

113TH CONGRESS  
1ST SESSION

# H. R. 505

To repeal sequester while achieving balance in deficit reduction between revenue and cuts, and between non-defense cuts and defense cuts, to invest in job creation, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 5, 2013

Mr. ELLISON (for himself, Mr. GRIJALVA, Mr. CONYERS, Mr. McDERMOTT, Ms. CLARKE, Mr. NADLER, Ms. LEE of California, Mr. MARKEY, Ms. SCHAKOWSKY, Ms. CHU, Mr. COHEN, Mr. CLAY, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. GRAYSON, and Mr. GUTIERREZ) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on the Budget, Oversight and Government Reform, Armed Services, Education and the Workforce, Transportation and Infrastructure, and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To repeal sequester while achieving balance in deficit reduction between revenue and cuts, and between non-defense cuts and defense cuts, to invest in job creation, and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Balancing Act”.

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

Sec. 1. Short title; table of contents.

TITLE I—REPEAL SEQUESTER

Sec. 101. Repeal of section 251A sequestration to enforce budget goal.

TITLE II—CLOSE TAX LOOPHOLES TO ACHIEVE BALANCE

Subtitle A—28 Percent Limitation on Certain Deductions and Exclusions

Sec. 201. 28 percent limitation on certain deductions and exclusions.

Subtitle B—Tax Carried Interest in Investment Partnerships as Ordinary  
Income

Sec. 211. Partnership interests transferred in connection with performance of  
services.

Sec. 212. Special rules for partners providing investment management services  
to partnerships.

Subtitle C—Dual Capacity Taxpayers

Sec. 221. Modifications of foreign tax credit rules applicable to dual capacity  
taxpayers.

Sec. 222. Separate basket treatment taxes paid on foreign oil and gas income.

Subtitle D—Close Exclusion of Foreign-Earned Income Loophole

Sec. 231. Repeal of foreign earned income exclusion.

Subtitle E—Close S Corporation Loophole

Sec. 241. Employment tax treatment of professional service businesses.

Subtitle F—Limitation on Mortgage Interest Deduction With Respect to  
Boats

Sec. 251. Mortgage interest deduction allowed with respect to boats only if boat  
is used as the principal residence of the taxpayer.

TITLE III—ENDING CORPORATE SUBSIDIES

Subtitle A—End Fossil Fuel Subsidies

Sec. 301. Termination of various tax expenditures relating to fossil fuels.

Sec. 302. Termination of alternative fuel vehicle refueling property credit with  
respect to fossil fuels.

Sec. 303. Uniform seven-year amortization for geological and geophysical ex-  
penditures.

- Sec. 304. Repeal of domestic manufacturing deduction for hard mineral mining.
- Sec. 305. Limitation on deduction for income attributable to domestic production of oil, natural gas, or primary products thereof.
- Sec. 306. Termination of last-in, first-out method of inventory for oil, natural gas, and coal companies.
- Sec. 307. Repeal of percentage depletion for coal and hard mineral fossil fuels.
- Sec. 308. Termination of capital gains treatment for royalties from coal.
- Sec. 309. Increase in oil spill liability trust fund financing rate.
- Sec. 310. Denial of deduction for removal costs and damages for certain oil spills.
- Sec. 311. Tax on crude oil and natural gas produced from the outer Continental Shelf in the Gulf of Mexico.

Subtitle B—Ending Excessive Corporate Tax Deductions for Stock Options

- Sec. 331. Consistent treatment of stock options by corporations.
- Sec. 332. Application of executive pay deduction limit.

Subtitle C—Reduce Deduction of Corporate Meals and Entertainment

- Sec. 341. Reduction in business meals and entertainment tax deduction.

TITLE IV—CLOSE INTERNATIONAL TAX SYSTEM LOOPHOLES

Subtitle A—Reformation of U.S. International Tax System

- Sec. 401. Allocation of expenses and taxes on basis of repatriation of foreign income.
- Sec. 402. Excess income from transfers of intangibles to low-taxed affiliates treated as subpart F income.
- Sec. 403. Limitations on income shifting through intangible property transfers.
- Sec. 404. Limitation on earnings stripping by expatriated entities.
- Sec. 405. Prevention of avoidance of tax through reinsurance with non-taxed affiliates.

Subtitle B—Reinsurance

- Sec. 411. Prevention of avoidance of tax through reinsurance with non-taxed affiliates.

Subtitle C—Close Loophole for Corporate Jet Depreciation

- Sec. 421. General aviation aircraft treated as 7-year property.

TITLE V—CLOSE ESTATE TAX LOOPHOLES

- Sec. 501. Valuation rules for certain transfers of nonbusiness assets; limitation on minority discounts.
- Sec. 502. Consistent basis reporting between estate and person acquiring property from decedent.
- Sec. 503. Required minimum 10-year term, etc., for grantor retained annuity trusts.
- Sec. 504. Limitation on GST exemption of perpetual dynasty trusts.

TITLE VI—CUT PENTAGON WASTE TO ACHIEVE BALANCE

Subtitle A—Smarter Approach to Nuclear Expenditures

- Sec. 601. Short title.

- Sec. 602. Findings.
- Sec. 603. Reduction in nuclear forces.
- Sec. 604. Reports required.

Subtitle B—Limiting Excessive Contractor Compensation

- Sec. 611. Limitation on allowable compensation costs.

Subtitle C—Relocate Troops From Europe to the United States

- Sec. 615. Relocation to United States military installations of members of the United States Armed Forces assigned to permanent duty in Europe.

Subtitle D—Additional Reduction in Armed Forces End Strength Levels

- Sec. 621. Additional Army and Marine Corps end strength reductions through retirement and separation.

Subtitle E—Procurement of Certain Submarines, Carriers, and Aircraft

- Sec. 631. Limitation on procurement of Virginia class submarines.
- Sec. 632. Limitation on procurement of one Ford class aircraft carrier.
- Sec. 633. Authority for procurement of F/A-18E and F/A-18F aircraft.
- Sec. 634. Prohibition on procurement of V-22 Osprey aircraft.

Subtitle F—Limit Military Bands

- Sec. 641. Limitation on expenditures for military musical units.

Subtitle G—Reduction in Number of General and Flag Officers

- Sec. 651. Return of maximum number of general and flag officers to Cold War levels.

Subtitle H—Audit the Pentagon

- Sec. 661. Purposes.
- Sec. 662. Findings.
- Sec. 663. Spending reductions for agencies without clean audits.
- Sec. 664. Report on Department of Defense reporting requirements.
- Sec. 665. Sense of Congress in implementation of defense budget reductions.

TITLE VII—INVEST IN JOB CREATION

Subtitle A—Making Work Pay Extension

- Sec. 701. One-year extension of making work pay credit.

Subtitle B—Support for Teachers and School Modernization

PART I—PREVENTING TEACHER LAYOFFS AND SUPPORTING THE CREATION OF ADDITIONAL JOBS IN PUBLIC EARLY CHILDHOOD, ELEMENTARY, AND SECONDARY EDUCATION

- Sec. 711. Purpose.
- Sec. 712. Grants for the outlying areas and the Secretary of the Interior; availability of funds.
- Sec. 713. State allocation.
- Sec. 714. State application.

- Sec. 715. State reservation and responsibilities.
- Sec. 716. Local educational agencies.
- Sec. 717. Early learning.
- Sec. 718. Maintenance of effort.
- Sec. 719. Reporting.
- Sec. 720. Definitions.
- Sec. 721. Authorization of appropriations.

#### PART II—ELEMENTARY AND SECONDARY SCHOOLS

- Sec. 731. Purpose.
- Sec. 732. Authorization of appropriations.
- Sec. 733. Allocation of funds.
- Sec. 734. State use of funds.
- Sec. 735. State and local applications.
- Sec. 736. Use of funds.
- Sec. 737. Private schools.
- Sec. 738. Additional provisions.

#### PART III—COMMUNITY COLLEGE MODERNIZATION

- Sec. 739. Federal assistance for community college modernization.

#### PART IV—GENERAL PROVISIONS

- Sec. 740. Definitions.
- Sec. 741. Buy American.

#### Subtitle C—Transportation Infrastructure Investments

##### PART I—IMMEDIATE TRANSPORTATION INFRASTRUCTURE INVESTMENTS

- Sec. 751. Immediate transportation infrastructure investments.

##### PART II—BUILDING AND UPGRADING INFRASTRUCTURE FOR LONG-TERM DEVELOPMENT

###### SUBPART A—IMMEDIATE TRANSPORTATION INFRASTRUCTURE INVESTMENTS

- Sec. 761. Short title.
- Sec. 762. Findings and purpose.
- Sec. 763. Definitions.

###### SUBPART B—AMERICAN INFRASTRUCTURE FINANCING AUTHORITY

- Sec. 765. Establishment and general authority of AIFA.
- Sec. 766. Voting members of the Board of Directors.
- Sec. 767. Chief executive officer of AIFA.
- Sec. 768. Powers and duties of the Board of Directors.
- Sec. 769. Senior management.
- Sec. 770. Special Inspector General for AIFA.
- Sec. 771. Other personnel.
- Sec. 772. Compliance.

###### SUBPART C—TERMS AND LIMITATIONS ON DIRECT LOANS AND LOAN GUARANTEES

- Sec. 773. Eligibility criteria for assistance from AIFA and terms and limitations of loans.

Sec. 774. Loan terms and repayment.  
 Sec. 775. Compliance and enforcement.  
 Sec. 776. Audits; reports to the President and Congress.

SUBPART D—FUNDING OF AIFA

Sec. 777. Administrative fees.  
 Sec. 778. Efficiency of AIFA.  
 Sec. 779. Funding.

SUBPART E—EXTENSION OF EXEMPTION FROM ALTERNATIVE MINIMUM TAX  
 TREATMENT FOR CERTAIN TAX-EXEMPT BONDS

Sec. 780. Extension of exemption from alternative minimum tax treatment for  
 certain tax-exempt bonds.

1 **TITLE I—REPEAL SEQUESTER**

2 **SEC. 101. REPEAL OF SECTION 251A SEQUESTRATION TO**  
 3 **ENFORCE BUDGET GOAL.**

4 Section 251A of the Balanced Budget and Emer-  
 5 gency Deficit Control Act of 1985 is repealed.

6 **TITLE II—CLOSE TAX LOOP-**  
 7 **HOLES TO ACHIEVE BALANCE**

8 **Subtitle A—28 Percent Limitation**  
 9 **on Certain Deductions and Ex-**  
 10 **clusions**

11 **SEC. 201. 28 PERCENT LIMITATION ON CERTAIN DEDUC-**  
 12 **TIONS AND EXCLUSIONS.**

13 (a) IN GENERAL.—Part I of subchapter B of chapter  
 14 1 of the Internal Revenue Code of 1986 is amended by  
 15 adding at the end the following new section:

16 **“SEC. 69. LIMITATION ON CERTAIN DEDUCTIONS AND EX-**  
 17 **CLUSIONS.**

18 “(a) IN GENERAL.—In the case of an individual for  
 19 any taxable year, if—

1           “(1) the taxpayer’s adjusted gross income is  
2 above—

3           “(A) \$250,000 in the case of a joint return  
4 within the meaning of section 6013,

5           “(B) \$225,000 in the case of a head of  
6 household return,

7           “(C) \$125,000 in the case of a married fil-  
8 ing separately return, or

9           “(D) \$200,000 in all other cases; and

10          “(2) the taxpayer’s adjusted taxable income for  
11 such taxable year exceeds the minimum marginal  
12 rate amount, then the tax imposed under section 1  
13 with respect to such taxpayer for such taxable year  
14 shall be increased by the amount determined under  
15 subsection (b). If the taxpayer is subject to tax  
16 under section 55,

17 then in lieu of an increase in tax under section 1, the tax  
18 imposed under section 55 with respect to such taxpayer  
19 for such taxable year shall be increased by the amount  
20 determined under subsection (c).

21          “(b) ADDITIONAL AMOUNT.—The amount deter-  
22 mined under this subsection with respect to any taxpayer  
23 for any taxable year is the excess (if any) of—

24           “(1) the tax which would be imposed under sec-  
25 tion 1 with respect to such taxpayer for such taxable

1 year if ‘adjusted taxable income’ were substituted  
2 for ‘taxable income’ each place it appears therein,  
3 over

4 “(2) the sum of—

5 “(A) the tax which would be imposed  
6 under such section with respect to such tax-  
7 payer for such taxable year on the greater of—

8 “(i) taxable income, or

9 “(ii) the minimum marginal rate  
10 amount, plus

11 “(B) 28 percent of the excess (if any) of  
12 the taxpayer’s adjusted taxable income over the  
13 greater of—

14 “(i) the taxpayer’s taxable income, or

15 “(ii) the minimum marginal rate  
16 amount.

17 “(c) ADDITIONAL AMT AMOUNT.—

18 “(1) The amount determined under this sub-  
19 section with respect to any taxpayer for any taxable  
20 year is the additional amount computed under sub-  
21 section (b) multiplied by the ratio that—

22 “(A) the result of—

23 “(i) all itemized deductions (before  
24 the application of section 68), plus



1           “(ii) the specified above-the-line de-  
2           ductions and specified exclusions, minus

3           “(iii) the amount of deductions dis-  
4           allowed under section 56(b)(1)(A) and (B),  
5           minus

6           “(iv) the non-preference disallowed de-  
7           ductions, bears to—

8           “(B) the sum of—

9           “(i) the total of itemized deductions  
10          (after the application of section 68), plus

11          “(ii) the specified above-the-line de-  
12          ductions and specified exclusions.

13          “(2) If the top of the AMT exemption phase-  
14          out range for the taxpayer exceeds the minimum  
15          marginal rate amount for the taxpayer and if the  
16          taxpayer’s alternative minimum taxable income does  
17          not exceed the top of the AMT exemption phase-out  
18          range, the taxpayer must increase its additional  
19          AMT amount by 7 percent of the excess of—

20          “(A) the lesser of—

21          “(i) the top of the AMT exemption  
22          phase-out range, or

23          “(ii) the taxpayer’s alternative min-  
24          imum taxable income, computed—

1                   “(I) without regard to any  
2                   itemized deduction or any specified  
3                   above-the-line deduction, and

4                   “(II) by including the amount of  
5                   any specified exclusion; over

6                   “(B) the greater of—

7                   “(i) the taxpayer’s alternative min-  
8                   imum taxable income, or

9                   “(ii) the minimum marginal rate  
10                  amount.

11               “(d) MINIMUM MARGINAL RATE AMOUNT.—For pur-  
12               poses of this section, the term ‘minimum marginal rate  
13               amount’ means, with respect to any taxpayer for any tax-  
14               able year, the highest amount of the taxpayer’s taxable  
15               income which would be subject to a marginal rate of tax  
16               under section 1 that is less than 36 percent with respect  
17               to such taxable year.

18               “(e) ADJUSTED TAXABLE INCOME.—For purposes of  
19               this section—

20                   “(1) IN GENERAL.—The term ‘adjusted taxable  
21               income’ means taxable income computed—

22                   “(A) without regard to any itemized deduc-  
23               tion or any specified above-the-line deduction,  
24               and

1           “(B) by including in gross income any  
2           specified exclusion.

3           “(2) SPECIFIED ABOVE-THE-LINE DEDUC-  
4           TION.—The term ‘specified above-the-line deduction’  
5           means—

6           “(A) the deduction provided under section  
7           162(l) (relating to special rules for health insur-  
8           ance costs of self-employed individuals),

9           “(B) the deduction provided under section  
10          199 (relating to income attributable to domestic  
11          production activities), and

12          “(C) the deductions provided under the fol-  
13          lowing paragraphs of section 62(a):

14               “(i) Paragraph (2) (relating to certain  
15               trade and business deductions of employ-  
16               ees), other than subparagraph (A) thereof.

17               “(ii) Paragraph (15) (relating to mov-  
18               ing expenses).

19               “(iii) Paragraph (16) (relating to Ar-  
20               cher MSAs).

21               “(iv) Paragraph (17) (relating to in-  
22               terest on education loans).

23               “(v) Paragraph (18) (relating to high-  
24               er education expenses).

1                   “(vi) Paragraph (19) (relating to  
2                   health savings accounts).

3                   “(3) SPECIFIED EXCLUSION.—The term ‘speci-  
4                   fied exclusion’ means—

5                   “(A) any interest excluded under section  
6                   103,

7                   “(B) any exclusion with respect to the cost  
8                   described in section 6051(a)(14) (without re-  
9                   gard to subparagraph (B) thereof), and

10                   “(C) any foreign earned income excluded  
11                   under section 911.

12                   “(f) NON-PREFERENCE DISALLOWED DEDUC-  
13                   TIONS.—For purposes of this section, the term ‘AMT-al-  
14                   lowed deductions’ means all itemized deductions dis-  
15                   allowed by section 68 multiplied by the ratio that—

16                   “(1) a taxpayer’s itemized deductions for the  
17                   taxable year that are subject to section 68 (that is,  
18                   not including those excluded under section 68(c))  
19                   and that are not limited under section 56(b)(1)(A)  
20                   or (B), bears to

21                   “(2) the taxpayer’s itemized deductions for the  
22                   taxable year that are subject to section 68 (that is,  
23                   not including those excluded under section 68(c)).

24                   “(g) REGULATIONS.—The Secretary shall prescribe  
25                   such regulations as may be appropriate to carry out this

1 section, including regulations which provide appropriate  
2 adjustments to the additional AMT amount.”.

3 (b) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to taxable years beginning on or  
5 after January 1, 2013.

6 **Subtitle B—Tax Carried Interest in**  
7 **Investment Partnerships as Or-**  
8 **dinary Income**

9 **SEC. 211. PARTNERSHIP INTERESTS TRANSFERRED IN**  
10 **CONNECTION WITH PERFORMANCE OF SERV-**  
11 **ICES.**

12 (a) MODIFICATION TO ELECTION TO INCLUDE PART-  
13 NERSHIP INTEREST IN GROSS INCOME IN YEAR OF  
14 TRANSFER.—Subsection (c) of section 83 of the Internal  
15 Revenue Code of 1986 is amended by redesignating para-  
16 graph (4) as paragraph (5) and by inserting after para-  
17 graph (3) the following new paragraph:

18 “(4) PARTNERSHIP INTERESTS.—Except as  
19 provided by the Secretary—

20 “(A) IN GENERAL.—In the case of any  
21 transfer of an interest in a partnership in con-  
22 nection with the provision of services to (or for  
23 the benefit of) such partnership—

24 “(i) the fair market value of such in-  
25 terest shall be treated for purposes of this

1 section as being equal to the amount of the  
2 distribution which the partner would re-  
3 ceive if the partnership sold (at the time of  
4 the transfer) all of its assets at fair market  
5 value and distributed the proceeds of such  
6 sale (reduced by the liabilities of the part-  
7 nership) to its partners in liquidation of  
8 the partnership, and

9 “(ii) the person receiving such interest  
10 shall be treated as having made the elec-  
11 tion under subsection (b)(1) unless such  
12 person makes an election under this para-  
13 graph to have such subsection not apply.

14 “(B) ELECTION.—The election under sub-  
15 paragraph (A)(ii) shall be made under rules  
16 similar to the rules of subsection (b)(2).”.

17 (b) EFFECTIVE DATE.—The amendments made by  
18 this section shall apply to interests in partnerships trans-  
19 ferred after December 31, 2012.

20 **SEC. 212. SPECIAL RULES FOR PARTNERS PROVIDING IN-**  
21 **VESTMENT MANAGEMENT SERVICES TO**  
22 **PARTNERSHIPS.**

23 (a) IN GENERAL.—Part I of subchapter K of chapter  
24 1 of the Internal Revenue Code of 1986 is amended by  
25 adding at the end the following new section:

1 **“SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING IN-**  
2 **VESTMENT MANAGEMENT SERVICES TO**  
3 **PARTNERSHIPS.**

4 “(a) TREATMENT OF DISTRIBUTIVE SHARE OF  
5 PARTNERSHIP ITEMS.—For purposes of this title, in the  
6 case of an investment services partnership interest—

7 “(1) IN GENERAL.—Notwithstanding section  
8 702(b)—

9 “(A) an amount equal to the net capital  
10 gain with respect to such interest for any part-  
11 nership taxable year shall be treated as ordi-  
12 nary income, and

13 “(B) subject to the limitation of paragraph  
14 (2), an amount equal to the net capital loss  
15 with respect to such interest for any partner-  
16 ship taxable year shall be treated as an ordi-  
17 nary loss.

18 “(2) RECHARACTERIZATION OF LOSSES LIM-  
19 ITED TO RECHARACTERIZED GAINS.—The amount  
20 treated as ordinary loss under paragraph (1)(B) for  
21 any taxable year shall not exceed the excess (if any)  
22 of—

23 “(A) the aggregate amount treated as ordi-  
24 nary income under paragraph (1)(A) with re-  
25 spect to the investment services partnership in-

1           terest for all preceding partnership taxable  
2           years to which this section applies, over

3           “(B) the aggregate amount treated as or-  
4           dinary loss under paragraph (1)(B) with re-  
5           spect to such interest for all preceding partner-  
6           ship taxable years to which this section applies.

7           “(3) ALLOCATION TO ITEMS OF GAIN AND  
8           LOSS.—

9           “(A) NET CAPITAL GAIN.—The amount  
10           treated as ordinary income under paragraph  
11           (1)(A) shall be allocated ratably among the  
12           items of long-term capital gain taken into ac-  
13           count in determining such net capital gain.

14           “(B) NET CAPITAL LOSS.—The amount  
15           treated as ordinary loss under paragraph (1)(B)  
16           shall be allocated ratably among the items of  
17           long-term capital loss and short-term capital  
18           loss taken into account in determining such net  
19           capital loss.

20           “(4) TERMS RELATING TO CAPITAL GAINS AND  
21           LOSSES.—For purposes of this section—

22           “(A) IN GENERAL.—Net capital gain, long-  
23           term capital gain, and long-term capital loss,  
24           with respect to any investment services partner-  
25           ship interest for any taxable year, shall be de-



1           terminated under section 1222, except that such  
2           section shall be applied—

3                   “(i) without regard to the recharacter-  
4                   ization of any item as ordinary income or  
5                   ordinary loss under this section,

6                   “(ii) by only taking into account items  
7                   of gain and loss taken into account by the  
8                   holder of such interest under section 702  
9                   with respect to such interest for such tax-  
10                  able year,

11                  “(iii) by treating property which is  
12                  taken into account in determining gains  
13                  and losses to which section 1231 applies as  
14                  capital assets held for more than 1 year,  
15                  and

16                  “(iv) without regard to section 1202.

17                  “(B) NET CAPITAL LOSS.—The term ‘net  
18                  capital loss’ means the excess of the losses from  
19                  sales or exchanges of capital assets over the  
20                  gains from such sales or exchanges. Rules simi-  
21                  lar to the rules of clauses (i) through (iv) of  
22                  subparagraph (A) shall apply for purposes of  
23                  the preceding sentence.

24                  “(5) SPECIAL RULES FOR DIVIDENDS.—

1           “(A) INDIVIDUALS.—Any dividend allo-  
2 cated to any investment services partnership in-  
3 terest shall not be treated as qualified dividend  
4 income for purposes of section 1(h).

5           “(B) CORPORATIONS.—No deduction shall  
6 be allowed under section 243 or 245 with re-  
7 spect to any dividend allocated to any invest-  
8 ment services partnership interest.

9           “(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—  
10           “(1) GAIN.—

11           “(A) IN GENERAL.—Any gain on the dis-  
12 position of an investment services partnership  
13 interest shall be—

14                   “(i) treated as ordinary income, and

15                   “(ii) recognized notwithstanding any  
16 other provision of this subtitle.

17           “(B) EXCEPTIONS; CERTAIN TRANSFERS  
18 TO CHARITIES AND RELATED PERSONS.—Sub-  
19 paragraph (A) shall not apply to—

20                   “(i) a disposition by gift,

21                   “(ii) a transfer at death, or

22                   “(iii) other disposition identified by  
23 the Secretary as a disposition with respect  
24 to which it would be inconsistent with the  
25 purposes of this section to apply subpara-

1 graph (A), if such gift, transfer, or other  
2 disposition is to an organization described  
3 in section 170(b)(1)(A) (other than any or-  
4 ganization described in section 509(a)(3)  
5 or any fund or account described in section  
6 4966(d)(2)) or a person with respect to  
7 whom the transferred interest is an invest-  
8 ment services partnership interest.

9 “(2) LOSS.—Any loss on the disposition of an  
10 investment services partnership interest shall be  
11 treated as an ordinary loss to the extent of the ex-  
12 cess (if any) of—

13 “(A) the aggregate amount treated as ordi-  
14 nary income under subsection (a) with respect  
15 to such interest for all partnership taxable  
16 years to which this section applies, over

17 “(B) the aggregate amount treated as or-  
18 dinary loss under subsection (a) with respect to  
19 such interest for all partnership taxable years  
20 to which this section applies.

21 “(3) ELECTION WITH RESPECT TO CERTAIN EX-  
22 CHANGES.—Paragraph (1)(A)(ii) shall not apply to  
23 the contribution of an investment services partner-  
24 ship interest to a partnership in exchange for an in-  
25 terest in such partnership if—

1           “(A) the taxpayer makes an irrevocable  
2 election to treat the partnership interest re-  
3 ceived in the exchange as an investment serv-  
4 ices partnership interest, and

5           “(B) the taxpayer agrees to comply with  
6 such reporting and recordkeeping requirements  
7 as the Secretary may prescribe.

8           “(4) DISTRIBUTIONS OF PARTNERSHIP PROP-  
9 ERTY.—

10           “(A) IN GENERAL.—In the case of any dis-  
11 tribution of property by a partnership with re-  
12 spect to any investment services partnership in-  
13 terest held by a partner, the partner receiving  
14 such property shall recognize gain equal to the  
15 excess (if any) of—

16           “(i) the fair market value of such  
17 property at the time of such distribution,  
18 over

19           “(ii) the adjusted basis of such prop-  
20 erty in the hands of such partner (deter-  
21 mined without regard to subparagraph  
22 (C)).

23           “(B) TREATMENT OF GAIN AS ORDINARY  
24 INCOME.—Any gain recognized by such partner  
25 under subparagraph (A) shall be treated as or-

1           dinary income to the same extent and in the  
2           same manner as the increase in such partner’s  
3           distributive share of the taxable income of the  
4           partnership would be treated under subsection  
5           (a) if, immediately prior to the distribution, the  
6           partnership had sold the distributed property at  
7           fair market value and all of the gain from such  
8           disposition were allocated to such partner. For  
9           purposes of applying paragraphs (2) and (3) of  
10          subsection (a), any gain treated as ordinary in-  
11          come under this subparagraph shall be treated  
12          as an amount treated as ordinary income under  
13          subsection (a)(1)(A).

14                 “(C) ADJUSTMENT OF BASIS.—In the case  
15          a distribution to which subparagraph (A) ap-  
16          plies, the basis of the distributed property in  
17          the hands of the distributee partner shall be the  
18          fair market value of such property.

19                 “(D) SPECIAL RULES WITH RESPECT TO  
20          MERGERS, DIVISIONS, AND TECHNICAL TERMI-  
21          NATIONS.—In the case of a taxpayer which sat-  
22          isfies requirements similar to the requirements  
23          of subparagraphs (A) and (B) of paragraph (3),  
24          this paragraph and paragraph (1)(A)(ii) shall  
25          not apply to the distribution of a partnership

1 interest if such distribution is in connection  
2 with a contribution (or deemed contribution) of  
3 any property of the partnership to which sec-  
4 tion 721 applies pursuant to a transaction de-  
5 scribed in paragraph (1)(B) or (2) of section  
6 708(b).

7 “(c) INVESTMENT SERVICES PARTNERSHIP INTER-  
8 EST.—For purposes of this section—

9 “(1) IN GENERAL.—The term ‘investment serv-  
10 ices partnership interest’ means any interest in an  
11 investment partnership acquired or held by any per-  
12 son in connection with the conduct of a trade or  
13 business described in paragraph (2) by such person  
14 (or any person related to such person). An interest  
15 in an investment partnership held by any person—

16 “(A) shall not be treated as an investment  
17 services partnership interest for any period be-  
18 fore the first date on which it is so held in con-  
19 nection with such a trade or business,

20 “(B) shall not cease to be an investment  
21 services partnership interest merely because  
22 such person holds such interest other than in  
23 connection with such a trade or business, and

24 “(C) shall be treated as an investment  
25 services partnership interest if acquired from a

1 related person in whose hands such interest was  
2 an investment services partnership interest.

3 “(2) BUSINESSES TO WHICH THIS SECTION AP-  
4 PLIES.—A trade or business is described in this  
5 paragraph if such trade or business primarily in-  
6 volves the performance of any of the following serv-  
7 ices with respect to assets held (directly or indi-  
8 rectly) by the investment partnership referred to in  
9 paragraph (1):

10 “(A) Advising as to the advisability of in-  
11 vesting in, purchasing, or selling any specified  
12 asset.

13 “(B) Managing, acquiring, or disposing of  
14 any specified asset.

15 “(C) Arranging financing with respect to  
16 acquiring specified assets.

17 “(D) Any activity in support of any service  
18 described in subparagraphs (A) through (C).

19 “(3) INVESTMENT PARTNERSHIP.—

20 “(A) IN GENERAL.—The term ‘investment  
21 partnership’ means any partnership if, at the  
22 end of any calendar quarter ending after De-  
23 cember 31, 2012—

24 “(i) substantially all of the assets of  
25 the partnership are specified assets (deter-

1           mined without regard to any section 197  
2           intangible within the meaning of section  
3           197(d)), and

4           “(ii) more than half of the contributed  
5           capital of the partnership is attributable to  
6           contributions of property by one or more  
7           persons in exchange for interests in the  
8           partnership which (in the hands of such  
9           persons) constitute property held for the  
10          production of income.

11          “(B) SPECIAL RULES FOR DETERMINING  
12          IF PROPERTY HELD FOR THE PRODUCTION OF  
13          INCOME.—Except as otherwise provided by the  
14          Secretary, for purposes of determining whether  
15          any interest in a partnership constitutes prop-  
16          erty held for the production of income under  
17          subparagraph (A)(ii)—

18                 “(i) any election under subsection (e)  
19                 or (f) of section 475 shall be disregarded,  
20                 and

21                 “(ii) paragraph (5)(B) shall not apply.

22          “(C) ANTIABUSE RULES.—The Secretary  
23          may issue regulations or other guidance which  
24          prevent the avoidance of the purposes of sub-  
25          paragraph (A), including regulations or other



1 guidance which treat convertible and contingent  
2 debt (and other debt having the attributes of  
3 equity) as a capital interest in the partnership.

4 “(D) CONTROLLED GROUPS OF ENTI-  
5 TIES.—

6 “(i) IN GENERAL.—In the case of a  
7 controlled group of entities, if an interest  
8 in the partnership received in exchange for  
9 a contribution to the capital of the part-  
10 nership by any member of such controlled  
11 group would (in the hands of such mem-  
12 ber) constitute property not held for the  
13 production of income, then any interest in  
14 such partnership held by any member of  
15 such group shall be treated for purposes of  
16 subparagraph (A) as constituting (in the  
17 hands of such member) property not held  
18 for the production of income.

19 “(ii) CONTROLLED GROUP OF ENTI-  
20 TIES.—For purposes of clause (i), the term  
21 ‘controlled group of entities’ means a con-  
22 trolled group of corporations as defined in  
23 section 1563(a)(1), applied without regard  
24 to subsections (a)(4) and (b)(2) of section  
25 1563. A partnership or any other entity

1 (other than a corporation) shall be treated  
2 as a member of a controlled group of enti-  
3 ties if such entity is controlled (within the  
4 meaning of section 954(d)(3)) by members  
5 of such group (including any entity treated  
6 as a member of such group by reason of  
7 this sentence).

8 “(4) SPECIFIED ASSET.—The term ‘specified  
9 asset’ means securities (as defined in section  
10 475(c)(2) without regard to the last sentence there-  
11 of), real estate held for rental or investment, inter-  
12 ests in partnerships, commodities (as defined in sec-  
13 tion 475(e)(2)), cash or cash equivalents, or options  
14 or derivative contracts with respect to any of the  
15 foregoing.

16 “(5) RELATED PERSONS.—

17 “(A) IN GENERAL.—A person shall be  
18 treated as related to another person if the rela-  
19 tionship between such persons is described in  
20 section 267(b) or 707(b).

21 “(B) ATTRIBUTION OF PARTNER SERV-  
22 ICES.—Any service described in paragraph (2)  
23 which is provided by a partner of a partnership  
24 shall be treated as also provided by such part-  
25 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 subsection—

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 January 1, 2013 unless such repayment  
9 is made with the proceeds of a loan or other ad-  
10 vance described in the preceding sentence.

11 “(B) REDUCTION IN ALLOCATIONS TO  
12 QUALIFIED CAPITAL INTERESTS FOR LOANS  
13 FROM NONSERVICE-PROVIDING PARTNERS TO  
14 THE PARTNERSHIP.—For purposes of this sub-  
15 section, any loan or other advance to the part-  
16 nership made or guaranteed, directly or indi-  
17 rectly, by a partner not providing services de-  
18 scribed in subsection (c)(2) to the partnership  
19 (or any person related to such partner) shall be  
20 taken into account in determining the qualified  
21 capital interests of the partners in the partner-  
22 ship.

23 “(e) OTHER INCOME AND GAIN IN CONNECTION  
24 WITH INVESTMENT MANAGEMENT SERVICES.—

25 “(1) IN GENERAL.—If—

1           “(A) a person performs (directly or indi-  
2           rectly) investment management services for any  
3           investment entity,

4           “(B) such person holds (directly or indi-  
5           rectly) a disqualified interest with respect to  
6           such entity, and

7           “(C) the value of such interest (or pay-  
8           ments thereunder) is substantially related to  
9           the amount of income or gain (whether or not  
10          realized) from the assets with respect to which  
11          the investment management services are per-  
12          formed, any income or gain with respect to such  
13          interest shall be treated as ordinary income.  
14          Rules similar to the rules of subsections (a)(5)  
15          and (d) shall apply for purposes of this sub-  
16          section.

17          “(2) DEFINITIONS.—For purposes of this sub-  
18          section—

19                 “(A) DISQUALIFIED INTEREST.—

20                         “(i) IN GENERAL.—The term ‘dis-  
21                         qualified interest’ means, with respect to  
22                         any investment entity—

23                                 “(I) any interest in such entity  
24                                 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, and

21                 “(2) coordinate this section with the other pro-  
22                 visions of this title.

23                 “(g) CROSS REFERENCE.—For 40 percent penalty on  
24                 certain underpayments due to the avoidance of this sec-  
25                 tion, see section 6662.”.

1 (b) APPLICATION OF SECTION 751 TO INDIRECT DIS-  
2 POSITIONS OF INVESTMENT SERVICES PARTNERSHIP IN-  
3 TERESTS.—

4 (1) IN GENERAL.—Subsection (a) of section  
5 751 of the Internal Revenue Code of 1986 is amend-  
6 ed by striking “or” at the end of paragraph (1), by  
7 inserting “or” at the end of paragraph (2), and by  
8 inserting after paragraph (2) the following new  
9 paragraph:

10 “(3) investment services partnership interests  
11 held by the partnership,”.

12 (2) CERTAIN DISTRIBUTIONS TREATED AS  
13 SALES OR EXCHANGES.—Subparagraph (A) of sec-  
14 tion 751(b)(1) of the Internal Revenue Code of 1986  
15 is amended by striking “or” at the end of clause (i),  
16 by inserting “or” at the end of clause (ii), and by  
17 inserting after clause (ii) the following new clause:

18 “(iii) investment services partnership  
19 interests held by the partnership,”.

20 (3) APPLICATION OF SPECIAL RULES IN THE  
21 CASE OF TIERED PARTNERSHIPS.—Subsection (f) of  
22 section 751 of the Internal Revenue Code of 1986  
23 is amended by striking “or” at the end of paragraph  
24 (1), by inserting “or” at the end of paragraph (2),

1 and by inserting after paragraph (2) the following  
2 new paragraph:

3 “(3) investment services partnership interests  
4 held by the partnership,”.

5 (4) INVESTMENT SERVICES PARTNERSHIP IN-  
6 TERESTS; QUALIFIED CAPITAL INTERESTS.—Section  
7 751 of the Internal Revenue Code of 1986 is amend-  
8 ed by adding at the end the following new sub-  
9 section:

10 “(g) INVESTMENT SERVICES PARTNERSHIP INTER-  
11 ESTS.—For purposes of this section—

12 “(1) IN GENERAL.—The term ‘investment serv-  
13 ices partnership interest’ has the meaning given  
14 such term by section 710(c).

15 “(2) ADJUSTMENTS FOR QUALIFIED CAPITAL  
16 INTERESTS.—The amount to which subsection (a)  
17 applies by reason of paragraph (3) thereof shall not  
18 include so much of such amount as is attributable  
19 to any portion of the investment services partnership  
20 interest which is a qualified capital interest (deter-  
21 mined under rules similar to the rules of section  
22 710(d)).

23 “(3) RECOGNITION OF GAINS.—Any gain with  
24 respect to which subsection (a) applies by reason of

1 paragraph (3) thereof shall be recognized notwith-  
2 standing any other provision of this title.

3 “(4) COORDINATION WITH INVENTORY  
4 ITEMS.—An investment services partnership interest  
5 held by the partnership shall not be treated as an  
6 inventory item of the partnership.

7 “(5) PREVENTION OF DOUBLE COUNTING.—  
8 Under regulations or other guidance prescribed by  
9 the Secretary, subsection (a)(3) shall not apply with  
10 respect to any amount to which section 710 ap-  
11 plies.”.

12 (c) TREATMENT FOR PURPOSES OF SECTION  
13 7704.—Subsection (d) of section 7704 of the Internal  
14 Revenue Code of 1986 is amended by adding at the end  
15 the following new paragraph:

16 “(6) INCOME FROM CERTAIN CARRIED INTER-  
17 ESTS NOT QUALIFIED.—

18 “(A) IN GENERAL.—Specified carried in-  
19 terest income shall not be treated as qualifying  
20 income.

21 “(B) SPECIFIED CARRIED INTEREST IN-  
22 COME.—For purposes of this paragraph—

23 “(i) IN GENERAL.—The term ‘speci-  
24 fied carried interest income’ means—

1           “(I) any item of income or gain  
2           allocated to an investment services  
3           partnership interest (as defined in  
4           section 710(c)) held by the partner-  
5           ship,

6           “(II) any gain on the disposition  
7           of an investment services partnership  
8           interest (as so defined) or a partner-  
9           ship interest to which (in the hands of  
10          the partnership) section 751 applies,  
11          and

12          “(III) any income or gain taken  
13          into account by the partnership under  
14          subsection (b)(4) or (e) of section  
15          710.

16          “(ii) EXCEPTION FOR QUALIFIED CAP-  
17          ITAL INTERESTS.—A rule similar to the  
18          rule of section 710(d) shall apply for pur-  
19          poses of clause (i).

20          “(C) COORDINATION WITH OTHER PROVI-  
21          SIONS.—Subparagraph (A) shall not apply to  
22          any item described in paragraph (1)(E) (or so  
23          much of paragraph (1)(F) as relates to para-  
24          graph (1)(E)).



1                   “(D) SPECIAL RULES FOR CERTAIN PART-  
2                   NERSHIPS.—

3                   “(i) CERTAIN PARTNERSHIPS OWNED  
4                   BY REAL ESTATE INVESTMENT TRUSTS.—  
5                   Subparagraph (A) shall not apply in the  
6                   case of a partnership which meets each of  
7                   the following requirements:

8                   “(I) Such partnership is treated  
9                   as publicly traded under this section  
10                  solely by reason of interests in such  
11                  partnership being convertible into in-  
12                  terests in a real estate investment  
13                  trust which is publicly traded.

14                  “(II) Fifty percent or more of  
15                  the capital and profits interests of  
16                  such partnership are owned, directly  
17                  or indirectly, at all times during the  
18                  taxable year by such real estate in-  
19                  vestment trust (determined with the  
20                  application of section 267(c)).

21                  “(III) Such partnership meets  
22                  the requirements of paragraphs (2),  
23                  (3), and (4) of section 856(c).

24                  “(ii) CERTAIN PARTNERSHIPS OWN-  
25                  ING OTHER PUBLICLY TRADED PARTNER-

1 SHIPS.—Subparagraph (A) shall not apply  
2 in the case of a partnership which meets  
3 each of the following requirements:

4 “(I) Substantially all of the as-  
5 sets of such partnership consist of in-  
6 terests in one or more publicly traded  
7 partnerships (determined without re-  
8 gard to subsection (b)(2)).

9 “(II) Substantially all of the in-  
10 come of such partnership is ordinary  
11 income or section 1231 gain (as de-  
12 fined in section 1231(a)(3)).

13 “(E) TRANSITIONAL RULE.—Subpara-  
14 graph (A) shall not apply to any taxable year  
15 of the partnership beginning before the date  
16 which is 10 years after January 1, 2013.”.

17 (d) IMPOSITION OF PENALTY ON UNDERPAY-  
18 MENTS.—

19 (1) IN GENERAL.—Subsection (b) of section  
20 6662 of the Internal Revenue Code of 1986 is  
21 amended by inserting after paragraph (7) the fol-  
22 lowing new paragraph:

23 “(8) The application of section 710(e) or the  
24 regulations or other guidance prescribed under sec-

1       tion 710(h) to prevent the avoidance of the purposes  
2       of section 710.”.

3               (2) AMOUNT OF PENALTY.—

4                       (A) IN GENERAL.—Section 6662 of the In-  
5                       ternal Revenue Code of 1986 is amended by  
6                       adding at the end the following new subsection:

7               “(k) INCREASE IN PENALTY IN CASE OF PROPERTY  
8       TRANSFERRED FOR INVESTMENT MANAGEMENT SERV-  
9       ICES.—In the case of any portion of an underpayment to  
10       which this section applies by reason of subsection (b)(8),  
11       subsection (a) shall be applied with respect to such portion  
12       by substituting ‘40 percent’ for ‘20 percent’.”.

13                       (B) CONFORMING AMENDMENT.—Subpara-  
14                       graph (B) of section 6662A(e)(2) is amended  
15                       by striking “or (i)” and inserting “, (i), or (k)”.

16               (3) SPECIAL RULES FOR APPLICATION OF REA-  
17       SONABLE CAUSE EXCEPTION.—Subsection (c) of sec-  
18       tion 6664 is amended—

19                       (A) by redesignating paragraphs (3) and  
20                       (4) as paragraphs (4) and (5), respectively;

21                       (B) by striking “paragraph (3)” in para-  
22                       graph (5)(A), as so redesignated, and inserting  
23                       “paragraph (4)”; and

24                       (C) by inserting after paragraph (2) the  
25                       following new paragraph:

1           “(3) SPECIAL RULE FOR UNDERPAYMENTS AT-  
2           TRIBUTABLE TO INVESTMENT MANAGEMENT SERV-  
3           ICES.—

4           “(A) IN GENERAL.—Paragraph (1) shall  
5           not apply to any portion of an underpayment to  
6           which section 6662 applies by reason of sub-  
7           section (b)(8) unless—

8                   “(i) the relevant facts affecting the  
9                   tax treatment of the item are adequately  
10                  disclosed,

11                   “(ii) there is or was substantial au-  
12                  thority for such treatment, and

13                   “(iii) the taxpayer reasonably believed  
14                  that such treatment was more likely than  
15                  not the proper treatment.

16           “(B) RULES RELATING TO REASONABLE  
17           BELIEF.—Rules similar to the rules of sub-  
18           section (d)(3) shall apply for purposes of sub-  
19           paragraph (A)(iii).”.

20           (e) INCOME AND LOSS FROM INVESTMENT SERVICES  
21           PARTNERSHIP INTERESTS TAKEN INTO ACCOUNT IN DE-  
22           TERMINING NET EARNINGS FROM SELF-EMPLOYMENT.—

23           (1) INTERNAL REVENUE CODE.—

24                   (A) IN GENERAL.—Section 1402(a) of the  
25           Internal Revenue Code of 1986 is amended by

1 striking “and” at the end of paragraph (16), by  
2 striking the period at the end of paragraph (17)  
3 and inserting “; and”, and by inserting after  
4 paragraph (17) the following new paragraph:

5 “(18) notwithstanding the preceding provisions  
6 of this subsection, in the case of any individual en-  
7 gaged in the trade or business of providing services  
8 described in section 710(c)(2) with respect to any  
9 entity, investment services partnership income or  
10 loss (as defined in subsection (m)) of such individual  
11 with respect to such entity shall be taken into ac-  
12 count in determining the net earnings from self-em-  
13 ployment of such individual.”.

14 (B) INVESTMENT SERVICES PARTNERSHIP  
15 INCOME OR LOSS.—Section 1402 of the Inter-  
16 nal Revenue Code is amended by adding at the  
17 end the following new subsection:

18 “(m) INVESTMENT SERVICES PARTNERSHIP INCOME  
19 OR LOSS.—For purposes of subsection (a)—

20 “(1) IN GENERAL.—The term ‘investment serv-  
21 ices partnership income or loss’ means, with respect  
22 to any investment services partnership interest (as  
23 defined in section 710(c)), the net of—

1           “(A) the amounts treated as ordinary in-  
2           come or ordinary loss under subsections (b) and  
3           (e) of section 710 with respect to such interest,

4           “(B) all items of income, gain, loss, and  
5           deduction allocated to such interest, and

6           “(C) the amounts treated as realized from  
7           the sale or exchange of property other than a  
8           capital asset under section 751 with respect to  
9           such interest.

10           “(2) EXCEPTION FOR QUALIFIED CAPITAL IN-  
11           TERESTS.—A rule similar to the rule of section  
12           710(d) shall apply for purposes of applying para-  
13           graph (1)(B)(ii).”.

14           (2) SOCIAL SECURITY ACT.—Section 211(a) of  
15           the Social Security Act is amended by striking  
16           “and” at the end of paragraph (15), by striking the  
17           period at the end of paragraph (16) and inserting “;  
18           and”, and by inserting after paragraph (16) the fol-  
19           lowing new paragraph:

20           “(17) Notwithstanding the preceding provisions  
21           of this subsection, in the case of any individual en-  
22           gaged in the trade or business of providing services  
23           described in section 710(c)(2) of the Internal Rev-  
24           enue Code of 1986 with respect to any entity, invest-  
25           ment services partnership income or loss (as defined

1 in section 1402(m) of such Code) shall be taken into  
2 account in determining the net earnings from self-  
3 employment of such individual.”.

4 (f) CONFORMING AMENDMENTS.—

5 (1) Subsection (d) of section 731 of the Inter-  
6 nal Revenue Code of 1986 is amended by inserting  
7 “section 710(b)(4) (relating to distributions of part-  
8 nership property),” after “to the extent otherwise  
9 provided by”.

10 (2) Section 741 of the Internal Revenue Code  
11 of 1986 is amended by inserting “or section 710 (re-  
12 lating to special rules for partners providing invest-  
13 ment management services to partnerships)” before  
14 the period at the end.

15 (3) The table of sections for part I of sub-  
16 chapter K of chapter 1 of the Internal Revenue Code  
17 of 1986 is amended by adding at the end the fol-  
18 lowing new item:

“Sec. 710. Special rules for partners providing investment management services  
to partnerships.”.

19 (g) EFFECTIVE DATE.—

20 (1) IN GENERAL.—Except as otherwise pro-  
21 vided in this subsection, the amendments made by  
22 this section shall apply to taxable years ending after  
23 December 31, 2012.

1           (2) PARTNERSHIP TAXABLE YEARS WHICH IN-  
2           CLUDE EFFECTIVE DATE.—In applying section  
3           710(a) of the Internal Revenue Code of 1986 (as  
4           added by this section) in the case of any partnership  
5           taxable year which includes January 1, 2013, the  
6           amount of the net income referred to in such section  
7           shall be treated as being the lesser of the net income  
8           for the entire partnership taxable year or the net in-  
9           come determined by only taking into account items  
10          attributable to the portion of the partnership taxable  
11          year which is after such date.

12          (3) DISPOSITIONS OF PARTNERSHIP INTER-  
13          ESTS.—

14                (A) IN GENERAL.—Section 710(b) of such  
15                Code (as added by this section) shall apply to  
16                dispositions and distributions after December  
17                31, 2012.

18                (B) INDIRECT DISPOSITIONS.—The amend-  
19                ments made by subsection (b) shall apply to  
20                transactions after December 31, 2012.

21          (4) OTHER INCOME AND GAIN IN CONNECTION  
22          WITH INVESTMENT MANAGEMENT SERVICES.—Sec-  
23          tion 710(e) of such Code (as added by this section)  
24          shall take effect on January 1, 2013.



1                   **Subtitle C—Dual Capacity**  
2                   **Taxpayers**

3   **SEC. 221. MODIFICATIONS OF FOREIGN TAX CREDIT RULES**  
4                   **APPLICABLE TO DUAL CAPACITY TAXPAYERS.**

5           (a) IN GENERAL.—Section 901 of the Internal Rev-  
6   enue Code of 1986 (relating to credit for taxes of foreign  
7   countries and of possessions of the United States) is  
8   amended by redesignating subsection (n) as subsection (o)  
9   and by inserting after subsection (m) the following new  
10   subsection:

11           “(n) SPECIAL RULES RELATING TO DUAL CAPACITY  
12   TAXPAYERS.—

13           “(1) GENERAL RULE.—Notwithstanding any  
14   other provision of this chapter, any amount paid or  
15   accrued by a dual capacity taxpayer or any member  
16   of the worldwide affiliated group of which such dual  
17   capacity taxpayer is also a member to any foreign  
18   country or to any possession of the United States  
19   for any period shall not be considered a tax to the  
20   extent such amount exceeds the amount (determined  
21   in accordance with regulations) which would have  
22   been required to be paid if the taxpayer were not a  
23   dual capacity taxpayer.

24           “(2) DUAL CAPACITY TAXPAYER.—For pur-  
25   poses of this subsection, the term ‘dual capacity tax-

1 payer’ means, with respect to any foreign country or  
2 possession of the United States, a person who—

3 “(A) is subject to a levy of such country or  
4 possession, and

5 “(B) receives (or will receive) directly or  
6 indirectly a specific economic benefit (as deter-  
7 mined in accordance with regulations) from  
8 such country or possession.

9 “(3) REGULATIONS.—The Secretary may issue  
10 such regulations or other guidance as is necessary or  
11 appropriate to carry out the purposes of this sub-  
12 section.”.

13 (b) CONTRARY TREATY OBLIGATIONS UPHELD.—  
14 The amendments made by this section shall not apply to  
15 the extent contrary to any treaty obligation of the United  
16 States.

17 (c) EFFECTIVE DATE.—The amendments made by  
18 this section shall apply to amounts that, if such amounts  
19 were an amount of tax paid or accrued, would be consid-  
20 ered paid or accrued in taxable years beginning after De-  
21 cember 31, 2012.

22 **SEC. 222. SEPARATE BASKET TREATMENT TAXES PAID ON**  
23 **FOREIGN OIL AND GAS INCOME.**

24 (a) SEPARATE BASKET FOR FOREIGN TAX CRED-  
25 IT.—Paragraph (1) of section 904(d) of the Internal Rev-

1 enue Code of 1986 is amended by striking “and” at the  
2 end of subparagraph (A), by striking the period at the  
3 end of subparagraph (B) and inserting “, and”, and by  
4 adding at the end the following:

5           “(C) combined foreign oil and gas income  
6           (as defined in section 907(b)(1)).”.

7           (b) COORDINATION.—Section 904(d)(2) of such Code  
8 is amended by redesignating subparagraphs (J) and (K)  
9 as subparagraphs (K) and (L) and by inserting after sub-  
10 paragraph (I) the following:

11           “(J) COORDINATION WITH COMBINED FOR-  
12           EIGN OIL AND GAS INCOME.—For purposes of  
13           this section, passive category income and gen-  
14           eral category income shall not include combined  
15           foreign oil and gas income (as defined in section  
16           907(b)(1)).”.

17           (c) CONFORMING AMENDMENTS.—

18           (1) Section 907(a) is hereby repealed.

19           (2) Section 907(c)(4) is hereby repealed.

20           (3) Section 907(f) is hereby repealed.

21           (d) EFFECTIVE DATES.—

22           (1) IN GENERAL.—The amendments made by  
23 this section shall apply to taxable years beginning  
24 after December 31, 2012.

25           (2) TRANSITIONAL RULES.—

1 (A) CARRYOVERS.—Any unused foreign oil  
2 and gas taxes which under section 907(f) of  
3 such Code (as in effect before the amendment  
4 made by subsection (c)(3)) would have been al-  
5 lowable as a carryover to the taxpayer’s first  
6 taxable year beginning after December 31,  
7 2012 (without regard to the limitation of para-  
8 graph (2) of such section 907(f) for first tax-  
9 able year) shall be allowed as carryovers under  
10 section 904(c) of such Code in the same man-  
11 ner as if such taxes were unused taxes under  
12 such section 904(c) with respect to foreign oil  
13 and gas extraction income.

14 (B) LOSSES.—The amendment made by  
15 subsection (c)(2) shall not apply to foreign oil  
16 and gas extraction losses arising in taxable  
17 years beginning on or before the date of the en-  
18 actment of this Act.

19 **Subtitle D—Close Exclusion of**  
20 **Foreign-Earned Income Loophole**

21 **SEC. 231. REPEAL OF FOREIGN EARNED INCOME EXCLU-**  
22 **SION.**

23 (a) IN GENERAL.—Subsection (a) of section 911 of  
24 the Internal Revenue Code of 1986 is amended by striking  
25 “for any taxable year—” and all that follows through the

1 end and inserting “for any taxable year the housing cost  
2 amount of such individual.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Subsection (f) of section 86 of such Code is  
5 amended by inserting “and” at the end of paragraph  
6 (2), by striking “, and” at the end of paragraph (3)  
7 and inserting a period, and by striking paragraph  
8 (4).

9 (2) Section 1401(a) of such Code is amended  
10 by striking paragraph (11).

11 (3)(A) Clause (i) of section 1411(a)(1)(B) of  
12 such Code is amended by striking “modified”.

13 (B) Section 1411 of such Code is amended  
14 by striking subsection (d) and by redesignating  
15 subsection (e) as subsection (d).

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

19 **Subtitle E—Close S Corporation**  
20 **Loophole**

21 **SEC. 241. EMPLOYMENT TAX TREATMENT OF PROFES-**  
22 **SIONAL SERVICE BUSINESSES.**

23 (a) IN GENERAL.—Section 1402 of the Internal Rev-  
24 enue Code of 1986 is amended by adding at the end the  
25 following new subsection:

1       “(m) SPECIAL RULES FOR PROFESSIONAL SERVICE  
2 BUSINESSES.—

3               “(1) SHAREHOLDERS PROVIDING SERVICES TO  
4 SPECIFIED S CORPORATIONS.—

5                       “(A) IN GENERAL.—In the case of an ap-  
6 plicable shareholder who provides substantial  
7 services with respect to a professional service  
8 business referred to in subparagraph (C) of a  
9 specified S corporation—

10                               “(i) such shareholder shall be treated  
11 as engaged in the trade or business of such  
12 professional service business with respect  
13 to items of income or loss described in sec-  
14 tion 1366 which are attributable to such  
15 business, and

16                               “(ii) such shareholder’s net earnings  
17 from self-employment shall include such  
18 shareholder’s pro rata share of such items  
19 of income or loss, except that in computing  
20 such pro rata share of such items the ex-  
21 ceptions provided in subsection (a) shall  
22 apply.

23                       “(B) TREATMENT OF FAMILY MEMBERS.—  
24 Except as otherwise provided by the Secretary,  
25 the applicable shareholder’s pro rata share of

1 items referred to in subparagraph (A) shall be  
2 increased by the pro rata share of such items  
3 of each member of such applicable shareholder's  
4 family (within the meaning of section  
5 318(a)(1)) who does not provide substantial  
6 services with respect to such professional serv-  
7 ice business.

8 “(C) SPECIFIED S CORPORATION.—For  
9 purposes of this subsection, the term ‘specified  
10 S corporation’ means—

11 “(i) any S corporation which is a  
12 partner in a partnership which is engaged  
13 in a professional service business if sub-  
14 stantially all of the activities of such S cor-  
15 poration are performed in connection with  
16 such partnership, and

17 “(ii) any other S corporation which is  
18 engaged in a professional service business  
19 if 75 percent or more of the gross income  
20 of such business is attributable to service  
21 of 3 or fewer shareholders of such corpora-  
22 tion.

23 “(D) APPLICABLE SHAREHOLDER.—For  
24 purposes of this paragraph, the term ‘applicable  
25 shareholder’ means any shareholder whose

1 modified adjusted gross income for the taxable  
2 year exceeds—

3 “(i) in the case of a shareholder mak-  
4 ing a joint return under section 6013 or a  
5 surviving spouse (as defined in section  
6 2(a)), \$250,000,

7 “(ii) in the case of a married share-  
8 holder (as defined in section 7703) filing a  
9 separate return, half of the dollar amount  
10 determined under clause (i), and

11 “(iii) in any other case, \$200,000.

12 “(2) PARTNERS.—

13 “(A) IN GENERAL.—In the case of any  
14 partnership which is engaged in a professional  
15 service business, subsection (a)(13) shall not  
16 apply to any applicable partner who provides  
17 substantial services with respect to such profes-  
18 sional service business.

19 “(B) APPLICABLE PARTNER.—For pur-  
20 poses of this paragraph, the term ‘applicable  
21 partner’ means any partner whose modified ad-  
22 justed gross income for the taxable year ex-  
23 ceeds—

24 “(i) in the case of a partner making  
25 a joint return under section 6013 or a sur-



1           viving spouse (as defined in section 2(a)),  
2           \$250,000,

3           “(ii) in the case of a married partner  
4           (as defined in section 7703) filing a sepa-  
5           rate return, half of the dollar amount de-  
6           termined under clause (i), and

7           “(iii) in any other case, \$200,000.

8           “(3) PROFESSIONAL SERVICE BUSINESS.—For  
9           purposes of this subsection, the term ‘professional  
10          service business’ means any trade or business (or  
11          portion thereof) providing services in the fields of  
12          health, law, lobbying, engineering, architecture, ac-  
13          counting, actuarial science, performing arts, con-  
14          sulting, athletics, investment advice or management,  
15          or brokerage services.

16          “(4) MODIFIED ADJUSTED GROSS INCOME.—  
17          For purposes of this subsection, the term ‘modified  
18          adjusted gross income’ means adjusted gross in-  
19          come—

20                 “(A) determined without regard to any de-  
21                 duction allowed under section 164(f), and

22                 “(B) increased by the amount excluded  
23                 from gross income under section 911(a)(1).

24          “(5) REGULATIONS.—The Secretary shall pre-  
25          scribe such regulations as may be necessary or ap-

1       appropriate to carry out the purposes of this sub-  
2       section, including regulations which prevent the  
3       avoidance of the purposes of this subsection through  
4       tiered entities or otherwise.

5               “(6) CROSS REFERENCE.—For employment tax  
6       treatment of wages paid to shareholders of S cor-  
7       porations, see subtitle C.”.

8       (b) CONFORMING AMENDMENT.—Section 211 of the  
9       Social Security Act is amended by adding at the end the  
10      following new subsection:

11              “(1) SPECIAL RULES FOR PROFESSIONAL SERVICE  
12      BUSINESSES.—

13                      “(1) SHAREHOLDERS PROVIDING SERVICES TO  
14      SPECIFIED S CORPORATIONS.—

15                              “(A) IN GENERAL.—In the case of an ap-  
16      plicable shareholder who provides substantial  
17      services with respect to a professional service  
18      business referred to in subparagraph (C) of a  
19      specified S corporation—

20                                      “(i) such shareholder shall be treated  
21      as engaged in the trade or business of such  
22      professional service business with respect  
23      to items of income or loss described in sec-  
24      tion 1366 of the Internal Revenue Code of

1           1986 which are attributable to such busi-  
2           ness, and

3           “(ii) such shareholder’s net earnings  
4           from self-employment shall include such  
5           shareholder’s pro rata share of such items  
6           of income or loss, except that in computing  
7           such pro rata share of such items the ex-  
8           ceptions provided in subsection (a) shall  
9           apply.

10          “(B) TREATMENT OF FAMILY MEMBERS.—

11          Except as otherwise provided by the Secretary  
12          of the Treasury, the applicable shareholder’s  
13          pro rata share of items referred to in subpara-  
14          graph (A) shall be increased by the pro rata  
15          share of such items of each member of such ap-  
16          plicable shareholder’s family (within the mean-  
17          ing of section 318(a)(1) of the Internal Revenue  
18          Code of 1986) who does not provide substantial  
19          services with respect to such professional serv-  
20          ice business.

21          “(C) SPECIFIED S CORPORATION.—For  
22          purposes of this subsection, the term ‘specified  
23          S corporation’ means—

24                 “(i) any S corporation (as defined in  
25                 section 1361(a) of the Internal Revenue

1 Code of 1986) which is a partner in a  
2 partnership which is engaged in a profes-  
3 sional service business if substantially all  
4 of the activities of such S corporation are  
5 performed in connection with such partner-  
6 ship, and

7 “(ii) any other S corporation (as so  
8 defined) which is engaged in a professional  
9 service business if 75 percent or more of  
10 the gross income of such business is attrib-  
11 utable to service of 3 or fewer shareholders  
12 of such corporation.

13 “(D) APPLICABLE SHAREHOLDER.—For  
14 purposes of this paragraph, the term ‘applicable  
15 shareholder’ means any shareholder whose  
16 modified adjusted gross income for the taxable  
17 year exceeds—

18 “(i) in the case of a shareholder mak-  
19 ing a joint return under section 6013 of  
20 the Internal Revenue Code of 1986 or a  
21 surviving spouse (as defined in section 2(a)  
22 of such Code), \$250,000,

23 “(ii) in the case of a married share-  
24 holder (as defined in section 7703 of such  
25 Code) filing a separate return, half of the

1           dollar amount determined under clause (i),  
2           and  
3           “(iii) in any other case, \$200,000.

4           “(2) PARTNERS.—

5           “(A) IN GENERAL.—In the case of any  
6           partnership which is engaged in a professional  
7           service business, subsection (a)(12) shall not  
8           apply to any applicable partner who provides  
9           substantial services with respect to such profes-  
10          sional service business.

11          “(B) APPLICABLE PARTNER.—For pur-  
12          poses of this paragraph, the term ‘applicable  
13          partner’ means any partner whose modified ad-  
14          justed gross income for the taxable year ex-  
15          ceeds—

16               “(i) in the case of a partner making  
17               a joint return under section 6013 of the  
18               Internal Revenue Code of 1986 or a sur-  
19               viving spouse (as defined in section 2(a) of  
20               such Code), \$250,000,

21               “(ii) in the case of a married partner  
22               (as defined in section 7703 of such Code)  
23               filing a separate return, half of the dollar  
24               amount determined under clause (i), and

25               “(iii) in any other case, \$200,000.

1           “(3) PROFESSIONAL SERVICE BUSINESS.—For  
2 purposes of this subsection, the term ‘professional  
3 service business’ means any trade or business (or  
4 portion thereof) providing services in the fields of  
5 health, law, lobbying, engineering, architecture, ac-  
6 counting, actuarial science, performing arts, con-  
7 sulting, athletics, investment advice or management,  
8 or brokerage services.

9           “(4) MODIFIED ADJUSTED GROSS INCOME.—  
10 For purposes of this subsection, the term ‘modified  
11 adjusted gross income’ means adjusted gross income  
12 as determined under section 62 of the Internal Rev-  
13 enue Code of 1986—

14                   “(A) determined without regard to any de-  
15 duction allowed under section 164(f) of such  
16 Code, and

17                   “(B) increased by the amount excluded  
18 from gross income under section 911(a)(1) of  
19 such Code.”.

20           (c) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to taxable years beginning after  
22 December 31, 2012.

1 **Subtitle F—Limitation on Mortgage**  
2 **Interest Deduction With Re-**  
3 **spect to Boats**

4 **SEC. 251. MORTGAGE INTEREST DEDUCTION ALLOWED**  
5 **WITH RESPECT TO BOATS ONLY IF BOAT IS**  
6 **USED AS THE PRINCIPAL RESIDENCE OF THE**  
7 **TAXPAYER.**

8 (a) IN GENERAL.—Subclause (ii) of section  
9 163(h)(4)(A) of the Internal Revenue Code of 1986 is  
10 amended by inserting “(other than a boat)” after “1 other  
11 residence of the taxpayer”.

12 (b) EFFECTIVE DATE.—

13 (1) IN GENERAL.—The amendment made by  
14 this section shall apply to indebtedness incurred  
15 after the date of the enactment of this Act.

16 (2) SPECIAL RULE FOR REFINANCINGS.—For  
17 purposes of this subsection, indebtedness resulting  
18 from the refinancing of indebtedness shall be treated  
19 as incurred on the date the refinanced indebtedness  
20 was incurred (taking into account the application of  
21 this paragraph in the case of multiple refinancings)  
22 but only to the extent the indebtedness resulting  
23 from such refinancing does not exceed the refi-  
24 nanced indebtedness.

1 **TITLE III—ENDING CORPORATE**  
2 **SUBSIDIES**  
3 **Subtitle A—End Fossil Fuel**  
4 **Subsidies**

5 **SEC. 301. TERMINATION OF VARIOUS TAX EXPENDITURES**  
6 **RELATING TO FOSSIL FUELS.**

7 (a) IN GENERAL.—Subchapter C of chapter 90 of the  
8 Internal Revenue Code of 1986 is amended by adding at  
9 the end the following new section:

10 **“SEC. 7875. TERMINATION OF CERTAIN PROVISIONS RELAT-**  
11 **ING TO FOSSIL FUEL INCENTIVES.**

12 “(a) IN GENERAL.—The following provisions shall  
13 not apply to taxable years beginning after the date of the  
14 enactment of the Balancing Act:

15 “(1) Section 43 (relating to enhanced oil recov-  
16 ery credit).

17 “(2) Section 45I (relating to credit for pro-  
18 ducing oil and natural gas from marginal wells).

19 “(3) Section 45K (relating to credit for pro-  
20 ducing fuel from a nonconventional source).

21 “(4) Section 193 (relating to tertiary  
22 injectants).

23 “(5) Section 199(d)(9) (relating to special rule  
24 for taxpayers with oil related qualified production  
25 activities income).



1           “(6) Section 461(i)(2) (relating to special rule  
2 for spudding of oil or natural gas wells).

3           “(7) Section 469(c)(3) (relating to working in-  
4 terests in oil and natural gas property).

5           “(8) Section 613A (relating to limitations on  
6 percentage depletion in case of oil and natural gas  
7 wells).

8           “(9) Section 617 (relating to deduction and re-  
9 capture of certain mining exploration expenditures).

10           “(10) Section 7704(d)(1)(E) (relating to quali-  
11 fying income).

12           “(b) PROVISIONS RELATING TO PROPERTY.—The  
13 following provisions shall not apply to property placed in  
14 service after the date of the enactment of the Balancing  
15 Act:

16           “(1) Subparagraphs (C)(iii) and (E)(viii) of  
17 section 168(e)(3) (relating to classification of certain  
18 property).

19           “(2) Section 169 (relating to amortization of  
20 pollution control facilities) with respect to any at-  
21 mospheric pollution control facility.

22           “(3) Section 179C (relating to election to ex-  
23 pense certain refineries).

24           “(c) PROVISIONS RELATING TO COSTS AND EX-  
25 PENSES.—The following provisions shall not apply to costs

1 or expenses paid or incurred after the date of the enact-  
2 ment of the Balancing Act:

3 “(1) Section 179B (relating to deduction for  
4 capital costs incurred in complying with Environ-  
5 mental Protection Agency sulfur regulations).

6 “(2) Section 198 (relating to expensing of envi-  
7 ronmental remediation costs).

8 “(3) Section 263(c) (relating to intangible drill-  
9 ing and development costs) with respect to costs in  
10 the case of oil and natural gas wells.

11 “(4) Section 468 (relating to special rules for  
12 mining and solid waste reclamation and closing  
13 costs).

14 “(d) 5-YEAR CARRYBACK FOR MARGINAL OIL AND  
15 NATURAL GAS WELL PRODUCTION CREDIT.—Section  
16 39(a)(3) (relating to 5-year carryback for marginal oil and  
17 natural gas well production credit) shall not apply to cred-  
18 its determined in taxable years beginning after the date  
19 of the enactment of the Balancing Act.

20 “(e) CREDIT FOR CARBON DIOXIDE SEQUESTRA-  
21 TION.—Section 45Q (relating to credit for carbon dioxide  
22 sequestration) shall not apply to carbon dioxide captured  
23 after the date of the enactment of the Balancing Act.

24 “(f) ALLOCATED CREDITS.—No new credits shall be  
25 certified under section 48A (relating to qualifying ad-

1 vanced coal project credit) or section 48B (relating to  
 2 qualifying gasification project credit) after the date of the  
 3 enactment of the Balancing Act.

4 “(g) ARBITRAGE BONDS.—Section 148(b)(4) (relat-  
 5 ing to safe harbor for prepaid natural gas) shall not apply  
 6 to obligations issued after the date of the enactment of  
 7 the Balancing Act.”.

8 (b) CONFORMING AMENDMENT.—The table of sec-  
 9 tions for subchapter C of chapter 90 is amended by adding  
 10 at the end the following new item:

“Sec. 7875. Termination of certain provisions.”.

11 **SEC. 302. TERMINATION OF ALTERNATIVE FUEL VEHICLE**  
 12 **REFUELING PROPERTY CREDIT WITH RE-**  
 13 **SPECT TO FOSSIL FUELS.**

14 (a) IN GENERAL.—Paragraph (2) of section 30C(c)  
 15 of the Internal Revenue Code of 1986 is amended—

16 (1) by striking “, natural gas, compressed nat-  
 17 ural gas, liquefied natural gas, liquefied petroleum  
 18 gas,” in subparagraph (A),

19 (2) by striking subparagraph (B), and

20 (3) by redesignating subparagraph (C) as sub-  
 21 paragraph (B).

22 (b) TECHNICAL AMENDMENT.—Paragraph (2) of  
 23 section 30C(g) of the Internal Revenue Code of 1986 is  
 24 amended by striking the second period.

1           (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to property placed in service after  
3 December 31, 2012.

4 **SEC. 303. UNIFORM SEVEN-YEAR AMORTIZATION FOR GEO-**  
5 **LOGICAL AND GEOPHYSICAL EXPENDITURES.**

6           (a) IN GENERAL.—Section 167(h) of the Internal  
7 Revenue Code of 1986 is amended—

8                   (1) by striking “24-month period” each place it  
9                   appears in paragraphs (1) and (4) and inserting “7-  
10                   year period”, and

11                   (2) by striking paragraph (5).

12           (b) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to amounts paid or incurred after  
14 the date of the enactment of this Act.

15 **SEC. 304. REPEAL OF DOMESTIC MANUFACTURING DEDUC-**  
16 **TION FOR HARD MINERAL MINING.**

17           (a) IN GENERAL.—Subparagraph (B) of section  
18 199(c)(4) of the Internal Revenue Code of 1986 is amend-  
19 ed by striking “and” at the end of clause (ii), by striking  
20 the period at the end of clause (iii) and inserting “, and”,  
21 and by adding at the end the following new clause:

22                                   “(iv) the mining of any hard min-  
23                                   eral.”.

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

4 **SEC. 305. LIMITATION ON DEDUCTION FOR INCOME AT-**  
5 **TRIBUTABLE TO DOMESTIC PRODUCTION OF**  
6 **OIL, NATURAL GAS, OR PRIMARY PRODUCTS**  
7 **THEREOF.**

8 (a) DENIAL OF DEDUCTION.—Paragraph (4) of sec-  
9 tion 199(c) of the Internal Revenue Code of 1986 is  
10 amended by adding at the end the following new subpara-  
11 graph:

12 “(E) SPECIAL RULE FOR OIL, NATURAL  
13 GAS, AND COAL INCOME.—The term ‘domestic  
14 production gross receipts’ shall not include  
15 gross receipts from the production, refining,  
16 processing, transportation, or distribution of oil,  
17 natural gas, or coal, or any primary product  
18 (within the meaning of subsection (d)(9)) there-  
19 of.”.

20 (b) EFFECTIVE DATE.—The amendment made by  
21 this section shall apply to taxable years beginning after  
22 the date of the enactment of this Act.

1 **SEC. 306. TERMINATION OF LAST-IN, FIRST-OUT METHOD**  
2 **OF INVENTORY FOR OIL, NATURAL GAS, AND**  
3 **COAL COMPANIES.**

4 (a) **IN GENERAL.**—Section 472 of the Internal Rev-  
5 enue Code of 1986 is amended by adding at the end the  
6 following new subsection:

7 “(h) **TERMINATION FOR OIL, NATURAL GAS, AND**  
8 **COAL COMPANIES.**—Subsection (a) shall not apply to any  
9 taxpayer that is in the trade or business of the production,  
10 refining, processing, transportation, or distribution of oil,  
11 natural gas, or coal for any taxable year beginning after  
12 December 31, 2012.”.

13 (b) **ADDITIONAL TERMINATION.**—Section 473 of the  
14 Internal Revenue Code of 1986 is amended by adding at  
15 the end the following new subsection:

16 “(h) **TERMINATION FOR OIL, NATURAL GAS, AND**  
17 **COAL COMPANIES.**—This section shall not apply to any  
18 taxpayer that is in the trade or business of the production,  
19 refining, processing, transportation, or distribution of oil,  
20 natural gas, or coal for any taxable year beginning after  
21 December 31, 2012.”.

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

1 **SEC. 307. REPEAL OF PERCENTAGE DEPLETION FOR COAL**  
2 **AND HARD MINERAL FOSSIL FUELS.**

3 (a) IN GENERAL.—Section 613 of the Internal Rev-  
4 enue Code of 1986 is amended by adding at the end the  
5 following new subsection:

6 “(f) TERMINATION WITH RESPECT TO COAL AND  
7 HARD MINERAL FOSSIL FUELS.—In the case of coal, lig-  
8 nite, and oil shale (other than oil shale described in sub-  
9 section (b)(5)), the allowance for depletion shall be com-  
10 puted without reference to this section for any taxable  
11 year beginning after the date of the enactment of the Bal-  
12 ancing Act.”.

13 (b) CONFORMING AMENDMENTS.—

14 (1) COAL AND LIGNITE.—Section 613(b)(4) of  
15 the Internal Revenue Code of 1986 is amended by  
16 striking “coal, lignite,”.

17 (2) OIL SHALE.—Section 613(b)(2) of such  
18 Code is amended to read as follows:

19 “(2) 15 PERCENT.—If, from deposits in the  
20 United States, gold, silver, copper, and iron ore.”.

21 (c) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to taxable years beginning after  
23 the date of the enactment of this Act.

1 **SEC. 308. TERMINATION OF CAPITAL GAINS TREATMENT**  
2 **FOR ROYALTIES FROM COAL.**

3 (a) IN GENERAL.—Subsection (c) of section 631 of  
4 the Internal Revenue Code of 1986 is amended—

5 (1) by striking “coal (including lignite), or iron  
6 ore” and inserting “iron ore”,

7 (2) by striking “coal or iron ore” each place it  
8 appears and inserting “iron ore”,

9 (3) by striking “iron ore or coal” each place it  
10 appears and inserting “iron ore”, and

11 (4) by striking “COAL OR” in the heading.

12 (b) CONFORMING AMENDMENT.—The heading of sec-  
13 tion 631 of the Internal Revenue Code of 1986 is amended  
14 by striking “, **COAL,**”.

15 (c) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to dispositions after the date of  
17 the enactment of this Act.

18 **SEC. 309. INCREASE IN OIL SPILL LIABILITY TRUST FUND**  
19 **FINANCING RATE.**

20 (a) IN GENERAL.—Subparagraph (B) of section  
21 4611(c)(2) of the Internal Revenue Code of 1986 is  
22 amended to read as follows:

23 “(B) the Oil Spill Liability Trust Fund fi-  
24 nancing rate is—



1           “(i) in the case of crude oil received  
2           or petroleum products entered before Jan-  
3           uary 1, 2013, 8 cents a barrel,

4           “(ii) in the case of crude oil received  
5           or petroleum products entered after De-  
6           cember 31, 2012, and before January 1,  
7           2017, 9 cents a barrel, and

8           “(iii) in the case of crude oil received  
9           or petroleum products entered after De-  
10          cember 31, 2016, 10 cents a barrel.”.

11          (b) **EFFECTIVE DATE.**—The amendment made by  
12 this section shall apply to crude oil received and petroleum  
13 products entered after the date of the enactment of this  
14 Act.

15 **SEC. 310. DENIAL OF DEDUCTION FOR REMOVAL COSTS**  
16 **AND DAMAGES FOR CERTAIN OIL SPILLS.**

17          (a) **IN GENERAL.**—Part IX of subchapter B of chap-  
18 ter 1 of the Internal Revenue Code of 1986 is amended  
19 by adding at the end the following new section:

20 **“SEC. 280I. EXPENSES FOR REMOVAL COSTS AND DAMAGES**  
21 **RELATING TO CERTAIN OIL SPILL LIABILITY.**

22          “No deduction shall be allowed under this chapter for  
23 any amount paid or incurred with respect to any costs or  
24 damages for which the taxpayer is liable under section  
25 1002 of the Oil Pollution Act of 1990 (33 U.S.C. 2702).”.

1 (b) CLERICAL AMENDMENT.—The table of sections  
 2 for part IX of subchapter B of chapter 1 of such Code  
 3 is amended by adding at the end the following new item:

“Sec. 280I. Expenses for removal costs and damages relating to certain oil spill liability.”.

4 (c) EFFECTIVE DATE.—The amendments made by  
 5 this section shall apply with respect to any liability arising  
 6 in taxable years ending after the date of the enactment  
 7 of this Act.

8 **SEC. 311. TAX ON CRUDE OIL AND NATURAL GAS PRO-**  
 9 **DUCED FROM THE OUTER CONTINENTAL**  
 10 **SHELF IN THE GULF OF MEXICO.**

11 (a) IN GENERAL.—Subtitle E of the Internal Rev-  
 12 enue Code of 1986 is amended by adding at the end the  
 13 following new chapter:

14 **“CHAPTER 56—TAX ON SEVERANCE OF**  
 15 **CRUDE OIL AND NATURAL GAS FROM**  
 16 **THE OUTER CONTINENTAL SHELF IN**  
 17 **THE GULF OF MEXICO**

“Sec. 5896. Imposition of tax.

“Sec. 5897. Taxable crude oil or natural gas and removal price.

“Sec. 5898. Special rules and definitions.

18 **“SEC. 5896. IMPOSITION OF TAX.**

19 “(a) IN GENERAL.—In addition to any other tax im-  
 20 posed under this title, there is hereby imposed a tax equal  
 21 to 13 percent of the removal price of any taxable crude

1 oil or natural gas removed from the premises during any  
2 taxable period.

3 “(b) CREDIT FOR FEDERAL ROYALTIES PAID.—

4 “(1) IN GENERAL.—There shall be allowed as a  
5 credit against the tax imposed by subsection (a) with  
6 respect to the production of any taxable crude oil or  
7 natural gas an amount equal to the aggregate  
8 amount of royalties paid under Federal law with re-  
9 spect to such production.

10 “(2) LIMITATION.—The aggregate amount of  
11 credits allowed under paragraph (1) to any taxpayer  
12 for any taxable period shall not exceed the amount  
13 of tax imposed by subsection (a) for such taxable pe-  
14 riod.

15 “(c) TAX PAID BY PRODUCER.—The tax imposed by  
16 this section shall be paid by the producer of the taxable  
17 crude oil or natural gas.

18 **“SEC. 5897. TAXABLE CRUDE OIL OR NATURAL GAS AND RE-**

19 **MOVAL PRICE.**

20 “(a) TAXABLE CRUDE OIL OR NATURAL GAS.—For  
21 purposes of this chapter, the term ‘taxable crude oil or  
22 natural gas’ means crude oil or natural gas which is pro-  
23 duced from Federal submerged lands on the outer Conti-  
24 nental Shelf in the Gulf of Mexico pursuant to a lease

1 entered into with the United States which authorizes the  
2 production.

3 “(b) REMOVAL PRICE.—For purposes of this chap-  
4 ter—

5 “(1) IN GENERAL.—Except as otherwise pro-  
6 vided in this subsection, the term ‘removal price’  
7 means—

8 “(A) in the case of taxable crude oil, the  
9 amount for which a barrel of such crude oil is  
10 sold, and

11 “(B) in the case of taxable natural gas, the  
12 amount per 1,000 cubic feet for which such  
13 natural gas is sold.

14 “(2) SALES BETWEEN RELATED PERSONS.—In  
15 the case of a sale between related persons, the re-  
16 moval price shall not be less than the constructive  
17 sales price for purposes of determining gross income  
18 from the property under section 613.

19 “(3) OIL OR NATURAL GAS REMOVED FROM  
20 PROPERTY BEFORE SALE.—If crude oil or natural  
21 gas is removed from the property before it is sold,  
22 the removal price shall be the constructive sales  
23 price for purposes of determining gross income from  
24 the property under section 613.

1           “(4) REFINING BEGUN ON PROPERTY.—If the  
2           manufacture or conversion of crude oil into refined  
3           products begins before such oil is removed from the  
4           property—

5                   “(A) such oil shall be treated as removed  
6                   on the day such manufacture or conversion be-  
7                   gins, and

8                   “(B) the removal price shall be the con-  
9                   structive sales price for purposes of determining  
10                  gross income from the property under section  
11                  613.

12           “(5) PROPERTY.—The term ‘property’ has the  
13           meaning given such term by section 614.

14   **“SEC. 5898. SPECIAL RULES AND DEFINITIONS.**

15           “(a) ADMINISTRATIVE REQUIREMENTS.—

16                   “(1) WITHHOLDING AND DEPOSIT OF TAX.—  
17           The Secretary shall provide for the withholding and  
18           deposit of the tax imposed under section 5896 on a  
19           quarterly basis.

20                   “(2) RECORDS AND INFORMATION.—Each tax-  
21           payer liable for tax under section 5896 shall keep  
22           such records, make such returns, and furnish such  
23           information (to the Secretary and to other persons  
24           having an interest in the taxable crude oil or natural

1 gas) with respect to such oil as the Secretary may  
2 by regulations prescribe.

3 “(3) TAXABLE PERIODS; RETURN OF TAX.—

4 “(A) TAXABLE PERIOD.—Except as pro-  
5 vided by the Secretary, each calendar year shall  
6 constitute a taxable period.

7 “(B) RETURNS.—The Secretary shall pro-  
8 vide for the filing, and the time for filing, of the  
9 return of the tax imposed under section 5896.

10 “(b) DEFINITIONS.—For purposes of this chapter—

11 “(1) PRODUCER.—The term ‘producer’ means  
12 the holder of the economic interest with respect to  
13 the crude oil or natural gas.

14 “(2) CRUDE OIL.—The term ‘crude oil’ includes  
15 crude oil condensates and natural gasoline.

16 “(3) PREMISES AND CRUDE OIL PRODUCT.—  
17 The terms ‘premises’ and ‘crude oil product’ have  
18 the same meanings as when used for purposes of de-  
19 termining gross income from the property under sec-  
20 tion 613.

21 “(c) ADJUSTMENT OF REMOVAL PRICE.—In deter-  
22 mining the removal price of oil or natural gas from a prop-  
23 erty in the case of any transaction, the Secretary may ad-  
24 just the removal price to reflect clearly the fair market  
25 value of oil or natural gas removed.

1 “(d) REGULATIONS.—The Secretary shall prescribe  
2 such regulations as may be necessary or appropriate to  
3 carry out the purposes of this chapter.”.

4 (b) DEDUCTIBILITY OF TAX.—The first sentence of  
5 section 164(a) is amended by inserting after paragraph  
6 (6) the following new paragraph:

7 “(7) The tax imposed by section 5896(a) (after  
8 application of section 5896(b)) on the severance of  
9 crude oil or natural gas from the outer Continental  
10 Shelf in the Gulf of Mexico.”.

11 (c) CLERICAL AMENDMENT.—The table of chapters  
12 for subtitle E is amended by adding at the end the fol-  
13 lowing new item:

“CHAPTER 56. Tax on severance of crude oil and natural gas  
from the outer Continental Shelf in the Gulf of  
Mexico.”.

14 (d) EFFECTIVE DATE.—The amendments made by  
15 this section shall apply to crude oil or natural gas removed  
16 after December 31, 2012.

17 **Subtitle B—Ending Excessive Cor-**  
18 **porate Tax Deductions for Stock**  
19 **Options**

20 **SEC. 331. CONSISTENT TREATMENT OF STOCK OPTIONS BY**  
21 **CORPORATIONS.**

22 (a) CONSISTENT TREATMENT FOR WAGE DEDUC-  
23 TION.—

24 (1) IN GENERAL.—Section 83(h) is amended—

1 (A) by striking “In the case of” and in-  
2 serting:

3 “(1) IN GENERAL.—In the case of”, and

4 (B) by adding at the end the following new  
5 paragraph:

6 “(2) STOCK OPTIONS.—In the case of property  
7 transferred to a person in connection with a stock  
8 option, any deduction related to such stock option  
9 shall be allowed only under section 162(q) and para-  
10 graph (1) shall not apply.”.

11 (2) TREATMENT OF COMPENSATION PAID WITH  
12 STOCK OPTIONS.—Section 162 is amended by redес-  
13 ignating subsection (q) as subsection (r) and by in-  
14 serting after subsection (p) the following new sub-  
15 section:

16 “(q) TREATMENT OF COMPENSATION PAID WITH  
17 STOCK OPTIONS.—

18 “(1) IN GENERAL.—In the case of compensa-  
19 tion for personal services that is paid with stock op-  
20 tions, the deduction under subsection (a)(1) shall  
21 not exceed the amount the taxpayer has treated as  
22 compensation cost with respect to such stock options  
23 for the purpose of ascertaining income, profit, or  
24 loss in a report or statement to shareholders, part-  
25 ners, or other proprietors (or to beneficiaries), and



1 shall be taken into account in the same period that  
2 such compensation cost is recognized for such pur-  
3 pose.

4 “(2) SPECIAL RULES FOR CONTROLLED  
5 GROUPS.—The Secretary may prescribe rules for the  
6 application of paragraph (1) in cases where the  
7 stock option is granted by—

8 “(A) a parent or subsidiary corporation  
9 (within the meaning of section 424) of the tax-  
10 payer, or

11 “(B) another corporation.”.

12 (b) CONSISTENT TREATMENT FOR RESEARCH TAX  
13 CREDIT.—Section 41(b)(2)(D) is amended by inserting at  
14 the end the following new clause:

15 “(iv) SPECIAL RULE FOR STOCK OP-  
16 TIONS.—The amount which may be treated  
17 as wages for any taxable year in connec-  
18 tion with the issuance of a stock option  
19 shall not exceed the amount allowed for  
20 such taxable year as a compensation de-  
21 duction under section 162(q) with respect  
22 to such stock option.”.

23 (c) APPLICATION OF AMENDMENTS.—The amend-  
24 ments made by this section shall apply to stock options

1 exercised after the date of the enactment of this Act, ex-  
2 cept that—

3 (1) such amendments shall not apply to stock  
4 options that were granted before such date and that  
5 vested in taxable periods beginning on or before  
6 June 15, 2005,

7 (2) for stock options that were granted before  
8 such date of enactment and vested during taxable  
9 periods beginning after June 15, 2005, and ending  
10 before such date of enactment, a deduction under  
11 section 162(q) of the Internal Revenue Code of 1986  
12 (as added by subsection (a)(2)) shall be allowed in  
13 the first taxable period of the taxpayer that ends  
14 after such date of enactment,

15 (3) for public entities reporting as small busi-  
16 ness issuers and for non-public entities required to  
17 file public reports of financial condition, paragraphs  
18 (1) and (2) shall be applied by substituting “Decem-  
19 ber 15, 2005” for “June 15, 2005”, and

20 (4) no deduction shall be allowed under section  
21 83(h) or section 162(q) of such Code with respect to  
22 any stock option the vesting date of which is  
23 changed to accelerate the time at which the option  
24 may be exercised in order to avoid the applicability  
25 of such amendments.

1 **SEC. 332. APPLICATION OF EXECUTIVE PAY DEDUCTION**  
2 **LIMIT.**

3 (a) IN GENERAL.—Subparagraph (D) of section  
4 162(m)(4) of the Internal Revenue Code of 1986 is  
5 amended to read as follows:

6 “(D) STOCK OPTION COMPENSATION.—  
7 The term ‘applicable employee remuneration’  
8 shall include any compensation deducted under  
9 subsection (q), and such compensation shall not  
10 qualify as performance-based compensation  
11 under subparagraph (C).”.

12 (b) EFFECTIVE DATE.—The amendment made by  
13 this section shall apply to stock options exercised or grant-  
14 ed after the date of the enactment of this Act.

15 **Subtitle C—Reduce Deduction of**  
16 **Corporate Meals and Entertain-**  
17 **ment**

18 **SEC. 341. REDUCTION IN BUSINESS MEALS AND ENTER-**  
19 **TAINMENT TAX DEDUCTION.**

20 (a) IN GENERAL.—Section 274(n)(1) of the Internal  
21 Revenue Code of 1986 (relating to only 50 percent of meal  
22 and entertainment expenses allowed as deduction) is  
23 amended by striking “50 percent” and inserting “25 per-  
24 cent”.

1 (b) CONFORMING AMENDMENT.—Section 274(n) of  
 2 the Internal Revenue Code of 1986 is amended by striking  
 3 paragraph (3).

4 (c) CLERICAL AMENDMENT.—The heading for sec-  
 5 tion 274(n) of the Internal Revenue Code of 1986 is  
 6 amended by striking “ONLY 50 PERCENT” and inserting  
 7 “ONLY 25 PERCENT”.

8 (d) EFFECTIVE DATE.—The amendments made by  
 9 this section shall apply to taxable years beginning after  
 10 December 31, 2012.

11 **TITLE IV—CLOSE INTER-**  
 12 **NATIONAL TAX SYSTEM LOOP-**  
 13 **HOLES**

14 **Subtitle A—Reformation of U.S.**  
 15 **International Tax System**

16 **SEC. 401. ALLOCATION OF EXPENSES AND TAXES ON BASIS**  
 17 **OF REPATRIATION OF FOREIGN INCOME.**

18 (a) IN GENERAL.—Part III of subchapter N of chap-  
 19 ter 1 of the Internal Revenue Code of 1986 is amended  
 20 by inserting after subpart G the following new subpart:

21 **“Subpart H—Special Rules for Allocation of Foreign-**  
 22 **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.

1 **“SEC. 975. DEDUCTIONS ALLOCATED TO DEFERRED FOR-**  
2 **EIGN INCOME MAY NOT OFFSET UNITED**  
3 **STATES SOURCE INCOME.**

4       “(a) **CURRENT YEAR DEDUCTIONS.**—For purposes  
5 of this chapter, foreign-related deductions for any taxable  
6 year—

7           “(1) shall be taken into account for such tax-  
8 able year only to the extent that such deductions are  
9 allocable to currently-taxed foreign income, and

10           “(2) to the extent not so allowed, shall be taken  
11 into account in subsequent taxable years as provided  
12 in subsection (b).

13 Foreign-related deductions shall be allocated to currently  
14 taxed foreign income in the same proportion which cur-  
15 rently taxed foreign income bears to the sum of currently  
16 taxed foreign income and deferred foreign income.

17       “(b) **DEDUCTIONS RELATED TO REPATRIATED DE-**  
18 **FERRED FOREIGN INCOME.**—

19           “(1) **IN GENERAL.**—If there is repatriated for-  
20 eign income for a taxable year, the portion of the  
21 previously deferred deductions allocated to the repa-  
22 triated foreign income shall be taken into account  
23 for the taxable year as a deduction allocated to in-  
24 come from sources outside the United States. Any  
25 such amount shall not be included in foreign-related

1 deductions for purposes of applying subsection (a) to  
2 such taxable year.

3 “(2) PORTION OF PREVIOUSLY DEFERRED DE-  
4 DUCTIONS.—For purposes of paragraph (1), the por-  
5 tion of the previously deferred deductions allocated  
6 to repatriated foreign income is—

7 “(A) the amount which bears the same  
8 proportion to such deductions, as

9 “(B) the repatriated income bears to the  
10 previously deferred foreign income.

11 “(c) DEFINITIONS AND SPECIAL RULE.—For pur-  
12 poses of this section—

13 “(1) FOREIGN-RELATED DEDUCTIONS.—The  
14 term ‘foreign-related deductions’ means the total  
15 amount of deductions and expenses which would be  
16 allocated or apportioned to gross income from  
17 sources without the United States for the taxable  
18 year if both the currently-taxed foreign income and  
19 deferred foreign income were taken into account.

20 “(2) CURRENTLY-TAXED FOREIGN INCOME.—  
21 The term ‘currently-taxed foreign income’ means the  
22 amount of gross income from sources without the  
23 United States for the taxable year (determined with-  
24 out regard to repatriated foreign income for such  
25 year).

1           “(3) DEFERRED FOREIGN INCOME.—The term  
2           ‘deferred foreign income’ means the excess of—

3                   “(A) the amount that would be includible  
4                   in gross income under subpart F of this part  
5                   for the taxable year if—

6                           “(i) all controlled foreign corporations  
7                           were treated as one controlled foreign cor-  
8                           poration, and

9                           “(ii) all earnings and profits of all  
10                          controlled foreign corporations were sub-  
11                          part F income (as defined in section 952),  
12                          over

13                          “(B) the sum of—

14                                  “(i) all dividends received during the  
15                                  taxable year from controlled foreign cor-  
16                                  porations, plus

17                                  “(ii) amounts includible in gross in-  
18                                  come under section 951(a).

19           “(4) PREVIOUSLY DEFERRED FOREIGN IN-  
20           COME.—The term ‘previously deferred foreign in-  
21           come’ means the aggregate amount of deferred for-  
22           eign income for all prior taxable years to which this  
23           part applies, determined as of the beginning of the  
24           taxable year, reduced by the repatriated foreign in-  
25           come for all such prior taxable years.

1           “(5) REPATRIATED FOREIGN INCOME.—The  
2 term ‘repatriated foreign income’ means the amount  
3 included in gross income on account of distributions  
4 out of previously deferred foreign income.

5           “(6) PREVIOUSLY DEFERRED DEDUCTIONS.—  
6 The term ‘previously deferred deductions’ means the  
7 aggregate amount of foreign-related deductions not  
8 taken into account under subsection (a) for all prior  
9 taxable years (determined as of the beginning of the  
10 taxable year), reduced by any amounts taken into  
11 account under subsection (b) for such prior taxable  
12 years.

13           “(7) TREATMENT OF CERTAIN FOREIGN  
14 TAXES.—

15           “(A) PAID BY CONTROLLED FOREIGN COR-  
16 PORATION.—Section 78 shall not apply for pur-  
17 poses of determining currently-taxed foreign in-  
18 come and deferred foreign income.

19           “(B) PAID BY TAXPAYER.—For purposes  
20 of determining currently-taxed foreign income,  
21 gross income from sources without the United  
22 States shall be reduced by the aggregate  
23 amount of taxes described in the applicable  
24 paragraph of section 901(b) which are paid by



1           the taxpayer (without regard to sections 902  
2           and 960) during the taxable year.

3           “(8) COORDINATION WITH SECTION 976.—In  
4           determining currently-taxed foreign income and de-  
5           ferred foreign income, the amount of deemed foreign  
6           tax credits shall be determined with regard to sec-  
7           tion 976.

8   **“SEC. 976. AMOUNT OF FOREIGN TAXES COMPUTED ON**  
9                                   **OVERALL BASIS.**

10          “(a) CURRENT YEAR ALLOWANCE.—For purposes of  
11         this chapter, the amount taken into account as foreign in-  
12         come taxes for any taxable year shall be an amount which  
13         bears the same ratio to the total foreign income taxes for  
14         that taxable year as—

15                 “(1) the currently-taxed foreign income for such  
16                 taxable year, bears to

17                 “(2) the sum of the currently-taxed foreign in-  
18                 come and deferred foreign income for such year.

19         The portion of the total foreign income taxes for any tax-  
20         able year not taken into account under the preceding sen-  
21         tence for a taxable year shall only be taken into account  
22         as provided in subsection (b) (and shall not be taken into  
23         account for purposes of applying sections 902 and 960).

24          “(b) ALLOWANCE RELATED TO REPATRIATED DE-  
25         FERRED FOREIGN INCOME.—

1           “(1) IN GENERAL.—If there is repatriated for-  
2           foreign income for any taxable year, the portion of the  
3           previously deferred foreign income taxes paid or ac-  
4           crued during such taxable year shall be taken into  
5           account for the taxable year as foreign taxes paid or  
6           accrued. Any such taxes so taken into account shall  
7           not be included in foreign income taxes for purposes  
8           of applying subsection (a) to such taxable year.

9           “(2) PORTION OF PREVIOUSLY DEFERRED FOR-  
10          EIGN INCOME TAXES.—For purposes of paragraph  
11          (1), the portion of the previously deferred foreign in-  
12          come taxes allocated to repatriated deferred foreign  
13          income is—

14                 “(A) the amount which bears the same  
15                 proportion to such taxes, as

16                 “(B) the repatriated deferred income bears  
17                 to the previously deferred foreign income.

18          “(c) DEFINITIONS AND SPECIAL RULE.—For pur-  
19          poses of this section—

20                 “(1) PREVIOUSLY DEFERRED FOREIGN INCOME  
21          TAXES.—The term ‘previously deferred foreign in-  
22          come taxes’ means the aggregate amount of total  
23          foreign income taxes not taken into account under  
24          subsection (a) for all prior taxable years (determined  
25          as of the beginning of the taxable year), reduced by

1 any amounts taken into account under subsection  
2 (b) for such prior taxable years.

3 “(2) TOTAL FOREIGN INCOME TAXES.—The  
4 term ‘total foreign income taxes’ means the sum of  
5 foreign income taxes paid or accrued during the tax-  
6 able year (determined without regard to section  
7 904(c)) plus the increase in foreign income taxes  
8 that would be paid or accrued during the taxable  
9 year under sections 902 and 960 if—

10 “(A) all controlled foreign corporations  
11 were treated as one controlled foreign corpora-  
12 tion, and

13 “(B) all earnings and profits of all con-  
14 trolled foreign corporations were subpart F in-  
15 come (as defined in section 952).

16 “(3) FOREIGN INCOME TAXES.—The term ‘for-  
17 eign income taxes’ means any income, war profits, or  
18 excess profits taxes paid by the taxpayer to any for-  
19 eign country or possession of the United States.

20 “(4) CURRENTLY-TAXED FOREIGN INCOME AND  
21 DEFERRED FOREIGN INCOME.—The terms ‘cur-  
22 rently-taxed foreign income’ and ‘deferred foreign in-  
23 come’ have the meanings given such terms by sec-  
24 tion 975(c)).

1 **“SEC. 977. APPLICATION OF SUBPART.**

2 “This subpart—

3 “(1) shall be applied before subpart A, and

4 “(2) shall be applied separately with respect to  
5 the categories of income specified in section  
6 904(d)(1).”.

7 (b) CLERICAL AMENDMENT.—The table of subparts  
8 for part III of subpart N of chapter 1 of such Code is  
9 amended by inserting after the item relating to subpart  
10 G the following new item:

“SUBPART H. SPECIAL RULES FOR ALLOCATION OF FOREIGN-RELATED  
DEDUCTIONS AND FOREIGN TAX CREDITS.”.

11 (c) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to taxable years beginning after  
13 the date of the enactment of this Act.

14 **SEC. 402. EXCESS INCOME FROM TRANSFERS OF INTANGI-**  
15 **BLES TO LOW-TAXED AFFILIATES TREATED**  
16 **AS SUBPART F INCOME.**

17 (a) IN GENERAL.—Subsection (a) of section 954 of  
18 such Code is amended by inserting after paragraph (3)  
19 the following new paragraph:

20 “(4) the foreign base company excess intangible  
21 income for the taxable year (determined under sub-  
22 section (f) and reduced as provided in subsection  
23 (b)(5)), and”.

1 (b) FOREIGN BASE COMPANY EXCESS INTANGIBLE  
2 INCOME.—Section 954 of such Code is amended by insert-  
3 ing after subsection (e) the following new subsection:

4 “(f) FOREIGN BASE COMPANY EXCESS INTANGIBLE  
5 INCOME.—For purposes of subsection (a)(4) and this sub-  
6 section:

7 “(1) FOREIGN BASE COMPANY EXCESS INTAN-  
8 GIBLE INCOME DEFINED.—

9 “(A) IN GENERAL.—The term ‘foreign  
10 base company excess intangible income’ means,  
11 with respect to any covered intangible, the ex-  
12 cess of—

13 “(i) the sum of—

14 “(I) gross income from the sale,  
15 lease, license, or other disposition of  
16 property in which such covered intan-  
17 gible is used directly or indirectly, and

18 “(II) gross income from the pro-  
19 vision of services related to such cov-  
20 ered intangible or in connection with  
21 property in which such covered intan-  
22 gible is used directly or indirectly,  
23 over

24 “(ii) 150 percent of the costs properly  
25 allocated and apportioned to the gross in-

1           come taken into account under clause (i)  
2           other than expenses for interest and taxes  
3           and any expenses which are not directly al-  
4           locable to such gross income.

5           “(B) SAME COUNTRY INCOME NOT TAKEN  
6 INTO ACCOUNT.—If—

7                   “(i) the sale, lease, license, or other  
8                   disposition of the property referred to in  
9                   subparagraph (A)(i)(I) is for use, con-  
10                  sumption, or disposition in the country  
11                  under the laws of which the controlled for-  
12                  eign corporation is created or organized, or

13                   “(ii) the services referred to in sub-  
14                  paragraph (A)(i)(II) are performed in such  
15                  country,

16           the gross income from such sale, lease, license,  
17           or other disposition, or provision of services,  
18           shall not be taken into account under subpara-  
19           graph (A)(i).

20           “(2) EXCEPTION BASED ON EFFECTIVE FOR-  
21 EIGN INCOME TAX RATE.—

22                   “(A) IN GENERAL.—Foreign base company  
23                   excess intangible income shall not include the  
24                   applicable percentage of any item of income re-  
25                   ceived by a controlled foreign corporation if the

1 taxpayer establishes to the satisfaction of the  
2 Secretary that such income was subject to an  
3 effective rate of income tax imposed by a for-  
4 eign country in excess of 5 percent.

5 “(B) APPLICABLE PERCENTAGE.—For  
6 purposes of subparagraph (A), the term ‘appli-  
7 cable percentage’ means the ratio (expressed as  
8 a percentage), not greater than 100 percent,  
9 of—

10 “(i) the number of percentage points  
11 by which the effective rate of income tax  
12 referred to in subparagraph (A) exceeds 5  
13 percentage points, over

14 “(ii) 10 percentage points.

15 “(C) TREATMENT OF LOSSES IN DETER-  
16 MINING EFFECTIVE RATE OF FOREIGN INCOME  
17 TAX.—For purposes of determining the effective  
18 rate of income tax imposed by any foreign  
19 country—

20 “(i) such effective rate shall be deter-  
21 mined without regard to any losses carried  
22 to the relevant taxable year, and

23 “(ii) to the extent the income with re-  
24 spect to such intangible reduces losses in  
25 the relevant taxable year, such effective

1 rate shall be treated as being the effective  
2 rate which would have been imposed on  
3 such income without regard to such losses.

4 “(3) COVERED INTANGIBLE.—The term ‘cov-  
5 ered intangible’ means, with respect to any con-  
6 trolled foreign corporation, any intangible property  
7 (as defined in section 936(h)(3)(B))—

8 “(A) which is sold, leased, licensed, or oth-  
9 erwise transferred (directly or indirectly) to  
10 such controlled foreign corporation from a re-  
11 lated person, or

12 “(B) with respect to which such controlled  
13 foreign corporation and one or more related  
14 persons has (directly or indirectly) entered into  
15 any shared risk or development agreement (in-  
16 cluding any cost sharing agreement).

17 “(4) RELATED PERSON.—The term ‘related  
18 person’ has the meaning given such term in sub-  
19 section (d)(3).”.

20 (c) SEPARATE BASKET FOR FOREIGN TAX CRED-  
21 IT.—Subsection (d) of section 904 of such Code is amend-  
22 ed by redesignating paragraph (7) as paragraph (8) and  
23 by inserting after paragraph (6) the following new para-  
24 graph:



1           “(6) SEPARATE APPLICATION TO FOREIGN  
2 BASE COMPANY EXCESS INTANGIBLE INCOME.—

3           “(A) IN GENERAL.—Subsections (a), (b),  
4 and (c) of this section and sections 902, 907,  
5 and 960 shall be applied separately with respect  
6 to each item of income which is taken into ac-  
7 count under section 954(a)(4) as foreign base  
8 company excess intangible income.

9           “(B) REGULATIONS.—The Secretary may  
10 issue such regulations or other guidance as is  
11 necessary or appropriate to carry out the pur-  
12 poses of this subsection, including regulations  
13 or other guidance which provides that related  
14 items of income may be aggregated for pur-  
15 poses of this paragraph.”.

16 (d) CONFORMING AMENDMENTS.—

17           (1) Paragraph (4) of section 954(b) of such  
18 Code is amended by inserting “foreign base company  
19 excess intangible income described in subsection  
20 (a)(4) or” before “foreign base company oil-related  
21 income” in the last sentence thereof.

22           (2) Subsection (b) of section 954 of such Code  
23 is amended by adding at the end the following new  
24 paragraph:

1           “(7) FOREIGN BASE COMPANY EXCESS INTAN-  
2           GIBLE INCOME NOT TREATED AS ANOTHER KIND OF  
3           BASE COMPANY INCOME.—Income of a corporation  
4           which is foreign base company excess intangible in-  
5           come shall not be considered foreign base company  
6           income of such corporation under paragraph (2),  
7           (3), or (5) of subsection (a).”.

8           (e) EFFECTIVE DATE.—The amendments made by  
9           this section shall apply to taxable years beginning after  
10          the date of the enactment of this Act.

11   **SEC. 403. LIMITATIONS ON INCOME SHIFTING THROUGH IN-**  
12                           **TANGIBLE PROPERTY TRANSFERS.**

13          (a) CLARIFICATION OF DEFINITION OF INTANGIBLE  
14          ASSET.—Clause (vi) of section 936(h)(3)(B) of such Code  
15          is amended by inserting “(including any section 197 intan-  
16          gible described in subparagraph (A), (B), or (C)(i) of sub-  
17          section (d)(1) of such section)” after “item”.

18          (b) CLARIFICATION OF ALLOWABLE VALUATION  
19          METHODS.—

20                 (1) FOREIGN CORPORATIONS.—Paragraph (2)  
21                 of section 367(d) of such Code is amended by adding  
22                 at the end the following new subparagraph:

23                         “(D) REGULATORY AUTHORITY.—For pur-  
24                         poses of the last sentence of subparagraph (A),  
25                         the Secretary may require—

1                   “(i) the valuation of transfers of in-  
2                   tangible property on an aggregate basis, or

3                   “(ii) the valuation of such a transfer  
4                   on the basis of the realistic alternatives to  
5                   such a transfer,

6                   in any case in which the Secretary determines  
7                   that such basis is the most reliable means of  
8                   valuation of such transfers.”.

9                   (2) ALLOCATION AMONG TAXPAYERS.—Section  
10                  482 of such Code is amended by adding at the end  
11                  the following: “For purposes of the preceding sen-  
12                  tence, the Secretary may require the valuation of  
13                  transfers of intangible property on an aggregate  
14                  basis or the valuation of such a transfer on the basis  
15                  of the realistic alternatives to such a transfer, in any  
16                  case in which the Secretary determines that such  
17                  basis is the most reliable means of valuation of such  
18                  transfers.”.

19                  (c) EFFECTIVE DATE.—

20                   (1) IN GENERAL.—The amendments made by  
21                   this section shall apply to transfers in taxable years  
22                   beginning after the date of the enactment of this  
23                   Act.

24                   (2) NO INFERENCE.—Nothing in the amend-  
25                   ment made by subsection (a) shall be construed to

1 create any inference with respect to the application  
2 of section 936(h)(3) of the Internal Revenue Code of  
3 1986, or the authority of the Secretary of the Treas-  
4 ury to provide regulations for such application, on or  
5 before the date of the enactment of such amend-  
6 ment.

7 **SEC. 404. LIMITATION ON EARNINGS STRIPPING BY EXPA-**  
8 **TRIATED ENTITIES.**

9 (a) IN GENERAL.—Subsection (j) of section 163 of  
10 such Code is amended—

11 (1) by redesignating paragraph (9) as para-  
12 graph (10), and

13 (2) by inserting after paragraph (8) the fol-  
14 lowing new paragraph:

15 “(9) SPECIAL RULES FOR EXPATRIATED ENTI-  
16 TIES.—

17 “(A) IN GENERAL.—In the case of a cor-  
18 poration to which this subsection applies which  
19 is an expatriated entity, this subsection shall  
20 apply to such corporation with the following  
21 modifications:

22 “(i) Paragraph (2)(A) shall be applied  
23 without regard to clause (ii) thereof.

24 “(ii) Paragraph (1)(B) shall be ap-  
25 plied—

1 “(I) without regard to the par-  
2 enthetical, and

3 “(II) by substituting ‘in the 1st  
4 succeeding taxable year and in the  
5 2nd through 10th succeeding taxable  
6 years to the extent not previously  
7 taken into account under this sub-  
8 paragraph’ for ‘in the succeeding tax-  
9 able year’.

10 “(iii) Paragraph (2)(B) shall be ap-  
11 plied—

12 “(I) without regard to clauses (ii)  
13 and (iii), and

14 “(II) by substituting ‘25 percent  
15 of the adjusted taxable income of the  
16 corporation for such taxable year’ for  
17 the matter of clause (i)(II) thereof.

18 “(B) EXPATRIATED ENTITY.—For pur-  
19 poses of this paragraph—

20 “(i) IN GENERAL.—With respect to a  
21 corporation and a taxable year, the term  
22 ‘expatriated entity’ has the meaning given  
23 such term by section 7874(a)(2), deter-  
24 mined as if such section and the regula-  
25 tions under such section as in effect on the

1 first day of such taxable year applied to all  
 2 taxable years of the corporation beginning  
 3 after July 10, 1989.

4 “(ii) EXCEPTION FOR SURROGATES  
 5 TREATED AS A DOMESTIC CORPORATION.—  
 6 The term ‘expatriated entity’ does not in-  
 7 clude a surrogate foreign corporation  
 8 which is treated as a domestic corporation  
 9 by reason of section 7874(b).”.

10 (b) EFFECTIVE DATE.—The amendments made by  
 11 this section shall apply to taxable years beginning after  
 12 the date of the enactment of this Act.

13 **SEC. 405. PREVENTION OF AVOIDANCE OF TAX THROUGH**  
 14 **REINSURANCE WITH NON-TAXED AFFILIATES.**

15 (a) IN GENERAL.—Part III of subchapter L of chap-  
 16 ter 1 of the Internal Revenue Code of 1986 is amended  
 17 by adding at the end the following new section:

18 **“SEC. 849. SPECIAL RULES FOR REINSURANCE OF NON-**  
 19 **LIFE CONTRACTS WITH NON-TAXED AFFILI-**  
 20 **ATES.**

21 “(a) IN GENERAL.—The taxable income under sec-  
 22 tion 831(a) or the life insurance company taxable income  
 23 under section 801(b) (as the case may be) of an insurance  
 24 company shall be determined by not taking into account—

25 “(1) any non-taxed reinsurance premium,

1           “(2) any additional amount paid by such insur-  
2           ance company with respect to the reinsurance for  
3           which such non-taxed reinsurance premium is paid,  
4           to the extent such additional amount is properly al-  
5           locable to such non-taxed reinsurance premium, and

6           “(3) any return premium, ceding commission,  
7           reinsurance recovered, or other amount received by  
8           such insurance company with respect to the reinsur-  
9           ance for which such non-taxed reinsurance premium  
10          is paid, to the extent such return premium, ceding  
11          commission, reinsurance recovered, or other amount  
12          is properly allocable to such non-taxed reinsurance  
13          premium.

14          “(b) NON-TAXED REINSURANCE PREMIUMS.—For  
15          purposes of this section—

16                 “(1) IN GENERAL.—The term ‘non-taxed rein-  
17                 surance premium’ means any reinsurance premium  
18                 paid directly or indirectly to an affiliated corporation  
19                 with respect to reinsurance of risks (other than ex-  
20                 cepted risks), to the extent that the income attrib-  
21                 utable to the premium is not subject to tax under  
22                 this subtitle (either as the income of the affiliated  
23                 corporation or as amounts included in gross income  
24                 by a United States shareholder under section 951).

1           “(2) EXCEPTED RISKS.—The term ‘excepted  
2 risks’ means any risk with respect to which reserves  
3 described in section 816(b)(1) are established.

4           “(c) AFFILIATED CORPORATIONS.—For purposes of  
5 this section, a corporation shall be treated as affiliated  
6 with an insurance company if both corporations would be  
7 members of the same controlled group of corporations (as  
8 defined in section 1563(a)) if section 1563 were applied—

9           “(1) by substituting ‘at least 50 percent’ for ‘at  
10 least 80 percent’ each place it appears in subsection  
11 (a)(1), and

12           “(2) without regard to subsections (a)(4),  
13 (b)(2)(C), (b)(2)(D), and (e)(3)(C).

14           “(d) ELECTION TO TREAT REINSURANCE INCOME AS  
15 EFFECTIVELY CONNECTED.—

16           “(1) IN GENERAL.—A specified affiliated cor-  
17 poration may elect for any taxable year to treat  
18 specified reinsurance income as—

19           “(A) income effectively connected with the  
20 conduct of a trade or business in the United  
21 States, and

22           “(B) for purposes of any treaty between  
23 the United States and any foreign country, in-  
24 come attributable to a permanent establishment  
25 in the United States.



1           “(2) EFFECT OF ELECTION.—In the case of  
2 any specified reinsurance income with respect to  
3 which the election under this subsection applies—

4           “(A) DEDUCTION ALLOWED FOR REINSUR-  
5 ANCE PREMIUMS.—For exemption from sub-  
6 section (a), see definition of non-taxed reinsur-  
7 ance premiums in subsection (b).

8           “(B) EXCEPTION FROM EXCISE TAX.—The  
9 tax imposed by section 4371 shall not apply  
10 with respect to any income treated as effectively  
11 connected with the conduct of a trade or busi-  
12 ness in the United States under paragraph (1).

13           “(C) TAXATION UNDER THIS SUB-  
14 CHAPTER.—Such income shall be subject to tax  
15 under this subchapter to the same extent and  
16 in the same manner as if such income were the  
17 income of a domestic insurance company.

18           “(D) COORDINATION WITH FOREIGN TAX  
19 CREDIT PROVISIONS.—For purposes of subpart  
20 A of part III of subchapter N and sections 78  
21 and 960—

22           “(i) such specified reinsurance income  
23 shall be treated as derived from sources  
24 without the United States, and

1                   “(ii) subsections (a), (b), and (c) of  
2                   section 904 and sections 902, 907, and  
3                   960 shall be applied separately with re-  
4                   spect to each item of such income.

5                   The Secretary may issue regulations or other  
6                   guidance which provide that related items of  
7                   specified reinsurance income may be aggregated  
8                   for purposes of applying clause (ii).

9                   “(3) SPECIFIED AFFILIATED CORPORATION.—

10                  For purposes of this subsection, the term ‘specified  
11                  affiliated corporation’ means any affiliated corpora-  
12                  tion which is a foreign corporation and which meets  
13                  such requirements as the Secretary shall prescribe to  
14                  ensure that tax on the specified reinsurance income  
15                  of such corporation is properly determined and paid.

16                  “(4) SPECIFIED REINSURANCE INCOME.—For  
17                  purposes of this paragraph, the term ‘specified rein-  
18                  surance income’ means all income of a specified af-  
19                  filiated corporation which is attributable to reinsur-  
20                  ance with respect to which subsection (a) would (but  
21                  for the election under this subsection) apply.

22                  “(5) RULES RELATED TO ELECTION.—Any  
23                  election under paragraph (1) shall—

1           “(A) be made at such time and in such  
2           form and manner as the Secretary may provide,  
3           and

4           “(B) apply for the taxable year for which  
5           made and all subsequent taxable years unless  
6           revoked with the consent of the Secretary.

7           “(e) REGULATIONS.—The Secretary shall prescribe  
8           such regulations or other guidance as may be appropriate  
9           to carry out, or to prevent the avoidance of the purposes  
10          of, this section, including regulations or other guidance  
11          which provide for the application of this section to alter-  
12          native reinsurance transactions, fronting transactions,  
13          conduit and reciprocal transactions, and any economically  
14          equivalent transactions.”.

15          (b) CLERICAL AMENDMENT.—The table of sections  
16          for part III of subchapter L of chapter 1 of such Code  
17          is amended by adding at the end the following new item:

          “Sec. 849. Special rules for reinsurance of non-life contracts with non-taxed af-  
  filiates.”.

18          (c) EFFECTIVE DATE.—The amendment made by  
19          this section shall apply to taxable years beginning after  
20          December 31, 2012.

## 1                   **Subtitle B—Reinsurance**

### 2   **SEC. 411. PREVENTION OF AVOIDANCE OF TAX THROUGH** 3                   **REINSURANCE WITH NON-TAXED AFFILIATES.**

4           (a) IN GENERAL.—Part III of subchapter L of chap-  
5   ter 1 of the Internal Revenue Code of 1986 is amended  
6   by adding at the end the following new section:

### 7   **“SEC. 849. SPECIAL RULES FOR REINSURANCE OF NON-** 8                   **LIFE CONTRACTS WITH NON-TAXED AFFILI-** 9                   **ATES.**

10          “(a) IN GENERAL.—The taxable income under sec-  
11   tion 831(a) or the life insurance company taxable income  
12   under section 801(b) (as the case may be) of an insurance  
13   company shall be determined by not taking into account—

14               “(1) any non-taxed reinsurance premium,

15               “(2) any additional amount paid by such insur-  
16   ance company with respect to the reinsurance for  
17   which such non-taxed reinsurance premium is paid,  
18   to the extent such additional amount is properly al-  
19   locable to such non-taxed reinsurance premium, and

20               “(3) any return premium, ceding commission,  
21   reinsurance recovered, or other amount received by  
22   such insurance company with respect to the reinsur-  
23   ance for which such non-taxed reinsurance premium  
24   is paid, to the extent such return premium, ceding  
25   commission, reinsurance recovered, or other amount

1 is properly allocable to such non-taxed reinsurance  
2 premium.

3 “(b) NON-TAXED REINSURANCE PREMIUMS.—For  
4 purposes of this section—

5 “(1) IN GENERAL.—The term ‘non-taxed rein-  
6 surance premium’ means any reinsurance premium  
7 paid directly or indirectly to an affiliated corporation  
8 with respect to reinsurance of risks (other than ex-  
9 cepted risks), to the extent that the income attrib-  
10 utable to the premium is not subject to tax under  
11 this subtitle (either as the income of the affiliated  
12 corporation or as amounts included in gross income  
13 by a United States shareholder under section 951).

14 “(2) EXCEPTED RISKS.—The term ‘excepted  
15 risks’ means any risk with respect to which reserves  
16 described in section 816(b)(1) are established.

17 “(c) AFFILIATED CORPORATIONS.—For purposes of  
18 this section, a corporation shall be treated as affiliated  
19 with an insurance company if both corporations would be  
20 members of the same controlled group of corporations (as  
21 defined in section 1563(a)) if section 1563 were applied—

22 “(1) by substituting ‘at least 50 percent’ for ‘at  
23 least 80 percent’ each place it appears in subsection  
24 (a)(1), and

1           “(2) without regard to subsections (a)(4),  
2           (b)(2)(C), (b)(2)(D), and (e)(3)(C).

3           “(d) ELECTION TO TREAT REINSURANCE INCOME AS  
4 EFFECTIVELY CONNECTED.—

5           “(1) IN GENERAL.—A specified affiliated cor-  
6 poration may elect for any taxable year to treat  
7 specified reinsurance income as—

8           “(A) income effectively connected with the  
9           conduct of a trade or business in the United  
10           States, and

11           “(B) for purposes of any treaty between  
12           the United States and any foreign country, in-  
13           come attributable to a permanent establishment  
14           in the United States.

15           “(2) EFFECT OF ELECTION.—In the case of  
16 any specified reinsurance income with respect to  
17 which the election under this subsection applies—

18           “(A) DEDUCTION ALLOWED FOR REINSUR-  
19 ANCE PREMIUMS.—For exemption from sub-  
20 section (a), see definition of non-taxed reinsur-  
21 ance premiums in subsection (b).

22           “(B) EXCEPTION FROM EXCISE TAX.—The  
23 tax imposed by section 4371 shall not apply  
24 with respect to any income treated as effectively

1 connected with the conduct of a trade or busi-  
2 ness in the United States under paragraph (1).

3 “(C) TAXATION UNDER THIS SUB-  
4 CHAPTER.—Such income shall be subject to tax  
5 under this subchapter to the same extent and  
6 in the same manner as if such income were the  
7 income of a domestic insurance company.

8 “(D) COORDINATION WITH FOREIGN TAX  
9 CREDIT PROVISIONS.—For purposes of subpart  
10 A of part III of subchapter N and sections 78  
11 and 960—

12 “(i) such specified reinsurance income  
13 shall be treated as derived from sources  
14 without the United States, and

15 “(ii) subsections (a), (b), and (c) of  
16 section 904 and sections 902, 907, and  
17 960 shall be applied separately with re-  
18 spect to each item of such income.

19 The Secretary may issue regulations or other  
20 guidance which provide that related items of  
21 specified reinsurance income may be aggregated  
22 for purposes of applying clause (ii).

23 “(3) SPECIFIED AFFILIATED CORPORATION.—  
24 For purposes of this subsection, the term ‘specified  
25 affiliated corporation’ means any affiliated corpora-

1       tion which is a foreign corporation and which meets  
2       such requirements as the Secretary shall prescribe to  
3       ensure that tax on the specified reinsurance income  
4       of such corporation is properly determined and paid.

5           “(4) SPECIFIED REINSURANCE INCOME.—For  
6       purposes of this paragraph, the term ‘specified rein-  
7       surance income’ means all income of a specified af-  
8       filiated corporation which is attributable to reinsur-  
9       ance with respect to which subsection (a) would (but  
10      for the election under this subsection) apply.

11          “(5) RULES RELATED TO ELECTION.—Any  
12      election under paragraph (1) shall—

13           “(A) be made at such time and in such  
14           form and manner as the Secretary may provide,  
15           and

16           “(B) apply for the taxable year for which  
17           made and all subsequent taxable years unless  
18           revoked with the consent of the Secretary.

19          “(e) REGULATIONS.—The Secretary shall prescribe  
20      such regulations or other guidance as may be appropriate  
21      to carry out, or to prevent the avoidance of the purposes  
22      of, this section, including regulations or other guidance  
23      which provide for the application of this section to alter-  
24      native reinsurance transactions, fronting transactions,



1 conduit and reciprocal transactions, and any economically  
2 equivalent transactions.”.

3 (b) CLERICAL AMENDMENT.—The table of sections  
4 for part III of subchapter L of chapter 1 of such Code  
5 is amended by adding at the end the following new item:

“Sec. 849. Special rules for reinsurance of non-life contracts with non-taxed af-  
filiates.”.

6 (c) EFFECTIVE DATE.—The amendment made by  
7 this section shall apply to taxable years beginning after  
8 December 31, 2012.

9 **Subtitle C—Close Loophole for**  
10 **Corporate Jet Depreciation**

11 **SEC. 421. GENERAL AVIATION AIRCRAFT TREATED AS 7-**  
12 **YEAR PROPERTY.**

13 (a) IN GENERAL.—Subparagraph (C) of section  
14 168(e)(3) of the Internal Revenue Code of 1986 (relating  
15 to classification of certain property) is amended by strik-  
16 ing “and” at the end of clause (iv), by redesignating clause  
17 (v) as clause (vi), and by inserting after clause (iv) the  
18 following new clause:

19 “(v) any general aviation aircraft, and”.

20 (b) CLASS LIFE.—Paragraph (3) of section 168(g)  
21 Internal Revenue Code of 1986 is amended by inserting  
22 after subparagraph (E) the following new subparagraph:

23 “(F) General aviation aircraft. In the case  
24 of any general aviation aircraft, the recovery

1 period used for purposes of paragraph (2) shall  
2 be 12 years.”.

3 (c) GENERAL AVIATION AIRCRAFT.—Subsection (i)  
4 of section 168 Internal Revenue Code of 1986 is amended  
5 by inserting after paragraph (19) the following new para-  
6 graph:

7 “(20) GENERAL AVIATION AIRCRAFT.—The  
8 term ‘general aviation aircraft’ means any airplane  
9 or helicopter (including airframes and engines) not  
10 used in commercial or contract carrying of pas-  
11 sengers or freight, but which primarily engages in  
12 the carrying of passengers.”.

13 (d) EFFECTIVE DATE.—This section shall be effec-  
14 tive for property placed in service after December 31,  
15 2012.

16 **TITLE V—CLOSE ESTATE TAX**  
17 **LOOPHOLES**

18 **SEC. 501. VALUATION RULES FOR CERTAIN TRANSFERS OF**  
19 **NONBUSINESS ASSETS; LIMITATION ON MI-**  
20 **NORITY DISCOUNTS.**

21 (a) IN GENERAL.—Section 2031 of the Internal Rev-  
22 enue Code of 1986 is amended by redesignating subsection  
23 (d) as subsection (f) and by inserting after subsection (c)  
24 the following new subsections:

1       “(d) VALUATION RULES FOR CERTAIN TRANSFERS  
2 OF NONBUSINESS ASSETS.—For purposes of this chapter  
3 and chapter 12—

4           “(1) IN GENERAL.—In the case of the transfer  
5 of any interest in an entity other than an interest  
6 which is actively traded (within the meaning of sec-  
7 tion 1092)—

8           “(A) the value of any nonbusiness assets  
9 held by the entity shall be determined as if the  
10 transferor had transferred such assets directly  
11 to the transferee (and no valuation discount  
12 shall be allowed with respect to such nonbusi-  
13 ness assets), and

14           “(B) the nonbusiness assets shall not be  
15 taken into account in determining the value of  
16 the interest in the entity.

17           “(2) NONBUSINESS ASSETS.—For purposes of  
18 this subsection—

19           “(A) IN GENERAL.—The term ‘nonbusi-  
20 ness asset’ means any asset which is not used  
21 in the active conduct of 1 or more trades or  
22 businesses.

23           “(B) EXCEPTION FOR CERTAIN PASSIVE  
24 ASSETS.—Except as provided in subparagraph  
25 (C), a passive asset shall not be treated for pur-

1 poses of subparagraph (A) as used in the active  
2 conduct of a trade or business unless—

3 “(i) the asset is property described in  
4 paragraph (1) or (4) of section 1221(a) or  
5 is a hedge with respect to such property,  
6 or

7 “(ii) the asset is real property used in  
8 the active conduct of 1 or more real prop-  
9 erty trades or businesses (within the mean-  
10 ing of section 469(c)(7)(C)) in which the  
11 transferor materially participates and with  
12 respect to which the transferor meets the  
13 requirements of section 469(c)(7)(B)(ii).

14 For purposes of clause (ii), material participa-  
15 tion shall be determined under the rules of sec-  
16 tion 469(h), except that section 469(h)(3) shall  
17 be applied without regard to the limitation to  
18 farming activity.

19 “(C) EXCEPTION FOR WORKING CAP-  
20 ITAL.—Any asset (including a passive asset)  
21 which is held as a part of the reasonably re-  
22 quired working capital needs of a trade or busi-  
23 ness shall be treated as used in the active con-  
24 duct of a trade or business.

1           “(3) PASSIVE ASSET.—For purposes of this  
2 subsection, the term ‘passive asset’ means any—

3                   “(A) cash or cash equivalents,

4                   “(B) except to the extent provided by the  
5 Secretary, stock in a corporation or any other  
6 equity, profits, or capital interest in any entity,

7                   “(C) evidence of indebtedness, option, for-  
8 ward or futures contract, notional principal con-  
9 tract, or derivative,

10                  “(D) asset described in clause (iii), (iv), or  
11 (v) of section 351(e)(1)(B),

12                  “(E) annuity,

13                  “(F) real property used in 1 or more real  
14 property trades or businesses (as defined in sec-  
15 tion 469(e)(7)(C)),

16                  “(G) asset (other than a patent, trade-  
17 mark, or copyright) which produces royalty in-  
18 come,

19                  “(H) commodity,

20                  “(I) collectible (within the meaning of sec-  
21 tion 401(m)), or

22                  “(J) any other asset specified in regula-  
23 tions prescribed by the Secretary.

24           “(4) LOOK-THRU RULES.—

1           “(A) IN GENERAL.—If a nonbusiness asset  
2 of an entity consists of a 10-percent interest in  
3 any other entity, this subsection shall be ap-  
4 plied by disregarding the 10-percent interest  
5 and by treating the entity as holding directly its  
6 ratable share of the assets of the other entity.  
7 This subparagraph shall be applied successively  
8 to any 10-percent interest of such other entity  
9 in any other entity.

10           “(B) 10-PERCENT INTEREST.—The term  
11 ‘10-percent interest’ means—

12           “(i) in the case of an interest in a cor-  
13 poration, ownership of at least 10 percent  
14 (by vote or value) of the stock in such cor-  
15 poration,

16           “(ii) in the case of an interest in a  
17 partnership, ownership of at least 10 per-  
18 cent of the capital or profits interest in the  
19 partnership, and

20           “(iii) in any other case, ownership of  
21 at least 10 percent of the beneficial inter-  
22 ests in the entity.

23           “(C) EXCEPTION FOR ACTIVELY TRADED  
24 INTERESTS.—Subparagraph (A) shall not apply  
25 to any nonbusiness asset which consists of an

1 interest which is actively traded (within the  
2 meaning of section 1092).

3 “(5) COORDINATION WITH SUBSECTION (b).—  
4 Subsection (b) shall apply after the application of  
5 this subsection.

6 “(e) LIMITATION ON MINORITY DISCOUNTS.—For  
7 purposes of this chapter and chapter 12, in the case of  
8 the transfer of any interest in an entity other than an in-  
9 terest which is actively traded (within the meaning of sec-  
10 tion 1092), no discount shall be allowed by reason of the  
11 fact that the transferee does not have control of such enti-  
12 ty if the transferee and members of the family (as defined  
13 in section 2032A(e)(2)) of the transferee have control of  
14 such entity (determined immediately after such trans-  
15 fer).”.

16 (b) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply to transfers after the date of the  
18 enactment of this Act.

19 **SEC. 502. CONSISTENT BASIS REPORTING BETWEEN ES-**  
20 **TATE AND PERSON ACQUIRING PROPERTY**  
21 **FROM DECEDENT.**

22 (a) CONSISTENT USE OF BASIS.—

23 (1) PROPERTY ACQUIRED FROM A DECE-  
24 DENT.—Section 1014 of the Internal Revenue Code

1 of 1986 is amended by adding at the end the fol-  
2 lowing new subsection:

3 “(f) BASIS MUST BE CONSISTENT WITH ESTATE  
4 TAX RETURN.—

5 “(1) IN GENERAL.—For purposes of this sec-  
6 tion, the value used to determine the basis of any in-  
7 terest in property in the hands of the person acquir-  
8 ing such property shall not exceed the value of such  
9 interest as finally determined for purposes of chap-  
10 ter 11.

11 “(2) SPECIAL RULE WHERE NO FINAL DETER-  
12 MINATION.—In any case in which the final value of  
13 property has not been determined under chapter 11  
14 and there has been a statement furnished under sec-  
15 tion 6035(a), the value used to determine the basis  
16 of any interest in property in the hands of the per-  
17 son acquiring such property shall not exceed the  
18 amount reported on any statement furnished under  
19 section 6035(a).

20 “(3) REGULATIONS.—The Secretary may by  
21 regulations provide exceptions to the application of  
22 this subsection.”.

23 (2) PROPERTY ACQUIRED BY GIFTS AND  
24 TRANSFERS IN TRUST.—Section 1015 of the Inter-



1       nal Revenue Code of 1986 is amended by adding at  
2       the end the following new subsection:

3       “(f) BASIS MUST BE CONSISTENT GIFT TAX RE-  
4       TURN.—

5               “(1) IN GENERAL.—For purposes of this sec-  
6       tion, the value used to determine the basis of any in-  
7       terest in property in the hands of the person acquir-  
8       ing such property shall not exceed the value of such  
9       interest as finally determined for purposes of chap-  
10      ter 12.

11              “(2) SPECIAL RULE WHERE NO FINAL DETER-  
12      MINATION.—In any case in which the final value of  
13      property has not been determined under chapter 12  
14      and there has been a statement furnished under sec-  
15      tion 6035(b), the value used to determine the basis  
16      of any interest in property in the hands of the per-  
17      son acquiring such property shall not exceed the  
18      amount reported on any statement furnished under  
19      section 6035(b).

20              “(3) REGULATIONS.—The Secretary may by  
21      regulations provide exceptions to the application of  
22      this subsection.”.

23      (b) INFORMATION REPORTING.—

24              “(1) IN GENERAL.—Subpart A of part III of  
25      subchapter A of chapter 61 of the Internal Revenue

1 Code of 1986 is amended by inserting after section  
2 6034A the following new section:

3 **“SEC. 6035. BASIS INFORMATION TO PERSONS ACQUIRING**  
4 **PROPERTY FROM DECEDENT OR BY GIFT.**

5 “(a) INFORMATION WITH RESPECT TO PROPERTY  
6 ACQUIRED FROM DECEDENTS.—

7 “(1) IN GENERAL.—The executor of any estate  
8 required to file a return under section 6018(a) shall  
9 furnish to the Secretary and to each person acquir-  
10 ing any interest in property included in the dece-  
11 dent’s gross estate for Federal estate tax purposes  
12 a statement identifying the value of each interest in  
13 such property as reported on such return and such  
14 other information with respect to such interest as  
15 the Secretary may prescribe.

16 “(2) STATEMENTS BY BENEFICIARIES.—Each  
17 person required to file a return under section  
18 6018(b) shall furnish to the Secretary and to each  
19 other person who holds a legal or beneficial interest  
20 in the property to which such return relates a state-  
21 ment identifying the information described in para-  
22 graph (1).

23 “(3) TIME FOR FURNISHING STATEMENT.—

24 “(A) IN GENERAL.—Each statement re-  
25 quired to be furnished under paragraph (1) or

1 (2) shall be furnished at such time as the Sec-  
2 retary may prescribe, but in no case at a time  
3 later than the earlier of—

4 “(i) the date which is 30 days after  
5 the date on which the return under section  
6 6018 was required to be filed (including  
7 extensions, if any), or

8 “(ii) the date which is 30 days after  
9 the date such return is filed.

10 “(B) ADJUSTMENTS.—In any case in  
11 which there is an adjustment to the information  
12 required to be included on a statement filed  
13 under paragraph (1) or (2) after such state-  
14 ment has been filed, a supplemental statement  
15 under such paragraph shall be filed not later  
16 than the date which is 30 days after such ad-  
17 justment is made.

18 “(b) INFORMATION WITH RESPECT TO PROPERTY  
19 ACQUIRED BY GIFT.—

20 “(1) IN GENERAL.—Each person making a  
21 transfer by gift who is required to file a return  
22 under section 6019 with respect to such transfer  
23 shall furnish to the Secretary and to each person ac-  
24 quiring any interest in property by reason of such  
25 transfer a statement identifying the value of each in-

1       terest in such property as reported on such return  
2       and such other information with respect to such in-  
3       terest as the Secretary may prescribe.

4           “(2) TIME FOR FURNISHING STATEMENT.—

5           “(A) IN GENERAL.—Each statement re-  
6       quired to be furnished under paragraph (1)  
7       shall be furnished at such time as the Secretary  
8       may prescribe, but in no case at a time later  
9       than the earlier of—

10           “(i) the date which is 30 days after  
11       the date on which the return under section  
12       6019 was required to be filed (including  
13       extensions, if any), or

14           “(ii) the date which is 30 days after  
15       the date such return is filed.

16           “(B) ADJUSTMENTS.—In any case in  
17       which there is an adjustment to the information  
18       required to be included on a statement filed  
19       under paragraph (1) after such statement has  
20       been filed, a supplemental statement under  
21       such paragraph shall be filed not later than the  
22       date which is 30 days after such adjustment is  
23       made.

1       “(c) REGULATIONS.—The Secretary shall prescribe  
2 such regulations as necessary to carry out this section, in-  
3 cluding regulations relating to—

4               “(1) the application of this section to property  
5 with regard to which no estate or gift tax return is  
6 required to be filed, and

7               “(2) situations in which the surviving joint ten-  
8 ant or other recipient may have better information  
9 than the executor regarding the basis or fair market  
10 value of the property.”.

11               (2) PENALTY FOR FAILURE TO FILE.—

12               (A) RETURN.—Section 6724(d)(1) of the  
13 Internal Revenue Code of 1986 is amended by  
14 striking “and” at the end of subparagraph (B),  
15 by striking the period at the end of subpara-  
16 graph (C) and inserting “, and”, and by adding  
17 at the end the following new subparagraph:

18               “(D) any statement required to be filed  
19 with the Secretary under section 6035.”.

20               (B) STATEMENT.—Section 6724(d)(2) of  
21 such Code is amended by striking “or” at the  
22 end of subparagraph (GG), by striking the pe-  
23 riod at the end of subparagraph (HH) and in-  
24 serting “, or”, and by adding at the end the fol-  
25 lowing new subparagraph:

1           “(II) section 6035 (other than a statement  
2           described in paragraph (1)(D)).”.

3           (3) CLERICAL AMENDMENT.—The table of sec-  
4           tions for subpart A of part III of subchapter A of  
5           chapter 61 of the Internal Revenue Code of 1986 is  
6           amended by inserting after the item relating to sec-  
7           tion 6034A the following new item:

“Sec. 6035. Basis information to persons acquiring property from decedent or  
by gift.”.

8           (c) PENALTY FOR INCONSISTENT REPORTING.—

9           (1) IN GENERAL.—Subsection (b) of section  
10          6662 of the Internal Revenue Code of 1986 is  
11          amended by inserting after paragraph (7) the fol-  
12          lowing new paragraph:

13           “(8) Any inconsistent estate or gift basis.”.

14          (2) INCONSISTENT BASIS REPORTING.—Section  
15          6662 of such Code is amended by adding at the end  
16          the following new subsection:

17          “(k) INCONSISTENT ESTATE OR GIFT BASIS RE-  
18          PORTING.—For purposes of this section, the term ‘incon-  
19          sistent estate or gift basis’ means the portion of the under-  
20          statement which is attributable to—

21           “(1) in the case of property acquired from a de-  
22           cedent, a basis determination with respect to such  
23           property which is not consistent with the value of

1 such property as determined under section 1014(f),  
2 and

3 “(2) in the case of property acquired by gift, a  
4 basis determination with respect to such property  
5 which is not consistent with the value of such prop-  
6 erty as determined under section 1015(f).”.

7 (d) EFFECTIVE DATE.—The amendments made by  
8 this section shall apply to transfers for which returns are  
9 filed after the date of the enactment of this Act.

10 **SEC. 503. REQUIRED MINIMUM 10-YEAR TERM, ETC., FOR**  
11 **GRANTOR RETAINED ANNUITY TRUSTS.**

12 (a) IN GENERAL.—Subsection (b) of section 2702 of  
13 the Internal Revenue Code of 1986 is amended—

14 (1) by redesignating paragraphs (1), (2) and  
15 (3) as subparagraphs (A), (B), and (C), respectively,  
16 and by moving such subparagraphs (as so redesign-  
17 nated) 2 ems to the right;

18 (2) by striking “For purposes of” and inserting  
19 the following:

20 “(1) IN GENERAL.—For purposes of”;

21 (3) by striking “paragraph (1) or (2)” in para-  
22 graph (1)(C) (as so redesignated) and inserting  
23 “subparagraph (A) or (B)”; and

24 (4) by adding at the end the following new  
25 paragraph:

1           “(2) ADDITIONAL REQUIREMENTS WITH RE-  
2           SPECT TO GRANTOR RETAINED ANNUITIES.—For  
3           purposes of subsection (a), in the case of an interest  
4           described in paragraph (1)(A) (determined without  
5           regard to this paragraph) which is retained by the  
6           transferor, such interest shall be treated as de-  
7           scribed in such paragraph only if—

8                   “(A) the right to receive the fixed amounts  
9                   referred to in such paragraph is for a term of  
10                  not less than 10 years,

11                   “(B) such fixed amounts, when determined  
12                   on an annual basis, do not decrease relative to  
13                   any prior year during the first 10 years of the  
14                   term referred to in subparagraph (A), and

15                   “(C) the remainder interest has a value  
16                   greater than zero determined as of the time of  
17                   the transfer.”.

18           (b) EFFECTIVE DATE.—The amendments made by  
19           this section shall apply to transfers made after the date  
20           of the enactment of this Act.

21   **SEC. 504. LIMITATION ON GST EXEMPTION OF PERPETUAL**  
22                   **DYNASTY TRUSTS.**

23           (a) IN GENERAL.—Section 2642 of the Internal Rev-  
24           enue Code of 1986 is amended by adding at the end the  
25           following new subsection:



1       “(h) EXPIRATION OF GST EXEMPTION 90 YEARS  
2 AFTER ESTABLISHMENT OF TRUST.—

3           “(1) IN GENERAL.—In the case of any genera-  
4 tion-skipping transfer made from a trust after the  
5 date which is 90 years after the date on which such  
6 trust is created, the inclusion ratio with respect to  
7 any property transferred in such transfer shall be 1.

8           “(2) SPECIAL RULES.—For purposes of this  
9 subsection—

10           “(A) DATE OF CREATION OF CERTAIN  
11 DEEMED SEPARATE TRUSTS.—In the case of  
12 any portion of a trust which is treated as a sep-  
13 arate trust under section 2654(b)(1), such sep-  
14 arate trust shall be treated as created on the  
15 date of the first transfer described in such sec-  
16 tion with respect to such separate trust.

17           “(B) DATE OF CREATION OF POUR-OVER  
18 TRUSTS.—In the case of any generation-skip-  
19 ping transfer of property which involves the  
20 transfer of property from 1 trust to another  
21 trust, the date of the creation of the transferee  
22 trust shall be treated as being the earlier of—

23           “(i) the date of the creation of such  
24 transferee trust, or

1                   “(ii) the date of the creation of the  
2                   transferor trust.

3                   In the case of multiple transfers to which the  
4                   preceding sentence applies, the date of the cre-  
5                   ation of the transferor trust shall be determined  
6                   under the preceding sentence before the appli-  
7                   cation of the preceding sentence to determine  
8                   the date of the creation of the transferee trust.

9                   “(C) EXCEPTION FOR CERTAIN TRANS-  
10                  FERS FOR EDUCATION AND MEDICAL EX-  
11                  PENSES.—Subparagraph (B) shall not apply to  
12                  the transfer of property from 1 trust to another  
13                  trust if—

14                   “(i) such transfer is described in sec-  
15                   tion 2642(c)(2), and

16                   “(ii) the individual referred to in such  
17                   section with respect to the transferee trust  
18                   was also a beneficiary of the transferor  
19                   trust.

20                  “(3) REGULATIONS.—The Secretary may pre-  
21                  scribe such regulations or other guidance as may be  
22                  necessary or appropriate to carry out this sub-  
23                  section.”.

24                  (b) EFFECTIVE DATE.—

1           (1) IN GENERAL.—The amendments made this  
2 section shall apply to—

3           (A) trusts created after the date of the en-  
4 actment of this Act, and

5           (B) generation-skipping transfers made  
6 from trusts created on or before such date, but  
7 only to the extent such transfer is made out of  
8 corpus added to the trust after such date (or  
9 out of income attributable to corpus so added).

10          (2) DETERMINATION OF DATE OF CREATION.—  
11 For purposes of this subsection, the rules of sections  
12 2642(h)(2) (as added by this section) and 2654(b)  
13 of the Internal Revenue Code of 1986 shall apply for  
14 purposes of determining the date of the creation of  
15 any trust.

16          (3) EXCEPTIONS.—The Secretary of the Treas-  
17 ury, or his designee, shall issue regulations or other  
18 guidance which provide exceptions to the application  
19 of the amendments made by this section which are  
20 substantially similar to the relevant exceptions under  
21 paragraph (2) of section 1433(b) of the Tax Reform  
22 Act of 1986.

1           **TITLE VI—CUT PENTAGON**  
2           **WASTE TO ACHIEVE BALANCE**  
3           **Subtitle A—Smarter Approach to**  
4           **Nuclear Expenditures**

5   **SEC. 601. SHORT TITLE.**

6           This title may be cited as the “Smarter Approach to  
7 Nuclear Expenditures Act”.

8   **SEC. 602. FINDINGS.**

9           Congress finds the following:

10           (1) The Berlin Wall fell in 1989, the U.S.S.R.  
11           no longer exists, and the Cold War is over. The na-  
12           ture of threats to the national security and military  
13           interests of the United States has changed. How-  
14           ever, the United States continues to maintain an  
15           enormous arsenal of nuclear weapons and delivery  
16           systems that were devised with the Cold War in  
17           mind.

18           (2) The current nuclear arsenal of the United  
19           States includes approximately 5,000 total nuclear  
20           warheads, of which approximately 2,000 are de-  
21           ployed with three delivery components: long-range  
22           strategic bomber aircraft, land-based interconti-  
23           nental ballistic missiles, and submarine-launched  
24           ballistic missiles. The bomber fleet of the United  
25           States comprises 93 B-52 and 20 B-2 aircraft. The

1 United States maintains 450 intercontinental bal-  
2 listic missiles. The United States also maintains 14  
3 Ohio-class submarines, up to 12 of which are de-  
4 ployed at sea. Each of these submarines is armed  
5 with up to 96 independently targetable nuclear war-  
6 heads.

7 (3) This Cold War-based approach to nuclear  
8 security comes at significant cost. Over the next 10  
9 years, the United States will spend hundreds of bil-  
10 lions of dollars maintaining its nuclear force. A sub-  
11 stantial decrease in the nuclear arsenal of the  
12 United States is prudent for both the budget and  
13 national security.

14 (4) The national security interests of the  
15 United States can be well served by reducing the  
16 total number of deployed nuclear warheads and their  
17 delivery systems, as suggested by the Department of  
18 Defense's January 2012 strategic guidance titled  
19 "Sustaining U.S. Global Leadership: Priorities for  
20 21st Century Defense". Furthermore, a number of  
21 arms control, nuclear, and national security experts  
22 have urged the United States to reduce the number  
23 of deployed nuclear warheads to no more than  
24 1,000.

1           (5) Economic security and national security are  
2 linked and both will be well served by smart defense  
3 spending. Admiral Mike Mullen, Chairman of the  
4 Joint Chiefs of Staff, stated on June 24, 2010, that  
5 “Our national debt is our biggest national security  
6 threat” and on August 2, 2011, stated that “I  
7 haven’t changed my view that the continually in-  
8 creasing debt is the biggest threat we have to our  
9 national security.”.

10           (6) The Government Accountability Office has  
11 found that there is significant waste in the construc-  
12 tion of the nuclear facilities of the National Nuclear  
13 Security Administration of the Department of En-  
14 ergy.

15 **SEC. 603. REDUCTION IN NUCLEAR FORCES.**

16           (a) PROHIBITION ON USE OF B-2 AND B-52 AIR-  
17 CRAFT FOR NUCLEAR MISSIONS.—Notwithstanding any  
18 other provision of law, none of the funds authorized to  
19 be appropriated or otherwise made available for fiscal year  
20 2014 or any fiscal year thereafter for the Department of  
21 Defense may be obligated or expended to arm a B-2 or  
22 B-52 aircraft with a nuclear weapon.

23           (b) PROHIBITION ON NEW LONG-RANGE PENE-  
24 TRATING BOMBER AIRCRAFT.—Notwithstanding any  
25 other provision of law, none of the funds authorized to

1 be appropriated or otherwise made available for any of fis-  
2 cal years 2014 through 2024 for the Department of De-  
3 fense may be obligated or expended for the research, devel-  
4 opment, test, and evaluation or procurement of a long-  
5 range penetrating bomber aircraft.

6 (c) PROHIBITION ON F-35 NUCLEAR MISSION.—  
7 Notwithstanding any other provision of law, none of the  
8 funds authorized to be appropriated or otherwise made  
9 available for fiscal year 2014 or any fiscal year thereafter  
10 for the Department of Defense or the Department of En-  
11 ergy may be used to make the F-35 Joint Strike Fighter  
12 aircraft capable of carrying nuclear weapons.

13 (d) TERMINATION OF B61 LEP.—Notwithstanding  
14 any other provision of law, none of the funds authorized  
15 to be appropriated or otherwise made available for fiscal  
16 year 2014 or any fiscal year thereafter for the Department  
17 of Defense or the Department of Energy may be obligated  
18 or expended for the B61 life extension program.

19 (e) TERMINATION OF W78 LEP.—Notwithstanding  
20 any other provision of law, none of the funds authorized  
21 to be appropriated or otherwise made available for fiscal  
22 year 2014 or any fiscal year thereafter for the Department  
23 of Defense or the Department of Energy may be obligated  
24 or expended for the W78 life extension program.

1           (f) REDUCTION OF NUCLEAR-ARMED SUB-  
2 MARINES.—Notwithstanding any other provision of law,  
3 beginning in fiscal year 2014, the forces of the Navy shall  
4 include not more than eight operational ballistic-missile  
5 submarines available for deployment.

6           (g) LIMITATION ON SSBN–X SUBMARINES.—Not-  
7 withstanding any other provision of law—

8                 (1) none of the funds authorized to be appro-  
9 priated or otherwise made available for any of fiscal  
10 years 2014 through 2024 for the Department of De-  
11 fense may be obligated or expended for the procure-  
12 ment of an SSBN–X submarine; and

13                 (2) none of the funds authorized to be appro-  
14 priated or otherwise made available for fiscal year  
15 2025 or any fiscal year thereafter for the Depart-  
16 ment of Defense may be obligated or expended for  
17 the procurement of more than eight such sub-  
18 marines.

19           (h) REDUCTION OF ICBMs.—Notwithstanding any  
20 other provision of law, none of the funds authorized to  
21 be appropriated or otherwise made available for fiscal year  
22 2014 or any fiscal year thereafter for the Department of  
23 Defense may be obligated or expended to maintain more  
24 than 200 intercontinental ballistic missiles.



1 (i) REDUCTION OF SLBMS.—Notwithstanding any  
2 other provision of law, none of the funds authorized to  
3 be appropriated or otherwise made available for fiscal year  
4 2014 or any fiscal year thereafter for the Department of  
5 Defense may be obligated or expended to maintain more  
6 than 250 submarine-launched ballistic missiles.

7 (j) PROHIBITION ON NEW ICBM.—Notwithstanding  
8 any other provision of law, none of the funds authorized  
9 to be appropriated or otherwise made available for fiscal  
10 year 2014 or any fiscal year thereafter for the Department  
11 of Defense may be obligated or expended for the research,  
12 development, test, and evaluation or procurement of a new  
13 intercontinental ballistic missile.

14 (k) TERMINATION OF MOX FUEL PLANT  
15 PROJECT.—Notwithstanding any other provision of law,  
16 none of the funds authorized to be appropriated or other-  
17 wise made available for fiscal year 2014 or any fiscal year  
18 thereafter for the Department of Defense or the Depart-  
19 ment of Energy may be obligated or expended for the  
20 Mixed Oxide (MOX) Fuel Fabrication Facility project.

21 (l) TERMINATION OF CMRR PROJECT.—Notwith-  
22 standing section 4215 of the Atomic Energy Defense Act  
23 or any other provision of law, none of the funds authorized  
24 to be appropriated or otherwise made available for fiscal  
25 year 2014 or any fiscal year thereafter for the Department

1 of Defense or the Department of Energy may be obligated  
2 or expended for the Chemistry and Metallurgy Research  
3 Replacement nuclear facility.

4 (m) TERMINATION OF UPF.—Notwithstanding any  
5 other provision of law, none of the funds authorized to  
6 be appropriated or otherwise made available for fiscal year  
7 2014 or any fiscal year thereafter for the Department of  
8 Defense or the Department of Energy may be obligated  
9 or expended for the Uranium Processing Facility located  
10 at the Y-12 National Security Complex.

11 (n) TERMINATION OF MEADS.—Notwithstanding  
12 any other provision of law, none of the funds authorized  
13 to be appropriated or otherwise made available for fiscal  
14 year 2014 or any fiscal year thereafter for the Department  
15 of Defense may be obligated or expended for the medium  
16 extended air defense system.

17 **SEC. 604. REPORTS REQUIRED.**

18 (a) INITIAL REPORT.—Not later than 180 days after  
19 the date of the enactment of this Act, the Secretary of  
20 Defense and the Secretary of Energy shall jointly submit  
21 to the appropriate committees of Congress a report out-  
22 lining the plan of each Secretary to carry out section 603.

23 (b) ANNUAL REPORT.—Not later than March 1,  
24 2014, and each year thereafter, the Secretary of Defense  
25 and the Secretary of Energy shall jointly submit to the

1 appropriate committees of Congress a report outlining the  
2 plan of each Secretary to carry out section 603, including  
3 any updates to previously submitted reports.

4 (c) ANNUAL NUCLEAR WEAPONS ACCOUNTING.—

5 Not later than September 30, 2014, and each year there-  
6 after, the President shall transmit to the appropriate com-  
7 mittees of Congress a report containing a comprehensive  
8 accounting by the Director of the Office of Management  
9 and Budget of the amounts obligated and expended by the  
10 Federal Government for each nuclear weapon and related  
11 nuclear program during—

12 (1) the fiscal year covered by the report; and

13 (2) the life cycle of such weapon or program.

14 (d) APPROPRIATE COMMITTEES OF CONGRESS DE-

15 FINED.—In this section, the term “appropriate commit-  
16 tees of Congress” means—

17 (1) the Committee on Armed Services, the  
18 Committee on Foreign Relations, the Committee on  
19 Appropriations, and the Committee on Energy and  
20 Natural Resources of the Senate; and

21 (2) the Committee on Armed Services, the  
22 Committee on Foreign Affairs, the Committee on  
23 Appropriations, the Committee on Energy and Com-  
24 merce, and the Committee on Natural Resources of  
25 the House of Representatives.

1           **Subtitle B—Limiting Excessive**  
2           **Contractor Compensation**

3   **SEC. 611. LIMITATION ON ALLOWABLE COMPENSATION**  
4           **COSTS.**

5           (a) LIMITATION.—

6                 (1)           CIVILIAN           CONTRACTS.—Section  
7           4304(a)(16) of title 41, United States Code, is  
8           amended to read as follows:

9                 “(16) Costs of compensation of contractor and  
10           subcontractor employees for a fiscal year, regardless  
11           of the contract funding source, to the extent that  
12           such compensation exceeds the rate payable for level  
13           I of the Executive Schedule under section 5312 of  
14           title 5.”.

15                (2)           DEFENSE           CONTRACTS.—Section  
16           2324(e)(1)(P) of title 10, United States Code, is  
17           amended to read as follows:

18                “(P) Costs of compensation of contractor and  
19           subcontractor employees for a fiscal year, regardless  
20           of the contract funding source, to the extent that  
21           such compensation exceeds the rate payable for level  
22           I of the Executive Schedule under section 5312 of  
23           title 5.”.

24           (b) CONFORMING AMENDMENTS.—

1 (1) IN GENERAL.—Section 1127 of title 41,  
2 United States Code, is hereby repealed.

3 (2) CLERICAL AMENDMENT.—The table of sec-  
4 tions at the beginning of chapter 11 of title 41,  
5 United States Code, is amended by striking the item  
6 relating to section 1127.

7 **Subtitle C—Relocate Troops From**  
8 **Europe to the United States**

9 **SEC. 615. RELOCATION TO UNITED STATES MILITARY IN-**  
10 **STALLATIONS OF MEMBERS OF THE UNITED**  
11 **STATES ARMED FORCES ASSIGNED TO PER-**  
12 **MANENT DUTY IN EUROPE.**

13 (a) RELOCATION REQUIRED.—Not later than one  
14 year after the date of the enactment of this Act, the Sec-  
15 retary of Defense shall complete the relocation to military  
16 installations in the United States of at least 10,000 mem-  
17 bers of the Armed Forces of the United States who, as  
18 of the date of the enactment of this Act, are assigned to  
19 permanent duty ashore in Europe. The members relocated  
20 shall not be replaced by the assignment of other members  
21 of the Armed Forces of the United States to permanent  
22 duty ashore in Europe.

23 (b) EXCLUSION OF CERTAIN MEMBERS.—For pur-  
24 poses of complying with this section, the Secretary of De-  
25 fense shall not select members of the Armed Forces per-

1 forming the following assignments for relocation to the  
2 United States:

3           (1) Members assigned to permanent duty  
4 ashore in Iceland, Greenland, and the Azores.

5           (2) Members performing duties in Europe for  
6 more than 179 days under a military-to-military  
7 contact program under section 168 of title 10,  
8 United States Code.

9           (c) EXCEPTIONS; WAIVER.—This section shall not  
10 apply in the event of a declaration of war or an armed  
11 attack on any European member nation of the North At-  
12 lantic Treaty Organization. The President may waive op-  
13 eration of this section if the President declares an emer-  
14 gency and immediately informs the Congress of the waiver  
15 and the reasons therefor.

16           (d) CONFORMING AMENDMENT TO PERMANENT  
17 CEILING ON UNITED STATES MILITARY PRESENCE IN  
18 EUROPE.—Section 1002(c)(1) of the Department of De-  
19 fense Authorization Act, 1985 (22 U.S.C. 1928 note) is  
20 amended by striking “100,000” and inserting “60,000”.

1 **Subtitle D—Additional Reduction**  
2 **in Armed Forces End Strength**  
3 **Levels**

4 **SEC. 621. ADDITIONAL ARMY AND MARINE CORPS END**  
5 **STRENGTH REDUCTIONS THROUGH RETIRE-**  
6 **MENT AND SEPARATION.**

7 (a) ARMY.—In addition to the reductions in end  
8 strength levels of active duty members of the Army other-  
9 wise required to be achieved during fiscal years 2013  
10 through 2017, the Secretary of the Army shall reduce the  
11 end strength numbers for active duty personnel as of the  
12 end of fiscal year 2017 by an additional 20,000.

13 (b) MARINE CORPS.—In addition to the reductions  
14 in end strength levels of active duty members of the Ma-  
15 rine Corps otherwise required to be achieved during fiscal  
16 years 2013 through 2017, the Secretary of the Navy shall  
17 reduce the end strength numbers for active duty personnel  
18 as of the end of fiscal year 2017 by an additional 7,000.

19 (c) METHODS OF ACHIEVING REDUCTIONS.—To  
20 achieve the personnel reductions required by subsections  
21 (a) and (b), the Secretary of the Army and the Secretary  
22 of the Navy shall rely on the retirement and separation  
23 of members of the Army and Marine Corps, including as  
24 a result of the use of enhanced selective early retirement  
25 boards and early discharges under section 638a of title

1 10, United States Code, as reinstated by section 502 of  
2 the National Defense Authorization Act for Fiscal Year  
3 2013 (Public Law 112–239).

4 **Subtitle E—Procurement of Cer-**  
5 **tain Submarines, Carriers, and**  
6 **Aircraft**

7 **SEC. 631. LIMITATION ON PROCUREMENT OF VIRGINIA**  
8 **CLASS SUBMARINES.**

9 Notwithstanding any other provision of law, none of  
10 the funds authorized to be appropriated or otherwise made  
11 available for fiscal years 2014 through 2024 for the De-  
12 partment of Defense may be obligated or expended to pro-  
13 cure more than one Virginia class submarine per fiscal  
14 year.

15 **SEC. 632. LIMITATION ON PROCUREMENT OF ONE FORD**  
16 **CLASS AIRCRAFT CARRIER.**

17 (a) **LIMITATION.**—Notwithstanding any other provi-  
18 sion of law, none of the funds authorized to be appro-  
19 priated or otherwise made available for fiscal year 2014  
20 or any fiscal year thereafter for the Department of De-  
21 fense may be obligated or expended to procure the Ford  
22 class aircraft carrier designated CVN–80.

23 (b) **EFFECT ON REQUIREMENT FOR 11 OPER-**  
24 **ATIONAL AIRCRAFT CARRIERS.**—Subsection (a) applies  
25 even in the event that the number of operational aircraft



1 carriers for the naval combat forces of the Navy becomes  
2 less than 11, notwithstanding section 5065(b) of title 10,  
3 United States Code.

4 **SEC. 633. AUTHORITY FOR PROCUREMENT OF F/A-18E AND**  
5 **F/A-18F AIRCRAFT.**

6 (a) REPLACEMENT OF PLANNED PROCUREMENT OF  
7 F-35C AIRCRAFT.—

8 (1) LIMITATION ON PROCUREMENT.—Notwith-  
9 standing any other provision of law, none of the  
10 funds authorized to be appropriated or otherwise  
11 made available for fiscal year 2014 or any fiscal year  
12 thereafter for the Department of Defense may be  
13 obligated or expended to procure the 237 F-35C air-  
14 craft that the Secretary of the Navy planned to pro-  
15 cure as of the date on which the budget of the Presi-  
16 dent was submitted to Congress under section  
17 1105(a) of title 31, United States Code, for fiscal  
18 year 2013.

19 (2) AUTHORITY FOR PROCUREMENT.—Of the  
20 funds authorized to be appropriated or otherwise  
21 made available for fiscal year 2014 or any fiscal year  
22 thereafter for the Department of Defense, the Sec-  
23 retary of the Navy may procure not more than a  
24 total of 240 F/A-18E and F/A-18F aircraft.

1 (b) REPLACEMENT OF PROCUREMENT OF F-35B  
2 AIRCRAFT.—

3 (1) LIMITATION ON PROCUREMENT.—Notwith-  
4 standing any other provision of law, none of the  
5 funds authorized to be appropriated or otherwise  
6 made available for fiscal year 2014 or any fiscal year  
7 thereafter for the Department of Defense may be  
8 obligated or expended to procure more than 200 F-  
9 35B aircraft.

10 (2) AUTHORITY FOR PROCUREMENT.—Of the  
11 funds authorized to be appropriated or otherwise  
12 made available for fiscal year 2014 or any fiscal year  
13 thereafter for the Department of Defense, the Sec-  
14 retary of the Navy may procure not more than a  
15 total of 220 F/A-18E and F/A-18F aircraft.

16 **SEC. 634. PROHIBITION ON PROCUREMENT OF V-22 OS-**  
17 **PREY AIRCRAFT.**

18 Notwithstanding any other provision of law, none of  
19 the funds authorized to be appropriated or otherwise made  
20 available for fiscal year 2014 or any fiscal year thereafter  
21 for the Department of Defense may be obligated or ex-  
22 pended for the procurement of V-22 Osprey aircraft.

1     **Subtitle F—Limit Military Bands**

2     **SEC. 641. LIMITATION ON EXPENDITURES FOR MILITARY**  
 3                     **MUSICAL UNITS.**

4             Amounts expended for any fiscal year for military  
 5 musical units (as defined in section 974 of title 10, United  
 6 States Code) may not exceed \$200,000,000.

7     **Subtitle G—Reduction in Number**  
 8                     **of General and Flag Officers**

9     **SEC. 651. RETURN OF MAXIMUM NUMBER OF GENERAL**  
 10                     **AND FLAG OFFICERS TO COLD WAR LEVELS.**

11             Section 526 of title 10, United States Code, is  
 12 amended by adding at the end the following new sub-  
 13 section:

14             “(i) **ADDITIONAL LIMITATION STATED AS RATIO OF**  
 15 **MEMBERS ON ACTIVE DUTY.**—Notwithstanding any other  
 16 provision of this section, the number of general officers  
 17 on active duty in the Army, Air Force, or Marine Corps,  
 18 and the number of flag officers on active duty in the Navy,  
 19 may not exceed six general officers or flag officers for each  
 20 10,000 members of that armed force on active duty.”.

21     **Subtitle H—Audit the Pentagon**

22     **SEC. 661. PURPOSES.**

23             The purposes of this subtitle are as follows:

24                     (1) To strengthen American national security  
 25             by ensuring that—

1 (A) military planning, operations, weapons  
2 development, and a long-term national security  
3 strategy are connected to sound financial con-  
4 trols; and

5 (B) defense dollars are spent efficiently.

6 (2) To instill a culture of accountability at the  
7 Department of Defense that supports the vast ma-  
8 jority of dedicated members of the Armed Forces  
9 and civilians who want to ensure proper accounting  
10 and prevent waste, fraud, and abuse.

11 **SEC. 662. FINDINGS.**

12 Congress finds the following:

13 (1) The 2011 Financial Report of the United  
14 States Government found that 32 of 35 major Fed-  
15 eral agencies received clean audit opinions. Two  
16 more, the Department of Homeland Security and  
17 the Department of State, received “qualified” audit  
18 opinions but are making progress. Only the Depart-  
19 ment of Defense had a “disclaimer” because it  
20 lacked any auditable reporting or accounting avail-  
21 able for independent review.

22 (2) The financial management of the Depart-  
23 ment of Defense has been on the “High-Risk” list  
24 of the Government Accountability Office (GAO). The  
25 GAO found that the Department is not consistently

1 able to “control costs; ensure basic accountability;  
2 anticipate future costs and claims on the budget;  
3 measure performance; maintain funds control; and  
4 prevent and detect fraud, waste, and abuse”.

5 (3) At a September 2010 hearing of the Senate,  
6 the Government Accountability Office stated that  
7 past expenditures by the Department of Defense of  
8 \$5,800,000,000 to improve financial information,  
9 and billions of dollars more of anticipated expendi-  
10 tures on new information technology systems for  
11 that purpose, may not suffice to achieve full audit  
12 readiness of the financial statement of the Depart-  
13 ment. At that hearing, the Government Account-  
14 ability Office could not predict when the Department  
15 would achieve full audit readiness of such state-  
16 ments.

17 (4) Section 9 of article I of the Constitution of  
18 the United States requires all agencies of the Fed-  
19 eral Government, including the Department of De-  
20 fense, to publish “a regular statement and account  
21 of the receipts and expenditures of all public  
22 money”.

23 (5) Section 303(d) of the Chief Financial Offi-  
24 cers Act of 1990 (Public Law 101–576) required  
25 that financial statements be prepared and independ-

1       ently audited for the Department of the Army by  
2       March 31, 1992, and for the Department of the Air  
3       Force by March 31, 1993. Neither the Department  
4       of the Army nor the Department of the Air Force  
5       has complied.

6           (6) Section 3515 of title 31, United States  
7       Code, requires the agencies of the Federal Govern-  
8       ment, including the Department of Defense, to  
9       present auditable financial statements beginning not  
10      later than March 1, 1997. The Department has not  
11      complied with this law.

12          (7) The Federal Financial Management Im-  
13      provement Act of 1996 (31 U.S.C. 3512 note) re-  
14      quires financial systems acquired by the Federal  
15      Government, including the Department of Defense,  
16      to be able to provide information to leaders to man-  
17      age and control the cost of government. The Depart-  
18      ment has not complied with this law.

19          (8) The National Defense Authorization Act for  
20      Fiscal Year 2002 (Public Law 107–107) requires  
21      the Secretary of Defense to report to Congress an-  
22      nually on the reliability of the financial statements  
23      of the Department of Defense, to minimize resources  
24      spent on producing unreliable financial statements,

1 and to use resources saved to improve financial man-  
2 agement policies, procedures, and internal controls.

3 (9) In 2005, the Department of Defense cre-  
4 ated a Financial Improvement and Audit Readiness  
5 (FIAR) Plan, overseen by a directorate within the  
6 office of the Under Secretary of Defense (Comp-  
7 troller), to improve Department business processes  
8 with the goal of producing timely, reliable, and accu-  
9 rate financial information that could generate an  
10 audit-ready annual financial statement. In December  
11 2005, that directorate, known as the FIAR Direc-  
12 torate, issued the first of a series of semiannual re-  
13 ports on the status of the Financial Improvement  
14 and Audit Readiness Plan.

15 (10) The National Defense Authorization Act  
16 for Fiscal Year 2010 (Public Law 111–84) requires  
17 regular status reports on the Financial Improvement  
18 and Audit Readiness Plan described in paragraph  
19 (9), and codified as a statutory requirement the goal  
20 of the Plan in ensuring that Department of Defense  
21 financial statements are validated as ready for audit  
22 not later than September 30, 2017.

23 **SEC. 663. SPENDING REDUCTIONS FOR AGENCIES WITHOUT**  
24 **CLEAN AUDITS.**

25 (a) APPLICABILITY.—

1           (1) IN GENERAL.—Subject to paragraph (2),  
2           this section applies to each Federal agency identified  
3           by the Director of the Office of Management and  
4           Budget as required to have an audited financial  
5           statement under section 3515 of title 31, United  
6           States Code.

7           (2) APPLICABILITY TO MILITARY DEPARTMENTS  
8           AND DEFENSE AGENCIES.—For purposes of para-  
9           graph (1), in the case of the Department of Defense,  
10          each military department and each Defense Agency  
11          shall be treated as a separate Federal agency.

12          (b) DEFINITIONS.—In this section, the terms “finan-  
13          cial statement” and “external independent auditor” have  
14          the meanings given those terms in section 3521(e) of title  
15          31, United States Code.

16          (c) ADJUSTMENTS FOR FINANCIAL ACCOUNT-  
17          ABILITY.—

18               (1) REDUCTION REQUIRED.—If a Federal agen-  
19               cy has not submitted a financial statement for a fis-  
20               cal year by March 1 of the next fiscal year, or if  
21               such financial statement has not received either an  
22               unqualified or a qualified audit opinion by an inde-  
23               pendent external auditor by such date, the discre-  
24               tionary budget authority available for the Federal  
25               agency for the then current fiscal year is reduced by



1       5 percent, with the reduction applied proportionately  
2       to each account (other than an account listed in sub-  
3       section (d) or an account for which a waiver is made  
4       under subsection (e)).

5           (2) TREATMENT OF REDUCTION.—An amount  
6       equal to the total amount of any reduction made  
7       under paragraph (2) shall be retained in the general  
8       fund of the Treasury for the purposes of deficit re-  
9       duction.

10       (d) ACCOUNTS EXCLUDED.—The following accounts  
11       are excluded from any reductions referred to in subsection  
12       (c)(1):

13           (1) Military personnel, reserve personnel, and  
14       National Guard personnel accounts of the Depart-  
15       ment of Defense.

16           (2) The Defense Health Program account of  
17       the Department of Defense.

18       (e) WAIVER.—The President may waive subsection  
19       (c)(1) with respect to an account if the President certifies  
20       that applying the subsection to that account would harm  
21       national security or members of the Armed Forces who  
22       are serving in a combat zone.

23       (f) REPORT.—Not later than 60 days after an adjust-  
24       ment is made under subsection (c), the Director of the  
25       Office of Management and Budget shall submit to Con-

1 gress a report describing the amount of the adjustment  
2 and the affected accounts.

3 **SEC. 664. REPORT ON DEPARTMENT OF DEFENSE REPORT-**  
4 **ING REQUIREMENTS.**

5 Not later than 180 days after the date of the enact-  
6 ment of this Act, the Under Secretary of Defense (Comp-  
7 troller) shall submit to Congress a report setting forth the  
8 following:

9 (1) A list of each report of the Department of  
10 Defense required by law to be submitted to Congress  
11 which, in the opinion of the Under Secretary, would  
12 no longer be necessary if the financial statements of  
13 the Department of Defense were audited with an un-  
14 qualified opinion.

15 (2) A list of each report of the Department re-  
16 quired by law to be submitted to Congress which, in  
17 the opinion of the Under Secretary, interferes with  
18 the capacity of the Department to achieve an audit  
19 of the financial statements of the Department with  
20 an unqualified opinion.

21 **SEC. 665. SENSE OF CONGRESS IN IMPLEMENTATION OF**  
22 **DEFENSE BUDGET REDUCTIONS.**

23 It is the sense of Congress that—

24 (1) as the overall defense budget is cut, con-  
25 gressional defense committees and the Department

1 of Defense should not endanger members of the  
2 Armed Forces by reducing wounded warrior ac-  
3 counts or vital protection (such as body armor) for  
4 members of the Armed Forces in harm's way;

5 (2) the valuation of legacy assets by the De-  
6 partment of Defense should be simplified without  
7 compromising essential controls or generally accept-  
8 ed government auditing standards; and

9 (3) nothing in this subtitle should be construed  
10 to require or permit the declassification of account-  
11 ing details about classified defense programs, and,  
12 as required by law, the Department of Defense  
13 should ensure financial accountability in such pro-  
14 grams using proven practices, including using audi-  
15 tors with security clearances.

16 **TITLE VII—INVEST IN JOB**  
17 **CREATION**  
18 **Subtitle A—Making Work Pay**  
19 **Extension**

20 **SEC. 701. ONE-YEAR EXTENSION OF MAKING WORK PAY**  
21 **CREDIT.**

22 (a) IN GENERAL.—Subsection (e) of section 36A of  
23 the Internal Revenue Code of 1986 is amended to read  
24 as follows:

1       “(e) TERMINATION.—This section shall not apply to  
2 taxable years—

3               “(1) beginning after December 31, 2010, and  
4 before January 1, 2013, or

5               “(2) beginning after December 31, 2013.”.

6       (b) TREATMENT OF POSSESSIONS.—Paragraph (1)  
7 of section 1001(b) of the American Recovery and Rein-  
8 vestment Tax Act of 2009 is amended by striking “2009  
9 and 2010” both places it appears and inserting “2009,  
10 2010, and 2013”.

11       (c) EFFECTIVE DATE.—The amendment made by  
12 this section shall apply to taxable years beginning after  
13 December 31, 2012.

14       **Subtitle B—Support for Teachers**  
15               **and School Modernization**

16       **PART I—PREVENTING TEACHER LAYOFFS AND**  
17               **SUPPORTING THE CREATION OF ADDI-**  
18               **TIONAL JOBS IN PUBLIC EARLY CHILDHOOD,**  
19               **ELEMENTARY, AND SECONDARY EDUCATION**

20       **SEC. 711. PURPOSE.**

21       The purpose of this part is to provide funds to States  
22 to prevent teacher layoffs and support the creation of ad-  
23 ditional jobs in public early childhood, elementary, and  
24 secondary education in the 2012–2013 and 2013–2014  
25 school years.

1 **SEC. 712. GRANTS FOR THE OUTLYING AREAS AND THE**  
2 **SECRETARY OF THE INTERIOR; AVAILABILITY**  
3 **OF FUNDS.**

4 (a) RESERVATION OF FUNDS.—From the amount ap-  
5 propriated to carry out this subtitle under section 721,  
6 the Secretary—

7 (1) shall reserve up to one-half of one percent  
8 to provide assistance to the outlying areas on the  
9 basis of their respective needs, as determined by the  
10 Secretary, for activities consistent with this part  
11 under such terms and conditions as the Secretary  
12 may determine;

13 (2) shall reserve up to one-half of one percent  
14 to provide assistance to the Secretary of the Interior  
15 to carry out activities consistent with this part, in  
16 schools operated or funded by the Bureau of Indian  
17 Education; and

18 (3) may reserve up to \$2,000,000 for adminis-  
19 tration and oversight of this subtitle, including pro-  
20 gram evaluation.

21 (b) AVAILABILITY OF FUNDS.—Funds made avail-  
22 able under section 721 shall remain available to the Sec-  
23 retary until September 30, 2014.

24 **SEC. 713. STATE ALLOCATION.**

25 (a) ALLOCATION.—After reserving funds under sec-  
26 tion section 712(a), the Secretary shall allocate the re-

1 maining funds appropriated under section 721 to States,  
2 of which—

3 (1) 60 percent shall be allocated to States on  
4 the basis of their relative population of individuals  
5 aged 5 through 17; and

6 (2) 40 percent shall be allocated to States on  
7 the basis of their relative total population.

8 (b) AWARDS.—The Secretary shall award a State’s  
9 allocation under subsection (a) to the Governor of the  
10 State only if the Secretary has approved the State’s appli-  
11 cation under section 714.

12 (c) ALTERNATE DISTRIBUTION OF FUNDS.—

13 (1) IN GENERAL.—If, within 30 days after the  
14 date of enactment of this Act, a Governor has not  
15 submitted an approvable application to the Sec-  
16 retary, the Secretary shall, consistent with para-  
17 graph (2), provide for funds allocated to that State  
18 to be distributed to another entity or other entities  
19 in the State for the support of early childhood, ele-  
20 mentary, and secondary education, under such terms  
21 and conditions as the Secretary may establish.

22 (2) MAINTENANCE OF EFFORT.—

23 (A) GOVERNOR ASSURANCE.—The Sec-  
24 retary shall not allocate funds under paragraph

25 (1) unless the Governor of the State provides

1 an assurance to the Secretary that the State  
2 will for fiscal years 2013 and 2014 meet the re-  
3 quirements of section 718.

4 (B) ALLOCATIONS TO OTHER ENTITIES.—  
5 Notwithstanding subparagraph (A), the Sec-  
6 retary may allocate up to 50 percent of the  
7 funds that are available to the State under  
8 paragraph (1) to another entity or entities in  
9 the State, provided that the State educational  
10 agency submits data to the Secretary dem-  
11 onstrating that the State will for fiscal year  
12 2013 meet the requirements of section 718(a)  
13 or the Secretary otherwise determines that the  
14 State will meet those requirements, or such  
15 comparable requirements as the Secretary may  
16 establish, for that year.

17 (3) REQUIREMENTS.—An entity that receives  
18 funds under paragraph (1) shall use those funds in  
19 accordance with the requirements of this subtitle.

20 (d) REALLOCATION.—If a State does not receive  
21 funding under this part or only receives a portion of its  
22 allocation under subsection (c), the Secretary shall reallo-  
23 cate the State's entire allocation or the remaining portion  
24 of its allocation, as the case may be, to the remaining  
25 States in accordance with subsection (a).

1 **SEC. 714. STATE APPLICATION.**

2       The Governor of a State desiring to receive a grant  
3 under this subtitle shall submit an application to the Sec-  
4 retary within 30 days of the date of enactment of this Act,  
5 in such manner, and containing such information as the  
6 Secretary may reasonably require to determine the State's  
7 compliance with applicable provisions of law.

8 **SEC. 715. STATE RESERVATION AND RESPONSIBILITIES.**

9       (a) RESERVATION.—Each State receiving a grant  
10 under section 713(b) may reserve—

11           (1) not more than 10 percent of the grant  
12 funds for awards to State-funded early learning pro-  
13 grams; and

14           (2) not more than 2 percent of the grant funds  
15 for the administrative costs of carrying out its re-  
16 sponsibilities under this subtitle.

17       (b) STATE RESPONSIBILITIES.—Each State receiving  
18 a grant under this part shall, after reserving any funds  
19 under subsection (a)—

20           (1) use the remaining grant funds only for  
21 awards to local educational agencies for the support  
22 of early childhood, elementary, and secondary edu-  
23 cation; and

24           (2) distribute those funds, through subgrants,  
25 to its local educational agencies by distributing—



1           (A) 60 percent on the basis of the local  
2           educational agencies' relative shares of enroll-  
3           ment; and

4           (B) 40 percent on the basis of the local  
5           educational agencies' relative shares of funds  
6           received under part A of title I of the Elemen-  
7           tary and Secondary Education Act of 1965 for  
8           fiscal year 2012; and

9           (3) make those funds available to local edu-  
10          cational agencies no later than 100 days after receiv-  
11          ing a grant from the Secretary.

12          (c) PROHIBITIONS.—A State shall not use funds re-  
13          ceived under this subtitle to directly or indirectly—

14               (1) establish, restore, or supplement a rainy-day  
15          fund;

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

19               (3) reduce or retire debt obligations incurred by  
20          the State; or

21               (4) supplant State funds in a manner that has  
22          the effect of reducing or retiring debt obligations in-  
23          curred by the State.

1 **SEC. 716. LOCAL EDUCATIONAL AGENCIES.**

2 Each local educational agency that receives a  
3 subgrant under this part—

4 (1) shall use the subgrant funds only for com-  
5 pensation and benefits and other expenses, such as  
6 support services, necessary to retain existing employ-  
7 ees, recall or rehire former employees, or hire new  
8 employees to provide early childhood, elementary, or  
9 secondary educational and related services;

10 (2) shall obligate those funds not later than  
11 September 30, 2014; and

12 (3) may not use those funds for general admin-  
13 istrative expenses or for other support services or ex-  
14 penditures, as those terms are defined by the Na-  
15 tional Center for Education Statistics in the Com-  
16 mon Core of Data, as of the date of enactment of  
17 this Act.

18 **SEC. 717. EARLY LEARNING.**

19 Each State-funded early learning program that re-  
20 ceives funds under this subtitle shall—

21 (1) use those funds only for compensation, ben-  
22 efits, and other expenses, such as support services,  
23 necessary to retain early childhood educators, recall  
24 or rehire former early childhood educators, or hire  
25 new early childhood educators to provide early learn-  
26 ing services; and

1           (2) obligate those funds not later than Sep-  
2           tember 30, 2014.

3 **SEC. 718. MAINTENANCE OF EFFORT.**

4           (a) REQUIREMENT.—The Secretary shall not allocate  
5 funds to a State under this subtitle unless the State pro-  
6 vides an assurance to the Secretary that—

7           (1) for State fiscal year 2013—

8                   (A) the State will maintain State support  
9                   for early childhood, elementary, and secondary  
10                   education (in the aggregate or on the basis of  
11                   expenditure per pupil) and for public institu-  
12                   tions of higher education (not including support  
13                   for capital projects or for research and develop-  
14                   ment or tuition and fees paid by students) at  
15                   not less than the level of such support for each  
16                   of the two categories for State fiscal year 2012;  
17                   or

18                   (B) the State will maintain State support  
19                   for early childhood, elementary, and secondary  
20                   education and for public institutions of higher  
21                   education (not including support for capital  
22                   projects or for research and development or tui-  
23                   tion and fees paid by students) at a percentage  
24                   of the total revenues available to the State that

1 is equal to or greater than the percentage pro-  
2 vided for State fiscal year 2012; and

3 (2) for State fiscal year 2014—

4 (A) the State will maintain State support  
5 for early childhood, elementary, and secondary  
6 education (in the aggregate or on the basis of  
7 expenditure per pupil) and for public institu-  
8 tions of higher education (not including support  
9 for capital projects or for research and develop-  
10 ment or tuition and fees paid by students) at  
11 not less than the level of such support for each  
12 of the two categories for State fiscal year 2013;  
13 or

14 (B) the State will maintain State support  
15 for early childhood, elementary, and secondary  
16 education and for public institutions of higher  
17 education (not including support for capital  
18 projects or for research and development or tui-  
19 tion and fees paid by students) at a percentage  
20 of the total revenues available to the State that  
21 is equal to or greater than the percentage pro-  
22 vided for State fiscal year 2013.

23 (b) WAIVER.—The Secretary may waive the require-  
24 ments of this section if the Secretary determines that a  
25 waiver would be equitable due to—

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

3           (2) a precipitous decline in the financial re-  
4           sources of the State.

5 **SEC. 719. REPORTING.**

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

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

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

13 **SEC. 720. DEFINITIONS.**

14          In this part:

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

21          (2) STATE.—The term “State” does not include  
22          an outlying area.

23          (3) EARLY CHILD EDUCATOR.—The term  
24          “early childhood educator” means an individual  
25          who—

1 (A) works directly with children in a State-  
2 funded early learning program in a low-income  
3 community;

4 (B) is involved directly in the care, devel-  
5 opment, and education of infants, toddlers, or  
6 young children age five and under; and

7 (C) has completed a baccalaureate or ad-  
8 vanced degree in early childhood development or  
9 early childhood education, or in a field related  
10 to early childhood education.

11 (4) STATE-FUNDED EARLY LEARNING PRO-  
12 GRAM.—The term “State-funded early learning pro-  
13 gram” means a program that provides educational  
14 services to children from birth to kindergarten entry  
15 and receives funding from a State.

16 **SEC. 721. AUTHORIZATION OF APPROPRIATIONS.**

17 There are authorized to be appropriated, and there  
18 are appropriated, \$30,000,000,000 to carry out this part  
19 for fiscal year 2013.

20 **PART II—ELEMENTARY AND SECONDARY**  
21 **SCHOOLS**

22 **SEC. 731. PURPOSE.**

23 The purpose of this part is to provide assistance for  
24 the modernization, renovation, and repair of elementary  
25 and secondary school buildings in public school districts

1 across America in order to support the achievement of im-  
2 proved educational outcomes in those schools.

3 **SEC. 732. AUTHORIZATION OF APPROPRIATIONS.**

4 There are authorized to be appropriated, and there  
5 are appropriated, \$25,000,000,000 to carry out this part,  
6 which shall be available for obligation by the Secretary  
7 until September 30, 2014.

8 **SEC. 733. ALLOCATION OF FUNDS.**

9 (a) RESERVATIONS.—Of the amount made available  
10 to carry out this part, the Secretary shall reserve—

11 (1) one-half of one percent for the Secretary of  
12 the Interior to carry out modernization, renovation,  
13 and repair activities described in section 736 in  
14 schools operated or funded by the Bureau of Indian  
15 Education;

16 (2) one-half of one percent to make grants to  
17 the outlying areas for modernization, renovation,  
18 and repair activities described in section 736; and

19 (3) such funds as the Secretary determines are  
20 needed to conduct a survey, by the National Center  
21 for Education Statistics, of the school construction,  
22 modernization, renovation, and repair needs of the  
23 public schools of the United States.

24 (b) STATE ALLOCATION.—After reserving funds  
25 under subsection (a), the Secretary shall allocate the re-

1 maining amount among the States in proportion to their  
2 respective allocations under part A of title I of the Ele-  
3 mentary and Secondary Education Act of 1965 (in this  
4 part referred to as the “ESEA”) (20 U.S.C. 6311 et seq.)  
5 for fiscal year 2013, except that—

6           (1) the Secretary shall allocate 40 percent of  
7           such remaining amount to the 100 local educational  
8           agencies with the largest numbers of children aged  
9           5–17 living in poverty, as determined using the most  
10          recent data available from the Department of Com-  
11          merce that are satisfactory to the Secretary, in pro-  
12          portion to those agencies’ respective allocations  
13          under part A of title I of the ESEA for fiscal year  
14          2013; and

15          (2) the allocation to any State shall be reduced  
16          by the aggregate amount of the allocations under  
17          paragraph (1) to local educational agencies in that  
18          State.

19          (c) REMAINING ALLOCATION.—

20           (1) STATES.—If a State does not apply for its  
21           allocation under subsection (b) (or applies for less  
22           than the full allocation for which it is eligible) or  
23           does not use that allocation in a timely manner, the  
24           Secretary may—



1 (A) reallocate all or a portion of that allo-  
2 cation to the other States in accordance with  
3 subsection (b); or

4 (B) use all or a portion of that allocation  
5 to make direct allocations to local educational  
6 agencies within the State based on their respec-  
7 tive allocations under part A of title I of the  
8 ESEA for fiscal year 2013 or such other meth-  
9 od as the Secretary may determine.

10 (2) LOCAL EDUCATIONAL AGENCIES.—If a local  
11 educational agency does not apply for its allocation  
12 under subsection (b)(1), applies for less than the full  
13 allocation for which it is eligible, or does not use  
14 that allocation in a timely manner, the Secretary  
15 may reallocate all or a portion of its allocation to the  
16 State in which that agency is located.

17 **SEC. 734. STATE USE OF FUNDS.**

18 (a) RESERVATION.—Each State that receives a grant  
19 under this part may reserve not more than one percent  
20 of the State's allocation under section 733(b) for the pur-  
21 pose of administering the grant, except that no State may  
22 reserve more than \$750,000 for this purpose.

23 (b) FUNDS TO LOCAL EDUCATIONAL AGENCIES.—

24 (1) FORMULA SUBGRANTS.—From the grant  
25 funds that are not reserved under subsection (a), a

1 State shall allocate at least 50 percent to local edu-  
2 cational agencies, including charter schools that are  
3 local educational agencies, that did not receive funds  
4 under section 733(b)(1) from the Secretary, in ac-  
5 cordance with their respective allocations under part  
6 A of title I of the ESEA for fiscal year 2013, except  
7 that no such local educational agency shall receive  
8 less than \$10,000.

9 (2) **ADDITIONAL SUBGRANTS.**—The State shall  
10 use any funds remaining, after reserving funds  
11 under subsection (a) and allocating funds under  
12 paragraph (1), for subgrants to local educational  
13 agencies that did not receive funds under section  
14 733(b)(1), including charter schools that are local  
15 educational agencies, to support modernization, ren-  
16 ovation, and repair projects that the State deter-  
17 mines, using objective criteria, are most needed in  
18 the State, with priority given to projects in rural  
19 local educational agencies.

20 (c) **REMAINING FUNDS.**—If a local educational agen-  
21 cy does not apply for an allocation under subsection  
22 (b)(1), applies for less than its full allocation, or fails to  
23 use that allocation in a timely manner, the State may re-  
24 allocate any unused portion to other local educational  
25 agencies in accordance with subsection (b).

1 **SEC. 735. STATE AND LOCAL APPLICATIONS.**

2 (a) STATE APPLICATION.—A State that desires to re-  
3 ceive a grant under this part shall submit an application  
4 to the Secretary at such time, in such manner, and con-  
5 taining such information and assurances as the Secretary  
6 may require, which shall include—

7 (1) an identification of the State agency or enti-  
8 ty that will administer the program under this part;  
9 and

10 (2) the State’s process for determining how the  
11 grant funds will be distributed and administered, in-  
12 cluding—

13 (A) how the State will determine the cri-  
14 teria and priorities in making subgrants under  
15 section 734(b)(2);

16 (B) any additional criteria the State will  
17 use in determining which projects it will fund  
18 under that section;

19 (C) a description of how the State will con-  
20 sider—

21 (i) the needs of local educational  
22 agencies for assistance under this part;

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

25 (iii) the fiscal capacity of local edu-  
26 cational agencies applying for assistance;

1 (iv) the percentage of children in  
2 those local educational agencies who are  
3 from low-income families; and

4 (v) the potential for leveraging assist-  
5 ance provided by the program under this  
6 part through matching or other financing  
7 mechanisms;

8 (D) a description of how the State will en-  
9 sure that the local educational agencies receiv-  
10 ing subgrants meet the requirements of this  
11 part;

12 (E) a description of how the State will en-  
13 sure that the State and its local educational  
14 agencies meet the deadlines established in sec-  
15 tion 738;

16 (F) a description of how the State will give  
17 priority to the use of green practices that are  
18 certified, verified, or consistent with any appli-  
19 cable provisions of—

20 (i) the LEED Green Building Rating  
21 System;

22 (ii) Energy Star;

23 (iii) the CHPS Criteria;

24 (iv) Green Globes; or

1 (v) an equivalent program adopted by  
2 the State or another jurisdiction with au-  
3 thority over the local educational agency;

4 (G) a description of the steps that the  
5 State will take to ensure that local educational  
6 agencies receiving subgrants under this part  
7 will adequately maintain any facilities that are  
8 modernized, renovated, or repaired with such  
9 subgrant funds; and

10 (H) such additional information and assur-  
11 ances as the Secretary may require.

12 (b) LOCAL APPLICATION.—A local educational agen-  
13 cy that is eligible under section 733(b)(1) that desires to  
14 receive a grant under this part shall submit an application  
15 to the Secretary at such time, in such manner, and con-  
16 taining such information and assurances as the Secretary  
17 may require, which shall include—

18 (1) a description of how the local educational  
19 agency will meet the deadlines and requirements of  
20 this part;

21 (2) a description of the steps that the local edu-  
22 cational agency will take to adequately maintain any  
23 facilities that are modernized, renovated, or repaired  
24 with funds under this part; and

1           (3) such additional information and assurances  
2           as the Secretary may require.

3 **SEC. 736. USE OF FUNDS.**

4           (a) IN GENERAL.—Funds awarded to local edu-  
5           cational agencies under this part shall be used only for  
6           either or both of the following modernization, renovation,  
7           or repair activities in facilities that are used for elemen-  
8           tary or secondary education or for early learning pro-  
9           grams:

10           (1) Direct payments for school modernization,  
11           renovation, or repair.

12           (2) To pay interest on bonds or payments for  
13           other financing instruments that are newly issued  
14           for the purpose of financing school modernization,  
15           renovation, or repair.

16           (b) SUPPLEMENT, NOT SUPPLANT.—Funds made  
17           available under this part shall be used to supplement, and  
18           not supplant, other Federal, State, and local funds that  
19           would otherwise be expended to modernize, renovate, or  
20           repair eligible school facilities.

21           (c) PROHIBITION.—Funds awarded to local edu-  
22           cational agencies under this part may not be used for—

23           (1) new construction;

24           (2) payment of routine maintenance costs; or

1           (3) modernization, renovation, or repair of sta-  
2           diums or other facilities primarily used for athletic  
3           contests or exhibitions or other events for which ad-  
4           mission is charged to the general public.

5 **SEC. 737. PRIVATE SCHOOLS.**

6           (a) IN GENERAL.—Section 9501 of the ESEA (20  
7 U.S.C. 7881) shall apply to this part in the same manner  
8 as it applies to activities under that Act, except that—

9           (1) such section 9501 shall not apply with re-  
10          spect to the title to any real property modernized,  
11          renovated, or repaired with assistance provided  
12          under this part;

13          (2) educational services or other benefits funded  
14          under this part for private schools shall be provided  
15          only to private, nonprofit elementary or secondary  
16          schools with a rate of child poverty of at least 40  
17          percent and may include only—

18                 (A) modifications of school facilities nec-  
19                 essary to meet the standards applicable to pub-  
20                 lic schools under the Americans with Disabil-  
21                 ities Act of 1990 (42 U.S.C. 12101 et seq.);

22                 (B) modifications of school facilities nec-  
23                 essary to meet the standards applicable to pub-  
24                 lic schools under section 504 of the Rehabilita-  
25                 tion Act of 1973 (29 U.S.C. 794); and

1           (C) asbestos or polychlorinated biphenyls  
2           abatement or removal from school facilities; and

3           (3) expenditures for services provided using  
4           funds made available under section 736 shall be con-  
5           sidered equal for purposes of section 9501(a)(4) of  
6           the ESEA if the per-pupil expenditures for services  
7           described in paragraph (2) for students enrolled in  
8           private, nonprofit elementary and secondary schools  
9           that have child-poverty rates of at least 40 percent  
10          are consistent with the per-pupil expenditures under  
11          this part for children enrolled in the public schools  
12          of the local educational agency receiving funds under  
13          this part.

14          (b) REMAINING FUNDS.—If the expenditure for serv-  
15          ices described in subsection (a)(2) is less than the amount  
16          calculated under subsection (a)(3) because of insufficient  
17          need for those services, the remainder shall be available  
18          to the local educational agency for modernization, renova-  
19          tion, or repair of its school facilities.

20          (c) APPLICATION.—If any provision of this section,  
21          or the application thereof, to any person or circumstance  
22          is judicially determined to be invalid, the remainder of the  
23          section and the application to other persons or cir-  
24          cumstances shall not be affected thereby.



1 **SEC. 738. ADDITIONAL PROVISIONS.**

2 (a) 24-MONTH PERIOD OF AVAILABILITY.—Funds  
3 appropriated under section 732 shall be available for obli-  
4 gation by local educational agencies receiving grants from  
5 the Secretary under section 733(b)(1), by States reserving  
6 funds under section 734(a), and by local educational agen-  
7 cies receiving subgrants under section 734(b)(1) only dur-  
8 ing the period that ends 24 months after the date of enact-  
9 ment of this Act.

10 (b) 36-MONTH PERIOD OF AVAILABILITY.—Funds  
11 appropriated under section 732 shall be available for obli-  
12 gation by local educational agencies receiving subgrants  
13 under section 734(b)(2) only during the period that ends  
14 36 months after the date of enactment of this Act.

15 (c) APPLICABILITY OF GEPA.—Section 439 of the  
16 General Education Provisions Act (20 U.S.C. 1232b) shall  
17 apply to funds available under this part.

18 (d) LIMITATION.—For purposes of section 733(b)(1),  
19 Hawaii, the District of Columbia, and the Commonwealth  
20 of Puerto Rico are not local educational agencies.

21 **PART III—COMMUNITY COLLEGE**

22 **MODERNIZATION**

23 **SEC. 739. FEDERAL ASSISTANCE FOR COMMUNITY COL-**  
24 **LEGE MODERNIZATION.**

25 (a) IN GENERAL.—

1           (1) GRANT PROGRAM.—From the amounts  
2           made available under subsection (h), the Secretary  
3           shall award grants to States to modernize, renovate,  
4           or repair existing facilities at community colleges.

5           (2) ALLOCATION.—

6           (A) RESERVATIONS.—Of the amount made  
7           available to carry out this section, the Secretary  
8           shall reserve—

9                   (i) up to 0.25 percent for grants to in-  
10                   stitutions that are eligible under section  
11                   316 of the Higher Education Act of 1965  
12                   (20 U.S.C. 1059e) to provide for mod-  
13                   ernization, renovation, and repair activities  
14                   described in this section; and

15                   (ii) up to 0.25 percent for grants to  
16                   the outlying areas to provide for mod-  
17                   ernization, renovation, and repair activities  
18                   described in this section.

19           (B) ALLOCATION.—After reserving funds  
20           under subparagraph (A), the Secretary shall al-  
21           locate to each State that has an application ap-  
22           proved by the Secretary an amount that bears  
23           the same relation to any remaining funds as the  
24           total number of students in such State who are  
25           enrolled in institutions described in section

1 740(b)(1)(A) plus the number of students who  
2 are estimated to be enrolled in and pursuing a  
3 degree or certificate that is not a bachelor's,  
4 master's, professional, or other advanced degree  
5 in institutions described in section  
6 740(b)(1)(B), based on the proportion of de-  
7 grees or certificates awarded by such institu-  
8 tions that are not bachelor's, master's, profes-  
9 sional, or other advanced degrees, as reported  
10 to the Integrated Postsecondary Data System  
11 bears to the estimated total number of such  
12 students in all States, except that no State shall  
13 receive less than \$2,500,000.

14 (C) REALLOCATION.—Amounts not allo-  
15 cated under this section to a State because the  
16 State either did not submit an application  
17 under subsection (b), the State submitted an  
18 application that the Secretary determined did  
19 not meet the requirements of such subsection,  
20 or the State cannot demonstrate to the Sec-  
21 retary a sufficient demand for projects to war-  
22 rant the full allocation of the funds, shall be  
23 proportionately reallocated under this para-  
24 graph to the other States that have a dem-

1           onstrated need for, and are receiving, alloca-  
2           tions under this section.

3           (D) STATE ADMINISTRATION.—A State  
4           that receives a grant under this section may use  
5           not more than one percent of that grant to ad-  
6           minister it, except that no State may use more  
7           than \$750,000 of its grant for this purpose.

8           (3) SUPPLEMENT, NOT SUPPLANT.—Funds  
9           made available under this section shall be used to  
10          supplement, and not supplant, other Federal, State,  
11          and local funds that would otherwise be expended to  
12          modernize, renovate, or repair existing community  
13          college facilities.

14          (b) APPLICATION.—A State that desires to receive a  
15          grant under this section shall submit an application to the  
16          Secretary at such time, in such manner, and containing  
17          such information and assurances as the Secretary may re-  
18          quire. Such application shall include a description of—

19                (1) how the funds provided under this section  
20                will improve instruction at community colleges in the  
21                State and will improve the ability of those colleges  
22                to educate and train students to meet the workforce  
23                needs of employers in the State;

1           (2) the projected start of each project and the  
2           estimated number of persons to be employed in the  
3           project; and

4           (3) the cost of each project and the total  
5           amount of funds requested for each project and for  
6           all projects.

7           (c) PROHIBITED USES OF FUNDS.—

8           (1) IN GENERAL.—No funds awarded under  
9           this section may be used for—

10                   (A) payment of routine maintenance costs;

11                   (B) construction, modernization, renova-  
12                   tion, or repair of stadiums or other facilities  
13                   primarily used for athletic contests or exhibi-  
14                   tions or other events for which admission is  
15                   charged to the general public; or

16                   (C) construction, modernization, renova-  
17                   tion, or repair of facilities—

18                           (i) used for sectarian instruction, reli-  
19                           gious worship, or a school or department  
20                           of divinity; or

21                           (ii) in which a substantial portion of  
22                           the functions of the facilities are subsumed  
23                           in a religious mission.

24           (2) FOUR-YEAR INSTITUTIONS.—No funds  
25           awarded to a four-year public institution of higher

1 education under this section may be used for any fa-  
2 cility, service, or program of the institution that is  
3 not available to students who are pursuing a degree  
4 or certificate that is not a bachelor's, master's, pro-  
5 fessional, or other advanced degree.

6 (d) GREEN PROJECTS.—In providing assistance to  
7 community college projects under this section, the State  
8 shall consider the extent to which a community college's  
9 project involves activities that are certified, verified, or  
10 consistent with the applicable provisions of—

- 11 (1) the LEED Green Building Rating System;
- 12 (2) Energy Star;
- 13 (3) the CHPS Criteria, as applicable;
- 14 (4) Green Globes; or
- 15 (5) an equivalent program adopted by the State  
16 or the State higher education agency that includes  
17 a verifiable method to demonstrate compliance with  
18 such program.

19 (e) APPLICATION OF GEPA.—Section 439 of the  
20 General Education Provisions Act (20 U.S.C. 1232b) shall  
21 apply to funds available under this section.

22 (f) REPORTS BY THE STATES.—Each State that re-  
23 ceives a grant under this section shall, not later than Sep-  
24 tember 30, 2013, and annually thereafter for each fiscal

1 year in which the State expends funds received under this  
2 section, submit to the Secretary a report that includes—

3 (1) a description of the projects for which the  
4 grant was, or will be, used;

5 (2) a description of the amount and nature of  
6 the assistance provided to each community college  
7 under this section; and

8 (3) the number of jobs created by the projects  
9 funded under this section.

10 (g) REPORT BY THE SECRETARY.—The Secretary  
11 shall submit to the authorizing committees (as defined in  
12 section 103 of the Higher Education Act of 1965; 20  
13 U.S.C. 1003) an annual report on the grants made under  
14 this section, including the information described in sub-  
15 section (f).

16 (h) AVAILABILITY OF FUNDS.—

17 (1) There are authorized to be appropriated,  
18 and there are appropriated, to carry out this section  
19 (in addition to any other amounts appropriated to  
20 carry out this section and out of any money in the  
21 Treasury not otherwise appropriated),  
22 \$5,000,000,000 for fiscal year 2013.

23 (2) Funds appropriated under this subsection  
24 shall be available for obligation by community col-

1       leges only during the period that ends 36 months  
2       after the date of enactment of this Act.

3                   **PART IV—GENERAL PROVISIONS**

4   **SEC. 740. DEFINITIONS.**

5       (a) ESEA TERMS.—Except as otherwise provided, in  
6       this subtitle, the terms “local educational agency”, “Sec-  
7       retary”, and “State educational agency” have the mean-  
8       ings given those terms in section 9101 of the Elementary  
9       and Secondary Education Act of 1965 (20 U.S.C. 7801).

10       (b) ADDITIONAL DEFINITIONS.—The following defi-  
11       nitions apply to this title:

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

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

17                   (B) an institution of higher education (as  
18       defined in section 101 of the Higher Education  
19       Act of 1965 (20 U.S.C. 1001)) that awards a  
20       significant number of degrees and certificates,  
21       as determined by the Secretary, that are not—

22                           (i) bachelor’s degrees (or an equiva-  
23       lent); or

24                           (ii) master’s, professional, or other  
25       advanced degrees.



1           (2) CHPS CRITERIA.—The term “CHPS Cri-  
2           teria” means the green building rating program de-  
3           veloped by the Collaborative for High Performance  
4           Schools.

5           (3) ENERGY STAR.—The term “Energy Star”  
6           means the Energy Star program of the United  
7           States Department of Energy and the United States  
8           Environmental Protection Agency.

9           (4) GREEN GLOBES.—The term “Green  
10          Globes” means the Green Building Initiative envi-  
11          ronmental design and rating system referred to as  
12          Green Globes.

13          (5) LEED GREEN BUILDING RATING SYSTEM.—  
14          The term “LEED Green Building Rating System”  
15          means the United States Green Building Council  
16          Leadership in Energy and Environmental Design  
17          green building rating standard referred to as the  
18          LEED Green Building Rating System.

19          (6) MODERNIZATION, RENOVATION, AND RE-  
20          PAIR.—The term “modernization, renovation, and  
21          repair” means—

22                 (A) comprehensive assessments of facili-  
23                 ties, including indoor air-quality assessments, to  
24                 identify—

1 (i) facility conditions or deficiencies  
2 that could adversely affect student and  
3 staff health, safety, performance, or pro-  
4 ductivity or energy, water, or materials ef-  
5 ficiency; and

6 (ii) needed facility improvements;

7 (B) repairing, replacing, or installing roofs  
8 (which may be extensive, intensive, or semi-in-  
9 tensive “green” roofs); electrical wiring; water  
10 supply and plumbing systems, sewage systems,  
11 storm water runoff systems, lighting systems  
12 (or components of such systems); or building  
13 envelope, windows, ceilings, flooring, or doors,  
14 including security doors;

15 (C) repairing, replacing, or installing heat-  
16 ing, ventilation, or air conditioning systems, or  
17 components of those systems (including insula-  
18 tion) to improve energy efficiency;

19 (D) compliance with fire, health, seismic,  
20 and safety codes, including professional installa-  
21 tion of fire and life safety alarms, and mod-  
22 ernizations, renovations, and repairs that en-  
23 sure that facilities are prepared for such emer-  
24 gencies as acts of terrorism, campus violence,  
25 and natural disasters, such as improving build-

1 ing infrastructure to accommodate security  
2 measures and installing or upgrading tech-  
3 nology to ensure that a school or incident is  
4 able to respond to such emergencies;

5 (E) making modifications necessary to  
6 make educational facilities accessible in compli-  
7 ance with the Americans with Disabilities Act  
8 of 1990 (42 U.S.C. 12101 et seq.) and section  
9 504 of the Rehabilitation Act of 1973 (29  
10 U.S.C. 794), except that such modifications  
11 shall not be the primary use of a grant or  
12 subgrant;

13 (F) abatement, removal, or interim con-  
14 trols of asbestos, polychlorinated biphenyls,  
15 mold, mildew, or lead-based hazards, including  
16 lead-based paint hazards;

17 (G) retrofitting necessary to increase en-  
18 ergy efficiency;

19 (H) measures, such as selection and sub-  
20 stitution of products and materials, and imple-  
21 mentation of improved maintenance and oper-  
22 ational procedures, such as “green cleaning”  
23 programs, to reduce or eliminate potential stu-  
24 dent or staff exposure to—

25 (i) volatile organic compounds;

1 (ii) particles such as dust and pollens;

2 or

3 (iii) combustion gases;

4 (I) modernization, renovation, or repair  
5 necessary to reduce the consumption of coal,  
6 electricity, land, natural gas, oil, or water;

7 (J) installation or upgrading of educational  
8 technology infrastructure;

9 (K) installation or upgrading of renewable  
10 energy generation and heating systems, includ-  
11 ing solar, photovoltaic, wind, biomass (including  
12 wood pellet and woody biomass), waste-to-en-  
13 ergy, solar-thermal, and geothermal systems,  
14 and energy audits;

15 (L) modernization, renovation, or repair  
16 activities related to energy efficiency and renew-  
17 able energy, and improvements to building in-  
18 frastructures to accommodate bicycle and pe-  
19 destrian access;

20 (M) ground improvements, storm water  
21 management, landscaping, and environmental  
22 clean-up when necessary;

23 (N) other modernization, renovation, or re-  
24 pair to—

- 1 (i) improve teachers' ability to teach  
2 and students' ability to learn;
- 3 (ii) ensure the health and safety of  
4 students and staff; or
- 5 (iii) improve classroom, laboratory,  
6 and vocational facilities in order to en-  
7 hance the quality of science, technology,  
8 engineering, and mathematics instruction;  
9 and
- 10 (O) required environmental remediation re-  
11 lated to facilities modernization, renovation, or  
12 repair activities described in subparagraphs (A)  
13 through (N).

14 (7) **OUTLYING AREA.**—The term “outlying  
15 area” means the U.S. Virgin Islands, Guam, Amer-  
16 ican Samoa, the Commonwealth of the Northern  
17 Mariana Islands, and the Republic of Palau.

18 (8) **STATE.**—The term “State” means each of  
19 the 50 States of the United States, the Common-  
20 wealth of Puerto Rico, and the District of Columbia.

21 **SEC. 741. BUY AMERICAN.**

22 Section 1605 of division A of the American Recovery  
23 and Reinvestment Act of 2009 (Public Law 111–5) applies  
24 to funds made available under this title.

1           **Subtitle C—Transportation**  
2           **Infrastructure Investments**

3           **PART I—IMMEDIATE TRANSPORTATION**

4           **INFRASTRUCTURE INVESTMENTS**

5   **SEC. 751. IMMEDIATE TRANSPORTATION INFRASTRUCTURE**  
6           **INVESTMENTS.**

7           (a) GRANTS-IN-AID FOR AIRPORTS.—

8                 (1) IN GENERAL.—There is made available to  
9           the Secretary of Transportation \$6,000,000,000 to  
10           carry out airport improvement under subchapter I of  
11           chapter 471 and subchapter I of chapter 475 of title  
12           49, United States Code.

13                (2) FEDERAL SHARE; LIMITATION ON OBLIGA-  
14           TIONS.—The Federal share payable of the costs for  
15           which a grant is made under this subsection, shall  
16           be 100 percent. The amount made available under  
17           this subsection shall not be subject to any limitation  
18           on obligations for the Grants-In-Aid for Airports  
19           program set forth in any Act or in title 49, United  
20           States Code.

21                (3) DISTRIBUTION OF FUNDS.—Funds provided  
22           to the Secretary under this subsection shall not be  
23           subject to apportionment formulas, special appor-  
24           tionment categories, or minimum percentages under  
25           chapter 471 of such title.

1           (4) AVAILABILITY.—The amounts made avail-  
2           able under this subsection shall be available for obli-  
3           gation until the date that is two years after the date  
4           of the enactment of this Act. The Secretary shall ob-  
5           ligate amounts totaling not less than 50 percent of  
6           the funds made available within one year of enact-  
7           ment and obligate remaining amounts not later than  
8           two years after enactment.

9           (5) ADMINISTRATIVE EXPENSES.—Of the funds  
10          made available under this subsection, 0.3 percent  
11          shall be available to the Secretary for administrative  
12          expenses, shall remain available for obligation until  
13          September 30, 2015, and may be used in conjunc-  
14          tion with funds otherwise provided for the adminis-  
15          tration of the Grants-In-Aid for Airports program.

16          (b) NEXT GENERATION AIR TRAFFIC CONTROL AD-  
17          VANCEMENTS.—

18               (1) IN GENERAL.—There is made available to  
19               the Secretary of Transportation \$3,000,000,000 for  
20               necessary Federal Aviation Administration capital,  
21               research, and operating costs to carry out Next Gen-  
22               eration air traffic control system advancements.

23               (2) AVAILABILITY.—The amounts made avail-  
24               able under this subsection shall be available for obli-

1 gation until the date that is two years after the date  
2 of the enactment of this Act.

3 (c) HIGHWAY INFRASTRUCTURE INVESTMENT.—

4 (1) IN GENERAL.—There is made available to  
5 the Secretary of Transportation \$81,000,000,000  
6 for restoration, repair, construction and other activi-  
7 ties eligible under section 133(b) of title 23, United  
8 States Code, and for passenger and freight rail  
9 transportation and port infrastructure projects eligi-  
10 ble for assistance under section 601(a)(8) of title 23.

11 (2) FEDERAL SHARE; LIMITATION ON OBLIGA-  
12 TIONS.—The Federal share payable on account of  
13 any project or activity carried out with funds made  
14 available under this subsection shall be, at the op-  
15 tion of the recipient, up to 100 percent of the total  
16 cost thereof. The amount made available under this  
17 subsection shall not be subject to any limitation on  
18 obligations for Federal-aid highways and highway  
19 safety construction programs set forth in any Act or  
20 in title 23, United States Code.

21 (3) AVAILABILITY.—The amounts made avail-  
22 able under this subsection shall be available for obli-  
23 gation until the date that is two years after the date  
24 of the enactment of this Act. The Secretary shall ob-  
25 ligate amounts totaling not less than 50 percent of



1 the funds made available within one year of enact-  
2 ment and obligate remaining amounts not later than  
3 two years after enactment.

4 (4) DISTRIBUTION OF FUNDS.—Of the funds  
5 provided in this subsection, after making the set-  
6 asides required by paragraphs (9), (10), (11), (12),  
7 and (15), 50 percent of the funds shall be appor-  
8 tioned to States using the formula set forth in sec-  
9 tion 104(b)(3) of title 23, United States Code, and  
10 the remaining funds shall be apportioned to States  
11 in the same ratio as the obligation limitation for fis-  
12 cal year 2010 was distributed among the States in  
13 accordance with the formula specified in section  
14 120(a)(6) of division A of Public Law 111–117.

15 (5) APPORTIONMENT.—Apportionments under  
16 paragraph (4) shall be made not later than 30 days  
17 after the date of the enactment of this Act.

18 (6) REDISTRIBUTION.—

19 (A) The Secretary shall, 180 days fol-  
20 lowing the date of apportionment, withdraw  
21 from each State an amount equal to 50 percent  
22 of the funds apportioned under paragraph (4)  
23 to that State (excluding funds suballocated  
24 within the State) less the amount of funding  
25 obligated (excluding funds suballocated within

1 the State), and the Secretary shall redistribute  
2 such amounts to other States that have had no  
3 funds withdrawn under this subparagraph in  
4 the manner described in section 120(c) of divi-  
5 sion A of Public Law 111–117.

6 (B) One year following the date of appor-  
7 tionment, the Secretary shall withdraw from  
8 each recipient of funds apportioned under para-  
9 graph (4) any unobligated funds, and the Sec-  
10 retary shall redistribute such amounts to States  
11 that have had no funds withdrawn under this  
12 paragraph (excluding funds suballocated within  
13 the State) in the manner described in section  
14 120(c) of division A of Public Law 111–117.

15 (C) At the request of a State, the Sec-  
16 retary may provide an extension of the one-year  
17 period only to the extent that the Secretary de-  
18 termines that the State has encountered ex-  
19 treme conditions that create an unworkable bid-  
20 ding environment or other extenuating cir-  
21 cumstances. Before granting an extension, the  
22 Secretary shall notify in writing the Committee  
23 on Transportation and Infrastructure and the  
24 Committee on Environment and Public Works,

1 providing a thorough justification for the exten-  
2 sion.

3 (7) PUERTO RICO AND TERRITORIAL HIGHWAY  
4 PROGRAMS.—Of the funds provided under this sub-  
5 section, \$315,000,000 shall be set aside for the  
6 Puerto Rico highway program and \$135,000,000  
7 shall be for the territorial highway program author-  
8 ized under section 165 of title 23, United States  
9 Code.

10 (8) FEDERAL LANDS AND INDIAN RESERVA-  
11 TIONS.—Of the funds provided under this sub-  
12 section, \$1,650,000,000 shall be set aside for invest-  
13 ments in transportation at Indian reservations and  
14 Federal lands in accordance with the following:.

15 (A) Of the funds set aside by this para-  
16 graph, \$930,000,000 shall be for the Indian  
17 Reservation Roads program, \$510,000,000  
18 shall be for the Park Roads and Parkways pro-  
19 gram, \$180,000,000 shall be for the Forest  
20 Highway Program, and \$30,000,000 shall be  
21 for the Refuge Roads program.

22 (B) For investments at Indian reservations  
23 and Federal lands, priority shall be given to  
24 capital investments, and to projects and activi-

1           ties that can be completed within 2 years of en-  
2           actment of this Act.

3           (C) One year following the enactment of  
4           this Act, to ensure the prompt use of the fund-  
5           ing provided for investments at Indian reserva-  
6           tions and Federal lands, the Secretary shall  
7           have the authority to redistribute unobligated  
8           funds within the respective program for which  
9           the funds were appropriated.

10          (D) Up to four percent of the funding pro-  
11          vided for Indian Reservation Roads may be  
12          used by the Secretary of the Interior for pro-  
13          gram management and oversight and project-re-  
14          lated administrative expenses.

15          (9) JOB TRAINING.—Of the funds provided  
16          under this subsection, \$150,000,000 shall be set  
17          aside for the development and administration of  
18          transportation training programs under section  
19          140(b) title 23, United States Code.

20          (A) Funds set aside under this subsection  
21          shall be competitively awarded and used for the  
22          purpose of providing training, apprenticeship  
23          (including Registered Apprenticeship), skill de-  
24          velopment, and skill improvement programs, as  
25          well as summer transportation institutes and

1           may be transferred to, or administered in part-  
2           nership with, the Secretary of Labor and shall  
3           demonstrate to the Secretary of Transportation  
4           program outcomes, including—

5                   (i) impact on areas with transpor-  
6                   tation workforce shortages;

7                   (ii) diversity of training participants;

8                   (iii) number of participants obtaining  
9                   certifications or credentials required for  
10                  specific types of employment;

11                  (iv) employment outcome metrics,  
12                  such as job placement and job retention  
13                  rates, established in consultation with the  
14                  Secretary of Labor and consistent with  
15                  metrics used by programs under the Work-  
16                  force Investment Act;

17                  (v) to the extent practical, evidence  
18                  that the program did not preclude workers  
19                  that participate in training or apprentice-  
20                  ship activities under the program from  
21                  being referred to, or hired on, projects  
22                  funded under this chapter; and

23                  (vi) identification of areas of collabo-  
24                  ration with the Department of Labor pro-  
25                  grams, including co-enrollment.

1 (B) To be eligible to receive a competitively  
2 awarded grant under this subsection, a State  
3 must certify that at least 0.1 percent of the  
4 amounts apportioned under the Surface Trans-  
5 portation Program and Bridge Program will be  
6 obligated in the first fiscal year after enactment  
7 of this act for job training activities consistent  
8 with section 140(b) of title 23, United States  
9 Code.

10 (10) DISADVANTAGED BUSINESS ENTER-  
11 PRISES.—Of the funds provided under this sub-  
12 section, \$30,000,000 shall be set aside for training  
13 programs and assistance programs under section  
14 140(c) of title 23, United States Code. Funds set  
15 aside under this paragraph should be allocated to  
16 businesses that have proven success in adding staff  
17 while effectively completing projects.

18 (11) STATE PLANNING AND OVERSIGHT EX-  
19 PENSES.—Of amounts apportioned under paragraph  
20 (4) of this subsection, a State may use up to 0.5  
21 percent for activities related to projects funded  
22 under this subsection, including activities eligible  
23 under sections 134 and 135 of title 23, United  
24 States Code, State administration of subgrants, and  
25 State oversight of subrecipients.

1 (12) CONDITIONS.—

2 (A) Funds made available under this sub-  
3 section shall be administered as if apportioned  
4 under chapter 1 of title 23, United States Code,  
5 except for funds made available for investments  
6 in transportation at Indian reservations and  
7 Federal lands, and for the territorial highway  
8 program, which shall be administered in accord-  
9 ance with chapter 2 of title 23, United States  
10 Code, and except for funds made available for  
11 disadvantaged business enterprises bonding as-  
12 sistance, which shall be administered in accord-  
13 ance with chapter 3 of title 49, United States  
14 Code.

15 (B) Funds made available under this sub-  
16 section shall not be obligated for the purposes  
17 authorized under section 115(b) of title 23,  
18 United States Code.

19 (C) Funding provided under this sub-  
20 section shall be in addition to any and all funds  
21 provided for fiscal years 2011 and 2012 in any  
22 other Act for “Federal-aid Highways” and shall  
23 not affect the distribution of funds provided for  
24 “Federal-aid Highways” in any other Act.

1 (D) Section 1101(b) of Public Law 109–59  
2 shall apply to funds apportioned under this sub-  
3 section.

4 (13) OVERSIGHT.—The Administrator of the  
5 Federal Highway Administration may set aside up  
6 to 0.15 percent of the funds provided under this  
7 subsection to fund the oversight by the Adminis-  
8 trator of projects and activities carried out with  
9 funds made available to the Federal Highway Ad-  
10 ministration in this Act, and such funds shall be  
11 available through September 30, 2015.

12 (d) CAPITAL ASSISTANCE FOR HIGH SPEED RAIL  
13 CORRIDORS AND INTERCITY PASSENGER RAIL SERV-  
14 ICE.—

15 (1) IN GENERAL.—There is made available to  
16 the Secretary of Transportation \$12,000,000,000  
17 for grants for high-speed rail projects as authorized  
18 under sections 26104 and 26106 of title 49, United  
19 States Code, capital investment grants to support  
20 intercity passenger rail service as authorized under  
21 section 24406 of title 49, United States Code, and  
22 congestion grants as authorized under section 24105  
23 of title 49, United States Code, and to enter into co-  
24 operative agreements for these purposes as author-  
25 ized, except that the Administrator of the Federal



1 Railroad Administration may retain up to one per-  
2 cent of the funds provided under this heading to  
3 fund the award and oversight by the Administrator  
4 of grants made under this subsection, which retained  
5 amount shall remain available for obligation until  
6 September 30, 2015.

7 (2) AVAILABILITY.—The amounts made avail-  
8 able under this subsection shall be available for obli-  
9 gation until the date that is two years after the date  
10 of the enactment of this Act. The Secretary shall ob-  
11 ligate amounts totaling not less than 50 percent of  
12 the funds made available within one year of enact-  
13 ment and obligate remaining amounts not later than  
14 two years after enactment.

15 (3) FEDERAL SHARE.—The Federal share pay-  
16 able of the costs for which a grant or cooperative  
17 agreements is made under this subsection shall be,  
18 at the option of the recipient, up to 100 percent.

19 (4) INTERIM GUIDANCE.—The Secretary shall  
20 issue interim guidance to applicants covering appli-  
21 cation procedures and administer the grants pro-  
22 vided under this subsection pursuant to that guid-  
23 ance until final regulations are issued.

24 (5) INTERCITY PASSENGER RAIL CORRIDORS.—  
25 Not less than 85 percent of the funds provided

1 under this subsection shall be for cooperative agree-  
2 ments that lead to the development of entire seg-  
3 ments or phases of intercity or high-speed rail cor-  
4 ridors.

5 (6) CONDITIONS.—

6 (A) In addition to the provisions of title  
7 49, United States Code, that apply to each of  
8 the individual programs funded under this sub-  
9 section, subsections 24402(a)(2), 24402(i), and  
10 24403(a) and (c) of title 49, United States  
11 Code, shall also apply to the provision of funds  
12 provided under this subsection.

13 (B) A project need not be in a State rail  
14 plan developed under chapter 227 of title 49,  
15 United States Code, to be eligible for assistance  
16 under this subsection.

17 (C) Recipients of grants under this para-  
18 graph shall conduct all procurement trans-  
19 actions using such grant funds in a manner  
20 that provides full and open competition, as de-  
21 termined by the Secretary, in compliance with  
22 existing labor agreements.

23 (e) CAPITAL GRANTS TO THE NATIONAL RAILROAD  
24 PASSENGER CORPORATION.—

1           (1) IN GENERAL.—There is made available  
2           \$6,000,000,000 to enable the Secretary of Transpor-  
3           tation to make capital grants to the National Rail-  
4           road Passenger Corporation (Amtrak), as authorized  
5           by section 101(c) of the Passenger Rail Investment  
6           and Improvement Act of 2008 (Public Law 110–  
7           432).

8           (2) AVAILABILITY.—The amounts made avail-  
9           able under this subsection shall be available for obli-  
10          gation until the date that is two years after the date  
11          of the enactment of this Act. The Secretary shall ob-  
12          ligate amounts totaling not less than 50 percent of  
13          the funds made available within one year of enact-  
14          ment and obligate remaining amounts not later than  
15          two years after enactment.

16          (3) PROJECT PRIORITY.—The priority for the  
17          use of funds shall be given to projects for the repair,  
18          rehabilitation, or upgrade of railroad assets or infra-  
19          structure, and for capital projects that expand pas-  
20          senger rail capacity including the rehabilitation of  
21          rolling stock.

22          (4) CONDITIONS.—

23                 (A) None of the funds under this sub-  
24                 section shall be used to subsidize the operating  
25                 losses of Amtrak.

1           (B) The funds provided under this sub-  
2           section shall be awarded not later than 90 days  
3           after the date of enactment of this Act.

4           (C) The Secretary shall take measures to  
5           ensure that projects funded under this sub-  
6           section shall be completed within 2 years of en-  
7           actment of this Act, and shall serve to supple-  
8           ment and not supplant planned expenditures for  
9           such activities from other Federal, State, local  
10          and corporate sources. The Secretary shall cer-  
11          tify to the House and Senate Committees on  
12          Appropriations in writing compliance with the  
13          preceding sentence.

14          (5) OVERSIGHT.—The Administrator of the  
15          Federal Railroad Administration may set aside 0.5  
16          percent of the funds provided under this subsection  
17          to fund the oversight by the Administrator of  
18          projects and activities carried out with funds made  
19          available in this subsection, and such funds shall be  
20          available through September 30, 2015.

21          (f) TRANSIT CAPITAL ASSISTANCE.—

22                (1) IN GENERAL.—There is made available to  
23          the Secretary of Transportation \$9,000,000,000 for  
24          grants for transit capital assistance grants as de-  
25          fined by section 5302(a)(3) of title 49, United

1 States Code. Notwithstanding any provision of chap-  
2 ter 53 of title 49, however, a recipient of funding  
3 under this subsection may use up to 10 percent of  
4 the amount provided for the operating costs of  
5 equipment and facilities for use in public transpor-  
6 tation or for other eligible activities.

7 (2) FEDERAL SHARE; LIMITATION ON OBLIGA-  
8 TIONS.—The applicable requirements of chapter 53  
9 of title 49, United States Code, shall apply to fund-  
10 ing provided under this subsection, except that the  
11 Federal share of the costs for which any grant is  
12 made under this subsection shall be, at the option of  
13 the recipient, up to 100 percent. The amount made  
14 available under this subsection shall not be subject  
15 to any limitation on obligations for transit programs  
16 set forth in any Act or chapter 53 of title 49.

17 (3) AVAILABILITY.—The amounts made avail-  
18 able under this subsection shall be available for obli-  
19 gation until the date that is two years after the date  
20 of the enactment of this Act. The Secretary shall ob-  
21 ligate amounts totaling not less than 50 percent of  
22 the funds made available within one year of enact-  
23 ment and obligate remaining amounts not later than  
24 two years after enactment.

1           (4) DISTRIBUTION OF FUNDS.—The Secretary  
2 of Transportation shall—

3           (A) provide 80 percent of the funds appro-  
4 priated under this subsection for grants under  
5 section 5307 of title 49, United States Code,  
6 and apportion such funds in accordance with  
7 section 5336 of such title;

8           (B) provide 10 percent of the funds appro-  
9 priated under this subsection in accordance  
10 with section 5340 of such title; and

11           (C) provide 10 percent of the funds appro-  
12 priated under this subsection for grants under  
13 section 5311 of title 49, United States Code,  
14 and apportion such funds in accordance with  
15 such section.

16           (5) APPORTIONMENT.—The funds apportioned  
17 under this subsection shall be apportioned not later  
18 than 21 days after the date of the enactment of this  
19 Act.

20           (6) REDISTRIBUTION.—

21           (A) The Secretary shall, 180 days fol-  
22 lowing the date of apportionment, withdraw  
23 from each urbanized area or State an amount  
24 equal to 50 percent of the funds apportioned to  
25 such urbanized areas or States less the amount

1 of funding obligated, and the Secretary shall re-  
2 distribute such amounts to other urbanized  
3 areas or States that have had no funds with-  
4 drawn under this proviso utilizing whatever  
5 method he deems appropriate to ensure that all  
6 funds redistributed under this proviso shall be  
7 utilized promptly.

8 (B) One year following the date of appor-  
9 tionment, the Secretary shall withdraw from  
10 each urbanized area or State any unobligated  
11 funds, and the Secretary shall redistribute such  
12 amounts to other urbanized areas or States  
13 that have had no funds withdrawn under this  
14 proviso utilizing whatever method the Secretary  
15 deems appropriate to ensure that all funds re-  
16 distributed under this proviso shall be utilized  
17 promptly.

18 (C) At the request of an urbanized area or  
19 State, the Secretary of Transportation may pro-  
20 vide an extension of such 1-year period if the  
21 Secretary determines that the urbanized area or  
22 State has encountered an unworkable bidding  
23 environment or other extenuating cir-  
24 cumstances. Before granting an extension, the  
25 Secretary shall notify in writing the Committee

1 on Transportation and Infrastructure and the  
2 Committee on Banking, Housing and Urban  
3 Affairs, providing a thorough justification for  
4 the extension.

5 (7) CONDITIONS.—

6 (A) Of the funds provided for section 5311  
7 of title 49, United States Code, 2.5 percent  
8 shall be made available for section 5311(c)(1).

9 (B) Section 1101(b) of Public Law 109–59  
10 shall apply to funds appropriated under this  
11 subsection.

12 (C) The funds appropriated under this  
13 subsection shall not be comingled with any prior  
14 year funds.

15 (8) OVERSIGHT.—Notwithstanding any other  
16 provision of law, 0.3 percent of the funds provided  
17 for grants under section 5307 and section 5340, and  
18 0.3 percent of the funds provided for grants under  
19 section 5311, shall be available for administrative  
20 expenses and program management oversight, and  
21 such funds shall be available through September 30,  
22 2015.

23 (g) STATE OF GOOD REPAIR.—

24 (1) IN GENERAL.—There is made available to  
25 the Secretary of Transportation \$18,000,000,000



1 for capital expenditures as authorized by section  
2 5309(b)(5) of title 49, United States Code.

3 (2) FEDERAL SHARE.—The applicable require-  
4 ments of chapter 53 of title 49, United States Code,  
5 shall apply, except that the Federal share of the  
6 costs for which a grant is made under this sub-  
7 section shall be, at the option of the recipient, up to  
8 100 percent.

9 (3) AVAILABILITY.—The amounts made avail-  
10 able under this subsection shall be available for obli-  
11 gation until the date that is two years after the date  
12 of the enactment of this Act. The Secretary shall ob-  
13 ligate amounts totaling not less than 50 percent of  
14 the funds made available within one year of enact-  
15 ment and obligate remaining amounts not later than  
16 two years after enactment.

17 (4) DISTRIBUTION OF FUNDS.—

18 (A) The Secretary of Transportation shall  
19 apportion not less than 75 percent of the funds  
20 under this subsection for the modernization of  
21 fixed guideway systems, pursuant to the for-  
22 mula set forth in section 5336(b) title 49,  
23 United States Code, other than subsection  
24 (b)(2)(A)(ii).

1           (B) Of the funds appropriated under this  
2 subsection, not less than 25 percent shall be  
3 available for the restoration or replacement of  
4 existing public transportation assets related to  
5 bus systems, pursuant to the formula set forth  
6 in section 5336 other than subsection (b).

7           (5) APPORTIONMENT.—The funds made avail-  
8 able under this subsection shall be apportioned not  
9 later than 30 days after the date of the enactment  
10 of this Act.

11           (6) REDISTRIBUTION.—

12           (A) The Secretary shall, 180 days fol-  
13 lowing the date of apportionment, withdraw  
14 from each urbanized area an amount equal to  
15 50 percent of the funds apportioned to such ur-  
16 banized area less the amount of funding obli-  
17 gated, and the Secretary shall redistribute such  
18 amounts to other urbanized areas that have had  
19 no funds withdrawn under this paragraph uti-  
20 lizing whatever method the Secretary deems ap-  
21 propriate to ensure that all funds redistributed  
22 under this paragraph shall be utilized promptly.

23           (B) One year following the date of appor-  
24 tionment, the Secretary shall withdraw from  
25 each urbanized area any unobligated funds, and

1 the Secretary shall redistribute such amounts to  
2 other urbanized areas that have had no funds  
3 withdrawn under this paragraph, utilizing what-  
4 ever method the Secretary deems appropriate to  
5 ensure that all funds redistributed under this  
6 paragraph shall be utilized promptly.

7 (C) At the request of an urbanized area,  
8 the Secretary may provide an extension of the  
9 1-year period if the Secretary finds that the ur-  
10 banized area has encountered an unworkable  
11 bidding environment or other extenuating cir-  
12 cumstances. Before granting an extension, the  
13 Secretary shall notify the Committee on Trans-  
14 portation and Infrastructure and the Com-  
15 mittee on Banking, Housing, and Urban Af-  
16 fairs, providing a thorough justification for the  
17 extension.

18 (7) CONDITIONS.—

19 (A) The provisions of section 1101(b) of  
20 Public Law 109–59 shall apply to funds made  
21 available under this subsection.

22 (B) The funds appropriated under this  
23 subsection shall not be commingled with any  
24 prior year funds.

1           (8) OVERSIGHT.—Notwithstanding any other  
2 provision of law, 0.3 percent of the funds under this  
3 subsection shall be available for administrative ex-  
4 penses and program management oversight and shall  
5 remain available for obligation until September 30,  
6 2015.

7           (h) TRANSPORTATION INFRASTRUCTURE GRANTS  
8 AND FINANCING.—

9           (1) IN GENERAL.—There is made available to  
10 the Secretary of Transportation \$15,000,000,000  
11 for capital investments in surface transportation in-  
12 frastructure. The Secretary shall distribute funds  
13 provided under this subsection as discretionary  
14 grants to be awarded to State and local governments  
15 or transit agencies on a competitive basis for  
16 projects that will have a significant impact on the  
17 Nation, a metropolitan area, or a region.

18           (2) FEDERAL SHARE; LIMITATION ON OBLIGA-  
19 TIONS.—The Federal share payable of the costs for  
20 which a grant is made under this subsection, shall  
21 be 100 percent.

22           (3) AVAILABILITY.—The amounts made avail-  
23 able under this subsection shall be available for obli-  
24 gation until the date that is two years after the date  
25 of the enactment of this Act. The Secretary shall ob-

1       ligate amounts totaling not less than 50 percent of  
2       the funds made available within one year of enact-  
3       ment and obligate remaining amounts not later than  
4       two years after enactment.

5               (4) PROJECT ELIGIBILITY.—Projects eligible for  
6       funding provided under this subsection include—

7               (A) highway or bridge projects eligible  
8               under title 23, United States Code, including  
9               interstate rehabilitation, improvements to the  
10              rural collector road system, the reconstruction  
11              of overpasses and interchanges, bridge replace-  
12              ments, seismic retrofit projects for bridges, and  
13              road realignments;

14             (B) public transportation projects eligible  
15             under chapter 53 of title 49, United States  
16             Code, including investments in projects partici-  
17             pating in the New Starts or Small Starts pro-  
18             grams that will expedite the completion of those  
19             projects and their entry into revenue service;

20             (C) passenger and freight rail transpor-  
21             tation projects; and

22             (D) port infrastructure investments, in-  
23             cluding projects that connect ports to other  
24             modes of transportation and improve the effi-  
25             ciency of freight movement.

1           (5) TIFIA PROGRAM.—The Secretary may  
2 transfer to the Federal Highway Administration  
3 funds made available under this subsection for the  
4 purpose of paying the subsidy and administrative  
5 costs of projects eligible for Federal credit assistance  
6 under chapter 6 of title 23, United States Code, if  
7 the Secretary finds that such use of the funds would  
8 advance the purposes of this subsection.

9           (6) PROJECT PRIORITY.—The Secretary shall  
10 give priority to projects that are expected to be com-  
11 pleted within 3 years of the date of the enactment  
12 of this Act.

13           (7) DEADLINE FOR ISSUANCE OF COMPETITION  
14 CRITERIA.—The Secretary shall publish criteria on  
15 which to base the competition for any grants award-  
16 ed under this subsection not later than 90 days after  
17 enactment of this Act. The Secretary shall require  
18 applications for funding provided under this sub-  
19 section to be submitted not later than 180 days after  
20 the publication of the criteria, and announce all  
21 projects selected to be funded from such funds not  
22 later than 1 year after the date of the enactment of  
23 the Act.

24           (8) APPLICABILITY OF TITLE 40.—Each project  
25 conducted using funds provided under this sub-

1 section shall comply with the requirements of sub-  
2 chapter IV of chapter 31 of title 40, United States  
3 Code.

4 (9) ADMINISTRATIVE EXPENSES.—The Sec-  
5 retary may retain up to one half of one percent of  
6 the funds provided under this subsection, and may  
7 transfer portions of those funds to the Administra-  
8 tors of the Federal Highway Administration, the  
9 Federal Transit Administration, the Federal Rail-  
10 road Administration and the Maritime Administra-  
11 tion, to fund the award and oversight of grants  
12 made under this subsection. Funds retained shall re-  
13 main available for obligation until September 30,  
14 2015.

15 (i) LOCAL HIRING.—

16 (1) IN GENERAL.—In the case of the funding  
17 made available under subsections (a) through (h) of  
18 this section, the Secretary of Transportation may es-  
19 tablish standards under which a contract for con-  
20 struction may be advertised that contains require-  
21 ments for the employment of individuals residing in  
22 or adjacent to any of the areas in which the work  
23 is to be performed to perform construction work re-  
24 quired under the contract, provided that—

1 (A) all or part of the construction work  
2 performed under the contract occurs in an area  
3 designated by the Secretary as an area of high  
4 unemployment, using data reported by the  
5 United States Department of Labor, Bureau of  
6 Labor Statistics;

7 (B) the estimated cost of the project of  
8 which the contract is a part is greater than  
9 \$10,000,000, except that the estimated cost of  
10 the project in the case of construction funded  
11 under subsection (c) shall be greater than  
12 \$50,000,000; and

13 (C) the recipient may not require the hir-  
14 ing of individuals who do not have the nec-  
15 essary skills to perform work in any craft or  
16 trade; provided that the recipient may require  
17 the hiring of such individuals if the recipient es-  
18 tablishes reasonable provisions to train such in-  
19 dividuals to perform any such work under the  
20 contract effectively.

21 (2) PROJECT STANDARDS.—Any standards es-  
22 tablished by the Secretary under this section shall  
23 ensure that any requirements specified under sub-  
24 section (c)(9)—



1           (A) do not compromise the quality of the  
2           project;

3           (B) are reasonable in scope and applica-  
4           tion;

5           (C) do not unreasonably delay the comple-  
6           tion of the project; and

7           (D) do not unreasonably increase the cost  
8           of the project.

9           (3) IMPLEMENTING REGULATIONS.—The Sec-  
10          retary shall promulgate final regulations to imple-  
11          ment the authority of this subsection.

12          (j) ADMINISTRATIVE PROVISIONS.—

13           (1) APPLICABILITY OF TITLE 40.—Each project  
14          conducted using funds provided under this subtitle  
15          shall comply with the requirements of subchapter IV  
16          of chapter 31 of title 40, United States Code.

17           (2) BUY AMERICAN.—Section 1605 of division  
18          A of the American Recovery and Reinvestment Act  
19          of 2009 (Public Law 111–5) applies to each project  
20          conducted using funds provided under this subtitle.

1 **PART II—BUILDING AND UPGRADING INFRA-**  
2 **STRUCTURE FOR LONG-TERM DEVELOP-**  
3 **MENT**

4 **Subpart A—Immediate Transportation**  
5 **Infrastructure Investments**

6 **SEC. 761. SHORT TITLE.**

7 This part may be cited as the “Building and Upgrad-  
8 ing Infrastructure for Long-Term Development Act”.

9 **SEC. 762. FINDINGS AND PURPOSE.**

10 (a) FINDINGS.—Congress finds that—

11 (1) infrastructure has always been a vital ele-  
12 ment of the economic strength of the United States  
13 and a key indicator of the international leadership of  
14 the United States;

15 (2) the Erie Canal, the Hoover Dam, the rail-  
16 roads, and the interstate highway system are all tes-  
17 taments to American ingenuity and have helped pro-  
18 pel and maintain the United States as the world’s  
19 largest economy;

20 (3) according to the World Economic Forum’s  
21 Global Competitiveness Report, the United States  
22 fell to second place in 2009, and dropped to fourth  
23 place overall in 2010, however, in the “Quality of  
24 overall infrastructure” category of the same report,  
25 the United States ranked twenty-third in the world;

1           (4) according to the World Bank’s 2010 Logis-  
2           tic Performance Index, the capacity of countries to  
3           efficiently move goods and connect manufacturers  
4           and consumers with international markets is improv-  
5           ing around the world, and the United States now  
6           ranks seventh in the world in logistics-related infra-  
7           structure behind countries from both Europe and  
8           Asia;

9           (5) according to a January 2009 report from  
10          the University of Massachusetts/Alliance for Amer-  
11          ican Manufacturing entitled “Employment, Produc-  
12          tivity and Growth,” infrastructure investment is a  
13          “highly effective engine of job creation”;

14          (6) according to the American Society of Civil  
15          Engineers, the current condition of the infrastruc-  
16          ture in the United States earns a grade point aver-  
17          age of D, and an estimated \$2,200,000,000,000 in-  
18          vestment is needed over the next 5 years to bring  
19          American infrastructure up to adequate condition;

20          (7) according to the National Surface Trans-  
21          portation Policy and Revenue Study Commission,  
22          \$225,000,000,000 is needed annually from all  
23          sources for the next 50 years to upgrade the United  
24          States surface transportation system to a state of  
25          good repair and create a more advanced system;

1           (8) the current infrastructure financing mecha-  
2           nisms of the United States, both on the Federal and  
3           State level, will fail to meet current and foreseeable  
4           demands and will create large funding gaps;

5           (9) published reports state that there may not  
6           be enough demand for municipal bonds to maintain  
7           the same level of borrowing at the same rates, re-  
8           sulting in significantly decreased infrastructure in-  
9           vestment at the State and local level;

10          (10) current funding mechanisms are not read-  
11          ily scalable and do not—

12                 (A) serve large in-State or cross jurisdic-  
13                 tion infrastructure projects, projects of regional  
14                 or national significance, or projects that cross  
15                 sector silos;

16                 (B) sufficiently catalyze private sector in-  
17                 vestment; or

18                 (C) ensure the optimal return on public re-  
19                 sources;

20          (11) although grant programs of the United  
21          States Government must continue to play a central  
22          role in financing the transportation, environment,  
23          and energy infrastructure needs of the United  
24          States, current and foreseeable demands on existing  
25          Federal, State, and local funding for infrastructure

1 expansion clearly exceed the resources to support  
2 these programs by margins wide enough to prompt  
3 serious concerns about the United States ability to  
4 sustain long-term economic development, produc-  
5 tivity, and international competitiveness;

6 (12) the capital markets, including pension  
7 funds, private equity funds, mutual funds, sovereign  
8 wealth funds, and other investors, have a growing  
9 interest in infrastructure investment and represent  
10 hundreds of billions of dollars of potential invest-  
11 ment; and

12 (13) the establishment of a United States Gov-  
13 ernment-owned, independent, professionally managed  
14 institution that could provide credit support to quali-  
15 fied infrastructure projects of regional and national  
16 significance, making transparent merit-based invest-  
17 ment decisions based on the commercial viability of  
18 infrastructure projects, would catalyze the participa-  
19 tion of significant private investment capital.

20 (b) PURPOSE.—The purpose of this part is to facili-  
21 tate investment in, and long-term financing of, economi-  
22 cally viable infrastructure projects of regional or national  
23 significance in a manner that both complements existing  
24 Federal, State, local, and private funding sources for these  
25 projects and introduces a merit-based system for financing

1 such projects, in order to mobilize significant private sec-  
2 tor investment, create jobs, and ensure United States com-  
3 petitiveness through an institution that limits the need for  
4 ongoing Federal funding.

5 **SEC. 763. DEFINITIONS.**

6 For purposes of this part, the following definitions  
7 shall apply:

8 (1) AIFA.—The term “AIFA” means the  
9 American Infrastructure Financing Authority estab-  
10 lished under this part.

11 (2) BLIND TRUST.—The term “blind trust”  
12 means a trust in which the beneficiary has no knowl-  
13 edge of the specific holdings and no rights over how  
14 those holdings are managed by the fiduciary of the  
15 trust prior to the dissolution of the trust.

16 (3) BOARD OF DIRECTORS.—The term “Board  
17 of Directors” means Board of Directors of AIFA.

18 (4) CHAIRPERSON.—The term “Chairperson”  
19 means the Chairperson of the Board of Directors of  
20 AIFA.

21 (5) CHIEF EXECUTIVE OFFICER.—The term  
22 “chief executive officer” means the chief executive  
23 officer of AIFA, appointed under section 767.

1           (6) COST.—The term “cost” has the same  
2 meaning as in section 502 of the Federal Credit Re-  
3 form Act of 1990 (2 U.S.C. 661a).

4           (7) DIRECT LOAN.—The term “direct loan” has  
5 the same meaning as in section 502 of the Federal  
6 Credit Reform Act of 1990 (2 U.S.C. 661a).

7           (8) ELIGIBLE ENTITY.—The term “eligible enti-  
8 ty” means an individual, corporation, partnership  
9 (including a public-private partnership), joint ven-  
10 ture, trust, State, or other non-Federal govern-  
11 mental entity, including a political subdivision or any  
12 other instrumentality of a State, or a revolving fund.

13           (9) INFRASTRUCTURE PROJECT.—

14           (A) IN GENERAL.—The term “eligible in-  
15 frastructure project” means any non-Federal  
16 transportation, water, or energy infrastructure  
17 project, or an aggregation of such infrastruc-  
18 ture projects, as provided in this part.

19           (B) TRANSPORTATION INFRASTRUCTURE  
20 PROJECT.—The term “transportation infra-  
21 structure project” means the construction, al-  
22 teration, or repair, including the facilitation of  
23 intermodal transit, of the following subsectors:

24                   (i) Highway or road.

25                   (ii) Bridge.

- 1 (iii) Mass transit.
- 2 (iv) Inland waterways.
- 3 (v) Commercial ports.
- 4 (vi) Airports.
- 5 (vii) Air traffic control systems.
- 6 (viii) Passenger rail, including high-
- 7 speed rail.
- 8 (ix) Freight rail systems.

9 (C) WATER INFRASTRUCTURE PROJECT.—

10 The term “water infrastructure project” means  
11 the construction, consolidation, alteration, or  
12 repair of the following subsectors:

- 13 (i) Waterwaste treatment facility.
- 14 (ii) Storm water management system.
- 15 (iii) Dam.
- 16 (iv) Solid waste disposal facility.
- 17 (v) Drinking water treatment facility.
- 18 (vi) Levee.
- 19 (vii) Open space management system.

20 (D) ENERGY INFRASTRUCTURE

21 PROJECT.—The term “energy infrastructure  
22 project” means the construction, alteration, or  
23 repair of the following subsectors:

- 24 (i) Pollution reduced energy genera-
- 25 tion.



1 (ii) Transmission and distribution.

2 (iii) Storage.

3 (iv) Energy efficiency enhancements  
4 for buildings, including public and com-  
5 mercial buildings.

6 (E) BOARD AUTHORITY TO MODIFY SUB-  
7 SECTORS.—The Board of Directors may make  
8 modifications, at the discretion of the Board, to  
9 the subsectors described in this paragraph by a  
10 vote of not fewer than 5 of the voting members  
11 of the Board of Directors.

12 (10) INVESTMENT PROSPECTUS.—

13 (A) The term “investment prospectus”  
14 means the processes and publications described  
15 below that will guide the priorities and strategic  
16 focus for the Bank’s investments. The invest-  
17 ment prospectus shall follow rulemaking proce-  
18 dures under section 553 of title 5, United  
19 States Code.

20 (B) The Bank shall publish a detailed de-  
21 scription of its strategy in an Investment Pro-  
22 spectus within one year of the enactment of this  
23 subchapter. The Investment Prospectus shall—

24 (i) specify what the Bank shall con-  
25 sider significant to the economic competi-

1           tiveness of the United States or a region  
2           thereof in a manner consistent with the  
3           primary objective;

4           (ii) specify the priorities and strategic  
5           focus of the Bank in forwarding its stra-  
6           tegic objectives and carrying out the Bank  
7           strategy;

8           (iii) specify the priorities and strategic  
9           focus of the Bank in promoting greater ef-  
10          ficiency in the movement of freight;

11          (iv) specify the priorities and strategic  
12          focus of the Bank in promoting the use of  
13          innovation and best practices in the plan-  
14          ning, design, development and delivery of  
15          projects;

16          (v) describe in detail the framework  
17          and methodology for calculating applica-  
18          tion qualification scores and associated  
19          ranges as specified in this subchapter,  
20          along with the data to be requested from  
21          applicants and the mechanics of calcula-  
22          tions to be applied to that data to deter-  
23          mine qualification scores and ranges;

24          (vi) describe how selection criteria will  
25          be applied by the Chief Executive Officer

1 in determining the competitiveness of an  
2 application and its qualification score and  
3 range relative to other current applications  
4 and previously funded applications; and

5 (vii) describe how the qualification  
6 score and range methodology and project  
7 selection framework are consistent with  
8 maximizing the Bank goals in both urban  
9 and rural areas.

10 (C) The Investment Prospectus and any  
11 subsequent updates thereto shall be approved  
12 by a majority vote of the Board of Directors  
13 prior to publication.

14 (D) The Bank shall update the Investment  
15 Prospectus on every biennial anniversary of its  
16 original publication.

17 (11) INVESTMENT-GRADE RATING.—The term  
18 “investment-grade rating” means a rating of BBB  
19 minus, Baa3, or higher assigned to an infrastructure  
20 project by a ratings agency.

21 (12) LOAN GUARANTEE.—The term “loan guar-  
22 antee” has the same meaning as in section 502 of  
23 the Federal Credit Reform Act of 1990 (2 U.S.C.  
24 661a).

1           (13) PUBLIC-PRIVATE PARTNERSHIP.—The  
2 term “public-private partnership” means any eligible  
3 entity—

4           (A)(i) which is undertaking the develop-  
5 ment of all or part of an infrastructure project  
6 that will have a public benefit, pursuant to re-  
7 quirements established in one or more contracts  
8 between the entity and a State or an instru-  
9 mentality of a State; or

10           (ii) the activities of which, with respect to  
11 such an infrastructure project, are subject to  
12 regulation by a State or any instrumentality of  
13 a State;

14           (B) which owns, leases, or operates or will  
15 own, lease, or operate, the project in whole or  
16 in part; and

17           (C) the participants in which include not  
18 fewer than 1 nongovernmental entity with sig-  
19 nificant investment and some control over the  
20 project or project vehicle.

21           (14) RURAL INFRASTRUCTURE PROJECT.—The  
22 term “rural infrastructure project” means an infra-  
23 structure project in a rural area, as that term is de-  
24 fined in section 343(a)(13)(A) of the Consolidated

1 Farm and Rural Development Act (7 U.S.C.  
2 1991(a)(13)(A)).

3 (15) SECRETARY.—Unless the context other-  
4 wise requires, the term “Secretary” means the Sec-  
5 retary of the Treasury or the designee thereof.

6 (16) SENIOR MANAGEMENT.—The term “senior  
7 management” means the chief financial officer, chief  
8 risk officer, chief compliance officer, general counsel,  
9 chief lending officer, and chief operations officer of  
10 AIFA established under section 769, and such other  
11 officers as the Board of Directors may, by majority  
12 vote, add to senior management.

13 (17) STATE.—The term “State” includes the  
14 District of Columbia, Puerto Rico, Guam, American  
15 Samoa, the Virgin Islands, the Commonwealth of  
16 Northern Mariana Islands, and any other territory  
17 of the United States.

18 **Subpart B—American Infrastructure Financing**

19 **Authority**

20 **SEC. 765. ESTABLISHMENT AND GENERAL AUTHORITY OF**

21 **AIFA.**

22 (a) ESTABLISHMENT OF AIFA.—The American In-  
23 frastructure Financing Authority is established as a whol-  
24 ly owned Government corporation.

1 (b) GENERAL AUTHORITY OF AIFA.—AIFA shall  
2 provide direct loans and loan guarantees to facilitate infra-  
3 structure projects that are both economically viable and  
4 of regional or national significance, and shall have such  
5 other authority, as provided in this part.

6 (c) INCORPORATION.—

7 (1) IN GENERAL.—The Board of Directors first  
8 appointed shall be deemed the incorporator of AIFA,  
9 and the incorporation shall be held to have been ef-  
10 fected from the date of the first meeting of the  
11 Board of Directors.

12 (2) CORPORATE OFFICE.—AIFA shall—

13 (A) maintain an office in Washington, DC;

14 and

15 (B) for purposes of venue in civil actions,  
16 be considered to be a resident of Washington,  
17 DC.

18 (d) RESPONSIBILITY OF THE SECRETARY.—The Sec-  
19 retary shall take such action as may be necessary to assist  
20 in implementing AIFA, and in carrying out the purpose  
21 of this part.

22 (e) RULE OF CONSTRUCTION.—Chapter 91 of title  
23 31, United States Code, does not apply to AIFA, unless  
24 otherwise specifically provided in this part.

1 **SEC. 766. VOTING MEMBERS OF THE BOARD OF DIREC-**  
2 **TORS.**

3 (a) VOTING MEMBERSHIP OF THE BOARD OF DIREC-  
4 TORS.—

5 (1) IN GENERAL.—AIFA shall have a Board of  
6 Directors consisting of 7 voting members appointed  
7 by the President, by and with the advice and consent  
8 of the Senate, not more than 4 of whom shall be  
9 from the same political party.

10 (2) CHAIRPERSON.—One of the voting members  
11 of the Board of Directors shall be designated by the  
12 President to serve as Chairperson thereof.

13 (3) CONGRESSIONAL RECOMMENDATIONS.—Not  
14 later than 30 days after the date of enactment of  
15 this Act, the majority leader of the Senate, the mi-  
16 nority leader of the Senate, the Speaker of the  
17 House of Representatives, and the minority leader of  
18 the House of Representatives shall each submit a  
19 recommendation to the President for appointment of  
20 a member of the Board of Directors, after consulta-  
21 tion with the appropriate committees of Congress.

22 (b) VOTING RIGHTS.—Each voting member of the  
23 Board of Directors shall have an equal vote in all decisions  
24 of the Board of Directors.

25 (c) QUALIFICATIONS OF VOTING MEMBERS.—Each  
26 voting member of the Board of Directors shall—

- 1 (1) be a citizen of the United States; and
- 2 (2) have significant demonstrated expertise in—
- 3 (A) the management and administration of
- 4 a financial institution relevant to the operation
- 5 of AIFA; or a public financial agency or author-
- 6 ity;
- 7 (B) the financing, development, or oper-
- 8 ation of infrastructure projects; or
- 9 (C) analyzing the economic benefits of in-
- 10 frastructure investment.

11 (d) TERMS.—

12 (1) IN GENERAL.—Except as otherwise pro-

13 vided in this part, each voting member of the Board

14 of Directors shall be appointed for a term of 4 years.

15 (2) INITIAL STAGGERED TERMS.—Of the voting

16 members first appointed to the Board of Directors—

17 (A) the initial Chairperson and 3 of the

18 other voting members shall each be appointed

19 for a term of 4 years; and

20 (B) the remaining 3 voting members shall

21 each be appointed for a term of 2 years.

22 (3) DATE OF INITIAL NOMINATIONS.—The ini-

23 tial nominations for the appointment of all voting

24 members of the Board of Directors shall be made



1 not later than 60 days after the date of enactment  
2 of this Act.

3 (4) BEGINNING OF TERM.—The term of each of  
4 the initial voting members appointed under this sec-  
5 tion shall commence immediately upon the date of  
6 appointment, except that, for purposes of calculating  
7 the term limits specified in this subsection, the ini-  
8 tial terms shall each be construed as beginning on  
9 January 22 of the year following the date of the ini-  
10 tial appointment.

11 (5) VACANCIES.—A vacancy in the position of  
12 a voting member of the Board of Directors shall be  
13 filled by the President, and a member appointed to  
14 fill a vacancy on the Board of Directors occurring  
15 before the expiration of the term for which the pred-  
16 ecessor was appointed shall be appointed only for  
17 the remainder of that term.

18 (e) MEETINGS.—

19 (1) OPEN TO THE PUBLIC; NOTICE.—Except as  
20 provided in paragraph (3), all meetings of the Board  
21 of Directors shall be—

22 (A) open to the public; and

23 (B) preceded by reasonable public notice.

24 (2) FREQUENCY.—The Board of Directors shall  
25 meet not later than 60 days after the date on which

1 all members of the Board of Directors are first ap-  
2 pointed, at least quarterly thereafter, and otherwise  
3 at the call of either the Chairperson or 5 voting  
4 members of the Board of Directors.

5 (3) EXCEPTION FOR CLOSED MEETINGS.—The  
6 voting members of the Board of Directors may, by  
7 majority vote, close a meeting to the public if, dur-  
8 ing the meeting to be closed, there is likely to be dis-  
9 closed proprietary or sensitive information regarding  
10 an infrastructure project under consideration for as-  
11 sistance under this part. The Board of Directors  
12 shall prepare minutes of any meeting that is closed  
13 to the public, and shall make such minutes available  
14 as soon as practicable, not later than 1 year after  
15 the date of the closed meeting, with any necessary  
16 redactions to protect any proprietary or sensitive in-  
17 formation.

18 (4) QUORUM.—For purposes of meetings of the  
19 Board of Directors, 5 voting members of the Board  
20 of Directors shall constitute a quorum.

21 (f) COMPENSATION OF MEMBERS.—Each voting  
22 member of the Board of Directors shall be compensated  
23 at a rate equal to the daily equivalent of the annual rate  
24 of basic pay prescribed for level III of the Executive  
25 Schedule under section 5314 of title 5, United States

1 Code, for each day (including travel time) during which  
2 the member is engaged in the performance of the duties  
3 of the Board of Directors.

4 (g) CONFLICTS OF INTEREST.—A voting member of  
5 the Board of Directors may not participate in any review  
6 or decision affecting an infrastructure project under con-  
7 sideration for assistance under this part, if the member  
8 has or is affiliated with an entity who has a financial inter-  
9 est in such project.

10 **SEC. 767. CHIEF EXECUTIVE OFFICER OF AIFA.**

11 (a) IN GENERAL.—The chief executive officer of  
12 AIFA shall be a nonvoting member of the Board of Direc-  
13 tors, who shall be responsible for all activities of AIFA,  
14 and shall support the Board of Directors as set forth in  
15 this part and as the Board of Directors deems necessary  
16 or appropriate.

17 (b) APPOINTMENT AND TENURE OF THE CHIEF EX-  
18 ECUTIVE OFFICER.—

19 (1) IN GENERAL.—The President shall appoint  
20 the chief executive officer, by and with the advice  
21 and consent of the Senate.

22 (2) TERM.—The chief executive officer shall be  
23 appointed for a term of 6 years.

24 (3) VACANCIES.—Any vacancy in the office of  
25 the chief executive officer shall be filled by the Presi-

1 dent, and the person appointed to fill a vacancy in  
2 that position occurring before the expiration of the  
3 term for which the predecessor was appointed shall  
4 be appointed only for the remainder of that term.

5 (c) QUALIFICATIONS.—The chief executive officer—

6 (1) shall have significant expertise in manage-  
7 ment and administration of a financial institution,  
8 or significant expertise in the financing and develop-  
9 ment of infrastructure projects, or significant exper-  
10 tise in analyzing the economic benefits of infrastruc-  
11 ture investment; and

12 (2) may not—

13 (A) hold any other public office;

14 (B) have any financial interest in an infra-  
15 structure project then being considered by the  
16 Board of Directors, unless that interest is  
17 placed in a blind trust; or

18 (C) have any financial interest in an in-  
19 vestment institution or its affiliates or any  
20 other entity seeking or likely to seek financial  
21 assistance for any infrastructure project from  
22 AIFA, unless any such interest is placed in a  
23 blind trust for the tenure of the service of the  
24 chief executive officer plus 2 additional years.

1 (d) RESPONSIBILITIES.—The chief executive officer  
2 shall have such executive functions, powers, and duties as  
3 may be prescribed by this part, the bylaws of AIFA, or  
4 the Board of Directors, including—

5 (1) responsibility for the development and im-  
6 plementation of the strategy of AIFA, including—

7 (A) the development and submission to the  
8 Board of Directors of the investment pro-  
9 spectus, the annual business plans and budget;

10 (B) the development and submission to the  
11 Board of Directors of a long-term strategic  
12 plan; and

13 (C) the development, revision, and submis-  
14 sion to the Board of Directors of internal poli-  
15 cies; and

16 (2) responsibility for the management and over-  
17 sight of the daily activities, decisions, operations,  
18 and personnel of AIFA, including—

19 (A) the appointment of senior manage-  
20 ment, subject to approval by the voting mem-  
21 bers of the Board of Directors, and the hiring  
22 and termination of all other AIFA personnel;

23 (B) requesting the detail, on a reimburs-  
24 able basis, of personnel from any Federal agen-  
25 cy having specific expertise not available from

1 within AIFA, following which request the head  
2 of the Federal agency may detail, on a reim-  
3 bursable basis, any personnel of such agency  
4 reasonably requested by the chief executive offi-  
5 cer;

6 (C) assessing and recommending in the  
7 first instance, for ultimate approval or dis-  
8 approval by the Board of Directors, compensa-  
9 tion and adjustments to compensation of senior  
10 management and other personnel of AIFA as  
11 may be necessary for carrying out the functions  
12 of AIFA;

13 (D) ensuring, in conjunction with the gen-  
14 eral counsel of AIFA, that all activities of  
15 AIFA are carried out in compliance with appli-  
16 cable law;

17 (E) overseeing the involvement of AIFA in  
18 all projects, including—

19 (i) developing eligible projects for  
20 AIFA financial assistance;

21 (ii) determining the terms and condi-  
22 tions of all financial assistance packages;

23 (iii) monitoring all infrastructure  
24 projects assisted by AIFA, including re-  
25 sponsibility for ensuring that the proceeds

1 of any loan made, guaranteed, or partici-  
2 pated in are used only for the purposes for  
3 which the loan or guarantee was made;

4 (iv) preparing and submitting for ap-  
5 proval by the Board of Directors the docu-  
6 ments required under paragraph (1); and

7 (v) ensuring the implementation of de-  
8 cisions of the Board of Directors; and

9 (F) such other activities as may be nec-  
10 essary or appropriate in carrying out this part.

11 (e) COMPENSATION.—

12 (1) IN GENERAL.—Any compensation assess-  
13 ment or recommendation by the chief executive offi-  
14 cer under this section shall be without regard to the  
15 provisions of chapter 51 or subchapter III of chapter  
16 53 of title 5, United States Code.

17 (2) CONSIDERATIONS.—The compensation as-  
18 sessment or recommendation required under this  
19 subsection shall take into account merit principles,  
20 where applicable, as well as the education, experi-  
21 ence, level of responsibility, geographic differences,  
22 and retention and recruitment needs in determining  
23 compensation of personnel.

1 **SEC. 768. POWERS AND DUTIES OF THE BOARD OF DIREC-**  
2 **TORS.**

3 The Board of Directors shall—

4 (1) as soon as is practicable after the date on  
5 which all members are appointed, approve or dis-  
6 approve senior management appointed by the chief  
7 executive officer;

8 (2) not later than 180 days after the date on  
9 which all members are appointed—

10 (A) develop and approve the bylaws of  
11 AIFA, including bylaws for the regulation of  
12 the affairs and conduct of the business of  
13 AIFA, consistent with the purpose, goals, objec-  
14 tives, and policies set forth in this part;

15 (B) establish subcommittees, including an  
16 audit committee that is composed solely of  
17 members of the Board of Directors who are  
18 independent of the senior management of  
19 AIFA;

20 (C) develop and approve, in consultation  
21 with senior management, a conflict-of-interest  
22 policy for the Board of Directors and for senior  
23 management;

24 (D) approve or disapprove internal policies  
25 that the chief executive officer shall submit to  
26 the Board of Directors, including—



1 (i) policies regarding the loan applica-  
2 tion and approval process, including—

3 (I) disclosure and application  
4 procedures to be followed by entities  
5 in the course of nominating infra-  
6 structure projects for assistance under  
7 this part;

8 (II) guidelines for the selection  
9 and approval of projects;

10 (III) specific criteria for deter-  
11 mining eligibility for project selection,  
12 consistent with title II; and

13 (IV) standardized terms and con-  
14 ditions, fee schedules, or legal require-  
15 ments of a contract or program, so as  
16 to carry out this part; and

17 (ii) operational guidelines; and

18 (E) approve or disapprove a multi-year or  
19 1-year business plan and budget for AIFA;

20 (3) ensure that AIFA is at all times operated  
21 in a manner that is consistent with this part, by—

22 (A) monitoring and assessing the effective-  
23 ness of AIFA in achieving its strategic goals;

24 (B) periodically reviewing internal policies;

1 (C) reviewing and approving annual busi-  
2 ness plans, annual budgets, and long-term  
3 strategies submitted by the chief executive offi-  
4 cer;

5 (D) reviewing and approving annual re-  
6 ports submitted by the chief executive officer;

7 (E) engaging one or more external audi-  
8 tors, as set forth in this part; and

9 (F) reviewing and approving all changes to  
10 the organization of senior management;

11 (4) appoint and fix, by a vote of 5 of the 7 vot-  
12 ing members of the Board of Directors, and without  
13 regard to the provisions of chapter 51 or subchapter  
14 III of chapter 53 of title 5, United States Code, the  
15 compensation and adjustments to compensation of  
16 all AIFA personnel, provided that in appointing and  
17 fixing any compensation or adjustments to com-  
18 pensation under this paragraph, the Board shall—

19 (A) consult with, and seek to maintain  
20 comparability with, other comparable Federal  
21 personnel;

22 (B) consult with the Office of Personnel  
23 Management; and

24 (C) carry out such duties consistent with  
25 merit principles, where applicable, as well as the

1 education, experience, level of responsibility, ge-  
2 ographic differences, and retention and recruit-  
3 ment needs in determining compensation of per-  
4 sonnel;

5 (5) establish such other criteria, requirements,  
6 or procedures as the Board of Directors may con-  
7 sider to be appropriate in carrying out this part;

8 (6) serve as the primary liaison for AIFA in  
9 interactions with Congress, the Executive Branch,  
10 and State and local governments, and to represent  
11 the interests of AIFA in such interactions and oth-  
12 ers;

13 (7) approve by a vote of 5 of the 7 voting mem-  
14 bers of the Board of Directors any changes to the  
15 bylaws or internal policies of AIFA;

16 (8) have the authority and responsibility—

17 (A) to oversee entering into and carry out  
18 such contracts, leases, cooperative agreements,  
19 or other transactions as are necessary to carry  
20 out this part with—

21 (i) any Federal department or agency;

22 (ii) any State, territory, or possession

23 (or any political subdivision thereof, includ-  
24 ing State infrastructure banks) of the

25 United States; and

1                   (iii) any individual, public-private  
2                   partnership, firm, association, or corpora-  
3                   tion;

4                   (B) to approve of the acquisition, lease,  
5                   pledge, exchange, and disposal of real and per-  
6                   sonal property by AIFA and otherwise approve  
7                   the exercise by AIFA of all of the usual inci-  
8                   dents of ownership of property, to the extent  
9                   that the exercise of such powers is appropriate  
10                  to and consistent with the purposes of AIFA;

11                  (C) to determine the character of, and the  
12                  necessity for, the obligations and expenditures  
13                  of AIFA, and the manner in which the obliga-  
14                  tions and expenditures will be incurred, allowed,  
15                  and paid, subject to this part and other Federal  
16                  law specifically applicable to wholly owned Fed-  
17                  eral corporations;

18                  (D) to execute, in accordance with applica-  
19                  ble bylaws and regulations, appropriate instru-  
20                  ments;

21                  (E) to approve other forms of credit en-  
22                  hancement that AIFA may provide to eligible  
23                  projects, as long as the forms of credit enhance-  
24                  ments are consistent with the purposes of this  
25                  part and terms set forth in title II;

1 (F) to exercise all other lawful powers  
2 which are necessary or appropriate to carry out,  
3 and are consistent with, the purposes of AIFA;

4 (G) to sue or be sued in the corporate ca-  
5 pacity of AIFA in any court of competent juris-  
6 diction;

7 (H) to indemnify the members of the  
8 Board of Directors and officers of AIFA for  
9 any liabilities arising out of the actions of the  
10 members and officers in such capacity, in ac-  
11 cordance with, and subject to the limitations  
12 contained in this part;

13 (I) to review all financial assistance pack-  
14 ages to all eligible infrastructure projects, as  
15 submitted by the chief executive officer and to  
16 approve, postpone, or deny the same by major-  
17 ity vote;

18 (J) to review all restructuring proposals  
19 submitted by the chief executive officer, includ-  
20 ing assignation, pledging, or disposal of the in-  
21 terest of AIFA in a project, including payment  
22 or income from any interest owned or held by  
23 AIFA, and to approve, postpone, or deny the  
24 same by majority vote; and

1 (K) to enter into binding commitments, as  
2 specified in approved financial assistance pack-  
3 ages;

4 (9) delegate to the chief executive officer those  
5 duties that the Board of Directors deems appro-  
6 priate, to better carry out the powers and purposes  
7 of the Board of Directors under this section; and

8 (10) to approve a maximum aggregate amount  
9 of outstanding obligations of AIFA at any given  
10 time, taking into consideration funding, and the size  
11 of AIFA's addressable market for infrastructure  
12 projects.

13 **SEC. 769. SENIOR MANAGEMENT.**

14 (a) IN GENERAL.—Senior management shall support  
15 the chief executive officer in the discharge of the respon-  
16 sibilities of the chief executive officer.

17 (b) APPOINTMENT OF SENIOR MANAGEMENT.—The  
18 chief executive officer shall appoint such senior managers  
19 as are necessary to carry out the purpose of AIFA, as  
20 approved by a majority vote of the voting members of the  
21 Board of Directors.

22 (c) TERM.—Each member of senior management  
23 shall serve at the pleasure of the chief executive officer  
24 and the Board of Directors.

1 (d) REMOVAL OF SENIOR MANAGEMENT.—Any mem-  
2 ber of senior management may be removed, either by a  
3 majority of the voting members of the Board of Directors  
4 upon request by the chief executive officer, or otherwise  
5 by vote of not fewer than 5 voting members of the Board  
6 of Directors.

7 (e) SENIOR MANAGEMENT.—

8 (1) IN GENERAL.—Each member of senior  
9 management shall report directly to the chief execu-  
10 tive officer, other than the Chief Risk Officer, who  
11 shall report directly to the Board of Directors.

12 (2) DUTIES AND RESPONSIBILITIES.—

13 (A) CHIEF FINANCIAL OFFICER.—The  
14 Chief Financial Officer shall be responsible for  
15 all financial functions of AIFA, provided that,  
16 at the discretion of the Board of Directors, spe-  
17 cific functions of the Chief Financial Officer  
18 may be delegated externally.

19 (B) CHIEF RISK OFFICER.—The Chief  
20 Risk Officer shall be responsible for all func-  
21 tions of AIFA relating to—

22 (i) the creation of financial, credit,  
23 and operational risk management guide-  
24 lines and policies;

1 (ii) credit analysis for infrastructure  
2 projects;

3 (iii) the creation of conforming stand-  
4 ards for infrastructure finance agreements;

5 (iv) the monitoring of the financial,  
6 credit, and operational exposure of AIFA;  
7 and

8 (v) risk management and mitigation  
9 actions, including by reporting such ac-  
10 tions, or recommendations of such actions  
11 to be taken, directly to the Board of Direc-  
12 tors.

13 (C) CHIEF COMPLIANCE OFFICER.—The  
14 Chief Compliance Officer shall be responsible  
15 for all functions of AIFA relating to internal  
16 audits, accounting safeguards, and the enforce-  
17 ment of such safeguards and other applicable  
18 requirements.

19 (D) GENERAL COUNSEL.—The General  
20 Counsel shall be responsible for all functions of  
21 AIFA relating to legal matters and, in consulta-  
22 tion with the chief executive officer, shall be re-  
23 sponsible for ensuring that AIFA complies with  
24 all applicable law.



1           (E) CHIEF OPERATIONS OFFICER.—The  
2 Chief Operations Officer shall be responsible for  
3 all operational functions of AIFA, including  
4 those relating to the continuing operations and  
5 performance of all infrastructure projects in  
6 which AIFA retains an interest and for all  
7 AIFA functions related to human resources.

8           (F) CHIEF LENDING OFFICER.—The Chief  
9 Lending Officer shall be responsible for—

10           (i) all functions of AIFA relating to  
11 the development of project pipeline, finan-  
12 cial structuring of projects, selection of in-  
13 frastructure projects to be reviewed by the  
14 Board of Directors, preparation of infra-  
15 structure projects to be presented to the  
16 Board of Directors, and set aside for rural  
17 infrastructure projects;

18           (ii) the creation and management of—

19           (I) a Center for Excellence to  
20 provide technical assistance to public  
21 sector borrowers in the development  
22 and financing of infrastructure  
23 projects; and

24           (II) an Office of Rural Assistance  
25 to provide technical assistance in the

1                    development and financing of rural in-  
2                    frastructure projects; and  
3                    (iii) the establishment of guidelines to  
4                    ensure diversification of lending activities  
5                    by region, infrastructure project type, and  
6                    project size.

7            (f) CHANGES TO SENIOR MANAGEMENT.—The Board  
8 of Directors, in consultation with the chief executive offi-  
9 cer, may alter the structure of the senior management of  
10 AIFA at any time to better accomplish the goals, objec-  
11 tives, and purposes of AIFA, provided that the functions  
12 of the Chief Financial Officer set forth in subsection (e)  
13 remain separate from the functions of the Chief Risk Offi-  
14 cer set forth in subsection (e).

15            (g) CONFLICTS OF INTEREST.—No individual ap-  
16 pointed to senior management may—

17                    (1) hold any other public office;

18                    (2) have any financial interest in an infrastruc-  
19                    ture project then being considered by the Board of  
20                    Directors, unless that interest is placed in a blind  
21                    trust; or

22                    (3) have any financial interest in an investment  
23                    institution or its affiliates, AIFA or its affiliates, or  
24                    other entity then seeking or likely to seek financial  
25                    assistance for any infrastructure project from AIFA,

1 unless any such interest is placed in a blind trust  
2 during the term of service of that individual in a  
3 senior management position, and for a period of 2  
4 years thereafter.

5 **SEC. 770. SPECIAL INSPECTOR GENERAL FOR AIFA.**

6 (a) IN GENERAL.—During the first 5 operating years  
7 of AIFA, the Office of the Inspector General of the De-  
8 partment of the Treasury shall have responsibility for  
9 AIFA.

10 (b) OFFICE OF THE SPECIAL INSPECTOR GEN-  
11 ERAL.—Effective 5 years after the date of enactment of  
12 the commencement of the operations of AIFA, there is es-  
13 tablished the Office of the Special Inspector General for  
14 AIFA.

15 (c) APPOINTMENT OF INSPECTOR GENERAL; RE-  
16 MOVAL.—

17 (1) HEAD OF OFFICE.—The head of the Office  
18 of the Special Inspector General for AIFA shall be  
19 the Special Inspector General for AIFA (in this part  
20 referred to as the “Special Inspector General”), who  
21 shall be appointed by the President, by and with the  
22 advice and consent of the Senate.

23 (2) BASIS OF APPOINTMENT.—The appoint-  
24 ment of the Special Inspector General shall be made  
25 on the basis of integrity and demonstrated ability in

1 accounting, auditing, financial analysis, law, man-  
2 agement analysis, public administration, or inves-  
3 tigations.

4 (3) TIMING OF NOMINATION.—The nomination  
5 of an individual as Special Inspector General shall  
6 be made as soon as is practicable after the effective  
7 date under subsection (b).

8 (4) REMOVAL.—The Special Inspector General  
9 shall be removable from office in accordance with  
10 the provisions of section 3(b) of the Inspector Gen-  
11 eral Act of 1978 (5 U.S.C. App.).

12 (5) RULE OF CONSTRUCTION.—For purposes of  
13 section 7324 of title 5, United States Code, the Spe-  
14 cial Inspector General shall not be considered an em-  
15 ployee who determines policies to be pursued by the  
16 United States in the nationwide administration of  
17 Federal law.

18 (6) RATE OF PAY.—The annual rate of basic  
19 pay of the Special Inspector General shall be the an-  
20 nual rate of basic pay for an Inspector General  
21 under section 3(e) of the Inspector General Act of  
22 1978 (5 U.S.C. App.).

23 (d) DUTIES.—

24 (1) IN GENERAL.—It shall be the duty of the  
25 Special Inspector General to conduct, supervise, and

1 coordinate audits and investigations of the business  
2 activities of AIFA.

3 (2) OTHER SYSTEMS, PROCEDURES, AND CON-  
4 TROLS.—The Special Inspector General shall estab-  
5 lish, maintain, and oversee such systems, procedures,  
6 and controls as the Special Inspector General con-  
7 siders appropriate to discharge the duty under para-  
8 graph (1).

9 (3) ADDITIONAL DUTIES.—In addition to the  
10 duties specified in paragraphs (1) and (2), the In-  
11 spector General shall also have the duties and re-  
12 sponsibilities of inspectors general under the Inspec-  
13 tor General Act of 1978.

14 (e) POWERS AND AUTHORITIES.—

15 (1) IN GENERAL.—In carrying out the duties  
16 specified in subsection (c), the Special Inspector  
17 General shall have the authorities provided in section  
18 6 of the Inspector General Act of 1978.

19 (2) ADDITIONAL AUTHORITY.—The Special In-  
20 spector General shall carry out the duties specified  
21 in subsection (c)(1) in accordance with section  
22 4(b)(1) of the Inspector General Act of 1978.

23 (f) PERSONNEL, FACILITIES, AND OTHER RE-  
24 SOURCES.—

25 (1) ADDITIONAL OFFICERS.—

1           (A) The Special Inspector General may se-  
2           lect, appoint, and employ such officers and em-  
3           ployees as may be necessary for carrying out  
4           the duties of the Special Inspector General,  
5           subject to the provisions of title 5, United  
6           States Code, governing appointments in the  
7           competitive service, and the provisions of chap-  
8           ter 51 and subchapter III of chapter 53 of such  
9           title, relating to classification and General  
10          Schedule pay rates.

11          (B) The Special Inspector General may ex-  
12          ercise the authorities of subsections (b) through  
13          (i) of section 3161 of title 5, United States  
14          Code (without regard to subsection (a) of that  
15          section).

16          (2) RETENTION OF SERVICES.—The Special In-  
17          spector General may obtain services as authorized by  
18          section 3109 of title 5, United States Code, at daily  
19          rates not to exceed the equivalent rate prescribed for  
20          grade GS–15 of the General Schedule by section  
21          5332 of such title.

22          (3) ABILITY TO CONTRACT FOR AUDITS, STUD-  
23          IES, AND OTHER SERVICES.—The Special Inspector  
24          General may enter into contracts and other arrange-  
25          ments for audits, studies, analyses, and other serv-

1       ices with public agencies and with private persons,  
2       and make such payments as may be necessary to  
3       carry out the duties of the Special Inspector Gen-  
4       eral.

5           (4) REQUEST FOR INFORMATION.—

6           (A) IN GENERAL.—Upon request of the  
7       Special Inspector General for information or as-  
8       sistance from any department, agency, or other  
9       entity of the Federal Government, the head of  
10      such entity shall, insofar as is practicable and  
11      not in contravention of any existing law, furnish  
12      such information or assistance to the Special  
13      Inspector General, or an authorized designee.

14          (B) REFUSAL TO COMPLY.—Whenever in-  
15      formation or assistance requested by the Spe-  
16      cial Inspector General is, in the judgment of the  
17      Special Inspector General, unreasonably refused  
18      or not provided, the Special Inspector General  
19      shall report the circumstances to the Secretary  
20      of the Treasury, without delay.

21       (g) REPORTS.—

22          (1) ANNUAL REPORT.—Not later than 1 year  
23      after the confirmation of the Special Inspector Gen-  
24      eral, and every calendar year thereafter, the Special  
25      Inspector General shall submit to the President a re-

1 port summarizing the activities of the Special In-  
2 spector General during the previous 1-year period  
3 ending on the date of such report.

4 (2) PUBLIC DISCLOSURES.—Nothing in this  
5 subsection shall be construed to authorize the public  
6 disclosure of information that is—

7 (A) specifically prohibited from disclosure  
8 by any other provision of law;

9 (B) specifically required by Executive order  
10 to be protected from disclosure in the interest  
11 of national defense or national security or in  
12 the conduct of foreign affairs; or

13 (C) a part of an ongoing criminal inves-  
14 tigation.

15 **SEC. 771. OTHER PERSONNEL.**

16 Except as otherwise provided in the bylaws of AIFA,  
17 the chief executive officer, in consultation with the Board  
18 of Directors, shall appoint, remove, and define the duties  
19 of such qualified personnel as are necessary to carry out  
20 the powers, duties, and purpose of AIFA, other than sen-  
21 ior management, who shall be appointed in accordance  
22 with section 769.

23 **SEC. 772. COMPLIANCE.**

24 The provision of assistance by the Board of Directors  
25 pursuant to this part shall not be construed as super-



1 seding any provision of State law or regulation otherwise  
2 applicable to an infrastructure project.

3 **Subpart C—Terms and Limitations on Direct Loans**  
4 **and Loan Guarantees**

5 **SEC. 773. ELIGIBILITY CRITERIA FOR ASSISTANCE FROM**  
6 **AIFA AND TERMS AND LIMITATIONS OF**  
7 **LOANS.**

8 (a) IN GENERAL.—Any project whose use or purpose  
9 is private and for which no public benefit is created shall  
10 not be eligible for financial assistance from AIFA under  
11 this part. Financial assistance under this part shall only  
12 be made available if the applicant for such assistance has  
13 demonstrated to the satisfaction of the Board of Directors  
14 that the infrastructure project for which such assistance  
15 is being sought—

16 (1) is not for the refinancing of an existing in-  
17 frastructure project; and

18 (2) meets—

19 (A) any pertinent requirements set forth in  
20 this part;

21 (B) any criteria established by the Board  
22 of Directors or chief executive officer in accord-  
23 ance with this part; and

1 (C) the definition of a transportation infra-  
2 structure project, water infrastructure project,  
3 or energy infrastructure project.

4 (b) CONSIDERATIONS.—The criteria established by  
5 the Board of Directors pursuant to this part shall provide  
6 adequate consideration of—

7 (1) the economic, financial, technical, environ-  
8 mental, and public benefits and costs of each infra-  
9 structure project under consideration for financial  
10 assistance under this part, prioritizing infrastructure  
11 projects that—

12 (A) contribute to regional or national eco-  
13 nomic growth;

14 (B) offer value for money to taxpayers;

15 (C) demonstrate a clear and significant  
16 public benefit;

17 (D) lead to job creation; and

18 (E) mitigate environmental concerns;

19 (2) the means by which development of the in-  
20 frastructure project under consideration is being fi-  
21 nanced, including—

22 (A) the terms, conditions, and structure of  
23 the proposed financing;

1           (B) the credit worthiness and standing of  
2           the project sponsors, providers of equity, and  
3           cofinanciers;

4           (C) the financial assumptions and projec-  
5           tions on which the infrastructure project is  
6           based; and

7           (D) whether there is sufficient State or  
8           municipal political support for the successful  
9           completion of the infrastructure project;

10          (3) the likelihood that the provision of assist-  
11          ance by AIFA will cause such development to pro-  
12          ceed more promptly and with lower costs than would  
13          be the case without such assistance;

14          (4) the extent to which the provision of assist-  
15          ance by AIFA maximizes the level of private invest-  
16          ment in the infrastructure project or supports a  
17          public-private partnership, while providing a signifi-  
18          cant public benefit;

19          (5) the extent to which the provision of assist-  
20          ance by AIFA can mobilize the participation of other  
21          financing partners in the infrastructure project;

22          (6) the technical and operational viability of the  
23          infrastructure project;

24          (7) the proportion of financial assistance from  
25          AIFA;

1           (8) the geographic location of the project in an  
2 effort to have geographic diversity of projects funded  
3 by AIFA;

4           (9) the size of the project and its impact on the  
5 resources of AIFA;

6           (10) the infrastructure sector of the project, in  
7 an effort to have projects from more than one sector  
8 funded by AIFA; and

9           (11) encourages use of innovative procurement,  
10 asset management, or financing to minimize the all-  
11 in-life-cycle cost, and improve the cost-effectiveness  
12 of a project.

13 (c) APPLICATION.—

14           (1) IN GENERAL.—Any eligible entity seeking  
15 assistance from AIFA under this part for an eligible  
16 infrastructure project shall submit an application to  
17 AIFA at such time, in such manner, and containing  
18 such information as the Board of Directors or the  
19 chief executive officer may require.

20           (2) REVIEW OF APPLICATIONS.—AIFA shall re-  
21 view applications for assistance under this part on  
22 an ongoing basis. The chief executive officer, work-  
23 ing with the senior management, shall prepare eligi-  
24 ble infrastructure projects for review and approval  
25 by the Board of Directors.

1           (3) DEDICATED REVENUE SOURCES.—The Fed-  
2           eral credit instrument shall be repayable, in whole or  
3           in part, from tolls, user fees, or other dedicated rev-  
4           enue sources that also secure the infrastructure  
5           project obligations.

6           (d) ELIGIBLE INFRASTRUCTURE PROJECT COSTS.—

7           (1) IN GENERAL.—Except as provided in para-  
8           graph (2), to be eligible for assistance under this  
9           part, an infrastructure project shall have project  
10          costs that are reasonably anticipated to equal or ex-  
11          ceed \$100,000,000.

12          (2) RURAL INFRASTRUCTURE PROJECTS.—To  
13          be eligible for assistance under this part a rural in-  
14          frastructure project shall have project costs that are  
15          reasonably anticipated to equal or exceed  
16          \$25,000,000.

17          (e) LOAN ELIGIBILITY AND MAXIMUM AMOUNTS.—

18          (1) IN GENERAL.—The amount of a direct loan  
19          or loan guarantee under this part shall not exceed  
20          the lesser of 50 percent of the reasonably anticipated  
21          eligible infrastructure project costs or, if the direct  
22          loan or loan guarantee does not receive an invest-  
23          ment grade rating, the amount of the senior project  
24          obligations.

1           (2) MAXIMUM ANNUAL LOAN AND LOAN GUAR-  
2 ANTEE VOLUME.—The aggregate amount of direct  
3 loans and loan guarantees made by AIFA in any  
4 single fiscal year may not exceed—

5           (A) during the first 2 fiscal years of the  
6 operations of AIFA, \$10,000,000,000;

7           (B) during fiscal years 3 through 9 of the  
8 operations of AIFA, \$20,000,000,000; or

9           (C) during any fiscal year thereafter,  
10 \$50,000,000,000.

11       (f) STATE AND LOCAL PERMITS REQUIRED.—The  
12 provision of assistance by the Board of Directors pursuant  
13 to this part shall not be deemed to relieve any recipient  
14 of such assistance, or the related infrastructure project,  
15 of any obligation to obtain required State and local per-  
16 mits and approvals.

17 **SEC. 774. LOAN TERMS AND REPAYMENT.**

18       (a) IN GENERAL.—A direct loan or loan guarantee  
19 under this part with respect to an eligible infrastructure  
20 project shall be on such terms, subject to such conditions,  
21 and contain such covenants, representations, warranties,  
22 and requirements (including requirements for audits) as  
23 the chief executive officer determines appropriate.

24       (b) TERMS.—A direct loan or loan guarantee under  
25 this part—

1 (1) shall—

2 (A) be payable, in whole or in part, from  
3 tolls, user fees, or other dedicated revenue  
4 sources that also secure the senior project obli-  
5 gations (such as availability payments and dedi-  
6 cated State or local revenues); and

7 (B) include a rate covenant, coverage re-  
8 quirement, or similar security feature sup-  
9 porting the project obligations; and

10 (2) may have a lien on revenues described in  
11 paragraph (1), subject to any lien securing project  
12 obligations.

13 (c) **BASE INTEREST RATE.**—The base interest rate  
14 on a direct loan under this part shall be not less than  
15 the yield on United States Treasury obligations of a simi-  
16 lar maturity to the maturity of the direct loan.

17 (d) **RISK ASSESSMENT.**—Before entering into an  
18 agreement for assistance under this part, the chief execu-  
19 tive officer, in consultation with the Director of the Office  
20 of Management and Budget and considering rating agency  
21 preliminary or final rating opinion letters of the project  
22 under this section, shall estimate an appropriate Federal  
23 credit subsidy amount for each direct loan and loan guar-  
24 antee, taking into account such letter, as well as any com-  
25 parable market rates available for such a loan or loan

1 guarantee, should any exist. The final credit subsidy cost  
2 for each loan and loan guarantee shall be determined con-  
3 sistent with the Federal Credit Reform Act, 2 U.S.C. 661a  
4 et seq.

5 (e) CREDIT FEE.—With respect to each agreement  
6 for assistance under this part, the chief executive officer  
7 may charge a credit fee to the recipient of such assistance  
8 to pay for, over time, all or a portion of the Federal credit  
9 subsidy determined under subsection (d), with the remain-  
10 der paid by the account established for AIFA; provided,  
11 that the source of fees paid under this section shall not  
12 be a loan or debt obligation guaranteed by the Federal  
13 Government. In the case of a direct loan, such credit fee  
14 shall be in addition to the base interest rate established  
15 under subsection (c).

16 (f) MATURITY DATE.—The final maturity date of a  
17 direct loan or loan guaranteed by AIFA under this part  
18 shall be not later than 35 years after the date of substan-  
19 tial completion of the infrastructure project, as determined  
20 by the chief executive officer.

21 (g) RATING OPINION LETTER.—

22 (1) IN GENERAL.—The chief executive officer  
23 shall require each applicant for assistance under this  
24 part to provide a rating opinion letter from at least  
25 1 ratings agency, indicating that the senior obliga-



1 tions of the infrastructure project, which may be the  
2 Federal credit instrument, have the potential to  
3 achieve an investment-grade rating.

4 (2) RURAL INFRASTRUCTURE PROJECTS.—With  
5 respect to a rural infrastructure project, a rating  
6 agency opinion letter described in paragraph (1)  
7 shall not be required, except that the loan or loan  
8 guarantee shall receive an internal rating score,  
9 using methods similar to the ratings agencies gen-  
10 erated by AIFA, measuring the proposed direct loan  
11 or loan guarantee against comparable direct loans or  
12 loan guarantees of similar credit quality in a similar  
13 sector.

14 (h) INVESTMENT-GRADE RATING REQUIREMENT.—

15 (1) LOANS AND LOAN GUARANTEES.—The exe-  
16 cution of a direct loan or loan guarantee under this  
17 part shall be contingent on the senior obligations of  
18 the infrastructure project receiving an investment-  
19 grade rating.

20 (2) RATING OF AIFA OVERALL PORTFOLIO.—  
21 The average rating of the overall portfolio of AIFA  
22 shall be not less than investment grade after 5 years  
23 of operation.

24 (i) TERMS AND REPAYMENT OF DIRECT LOANS.—

1           (1) SCHEDULE.—The chief executive officer  
2 shall establish a repayment schedule for each direct  
3 loan under this part, based on the projected cash  
4 flow from infrastructure project revenues and other  
5 repayment sources.

6           (2) COMMENCEMENT.—Scheduled loan repay-  
7 ments of principal or interest on a direct loan under  
8 this part shall commence not later than 5 years after  
9 the date of substantial completion of the infrastruc-  
10 ture project, as determined by the chief executive of-  
11 ficer of AIFA.

12           (3) DEFERRED PAYMENTS OF DIRECT  
13 LOANS.—

14           (A) AUTHORIZATION.—If, at any time  
15 after the date of substantial completion of an  
16 infrastructure project assisted under this part,  
17 the infrastructure project is unable to generate  
18 sufficient revenues to pay the scheduled loan re-  
19 payments of principal and interest on the direct  
20 loan under this part, the chief executive officer  
21 may allow the obligor to add unpaid principal  
22 and interest to the outstanding balance of the  
23 direct loan, if the result would benefit the tax-  
24 payer.

1 (B) INTEREST.—Any payment deferred  
2 under subparagraph (A) shall—

3 (i) continue to accrue interest, in ac-  
4 cordance with the terms of the obligation,  
5 until fully repaid; and

6 (ii) be scheduled to be amortized over  
7 the remaining term of the loan.

8 (C) CRITERIA.—

9 (i) IN GENERAL.—Any payment defer-  
10 ral under subparagraph (A) shall be con-  
11 tingent on the infrastructure project meet-  
12 ing criteria established by the Board of Di-  
13 rectors.

14 (ii) REPAYMENT STANDARDS.—The  
15 criteria established under clause (i) shall  
16 include standards for reasonable assurance  
17 of repayment.

18 (4) PREPAYMENT OF DIRECT LOANS.—

19 (A) USE OF EXCESS REVENUES.—Any ex-  
20 cess revenues that remain after satisfying  
21 scheduled debt service requirements on the in-  
22 frastructure project obligations and direct loan  
23 and all deposit requirements under the terms of  
24 any trust agreement, bond resolution, or similar  
25 agreement securing project obligations under

1           this part may be applied annually to prepay the  
2           direct loan, without penalty.

3           (B) USE OF PROCEEDS OF REFI-  
4           NANCING.—A direct loan under this part may  
5           be prepaid at any time, without penalty, from  
6           the proceeds of refinancing from non-Federal  
7           funding sources.

8           (5) SALE OF DIRECT LOANS.—

9           (A) IN GENERAL.—As soon as is prac-  
10          ticable after substantial completion of an infra-  
11          structure project assisted under this part, and  
12          after notifying the obligor, the chief executive  
13          officer may sell to another entity, or reoffer into  
14          the capital markets, a direct loan for the infra-  
15          structure project, if the chief executive officer  
16          determines that the sale or reoffering can be  
17          made on favorable terms for the taxpayer.

18          (B) CONSENT OF OBLIGOR.—In making a  
19          sale or reoffering under subparagraph (A), the  
20          chief executive officer may not change the origi-  
21          nal terms and conditions of the direct loan,  
22          without the written consent of the obligor.

23          (j) LOAN GUARANTEES.—

24                (1) TERMS.—The terms of a loan guaranteed  
25                by AIFA under this part shall be consistent with the

1 terms set forth in this section for a direct loan, ex-  
2 cept that the rate on the guaranteed loan and any  
3 payment, pre-payment, or refinancing features shall  
4 be negotiated between the obligor and the lender,  
5 with the consent of the chief executive officer.

6 (2) GUARANTEED LENDER.—A guaranteed  
7 lender shall be limited to those lenders meeting the  
8 definition of that term in section 601(a) of title 23,  
9 United States Code.

10 (k) COMPLIANCE WITH FCRA; IN GENERAL.—Di-  
11 rect loans and loan guarantees authorized by this part  
12 shall be subject to the provisions of the Federal Credit  
13 Reform Act of 1990 (2 U.S.C. 661 et seq.), as amended.

14 **SEC. 775. COMPLIANCE AND ENFORCEMENT.**

15 (a) CREDIT AGREEMENT.—Notwithstanding any  
16 other provision of law, each eligible entity that receives  
17 assistance under this part from AIFA shall enter into a  
18 credit agreement that requires such entity to comply with  
19 all applicable policies and procedures of AIFA, in addition  
20 to all other provisions of the loan agreement.

21 (b) AIFA AUTHORITY ON NONCOMPLIANCE.—In any  
22 case in which a recipient of assistance under this part is  
23 materially out of compliance with the loan agreement, or  
24 any applicable policy or procedure of AIFA, the Board of  
25 Directors may take action to cancel unutilized loan

1 amounts, or to accelerate the repayment terms of any out-  
2 standing obligation.

3 (c) Nothing in this part is intended to affect existing  
4 provisions of law applicable to the planning, development,  
5 construction, or operation of projects funded under the  
6 Act.

7 **SEC. 776. AUDITS; REPORTS TO THE PRESIDENT AND CON-**  
8 **GRESS.**

9 (a) ACCOUNTING.—The books of account of AIFA  
10 shall be maintained in accordance with generally accepted  
11 accounting principles, and shall be subject to an annual  
12 audit by independent public accountants of nationally rec-  
13 ognized standing appointed by the Board of Directors.

14 (b) REPORTS.—

15 (1) BOARD OF DIRECTORS.—Not later than 90  
16 days after the last day of each fiscal year, the Board  
17 of Directors shall submit to the President and Con-  
18 gress a complete and detailed report with respect to  
19 the preceding fiscal year, setting forth—

20 (A) a summary of the operations of AIFA,  
21 for such fiscal year;

22 (B) a schedule of the obligations of AIFA  
23 and capital securities outstanding at the end of  
24 such fiscal year, with a statement of the

1 amounts issued and redeemed or paid during  
2 such fiscal year;

3 (C) the status of infrastructure projects re-  
4 ceiving funding or other assistance pursuant to  
5 this part during such fiscal year, including all  
6 nonperforming loans, and including disclosure  
7 of all entities with a development, ownership, or  
8 operational interest in such infrastructure  
9 projects;

10 (D) a description of the successes and  
11 challenges encountered in lending to rural com-  
12 munities, including the role of the Center for  
13 Excellence and the Office of Rural Assistance  
14 established under this part; and

15 (E) an assessment of the risks of the port-  
16 folio of AIFA, prepared by an independent  
17 source.

18 (2) GAO.—Not later than 5 years after the  
19 date of enactment of this part, the Comptroller Gen-  
20 eral of the United States shall conduct an evaluation  
21 of, and shall submit to Congress a report on, activi-  
22 ties of AIFA for the fiscal years covered by the re-  
23 port that includes an assessment of the impact and  
24 benefits of each funded infrastructure project, in-  
25 cluding a review of how effectively each such infra-

1 structure project accomplished the goals prioritized  
2 by the infrastructure project criteria of AIFA.

3 (c) BOOKS AND RECORDS.—

4 (1) IN GENERAL.—AIFA shall maintain ade-  
5 quate books and records to support the financial  
6 transactions of AIFA, with a description of financial  
7 transactions and infrastructure projects receiving  
8 funding, and the amount of funding for each such  
9 project maintained on a publically accessible data-  
10 base.

11 (2) AUDITS BY THE SECRETARY AND GAO.—  
12 The books and records of AIFA shall at all times be  
13 open to inspection by the Secretary of the Treasury,  
14 the Special Inspector General, and the Comptroller  
15 General of the United States.

16 **Subpart D—Funding of AIFA**

17 **SEC. 777. ADMINISTRATIVE FEES.**

18 (a) IN GENERAL.—In addition to fees that may be  
19 collected under section 774(e), the chief executive officer  
20 shall establish and collect fees from eligible funding recipi-  
21 ents with respect to loans and loan guarantees under this  
22 part that—

23 (1) are sufficient to cover all or a portion of the  
24 administrative costs to the Federal Government for  
25 the operations of AIFA, including the costs of expert



1 firms, including counsel in the field of municipal and  
2 project finance, and financial advisors to assist with  
3 underwriting, credit analysis, or other independent  
4 reviews, as appropriate;

5 (2) may be in the form of an application or  
6 transaction fee, or other form established by the  
7 CEO; and

8 (3) may be based on the risk premium associ-  
9 ated with the loan or loan guarantee, taking into  
10 consideration—

11 (A) the price of United States Treasury  
12 obligations of a similar maturity;

13 (B) prevailing market conditions;

14 (C) the ability of the infrastructure project  
15 to support the loan or loan guarantee; and

16 (D) the total amount of the loan or loan  
17 guarantee.

18 (b) AVAILABILITY OF AMOUNTS.—Amounts collected  
19 under subsections (a)(1), (a)(2), and (a)(3) shall be avail-  
20 able without further action; provided further, that the  
21 source of fees paid under this section shall not be a loan  
22 or debt obligation guaranteed by the Federal Government.

23 **SEC. 778. EFFICIENCY OF AIFA.**

24 The chief executive officer shall, to the extent pos-  
25 sible, take actions consistent with this part to minimize

1 the risk and cost to the taxpayer of AIFA activities. Fees  
2 and premiums for loan guarantee or insurance coverage  
3 will be set at levels that minimize administrative and Fed-  
4 eral credit subsidy costs to the Government, as defined  
5 in Section 502 of the Federal Credit Reform Act of 1990,  
6 as amended, of such coverage, while supporting achieve-  
7 ment of the program's objectives, consistent with policies  
8 as set forth in the Business Plan.

9 **SEC. 779. FUNDING.**

10       There is hereby appropriated to AIFA to carry out  
11 this part, for the cost of direct loans and loan guarantees  
12 subject to the limitations under section 773, and for ad-  
13 ministrative costs, \$10,000,000,000, to remain available  
14 until expended; provided, that such costs, including the  
15 costs of modifying such loans, shall be as defined in sec-  
16 tion 502 of the Federal Credit Reform Act of 1990, as  
17 amended; provided further, that of this amount, not more  
18 than \$25,000,000 for each of fiscal years 2013 through  
19 2014, and not more than \$50,000,000 for fiscal year 2015  
20 may be used for administrative costs of AIFA; provided  
21 further, that not more than 5 percent of such amount shall  
22 be used to offset subsidy costs associated with rural  
23 projects. Amounts authorized shall be available without  
24 further action.

1 **Subpart E—Extension of Exemption From Alter-**  
2 **native Minimum Tax Treatment for Certain Tax-**  
3 **Exempt Bonds**

4 **SEC. 780. EXTENSION OF EXEMPTION FROM ALTERNATIVE**  
5 **MINIMUM TAX TREATMENT FOR CERTAIN**  
6 **TAX-EXEMPT BONDS.**

7 (a) IN GENERAL.—Clause (vi) of section 57(a)(5)(C)  
8 of the Internal Revenue Code of 1986 is amended—

9 (1) by striking “January 1, 2011” in subclause  
10 (I) and inserting “January 1, 2014”; and

11 (2) by striking “AND 2010” in the heading and  
12 inserting “, 2010, 2011, 2012 AND 2013”.

13 (b) ADJUSTED CURRENT EARNINGS.—Clause (iv) of  
14 section 56(g)(4)(B) of the Internal Revenue Code of 1986  
15 is amended—

16 (1) by striking “January 1, 2011” in subclause  
17 (I) and inserting “January 1, 2014”; and

18 (2) by striking “AND 2010” in the heading and  
19 inserting “, 2010, 2011, 2012 AND 2013”.

20 (c) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to obligations issued after Decem-  
22 ber 31, 2010.

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