research Program (NRP)
14 of the Internal Revenue Service. Such report shall
15 provide statistical estimates of the number of em-
16 ployers misclassifying workers, the number of work-
17 ers misclassified, the industries involved, data inter-
18 pretations and conclusions, and a description of the
19 impact of improper worker classification on the em-
20 ployment tax gap.

21 (f) EFFECTIVE DATES.—

22 (1) DELAYED EFFECTIVE DATE OF REGULA-
23 TIONS AND GUIDANCE.—Except as provided in para-
24 graph (2), any regulation or other guidance issued
25 under section 3511(a) of the Internal Revenue Code

1 of 1986, as added by this section, shall not apply to
 2 services rendered before the date which is 1 year
 3 after the date of the enactment of this Act.

4 (2) TREATMENT OF SECURITIES BROKER DEAL-
 5 ERS.—Paragraph (9) of section 3511(d) of the In-
 6 ternal Revenue Code of 1986, as added by this sec-
 7 tion, shall apply to services performed after Decem-
 8 ber 31, 1997.

9 (3) AUTHORITY TO ISSUE REGULATIONS AND
 10 GUIDANCE IMMEDIATELY.—So much of the amend-
 11 ment made by subsection (d) as relates to subsection
 12 (b) of section 530 of the Revenue Act of 1978 shall
 13 take effect on the date of the enactment of this Act.

14 (4) DELAYED TERMINATION OF REMAINDER OF
 15 SECTION 530 OF THE REVENUE ACT OF 1978.—Ex-
 16 cept as provided in paragraph (3), the amendments
 17 made by subsections (c)(1) and (d) shall apply to
 18 services rendered on or after the date which is 1
 19 year after the date of the enactment of this Act.

20 **TITLE IV—REBUILD AMERICA**
 21 **TRUST FUND**

22 **SEC. 401. ESTABLISH REBUILD AMERICA TRUST FUND.**

23 (a) IN GENERAL.—Subchapter A of chapter 98 is
 24 amended by adding at the end the following new section:

1 **“SEC. 9512. REBUILD AMERICA TRUST FUND.**

2 “(a) CREATION OF TRUST FUND.—There is estab-
3 lished in the Treasury of the United States a trust fund
4 to be known as the ‘Rebuild America Trust Fund’, con-
5 sisting of such amounts as may be appropriated or cred-
6 ited to such fund as provided in this section or section
7 9602(b).

8 “(b) TRANSFERS TO TRUST FUND.—There are here-
9 by appropriated to the Rebuild America Trust Fund
10 amounts equivalent to the revenues resulting from the
11 amendments made by title III of the Rebuild America Act.

12 “(c) AUTHORITY TO BORROW.—

13 “(1) IN GENERAL.—There are authorized to be
14 appropriated to the Rebuild America Trust Fund, as
15 repayable advances, such sums as may be necessary
16 to carry out the other purposes of the Rebuild Amer-
17 ica Act as described in subsection (d)(2).

18 “(2) LIMITATION ON AGGREGATE ADVANCES.—
19 The maximum aggregate amount of repayable ad-
20 vances to the Rebuild America Trust Fund which is
21 outstanding at any one time shall not exceed an
22 amount equal to the amount which the Secretary es-
23 timates will be equal to the sum of the amounts ap-
24 propriated to the Rebuild America Trust Fund
25 under subsection (b) during the following 60
26 months.

1 “(3) REPAYMENT OF ADVANCES.—

2 “(A) IN GENERAL.—Advances made to the
3 Rebuild America Trust Fund shall be repaid,
4 and interest on such advances shall be paid, to
5 the general fund of the Treasury when the Sec-
6 retary determines that moneys are available for
7 such purposes in the Rebuild America Trust
8 Fund.

9 “(B) FINAL REPAYMENT.—No advance
10 shall be made to the Rebuild America Trust
11 Fund after September 30, 2022, and all ad-
12 vances to such Trust Fund shall be repaid on
13 or before September 30, 2024.

14 “(C) RATE OF INTEREST.—Interest on ad-
15 vances made to the Rebuild America Trust
16 Fund shall be at a rate determined by the Sec-
17 retary of the Treasury (as of the close of the
18 calendar month preceding the month in which
19 the advance is made) to be equal to the current
20 average market yield on outstanding marketable
21 obligations of the United States with remaining
22 periods to maturity comparable to the antici-
23 pated period during which the advance will be
24 outstanding and shall be compounded annually.

25 “(d) EXPENDITURES.—

1 “(1) IN GENERAL.—Amounts in the Rebuild
2 America Trust Fund shall be available, without fur-
3 ther appropriation—

4 “(A) to transfer to accounts specified by,
5 and to carry out the provisions of, section 103
6 of the Rebuild America Act, and

7 “(B) as provided for in the Rebuild Amer-
8 ica Act (and the amendments made by that
9 Act).

10 “(2) ALLOCATION OF FUNDS.—The Secretary
11 shall allocate funds from the Rebuild America Trust
12 Fund to the responsible Departments for distribu-
13 tion to the States and subdivisions within 15 days
14 of the beginning of each fiscal year as set in section
15 103 of the Rebuild America Act. Each Secretary of
16 such a Department shall allocate the funds set by
17 formula to the States or local receiving entities with-
18 in 90 days of the beginning of such fiscal year.

19 “(3) ADMINISTRATIVE FUNDS.—The portion of
20 funds allowed for administrative costs for any ac-
21 count may not exceed the percentage used for ad-
22 ministering those funds at both the Federal and the
23 State levels under the underlying regular program
24 that is in effect for the latest appropriations meas-
25 ure expiring at the end of a fiscal year.

1 “(4) MAINTENANCE OF EFFORT.—

2 “(A) FEDERAL LEVEL.—The funds pro-
3 vided from the Rebuild America Trust Fund
4 shall not be provided by the Secretary to an ac-
5 count if the appropriations for that account are
6 to be funded at not less than the sum provided
7 in fiscal year 2012, not including emergency
8 funds.

9 “(B) STATE LEVEL.—A State or local gov-
10 ernment shall not receive funds for an account
11 provided by the Rebuild America Trust Fund
12 unless that State maintains the same level of
13 funding for that function as the State and local
14 governments provided in State fiscal year 2011.
15 The Secretary shall, by rule define the State
16 programs representing the function for each ac-
17 count for which funds are provided by the
18 Trust Fund.

19 “(5) USE OF AMERICAN IRON, STEEL, MANU-
20 FACTURED GOODS, AND EQUIPMENT.—

21 “(A) IN GENERAL.—None of the funds
22 made available by the Rebuild America Trust
23 Fund may be used for a project for the con-
24 struction, alteration, maintenance, or repair of
25 a public building or public work unless all of

1 the iron, steel, manufactured goods, and equip-
2 ment used in the project are produced in the
3 United States.

4 “(B) EXCEPTIONS.—Subparagraph (A)
5 shall not apply in any case or category of cases
6 in which the head of the Federal department or
7 agency involved finds that—

8 “(i) applying subparagraph (A) would
9 be inconsistent with the public interest,

10 “(ii) iron, steel, the relevant manufac-
11 tured goods, or the relevant equipment are
12 not produced in the United States in suffi-
13 cient and reasonably available quantities
14 and of a satisfactory quality, or

15 “(iii) inclusion of iron, steel, manufac-
16 tured goods, and equipment produced in
17 the United States will increase the cost of
18 the overall project by more than 25 per-
19 cent.

20 “(C) PUBLICATION OF JUSTIFICATION.—If
21 the head of a Federal department or agency de-
22 termines that it is necessary to waive the appli-
23 cation of subparagraph (A) based on a finding
24 under subparagraph (B), the head of the de-
25 partment or agency shall publish in the Federal

1 Register a detailed written justification as to
2 why the provision is being waived.

3 “(D) CONSISTENCY WITH INTERNATIONAL
4 AGREEMENTS.—This paragraph shall be applied
5 in a manner consistent with United States obli-
6 gations under international agreements.

7 “(6) WAGE RATE REQUIREMENTS.—Notwith-
8 standing any other provision of law and in a manner
9 consistent with other provisions in this section and
10 in the Rebuild America Act, all laborers and me-
11 chanics employed by contractors and subcontractors
12 on projects funded directly by or assisted in whole
13 or in part by and through the Federal Government
14 pursuant to funds made available by the Rebuild
15 America Act shall be paid wages at rates not less
16 than those prevailing on projects of a character simi-
17 lar in the locality as determined by the Secretary of
18 Labor in accordance with subchapter IV of chapter
19 31 of title 40, United States Code. With respect to
20 the labor standards specified in this paragraph, the
21 Secretary of Labor shall have the authority and
22 functions set forth in Reorganization Plan Num-
23 bered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.)
24 and section 3145 of title 40, United States Code.”.

1 (b) CONFORMING AMENDMENT.—The table of sec-
2 tions for subchapter A of chapter 98 is amended by adding
3 at the end the following new item:

“Sec. 9512. Rebuild America Trust Fund.”.

