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VERIFICATION OF INCOME AND INSURANCE INFORMATION UNDER THE AFFORDABLE CARE ACT

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT
AND
SUBCOMMITTEE ON HEALTH

OF THE

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

JUNE 10, 2014

Serial No. 113-OS9/HL13

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VERIFICATION OF INCOME AND INSURANCE INFORMATION UNDER THE AFFORDABLE CARE ACT

TUESDAY, JUNE 10, 2014

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON OVERSIGHT,
SUBCOMMITTEE ON HEALTH,
Washington, DC.

The subcommittees met, pursuant to call, at 10:33 a.m., in Room 1100, Longworth House Office Building, the Honorable Kevin Brady [Chairman of the Subcommittee on Health] presiding.

[The advisory of the hearing follows:]

HEARING ADVISORY

Boustany and Brady Announce Hearing on the Verification of Income and Insurance Information Under the Affordable Care Act

1100 Longworth House Office Building at 10:30 AM
Washington, June 3, 2014

House Ways and Means Oversight Subcommittee Chairman Charles Boustany, Jr., M.D, (R–L(A) and Health Subcommittee Chairman Kevin Brady (R–T(X) today announced that the subcommittees will hold a joint hearing on the verification system for income and eligibility for tax credits under the President's health care law. The hearing will take place on Tuesday, June 10, 2014, in 1100 Longworth House Office Building, beginning at 10:30 A.M

In view of the limited time available to hear from witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing. A list of invited witnesses will follow.

BACKGROUND:

The Affordable Care Act (ACA) created an income-based premium tax credit for certain individuals who purchase health insurance through the new Exchanges. The accuracy of these tax credits, which began this year, depends on multiple pieces of data, including an individual's income and eligibility for affordable employer-sponsored insurance. The Administration's 2013 decision to delay employer-reporting requirements has further complicated the government's ability to verify an offer of "affordable employer-sponsored insurance."

Without accurate income and insurance information, the government is unable to guarantee the accuracy of the tax credits, which are paid directly to insurance companies. The consequences of this failure may result in overpayments, which the ACA requires the IRS to recoup directly from individuals during the 2015 tax-filing season.

The Continuing Appropriations Act, 2014 required that "prior to making such credits and reductions available, the Secretary shall certify to the Congress that the Exchanges verify such eligibility consistent with the requirements of such Act." Despite the difficulties in the launch of the Exchanges and healthcare.gov, on January 1, 2014, Health and Human Services Secretary Kathleen Sebelius provided Congress with such certification. Subsequently, reports have indicated that the Department of Health and Human Services and the Exchanges are in fact having difficulty verifying income. For example, on May 17, The *Washington Post* reported, "The government may be paying incorrect subsidies to more than 1 million Americans for their health plans in the new federal insurance marketplace and has been unable so far to fix the errors."

The hearing will explore the sufficiency of government's procedures to verify income and insurance information and ensure the accuracy of premium tax credits. The hearing will also examine the challenges employers and individuals are likely to face in the 2015 tax-filing year due to new employer-reporting requirements and unexpected tax debt for individuals because of subsidy recapture.

In announcing the hearing, Chairman Boustany stated, **"As with many other problems - from stimulus to healthcare.gov—the Administration prefers to spend taxpayer dollars first and ask questions later. The White House took a poorly written law and implemented it incompetently. At the end of the day, employers and individual taxpayers will pay the price. The Committee has been warning about this problem for some time, and has an obligation to continue holding the Administration accountable."**

In announcing the hearing, Chairman Brady stated, **"It's clear the ACA income and eligibility verification system is not ready and not complete. I'm deeply concerned about the fairness of imposing the risk and burden onto individual taxpayers for the disastrous implementation of this poorly designed law. Millions of Americans could be hit with a large and surprising tax bill on April 15th, and the White House doesn't appear to be doing much to fix the problems."**

FOCUS OF THE HEARING:

The hearing will focus on the government's ability to verify income and insurance information, ensure accuracy of premium tax credits, and the likely effect of these challenges on the 2015 tax-filing season.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit written comments for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, *http://waysandmeans.house.gov*, select "Hearings." Select the hearing for which you would like to submit, and click on the link entitled, "Click here to provide a submission for the record." Once you have followed the online instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, **by the close of business on June 24, 2014**. Finally, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. For questions, or if you encounter technical problems, please call (202) 225–3625 or (202) 225–5522.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All submissions and supplementary materials must be provided in Word format and MUST NOT exceed a total of 10 pages, including attachments.Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission listing the name, company, address, telephone, and fax numbers of each witness.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225–1721 or 202–226–3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available on the World Wide Web at *http://www.waysandmeans.house.gov/*.

Chairman BRADY. Good morning, everyone. This hearing will come to order.

Before we start, I would like to recognize the ranking member, Dr. McDermott, for a statement.

Mr. MCDERMOTT. Thank you, Mr. Chairman.

Before we start today, I want to acknowledge the service of Jennifer Friedman.

Jennifer has been with the Ways and Means Committee for 7 years and has handled Medicare things on a variety of levels, and this is her last week of service. She is on her way to Japan. Her husband is in the State Department, and she going to take a Council of Foreign Relations fellowship there, and we want to thank her for her service. Jennifer, please stand up.

Chairman BRADY. Jennifer, you will be missed, and best wishes.

As we begin this hearing, you may remember then Speaker Nancy Pelosi famously warned Congress and the American people about the Affordable Care Act: We have to pass the bill so we can find out what is in it. Over 4 years later, the American people continue to learn and continue to be surprised.

Today the Health and Oversight Subcommittees will hear testimony about yet another surprise. Today, 8 months after the start of open enrollment and well over a month after the extended open enrollment ended, the income and eligibility verification system is not yet completed and the burden and the cost of that failure will fall on the American people. That is simply unfair and unacceptable.

What we will hear today from our distinguished panel is trouble. Potentially millions of Americans are currently receiving the wrong tax credits and cost-sharing subsidies, including some people that are completely ineligible to receive any at all. As required by the Affordable Care Act, individuals who receive subsidy overpayments must repay the government. Americans who tried to do the right thing could be hit with unexpected tax bills from the IRS next April.

For many, this could mean thousands of dollars and while the cost of the loss failures fall on the individual, the blame for this mess falls squarely on the White House. Time after time Republicans on this committee raised concerns with the administration witnesses sitting in these chairs, including cabinet officers and IRS commissioners, and we said the website, the exchanges, the eligibility verification systems, were not ready to go, but the White House pushed ahead, focusing on the advertising campaign, launching healthcare.gov instead of the steps to make the system actually work.

As a result, according to the Washington Post, piles of unprocessed proof documents are sitting in the Federal contractor's Kentucky office while incorrect subsidies continue to be paid. Because the system isn't ready, these inconsistencies have to be resolved manually one by one, and there are over 1 million related to income alone, and the contractors haven't even started.

As we will hear, for the verification system to work as designed, a massive amount of reporting data is required from employers, data the Government has never collected before. The amount of data is so massive, that around this time last year, the White

House gave up and delayed reporting requirements for 2014, after legitimate complaints from businesses about the cost of compliance.

We are not here to revisit the controversy that decision set off, but it is important to understand that decision meant very plainly and very clearly that for 2014, there is not a working verification system.

In order to effectively manage the Affordable Care Act, the administration either needs to employ a reporting information. Why else would you impose such a high cost on employers? The information is needed to enforce the so-called firewall, that prohibits an individual with an offer of affordable employer insurance from receiving tax credits, and yet it does not exist for 2014.

All that is left is for the American people to verify their eligibility for themselves. They need to understand the rules around the offer of affordable health insurance. They need to know it is on them to notify the Government if they have received a raise or had a child or lost a loved one. If they don't understand this, they could be hit with a tax bill for thousands of dollars, and that is not fair.

Democrats and Republicans came together and passed a law last October that stated very clearly that before any tax credit went out, the secretary of HHS had to certify to Congress that the verification system was working. Clearly Secretary Sebelius erred in sending that certification. It wasn't working then and it isn't working today, and the burden and cost of that failure will fall on the American people. It isn't fair and it isn't right.

Before I recognize Health Subcommittee Ranking Member Dr. McDermott for the purposes of an opening statement, I ask unanimous consent that all members' written statements be included in the record. Without objection, so ordered.

I now recognize Mr. McDermott for his opening statement.

Mr. MCDERMOTT. Thank you, Mr. Chairman.

Our Republican colleagues have called us here this morning once again to try to tear down the Affordable Care Act, to find all the defects they possibly can before the election. They have staged this political event, really, to blow another implementation issue out of proportion. What is more, they have decided that one subcommittee isn't enough. They needed to put together two subcommittees to prove a purely partisan political point.

It really is a disappointing choice on my Republican colleagues' part, because they should accept that the ACA is working. Seven million people have joined. Many states have accepted Medicare expansions. Access to quality health care coverage has expanded dramatically since we enacted the law. Eight million people have bought insurance through the exchanges. Six million middle class people have saved money through tax——

[Audible alarm.]

Mr. MCDERMOTT. There is a flash flood warning.

Mr. THOMPSON. Roll up your pants.

Chairman BRADY. Republicans did not make that announcement.

Mr. MCDERMOTT. They did not.

The success of this act, though, is really unquestionable and you can see it in the New York Times yesterday where they had the story about Texarkana, Texas, on the border with Arkansas, and

people on one side of the street had health care, and on the other side, they don't. You can see that this information is seeping out across the country.

But access isn't everything, and we still have plenty to do with the ACA even today. We must control the cost. I am hand in hand with the chairman on that issue. That is why I have been working to combat the fraud, the waste and the abuse in the system and to promote shared savings programs that save providers, taxpayers and patients money.

Reforms such as these will reform the ACA and provide better health security to American families, but instead of working on that issue and building on the success of the ACA, we are called here today to talk about a distorted view of the premium tax credit verification system.

Virtually none of the criticisms are sincere and there is little or no facts to support their claims. Everybody knew that when you tried to enroll 30 million people, you would have errors. We might even look to ourselves in the mirror and remember how many times we have filled out something wrong and it was not considered fraud or abuse or waste, just human error.

When my Republican colleagues talk about inconsistencies, they are not telling the full story. Although there have been inconsistencies, only a fraction actually impact anyone's tax credits. In fact, many inconsistencies relate to applications that were never even completed.

Now, just think about what the solution to the issue is. A letter was written to Secretary Lew to stop all tax credits. Now, you have got seven million people out there enrolled, and suddenly we are going to put a blanket stop on everything. That is trying to kill the law. If my colleagues on the other side had their way, no middle class families, even those without inconsistencies, would benefit from the tax credits for the foreseeable future.

And when we hear the other side pretend that these inconsistencies are unprecedented, let's look at the facts. Medicaid, CHIP and other highly successful programs have handled similar data inconsistencies before. We saw this morning when we wrote the ACA—we saw this coming when we wrote the ACA, which is why we included provisions to correct the inaccuracies. It is important to get this right, and designed the system to make sure that we did.

The more data that comes out, the more stories we hear of people getting coverage, the more we can ensure the ACA is working. Just this past Thursday, a new Gallup Poll showed that the uninsured rate in America is at its lowest point since Gallup began selecting such data. That is not political spin or fuzzy math to say that the ACA has been a success. The Republicans should join Democrats in discussing how to make it even better and for that reason, I am glad we are having the hearing, but it ought to be about how we control costs, not about inconsistencies, which ultimately we will have a hearing on this.

A year from now, if we haven't got a better system than we have got today, that would be one thing, but when you take 3 months in and say you are going to have everything perfect, you simply have never tried to do anything, whether it is build a car, build a

missile. How many failures do we have in the missile system? Did we have them in every week to say, how many failures have you had? That is what we are doing here. We are jumping before it really needs to be done.

I yield back the balance of my time.

Chairman BRADY. I now recognize the Oversight and Subcommittee Ranking Member, Mr. Lewis, for his opening statement.

Mr. LEWIS. Thank you very much.

Thank you very much, Mr. Chairman, Mr. McDermott.

In my heart of hearts, I believe that health insurance or health care is a right. When President Obama signed the Affordable Care Act into law, a new day began, one that was free of worry about what would happen if someone in their family got sick. The Affordable Care Act has opened the door for millions of Americans to access this sacred right for the first time in our country's history.

Let us take a moment to review the many accomplishments of the Affordable Care Act. Eight million people now have health insurance coverage; 3.1 million young people are able to stay on their parents' health plan instead of being uninsured; and 129 million Americans, including 17 million children, with pre-existing conditions are no longer denied coverage or charged high premiums.

Sometimes I think we forget what it is like to get sick and not be able to go to the hospital or see a doctor. We forget or maybe we do not know what it is like to look at the face of your sick son or your sick daughter and know that you cannot afford the treatment they need. The Affordable Care Act changed that reality for millions of people.

Today women can now no longer be charged high premiums just because they are women and 105 million Americans no longer face a dollar limit on their coverage. This means that if faced with an expensive disease like cancer, they know their treatment will be covered and their family will not go bankrupt.

The Affordable Care Act did that. This is a law that has literally saved people's lives by giving them health insurance for the first time. We will not and must not return to the dark days when many of our fellow citizens could not afford health care and the Federal Government did nothing.

Republicans have voted 52 times to repeal the Affordable Care Act. Whenever a topic about the ACA is on the table, it seems to be a code for one thing: repeal, destroy, go back. We have come too far, we have made too much progress, and we are not going back. After 52 votes to nowhere, I think it is very clear that we will not go back. Instead of focusing on repeal, we should encourage improvement. For the good of all of our citizens, we need to look forward and put an end to the political games.

Realizing the dream of health care has meant a new challenge for the Federal Government. It has not been easy, it is not a light task. We must ensure that the agencies have the resources, the staff, training and technology that they need to help our citizens, our people to get the health care services they need and deserve.

I hope that we can put our differences aside and come together to make the transition smoother for our citizens, for the most vulnerable people in our society and for those trying to serve them.

Thank you, and I yield back, Mr. Chairman.

Chairman BRADY. Thank you.

I now recognize the Chairman of the Oversight Subcommittee, Mr. Boustany.

Chairman BOUSTANY. Thank you, Chairman Brady, for convening this really important hearing.

In recent years, the Ways and Means Subcommittees on Oversight and Health have held numerous hearings on the implementation of the Affordable Care Act, including the new tax burdens under the law, the improper administration of tax credits, and taxpayer rights.

This morning's hearing will explore the Affordable Care Act's income and eligibility verification system, which lies at the nexus of all three of these concerns. What is increasingly clear is that even if this system works as intended, there is a potential nightmare scenario developing for the 2015 tax filing season.

Under the Affordable Care Act, the Internal Revenue Service will distribute over $1 trillion in new premium subsidies over the next decade, $1 trillion. To administer these subsidies accurately, the Federal Government requires precise and timely information about income, family status, the availability of employer-sponsored insurance, and other eligibility information. Yet after implementation delays, failures of healthcare.gov, and other poor administration, the Federal Government lacks this information, but has nonetheless begun to pay out billions of dollars in potentially incorrect premium subsidies. We know from experience where this story leads, and it does not end well for the American taxpayers.

The rate of improper payments across the Federal Government is 4.35 percent. The rate of improper payments for the earned income tax credit, which like premium subsidies is paid based on income calculations, is approximately 22 percent, the worst error rate in Government. If this new subsidy is implemented with the average degree of improper payment, the low end for the IRS, the Federal Government will pay out over $44 billion in improper payments.

If premium subsidies are administered with the same degree of accuracy as the earned income tax credit, the Federal Government will pay out a whopping $220 billion in improper payments over 10 years. We have to get a handle on this and we haven't gotten a handle on the EITC, and yet we have this whole new area of implementation.

Although these subsidies are going correctly to insurers next year, the IRS will be in the position of recouping overpayments directly from individuals. Many of these individuals will end up with unexpected tax debt through no fault of their own, but from simply not understanding the quirks and complexities of the President's health law.

The rules regarding employer-sponsored insurance, for example, can leave a taxpayer owing the IRS the entirety of their subsidy payments. These are not hypothetical problems in the distant future. These are problems developing now and ones that will haunt taxpayers and businesses during the next filing season. I hope today's hearing will cast new light on these issues.

And I want to thank our guests for joining us in this very important discussion.

I yield back.

Chairman BRADY. Thank you.

Today we will hear from five distinguished witnesses: Douglas Holtz-Eakin, president of the American Action Forum; Ryan Ellis, tax policy director for the Americans For Tax Reform, an IRS registered tax return preparer; Katie Mahoney, executive director of health policy for the U.S. Chamber of Commerce; Bryan Skarlatos, a partner of Kostelanetz & Fink law firm; and Ron Pollack, executive director of Families USA.

Welcome to all of you. I look forward to your testimony.

Mr. Holtz-Eakin, we will begin with you. As usual, we have preserved 5 minutes for the statement and questions as well and because we are holding a joint hearing, we are going to stay close to the limits today. Mr. Holtz-Eakin.

STATEMENT OF DOUGLAS HOLTZ-EAKIN, PRESIDENT, AMERICAN ACTION FORUM, WASHINGTON, D.C.

Mr. HOLTZ-EAKIN. Well, thank you, Chairman Brady, Chairman Boustany, Ranking Member McDermott, Ranking Member Lewis. It is a privilege to be here today to talk about the income and subsidy verification systems in the Affordable Care Act.

I want to make three basic points in my testimony. Point number one is that the system itself is very complex in its best circumstances, if it worked exactly as designed, and that the series of waivers and delays that have been implemented over the past several years have made the system essentially unworkable, in my view, and we will see more about that.

The second is that it complicates an already far too complicated tax system. The Ways and Means Committee has spent a considerable amount of time on tax implication and reforms. Many of the features of the Affordable Care Act verification system make things much, much worse.

And then the third is that the combination of the complexity really does expose the taxpayer to additional unwarranted burdens and the likelihood of spending above what would be anticipated from the Affordable Care Act itself.

The first point is that it is just very complicated. There is a graphic which we had hoped to show which my staff put together, which shows the verification system. It is in my written testimony. Yeah. That is a good faith effort to replicate the sequence of decisions and rulings that would take place in trying to verify the income and subsidies as the system stands at the moment.

Just a glance at that tells you this is a system that is going to overwhelm taxpayers. In particular, this is a tax filing population that may not in fact be used to file tax returns at all and will have to begin to do so only because of the Affordable Care Act and to satisfy they verification. So it is a very, very complex system. It adds new information requirements, it adds new forms to reconcile to the actual subsidies in the Tax Code, they are required to report quarterly changes in their family status, changes in custodial relationships with children, kids who graduate from college and move out of the house, divorces. An enormous amount of personal information must be reported quarterly and on a timely basis to get the

reconciliation right. This is all going to prove to be quite complicated for this population to comply with.

It will complicate the Tax Code. We do not yet know for sure how the IRS will do a lot of the implementation, but there is a very real chance that many of these taxpayers will no longer be able to file a 1040EZ form, for example, be forced into a more complicated filing status, something with which they are completely unfamiliar and will probably have to appeal to paid tax preparers for low income individuals. It doesn't make a lot of sense.

And the recapture itself will be very complicated. Many people have finally begun to understand how the child tax credit works or how the EITC works, and the recapture will interfere with their receipt of their normal refunds and they will find the system harder to manage.

And my concern is the one that Chairman Boustany mentioned in his opening remarks, is that in the end, we have a system which will have individual eligibility requirements that look very much like the EITC, and these are layered—layered on top of this are employer requirements for affordable insurance, where the reporting is not yet in place but which in principle they would have to provide.

That complicated system is likely to lead to error rates in payments and as you mentioned, if we have a 20 percent error rate, we are looking at $150 to $200 billion in inappropriate payments over the next decade. It is not a trivial problem, it is a serious budget problem at a time when the U.S. faces chronic budget deficits and long-run spending problems, so I am concerned about that.

If you step back, I think it would be important for the committee to focus on two different things. The first is there are a set of issues which really are about the startup and what will a filing season look like next year, what will a population that is not used to receiving a, you know, a form 1095A which says, this is what your subsidies were, they may just throw those in the trash, will the error reconciliation process work effectively, we have no idea, but a bunch of startup problems.

And then there is the longer-run problem, which is that this system is like the EITC, it is like Medicare. This is a pay-and-chase policy: pay people and then go find inappropriate payments. We have not proven capable of doing that in a very efficient fashion. We worry about the $60 to $80 billion a year in inappropriate payments to Medicare, we worry about the 20 percent error rate in the EITC. This is another program that has the same fundamental character, and I worry about whether it will be effective in the long-run.

But I am pleased to have the opportunity to be here today and I would look forward to answering your questions.

Chairman BRADY. Great. Thank you.

[The prepared statement of Mr. Holtz-Eakin follows:]

Subsidy Verification in the ACA: Complexity Creating Taxpayer Risk

United States House of Representatives
Committee on Ways and Means
Subcommittee on Oversight
Subcommittee on Health

Douglas Holtz-Eakin, President*
American Action Forum

June 10, 2014

The views expressed here are my own and not those of the American Action Forum. I thank Angela Boothe, Christopher Holt, and Gordon Gray, for their assistance.

Chairman Boustany, Chairman Brady, Ranking Member Lewis, Ranking member McDermott and members of the committee, thank you for the opportunity to testify today regarding the budget vulnerabilities created by the Affordable Care Act's (ACA) income verification system. The American Action Forum has closely followed the implementation of the ACA, and I am pleased to discuss the potential impacts of determination of subsidy eligibility and the implications of delays in employer reporting requirements issued earlier this year by the Department of Health and Human Services (HHS). I will also address some of the burdens imposed on the tax system, the taxpayers and the federal budget through the ACA.

I hope to convey three main points:

- The subsidy eligibility system is too difficult for consumers to navigate. The complexity of the subsidy eligibility system, and the information required of the consumers and employers will result in erroneous subsidy allotments.
- The tax system is already too complicated and in need of reform. The additions to the tax code stemming from the ACA will continue to worsen this problem, placing taxpayers at risk when requesting ACA benefits.
- The complexities and burdens created by the subsidy eligibility system and income verification flaws in the ACA are generating serious vulnerabilities in the federal budget. These vulnerabilities will come in the form of fraudulent spending, increased program costs, and a heavier taxpayer burden.

I will discuss each of these issues in turn.

Introduction

The Affordable Care Act (ACA) was signed into law in 2010 with the goal of providing accessible, affordable health insurance coverage. In the fourth year of implementation, the administration has issued thousands of pages of regulations detailing the guidelines for the programs contained within the law, as well as requirements for stakeholders participating in these programs. The insurance subsidies and the guidance surrounding eligibility and employer involvement in this portion of the law were designed to provide insurance coverage deemed affordable. The provisions regarding subsidy eligibility and employer reporting requirements work together forming massive vulnerabilities for the federal budget and therefore the taxpayer.

Complications of the Subsidy Eligibility Provisions in the Affordable Care Act

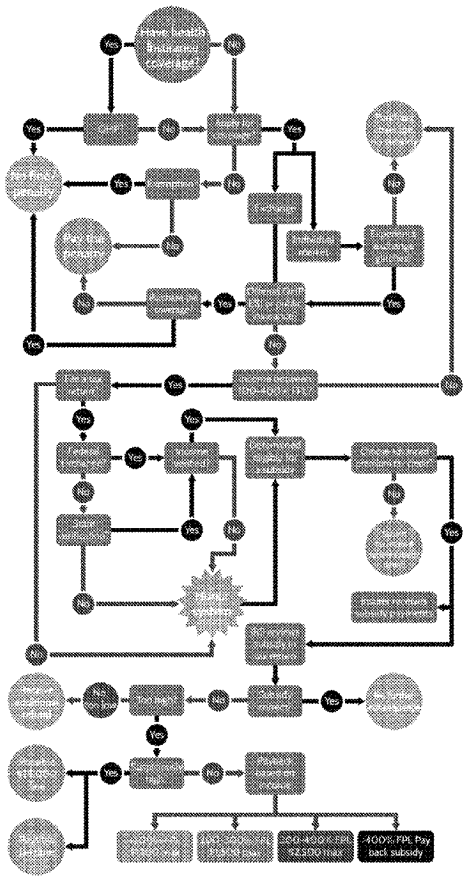
From a 30,000 foot view, subsidy eligibility requirements in the ACA seem straight forward. An individual applies for coverage through the newly created insurance exchange and requests assistance with their monthly premium payment. If an individual is between 100 percent and 400 percent of the federal poverty level (FPL) they are eligible for a credit, which the federal government pays directly to the insurance company of the individual's choice, thereby decreasing their share of the plan's premiums for the year. However, the closer to practical application you get, the more complicated the subsidy eligibility process becomes.

Consumers requesting an insurance subsidy must be within the income bracket described above, and the subsidy received for the year is based on the consumer's self-estimated income for that plan year. Though some people may experience a steady income throughout the year, many Americans change jobs, have children, receive unexpected bonuses or experience other life events that could greatly alter their originally predicted income. If these changes occur and consumers do not update their status through the exchange, then the amount of the premium received will have to be reconciled in their next tax return.

Figure 1walks through the potential steps faced by a consumer working to gain subsidy eligibility for 2014.

An individual (or family) applies for coverage through the online exchange portal, where they are then assessed for premium assistance eligibility. The eligibility process could turn out in a variety of ways. In order to be determined eligible for a subsidy, individuals must provide both income information and family size data. When the exchange sends consumer information to the federal data hub for verification, the IRS data available is from two years ago – so it may not be accurate, depending on the applicant's financial situation. Further, the exchanges currently do not have access to information that can verify family size and self-attestation is the only form of data at this time. If data is not available, the applicant must attest to their projected income for the plan year.[1] Therefore, two pieces of information required to receive premium assistance need only to be attested by the applicant.

Figure 1



AMERICAN ACTION FORUM

This process is different for individuals in states that implemented a state based exchange, and documentation of income may not be needed at all. Instead, in 2014 state-run exchanges just have to verify income for a "statistically significant" sample of people who say their earnings will drop by at least 10 percent, under rules issued by the administration.[2]

This process is further complicated by the delay in employer reporting requirements. According to the White House,[3] the regulations imposed on employers were too complicated to implement for the 2014 plan year and the requirement for employers to provide affordable coverage to their employees was delayed one to two years, based on the size on the employer. For employees that are not offered coverage, they can receive coverage in the meantime through the insurance exchange. According to the final rule issued in March of 2010, employers do not have to begin reporting on the insurance offered to their employees until the 2015 plan year.[4] However, this makes subsidy eligibility more complicated.

If an individual is offered employer sponsored coverage that is deemed affordable through the ACA's requirements, then the individual and their family are not eligible for subsidies through the exchange. This barrier prohibits those offered affordable employer sponsored insurance from signing up for exchange coverage. Though some employers only offer individual coverage, the barrier applies to the entire family, making those without coverage ineligible for a subsidy. However, the delay in reporting requirements makes it impossible to determine which employers are offering affordable coverage and which ones are not for 2014. For example, an employee could be offered affordable coverage through their employer, but choose to gain coverage through the exchange in order to receive a subsidy. Since an employer is not required to provide affordable coverage this year (it is optional for 2014), or report on the coverage offered, the federal government cannot determine who is offered ESI and whether or not it is an affordable option.

Once an applicant sifts through the subsidy process and is determined eligible for assistance, the applicant may choose to use the subsidy as an advanced premium tax credit (APTC) where the subsidy is sent directly to the insurer OR the individual can choose to wait until filing their taxes to claim their subsidy dollars.[5] The amount of money received in each subsidy is based on a sliding scale of income levels within the bracketed FPL range. A family of four could make up to $95,400 a year and receive a subsidy and a single, childless adult making $11,670 could receive a subsidy as well.[6]

It is important to note that all individuals receiving a subsidy will have to reconcile the funds received on the next year's tax returns. Consumers could be held accountable for over payment of subsidies and inaccurate reporting. As is apparent above, this is a complicated system where consumers are asked to estimate their income a year in advance, and are then held accountable for a system that is difficult to navigate and understand. There are bound to be errors in consumer reporting. Even discounting those out to defraud the federal government by intentionally reporting lower incomes, consumers cannot always prevent major fluctuations in income, creating room for error in reporting. These errors will reflect on the federal budget and the country's taxpayers.

The Affordable Care Act Increases Burdens on the Tax Code and on Taxpayers

As I have mentioned in previous testimony,[7] the ACA creates an additional $30 billion in regulatory compliance costs. Some of these costs are generated by the increased burden on compliance with new tax requirements resulting from the subsidy eligibility process. Though HHS is responsible for determining subsidy eligibility and overseeing the insurance exchanges, the IRS is responsible for ensuring the repayment of subsidies that were inaccurately issued.[8] Taxpayers will be required to present proof of health insurance to avoid the individual mandate penalty.[9] Further, those qualifying for subsidies will have to maintain records in order to reconcile the credit and/or any discrepancies in the level of premium eligibility.[10] Needless to say, the subsidy provisions in the ACA generate more hours of regulatory burden and complicate tax filings for consumers.

For those consumers receiving exchange coverage and premium assistance, there is an increased risk. The reconciliation process for exchange subsidy discrepancies could become complicated if the consumer fails to report major life events that may impact the amount of subsidy received. If the subsidy received is too high, there are some "claw back" provisions in place where consumers must return part of the subsidy with their 2014 tax return. For example, if a consumer applies for a subsidy and subsequently receives an unexpected raise, their income is higher than originally estimated during the 2014 application process. When filing their 2014 taxes, the consumer may have to repay a portion of the subsidy, but it's complicated. The amount you have to repay varies according to the following rules:[11]

Below 200 percent FPL, an individual cannot be required to pay back more than $300. If the consumer's income is between 200 and 300 percent FPL, individuals only have to pay up to $700. This limit is increased for those making between 300 and 400 percent FPL, with a $1,250 limit.[12] Those making more than four times the poverty level[13] or that were inaccurately determined eligible have to repay the entire subsidy.[14]

These adjustments are in place for those that underestimate their income within reasonable levels. More serious consequences exist for income claims that are believed to be fraudulent. If the estimate is excessively low, the penalty for unintentional negligence could be as much as $25,000, and intentional misrepresentation could result in a fine of $250,000 or incarceration.[15]

Risks also exist for the federal budget in the inaccurate estimation of income for insurance exchanges. If an individual underestimates their income, but does not pay taxes or are not eligible for a tax refund, no criminal penalties can be brought against the individual and no liens or levies may be imposed, therefore, actions do not exist for the federal government to recoup those funds.[16]

Income Verification and Risks to the Federal Budget

With so much at stake, it is to be expected that the income verification process should be one that places extreme emphasis on program integrity. However, the administration has failed to build a system that allows for the protection of subsidy beneficiaries or for the taxpayers funding those subsidies.

The Earned Income Tax Credit (EITC) is a reasonable proxy for considering the potential for payment errors with respect to ACA subsidies. Like the ACA premium credits, the EITC is a means-tested, refundable tax credit, and is the largest refundable tax credit in the tax code at the moment. Eligibility for the credit is based on income and family size. However, the eligibility rules are complex – warranting a 60 page instruction booklet – and give rise to payment errors.[17] Owing to the size of the program, these payment errors present significant budgetary effects. According to the Treasury Inspector General for Tax Administration, 21 percent to 25 percent of EITC payments made in 2012 were in error – costing $11.6 to $13.6 billion.[18] Since 2003, even under the minimum estimated payment error rate, erroneous payments have exceeded $110 billion. The Treasury department attributed these errors to a host of factors that include general and specific areas of complexity that introduce confusion in eligibility

determination, high turnover of claimants, as well as unscrupulous practices by tax-preparers and outright fraud.

There is every reason to suspect that ACA premium credit payments will be subject to similar if not greater challenges. ACA premium credits are novel, which when paired with a complex design will likely precipitate erroneous payments. The combination of these elements and lax enforcement standards risks error rates on the order of those observed in the EITC program. These erroneous payments will result in enormous budgetary costs. While the EITC is at present the largest refundable tax credit, it will soon be eclipsed in budgetary terms by ACA premium credits. By 2021, the cost of ACA premium credits will exceed the cost of the EITC by 80 percent. Accordingly, a payment error rate similar to that of the EITC program will be that much costlier. Outlays for premium credits are estimated to total $726 billion over 2015-2024.[19] An error rate of 21 percent, the minimum rate estimated by Treasury over 10 years of EITC payments, would result in $152 billion in erroneous ACA premium credit payments.

The risk of erroneous payment as seen in EITC is especially important for 2014. This year the exchange subsidies are based on an honor system, creating an even greater vulnerability than exists within the EITC program and at a greater magnitude due to the size of the program. The administration announced in a July 2013 final rule that income verification will rely more heavily on self-attestation until 2015, when a reliable verification system will be up and running.[20] This contradicts a letter Secretary Sebelius wrote to Vice President Biden at the beginning of the year, stating that HHS has put in place "numerous systems and processes" to ensure that incomes are verified.[21] Further, the so-called "back-end" of the healthcare.gov website that tracks payments to insurers is not yet functional, and the federal government is using a spreadsheet system to account for payments to insurers.[22] For a program that comprises $36 billion dollars of federal spending, there are many holes in the process that can and will compromise the integrity of the federal budget.[23]

The inability of the administration to provide security for the federal tax dollars used in the dissemination of federal subsidies in an appropriate way creates large vulnerabilities in the budget. As reported last month by the *Washington Post*, up to 1.5 million individuals may be receiving inaccurate subsidy amounts.[24] Some of these individuals could be receiving too low of a subsidy, harming tight family budgets. Others will be responsible for re-paying all or part of the subsidy granted to them through the exchange. Meanwhile, insurers are receiving payments based on a fragile system with high potential for human error.

The federal budget is further exposed to inaccuracies by the exceptions provided to states not implementing the ACA expansion of Medicaid. If a consumer resides in a state that has not expanded Medicaid, and the individual would be Medicaid eligible if the state expanded (i.e. the coverage gap), then the individual may not be held liable for intentionally inaccurately reporting income. If their income is overestimated so as to be exchange eligible, such as stating your income is 105 percent FPL instead of 90 percent FPL, there is no penalty for the overpayment.[25] This is just one quirk in a sweeping law that allows for holes in the budget.

Finally, the loose requirements for income verification will decrease the dollars gained through the individual mandate penalty. If an individual does not have to truly verify their income, and the consequences are minimal, revenue from those not gaining coverage will be diminished.[26]

Conclusion

The process for verifying eligibility and receiving subsidies is far too complex to rely on such tenuous information. The enrollment period is over, and those that applied to receive subsides are currently receiving them in some form, and these individuals will be asked to provide an answer for inaccuracies in a system bound for error and fraudulent payments. Not only does this impact the taxpayer, but it could unnecessarily increase federal spending through inaccurate subsidy payments – both unintentional and fraudulent.

The additional burden of reporting health insurance status and payments through the tax filing process could create large liabilities for taxpayers, and increases the complexity of the federal tax system. The Treasury Inspector General even testified that the IRS will have difficulty implementing fraud prevention measures imposed on the agency until the system is more robust.[27]

With the 2015 open enrollment season just around the corner, the administration should be ensuring that proper verification systems are in place and do away with the self-attestation honor system that leaves taxpayers liable and the encourages additional spending at the federal level. The current subsidy eligibility system places too heavy of a responsibility on the individual, the employer and the federal budget.

[1] http://www.cms.gov/CCIIO/Resources/Letters/Downloads/verifications-report-12-31-2013.pdf
[2] http://www.politico.com/story/2013/10/aca-backers-ok-with-income-verification-in-debt-deal-98422.html#ixzz33auXPyOS
[3] http://www.whitehouse.gov/blog/2013/07/02/we-re-listening-businesses-about-health-care-law
[4] http://www.treasury.gov/press-center/press-releases/Documents/Fact%20Sheet%20021014.pdf
[5] http://www.irs.gov/pub/irs-pdf/p5120.pdf
[6] http://familiesusa.org/product/federal-poverty-guidelines
[7] http://americanactionforum.org/press/douglas-holtz-eakin-testimony-on-the-delay-of-the-employer-mandate
[8] http://www.portman.senate.gov/public/index.cfm/files/serve?File_id=3afc81b9-a7fc-4ffa-8d49-0be08ecf6d29
[9] http://newsroom.hrblock.com/hr-block-highlights-seen-unseen-effects-aca-implementation-taxpayers/
[10] http://newsroom.hrblock.com/hr-block-highlights-seen-unseen-effects-aca-implementation-taxpayers/
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[12] http://whatifpost.com/wp-content/uploads/2013/12/subsidy-repayment-limits-e1386802779624.png
[13] Id.
[14] http://www.gpo.gov/fdsys/pkg/BILLS-111s1508enr/pdf/BILLS-111s1508enr.pdf Sec 1401. 26 CFR 601.105.
[15] http://healthaffairs.org/blog/2013/07/07/implementing-health-reform-final-rule-on-premium-tax-credit-medicaid-and-chip-eligibility-determinations-part-1/
[16] Sec. 1501(g)(2)
[17] http://www.irs.gov/pub/irs-pdf/p596.pdf
[18] Note, owing to assumptions underpinning the IRS-sourced estimate for these overpayments, the dollar values are likely understated.
[19] http://www.cbo.gov/sites/default/files/cbofiles/attachments/45231-ACA_Estimates.pdf
[20] http://www.washingtonpost.com/national/health-science/health-insurance-marketplaces-will-not-be-required-to-verify-consumer-claims/2013/07/05/d2a171f4-e5ab-11e2-aef3-339619eab080_story.html
[21] http://www.portman.senate.gov/public/index.cfm/files/serve?File_id=3afc81b9-a7fc-4ffa-8d49-0be08ecf6d29
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[23] http://www.cbo.gov/publication/45231
[24] http://www.washingtonpost.com/national/health-science/federal-health-care-subsidies-may-be-too-high-or-too-low-for-more-than-1-million-americans/2014/05/16/8f544992-dd14-11e3-8009-71de85b9c527_story.html
[25] http://www.forbes.com/sites/theapothecary/2013/07/06/not-qualified-for-obamacares-subsidies-just-lie-govt-to-use-honor-system-without-verifying-your-eligibility/
[26] http://www.forbes.com/sites/theapothecary/2013/07/06/not-qualified-for-obamacares-subsidies-just-lie-govt-to-use-honor-system-without-verifying-your-eligibility/
[27] http://www.portman.senate.gov/public/index.cfm/files/serve?File_id=3afc81b9-a7fc-4ffa-8d49-0be08ecf6d29

Chairman BRADY. Mr. Ellis, you are recognized.

STATEMENT OF RYAN ELLIS, TAX POLICY DIRECTOR, AMERICANS FOR TAX REFORM, IRS REGISTERED TAX RETURN PREPARER, WASHINGTON, D.C.

Mr. ELLIS. Chairman Brady, Chairman Boustany, Mr. McDermott, Mr. Lewis, Members of the Committee, thank you for inviting me to testify today.

My name is Ryan Ellis. I come here today as a small business owner of a tax preparation firm, in the Commonwealth of Virginia and also as an IRS enrolled agent. I am also tax policy director at

Americans For Tax Reform, which is a non-profit here in Washington, D.C.

Now I am here today to tell you that the upcoming tax filing season has the potential to be one of the most chaotic in years. One of the key elements of the Affordable Care Act, popularly known as Obamacare, is the creation of advanceable tax credits for the purchase of exchange health insurance plans. Taxpayers applying for credit assistance must be evaluated by government entities ranging from the SSA, to CMS, to the IRS.

The goal is to have an educated estimate based on the most immediately available government documentation, e.g., prior year tax returns, et cetera, of the taxpayer's probable income for the year, which in turn determines the size of the tax credit. In an effort to get this tax benefit out quickly, the estimated credit is advanced to the insurance company by the IRS, which applies it to customer premiums. This is an important point. The money has left the IRS's hands up to over a year before the taxpayer actually calculates his final credit amount. The insurance companies have collected it, and they are not required to give it back.

Press reports this month indicated that the Government was having a hard time doing all this, with 1.2 million of the 6 million Federal exchange applicants having to be asked for additional income verification information from CMS. That is not surprising. Applicants are asked to complete a detailed, confusing 12-page application, which asks for income, family size, et cetera. It is rather like trying to fill out a 1040 on the fly. Added to this is the lack of employer reporting requirements and the failure to complete the back end of the website properly.

Inconsistencies, some of which are the results of failures of the healthcare.gov system, some of which are poor records from the government, and some of which are mistakes from the individual are not surprising, but they are a problem.

Here it is the middle of June, and many people have now been receiving inaccurate subsidies for 6 months. To the public's knowledge, not a single advanced tax credit has been adjusted this year.

So what happens if the flawed, confusing process results in a tax credit larger than what the law calls for? A hypothetical example might help illustrate. A health exchange customer selects an Obamacare exchange plan, the Government estimates that this taxpayer will earn $30,000 this year, which makes her eligible for a $2,000 tax credit. This $2,000 is paid to the taxpayer's insurance company to help with premiums. The next spring, our customer slash taxpayer is filling out her tax return. Unfortunately, the Government estimated the taxpayer earned too little and paid out too large a credit. She actually earned $40,000 and so only had a $1,500 credit coming to her.

Depending on the taxpayer's income level and availability of verified affordable workplace insurance, she will have to pay back much or all of the $500 overage to the IRS. This means skinnier refunds and maybe even a tax liability, and it won't be the taxpayer's fault, it will be the Government's fault. It is also inevitable that many people are receiving tax credits which they are completely ineligible.

The firewall of the offer of employer-sponsored insurance is a new concept. Tax preparers will have difficulty figuring out how it works in operation. There is virtually no way to catch it on the front end, but come tax filing season, many people will end up owing thousands of dollars and it will be a complete surprise to them and to their tax preparer.

The burden of explaining why the Government allowed individuals to accept too large a subsidy will fall on the tax preparer community.

It is in the interest of the Congress to make sure that the entirety of the Obamacare sign-up system is fully functional; not just the front-end website, which got all the headlines, but the really important back end, where this complex income verification system must be able to work.

Thank you for allowing me to testify today, and I look forward to your questions.

Chairman BRADY. Thank you.

[The prepared statement of Mr. Ellis follows:]

AMERICANS for TAX REFORM

722 12th Street N.W.
Fourth Floor
Washington, D.C.
20005
T:(202)785-0266
F:(202)785-0261
www.atr.org

June 10, 2014

Testimony Before the House Ways and Means Committee Subcommittees on Health and Oversight

Mr. Chairman and Members of the Committee, thank you for inviting me to testify today.

My name is Ryan Ellis. I come here today as a small business owner of a tax preparation firm in the Commonwealth of Virginia, and an IRS Enrolled Agent. I am also Tax Policy Director at Americans for Tax Reform, a non-profit here in Washington, D.C.

I am here today to tell you that the upcoming tax filing season has the potential to be one of the most chaotic in years.

One of the key elements of the Affordable Care Act, popularly known as "Obamacare," is the creation of advanceable tax credits for the purchase of exchange health insurance plans.

Taxpayers applying for credit assistance must be evaluated by government entities ranging from the SSA to CMS to the IRS. The goal is to have an educated estimate, based on the most immediately-available government documents (e.g. prior year tax returns, etc.), of the taxpayer's probable income for the year--which in turn determines the size of the tax credit.

In an effort to get this tax benefit out quickly, the estimated credit is advanced to the insurance company by the IRS, which applies it to customer premiums.

This is an important point—the money has left the IRS' hands up to over a year before the taxpayer actually calculates his final credit amount. The insurance companies have collected it, and they are not required to pay it back.

Press reports this month indicated that the government was having a hard time doing all this, with 1.2 million of the 6 million federal exchange applicants having to be asked for additional income verification information from CMS. That is not surprising. Applicants are asked to complete a detailed, confusing twelve-page application which asks for income, family size, etc. It is rather like trying to fill out a 1040 on the fly. Added to this is the lack of employer reporting requirements and the failure to complete the back-end of the web site.

Inconsistencies--some of which are the result of failures of the healthcare.gov system, some of which are poor records from the government, and some of which are mistakes from the individual--are not surprising. But they are a problem. It is the middle of June, and many people have now been receiving inaccurate

subsidies for six months. To the public's knowledge, not a single advanced tax credit has been adjusted this year.

So what happens if the flawed, confusing process results in a tax credit larger than what the law calls for?

A hypothetical example might help illustrate: a health exchange customer selects an Obamacare exchange plan. The government estimates that this taxpayer will earn $30,000 this year, which makes her eligible for a $2000 tax credit. This $2000 is paid to the taxpayer's insurance company to help with premiums.

The next spring, our customer/taxpayer is filling out her tax return. Unfortunately, the government estimated the taxpayer earned too little and paid too large a credit. She actually earned $40,000, and so only had a $1500 credit coming to her.

Depending on the taxpayer's income level and availability of verified affordable workplace insurance, she will have to pay back much or all of the $500 overage to the IRS. This means skinnier refunds and maybe even liabilities, and it won't be the taxpayer's fault—it will be the government's fault.

It is also inevitable that many people are receiving tax credits for which they are completely ineligible. The firewall of the offer of employer sponsored insurance is a new concept — tax preparers will have difficulty figuring out how it works in operation. There is virtually no way to catch it on the front end — but come tax filing season, many people will end up owing thousands of dollars, and it will be a complete surprise.

The burden of explaining why the government allowed individuals into accepting too large a subsidy will fall on the tax preparer community.

It's in the interest of the Congress to make sure that the entirety of the Obamacare signup system is fully functional—not just the front-end website, but the really important back end where this complex income verification system must be able to work.

Thank you for allowing me to testify today, and I look forward to your questions.

Chairman BRADY. Ms. Mahoney, you are now recognized.

STATEMENT OF KATIE W. MAHONEY, EXECUTIVE DIRECTOR OF HEALTH POLICY, U.S. CHAMBER OF COMMERCE, WASHINGTON, D.C.

Ms. MAHONEY. Thank you, Chairman Boustany and Brady. Ranking Members Lewis and McDermott, and other Members of the Subcommittees for the opportunity to participate in today's hearing.

We appreciate this hearing's focus on the challenges in verifying income and insurance information, given the delay of the reporting requirements under the health reform law, hopefully by examining the law's interrelated provisions and how they were intended to work, we may be able to identify and advance solutions to alleviate the challenges that remain.

My name is Katie Mahoney. I am the executive director at the U.S. Chamber of Commerce. While the Chamber opposed the

health reform law during the legislative debate, we are moving forward to do whatever we can to help our member companies understand and comply with the law. We continue to work with the regulators to mitigate the burdens and challenges of implementation and with members of Congress to provide relief to business. We have made some progress, but much more work needs to be done on both fronts.

Since the law was enacted, the Chamber has filed 77 comment letters, many of which were in response to items issued to implement the employer mandate. While today's hearing is on the verification of income and insurance information, I have been asked to testify specifically on the two reporting requirements contained in Sections 6055 and 6056. These sections were designed to provide the IRS with the data and information necessary to implement at least three other major provisions in the law: the employer mandate provision, the premium tax credit provision and the individual mandate provision.

6056 requires employers subject to the employer mandate to report information to the IRS and to their employees to demonstrate compliance with the employer mandate. This information is necessary to determine which employers may be penalized and which individuals may be eligible for a premium tax credit.

6055 requires those entities that insure individuals with minimum essential coverage to report to the IRS and those individuals the information necessary to demonstrate which individuals are covered and what that coverage looks like. This information is necessary for the IRS to know which individuals have met the requirement to obtain minimum essential coverage under the individual mandate and which individuals may be subject to a penalty.

Even when described as simply as possible, the complexities are striking. Clearly the challenge of drafting regulations to implement these provisions is immense, but it is one that we have found the Treasury officials to take very seriously and approach very carefully. Efforts to promulgate regulations to implement 6056 and 65 specifically began in 2012 in conjunction with other efforts to promulgate regulations on the employer mandate, which began in 2011.

At least ten regulatory items were issued in nearly 2 years between May of 2011 and April of 2013. We had many exchanges with Treasury during this process and filed numerous comments. In addition to responding to Treasury's specific proposals, we repeatedly asked for transition relief, safe harbors and compliance assistance rather than strict enforcement of the provisions. As I shared with the House Energy and Commerce Subcommittee nearly a year ago, businesses needed more time.

On July 2nd of 2013, Treasury announced that the reporting requirement regulations were not ready. As a result, transition relief for 2014 was provided to allow additional time to comply with the reporting requirements and the employer mandate, delaying compliance with these provisions. It would not have been possible to enforce the employer mandate provision without the information that the reporting requirements would collect.

Following that announcement, Treasury continued its work, soliciting feedback and issuing eight more items in roughly 9 months,

including the NPRM's on 6055 and 6056. We have worked with Treasury officials for the past 4 years as they labored to implement these requirements. We found their commitment to minimize the cost and burden to business while implementing the law as intended to be commendable.

Many of the concerns and recommendations that we raised were explored and incorporated into the final rule, including several simplified reporting methods that will help ease the burden for some business and reduce reporting of statutorily specified but unnecessary data points.

We applaud the officials at Treasury for their efforts, however, the extensive costs and time necessary to comply with these reporting requirements continues to be daunting.

Many companies offer exceptional benefits, for which employees pay only a small portion of the premium. These businesses, like many others, are committed to improving the health of their employees and offering coverage that is highly valued. It is unfortunate that because of the way the statute is written, these businesses must direct resources to report on the coverage they offer rather than use those resources to pay for a greater portion of the cost of that coverage.

Even more unfortunate is the extreme expense of these reporting requirements and the challenges in identifying precisely which month's coverage is offered to which employees may incent employers to stop offering coverage all together. Clearly this is not what was intended and it is not what is best for employers or employees.

In conclusion, what is to be done? Well, enacting the legislation passed by the House earlier this year to restore the long-standing definition of full-time employment to 40 hours would be helpful. We urge you to consider legislation to permit businesses greater flexibility and protection, and work with stakeholders to identify possible ways to provide further relief.

Thank you.

Chairman BRADY. Thank you.

[The prepared statement of Ms. Mahoney follows:]

Statement of the U.S. Chamber of Commerce

ON: The Reporting Requirements Necessary to Verify Income and Insurance Information under the Affordable Care Act

TO: The House Ways and Means Subcommittees on Oversight and Health

BY: Katie Mahoney
Executive Director, Health Policy
U.S. Chamber of Commerce

DATE: June 10, 2014

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on issues are developed by Chamber members serving on committees, subcommittees, councils, and task forces. Nearly 1,900 business people participate in this process.

Statement on
"The Reporting Requirements Necessary to
Verify Income and Insurance Information
Under the Affordable Care Act"
Submitted to
THE HOUSE WAYS AND MEANS COMMITTEE'S
SUBCOMMITTEES ON OVERSIGHT AND HEALTH
By
Katie Mahoney
Executive Director, Health Policy
U.S. Chamber of Commerce
on behalf of the
U.S. CHAMBER OF COMMERCE
June 10, 2014

The U.S. Chamber of Commerce would like to thank Chairmen Boustany and Brady and Ranking Members Lewis and McDermott, and other members of the subcommittees for the opportunity to participate in today's hearing. We appreciate this hearing's focus on the challenges in verifying income and insurance information given the delay of the reporting requirements under the health reform law. Indeed, it is critical that we understand how the law's interrelated provisions were intended to work and the challenges that remain for businesses and individuals as they struggle to comply with the complex and intricate reporting requirements.

My name is Katie Mahoney and I am the Executive Director of Health Policy at the U.S. Chamber of Commerce. I have more than 16 years of health care experience in hospital and health plan operations, as well as health policy. At the Chamber, I am responsible for developing and advocating the organization's policy on health and working with members of Congress, the administration, and regulatory agencies to promote the Chamber's health policy priorities.

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses of every size, sector and region. More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 71 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

BACKGROUND

During the legislative process, the Chamber opposed the Patient Protection and Affordable Care Act ("ACA") because it would: do very little to control the rise of unnecessary health care spending; impose benefit mandates, requirements, taxes and penalties increasing the cost of coverage, and; limit the flexibility that employers and employees alike need in choosing coverage options that they can afford. Before the law was enacted, the Chamber testified before both the House Committee on Ways and Means and the Senate Health, Education, Labor and Pensions Committee as to our significant concerns.[1, 2] Since the law's enactment, we have brought nine member companies to testify on the impact that the law will have on their businesses and employees. Most recently, I testified a year ago this month before the House Energy and Commerce's Subcommittee on Oversight on the implementation of employer mandate – urging members to pass legislation to restore the long-standing definition of full-time

[1] Randel Johnson, Senior Vice President of Labor, Immigration and Employee Benefits for the U.S. Chamber of Commerce, "Health Reform in the 21st Century: Proposals to Reform the Health System," The House Committee on Ways and Means, June 24, 2009.
[2] Randel Johnson, Senior Vice President of Labor, Immigration and Employee Benefits for the U.S. Chamber of Commerce, "Roundtable Discussion – Health Care Reform Legislative Options," The Senate Health, Education, Labor and Pensions Committee, June 11, 2009.

employment to 40 hours and articulating the need for the Administration to allow flexibility, safe harbors and transition relief in enforcement. Even though we have seen some progress, we will continue to work with Congress and the regulators to ease the burdens on businesses.

As the law's implementation continues, so do the challenges. While we appreciate the importance of monitoring and highlighting the effects the law is having on businesses and employees, we also believe it is critical to the extent possible to search for and act on opportunities to provide relief. Our country must continue to focus on improving the ability of all Americans to: access affordable health care coverage; receive innovative and high-quality care; and realize better health.

Our view continues to be that reform does not end here. As we continue to struggle with the implementation of the ACA, we must examine ways to further advance and strengthen our health care system. To this end, the Chamber released a report in June of last year with proposals to advance access to affordable coverage and to improve health care value.[3] While we continue to pursue legislative action to further reform and strengthen our health care system in accordance with the proposals in the report, we also remain focused on ameliorating the burdens of the current requirements by working with the regulators to identify ways to simplify, streamline and ease compliance. Since the law was enacted, the Chamber has submitted 77 comment letters in response to 8 Interim Final Regulations (IFRs), 3 Final Rules, 20 Requests for Comments (RFCs), 34 Proposed Rules, 1 Information Collection Request (ICR), 2 Amendments to the IFRs, 6 Requests for Information (RFIs), 1 FAQ, 1 Draft Letter, and 1 Draft Guidance Notice.

[3] "Health Care Solutions from America's Business Community: The Path Forward for U.S. Health Reform," A Report from the U.S. Chamber of Commerce's Health Care Solutions Council, June 2013.

Many of the comments that we filed were in response to items issued that are directly or indirectly necessary to implement the employer mandate. Beyond the complex language in the employer mandate provision (4980H), there are at least three other critical provisions that interrelate to this direct requirement for employers: the premium tax credit provision (Section 36B), the reporting requirement for employers subject to the employer mandate (Section 6056), and the reporting requirements for issuers, including self-insured employers (Section 6055). While today's hearing is on the verification of income and insurance information under the ACA, I have been asked to testify specifically on the two reporting requirements contained in Sections 6055 and 6056 of the ACA. My testimony will offer: a brief and simplified overview of what these reporting requirement provisions were intended to do; our view of the Administration's efforts to promulgate regulations to implement these provisions; the unfortunate consequences that the statutory requirements will have on employers and employees; and possible solutions moving forward.

THE REPORTING REQUIREMENTS: AN OVERVIEW

As enacted, the reporting requirements contained in Sections 6055 and 6056 were designed to provide the data and information necessary for the Internal Revenue Service (IRS) and the U.S. Department of the Treasury (Treasury) to implement at least three other major provisions in the law: the employer mandate (Section 4980H), the premium tax credit provision (Section 36B) and the individual mandate (Section 5000A). These two reporting provisions, while short in

statutory text (each are 3 pages in length), have broad-reaching ramifications and are intricately connected to other significant provisions.

Section 6056: Reporting Requirement for Applicable Large Employers

Under Section 6056, an employer that is required to offer health coverage under the employer mandate (an applicable large employer with 50 or more full-time equivalent employees) must report information to the IRS and to the employees to facilitate the enforcement of the employer mandate. The information provided by the applicable large employer (ALE) under Section 6056 is designed to inform the IRS as to which full-time employees (and their dependents) receive an offer of employer-sponsored coverage. Extensive information must be reported to enable the IRS to determine whether an employer may be subject to a penalty for either failing to "offer coverage to all full-time employees and their dependents" under the Section 4980H(a) requirements, or may be subject to a penalty because the coverage offered to the full-time employees fails to satisfy the minimum value and/or affordable coverage requirement under Section 4980H(b). Under Section 6056, information is also reported to individuals to provide them with the documentation necessary to show whether he/she and his/her dependents may be eligible for a premium tax credit because they do not have an offering of employer-sponsored coverage.

Section 6055: Reporting Requirements on Minimum Essential Coverage

Section 6055 requires those entities that insure individuals (i.e. self-insured employers, health insurers, governmental entities, etc.) with minimum essential coverage to report information necessary to document to the IRS which individuals satisfy the individual mandate requirement. This information is necessary for the IRS to know which individuals have met the requirement to obtain minimum essential coverage under the individual mandate (5000A) and which individuals may be subject to a penalty. It also provides documentation to the individual so that he/she can demonstrate compliance with the individual mandate.

THE EFFORT TO PROMULGATE REGULATIONS

Even when the interwoven provisions of the statute are described as simply as possible, the complexities are striking. Clearly the challenge of drafting, much less finalizing, regulations to implement these two reporting provisions is immense. It is also a challenge that we have found that the Treasury in particular takes very seriously and approaches very thoughtfully. Not only is this evident in some of the reporting alternatives offered in the Final Rules, but also in the numerous solicitations for input and proposals, as well as the measured evaluation of the feedback provided. Efforts to promulgate regulations to implement Sections 6056 and 6055 specifically began in 2012, but were intertwined with efforts to promulgate regulations to implement Section 4980H (the employer mandate) which began in 2011. We were involved in many exchanges with the Treasury and IRS during this process and filed numerous comments on these provisions specifically.

Further, during the throws of this regulatory process, I had the pleasure of testifying before the House Energy and Commerce Oversight Subcommittee on June 26, 2013. At that hearing, I shared with the Subcommittee the tremendous confusion among businesses. While we in Washington were exploring safe harbors for affordability, many owners were still confused as to how to determine whether they were an "applicable large employer" and therefore subject to the employer mandate. As I shared with the Subcommittee on that day, businesses needed additional time not only to meet the employer mandate requirements, but also to demonstrate compliance with the mandate. While Treasury and IRS had invested time and energy in issuing numerous notices and requests for information, by June of 2013, they still had not issued a proposed rule on the reporting requirements which were to be imposed on employers in less than 6 months' time.

On July 2, 2013, the IRS and the Treasury announced that because the regulations for the reporting requirements were not ready, they would delay enforcement of section 6056 and 6055 and therefore, also have to delay enforcement of section 4980H, the employer mandate. Without the information that the reporting requirements would collect, it would be impossible to enforce the employer mandate provision.

Following that announcement, the Treasury and IRS continued to work on the regulations and solicit feedback. Less than 2 months later, the NPRMs were issued on 6055 and 6056. Here is a detailed chronological list of the items issued by Treasury and the IRS as they gathered feedback and worked to promulgate regulations implementing the reporting requirements and the employer mandate. The Chamber filed comments on nearly every item.

- May 23, 2011, the Treasury & IRS issued a request for comments on methods for determining the number of full-time employees (comments due June17, 2011)
    - Notice 2011-36 for 4980H
- October 3, 2011, the Treasury & IRS issued a request for comments on an affordability safe harbor for employers (comments due December 13, 2011)
    - Notice 2011-73 for 4980H
- February 9, 2012, the Treasury & IRS issued request for comment on employer shared responsibility (comments due April 9, 2012)
    - Notice 2012-17 for 4980H
- April 27, 2012, the Treasury & IRS issued a request for comments on minimum value (comments due June 11, 2012)
    - Notice 2012-31 for 4980H
- May 14, 2012, the Treasury & IRS issued two requests for comments on "how to coordinate and minimize duplication between the data employers must report" (comments due on June 11, 2012)
    - Notice 2012-33 for 6056
    - Notice 2012-32 for 6055
- August 31, 2012, the Treasury & IRS issued a request for comments on determination of full-time status (comments were due on September 30, 2012)
    - Notice 2012-58 for 4980H
- December 28, 2012, the Treasury & IRS issued a series of FAQs on 4980H

- January 2, 2013, the Treasury & IRS issued an Notice of Proposed Rulemaking on 4980H (comments due on March 18, 2013)
- April 23, 2013, the Treasury & IRS held a hearing on the proposals in the NPRM for 4980H
- July 2, 2013, the Treasury & IRS announced delay of enforcement of 4980H, 6056 and 6055
- July 9, 2013, the Treasury & IRS issued Notice 2013-45 formalizing transition relief 2014 from requirements in Sections 4980H, 6056, and 6055
- September 9, 2013, the Treasury & IRS published two NPRMs on 6056 & 6055 (comments due November 8, 2013)
- November 19, 2013, the Treasury & IRS held a public hearing on the proposals in the NPRMs on 6056 and 6055
- February 12, 2014, the Treasury & IRS published a Final Rule on 4980H
- March 10, 2014, the Treasury & IRS published two Final Rules on 6056 & 6055

COMMENDABLE EFFORTS

We have worked with officials at the Treasury for over three years during their efforts to promulgate regulations to implement these requirements. We have found their commitment to promulgating regulations that minimize the cost and burden to business while implementing the law as intended to be commendable. As they espoused in the Final Rule, we believe that Treasury truly has "sought to develop final information reporting rules that will be as streamlined, simple, and workable as possible, consistent with effective implementation of the

law. This has reflected a considered balancing of the importance of (1) minimizing cost and administrative tasks for reporting by entities and individuals, (2) providing individuals the information to complete their tax returns accurately, including with respect to the individual shared responsibility provisions and potential eligibility for the premium tax credit, and (3) providing the IRS with information needed for effective and efficient tax administration."[4] As proof of this commitment, we cite a number of simplifications and alternatives provided for in the Final Rules which we understand from our members may help some employers comply somewhat more easily with the reporting requirements of Section 6056. Many of the comments, concerns and recommendations that we raised given the feedback we received from our member companies were explored, adopted and sometimes incorporated into the Final Rule. Further, Treasury has identified data points that are not relevant to individual taxpayers or the IRS for purposes of administering the premium tax credit and section 4980H, or that is already provided at the same time through other means. While we applaud the officials at Treasury for their efforts, the extensive burdens of cost and time to comply with these reporting requirements continues for the majority of employers.

HARMFUL AND EXPENSIVE CONSEQUENCES REMAIN

Despite the commendable efforts of the officials at the Treasury, exceedingly high administrative burdens and expenses remain as businesses grapple with how to comply with the reporting requirements contained in the statute. First and foremost, the greatest complaint we hear from our members is about the extraordinary expense of complying with the reporting requirements.

[4] Information Reporting by Applicable Large Employer on Health Insurance Coverage Offered Under Employer-Sponsored Plans, Final Rule, 79 Fed. Reg. at 13232 (available at: http://www.gpo.gov/fdsys/pkg/FR-2014-03-10/pdf/2014-05050.pdf).

This includes challenges with identifying which employees are full-time during which months as well as, for those employers that self-insure, challenges with collecting social security numbers for dependents.

Many of our larger member companies have long offered exceptional benefits for which employees pay only a small portion of the premium. These businesses – like many – are committed to improving the health of their employees and offering coverage that is highly valued. It is unfortunate that because of the way the statute is written, these businesses must redirect resources to report on the coverage they offer, rather than use those resources to pay for a greater portion of the cost of that coverage. Even more unfortunate is that the extreme expense of these reporting requirements and the challenges in identifying precisely which months coverage is offered to which employees may incent employers to stop offering coverage all together. Clearly, this is not what was intended and is not what is best for employers or employees.

CONCLUSION

Clearly these reporting requirements as prescribed by the statute and efforts to promulgate regulations to implement them are very complicated. Despite laudable efforts by the dedicated and pragmatic officials at the Treasury and the IRS, the significant challenges and tremendous costs to comply remain exceedingly burdensome for business. Many of the efforts to streamline reporting and offer alternative or simplified methods will be helpful to some employers, but we will continue to explore additional ways to ease the burden of compliance. Proposing a solution

for the regulators to adopt is difficult given the statutory requirements and the need for this data to enforce and verify many other provisions and elements. However, enacting the legislation passed by the House earlier this year restoring the longstanding definition of full-time employment to 40 hours a week would be an important first step.

Therefore, we urge you to consider additional legislative ways to offer businesses greater flexibility and protection and work with stakeholders such as those here today to identify possible ways to provide relief to businesses. We also urge the regulators to continue to identify ways to streamline and simplify reporting requirements as new scenarios and fact patterns present different challenges and additional opportunities. Permitting a compliance assistance approach as opposed to strict enforcement is critical.

Chairman BRADY. Mr. Skarlatos.

STATEMENT OF BRYAN C. SKARLATOS, PARTNER, KOSTELANETZ & FINK, LLP, NEW YORK, N.Y.

Mr. SKARLATOS. Good morning, Chairman Boustany, Chairman Brady, Members of the Committee.

Thank you for inviting me here this morning. My name is Bryan Skarlatos. I am an attorney in New York, and my practice focuses in large part on tax procedure issues.

I am here to talk to you today about how the IRS collects taxes, and you may find that relevant to how the IRS may collect over-

payments of credits. When we talk about how the IRS collects taxes, it is important to remember the IRS is not an ordinary creditor like you or me. If somebody owes me money, I have to go to court, start an action to invoke the authority of the court to give me a judgment that I can use to collect the property to pay the debt. I can't just take somebody's car or take somebody's bank account.

It is different for the IRS. Because the IRS has a need to collect taxes, Congress has given the IRS super creditor powers. The IRS doesn't need to go to court. It can act unilaterally, using its powers of lien and levy to collect taxes. Those are the two main tools it has.

A lien is the first and most important concept. It is an intangible concept. It is not something the IRS does; it is a thing that arises by operation of law and the lien is what gives the IRS the right to collect somebody's property, or to take somebody's property. It is sort of like a string that the IRS can pull to take property from someone.

A levy, is distinct from a lien. The levy is the actual procedure it uses to take the property. It can go in and take things that the taxpayer has an interest in, like a bank account, a car, wages or something like that.

Now, the IRS can't just do this without first having an assessment. It needs an assessment of taxes. Most taxes get assessed on the tax return and taxpayers themselves say, I owe a thousand dollars. That is a self-assessment and we indeed have a self-assessment system. If the taxpayer doesn't pay the taxes that they say they owe, then the IRS has these collection powers, or if the IRS later comes in and says, you owe more money, you owe $2,000, not a thousand dollars, then the IRS has these collection powers, because the assessment arises.

Once the assessment arises automatically, it doesn't arise automatically. Excuse me. What happens first is that the IRS has to say, hey, you owe money, there is an assessment, and demand payment. If the taxpayer then fails to pay the tax, the assessment arises automatically and then the lien arises automatically upon the assessment, giving the IRS rights to the property.

The lien is the important concept, as I mentioned, because it is very broad. It affects anything that the taxpayer owns or anything that the taxpayer could have an interest in. It also includes things like after-acquired property. So if the taxpayer buys a car or receives an inheritance after the assessment, the lien will attach to that after-acquired property.

The IRS can also file a notice of tax lien. It does this in order to give itself priority over other creditors. It files the notice in the local county clerk's office or in the local court office. That notice of tax lien by mere filing can have an impact on the taxpayer's credit standing and it can affect certain agreements it has, credit agreements, mortgages, it can trigger events of default simply by filing the notice of lien.

But the lien itself, as I said, is not the thing that takes the property. The thing that takes the property is the levy. The levy and the seizure, and levy and seizure are basically the same words for, similar words for two same concepts, is when the IRS goes in and

takes things. It can go to the taxpayer or it can go to third parties like a bank or like an employer or a customer who owes the taxpayer money.

The levy, though, unlike the lien, does not attach to after-acquired property, so if a levy hits on a certain day and somebody deposits money into a bank account the next day, the levy does not attach to that. There is one exception, however, and that is for a levy on wages. A levy on wages continues, and continues on the taxpayer like a vacuum cleaner, continuing to take the wages as they are earned.

The IRS has to give the taxpayer notice, 30-days' notice before it is going to levy and take the property and at that time the taxpayer has the right to request a collection due process hearing to contest the levy or the underlying assessment of taxes.

Now, the IRS doesn't just take things without giving some notice and demand, and there are a series of notices that come out in the usual case and in that case, the taxpayer can try to negotiate an installment agreement or an offer in compromise where they pay less than the full amount due, depending on the taxpayer's current assets and ability to pay.

One other factor you should consider is that if there is an overpayment of tax in another year, the IRS can offset an underpayment simply by reducing the overpayment in another year.

So those are some of the tools that the IRS has at its disposal to collect taxes. Thank you.

Chairman BRADY. Thank you.

[The prepared statement of Mr. Skarlatos follows:]

WRITTEN TESTIMONY
OF
BRYAN C. SKARLATOS, ESQ.

The Internal Revenue Service (the "Service") is a "Super Creditor" because Congress has given it powers to collect money and property that far exceed those of any ordinary creditor. Typically, a creditor who is owed money cannot just take property of the debtor. Instead, the creditor must first bring a lawsuit, obtain a judgment, and then invoke the power of the court to execute on the judgment by seizing the debtor's property, usually with the help of a court order or a public servant such as a marshal. In contrast, when taxes are assessed, the Internal Revenue Code automatically creates a lien in favor of the Service in a taxpayer's property. Then, the Service has the unique and powerful ability to levy on or seize property that is subject to a federal tax lien. In addition, the Service can sue in federal court to collect taxes.

Assessment

The first step in the tax collection process is the assessment. In general, the Service cannot attempt to collect from a taxpayer until a tax has been assessed.

The Internal Revenue Code gives the Secretary of the Treasure the authority to assess tax. A tax is assessed when it is recorded as a liability, or account receivable, on the Service's records.

Once a tax has been assessed, the Service is required to notify the taxpayer that the tax has been assessed and to demand payment of the tax. The notice and demand for payment must be made within sixty days of the assessment. The notice and demand must be left at the taxpayer's home or place of business, or sent to the taxpayer's last known residence. Failure to pay an assessed tax after notice and demand for payment has been made gives rise to a federal tax lien and the Service's ability to collect through levy or seizure of property.

Federal Tax Lien

If any person liable to pay a tax fails to pay after notice and demand, the amount not paid, including interest and penalties, becomes a lien in favor of the United States upon all property and rights to property belonging to such person. The tax lien is the mechanism that gives the Service rights to the taxpayer's property. However, the lien itself does not transfer any value to the Service. As discussed below, a levy is the tool used to transfer the actual property to the possession of the Service.

A federal tax lien arises against any person liable for the tax and attaches to any interest in property that the person may have. A tax lien also attaches to any property the taxpayer may acquire in the future. This is another way of saying that the tax lien attaches to after acquired property.

The law of each individual state determines whether and when a taxpayer has an interest in some type of property. Federal law determines the extent to which the federal tax lien attaches to that interest. For example, the tax lien attaches to a taxpayer's interest in a joint bank account to the extent that the taxpayer can withdraw money from the account. Similarly, if under state law, one spouse has a right to community property, then the tax lien attaches to that spouse's interest in community property. Or, if one spouse has an interest in property held as tenants by the entirety, then the federal tax lien can attach to that interest. A federal tax lien attaches to interests in personal or real property, bank accounts, retirement accounts, Social security benefits, alimony (but not child support) payments, beneficial interests in trusts, contingent interests, future interests, and intangibles such as accounts receivable, trademarks, licenses, royalties and franchise rights.

The federal tax lien relates back to the date of assessment. However, a federal tax lien does not have priority over purchasers for value, holders of security interests, mechanics lienors or judgment creditors until a Notice of Federal Tax Lien (a "Notice of Lien") is filed. The Service may file a Notice of Lien to obtain priority over these holders of interests through the general rule of "first in time, first in right." The interest that is perfected first has priority if and when the property rights are sold or seized.

State law determines where a Notice of Lien must be filed to be effective. Generally, Notices of Lien are filed with clerk of the court in the county where real property is located, with the clerk of the court in the county where the taxpayer is located in the case of personal property, or with the clerk of the federal district court in the district where the real property or taxpayer is located. Filing the Notice of Lien provides constructive notice to anyone else who may hold or acquire an interest in property and gives rise to the "first in time, first in right" rule.

The Notice of Lien is merely a device that provides deemed notice to other interested parties for purposes of establishing priority. The federal tax lien exists independently from the Notice of Lien and there is no requirement that the Service even file the Notice of Lien. However, if the Service does file a Notice of Lien, it must give the taxpayer written notice that the Notice of Lien is being filed with five days of the filing and give the taxpayer an opportunity to request a Collection Due Process hearing (a "CDP Hearing") to contest the filing of the Notice of Lien. Requesting a CDP Hearing does not stop the filing of the Notice of Lien; it just gives the taxpayer a forum to request that the lien be lifted.

Once a federal tax lien arises, it generally is valid until the taxpayer's liability is satisfied or until the time for enforcing the lien expires. Generally, an assessment may be collected by

levy or court proceeding within ten years after the date of assessment. The ten-year period can be extended under limited circumstances.

The filing of a Notice of Lien, by necessity, is open to the public and can harm a taxpayer's credit standing and can affect business relationships by, for example, triggering a default under certain credit agreements, etc.

Levy and Seizure

If any person liable to pay a tax fails to do so within ten days after notice and demand, then the Service may collect the tax by levying on all property owned by that taxpayer, or on which there is a federal tax lien for the payment of such tax. Levies and seizures are ways in which the Service takes possession of property or rights to property. Levies and seizures are essentially the same thing. The term "levy" is typically used when the Service takes possession of intangible property or rights to property and the term "seizure" is typically used when the Service takes possession of real or personal property. A levy or seizure is a provisional collection device, meaning that disputes over ownership, priority or even liability for the tax can still be disputed after the levy or seizure.

Two notices must be issued before the Service can execute a valid levy or seizure. First, the Service may not attempt any collection until ten days after a notice and demand for payment of the tax. This notice and demand can be the same notice and demand that must be made within sixty days after the assessment as described above. Typically, the Service sends two or three notices and demands for payment of taxes before it proceeds with the levy process.

Second, the Service must notify the taxpayer in writing of its intention to levy on the taxpayer's property or rights to property at least 30 days before the date of the levy (the "Notice of Intent to Levy"). The Notice of Intent to Levy must be given either in person, left at the

taxpayer's dwelling or usual place of business, or sent by certified or registered mail, return receipt requested, to the taxpayer's last known address.

Like the Notice of Tax Lien, the Notice of Intent to Levy must inform the taxpayer of the right to request a CDP Hearing within 30 days of the Notice of Intent to Levy. At the CDP Hearing, the taxpayer can challenge the appropriateness of the collection activity and, in some cases, the validity of the underlying tax liability. If the taxpayer timely requests a CDP Hearing, the Service may not proceed with levy until the CDP Hearing is complete.

The Service can use a levy to take any property subject to the federal tax lien. This includes just about any kind of property in the possession of the taxpayer or property in the hands of a third party to which the taxpayer is entitled. The Service can levy property from a third party simply by serving the levy on that third party. No special notice or procedure is required to levy property from a third party.

Typically, a levy only reaches property in possession or rights in existence as of the date the levy is issued. Unlike a federal tax lien which attaches to after-acquired property, most levies do not reach after acquired property. Thus, a levy served on a bank will reach the balance in the account on the day of the levy and does not reach a deposit made the day after the levy. However, there is an exception to this rule. A continuing levy can be issued on salary and wages. A continuing levy is like a vacuum cleaner that continues to sweep up money as it is paid to the taxpayer.

There are very few types of property that are exempt from a levy. State laws that provide homestead exemptions, protect certain types of retirement accounts, or limit the amount of a person's salary that can be garnished, do not trump the federal levy laws and are ineffective against the Service's power to levy. Federal law provides limited exemptions for things like

school books, tools of trade, wearing apparel, fuel, provisions, furniture and personal effects, unemployment or workers compensation benefits and a minimum amount of wages.

As noted above, the Service typically has ten years from the date of assessment to collect a tax by levy.

Judicial Proceedings

In addition to the administrative lien and levy procedures described above, the Service can also request the Tax Division of the Department of Justice to sue a taxpayer in federal court to collect a federal tax liability. Federal courts have subject matter jurisdiction over suits to obtain judgments pursuant to the Internal Revenue Laws. While an assessment and lien are not necessary prerequisites for such suits, there usually is an assessment and related federal tax lien. The Service sometimes uses the judicial remedy to reduce a federal tax lien to judgment when the statue of limitations for collecting administratively by levy is about to expire. If the Service obtains a judgment against the taxpayer, a whole new statute of limitations for collection on the judgment begins to run.

The Service also uses judicial remedies to sue third parties who have failed to turn over property in response to a levy, to establish liability against a transferee of property, or to recover a refund of taxes that was mistakenly paid to a taxpayer.

Taxpayer Defenses

There are many ways that a taxpayer can defend against the collection of taxes. The CDP Hearing requests referred to above are some of the most powerful tools that a taxpayer can use because, while a CDP Hearing request does not stop the filing of a Notice of Lien, it can stop a levy pending the outcome of the CDP Hearing. Of course, if the Service collects money or property improperly, the taxpayer can sue for a refund.

If the taxpayer agrees that he or she owes taxes but wishes to avoid enforced collection activity through a lien or levy, the taxpayer can negotiate an installment payment agreement whereby the Service will suspend certain collection activity if the taxpayer adheres to an agreed upon collection plan. The amount of periodic payment and the length of the installment plan depend, in large part, on the taxpayer's individual finances as reflected on a Collection Information Statement which is essentially a personal or business financial statement. Interest and some penalties continue to run while the installment plan is in place.

Alternatively, a taxpayer can negotiate an offer in compromise to pay less than the full amount demanded by the Service. Again, whether the Service will compromise a tax liability for less than the full amount due and the terms of any such compromise depend on the taxpayer's individual finances as reflected in a Collection Information Statement. Typically, the Service will not compromise a tax liability for less than the full amount due unless the taxpayer does not have sufficient current assets and expectations of additional assets in the future to pay the tax liability.

Chairman BRADY. Mr. Pollack, you are recognized.

STATEMENT OF RON POLLACK, EXECUTIVE DIRECTOR, FAMILIES USA, WASHINGTON D.C.

Mr. POLLACK. Thank you, Chairman Brady and Boustany, Ranking Members McDermott and Lewis, Members of the Committee.

Today's hearing is important, because it is essential that tax credit premium subsidies be provided based on good and accurate information. This is needed to ensure that there are neither underpayments or overpayments of such subsidies.

In undertaking today's examination, it is crucial to single out two important words, both with very separate meanings. These words are "inconsistencies" and "inaccuracies." The two words should not be confused with one another, because they are not synonymous, and conflating those two words, like some in this Congress have done, does an enormous disservice to today's inquiry. For example, two sets of data may be inconsistent, one depicting a situation 2 years ago and another depicting the situation today, and they both may be accurate. It is crucial, therefore, to underscore the differences between inconsistencies and inaccuracies as we examine the discrepancies that appear to exist in application submissions versus Government data files among 2.1 million people enrolled in affordable care-related coverage.

Of the 2.1 million discrepancies, over half concern discrepancies about applicants' income. This should not be surprising, because applicants are supposed to provide information about their current 2014 income, while the Government's data reflects such households' income based on their 2012 tax returns. Many significant changes occur in income status over those 2 years.

Many people change jobs, resulting in gains or losses of income; many people receive differences in compensation, again, up or down; many people experience differences in real or expected overtime. Changes in family composition significantly impact income, and some families move from jobs to becoming students, and vice versa. And many other factors cause incomes to change over the course of 2 years.

These 2-year differences should be reviewed, but there is little reason to surmise that these differences are inaccuracies in applications that should cause reductions in premium subsidies.

The same is true with the almost 1 million discrepancies with respect to immigration and citizen-related information. Keep in mind, people eligible for marketplace coverage include citizens and nationals and others lawfully in the United States. The only persons disqualified for coverage are those who are not lawfully in the country, and those individuals are hardly likely to contact an exchange or other governmental entity.

The kinds of discrepancies that do exist in this area involve matters that are innocuous and do not affect eligibility for or the size of premium subsidies. They include the precise Social Security Number, whether a person does or does not have a hyphenated name, whether the person has a permanent resident card or a green card, whether they are missing a digit in an address.

There are other reasons to believe that the number of inaccuracies are small, and when we see verification, that they would be rectified, four reasons: one, similar verification systems exist in programs like Medicaid and CHIP, and the vast majority of instances consumers' information is found to be accurate; second, Serco, which is the contractor responsible for obtaining information from beneficiaries to address ACA enrollment inconsistencies, briefed the House Energy and Commerce Committee last week, and what they said, they indicated that upwards of 99 percent of the inconsistencies would be in, quote, "innocuous", end quote, or benign, and easily resolved without impact on beneficiaries' costs or coverage; third, consumers attest in their application form under

penalty of perjury, and that is not taken lightly; and lastly, if a review shows a household's initial subsidy is inaccurate, the marketplace will adjust it for the remainder of the year, and places like the District of Columbia have actually suggested to people that they only take 85 percent of their subsidy so that they are on the conservative side of this, and, of course, then there is true up and reconciliation.

The bottom line in all this is that it makes sense to complete the examination of discrepancies as soon as possible, but with respect to the number of inaccuracies, to borrow from William Shakespeare, this is much about very little.

Chairman BRADY. Thank you.

[The prepared statement of Mr. Pollack follows:]

Written Statement for the Record by

Families USA

For the U.S. House of Representatives

Committee on Ways and Means

Hearing on the Verification of Income and Insurance Information Under the Affordable Care Act

Tuesday, June 10th, 2014

Since 1982, Families USA has worked to promote access to affordable, high-quality health care for all Americans. The Affordable Care Act took an enormous step forward to provide that care to people who were previously shut out of the health insurance market.

Background on the Application System

The Affordable Care Act envisioned a modern, streamlined application system for health insurance and premium tax credits that would avoid the need for people to bring shoeboxes full of documents into government offices. As with any large new program, it took a while to make that new system a reality. But the marketplace succeeded in reaching its enrollment targets by the close of the enrollment period and allowed millions of Americans to complete the application process online, with help from trusted community assisters.

Generally, the online application confirms eligibility using the follow process:

1) An applicant answers a series of questions about who is applying for coverage, his or her address, whether he or she wants financial help, whether the applicant is a citizen or lawful resident, the income of members of the tax household, and whether the members of the household who want financial help with marketplace insurance have offers of employer-sponsored coverage. The applicant signs that, under penalty of perjury, he or she has provided true information to the best of his or her knowledge.

2) The marketplace searches a data hub to confirm the accuracy of the information. If documents that are already available to the government match the applicant's attestation,[1] the

[1] Rules define an inconsistency that has to be reconciled as a discrepancy in income of 10 percent or more that would make a difference as to eligibility. If a person is not income-eligible for premium tax credits and would not be found eligible regardless of which data source was used, the difference does not need to be reconciled.

application is confirmed. If information in the data hub does not match the applicant's attestation, the applicant has 90 days to provide additional documents.[i] For example, the applicant might provide a W-2 form, paystub, or letter from an employer to verify his or her current income. (Healthcare.gov provides a list of acceptable verification documents here: https://www.healthcare.gov/help/how-do-i-resolve-an-inconsistency/.) The applicant can do this by uploading the documents or by mailing them to the marketplace processing center. This period for "resolving inconsistencies" provides a critical due process protection to consumers while ensuring that the marketplace obtains the necessary verification.

Meanwhile, the initial assessment of eligibility is based on the applicant's attestation. If the applicant's identity has been verified and the person appears to be eligible for advance premium tax credits, the person can enroll in a plan with those tax credits. The applicant is also warned that he or she may have to pay back money at tax time, or may be able to get more assistance at tax time, if the amount that he or she receives in advance is not correct.

3) After the marketplace reviews any further documentation that the applicant sends, if documents show that the person is not receiving the correct amount of advance premium tax credits, the marketplace will adjust the amount of those tax credit payments for the remainder of the year.

Inconsistencies Are Not a Big Deal

Reports have shown that, for about 2 million enrollees, the marketplace is in the process of resolving inconsistencies between the documentation previously on file with government agencies and the information applicants provided.[ii] We expect that, in the overwhelming majority of these cases, the marketplace will ultimately determine that enrollees are entitled to about the same amount of assistance as they currently receive.

Here is why.

Income inconsistencies: CMS reports that the federal marketplace is still reconciling income inconsistencies for 1.2 million enrollees. *Because the income data that are readily available to the government are old, we expect that the information people record on their applications will generally be more accurate and up-to-date than the information that marketplaces find in the data hub.*

Applicants must project their 2014 adjusted gross income on their application forms. In fact, they are *supposed to* guess their future income.[iii] They are told that their final premium tax credits will be adjusted based on their actual 2014 incomes when they file their taxes, and they have the option of taking less than the full amount of tax credits in advance if they do not want to risk repayment. (Some state marketplaces, such as the District of Columbia's HealthLink, help applicants decide whether to take less than the full amount of tax credits in advance. The District's website provides as a default option that applicants will take 85 percent of their tax credit in advance.)

The federal data hub provides information from a *2012* tax return and from Social Security records. Marketplaces can also check wage information from employers that is provided by Equifax, an employment verification service, but not all employers provide information to Equifax. Therefore, in many cases, the information that applicants mail or upload in response to a request to resolve an inconsistency will be better, more recent income information that more closely matches their applications than information previously available to the government through electronic databases.

Income inconsistencies may also arise for people with irregular income. For example, a construction worker is paid by the job. This year, he may not have gotten much work during the snowy winter, but he guesses he'll have more income for the remainder of the year. He may therefore project a higher total income for 2014 on his application than the available databases indicate and may therefore take a lower amount in advance premium tax credits.

Citizenship and immigration inconsistencies: CMS reports that it is still reconciling 461,000 inconsistencies about citizenship information and 505,000 inconsistencies about immigration information. This is due to ongoing technical problems: The electronic verification system is still not working properly. These problems are not the fault of the applicants, who have provided the information they were asked to provide. Many of the current inconsistencies simply reflect that the documentation provided by applicants has not yet been processed by the agency. Due to the nature of these inconsistencies, it is highly likely that, once processed, eligibility will be confirmed for these cases.

People are eligible for marketplace coverage if they are citizens, nationals, or lawfully present in the United States. This information must be verified.

For individuals who attest to being a U.S. citizen, the system first attempts to verify citizenship using the applicant's Social Security number and querying the Social Security Administration (SSA). However, because of deficiencies in the SSA database (which is not updated when an individual naturalizes), many naturalized citizens cannot be verified through SSA. If SSA cannot verify citizenship, the system attempts to verify the individual's citizenship with U.S. Citizenship and Immigration Services (USCIS) using their SAVE system.

Lawfully present individuals must provide information from immigration documentation they've received from the Department of Homeland Security. Using this information, the system attempts to verify immigration status with USCIS using SAVE. There are many transfers of data throughout this process: the marketplace → federal data services hub → SAVE → the federal data hub → the marketplace. At any of these transfer points, there may be a problem with the electronic interface and the exchange of information that results in a glitch that creates a problem in the verification process.

Initially, additional technical problems included an application glitch in the federal marketplace: Even when all the information from an individual's immigration document was entered, the system didn't recognize it and wasn't able to process the information. In some cases, slight misspellings of names or the inclusion of a middle initial or hyphenated name may have thrown off a search.

Workarounds were developed and have evolved. For example, sometimes it helped to enter the information in all capital letters, and sometimes it helped to leave off hyphens or to leave out certain information. Therefore, the marketplace asked many applicants to submit additional documentary evidence of their immigration status simply because the marketplace's electronic interfaces were not working. Applicants responded (and continue to respond) by uploading documents or by mailing copies of their immigration documents to the federal processing center. [Here's a link to a list of accepted immigration documents: Permanent Resident Card or green card, Employment Authorization Document and Arrival/Departure Record or I-94 are probably the most common.]

We know from assisters and immigration advocacy organizations that many consumers who have submitted these documents are still awaiting notice that their documents have been received and processed. This accounts for a large number of the "inconsistencies" that are currently being resolved. In fact, inconsistency is a misnomer for these situations–the government is simply trying to obtain or process documentation for cases in which it had problems accessing electronic data.

Verification of Employer-Based Coverage

The Affordable Care Act makes premium tax credits available to people in the individual market who have financial need for premium assistance and who do not have an affordable offer of minimum-value coverage through their employers. We support this aspect of the law: It does not supplant employer-based coverage, rather, it makes coverage available to people who previously could not get coverage either through their employers or through the individual market due to cost or their health conditions. With the protections of the Affordable Care Act, people no longer are locked into jobs to get health insurance—they can work for themselves or start a new business. Workers in small firms that did not provide coverage before can also buy coverage, and low- and middle-wage workers whose employers do not offer coverage can get premium tax credits.

Applications for premium assistance therefore require applicants to provide information about any available employer-sponsored coverage. They can use an "employer coverage tool" to get the relevant information from their employers. Unless the marketplace receives contradictory information (for example, through data on coverage that is offered to federal employees), it generally accepts the applicants' attestation about available coverage. Rules require the marketplace to conduct further verification of employer-sponsored coverage offers for a random sample of enrollees.

Going forward, we believe that some aspects of the rules pertaining to employer-sponsored coverage should be improved. We know from assisters that some applicants tried, in good faith, to provide information about their employer-sponsored coverage, but they or their employers did not understand some of the requirements.

In particular, if dependents can be covered on the employer's plan, and the employee's share of premiums is affordable, the rules ban the entire family from getting premium tax credits—even if the employer contributes little or nothing to dependents' coverage and the dependents do not enroll in the employer's plan. This "family glitch" defies logic and fairness, and we know that applicants may not have

understood or provided correct information about employers' offers of dependent coverage. This was not anticipated[iv] and should be fixed through regulation or legislation.

In addition, some applicants had difficulty getting their employers to complete the coverage tool at all. Applicants would be able to provide more accurate information if, during open enrollment season, they automatically received relevant information from their employers about available employer-sponsored coverage. Enhancements to the Summary of Benefits and Coverage could help with this in future years.

Reconciliation

The Affordable Care Act distinguishes advance premium tax credits from final premium tax credits. When people file their taxes, they list their actual income for the year, and if that differs from the income they predicted, they may get more in premium tax credits than they took in advance, or they may have to pay back a portion of the premium tax credits that they took in advance. Thus, as CMS resolves inconsistencies between documents and applications, if people actually did get more or less assistance than they should have, two mechanisms will resolve any over- or underpayments: First, the marketplace will adjust premium tax credits for the remainder of the year. Second, discrepancies will be corrected through reconciliation.

As noted, we believe that, once all verification is complete, the marketplace will not find major discrepancies in the amounts *most* consumers should receive in premium tax credits. But we share concerns that the longer the process of verifying and resolving inconsistencies takes, the more *some* consumers will owe when they reconcile their tax returns.

Congress can work in a bipartisan way to minimize the effects of reconciliation on consumers who tried, in good faith, to maintain health insurance and obtain the proper amount of premium assistance. When the Affordable Care Act was passed, repayments for families with income below 400 percent of the federal poverty line were capped at $400 annually.[v] In later years, Congress revised the reconciliation caps so that they were scaled to income but increased to $2,500 for a family with income below 400 percent of poverty.

Congress should again consider providing more protective caps on reconciliation, either on a temporary or permanent basis; disregarding inconsistencies that were resolved within a few months; or disregarding certain types of inconsistencies, such as those that reflect minor mistakes in an employer coverage tool. We would be glad to work with you on such an initiative.

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[i] 45 CFR 155.315.
[ii] June 5, 2014, compilation of news stories on Kaiser Health News, http://www.kaiserhealthnews.org/Daily-Reports/2014/June/05/health-law-applilcation-vexation.aspx.
[iii] The application asks the following questions about income:
"Wages/tips (before taxes) □Hourly □Weekly □Twice a month □Monthly □Yearly
In the past year, did you □Change jobs □Stop working □Start working fewer hours □None of these
If self employed, answer the following questions: a) Type of work; b) How much net income (profits once business expenses are paid) will you get from self-employment this month?
Other income this month [a list of options includes unemployment, social security, etc.]
Yearly income: Complete only if your income changes from month to month: Your total income this year; your total income next year (if you think it will be different)."
[iv] Letter from Members Levin, Waxman, Miller, Stark, Pallone, Andrews and Dingell to Secretary Timothy Geithner, December 6, 2011.
[v] Patient Protection and Affordable Care Act Section 1401(f)(2)(B).

Chairman BRADY. While some today try to dismiss this, this as no big deal, the truth is Republicans and Democrats have been concerned about this for some time, with the risk to taxpayers by inadvertently committing taxpayer funded fraud, unfortunately, if this is not fixed.

Mr. Holtz-Eakin, on the screen, in barely readable type, is the income verification system of the Continuing Appropriations Act 2014. This was passed Republicans and Democrats, signed by the President, includes language principally by Representative Black of Tennessee, an important section reads this way: Prior to making such credits and reductions available, the Secretary shall certify to the Congress that the exchanges verify such eligibilities consistent with the requirements of such act. And Secretary Sebelius made that certification January 1.

One, was that certification in error, and two, as of today as it currently stands, does this system meet the requirements of the law?

Mr. HOLTZ-EAKIN. In my opinion, it does not meet that requirement and the Secretary clearly made the certification for reasons that she can defend, but by delaying for 1 to 2 years depending on the size of the firm any collection other than voluntary of information from the employer side, you cannot know if someone has an offer of affordable insurance. That is a key piece of the eligibility requirement.

Second, there are essentially different rules for Federal exchanges and state exchanges, and my understanding is that the administration is going to treat differently those states that did and did not expand Medicaid. You cannot make a sweeping statement that there is an overall certification system in those circumstances.

Chairman BRADY. As of today——

Mr. HOLTZ-EAKIN. Yes.

Chairman BRADY. As of today. Here we are June 10th, we have not even begun to resolve, even begun to resolve income-related inconsistencies. CMS acknowledges there is well over a million of these. They hope to get through them by the end of the summer; not yet known if that will happen or not. Obviously everyone acknowledges there is a long way to go in this.

Some will say this is all working out, no problem, this will work itself out, but even if they fix all the technical items, will HHS and the IRS really ever have a working income verification system? Doesn't the law, based on a very poor design, really prevent any agency from verifying income information before sending out the tax subsidy?

Mr. HOLTZ-EAKIN. There is no existing program that does what you described effectively. My concern is from experience with the earned income tax credit, from experience with the Medicare payment programs that this is yet another program that will, in fact, place a premium on getting money out the door, it will then make a good faith effort to identify errors in payment and recapture, but we have as a Government never done that particularly successfully.

And so, I understand the folks who point to particular details that can be fixed and done better, but as an overall track record, these kinds of programs have large errors in payment, and those are large taxpayer sums of money.

Chairman BRADY. So the problems that we will see won't merely fix themselves. The design of the system really makes it, as you indicated in your testimony, creates that pay-and-chase process, again, where we will always be paying out incorrect subsidies, chasing them down with some degree of success or not.

Mr. HOLTZ-EAKIN. Absolutely. And indeed, this law, in fact, exacerbates that slightly by making it the case that the recapture comes from taking money out of refunds. If there is no refund from which to take the overpayment, the taxpayer has—the recipient of the payment has no obligation to repay the Federal Government and thus the taxpayers.

So, you know, you have designed it so as to not get back all the overpayments. There is no doubt about that. It is going to be in particular, people like Mr. Ellis in a bad position. If you are a tax preparer, you can have an individual sitting in front of you saying, I am not going to pay what I owe, and will he sign off on that as a tax return? I won't answer for him, but I wouldn't want to be in that position. This is really a poorly designed system from that perspective.

Chairman BRADY. And in your testimony, you made the case that many of these individuals may not be as familiar with the tax preparation system. You are asking them to follow a very complex set of rules that they may have really no experience in dealing with?

Mr. HOLTZ-EAKIN. Yes. I mean, there are two people on this panel that can speak to this better than I can, but I worry about what happens next February. There are going to be people who have not traditionally filed returns who are going to get an information form in the mail, it is a 1095A, and my guess is half of them will toss it, they will have no idea what that is.

They will then have an obligation to file a return and reconcile the information on that form through another form, an 860—890—8962 form, and if they don't put that form in, the IRS will reject the filing and send it back to them. They won't get their earned income tax credit, they won't get their child care, they won't get anything.

I think there is going to be enormous amount of confusion. This population is not used to this process, the forms are new. The way error checking and reconciliation is going to happen is, in fact, not clear.

You know——

Chairman BRADY. And if I understand it correctly, because of the way Ms. Maloney talked about, if taxpayers don't catch it this next tax season, with the reporting requirements put in place in 2015, they will be caught in the 2016 tax system, which means they could be on the hook for 2 years of either overpayments or ineligible subsidies; is that correct?

Mr. HOLTZ-EAKIN. That would be my reading of the law and the practice. I would encourage you, you know, to have the IRS commissioner come up and explain how they do in fact plan to do that. I think there is some uncertainty about that at the moment.

Chairman BRADY. Thank you very much.

Mr. Ellis, to sort of follow up, there is really a second group of taxpayers we are concerned about, and you identified them in your testimony. And so if an individual, if I go to my employer and ask, is the insurance you offer me affordable according to the Affordable Care Act, will that employer necessarily know what that means?

Mr. ELLIS. No, because the employer doesn't have all the information that it needs in order to make that judgment. The defini-

tion of affordable insurance from the workplace is nine and a half percent of someone's adjusted gross income, of an individual's adjusted gross income, but, of course, individuals if they are part of a family unit don't file taxes as individuals. That only happens if they are single.

If you are married or if you have dependent children and all these other things that come into a more complicated tax return situation, the employer is not necessarily going to have all that information.

That is why the employer community was so insistent upon having this waiver of reporting, I think, for 2014, because they knew that they didn't want to make an attestation to the Government based on information that was incomplete.

Chairman BRADY. So if I have asked that question of my employer, they may not necessarily know what that means. So Serco, the Government contractor hired to process all the paper applications, resolve the conflicts of data, contact taxpayers and all, if they ask an employer today, is the insurance you offer John Q employee affordable, is the employer going to know that answer?

Mr. ELLIS. Probably not, because that employer probably doesn't have any more information than he did at any point this year.

Chairman BRADY. So, the Government can supposedly check, and they are doing this manually, so doubt they are doing much checking right now, but can they check and get the wrong answer?

Mr. ELLIS. Absolutely, they can get the wrong answer, and they will.

Chairman BRADY. And then, who pays that back if the answer is wrong? Is it the individual?

Mr. ELLIS. Ultimately the final liability lies with the taxpayer himself or herself that has received this advanced credit.

Chairman BRADY. Okay. Final point. Mr. Ellis, in his testimony, Mr. Pollack stated the Affordable Care Act envisioned a modern, streamlined application system for health insurance and premium tax credits that would avoid the need for people to bring shoeboxes full of documents into Government offices. The Washington Post reports, piles of unprocessed proof documents are sitting in a Federal contractor's Kentucky office. Quite literally there are millions of documents, much of which presumably came from someone's shoebox.

As the tax preparer, does the Affordable Care Act meet the goal envisioned by Mr. Pollack, and do you expect it to be overwhelmed by the contents of these shoeboxes next April?

Mr. ELLIS. I expect it to be overwhelming, in that taxpayers will not know what they don't know when they walk into a tax preparation meeting. I think tax preparers are going to have to learn themselves what it is taxpayers are going to need to bring. We are probably going to have to send them back home, send them back to the Government agencies that maybe they threw away forms from and come back and do follow-up meetings. So it is going to be burdensome on the entire process next filing season.

Chairman BRADY. The purpose of the hearing is not to minimize the problem, it is to shine line on it. So both individuals, employers, others who could be caught up in this can take action now to

try to prevent it, and the Federal Government can actually do the job it was supposed to do under this law.

So I now recognize the Health Subcommittee ranking member, Dr. McDermott, for 5 minutes.

Mr. MCDERMOTT. Thank you, Mr. Chairman.

God, it sounds like the game is over, it is all—it is hopeless.

Mr. Pollack, the ACA—doesn't the IRS have a process at the end of the year that will take the income that you report that year and match it up with what you said you were going to have?

Mr. POLLACK. Yes, of course they do and, you know, what is really important in this inquiry is not to confuse two different sets of things.

One is verification of information that looks retrospectively, which is really the issue that is currently being considered when they say there are a couple million inconsistencies. The other is prospectively. When people provide the best information which is accurate at the time they provide that information, you and I don't know, they don't know whether in the middle of the tax year their employer is going to give them a bonus, whether their employer is going to increase their salary, whether there is going to be a difference in overtime pay. Those are the kinds of things that will be checked later on at the end of the tax year. That does not mean that the application that has been filed has current inaccuracies.

I am concerned that the retrospective effort—I am sorry, that the effort at trying to adjust tax credits in the following year, which may have to look at things that nobody predicted and that are not contrary to what the information that was provided in good faith could result in a tax liability, but that is very different than saying that there are current inaccuracies.

Mr. MCDERMOTT. It sounds to me like the testimony of some of the other witnesses is fear mongering to make people afraid to say, I think my income this year is going to be $30,000, and therefore I would be eligible for X amount of subsidy, and to take it, because it may turn out that something changes during the year and suddenly they are faced then with, it was $40,000 you made, you owe $500 back. Is that a fair statement of what the——

Mr. POLLACK. Yeah. There is no question that those who have opposed the Affordable Care Act have tried to deflate the number of people who apply for coverage and seek subsidies.

Thankfully, the Affordable Care Act did better than anyone predicted. Over 8 million people actually enrolled in private coverage, about 5 million people enrolled in Medicaid coverage, another 1 million enrolled in Medicaid coverage in April after the first enrollment period expired, but thankfully people, when they get counseling—and they are receiving counselors. There are navigators and assisters that are providing information to people so that those who are unfamiliar with the form and have difficulties with the form can fill it out accurately.

Mr. MCDERMOTT. And was there anything in that process when they were filing that said, give us your income for 2 years ago so we can match what you tell us with what you received 2 years ago? Was that the earliest—the best data available to the IRS?

Mr. POLLACK. Yeah. Well, of course when we move away from this shoebox mentality that we have had with social welfare programs where people have to come in with W-2's and 1099's and a host of other data, now we are doing it digitally, and what we then do is verification digitally. What we can only do with the best data that we have, and the best data that we have with respect to income is income in the tax files of a couple years ago.

Mr. MCDERMOTT. So if I am making $30,000 now, maybe I was making 27 when I—the last time, in 2012. So when I report $30,000 as my income today, it will be matched against that 27 of 2012, and it will look like an inconsistency, right?

Mr. POLLACK. Yes and especially any inconsistency that exceeds 10 percent, and that—from $2,700 to—$27,000 to $30,000, that is an increase a little above 10 percent, that will appear to be an inconsistency, but it doesn't mean that the $30,000 response was inaccurate.

Mr. MCDERMOTT. So what is being created here is the impression that there are thousands of people sitting out there saying, I think I will put my income down real low so I can get a big subsidy and see how far I could get with it. Is that a fair way to characterize?

Mr. POLLACK. Well, I don't think people——

Mr. MCDERMOTT. And I yield back the balance of my time.

Mr. POLLACK. I don't think people are looking at it that way.

Chairman BRADY. If you would like to answer in a later question or submit it in writing, that would be perfect.

Mr. POLLACK. I would be happy to do so.

Chairman BRADY. Chairman Boustany.

Chairman BOUSTANY. Thank you, Chairman Brady. The Oversight Subcommittee of Ways and Means has had multiple hearings looking at improper payments in various areas of the Tax Code, and we have tried to focus on this nexus of complexity in the Code and how it leads to improper payments, what is the IRS trying to do to deal with all this, and the compliance burden. We know that improper payments come about from identity theft, honest miscalculation, or the government's inability to administer credits properly. We know that refundable credits are very difficult from an administration standpoint, and that is based on multiple conversations I have had with the IRS Commissioner, privately as well as in hearings. And I referenced government-wide, just under 5 percent improper payment rate. EITC is more problematic, and we still have not gotten a full handle on this. But Mr. Holtz-Eakin and Mr. Ellis, comment on the vulnerability that this premium tax credit is going to pose in terms of creating significant improper payment, and what can the Federal Government do better, if we are going to have this system, and I would submit, I think, the policy prescription is pretty flawed, and we are seeing the implementation flawed as a result; but given that scenario, what can we do?

Mr. HOLTZ-EAKIN. I guess the thing I would like to emphasize is that the reason I am concerned is because of the EITC experience, and this committee has looked at it for a number of years I know. There is no income attestation in the EITC. This is not about inaccuracies in attestations. It is about correctly delivering the right amount of a refundable credit to a deserving individual,

and we get that wrong at alarmingly high rates, 1 in 5, hundreds of billions of dollars. And that track record is the focus of my concern.

It can be improved by effective electronic information sharing, and there is, you know, great efforts by the IRS to do that. I think at the startup of the ACA, there is going to be big problems there. We know that, in fact, the States have simply not been asked to do that. If you are on a Federal exchange, there was an attempt to check the records a few years ago; but I think for a number of years, until the employers are fully in the system and the matching and error checking is done effectively, it is going to be impossible, regardless of attestation, to simply line up the records and give the right amount of money out, and that is my concern.

Chairman BOUSTANY. This level of complexity, especially with the problems they are having with the employer mandate and the reporting is significant. Ms. Mahoney laid out a number of major concerns in that regard. And I know we have talked, I think you have testified before about the additional $30 billion in regulatory compliance on taxpayers because of the Affordable Care Act. How does this situation with the subsidy eligibility process, employer reporting as we know the status today, these requirements, how will they really add to the compliance cost, and what is the effect going to be both on tax compliance and economic growth?

Mr. HOLTZ-EAKIN. I have been concerned for quite some time that the Affordable Care Act does not cost you anything like a pro-growth policy at a time when the U.S. is recovering poorly from a very deep recession. And so as a whole, it goes in the wrong direction. This is not what you would do to stimulate economic growth. The particulars of the compliance costs are quite troubling because the number is high, the paperwork and self-reported compliance cost—these are all figures from the agencies themselves—look like $300 billion over a 10-year horizon. Much of it is going to be visited upon a very low income population, the deserving targets of the exchange subsidies. They are the ones who are going to have to report every change in their personal lives quarterly to these exchanges. They are the ones that are going to have to identify the information statements that come in the mail, file new tax forms that they did not previously have to file, do the reconciliation, perhaps be denied their EITC until a second filing confirms the appropriateness of their subsidy. Those compliance costs are going to visit on that population, and that is not going to improve their economic lives.

Chairman BOUSTANY. Mr. Pollack quoted Shakespeare earlier to the tune of much about nothing, but I would submit that $220 billion over 10 years is significant; and this is just one piece in a budget problem that we have. I would like you to comment. I mean, this $220 billion estimate, give us a little more insight into where that figure might have come from?

Mr. HOLTZ-EAKIN. How big is that? I mean, where it came from, if we spend $1 trillion in exchange subsidies over the next 10 years at roughly 20 to 22 percent inappropriate payment rate, that is a $220 billion taxpayer finance mistake. And that is not entirely hypothetical because we have had that experience in the EITC, which is a smaller program. For perspective, right now the

gap between payments coming in, payroll taxes and premiums, and spending going out in Medicare is $300 billion. Crucial piece of the social safety net, $300 billion deficit every year, that is the size of the mistake that we are potentially making that could be applied to legitimate taxpayer goals like funding programs they want and reducing taxes they don't think they need.

Chairman BOUSTANY. Do you think the error rate, we are basically, for the sake of calculation, using a 20 to 22 percent error rate, do you think it is going to be higher? This strikes me as being actually more complicated than the EITC and suggests to me that the error rate could be higher.

Mr. HOLTZ-EAKIN. Well, the EITC asks you to provide at the individual level, household level, your income, family size, the parameters of qualification for your credit. This is that, plus the employer side on affordable insurance, and it is by definition more complex and leads the situations that Mr. Ellis talked about where you might decide something is unaffordable for an individual, send them off to the exchanges, look at the family unit as a whole, decide it was affordable, they got the subsidies inappropriately. They are now in a very bad position of owing the entire amount back, perhaps with quite large penalties. It is going to be difficult to operate effectively.

Chairman BOUSTANY. Ms. Mahoney, do you want to add anything to this? You focused a little bit on the employer reporting requirements and the complexity there. Is there anything that you would like to add?

Ms. MAHONEY. I think that one thing to consider is that businesses are very different in terms of their population of employees, in terms of the size of their company, in terms of whether they self-insure or do not self-insure. And so one of the things that we would like to continue to see is flexibility in terms of what compliance means for the reporting requirements because there are so many different types of businesses and different types of employees with variable hourly employees as opposed to seasonal employees as opposed to a population that you anticipate their hours very clearly. So I think that adds a huge layer for the employer.

Chairman BOUSTANY. To put all this back into perspective, some very disturbing trends have already emerged, and as a physician, I know what the impact of this will truly be. We are now seeing more people in the emergency rooms across the country. This means that a lot of people who need medical care are getting their first line care in the emergency room where it is more expensive, typically later in the process, and it is certainly not the best way to establish a high-quality doctor-patient relationship. I don't think this was the intent of this law, but this is the consequence of a flawed policy. With that, I will yield back, Mr. Chairman.

Chairman BRADY. Thank you, Chairman. Ranking Member Lewis.

Mr. LEWIS. Mr. Pollack. It is good to see you again. Thank you for being here. Thank you for continuing to fight the good fight. Almost 50 years ago you were down in Mississippi in the heart of the Delta trying to help people get registered to vote. Fifty years later you are still fighting, standing up for what is fair. Just thank you for being here. As you travel around the country, what do you see?

What do you hear about the Affordable Care Act? What are the American people saying about it? And I want you to take your time, and if you want to respond to anything, I want you to use my 5 minutes to say what you want to say.

Mr. POLLACK. Thank you. Thank you, Mr. Lewis. You know, the last Census Bureau report tells us something that is truly extraordinary. What the Census Bureau reports said was that there were 48 million people in our Nation who are uninsured. You know, it is hard to put your arms around that number, 48 million. So think about it this way: Take the entire population of Oregon, and then Oklahoma, and then Iowa, and New Mexico, and Mississippi and Utah, Nebraska, Montana, North Dakota, South Dakota, Connecticut, Arkansas, Kansas, Nevada, West Virginia, Idaho, Hawaii, Maine, New Hampshire, Rhode Island, Delaware, Alaska, Vermont, and Wyoming, 24 States, and you aggregate the population together and throw in the District of Columbia, and you have fewer than 48 million people.

What the Affordable Care Act does is it changes that, and we have seen some significant improvements already. For example, we just learned from the Gallup Survey that the number of people who are uninsured has reduced very significantly, and that is very important. But the Affordable Care Act is doing a whole lot more. It is providing peace of mind to people, people who had preexisting health conditions like asthma or diabetes or high blood pressure or history of cancer, they no longer have to worry whether they can get health insurance from an insurance company. Young adults who can't afford insurance are now getting coverage, over 3 million of them, through their parents' policy. And a lot of people who could never afford health insurance before are now receiving significant subsidies that makes premiums affordable and that make out-of-pocket costs affordable. And community health centers are receiving more money to serve more people.

So the Affordable Care Act has taken some very important steps that are long overdue, and in the process, it is also doing something about health care costs that Mr. McDermott talked about. It is aligning payments so we pay for quality rather than quantity of care. It is improving quality effectiveness research to make sure that the care we get is the best care possible. It is improving coordination of care. Those are all very important steps, so I am really thankful that the Affordable Care Act, which is by no means perfect, but it is an extraordinary step in the right direction.

Mr. LEWIS. Thank you very much. Mr. Chairman, I yield back.

Chairman BRADY. Thank you. Mr. Johnson is recognized.

Mr. JOHNSON. Thank you, Mr. Chairman. I can't say what I want to say. You know, defenders of the President's health care law claim the problems we are talking about today are predictable challenges in implementing new programs, the administration is working out the kinks and the problems will go away. I don't think that is true, is it? Mr. Holtz-Eakin, are the problems of income reconciliation, unexpected tax debt or potential waste, fraud, and abuse issues of implementation, or do they go to the very core of how this law operates?

Mr. HOLTZ-EAKIN. As I said in my opening statement, I think there are lots of issues that will arise in the first filing season due

to the deferral and waiving of some of the provisions, but the fundamental issue is much like the EITC and other programs and will not disappear. It is a problem in the design.

Mr. JOHNSON. Well, I guess we have to wait and see. Mr. Ellis, as a tax preparer, what are your biggest concerns about the 2015 tax filing season?

Mr. ELLIS. My biggest concern is that there is a lack of education that is happening on both the preparer side and on the taxpayer side, that there is going to be a completely different dynamic in the tax interview for many of these clients next spring than we have had up until this point. We are going to have an added dimension of having to deal with this, and really everyone I think is going to be caught flat-footed in this. Taxpayers are not going to expect it coming. They, frankly, come in with a big pile of paper and have no idea what they are bringing to a tax meeting. That's the honest truth. This will simply be added to that pile.

They won't be prepared to answer the type of questions that we are going to have to ask as tax preparers, tax preparers having to deal with a completely new set of forms and a completely new process to interview taxpayers are also ill-prepared for this.

So my biggest concern is that we are going to have a lack of information all around, and then that doesn't even bring into account the agency, the IRS, and their ability to educate both taxpayers and preparers in that regard.

Mr. JOHNSON. Well, and they are going to be unable to fathom all the facets of this law I think ultimately. Thank you, Mr. Chairman. I yield back.

Chairman BRADY. Thank you. Mr. Davis.

Mr. DAVIS. Thank you. Thank you very much, Mr. Chairman. I want to thank the witnesses. You know, I was in church Sunday, and I was kind of touched with the message that the pastor gave, and he was trying to figure out why it is that sometimes we see things and just refuse to believe it, that he was pushing the fact that what the eyes see, the heart must believe. And so it amazes me that we continue to hear that ACA is not working when we can see, if we put in perspective, more than 8 million people have marketplace health insurance plans, including more than 6 million who are receiving tax credits. Approximately 6 million lower wage individuals have enrolled in Medicaid coverage, 6 million young adults have been able to stay on their parents' health plan; 129 million Americans with preexisting conditions, including 17 million children, can no longer be denied coverage or charged higher premiums because of their conditions; and more than 100 million Americans no longer have a dollar limit on their coverage, providing them and their families with peace of mind that they will not go bankrupt if they are diagnosed with an expensive disease.

The bottom line is that the ACA helps people with preexisting conditions, those who are between jobs wanting to become self-employed, and obviously this is a tremendous amount of improvement.

Mr. Pollack, you have indicated that as you have talked to people and get the impressions from them how they see this, if they see it one way, I am wondering, why do so many other people seem to see it another way? Or if their hearts just refuse to believe what their eyes see. How would you respond to that?

Mr. POLLACK. I think there are three words that really reflect what has happened to people who are gaining coverage through the Affordable Care Act. Those three words are ″peace of mind.″ People now know that when they or a family member need care, they will be able to receive it, and I think that if you take a look at the surveys of those people who have enrolled, you will find that by an extraordinary margin, people are very happy with that. And I think as more people get enrolled, and more people will get enrolled over the course of the next year and the following year, I think you are going to see that the American public understands that the Affordable Care Act provides a very significant contribution to the improvement of America's health care system. It is by no means perfect, and we are still going to have to make some changes to it, but it is a big step in a positive direction.

Mr. DAVIS. Thank you very much, and I just hope that their hearts will catch up to their eyes, and they too will see that the Affordable Care Act is what America needs, and I yield back, Mr. Chairman.

Mrs. BLACK. [Presiding.] Mr. Roskam.

Mr. ROSKAM. Thank you, Madam Chairman. Mr. Holtz-Eakin, I noticed the first point that you made in your opening remarks I thought was interesting, and you cited the complexity of the Affordable Care Act, and I want to follow up on that. You know, one of the reasons that we have this hearing today is because it is so complicated that the administration is calling upon an honor system that just basically says, you know, you all just report in, and we will attribute, give that the imprimatur of actuality on it. We will just assume that what you say is true because it is so big and it is so complex and it is so difficult that the administration can't deal with it. We know that the Congressional Budget Office recently came out, and they said, in part, that some of these elements of the Affordable Care Act are so complicated and so difficult to discern that the Congressional Budget Office can't get its arms around the totality of this impact, and not to indict the CBO, they are just saying this is the reality, and the footnote in part says that CBO and Joint Committee on Taxation can no longer determine exactly how the provisions of the ACA that are not related to the expansion of health insurance coverage have affected their projections of direct spending and revenues. Then it goes on, isolating the incremental effects of those provisions on previously existing programs and revenues 4 years after enactment of the ACA is not possible.

In other words, it is so big and it is so complicated and it is so overwhelming that a few months ago they were able to estimate that the 10-year cost was $1.3 trillion, and now they have said it is too big, there is no way to get our heads around this.

One of the remedies, I believe, and I am interested in your insight in this, is legislation that I have introduced along with 80 Members of the House calling for a Special Inspector General to monitor the Affordable Care Act. The thinking is this incredibly complicated piece of legislation that implicitly is so complicated that the administration can't get its heads around it is implementing the honor system.

Explicitly, the Congressional Budget Office says it is so big and complicated, we can't get our heads around this thing, that I think

it is time for us to enact similar to what happened with the Troubled Asset Recovery Program, similar to Inspectors General on Iraq and Afghanistan, and an overall Inspector General to get the information to report back and to get our arms around these big questions. Can you give us any insight or thoughts you have, particularly on a large Inspector General and how the need for that? Am I overstating this? Am I overcharacterizing it? How would you think of that.

Mr. HOLTZ-EAKIN. Well, first of all, I would, you know, issue the caveat that I haven't read your bill.

Mr. ROSKAM. It is really good reading. You would love it.

Mr. HOLTZ-EAKIN. I am remiss, I know I should have. The Inspector Generals have been very valuable additions to agencies, they have, and I think the track record of their bringing to light inefficiencies, outright malfeasance, things like that is superb. What is unique about this law is really its breadth, the number of agencies it encompasses. I wouldn't even be able to list them all. You have got DHS, IRS, Treasury, you have got HHS, you have got the Social Security Administration, the list goes on. Each of the IGs in those agencies is probably very good and looking as carefully as they can at the operations, but they are not going to see the big picture, they are not going to ask the question, are we seeing an efficient, good-faith implementation of the law that the Congress passed and the President signed. It makes sense to me to put someone in that position, particularly for such a very, very large amount of money. This is an extraordinarily important and large program. It makes perfect sense from that perspective.

Mr. ROSKAM. Let me just direct you specifically to three questions that we prepared in advance. Is there any entity today that could give us an accurate report of how taxpayer dollars are being spent for this law across the entire Federal Government, the interactions with State government and the private sector?

Mr. HOLTZ-EAKIN. No.

Mr. ROSKAM. Do you agree that SIGMA would bring, that is this Special Inspector General Monitoring the Affordable Care Act, as you have come to understand it would bring much needed clarity to the law that has been haphazardly implemented, and where there are strong concerns about waste, fraud, and abuse?

Mr. HOLTZ-EAKIN. Yes, because the implementation is now more important than the law. It has been so uneven.

Mr. ROSKAM. And regardless of someone's perspective on the Affordable Care Act, isn't it a rational thing to say more information as it relates to the implementation of the law is a better thing?

Mr. HOLTZ-EAKIN. Absolutely.

Mr. ROSKAM. I yield back.

Mrs. BLACK. The gentleman from Nebraska, Mr. Smith, is recognized.

Mr. SMITH. Thank you, Madam Chair. Mr. Ellis, can you explain the difference between inconsistencies, that is, the difference between information entered on an application and government records, and then ineligibility based on an offer of affordable employer-sponsored insurance? Now, in the case of inconsistency the applicant will receive a notice of inconsistency; is that correct?

Mr. ELLIS. That is correct.

Mr. SMITH. And then they will have the opportunity to rectify those inconsistencies, would that be accurate?

Mr. ELLIS. That is accurate.

Mr. SMITH. So in the case of an applicant, I would say someone acting in good faith who receives a tax credit not realizing or fully understanding they are ineligible because they or a family member were offered employer-sponsored coverage will receive an inconsistency notice. What will they owe when the error is identified?

Mr. ELLIS. If the taxpayer in question was eligible for affordable employer-provided insurance, they would owe the entirety of their advance tax credit back. If they were simply given an overage, they would owe back the extra amount presuming that they make more than a certain amount of income as set in law by statute.

Mr. SMITH. Now, if they did not have a refund coming, what would happen in that case? In that case they would have a straight liability to the IRS. They would have to do a payment. That payment could potentially have interest, and also if payment does not happen, the liens and levies that were discussed earlier could also come into play.

Mr. SMITH. Okay. Mr. Pollack, would you agree with that analysis?

Mr. POLLACK. Yes, I do.

Mr. SMITH. So that a taxpayer acting in good faith could see a lien coming as a result of the complexities of the Tax Code?

Mr. POLLACK. Is that a hypothetical potential? Of course there is. But the real issue here is really not the error scenario that we are focusing on right now. The real potential is for liability is not significantly in errors as we talked about errors before. It is because when people honestly, accurately portray their current circumstances, and they receive a tax credit subsidy accordingly, where the potential for liability is significant is that despite the fact that the response was honest and accurate, things change over the course of the year. Someone may have gotten a bonus in terms of their compensation. They may have received an increase in their salary. They may have had more overtime than they had expected.

There are a variety of factors like that which mean that the accurate, not error, information provided by an individual changes over the course of that year. And that will result in a potential liability. That is what I think may very well happen in April of 2015. I do not believe that we are going to see liability to any significant degree because of errors as we have been talking about it in this hearing. It is what happens prospectively that was unpredictable, rather what happened retrospectively that was reported inaccurately.

Mr. SMITH. My concern is that the Tax Code was already very complicated before we added more complications as a result of this healthcare issue, and my concern is that a taxpayer acting in good faith and wishing to do the right thing could see a pretty significant penalty. Thank you. I yield back.

Mrs. BLACK. The gentleman yields back. The lady from California, Ms. Sanchez, is recognized.

Ms. SANCHEZ. Thank you. I want to thank our chairmen and our ranking members for this hearing. I want to begin by pointing out that the Affordable Care Act is working. Gallup recently found

that the percentage of uninsured Americans has dropped to 13.4 percent, which is the lowest recorded rate ever. More than 8 million people have signed up for exchange plans, with 6.8 million of those receiving an average tax credit of $4,400 to provide the peace of mind of having health insurance, many for the first time.

Another 6 million have enrolled in Medicaid thanks to the ACA's Medicaid expansion, including 1.4 million people enrolling in California's medical system, and I could go on and on with numbers, but the bottom line is that the ACA is helping people, people with preexisting conditions, people between jobs and many, many others.

Now is the law perfect? Well, no law is, but a tremendous improvement over the discriminatory, dysfunctional, and irrational market that existed prior to its enactment, it is doing much better. And we can agree that some of the issues that HealthCare.gov have encountered are unacceptable. However, it is not the first time that we have seen a troubled rollout. The implementation of Medicare Part D was riddled with false starts and complaints, but we didn't defund it and we didn't repeal it. We didn't throw our hands up in the air and woe is me because it is complex or it is a little bit difficult or it could change.

So let's just all stop kidding ourselves and admit that there will be glitches with the ACA, but if we spend our time working together to ensure that the law worked, maybe we could make it easier for families to buy affordable health insurance. But the hearing today unfortunately does very little to accomplish that goal. It is clear that this hearing is just another attempt to bash the ACA and play politics with Americans' livelihoods.

Like most Republican hearings we have had recently, this is meant to produce a lot of noise and some crocodile tears but very few solutions moving forward. The majority is playing up a false sense of populism and claims that they are worried about people owing a huge tax bill to the IRS during the 2015 filing season. Well, I think that is ironic given that the Republicans eliminated improvements made by Democrats, and they want Secretary Lew to halt all tax credits that make health insurance more affordable.

I think it is unconscionable, and that kind of demand demonstrates that Republicans are out of touch with everyday American families. Life is complicated, yes. And it is full of surprises. People get new jobs, they get married, they have children, they move from State to State. The verification system known as true-up ensures that tax credits accurately reflect the changing nature of people's lives, and I am one of those examples.

I have a biological son and I have stepchildren. I come from an immigrant family, and I use an accent over my last name. And my life, like so many southern Californians, could be considered complicated, but the ACA will recognize those complexities through the verification process during next year's tax filing season. HHS has been transparent about the process and has tried to be proactive in its outreach. We shouldn't deny Americans the assistance they need to buy affordable health care just weeks after they have received it. So if we spent a little more time really caring about the needs of real people instead of trying to tear down the law and defund it or repeal it, we might be able to work together in a con-

structive way, in a bipartisan way, to help ensure that Americans receive quality, affordable health insurance, and I am sorry for stepping on my soap box just now, but I felt it was important to point that out through this entire hearing.

What I would like to do is I would like to ask Mr. Pollack what happens if we repeal or defund the Affordable Care Act as Republicans have suggested time and time again? What happens?

Mr. POLLACK. Ms. Sanchez, I don't think we are going to repeal the Affordable Care Act. We are not going to defund the Affordable Care Act. There are 8 million people who are now receiving subsidies, who are receiving coverage. Most of them, 85 percent are receiving subsidies. Five million people are receiving coverage through the Medicaid program, or CHIP. Three million kids are getting coverage through their parents' policies. We are going to see those numbers increase substantially. I don't think that this Congress, I don't think any Congress is going to take away these benefits that are so important that make health coverage affordable for the first time.

Ms. SANCHEZ. Let me ask you what I hope is a constructive question, which is how can we work to improve the application process for immigrant families in particular?

Mrs. BLACK. Mr. Pollack, the lady's time is expired. We will ask that you submit the answer to this question in writing. Thank you.

The gentlelady from Kansas, Ms. Jenkins, is recognized.

Ms. JENKINS. Thank you, Madam Chairman. Thank you for holding this hearing and thank you all for joining us today. A month ago, our Oversight Subcommittee was able to host IRS Commissioner Koskinen at a hearing on the IRS filing season. At that hearing, I asked Mr. Koskinen about the administration of the Affordable Care Act's premium tax credit reconciliation process. As we have already covered at today's hearing, the ACA's premium tax subsidy will be based on folks' income estimates, and these estimates will often use the prior year's tax returns. Taxpayers will eventually have to reconcile the premium subsidies they received with the amounts they were eligible to receive based on their actual income. In many cases, whether it is due to a salary increase, move across State lines, or other change in situation, they could find themselves owing thousands of dollars back to the IRS.

Recently CMS data indicated that 1.2 million enrollees had discrepancies related to income, and this is before we begin to factor in life changes that will occur throughout this year. I have asked Mr. Koskinen if he believes that taxpayers fully understand the risk that comes with failure to report a life change to the exchange and how they will handle the reconciliation process. He responded that the IRS is concerned that taxpayers need to understand the risk, and they are beginning to publicize this so that taxpayers have various modes of outreach, including their Web site and that he hopes that taxpayers will notify the exchange so that they will not be surprised.

Mr. Ellis and Mr. Skarlatos, would you be willing to answer a few questions for me? Do you think that taxpayers are at all aware of their obligation to notify the exchange with their good news of getting a raise or marriage throughout the year, and do you believe that taxpayers understand their risk of failing to do so? Mr. Ellis.

Mr. ELLIS. No. Because if there is one constant in the tax preparation industry, it is that people forget about the IRS as quickly as they can once they file their tax return, and they don't think about it again until the next January.

Ms. JENKINS. Mr. Skarlatos.

Mr. SKARLATOS. I don't think taxpayers are aware. I think that is what tax preparers should be doing with them. They should be educating them as much as they can.

Ms. JENKINS. Okay. Thank you. Do you believe the IRS' efforts to publicize this information, either through a YouTube account or their Website, will make taxpayers understand their obligation?

Mr. ELLIS. That requires taxpayers to have the interest to go to IRS.gov or to be recipients of the information in some other way that they would actually see it. Based on my experience with real world people that actually file their taxes, I think that is incredibly unlikely.

Mr. SKARLATOS. I agree. I think it is unlikely. I think the burden again should be on the tax return preparers to educate the taxpayers. Ms. Jenkins. And as someone who has prepared tax returns and has had to deliver bad news to taxpayers regarding refunds, are you concerned the tax preparers will be the real frontline of taxpayer education at a time when it is too late.

Mr. ELLIS. There is a joke inside the tax preparer world that it is always the taxpayer's fault when you are in a meeting with a client, and I think that is probably going to be exacerbated here. I think the tax preparers themselves are going to be very unprepared for this. They are going to be talking to people who make a modest amount of income by definition. The 400 percent of Federal poverty line is not a very high level of income. These are not people that have a lot of liquidity to be able to deal with surprises. So, yes, I think it will be very tense, those conversations between preparers and clients.

Mr. SKARLATOS. I agree. The Tax Code is very complex. The tax return preparers are the gatekeepers to the system, and it will be difficult for them to educate taxpayers in this way, but it is really the only way it can be done.

Ms. JENKINS. Thank you. I yield back.

Mrs. BLACK. Mr. Paulsen from Minnesota, you are recognized.

Mr. PAULSEN. Thank you, Madam Chair, and thank you also for presiding over the hearing today.

Just to recap, when the President's health law was passed back in 2010, the law called for verifying individuals' income in order to determine if they are eligible to receive a subsidy. The administration said we are not going to enforce that provision. So Congress moves in, re-passes legislation, the President signs into law that includes the provision once again that we require income verification. But then today now, we know that there are over 2 million people of the 8 million that are in the exchanges, these applicants, have unresolved inconsistencies. So that means 25 percent of applicants in the exchanges had discrepancies. This isn't a glitch. This is clearly a systemic issue, and so the May 17 Washington Post report showing that as many as 1.5 million people; there are cases of significant inaccurate subsidy payments now due to incorrect income data.

In other words, there is no verification resulting in millions of taxpayers, families being on the hook potentially for billions of dollars in waste and fraud, and some of those cases bear out, I think, with Mr. Holtz-Eakin had mentioned earlier in terms of the EITC. So we are no longer talking about hypothetical problems regarding the new healthcare law. We are talking about real risks that are in place now, and this harm is happening as we speak, and during next year's tax filing season millions of Americans are going to find out that they owe the IRS money because their premium credits were paid incorrectly.

And the IRS and the administration in general is going to have to face a choice. One, they can go after innocent taxpayers creating financial hardship and confusion for those millions of families; or two, just and choose to once again ignore the law and force other taxpayers to cover billions of dollars in excess premium credit payments. Those are both very, very bad choices, and it didn't have to be that way. That is what comes when you pass just a one-sided partisan law without bipartisan buy in. Mr. Ellis, is this really how the law was supposed to operate?

Mr. ELLIS. Well, if you look at the actual letter of the law, it is operating the way it is supposed to operate. That speaks more to think the process not having been thought through properly when the law was drafted. As you point out, if the IRS implements the law as written, it is going to face that very difficult choice between going after people who have very modest levels of income and savings in order to pay this overage or simply ignoring their mandate to carry out the laws as written by the Congress.

Mr. PAULSEN. Let me just follow up because as a tax preparer, you know what questions to ask when people seek your services. But what about the people who don't seek your services? Typically how are they going to know? How are they going to know what they are responsible for as a part of verification, and aren't those typically lower income Americans or individuals or families that aren't seeking your services that are going to be trapped in this situation?

Mr. ELLIS. Well, by definition if you look at the upper band of who is going to be affected by this, people that are receiving premium credits at all, 400 percent of the Federal poverty line is about $44,000 for a single person. It is about $90,000 for a family of four. So it is everybody between that and below all the way down to Medicaid eligibility. So many of those people are not today using tax preparers. They will continue to file their tax returns or not as they have up until the past. When they are going to find out about it is when they are going to get a notice of deficiency from the IRS after they file.

Mr. PAULSEN. Mr. Holtz-Eakin, I just want to give you a chance to respond too real quick maybe to that or a couple of those points if you could.

Mr. HOLTZ-EAKIN. I think that's exactly right, and my concern is that for this population, they are going to be in uncharted waters. There is a question about whether some of the State exchanges will be able to get the information statements to the recipients, their subsidy payments. Once people receive it, will they know to hold on to it, this is something they need or it was about

that health thing they already did. Do they know to go to a preparer and thus send a reconciliation form? If they don't send in a reconciliation form, my understanding is the IRS is simply going to reject the tax return and tell them to start over. That will be a shocker, particularly if they are used to getting an EITC. It can be a bumpy ride in 2015.

Mr. PAULSEN. Thank you, Madam Chair. I yield back.

Mrs. BLACK. The gentleman yields back. The gentleman from New York, Mr. Crowley, is recognized.

Mr. CROWLEY. Thank you, Madam Chair. It is really a remarkable hearing today. It is unbelievable in many respects to me that my colleagues are willing to say and do just about anything to tarnish the Affordable Care Act and undermine access to health care in this country. Let me be very clear about a few things: One, the vast majority of what we are talking about when we hear inconsistency isn't fraud. It isn't malicious or a sign of anything bigger. These are expected, anticipated issues that happen with any Federal program checking various items of data.

Two, there is, in fact, a verification system. It happens now as we speak and it is clearing the majority of inconsistencies. And three, there was a backup verification process that happens at the next tax filing when we know what a person's actual income was for that filing year. This reconciliation process is necessary and helpful because people's incomes, as has been stated over and over again, and family circumstances change over the course of a year, hopefully for the better. Some people maybe didn't get all the tax credits that they were entitled to, in fact. But what's shocking to me is all the fake outrage from my colleagues on the other side of the aisle about this reconciliation process when they have voted time and again to make this process harder on working families.

After passage of the Affordable Care Act, Democrats worked to improve this reconciliation process, so families wouldn't see their income taxes raised if they received even a small end-of-the-year bonus. But opponents of this law in their unending zeal to undermine the Affordable Care Act and to scare away people from accessing health insurance went back to this again and again to undo all the improvements we made and actually made it worse than before.

I guess using Speaker Boehner's metric of judging this majority based on what the undo rather than what they do, they consider what they have done a success.

And that is not even enough for them. Twice more, they put forward proposals to completely repeal all protections for families to repay tax credits that turned out to be more than they needed. So when you hear them now crying crocodile tears about the burden on people to pay back some or all of their tax credits, remember that they themselves have themselves to thank for increasing this tax burden.

Madam Chairlady, I would like to ask unanimous consent to enter into the record each of these Republican attempts to force a tax increase on working families, H.R. 4, H.R. 5652, and H.R. 436.

Mrs. BLACK. Without objection.

[The documents follow: Rep. Joseph Crowley 1, Joseph Crowley 2, Joseph Crowley 3]

II

Calendar No. 597

113TH CONGRESS
2D SESSION

H. R. 4

IN THE SENATE OF THE UNITED STATES

NOVEMBER 12, 2014
Received; read the first time

NOVEMBER 13, 2014
Read the second time and placed on the calendar

AN ACT

To make revisions to Federal law to improve the conditions necessary for economic growth and job creation, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Jobs for America Act".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. PAYGO scorecard.

DIVISION I—WAYS AND MEANS

TITLE I—SAVE AMERICAN WORKERS

Sec. 101. Short title.
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Sec. 301. Secretarial order not affected.

1 **SEC. 3. PAYGO SCORECARD.**

2 The budgetary effects of this Act shall not be entered
3 on either PAYGO scorecard maintained pursuant to sec-
4 tion 4(d) of the Statutory Pay-As-You-Go Act of 2010.

DIVISION I—WAYS AND MEANS

TITLE I—SAVE AMERICAN WORKERS

SEC. 101. SHORT TITLE.

This title may be cited as the "Save American Workers Act of 2014".

SEC. 102. REPEAL OF 30-HOUR THRESHOLD FOR CLASSIFICATION AS FULL-TIME EMPLOYEE FOR PURPOSES OF THE EMPLOYER MANDATE IN THE PATIENT PROTECTION AND AFFORDABLE CARE ACT AND REPLACEMENT WITH 40 HOURS.

(a) FULL-TIME EQUIVALENTS.—Paragraph (2) of section 4980H(c) of the Internal Revenue Code of 1986 is amended—

(1) by repealing subparagraph (E), and

(2) by inserting after subparagraph (D) the following new subparagraph:

"(E) FULL-TIME EQUIVALENTS TREATED AS FULL-TIME EMPLOYEES.—Solely for purposes of determining whether an employer is an applicable large employer under this paragraph, an employer shall, in addition to the number of full-time employees for any month otherwise determined, include for such month a number of

full-time employees determined by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by 174.".

(b) FULL-TIME EMPLOYEES.—Paragraph (4) of section 4980H(c) of the Internal Revenue Code of 1986 is amended—

(1) by repealing subparagraph (A), and

(2) by inserting before subparagraph (B) the following new subparagraph:

"(A) IN GENERAL.—The term 'full-time employee' means, with respect to any month, an employee who is employed on average at least 40 hours of service per week.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to months beginning after December 31, 2013.

TITLE II—HIRE MORE HEROES

SEC. 201. SHORT TITLE.

This title may be cited as the "Hire More Heroes Act of 2014".

SEC. 202. EMPLOYEES WITH HEALTH COVERAGE UNDER TRICARE OR THE VETERANS ADMINISTRATION MAY BE EXEMPTED FROM EMPLOYER MANDATE UNDER PATIENT PROTECTION AND AFFORDABLE CARE ACT.

(a) IN GENERAL.—Section 4980H(c)(2) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

"(F) EXEMPTION FOR HEALTH COVERAGE UNDER TRICARE OR THE VETERANS ADMINISTRATION.—Solely for purposes of determining whether an employer is an applicable large employer under this paragraph for any month, an employer may elect not to take into account for a month as an employee any individual who, for such month, has medical coverage under—

"(i) chapter 55 of title 10, United States Code, including coverage under the TRICARE program, or

"(ii) under a health care program under chapter 17 or 18 of title 38, United States Code, as determined by the Secretary of Veterans Affairs, in coordination with the Secretary of Health and Human Services and the Secretary.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to months beginning after December 31, 2013.

TITLE III—AMERICAN RESEARCH AND COMPETITIVENESS

SEC. 301. SHORT TITLE.

This title may be cited as the "American Research and Competitiveness Act of 2014".

SEC. 302. RESEARCH CREDIT SIMPLIFIED AND MADE PERMANENT.

(a) IN GENERAL.—Subsection (a) of section 41 of the Internal Revenue Code of 1986 is amended to read as follows:

"(a) IN GENERAL.—For purposes of section 38, the research credit determined under this section for the taxable year shall be an amount equal to the sum of—

"(1) 20 percent of so much of the qualified research expenses for the taxable year as exceeds 50 percent of the average qualified research expenses for the 3 taxable years preceding the taxable year for which the credit is being determined,

"(2) 20 percent of so much of the basic research payments for the taxable year as exceeds 50 percent of the average basic research payments for

1 the 3 taxable years preceding the taxable year for
2 which the credit is being determined, plus
3 "(3) 20 percent of the amounts paid or in-
4 curred by the taxpayer in carrying on any trade or
5 business of the taxpayer during the taxable year (in-
6 cluding as contributions) to an energy research con-
7 sortium for energy research.".
8 (b) REPEAL OF TERMINATION.—Section 41 of such
9 Code is amended by striking subsection (h).
10 (c) CONFORMING AMENDMENTS.—
11 (1) Subsection (c) of section 41 of such Code
12 is amended to read as follows:
13 "(c) DETERMINATION OF AVERAGE RESEARCH EX-
14 PENSES FOR PRIOR YEARS.—
15 "(1) SPECIAL RULE IN CASE OF NO QUALIFIED
16 RESEARCH EXPENDITURES IN ANY OF 3 PRECEDING
17 TAXABLE YEARS.—In any case in which the taxpayer
18 has no qualified research expenses in any one of the
19 3 taxable years preceding the taxable year for which
20 the credit is being determined, the amount deter-
21 mined under subsection (a)(1) for such taxable year
22 shall be equal to 10 percent of the qualified research
23 expenses for the taxable year.
24 "(2) CONSISTENT TREATMENT OF EX-
25 PENSES.—

"(A) IN GENERAL.—Notwithstanding whether the period for filing a claim for credit or refund has expired for any taxable year taken into account in determining the average qualified research expenses, or average basic research payments, taken into account under subsection (a), the qualified research expenses and basic research payments taken into account in determining such averages shall be determined on a basis consistent with the determination of qualified research expenses and basic research payments, respectively, for the credit year.

"(B) PREVENTION OF DISTORTIONS.—The Secretary may prescribe regulations to prevent distortions in calculating a taxpayer's qualified research expenses or basic research payments caused by a change in accounting methods used by such taxpayer between the current year and a year taken into account in determining the average qualified research expenses or average basic research payments taken into account under subsection (a).".

(2) Section 41(c) of such Code is amended—

(A) by striking all that precedes paragraph (6) and inserting the following:

1 "(e) BASIC RESEARCH PAYMENTS.—For purposes of
2 this section—
3 "(1) IN GENERAL.—The term 'basic research
4 payment' means, with respect to any taxable year,
5 any amount paid in cash during such taxable year
6 by a corporation to any qualified organization for
7 basic research but only if—
8 "(A) such payment is pursuant to a writ-
9 ten agreement between such corporation and
10 such qualified organization, and
11 "(B) such basic research is to be per-
12 formed by such qualified organization.
13 "(2) EXCEPTION TO REQUIREMENT THAT RE-
14 SEARCH BE PERFORMED BY THE ORGANIZATION.—
15 In the case of a qualified organization described in
16 subparagraph (C) or (D) of paragraph (3), subpara-
17 graph (B) of paragraph (1) shall not apply.",
18 (B) by redesignating paragraphs (6) and
19 (7) as paragraphs (3) and (4), respectively, and
20 (C) in paragraph (4) as so redesignated,
21 by striking subparagraphs (B) and (C) and by
22 redesignating subparagraphs (D) and (E) as
23 subparagraphs (B) and (C), respectively.
24 (3) Section 41(f)(3) of such Code is amended—

(A)(i) by striking ", and the gross receipts" in subparagraph (A)(i) and all that follows through "determined under clause (iii)",

(ii) by striking clause (iii) of subparagraph (A) and redesignating clauses (iv), (v), and (vi), thereof, as clauses (iii), (iv), and (v), respectively,

(iii) by striking "and (iv)" each place it appears in subparagraph (A)(iv) (as so redesignated) and inserting "and (iii)",

(iv) by striking subclause (IV) of subparagraph (A)(iv) (as so redesignated), by striking ", and" at the end of subparagraph (A)(iv)(III) (as so redesignated) and inserting a period, and by adding "and" at the end of subparagraph (A)(iv)(II) (as so redesignated),

(v) by striking "(A)(vi)" in subparagraph (B) and inserting "(A)(v)", and

(vi) by striking "(A)(iv)(II)" in subparagraph (B)(i)(II) and inserting "(A)(iii)(II)",

(B) by striking ", and the gross receipts of the predecessor," in subparagraph (A)(iv)(II) (as so redesignated),

(C) by striking ", and the gross receipts of," in subparagraph (B),

(D) by striking ", or gross receipts of," in subparagraph (B)(i)(I), and

(E) by striking subparagraph (C).

(4) Section 45C(b)(1) of such Code is amended by striking subparagraph (D).

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2013.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to amounts paid or incurred after December 31, 2013.

SEC. 303. PAYGO SCORECARD.

(a) PAYGO SCORECARD.—The budgetary effects of this title shall not be entered on either PAYGO scorecard maintained pursuant to section 4(d) of the Statutory Pay-As-You-Go Act of 2010.

(b) SENATE PAYGO SCORECARD.—The budgetary effects of this title shall not be entered on any PAYGO scorecard maintained for purposes of section 201 of S. Con. Res. 21 (110th Congress).

TITLE IV—AMERICA'S SMALL BUSINESS TAX RELIEF

SEC. 401. SHORT TITLE.

This title may be cited as the "America's Small Business Tax Relief Act of 2014".

SEC. 402. EXPENSING CERTAIN DEPRECIABLE BUSINESS ASSETS FOR SMALL BUSINESS.

(a) IN GENERAL.—

(1) DOLLAR LIMITATION.—Paragraph (1) of section 179(b) of the Internal Revenue Code of 1986 is amended by striking "shall not exceed—" and all that follows and inserting "shall not exceed $500,000.".

(2) REDUCTION IN LIMITATION.—Paragraph (2) of section 179(b) of such Code is amended by striking "exceeds—" and all that follows and inserting "exceeds $2,000,000.".

(b) COMPUTER SOFTWARE.—Clause (ii) of section 179(d)(1)(A) of such Code is amended by striking ", to which section 167 applies, and which is placed in service in a taxable year beginning after 2002 and before 2014" and inserting "and to which section 167 applies".

(c) ELECTION.—Paragraph (2) of section 179(c) of such Code is amended—

1 (1) by striking "may not be revoked" and all
2 that follows through "and before 2014", and
3 (2) by striking "IRREVOCABLE" in the heading
4 thereof.
5 (d) AIR CONDITIONING AND HEATING UNITS.—
6 Paragraph (1) of section 179(d) of such Code is amended
7 by striking "and shall not include air conditioning or heat-
8 ing units".
9 (e) QUALIFIED REAL PROPERTY.—Subsection (f) of
10 section 179 of such Code is amended—
11 (1) by striking "beginning in 2010, 2011, 2012,
12 or 2013" in paragraph (1), and
13 (2) by striking paragraphs (3) and (4).
14 (f) INFLATION ADJUSTMENT.—Subsection (b) of sec-
15 tion 179 of such Code is amended by adding at the end
16 the following new paragraph:
17 "(6) INFLATION ADJUSTMENT.—
18 "(A) IN GENERAL.—In the case of any
19 taxable year beginning after 2014, the dollar
20 amounts in paragraphs (1) and (2) shall each
21 be increased by an amount equal to—
22 "(i) such dollar amount, multiplied by
23 "(ii) the cost-of-living adjustment de-
24 termined under section 1(f)(3) for the cal-
25 endar year in which such taxable year be-

gins, determined by substituting 'calendar year 2013' for 'calendar year 1992' in subparagraph (B) thereof.

"(B) ROUNDING.—The amount of any increase under subparagraph (A) shall be rounded to the nearest multiple of $10,000.".

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2013.

SEC. 403. BUDGETARY EFFECTS.

(a) STATUTORY PAY-AS-YOU-GO SCORECARDS.—The budgetary effects of this title shall not be entered on either PAYGO scorecard maintained pursuant to section 4(d) of the Statutory Pay-As-You-Go Act of 2010.

(b) SENATE PAYGO SCORECARDS.—The budgetary effects of this title shall not be entered on any PAYGO scorecard maintained for purposes of section 201 of S. Con. Res. 21 (110th Congress).

TITLE V—S CORPORATION PERMANENT TAX RELIEF

SEC. 501. SHORT TITLE.

This title may be cited as the "S Corporation Permanent Tax Relief Act of 2014".

SEC. 502. REDUCED RECOGNITION PERIOD FOR BUILT-IN GAINS OF S CORPORATIONS MADE PERMANENT.

(a) IN GENERAL.—Paragraph (7) of section 1374(d) of the Internal Revenue Code of 1986 is amended to read as follows:

"(7) RECOGNITION PERIOD.—

"(A) IN GENERAL.—The term 'recognition period' means the 5-year period beginning with the 1st day of the 1st taxable year for which the corporation was an S corporation. For purposes of applying this section to any amount includible in income by reason of distributions to shareholders pursuant to section 593(e), the preceding sentence shall be applied without regard to the phrase '5-year'.

"(B) INSTALLMENT SALES.—If an S corporation sells an asset and reports the income from the sale using the installment method under section 453, the treatment of all payments received shall be governed by the provisions of this paragraph applicable to the taxable year in which such sale was made.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2013.

SEC. 503. PERMANENT RULE REGARDING BASIS ADJUSTMENT TO STOCK OF S CORPORATIONS MAKING CHARITABLE CONTRIBUTIONS OF PROPERTY.

(a) IN GENERAL.—Section 1367(a)(2) of the Internal Revenue Code of 1986 is amended by striking the last sentence.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made in taxable years beginning after December 31, 2013.

SEC. 504. BUDGETARY EFFECTS.

(a) STATUTORY PAY-AS-YOU-GO SCORECARDS.—The budgetary effects of this title shall not be entered on either PAYGO scorecard maintained pursuant to section 4(d) of the Statutory Pay-As-You-Go Act of 2010.

(b) SENATE PAYGO SCORECARDS.—The budgetary effects of this title shall not be entered on any PAYGO scorecard maintained for purposes of section 201 of S. Con. Res. 21 (110th Congress).

TITLE VI—BONUS DEPRECIATION MODIFIED AND MADE PERMANENT

SEC. 601. BONUS DEPRECIATION MODIFIED AND MADE PERMANENT.

(a) MADE PERMANENT; INCLUSION OF QUALIFIED RETAIL IMPROVEMENT PROPERTY.—Section 168(k)(2) of

1 the Internal Revenue Code of 1986 is amended to read
2 as follows:
3 "(2) QUALIFIED PROPERTY.—For purposes of
4 this subsection—
5 "(A) IN GENERAL.—The term 'qualified
6 property' means property—
7 "(i)(I) to which this section applies
8 which has a recovery period of 20 years or
9 less,
10 "(II) which is computer software (as
11 defined in section 167(f)(1)(B)) for which
12 a deduction is allowable under section
13 167(a) without regard to this subsection,
14 "(III) which is water utility property,
15 "(IV) which is qualified leasehold im-
16 provement property, or
17 "(V) which is qualified retail improve-
18 ment property, and
19 "(ii) the original use of which com-
20 mences with the taxpayer.
21 "(B) EXCEPTION FOR ALTERNATIVE DE-
22 PRECIATION PROPERTY.—The term 'qualified
23 property' shall not include any property to
24 which the alternative depreciation system under
25 subsection (g) applies, determined—

"(i) without regard to paragraph (7) of subsection (g) (relating to election to have system apply), and

"(ii) after application of section 280F(b) (relating to listed property with limited business use).

"(C) SPECIAL RULES.—

"(i) SALE-LEASEBACKS.—For purposes of clause (ii) and subparagraph (A)(ii), if property is—

"(I) originally placed in service by a person, and

"(II) sold and leased back by such person within 3 months after the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback referred to in subclause (II).

"(ii) SYNDICATION.—For purposes of subparagraph (A)(ii), if—

"(I) property is originally placed in service by the lessor of such property,

"(II) such property is sold by such lessor or any subsequent purchaser within 3 months after the date such property was originally placed in service (or, in the case of multiple units of property subject to the same lease, within 3 months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time the last unit is placed in service does not exceed 12 months), and

"(III) the user of such property after the last sale during such 3-month period remains the same as when such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date of such last sale.

"(D) COORDINATION WITH SECTION 280F.—For purposes of section 280F—

"(i) AUTOMOBILES.—In the case of a passenger automobile (as defined in section

1 280F(d)(5)) which is qualified property,
2 the Secretary shall increase the limitation
3 under section 280F(a)(1)(A)(i) by $8,000.
4 "(ii) LISTED PROPERTY.—The deduc-
5 tion allowable under paragraph (1) shall be
6 taken into account in computing any re-
7 capture amount under section 280F(b)(2).
8 "(iii) INFLATION ADJUSTMENT.—In
9 the case of any taxable year beginning in
10 a calendar year after 2014, the $8,000
11 amount in clause (i) shall be increased by
12 an amount equal to—
13 "(I) such dollar amount, multi-
14 plied by
15 "(II) the automobile price infla-
16 tion adjustment determined under sec-
17 tion 280F(d)(7)(B)(i) for the calendar
18 year in which such taxable year begins
19 by substituting '2013' for '1987' in
20 subclause (II) thereof.
21 If any increase under the preceding sen-
22 tence is not a multiple of $100, such in-
23 crease shall be rounded to the nearest mul-
24 tiple of $100.

"(E) DEDUCTION ALLOWED IN COMPUTING MINIMUM TAX.—For purposes of determining alternative minimum taxable income under section 55, the deduction under section 167 for qualified property shall be determined without regard to any adjustment under section 56.".

(b) EXPANSION OF ELECTION TO ACCELERATE AMT CREDITS IN LIEU OF BONUS DEPRECIATION.—Section 168(k)(4) of such Code is amended to read as follows:

"(4) ELECTION TO ACCELERATE AMT CREDITS IN LIEU OF BONUS DEPRECIATION.—

"(A) IN GENERAL.—If a corporation elects to have this paragraph apply for any taxable year—

"(i) paragraphs (1)(A), (2)(D)(i), and (5)(A)(i) shall not apply for such taxable year,

"(ii) the applicable depreciation method used under this section with respect to any qualified property shall be the straight line method, and

"(iii) the limitation imposed by section 53(c) for such taxable year shall be increased by the bonus depreciation amount

which is determined for such taxable year under subparagraph (B).

"(B) BONUS DEPRECIATION AMOUNT.—For purposes of this paragraph—

"(i) IN GENERAL.—The bonus depreciation amount for any taxable year is an amount equal to 20 percent of the excess (if any) of—

"(I) the aggregate amount of depreciation which would be allowed under this section for qualified property placed in service by the taxpayer during such taxable year if paragraph (1) applied to all such property, over

"(II) the aggregate amount of depreciation which would be allowed under this section for qualified property placed in service by the taxpayer during such taxable year if paragraph (1) did not apply to any such property.

The aggregate amounts determined under subclauses (I) and (II) shall be determined without regard to any election made under subsection (b)(2)(D), (b)(3)(D), or (g)(7)

1 and without regard to subparagraph
2 (A)(ii).
3 "(ii) LIMITATION.—The bonus depre-
4 ciation amount for any taxable year shall
5 not exceed the lesser of—
6 "(I) 50 percent of the minimum
7 tax credit under section 53(b) for the
8 first taxable year ending after Decem-
9 ber 31, 2013, or
10 "(II) the minimum tax credit
11 under section 53(b) for such taxable
12 year determined by taking into ac-
13 count only the adjusted net minimum
14 tax for taxable years ending before
15 January 1, 2014 (determined by
16 treating credits as allowed on a first-
17 in, first-out basis).
18 "(iii) AGGREGATION RULE.—All cor-
19 porations which are treated as a single em-
20 ployer under section 52(a) shall be treat-
21 ed—
22 "(I) as 1 taxpayer for purposes
23 of this paragraph, and

"(II) as having elected the application of this paragraph if any such corporation so elects.

"(C) CREDIT REFUNDABLE.—For purposes of section 6401(b), the aggregate increase in the credits allowable under part IV of subchapter A for any taxable year resulting from the application of this paragraph shall be treated as allowed under subpart C of such part (and not any other subpart).

"(D) OTHER RULES.—

"(i) ELECTION.—Any election under this paragraph may be revoked only with the consent of the Secretary.

"(ii) PARTNERSHIPS WITH ELECTING PARTNERS.—In the case of a corporation which is a partner in a partnership and which makes an election under subparagraph (A) for the taxable year, for purposes of determining such corporation's distributive share of partnership items under section 702 for such taxable year—

"(I) paragraphs (1)(A), (2)(D)(i), and (5)(A)(i) shall not apply, and

"(II) the applicable depreciation method used under this section with respect to any qualified property shall be the straight line method.

"(iii) CERTAIN PARTNERSHIPS.—In the case of a partnership in which more than 50 percent of the capital and profits interests are owned (directly or indirectly) at all times during the taxable year by 1 corporation (or by corporations treated as 1 taxpayer under subparagraph (B)(iii)), each partner shall compute its bonus depreciation amount under clause (i) of subparagraph (B) by taking into account its distributive share of the amounts determined by the partnership under subclauses (I) and (II) of such clause for the taxable year of the partnership ending with or within the taxable year of the partner.".

(c) SPECIAL RULES FOR TREES AND VINES BEARING FRUITS AND NUTS.—Section 168(k) of such Code is amended—

(1) by striking paragraph (5), and

(2) by inserting after paragraph (4) the following new paragraph:

"(5) SPECIAL RULES FOR TREES AND VINES BEARING FRUITS AND NUTS.—

"(A) IN GENERAL.—In the case of any tree or vine bearing fruits or nuts which is planted, or is grafted to a plant that has already been planted, by the taxpayer in the ordinary course of the taxpayer's farming business (as defined in section 263A(e)(4))—

"(i) a depreciation deduction equal to 50 percent of the adjusted basis of such tree or vine shall be allowed under section 167(a) for the taxable year in which such tree or vine is so planted or grafted, and

"(ii) the adjusted basis of such tree or vine shall be reduced by the amount of such deduction.

"(B) ELECTION OUT.—If a taxpayer makes an election under this subparagraph for any taxable year, this paragraph shall not apply to any tree or vine planted or grafted during such taxable year. An election under this subparagraph may be revoked only with the consent of the Secretary.

"(C) ADDITIONAL DEPRECIATION MAY BE CLAIMED ONLY ONCE.—If this paragraph ap-

1 plies to any tree or vine, such tree or vine shall
2 not be treated as qualified property in the tax-
3 able year in which placed in service.
4 "(D) COORDINATION WITH ELECTION TO
5 ACCELERATE AMT CREDITS.—If a corporation
6 makes an election under paragraph (4) for any
7 taxable year, the amount under paragraph
8 (4)(B)(i)(I) for such taxable year shall be in-
9 creased by the amount determined under sub-
10 paragraph (A)(i) for such taxable year.
11 "(E) DEDUCTION ALLOWED IN COMPUTING
12 MINIMUM TAX.—Rules similar to the rules of
13 paragraph (2)(E) shall apply for purposes of
14 this paragraph.".
15 (d) CONFORMING AMENDMENTS.—
16 (1) Section 168(e)(8) of such Code is amended
17 by striking subparagraph (D).
18 (2) Section 168(k) of such Code is amended by
19 adding at the end the following new paragraph:
20 "(6) ELECTION OUT.—If a taxpayer makes an
21 election under this paragraph with respect to any
22 class of property for any taxable year, this sub-
23 section shall not apply to all property in such class
24 placed in service (or, in the case of paragraph (5),
25 planted or grafted) during such taxable year. An

election under this paragraph may be revoked only with the consent of the Secretary.".

(3) Section 168(l)(5) of such Code is amended by striking "section 168(k)(2)(G)" and inserting "section 168(k)(2)(E)".

(4) Section 263A(e) of such Code is amended by adding at the end the following new paragraph:

"(7) COORDINATION WITH SECTION 168(k)(5).—This section shall not apply to any amount allowable as a deduction by reason of section 168(k)(5) (relating to special rules for trees and vines bearing fruits and nuts).".

(5) Section 460(e)(6)(B) of such Code is amended by striking "which—" and all that follows and inserting "which has a recovery period of 7 years or less.".

(6) Section 168(k) of such Code is amended by striking "ACQUIRED AFTER DECEMBER 31, 2007, AND BEFORE JANUARY 1, 2014" in the heading thereof.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to property placed in service after December 31, 2013.

(2) EXPANSION OF ELECTION TO ACCELERATE AMT CREDITS IN LIEU OF BONUS DEPRECIATION.—

(A) IN GENERAL.—The amendment made by subsection (b) (other than so much of such amendment as relates to section 168(k)(4)(D)(iii) of such Code, as added by such amendment) shall apply to taxable years ending after December 31, 2013.

(B) TRANSITIONAL RULE.—In the case of a taxable year beginning before January 1, 2014, and ending after December 31, 2013, the bonus depreciation amount determined under section 168(k)(4) of such Code for such year shall be the sum of—

(i) such amount determined without regard to the amendments made by this section and—

(I) by taking into account only property placed in service before January 1, 2014, and

(II) by multiplying the limitation under section 168(k)(4)(C)(ii) of such Code (determined without regard to the amendments made by this section) by a fraction the numerator of which

is the number of days in the taxable year before January 1, 2014, and the denominator of which is the number of days in the taxable year, and

(ii) such amount determined after taking into account the amendments made by this section and—

(I) by taking into account only property placed in service after December 31, 2013, and

(II) by multiplying the limitation under section 168(k)(4)(B)(ii) of such Code (as amended by this section) by a fraction the numerator of which is the number of days in the taxable year after December 31, 2013, and the denominator of which is the number of days in the taxable year.

(3) SPECIAL RULES FOR CERTAIN TREES AND VINES.—The amendment made by subsection (c)(2) shall apply to trees and vines planted or grafted after December 31, 2013.

SEC. 602. BUDGETARY EFFECTS.

(a) STATUTORY PAY-AS-YOU-GO SCORECARDS.—The budgetary effects of this title shall not be entered on either

1 PAYGO scorecard maintained pursuant to section 4(d) of
2 the Statutory Pay-As-You-Go Act of 2010.
3 (b) SENATE PAYGO SCORECARDS.—The budgetary
4 effects of this title shall not be entered on any PAYGO
5 scorecard maintained for purposes of section 201 of S.
6 Con. Res. 21 (110th Congress).

7 TITLE VII—REPEAL OF MEDICAL 8 DEVICE EXCISE TAX

9 **SEC. 701. REPEAL OF MEDICAL DEVICE EXCISE TAX.**
10 (a) IN GENERAL.—Chapter 32 of the Internal Rev-
11 enue Code of 1986 is amended by striking subchapter E.
12 (b) CONFORMING AMENDMENTS.—
13 (1) Subsection (a) of section 4221 of such Code
14 is amended by striking the last sentence.
15 (2) Paragraph (2) of section 6416(b) of such
16 Code is amended by striking the last sentence.
17 (3) The table of subchapters for chapter 32 of
18 such Code is amended by striking the item relating
19 to subchapter E.
20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to sales after December 31, 2012.
22 **SEC. 702. BUDGETARY EFFECTS.**
23 (a) STATUTORY PAY-AS-YOU-GO SCORECARDS.—The
24 budgetary effects of this title shall not be entered on either

PAYGO scorecard maintained pursuant to section 4(d) of the Statutory Pay-As-You-Go Act of 2010.

(b) SENATE PAYGO SCORECARDS.—The budgetary effects of this title shall not be entered on any PAYGO scorecard maintained for purposes of section 201 of S. Con. Res. 21 (110th Congress).

DIVISION II—FINANCIAL SERVICES

TITLE I—SMALL BUSINESS CAPITAL ACCESS AND JOB PRESERVATION

SEC. 101. SHORT TITLE.

This title may be cited as the "Small Business Capital Access and Job Preservation Act".

SEC. 102. REGISTRATION AND REPORTING EXEMPTIONS RELATING TO PRIVATE EQUITY FUNDS ADVISORS.

Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) is amended by adding at the end the following:

"(o) EXEMPTION OF AND REPORTING REQUIREMENTS BY PRIVATE EQUITY FUNDS ADVISORS.—

"(1) IN GENERAL.—Except as provided in this subsection, no investment adviser shall be subject to the registration or reporting requirements of this

1 title with respect to the provision of investment ad-
2 vice relating to a private equity fund or funds, pro-
3 vided that each such fund has not borrowed and
4 does not have outstanding a principal amount in ex-
5 cess of twice its invested capital commitments.
6 "(2) MAINTENANCE OF RECORDS AND ACCESS
7 BY COMMISSION.—Not later than 6 months after the
8 date of enactment of this subsection, the Commis-
9 sion shall issue final rules—
10 "(A) to require investment advisers de-
11 scribed in paragraph (1) to maintain such
12 records and provide to the Commission such an-
13 nual or other reports as the Commission may
14 require taking into account fund size, govern-
15 ance, investment strategy, risk, and other fac-
16 tors, as the Commission determines necessary
17 and appropriate in the public interest and for
18 the protection of investors; and
19 "(B) to define the term 'private equity
20 fund' for purposes of this subsection.".

TITLE II—SMALL BUSINESS MERGERS, ACQUISITIONS, SALES, AND BROKERAGE SIMPLIFICATION

SEC. 201. SHORT TITLE.

This title may be cited as the "Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2014".

SEC. 202. REGISTRATION EXEMPTION FOR MERGER AND ACQUISITION BROKERS.

Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is amended by adding at the end the following:

"(13) REGISTRATION EXEMPTION FOR MERGER AND ACQUISITION BROKERS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), an M&A broker shall be exempt from registration under this section.

"(B) EXCLUDED ACTIVITIES.—An M&A broker is not exempt from registration under this paragraph if such broker does any of the following:

"(i) Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives,

1 holds, transmits, or has custody of the
2 funds or securities to be exchanged by the
3 parties to the transaction.
4 "(ii) Engages on behalf of an issuer in
5 a public offering of any class of securities
6 that is registered, or is required to be reg-
7 istered, with the Commission under section
8 12 or with respect to which the issuer files,
9 or is required to file, periodic information,
10 documents, and reports under subsection
11 (d).
12 "(C) RULE OF CONSTRUCTION.—Nothing
13 in this paragraph shall be construed to limit
14 any other authority of the Commission to ex-
15 empt any person, or any class of persons, from
16 any provision of this title, or from any provision
17 of any rule or regulation thereunder.
18 "(D) DEFINITIONS.—In this paragraph:
19 "(i) CONTROL.—The term 'control'
20 means the power, directly or indirectly, to
21 direct the management or policies of a
22 company, whether through ownership of
23 securities, by contract, or otherwise. There
24 is a presumption of control for any person
25 who—

"(I) is a director, general partner, member or manager of a limited liability company, or officer exercising executive responsibility (or has similar status or functions);

"(II) has the right to vote 20 percent or more of a class of voting securities or the power to sell or direct the sale of 20 percent or more of a class of voting securities; or

"(III) in the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, 20 percent or more of the capital.

"(ii) ELIGIBLE PRIVATELY HELD COMPANY.—The term 'eligible privately held company' means a company that meets both of the following conditions:

"(I) The company does not have any class of securities registered, or required to be registered, with the Commission under section 12 or with respect to which the company files, or is required to file, periodic informa-

1 tion, documents, and reports under
2 subsection (d).
3 "(II) In the fiscal year ending
4 immediately before the fiscal year in
5 which the services of the M&A broker
6 are initially engaged with respect to
7 the securities transaction, the com-
8 pany meets either or both of the fol-
9 lowing conditions (determined in ac-
10 cordance with the historical financial
11 accounting records of the company):
12 "(aa) The earnings of the
13 company before interest, taxes,
14 depreciation, and amortization
15 are less than $25,000,000.
16 "(bb) The gross revenues of
17 the company are less than
18 $250,000,000.
19 "(iii) M&A BROKER.—The term 'M&A
20 broker' means a broker, and any person
21 associated with a broker, engaged in the
22 business of effecting securities transactions
23 solely in connection with the transfer of
24 ownership of an eligible privately held com-
25 pany, regardless of whether the broker acts

1 on behalf of a seller or buyer, through the
2 purchase, sale, exchange, issuance, repur-
3 chase, or redemption of, or a business com-
4 bination involving, securities or assets of
5 the eligible privately held company, if the
6 broker reasonably believes that—
7 "(I) upon consummation of the
8 transaction, any person acquiring se-
9 curities or assets of the eligible pri-
10 vately held company, acting alone or
11 in concert, will control and, directly or
12 indirectly, will be active in the man-
13 agement of the eligible privately held
14 company or the business conducted
15 with the assets of the eligible privately
16 held company; and
17 "(II) if any person is offered se-
18 curities in exchange for securities or
19 assets of the eligible privately held
20 company, such person will, prior to
21 becoming legally bound to consum-
22 mate the transaction, receive or have
23 reasonable access to the most recent
24 year-end balance sheet, income state-
25 ment, statement of changes in finan-

1 cial position, and statement of owner's
2 equity of the issuer of the securities
3 offered in exchange, and, if the finan-
4 cial statements of the issuer are au-
5 dited, the related report of the inde-
6 pendent auditor, a balance sheet
7 dated not more than 120 days before
8 the date of the offer, and information
9 pertaining to the management, busi-
10 ness, results of operations for the pe-
11 riod covered by the foregoing financial
12 statements, and material loss contin-
13 gencies of the issuer.
14 "(E) INFLATION ADJUSTMENT.—
15 "(i) IN GENERAL.—On the date that
16 is 5 years after the date of the enactment
17 of the Small Business Mergers, Acquisi-
18 tions, Sales, and Brokerage Simplification
19 Act of 2014, and every 5 years thereafter,
20 each dollar amount in subparagraph
21 (D)(ii)(II) shall be adjusted by—
22 "(I) dividing the annual value of
23 the Employment Cost Index For
24 Wages and Salaries, Private Industry
25 Workers (or any successor index), as

published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index (or successor) for the calendar year ending December 31, 2012; and

"(II) multiplying such dollar amount by the quotient obtained under subclause (I).

"(ii) ROUNDING.—Each dollar amount determined under clause (i) shall be rounded to the nearest multiple of $100,000.".

SEC. 203. EFFECTIVE DATE.

This title and any amendment made by this title shall take effect on the date that is 90 days after the date of the enactment of this Act.

DIVISION III—OVERSIGHT

SUBDIVISION A—UNFUNDED MANDATES INFORMATION AND TRANSPARENCY

SEC. 101. SHORT TITLE.

This subdivision may be cited as the "Unfunded Mandates Information and Transparency Act of 2014".

SEC. 102. PURPOSE.

The purpose of this title is—

(1) to improve the quality of the deliberations of Congress with respect to proposed Federal mandates by—

(A) providing Congress and the public with more complete information about the effects of such mandates; and

(B) ensuring that Congress acts on such mandates only after focused deliberation on their effects; and

(2) to enhance the ability of Congress and the public to identify Federal mandates that may impose undue harm on consumers, workers, employers, small businesses, and State, local, and tribal governments.

SEC. 103. PROVIDING FOR CONGRESSIONAL BUDGET OFFICE STUDIES ON POLICIES INVOLVING CHANGES IN CONDITIONS OF GRANT AID.

Section 202(g) of the Congressional Budget Act of 1974 (2 U.S.C. 602(g)) is amended by adding at the end the following new paragraph:

"(3) ADDITIONAL STUDIES.—At the request of any Chairman or ranking member of the minority of a Committee of the Senate or the House of Representatives, the Director shall conduct an assess-

1 ment comparing the authorized level of funding in a
2 bill or resolution to the prospective costs of carrying
3 out any changes to a condition of Federal assistance
4 being imposed on State, local, or tribal governments
5 participating in the Federal assistance program con-
6 cerned or, in the case of a bill or joint resolution
7 that authorizes such sums as are necessary, an as-
8 sessment of an estimated level of funding compared
9 to such costs.".

10 **SEC. 104. CLARIFYING THE DEFINITION OF DIRECT COSTS**
11 **TO REFLECT CONGRESSIONAL BUDGET OF-**
12 **FICE PRACTICE.**

13 Section 421(3) of the Congressional Budget Act of
14 1974 (2 U.S.C. 658(3)(A)(i)) is amended—
15 (1) in subparagraph (A)(i), by inserting "incur
16 or" before "be required"; and
17 (2) in subparagraph (B), by inserting after "to
18 spend" the following: "or could forgo in profits, in-
19 cluding costs passed on to consumers or other enti-
20 ties taking into account, to the extent practicable,
21 behavioral changes,".

SEC. 105. EXPANDING THE SCOPE OF REPORTING REQUIREMENTS TO INCLUDE REGULATIONS IMPOSED BY INDEPENDENT REGULATORY AGENCIES.

Paragraph (1) of section 421 of the Congressional Budget Act of 1974 (2 U.S.C. 658) is amended by striking ", but does not include independent regulatory agencies" and inserting ", except it does not include the Board of Governors of the Federal Reserve System or the Federal Open Market Committee".

SEC. 106. AMENDMENTS TO REPLACE OFFICE OF MANAGEMENT AND BUDGET WITH OFFICE OF INFORMATION AND REGULATORY AFFAIRS.

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4; 2 U.S.C. 1511 et seq.) is amended—

(1) in section 103(e) (2 U.S.C. 1511(e))—

(A) in the subsection heading, by striking "OFFICE OF MANAGEMENT AND BUDGET" and inserting "OFFICE OF INFORMATION AND REGULATORY AFFAIRS"; and

(B) by striking "Director of the Office of Management and Budget" and inserting "Administrator of the Office of Information and Regulatory Affairs";

(2) in section 205(e) (2 U.S.C. 1535(e))—

(A) in the subsection heading, by striking "OMB"; and

(B) by striking "Director of the Office of Management and Budget" and inserting "Administrator of the Office of Information and Regulatory Affairs"; and

(3) in section 206 (2 U.S.C. 1536), by striking "Director of the Office of Management and Budget" and inserting "Administrator of the Office of Information and Regulatory Affairs".

SEC. 107. APPLYING SUBSTANTIVE POINT OF ORDER TO PRIVATE SECTOR MANDATES.

Section 425(a)(2) of the Congressional Budget Act of 1974 (2 U.S.C. 658d(a)(2)) is amended—

(1) by striking "Federal intergovernmental mandates" and inserting "Federal mandates"; and

(2) by inserting "or 424(b)(1)" after "section 424(a)(1)".

SEC. 108. REGULATORY PROCESS AND PRINCIPLES.

Section 201 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531) is amended to read as follows:

"SEC. 201. REGULATORY PROCESS AND PRINCIPLES.

"(a) IN GENERAL.—Each agency shall, unless otherwise expressly prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal govern-

1 ments and the private sector (other than to the extent that
2 such regulatory actions incorporate requirements specifi-
3 cally set forth in law) in accordance with the following
4 principles:

5 "(1) Each agency shall identify the problem
6 that it intends to address (including, if applicable,
7 the failures of private markets or public institutions
8 that warrant new agency action) as well as assess
9 the significance of that problem.

10 "(2) Each agency shall examine whether exist-
11 ing regulations (or other law) have created, or con-
12 tributed to, the problem that a new regulation is in-
13 tended to correct and whether those regulations (or
14 other law) should be modified to achieve the in-
15 tended goal of regulation more effectively.

16 "(3) Each agency shall identify and assess
17 available alternatives to direct regulation, including
18 providing economic incentives to encourage the de-
19 sired behavior, such as user fees or marketable per-
20 mits, or providing information upon which choices
21 can be made by the public.

22 "(4) If an agency determines that a regulation
23 is the best available method of achieving the regu-
24 latory objective, it shall design its regulations in the
25 most cost-effective manner to achieve the regulatory

1 objective. In doing so, each agency shall consider in-
2 centives for innovation, consistency, predictability,
3 the costs of enforcement and compliance (to the gov-
4 ernment, regulated entities, and the public), flexi-
5 bility, distributive impacts, and equity.
6 "(5) Each agency shall assess both the costs
7 and the benefits of the intended regulation and, rec-
8 ognizing that some costs and benefits are difficult to
9 quantify, propose or adopt a regulation, unless ex-
10 pressly prohibited by law, only upon a reasoned de-
11 termination that the benefits of the intended regula-
12 tion justify its costs.
13 "(6) Each agency shall base its decisions on the
14 best reasonably obtainable scientific, technical, eco-
15 nomic, and other information concerning the need
16 for, and consequences of, the intended regulation.
17 "(7) Each agency shall identify and assess al-
18 ternative forms of regulation and shall, to the extent
19 feasible, specify performance objectives, rather than
20 specifying the behavior or manner of compliance
21 that regulated entities must adopt.
22 "(8) Each agency shall avoid regulations that
23 are inconsistent, incompatible, or duplicative with its
24 other regulations or those of other Federal agencies.

"(9) Each agency shall tailor its regulations to minimize the costs of the cumulative impact of regulations.

"(10) Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.

"(b) REGULATORY ACTION DEFINED.—In this section, the term 'regulatory action' means any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including advance notices of proposed rulemaking and notices of proposed rulemaking.".

SEC. 109. EXPANDING THE SCOPE OF STATEMENTS TO ACCOMPANY SIGNIFICANT REGULATORY ACTIONS.

(a) IN GENERAL.—Subsection (a) of section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) is amended to read as follows:

"(a) IN GENERAL.—Unless otherwise expressly prohibited by law, before promulgating any general notice of proposed rulemaking or any final rule, or within six months after promulgating any final rule that was not preceded by a general notice of proposed rulemaking, if the

1 proposed rulemaking or final rule includes a Federal man-
2 date that may result in an annual effect on State, local,
3 or tribal governments, or to the private sector, in the ag-
4 gregate of $100,000,000 or more in any 1 year, the agency
5 shall prepare a written statement containing the following:
6 "(1) The text of the draft proposed rulemaking
7 or final rule, together with a reasonably detailed de-
8 scription of the need for the proposed rulemaking or
9 final rule and an explanation of how the proposed
10 rulemaking or final rule will meet that need.
11 "(2) An assessment of the potential costs and
12 benefits of the proposed rulemaking or final rule, in-
13 cluding an explanation of the manner in which the
14 proposed rulemaking or final rule is consistent with
15 a statutory requirement and avoids undue inter-
16 ference with State, local, and tribal governments in
17 the exercise of their governmental functions.
18 "(3) A qualitative and quantitative assessment,
19 including the underlying analysis, of benefits antici-
20 pated from the proposed rulemaking or final rule
21 (such as the promotion of the efficient functioning of
22 the economy and private markets, the enhancement
23 of health and safety, the protection of the natural
24 environment, and the elimination or reduction of dis-
25 crimination or bias).

"(4) A qualitative and quantitative assessment, including the underlying analysis, of costs anticipated from the proposed rulemaking or final rule (such as the direct costs both to the Government in administering the final rule and to businesses and others in complying with the final rule, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and international competitiveness), health, safety, and the natural environment).

"(5) Estimates by the agency, if and to the extent that the agency determines that accurate estimates are reasonably feasible, of—

"(A) the future compliance costs of the Federal mandate; and

"(B) any disproportionate budgetary effects of the Federal mandate upon any particular regions of the Nation or particular State, local, or tribal governments, urban or rural or other types of communities, or particular segments of the private sector.

"(6)(A) A detailed description of the extent of the agency's prior consultation with the private sector and elected representatives (under section 204) of the affected State, local, and tribal governments.

"(B) A detailed summary of the comments and concerns that were presented by the private sector and State, local, or tribal governments either orally or in writing to the agency.

"(C) A detailed summary of the agency's evaluation of those comments and concerns.

"(7) A detailed summary of how the agency complied with each of the regulatory principles described in section 201.".

(b) REQUIREMENT FOR DETAILED SUMMARY.—Subsection (b) of section 202 of such Act is amended by inserting "detailed" before "summary".

SEC. 110. ENHANCED STAKEHOLDER CONSULTATION.

Section 204 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1534) is amended—

(1) in the section heading, by inserting "**AND PRIVATE SECTOR**" before "**INPUT**";

(2) in subsection (a)—

(A) by inserting ", and impacted parties within the private sector (including small business)," after "on their behalf)";

(B) by striking "Federal intergovernmental mandates" and inserting "Federal mandates"; and

1 (3) by amending subsection (c) to read as fol-
2 lows:
3 "(c) GUIDELINES.—For appropriate implementation
4 of subsections (a) and (b) consistent with applicable laws
5 and regulations, the following guidelines shall be followed:
6 "(1) Consultations shall take place as early as
7 possible, before issuance of a notice of proposed rule-
8 making, continue through the final rule stage, and
9 be integrated explicitly into the rulemaking process.
10 "(2) Agencies shall consult with a wide variety
11 of State, local, and tribal officials and impacted par-
12 ties within the private sector (including small busi-
13 nesses). Geographic, political, and other factors that
14 may differentiate varying points of view should be
15 considered.
16 "(3) Agencies should estimate benefits and
17 costs to assist with these consultations. The scope of
18 the consultation should reflect the cost and signifi-
19 cance of the Federal mandate being considered.
20 "(4) Agencies shall, to the extent practicable—
21 "(A) seek out the views of State, local, and
22 tribal governments, and impacted parties within
23 the private sector (including small business), on
24 costs, benefits, and risks; and

"(B) solicit ideas about alternative methods of compliance and potential flexibilities, and input on whether the Federal regulation will harmonize with and not duplicate similar laws in other levels of government.

"(5) Consultations shall address the cumulative impact of regulations on the affected entities.

"(6) Agencies may accept electronic submissions of comments by relevant parties but may not use those comments as the sole method of satisfying the guidelines in this subsection.".

SEC. 111. NEW AUTHORITIES AND RESPONSIBILITIES FOR OFFICE OF INFORMATION AND REGULATORY AFFAIRS.

Section 208 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1538) is amended to read as follows:

"SEC. 208. OFFICE OF INFORMATION AND REGULATORY AFFAIRS RESPONSIBILITIES.

"(a) IN GENERAL.—The Administrator of the Office of Information and Regulatory Affairs shall provide meaningful guidance and oversight so that each agency's regulations for which a written statement is required under section 202 are consistent with the principles and requirements of this title, as well as other applicable laws, and do not conflict with the policies or actions of another agen-

1 cy. If the Administrator determines that an agency's regu-
2 lations for which a written statement is required under
3 section 202 do not comply with such principles and re-
4 quirements, are not consistent with other applicable laws,
5 or conflict with the policies or actions of another agency,
6 the Administrator shall identify areas of non-compliance,
7 notify the agency, and request that the agency comply be-
8 fore the agency finalizes the regulation concerned.

9 "(b) ANNUAL STATEMENTS TO CONGRESS ON AGEN-
10 CY COMPLIANCE.—The Director of the Office of Informa-
11 tion and Regulatory Affairs annually shall submit to Con-
12 gress, including the Committee on Homeland Security and
13 Governmental Affairs of the Senate and the Committee
14 on Oversight and Government Reform of the House of
15 Representatives, a written report detailing compliance by
16 each agency with the requirements of this title that relate
17 to regulations for which a written statement is required
18 by section 202, including activities undertaken at the re-
19 quest of the Director to improve compliance, during the
20 preceding reporting period. The report shall also contain
21 an appendix detailing compliance by each agency with sec-
22 tion 204.".

SEC. 112. RETROSPECTIVE ANALYSIS OF EXISTING FEDERAL REGULATIONS.

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4; 2 U.S.C. 1511 et seq.) is amended—

(1) by redesignating section 209 as section 210; and

(2) by inserting after section 208 the following new section 209:

"SEC. 209. RETROSPECTIVE ANALYSIS OF EXISTING FEDERAL REGULATIONS.

"(a) REQUIREMENT.—At the request of the chairman or ranking minority member of a standing or select committee of the House of Representatives or the Senate, an agency shall conduct a retrospective analysis of an existing Federal regulation promulgated by an agency.

"(b) REPORT.—Each agency conducting a retrospective analysis of existing Federal regulations pursuant to subsection (a) shall submit to the chairman of the relevant committee, Congress, and the Comptroller General a report containing, with respect to each Federal regulation covered by the analysis—

"(1) a copy of the Federal regulation;

"(2) the continued need for the Federal regulation;

"(3) the nature of comments or complaints received concerning the Federal regulation from the public since the Federal regulation was promulgated;

"(4) the extent to which the Federal regulation overlaps, duplicates, or conflicts with other Federal regulations, and, to the extent feasible, with State and local governmental rules;

"(5) the degree to which technology, economic conditions, or other factors have changed in the area affected by the Federal regulation;

"(6) a complete analysis of the retrospective direct costs and benefits of the Federal regulation that considers studies done outside the Federal Government (if any) estimating such costs or benefits; and

"(7) any litigation history challenging the Federal regulation.".

SEC. 113. EXPANSION OF JUDICIAL REVIEW.

Section 401(a) of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1571(a)) is amended—

(1) in paragraphs (1) and (2)(A)—

(A) by striking "sections 202 and 203(a)(1) and (2)" each place it appears and inserting "sections 201, 202, 203(a)(1) and (2), and 205(a) and (b)"; and

(B) by striking "only" each place it appears;

(2) in paragraph (2)(B), by striking "section 202" and all that follows through the period at the end and inserting the following: "section 202, prepare the written plan under section 203(a)(1) and (2), or comply with section 205(a) and (b), a court may compel the agency to prepare such written statement, prepare such written plan, or comply with such section."; and

(3) in paragraph (3), by striking "written statement or plan is required" and all that follows through "shall not" and inserting the following: "written statement under section 202, a written plan under section 203(a)(1) and (2), or compliance with sections 201 and 205(a) and (b) is required, the inadequacy or failure to prepare such statement (including the inadequacy or failure to prepare any estimate, analysis, statement, or description), to prepare such written plan, or to comply with such section may".

SUBDIVISION B—ACHIEVING LESS EXCESS IN REGULATION AND REQUIRING TRANSPARENCY

SEC. 100. SHORT TITLE; TABLE OF CONTENTS.

This subdivision may be cited as the "Achieving Less Excess in Regulation and Requiring Transparency Act of 2014" or as the "ALERRT Act of 2014".

TITLE I—ALL ECONOMIC REGULATIONS ARE TRANSPARENT ACT

SEC. 101. SHORT TITLE.

This title may be cited as the "All Economic Regulations are Transparent Act of 2014" or the "ALERT Act of 2014".

SEC. 102. OFFICE OF INFORMATION AND REGULATORY AFFAIRS PUBLICATION OF INFORMATION RELATING TO RULES.

(a) AMENDMENT.—Title 5, United States Code, is amended by inserting after chapter 6, the following new chapter:

"CHAPTER 6A—OFFICE OF INFORMATION AND REGULATORY AFFAIRS PUBLICATION OF INFORMATION RELATING TO RULES

"Sec.
"651. Agency monthly submission to Office of Information and Regulatory Affairs.
"652. Office of Information and Regulatory Affairs Publications.
"653. Requirement for rules to appear in agency-specific monthly publication.
"654. Definitions.

"§ 651. Agency monthly submission to Office of Information and Regulatory Affairs

"On a monthly basis, the head of each agency shall submit to the Administrator of the Office of Information and Regulatory Affairs (referred to in this chapter as the 'Administrator'), in such a manner as the Administrator may reasonably require, the following information:

"(1) For each rule that the agency expects to propose or finalize during the following year:

"(A) A summary of the nature of the rule, including the regulation identifier number and the docket number for the rule.

"(B) The objectives of and legal basis for the issuance of the rule, including—

"(i) any statutory or judicial deadline; and

"(ii) whether the legal basis restricts or precludes the agency from conducting

1 an analysis of the costs or benefits of the
2 rule during the rule making, and if not,
3 whether the agency plans to conduct an
4 analysis of the costs or benefits of the rule
5 during the rule making.
6 "(C) Whether the agency plans to claim an
7 exemption from the requirements of section 553
8 pursuant to section 553(b)(B).
9 "(D) The stage of the rule making as of
10 the date of submission.
11 "(E) Whether the rule is subject to review
12 under section 610.
13 "(2) For any rule for which the agency expects
14 to finalize during the following year and has issued
15 a general notice of proposed rule making—
16 "(A) an approximate schedule for com-
17 pleting action on the rule;
18 "(B) an estimate of whether the rule will
19 cost—
20 "(i) less than $50,000,000;
21 "(ii) $50,000,000 or more but less
22 than $100,000,000;
23 "(iii) $100,000,000 or more but less
24 than $500,000,000;

"(iv) $500,000,000 or more but less than $1,000,000,000;

"(v) $1,000,000,000 or more but less than $5,000,000,000;

"(vi) $5,000,000,000 or more but less than $10,000,000,000; or

"(vii) $10,000,000,000 or more; and

"(C) any estimate of the economic effects of the rule, including any estimate of the net effect that the rule will have on the number of jobs in the United States, that was considered in drafting the rule. If such estimate is not available, a statement affirming that no information on the economic effects, including the effect on the number of jobs, of the rule has been considered.

"§ 652. Office of Information and Regulatory Affairs Publications

"(a) AGENCY-SPECIFIC INFORMATION PUBLISHED MONTHLY.—Not later than 30 days after the submission of information pursuant to section 651, the Administrator shall make such information publicly available on the Internet.

"(b) CUMULATIVE ASSESSMENT OF AGENCY RULE MAKING PUBLISHED ANNUALLY.—

"(1) PUBLICATION IN THE FEDERAL REGISTER.—Not later than October 1 of each year, the Administrator shall publish in the Federal Register, for the previous year the following:

"(A) The information that the Administrator received from the head of each agency under section 651.

"(B) The number of rules and a list of each such rule—

"(i) that was proposed by each agency, including, for each such rule, an indication of whether the issuing agency conducted an analysis of the costs or benefits of the rule; and

"(ii) that was finalized by each agency, including for each such rule an indication of whether—

"(I) the issuing agency conducted an analysis of the costs or benefits of the rule;

"(II) the agency claimed an exemption from the procedures under section 553 pursuant to section 553(b)(B); and

"(III) the rule was issued pursuant to a statutory mandate or the rule making is committed to agency discretion by law.

"(C) The number of agency actions and a list of each such action taken by each agency that—

"(i) repealed a rule;

"(ii) reduced the scope of a rule;

"(iii) reduced the cost of a rule; or

"(iv) accelerated the expiration date of a rule.

"(D) The total cost (without reducing the cost by any offsetting benefits) of all rules proposed or finalized, and the number of rules for which an estimate of the cost of the rule was not available.

"(2) PUBLICATION ON THE INTERNET.—Not later than October 1 of each year, the Administrator shall make publicly available on the Internet the following:

"(A) The analysis of the costs or benefits, if conducted, for each proposed rule or final rule issued by an agency for the previous year.

"(B) The docket number and regulation identifier number for each proposed or final rule issued by an agency for the previous year.

"(C) The number of rules and a list of each such rule reviewed by the Director of the Office of Management and Budget for the previous year, and the authority under which each such review was conducted.

"(D) The number of rules and a list of each such rule for which the head of an agency completed a review under section 610 for the previous year.

"(E) The number of rules and a list of each such rule submitted to the Comptroller General under section 801.

"(F) The number of rules and a list of each such rule for which a resolution of disapproval was introduced in either the House of Representatives or the Senate under section 802.

"§ 653. Requirement for rules to appear in agency-specific monthly publication

"(a) IN GENERAL.—Subject to subsection (b), a rule may not take effect until the information required to be made publicly available on the Internet regarding such

1 rule pursuant to section 652(a) has been so available for
2 not less than 6 months.
3 "(b) EXCEPTIONS.—The requirement of subsection
4 (a) shall not apply in the case of a rule—
5 "(1) for which the agency issuing the rule
6 claims an exception under section 553(b)(B); or
7 "(2) which the President determines by Execu-
8 tive order should take effect because the rule is—
9 "(A) necessary because of an imminent
10 threat to health or safety or other emergency;
11 "(B) necessary for the enforcement of
12 criminal laws;
13 "(C) necessary for national security; or
14 "(D) issued pursuant to any statute imple-
15 menting an international trade agreement.
16 **"§ 654. Definitions**
17 "In this chapter, the terms 'agency', 'agency action',
18 'rule', and 'rule making' have the meanings given those
19 terms in section 551.".
20 (b) TECHNICAL AND CONFORMING AMENDMENT.—
21 The table of chapters for part I of title 5, United States
22 Code, is amended by inserting after the item relating to
23 chapter 5, the following:

"6. The Analysis of Regulatory Functions 601
"6A. Office of Information and Regulatory Affairs Publication of Information Relating to Rules ..... 651".

24 (c) EFFECTIVE DATES.—

(1) AGENCY MONTHLY SUBMISSION TO THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS.—The first submission required pursuant to section 651 of title 5, United States Code, as added by subsection (a), shall be submitted not later than 30 days after the date of the enactment of this title, and monthly thereafter.

(2) CUMULATIVE ASSESSMENT OF AGENCY RULE MAKING.—

(A) IN GENERAL.—Subsection (b) of section 652 of title 5, United States Code, as added by subsection (a), shall take effect on the date that is 60 days after the date of the enactment of this title.

(B) DEADLINE.—The first requirement to publish or make available, as the case may be, under subsection (b) of section 652 of title 5, United States Code, as added by subsection (a), shall be the first October 1 after the effective date of such subsection.

(C) FIRST PUBLICATION.—The requirement under section 652(b)(2)(A) of title 5, United States Code, as added by subsection (a), shall include for the first publication, any analysis of the costs or benefits conducted for a

proposed or final rule, for the 10 years before the date of the enactment of this title.

(3) REQUIREMENT FOR RULES TO APPEAR IN AGENCY-SPECIFIC MONTHLY PUBLICATION.—Section 653 of title 5, United States Code, as added by subsection (a), shall take effect on the date that is 8 months after the date of the enactment of this title.

TITLE II—REGULATORY ACCOUNTABILITY ACT

SEC. 201. SHORT TITLE.

This title may be cited as the "Regulatory Accountability Act of 2014".

SEC. 202. DEFINITIONS.

Section 551 of title 5, United States Code, is amended—

(1) in paragraph (13), by striking "and" at the end;

(2) in paragraph (14), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(15) 'major rule' means any rule that the Administrator of the Office of Information and Regulatory Affairs determines is likely to impose—

"(A) an annual cost on the economy of $100,000,000 or more, adjusted annually for inflation;

"(B) a major increase in costs or prices for consumers, individual industries, Federal, State, local, or tribal government agencies, or geographic regions;

"(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets; or

"(D) significant impacts on multiple sectors of the economy;

"(16) 'high-impact rule' means any rule that the Administrator of the Office of Information and Regulatory Affairs determines is likely to impose an annual cost on the economy of $1,000,000,000 or more, adjusted annually for inflation;

"(17) 'negative-impact on jobs and wages rule' means any rule that the agency that made the rule or the Administrator of the Office of Information and Regulatory Affairs determines is likely to—

"(A) in one or more sectors of the economy that has a 6-digit code under the North Amer-

1 ican Industry Classification System, reduce em-
2 ployment not related to new regulatory compli-
3 ance by 1 percent or more annually during the
4 1-year, 5-year, or 10-year period after imple-
5 mentation;
6 "(B) in one or more sectors of the econ-
7 omy that has a 6-digit code under the North
8 American Industry Classification System, re-
9 duce average weekly wages for employment not
10 related to new regulatory compliance by 1 per-
11 cent or more annually during the 1-year, 5-
12 year, or 10-year period after implementation;
13 "(C) in any industry area (as such term is
14 defined in the Current Population Survey con-
15 ducted by the Bureau of Labor Statistics) in
16 which the most recent annual unemployment
17 rate for the industry area is greater than 5 per-
18 cent, as determined by the Bureau of Labor
19 Statistics in the Current Population Survey, re-
20 duce employment not related to new regulatory
21 compliance during the first year after imple-
22 mentation; or
23 "(D) in any industry area in which the Bu-
24 reau of Labor Statistics projects in the Occupa-
25 tional Employment Statistics program that the

1 employment level will decrease by 1 percent or
2 more, further reduce employment not related to
3 new regulatory compliance during the first year
4 after implementation;
5 "(18) 'guidance' means an agency statement of
6 general applicability and future effect, other than a
7 regulatory action, that sets forth a policy on a statu-
8 tory, regulatory or technical issue or an interpreta-
9 tion of a statutory or regulatory issue;
10 "(19) 'major guidance' means guidance that the
11 Administrator of the Office of Information and Reg-
12 ulatory Affairs finds is likely to lead to—
13 "(A) an annual cost on the economy of
14 $100,000,000 or more, adjusted annually for
15 inflation;
16 "(B) a major increase in costs or prices for
17 consumers, individual industries, Federal,
18 State, local or tribal government agencies, or
19 geographic regions;
20 "(C) significant adverse effects on competi-
21 tion, employment, investment, productivity, in-
22 novation, or on the ability of United States-
23 based enterprises to compete with foreign-based
24 enterprises in domestic and export markets; or

"(D) significant impacts on multiple sectors of the economy;

"(20) the 'Information Quality Act' means section 515 of Public Law 106–554, the Treasury and General Government Appropriations Act for Fiscal Year 2001, and guidelines issued by the Administrator of the Office of Information and Regulatory Affairs or other agencies pursuant to the Act; and

"(21) the 'Office of Information and Regulatory Affairs' means the office established under section 3503 of chapter 35 of title 44 and any successor to that office.".

SEC. 203. RULE MAKING.

(a) Section 553(a) of title 5, United States Code, is amended by striking "(a) This section applies" and inserting "(a) APPLICABILITY.—This section applies".

(b) Section 553 of title 5, United States Code, is amended by striking subsections (b) through (c) and inserting the following:

"(b) RULE MAKING CONSIDERATIONS.—In a rule making, an agency shall make all preliminary and final factual determinations based on evidence and consider, in addition to other applicable considerations, the following:

"(1) The legal authority under which a rule may be proposed, including whether a rule making

1 is required by statute, and if so, whether by a spe-
2 cific date, or whether the agency has discretion to
3 commence a rule making.
4 "(2) Other statutory considerations applicable
5 to whether the agency can or should propose a rule
6 or undertake other agency action.
7 "(3) The specific nature and significance of the
8 problem the agency may address with a rule (includ-
9 ing the degree and nature of risks the problem poses
10 and the priority of addressing those risks compared
11 to other matters or activities within the agency's ju-
12 risdiction), whether the problem warrants new agen-
13 cy action, and the countervailing risks that may be
14 posed by alternatives for new agency action.
15 "(4) Whether existing rules have created or
16 contributed to the problem the agency may address
17 with a rule and whether those rules could be amend-
18 ed or rescinded to address the problem in whole or
19 part.
20 "(5) Any reasonable alternatives for a new rule
21 or other response identified by the agency or inter-
22 ested persons, including not only responses that
23 mandate particular conduct or manners of compli-
24 ance, but also—

"(A) the alternative of no Federal response;

"(B) amending or rescinding existing rules;

"(C) potential regional, State, local, or tribal regulatory action or other responses that could be taken in lieu of agency action; and

"(D) potential responses that—

"(i) specify performance objectives rather than conduct or manners of compliance;

"(ii) establish economic incentives to encourage desired behavior;

"(iii) provide information upon which choices can be made by the public; or

"(iv) incorporate other innovative alternatives rather than agency actions that specify conduct or manners of compliance.

"(6) Notwithstanding any other provision of law—

"(A) the potential costs and benefits associated with potential alternative rules and other responses considered under section 553(b)(5), including direct, indirect, and cumulative costs and benefits and estimated impacts on jobs (in-

1 cluding an estimate of the net gain or loss in
2 domestic jobs), wages, economic growth, innova-
3 tion, and economic competitiveness;
4 "(B) means to increase the cost-effective-
5 ness of any Federal response; and
6 "(C) incentives for innovation, consistency,
7 predictability, lower costs of enforcement and
8 compliance (to government entities, regulated
9 entities, and the public), and flexibility.
10 "(c) ADVANCE NOTICE OF PROPOSED RULE MAKING
11 FOR MAJOR RULES, HIGH-IMPACT RULES, NEGATIVE-IM-
12 PACT ON JOBS AND WAGES RULES, AND RULES INVOLV-
13 ING NOVEL LEGAL OR POLICY ISSUES.—In the case of
14 a rule making for a major rule, a high-impact rule, a nega-
15 tive-impact on jobs and wages rule, or a rule that involves
16 a novel legal or policy issue arising out of statutory man-
17 dates, not later than 90 days before a notice of proposed
18 rule making is published in the Federal Register, an agen-
19 cy shall publish advance notice of proposed rule making
20 in the Federal Register. In publishing such advance notice,
21 the agency shall—
22 "(1) include a written statement identifying, at
23 a minimum—
24 "(A) the nature and significance of the
25 problem the agency may address with a rule, in-

1 cluding data and other evidence and informa-
2 tion on which the agency expects to rely for the
3 proposed rule;
4 "(B) the legal authority under which a rule
5 may be proposed, including whether a rule mak-
6 ing is required by statute, and if so, whether by
7 a specific date, or whether the agency has dis-
8 cretion to commence a rule making;
9 "(C) preliminary information available to
10 the agency concerning the other considerations
11 specified in subsection (b);
12 "(D) in the case of a rule that involves a
13 novel legal or policy issue arising out of statu-
14 tory mandates, the nature of and potential rea-
15 sons to adopt the novel legal or policy position
16 upon which the agency may base a proposed
17 rule; and
18 "(E) an achievable objective for the rule
19 and metrics by which the agency will measure
20 progress toward that objective;
21 "(2) solicit written data, views or argument
22 from interested persons concerning the information
23 and issues addressed in the advance notice; and

1 "(3) provide for a period of not fewer than 60
2 days for interested persons to submit such written
3 data, views, or argument to the agency.
4 "(d) NOTICES OF PROPOSED RULE MAKING; DETER-
5 MINATIONS OF OTHER AGENCY COURSE.—(1) Before it
6 determines to propose a rule, and following completion of
7 procedures under subsection (c), if applicable, the agency
8 shall consult with the Administrator of the Office of Infor-
9 mation and Regulatory Affairs. If the agency thereafter
10 determines to propose a rule, the agency shall publish a
11 notice of proposed rule making, which shall include—
12 "(A) a statement of the time, place, and nature
13 of public rule making proceedings;
14 "(B) reference to the legal authority under
15 which the rule is proposed;
16 "(C) the terms of the proposed rule;
17 "(D) a description of information known to the
18 agency on the subject and issues of the proposed
19 rule, including but not limited to—
20 "(i) a summary of information known to
21 the agency concerning the considerations speci-
22 fied in subsection (b);
23 "(ii) a summary of additional information
24 the agency provided to and obtained from inter-
25 ested persons under subsection (c);

"(iii) a summary of any preliminary risk assessment or regulatory impact analysis performed by the agency; and

"(iv) information specifically identifying all data, studies, models, and other evidence or information considered or used by the agency in connection with its determination to propose the rule;

"(E)(i) a reasoned preliminary determination of need for the rule based on the information described under subparagraph (D);

"(ii) an additional statement of whether a rule is required by statute; and

"(iii) an achievable objective for the rule and metrics by which the agency will measure progress toward that objective;

"(F) a reasoned preliminary determination that the benefits of the proposed rule meet the relevant statutory objectives and justify the costs of the proposed rule (including all costs to be considered under subsection (b)(6)), based on the information described under subparagraph (D);

"(G) a discussion of—

"(i) the alternatives to the proposed rule, and other alternative responses, considered by the agency under subsection (b);

"(ii) the costs and benefits of those alternatives (including all costs to be considered under subsection (b)(6));

"(iii) whether those alternatives meet relevant statutory objectives; and

"(iv) why the agency did not propose any of those alternatives; and

"(II)(i) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule; and

"(ii) if so, whether or not the agency proposes to amend or rescind any such rules, and why.

All information provided to or considered by the agency, and steps to obtain information by the agency, in connection with its determination to propose the rule, including any preliminary risk assessment or regulatory impact analysis prepared by the agency and all other information prepared or described by the agency under subparagraph (D) and, at the discretion of the President or the Administrator of the Office of Information and Regulatory Affairs, information provided by that Office in consultations with the agency, shall be placed in the docket for the proposed

1 rule and made accessible to the public by electronic means
2 and otherwise for the public's use when the notice of pro-
3 posed rule making is published.
4 "(2)(A) If the agency undertakes procedures under
5 subsection (c) and determines thereafter not to propose
6 a rule, the agency shall, following consultation with the
7 Office of Information and Regulatory Affairs, publish a
8 notice of determination of other agency course. A notice
9 of determination of other agency course shall include in-
10 formation required by paragraph (1)(D) to be included in
11 a notice of proposed rule making and a description of the
12 alternative response the agency determined to adopt.
13 "(B) If in its determination of other agency course
14 the agency makes a determination to amend or rescind
15 an existing rule, the agency need not undertake additional
16 proceedings under subsection (c) before it publishes a no-
17 tice of proposed rule making to amend or rescind the exist-
18 ing rule.
19 All information provided to or considered by the agency,
20 and steps to obtain information by the agency, in connec-
21 tion with its determination of other agency course, includ-
22 ing but not limited to any preliminary risk assessment or
23 regulatory impact analysis prepared by the agency and all
24 other information that would be required to be prepared
25 or described by the agency under paragraph (1)(D) if the

1 agency had determined to publish a notice of proposed rule
2 making and, at the discretion of the President or the Ad-
3 ministrator of the Office of Information and Regulatory
4 Affairs, information provided by that Office in consulta-
5 tions with the agency, shall be placed in the docket for
6 the determination and made accessible to the public by
7 electronic means and otherwise for the public's use when
8 the notice of determination is published.

9 "(3) After notice of proposed rule making required
10 by this section, the agency shall provide interested persons
11 an opportunity to participate in the rule making through
12 submission of written data, views, or arguments with or
13 without opportunity for oral presentation, except that—

14 "(A) if a hearing is required under paragraph
15 (4)(B) or subsection (e), opportunity for oral presen-
16 tation shall be provided pursuant to that require-
17 ment; or

18 "(B) when other than under subsection (e) of
19 this section rules are required by statute or at the
20 discretion of the agency to be made on the record
21 after opportunity for an agency hearing, sections
22 556 and 557 shall apply, and paragraph (4), the re-
23 quirements of subsection (e) to receive comment out-
24 side of the procedures of sections 556 and 557, and

1 the petition procedures of subsection (e)(6) shall not
2 apply.
3 The agency shall provide not fewer than 60 days for inter-
4 ested persons to submit written data, views, or argument
5 (or 120 days in the case of a proposed major or high-
6 impact rule).
7 "(4)(A) Within 30 days of publication of notice of
8 proposed rule making, a member of the public may peti-
9 tion for a hearing in accordance with section 556 to deter-
10 mine whether any evidence or other information upon
11 which the agency bases the proposed rule fails to comply
12 with the Information Quality Act.
13 "(B)(i) The agency may, upon review of the petition,
14 determine without further process to exclude from the rule
15 making the evidence or other information that is the sub-
16 ject of the petition and, if appropriate, withdraw the pro-
17 posed rule. The agency shall promptly publish any such
18 determination.
19 "(ii) If the agency does not resolve the petition under
20 the procedures of clause (i), it shall grant any such peti-
21 tion that presents a prima facie case that evidence or other
22 information upon which the agency bases the proposed
23 rule fails to comply with the Information Quality Act, hold
24 the requested hearing not later than 30 days after receipt
25 of the petition, provide a reasonable opportunity for cross-

1 examination at the hearing, and decide the issues pre-
2 sented by the petition not later than 60 days after receipt
3 of the petition. The agency may deny any petition that
4 it determines does not present such a prima facie case.
5 "(C) There shall be no judicial review of the agency's
6 disposition of issues considered and decided or determined
7 under subparagraph (B)(ii) until judicial review of the
8 agency's final action. There shall be no judicial review of
9 an agency's determination to withdraw a proposed rule
10 under subparagraph (B)(i) on the basis of the petition.
11 "(D) Failure to petition for a hearing under this
12 paragraph shall not preclude judicial review of any claim
13 based on the Information Quality Act under chapter 7 of
14 this title.
15 "(e) HEARINGS FOR HIGH-IMPACT RULES.—Fol-
16 lowing notice of a proposed rule making, receipt of com-
17 ments on the proposed rule, and any hearing held under
18 subsection (d)(4), and before adoption of any high-impact
19 rule, the agency shall hold a hearing in accordance with
20 sections 556 and 557, unless such hearing is waived by
21 all participants in the rule making other than the agency.
22 The agency shall provide a reasonable opportunity for
23 cross-examination at such hearing. The hearing shall be
24 limited to the following issues of fact, except that partici-

1 pants at the hearing other than the agency may waive de-
2 termination of any such issue:
3 "(1) Whether the agency's asserted factual
4 predicate for the rule is supported by the evidence.
5 "(2) Whether there is an alternative to the pro-
6 posed rule that would achieve the relevant statutory
7 objectives at a lower cost (including all costs to be
8 considered under subsection (b)(6)) than the pro-
9 posed rule.
10 "(3) If there is more than one alternative to the
11 proposed rule that would achieve the relevant statu-
12 tory objectives at a lower cost than the proposed
13 rule, which alternative would achieve the relevant
14 statutory objectives at the lowest cost.
15 "(4) Whether, if the agency proposes to adopt
16 a rule that is more costly than the least costly alter-
17 native that would achieve the relevant statutory ob-
18 jectives (including all costs to be considered under
19 subsection (b)(6)), the additional benefits of the
20 more costly rule exceed the additional costs of the
21 more costly rule.
22 "(5) Whether the evidence and other informa-
23 tion upon which the agency bases the proposed rule
24 meets the requirements of the Information Quality
25 Act.

1 "(6) Upon petition by an interested person who
2 has participated in the rule making, other issues rel-
3 evant to the rule making, unless the agency deter-
4 mines that consideration of the issues at the hearing
5 would not advance consideration of the rule or
6 would, in light of the nature of the need for agency
7 action, unreasonably delay completion of the rule
8 making. An agency shall grant or deny a petition
9 under this paragraph within 30 days of its receipt
10 of the petition.
11 No later than 45 days before any hearing held under this
12 subsection or sections 556 and 557, the agency shall pub-
13 lish in the Federal Register a notice specifying the pro-
14 posed rule to be considered at such hearing, the issues
15 to be considered at the hearing, and the time and place
16 for such hearing, except that such notice may be issued
17 not later than 15 days before a hearing held under sub-
18 section (d)(4)(B).
19 "(f) FINAL RULES.—(1) The agency shall adopt a
20 rule only following consultation with the Administrator of
21 the Office of Information and Regulatory Affairs to facili-
22 tate compliance with applicable rule making requirements.
23 "(2) The agency shall adopt a rule only on the basis
24 of the best reasonably obtainable scientific, technical, eco-

1 nomic, and other evidence and information concerning the
2 need for, consequences of, and alternatives to the rule.
3 "(3)(A) Except as provided in subparagraph (B), the
4 agency shall adopt the least costly rule considered during
5 the rule making (including all costs to be considered under
6 subsection (b)(6)) that meets relevant statutory objectives.
7 "(B) The agency may adopt a rule that is more costly
8 than the least costly alternative that would achieve the rel-
9 evant statutory objectives only if the additional benefits
10 of the more costly rule justify its additional costs and only
11 if the agency explains its reason for doing so based on
12 interests of public health, safety or welfare that are clearly
13 within the scope of the statutory provision authorizing the
14 rule.
15 "(4) When it adopts a final rule, the agency shall
16 publish a notice of final rule making. The notice shall in-
17 clude—
18 "(A) a concise, general statement of the rule's
19 basis and purpose;
20 "(B) the agency's reasoned final determination
21 of need for a rule to address the problem the agency
22 seeks to address with the rule, including a statement
23 of whether a rule is required by statute and a sum-
24 mary of any final risk assessment or regulatory im-
25 pact analysis prepared by the agency;

1 "(C) the agency's reasoned final determination
2 that the benefits of the rule meet the relevant statu-
3 tory objectives and justify the rule's costs (including
4 all costs to be considered under subsection (b)(6));
5 "(D) the agency's reasoned final determination
6 not to adopt any of the alternatives to the proposed
7 rule considered by the agency during the rule mak-
8 ing, including—
9 "(i) the agency's reasoned final determina-
10 tion that no alternative considered achieved the
11 relevant statutory objectives with lower costs
12 (including all costs to be considered under sub-
13 section (b)(6)) than the rule; or
14 "(ii) the agency's reasoned determination
15 that its adoption of a more costly rule complies
16 with subsection (f)(3)(B);
17 "(E) the agency's reasoned final determina-
18 tion—
19 "(i) that existing rules have not created or
20 contributed to the problem the agency seeks to
21 address with the rule; or
22 "(ii) that existing rules have created or
23 contributed to the problem the agency seeks to
24 address with the rule, and, if so—

"(I) why amendment or rescission of such existing rules is not alone sufficient to respond to the problem; and

"(II) whether and how the agency intends to amend or rescind the existing rule separate from adoption of the rule;

"(F) the agency's reasoned final determination that the evidence and other information upon which the agency bases the rule complies with the Information Quality Act;

"(G) the agency's reasoned final determination that the rule meets the objectives that the agency identified in subsection (d)(1)(E)(iii) or that other objectives are more appropriate in light of the full administrative record and the rule meets those objectives;

"(H) the agency's reasoned final determination that it did not deviate from the metrics the agency included in subsection (d)(1)(E)(iii) or that other metrics are more appropriate in light of the full administrative record and the agency did not deviate from those metrics;

"(I)(i) for any major rule, high-impact rule, or negative-impact on jobs and wages rule, the agency's plan for review of the rule no less than every ten

1 years to determine whether, based upon evidence,
2 there remains a need for the rule, whether the rule
3 is in fact achieving statutory objectives, whether the
4 rule's benefits continue to justify its costs, and
5 whether the rule can be modified or rescinded to re-
6 duce costs while continuing to achieve statutory ob-
7 jectives; and
8 "(ii) review of a rule under a plan required by
9 clause (i) of this subparagraph shall take into ac-
10 count the factors and criteria set forth in sub-
11 sections (b) through (f) of section 553 of this title;
12 and
13 "(J) for any negative-impact on jobs and wages
14 rule, a statement that the head of the agency that
15 made the rule approved the rule knowing about the
16 findings and determination of the agency or the Ad-
17 ministrator of the Office of Information and Regu-
18 latory Affairs that qualified the rule as a negative
19 impact on jobs and wages rule.
20 All information considered by the agency in connection
21 with its adoption of the rule, and, at the discretion of the
22 President or the Administrator of the Office of Informa-
23 tion and Regulatory Affairs, information provided by that
24 Office in consultations with the agency, shall be placed

1 in the docket for the rule and made accessible to the public
2 for the public's use no later than when the rule is adopted.
3 "(g) EXCEPTIONS FROM NOTICE AND HEARING RE-
4 QUIREMENTS.—(1) Except when notice or hearing is re-
5 quired by statute, the following do not apply to interpre-
6 tive rules, general statements of policy, or rules of agency
7 organization, procedure, or practice:
8 "(A) Subsections (c) through (e).
9 "(B) Paragraphs (1) through (3) of subsection
10 (f).
11 "(C) Subparagraphs (B) through (H) of sub-
12 section (f)(4).
13 "(2)(A) When the agency for good cause, based upon
14 evidence, finds (and incorporates the finding and a brief
15 statement of reasons therefor in the rules issued) that
16 compliance with subsection (c), (d), or (e) or requirements
17 to render final determinations under subsection (f) of this
18 section before the issuance of an interim rule is impracti-
19 cable or contrary to the public interest, including interests
20 of national security, such subsections or requirements to
21 render final determinations shall not apply to the agency's
22 adoption of an interim rule.
23 "(B) If, following compliance with subparagraph (A)
24 of this paragraph, the agency adopts an interim rule, it
25 shall commence proceedings that comply fully with sub-

1 sections (d) through (f) of this section immediately upon
2 publication of the interim rule, shall treat the publication
3 of the interim rule as publication of a notice of proposed
4 rule making and shall not be required to issue supple-
5 mental notice other than to complete full compliance with
6 subsection (d). No less than 270 days from publication
7 of the interim rule (or 18 months in the case of a major
8 rule or high-impact rule), the agency shall complete rule
9 making under subsections (d) through (f) of this sub-
10 section and take final action to adopt a final rule or re-
11 scind the interim rule. If the agency fails to take timely
12 final action, the interim rule will cease to have the effect
13 of law.

14 "(C) Other than in cases involving interests of na-
15 tional security, upon the agency's publication of an interim
16 rule without compliance with subsection (c), (d), or (e) or
17 requirements to render final determinations under sub-
18 section (f) of this section, an interested party may seek
19 immediate judicial review under chapter 7 of this title of
20 the agency's determination to adopt such interim rule. The
21 record on such review shall include all documents and in-
22 formation considered by the agency and any additional in-
23 formation presented by a party that the court determines
24 necessary to consider to assure justice.

1 "(3) When the agency for good cause finds (and in-
2 corporates the finding and a brief statement of reasons
3 therefor in the rules issued) that notice and public proce-
4 dure thereon are unnecessary, including because agency
5 rule making is undertaken only to correct a de minimis
6 technical or clerical error in a previously issued rule or
7 for other noncontroversial purposes, the agency may pub-
8 lish a rule without compliance with subsection (c), (d), (e),
9 or (f)(1)–(3) and (f)(4)(B)–(F). If the agency receives sig-
10 nificant adverse comment within 60 days after publication
11 of the rule, it shall treat the notice of the rule as a notice
12 of proposed rule making and complete rule making in com-
13 pliance with subsections (d) and (f).

14 "(h) ADDITIONAL REQUIREMENTS FOR HEARINGS.—
15 When a hearing is required under subsection (e) or is oth-
16 erwise required by statute or at the agency's discretion
17 before adoption of a rule, the agency shall comply with
18 the requirements of sections 556 and 557 in addition to
19 the requirements of subsection (f) in adopting the rule and
20 in providing notice of the rule's adoption.

21 "(i) DATE OF PUBLICATION OF RULE.—The required
22 publication or service of a substantive final or interim rule
23 shall be made not less than 30 days before the effective
24 date of the rule, except—

1 "(1) a substantive rule which grants or recog-
2 nizes an exemption or relieves a restriction;
3 "(2) interpretive rules and statements of policy;
4 or
5 "(3) as otherwise provided by the agency for
6 good cause found and published with the rule.
7 "(j) RIGHT TO PETITION.—Each agency shall give
8 an interested person the right to petition for the issuance,
9 amendment, or repeal of a rule.
10 "(k) RULE MAKING GUIDELINES.—(1)(A) The Ad-
11 ministrator of the Office of Information and Regulatory
12 Affairs shall establish guidelines for the assessment, in-
13 cluding quantitative and qualitative assessment, of the
14 costs and benefits of proposed and final rules and other
15 economic issues or issues related to risk that are relevant
16 to rule making under this title. The rigor of cost-benefit
17 analysis required by such guidelines shall be commensu-
18 rate, in the Administrator's determination, with the eco-
19 nomic impact of the rule.
20 "(B) To ensure that agencies use the best available
21 techniques to quantify and evaluate anticipated present
22 and future benefits, costs, other economic issues, and risks
23 as accurately as possible, the Administrator of the Office
24 of Information and Regulatory Affairs shall regularly up-

1 date guidelines established under paragraph (1)(A) of this
2 subsection.
3 "(2) The Administrator of the Office of Information
4 and Regulatory Affairs shall also issue guidelines to pro-
5 mote coordination, simplification and harmonization of
6 agency rules during the rule making process and other-
7 wise. Such guidelines shall assure that each agency avoids
8 regulations that are inconsistent or incompatible with, or
9 duplicative of, its other regulations and those of other
10 Federal agencies and drafts its regulations to be simple
11 and easy to understand, with the goal of minimizing the
12 potential for uncertainty and litigation arising from such
13 uncertainty.
14 "(3) To ensure consistency in Federal rule making,
15 the Administrator of the Office of Information and Regu-
16 latory Affairs shall—
17 "(A) issue guidelines and otherwise take action
18 to ensure that rule makings conducted in whole or
19 in part under procedures specified in provisions of
20 law other than those of subchapter II of this title
21 conform to the fullest extent allowed by law with the
22 procedures set forth in section 553 of this title; and
23 "(B) issue guidelines for the conduct of hear-
24 ings under subsections 553(d)(4) and 553(e) of this
25 section, including to assure a reasonable opportunity

1 for cross-examination. Each agency shall adopt regu-
2 lations for the conduct of hearings consistent with
3 the guidelines issued under this subparagraph.
4 "(4) The Administrator of the Office of Information
5 and Regulatory Affairs shall issue guidelines pursuant to
6 the Information Quality Act to apply in rule making pro-
7 ceedings under sections 553, 556, and 557 of this title.
8 In all cases, such guidelines, and the Administrator's spe-
9 cific determinations regarding agency compliance with
10 such guidelines, shall be entitled to judicial deference.
11 "(l) INCLUSION IN THE RECORD OF CERTAIN DOCU-
12 MENTS AND INFORMATION.—The agency shall include in
13 the record for a rule making, and shall make available by
14 electronic means and otherwise, all documents and infor-
15 mation prepared or considered by the agency during the
16 proceeding, including, at the discretion of the President
17 or the Administrator of the Office of Information and Reg-
18 ulatory Affairs, documents and information communicated
19 by that Office during consultation with the Agency.
20 "(m) MONETARY POLICY EXEMPTION.—Nothing in
21 subsection (b)(6), subparagraphs (F) and (G) of sub-
22 section (d)(1), subsection (e), subsection (f)(3), and sub-
23 paragraphs (C) and (D) of subsection (f)(5) shall apply
24 to rule makings that concern monetary policy proposed or

1 implemented by the Board of Governors of the Federal
2 Reserve System or the Federal Open Market Committee.".

3 **SEC. 204. AGENCY GUIDANCE; PROCEDURES TO ISSUE**
4 **MAJOR GUIDANCE; PRESIDENTIAL AUTHOR-**
5 **ITY TO ISSUE GUIDELINES FOR ISSUANCE OF**
6 **GUIDANCE.**

7 (a) IN GENERAL.—Chapter 5 of title 5, United
8 States Code, is amended by inserting after section 553 the
9 following new section:

10 **"§ 553a. Agency guidance; procedures to issue major**
11 **guidance; authority to issue guidelines**
12 **for issuance of guidance**

13 "(a) Before issuing any major guidance, or guidance
14 that involves a novel legal or policy issue arising out of
15 statutory mandates, an agency shall—

16 "(1) make and document a reasoned determina-
17 tion that—

18 "(A) assures that such guidance is under-
19 standable and complies with relevant statutory
20 objectives and regulatory provisions (including
21 any statutory deadlines for agency action);

22 "(B) summarizes the evidence and data on
23 which the agency will base the guidance;

24 "(C) identifies the costs and benefits (in-
25 cluding all costs to be considered during a rule

1 making under section 553(b) of this title) of
2 conduct conforming to such guidance and
3 assures that such benefits justify such costs;
4 and
5 "(D) describes alternatives to such guid-
6 ance and their costs and benefits (including all
7 costs to be considered during a rule making
8 under section 553(b) of this title) and explains
9 why the agency rejected those alternatives; and
10 "(2) confer with the Administrator of the Office
11 of Information and Regulatory Affairs on the
12 issuance of such guidance to assure that the guid-
13 ance is reasonable, understandable, consistent with
14 relevant statutory and regulatory provisions and re-
15 quirements or practices of other agencies, does not
16 produce costs that are unjustified by the guidance's
17 benefits, and is otherwise appropriate.
18 Upon issuing major guidance, or guidance that involves
19 a novel legal or policy issue arising out of statutory man-
20 dates, the agency shall publish the documentation required
21 by subparagraph (1) by electronic means and otherwise.
22 "(b) Agency guidance—
23 "(1) is not legally binding and may not be re-
24 lied upon by an agency as legal grounds for agency
25 action;

1 "(2) shall state in a plain, prominent and per-
2 manent manner that it is not legally binding; and
3 "(3) shall, at the time it is issued or upon re-
4 quest, be made available by the issuing agency to in-
5 terested persons and the public by electronic means
6 and otherwise.
7 Agencies shall avoid the issuance of guidance that is in-
8 consistent or incompatible with, or duplicative of, the
9 agency's governing statutes or regulations, with the goal
10 of minimizing the potential for uncertainty and litigation
11 arising from such uncertainty.
12 "(e) The Administrator of the Office of Information
13 and Regulatory Affairs shall have authority to issue guide-
14 lines for use by the agencies in the issuance of major guid-
15 ance and other guidance. Such guidelines shall assure that
16 each agency avoids issuing guidance documents that are
17 inconsistent or incompatible with, or duplicative of, the
18 law, its other regulations, or the regulations of other Fed-
19 eral agencies and drafts its guidance documents to be sim-
20 ple and easy to understand, with the goal of minimizing
21 the potential for uncertainty and litigation arising from
22 such uncertainty.".
23 (b) CLERICAL AMENDMENT.—The table of sections
24 for chapter 5 of title 5, United States Code, is amended

1 by inserting after the item relating to section 553 the fol-
2 lowing new item:

"553a. Agency guidance; procedures to issue major guidance; authority to issue guidelines for issuance of guidance.".

3 **SEC. 205. HEARINGS; PRESIDING EMPLOYEES; POWERS AND**
4 **DUTIES; BURDEN OF PROOF; EVIDENCE;**
5 **RECORD AS BASIS OF DECISION.**

6 Section 556 of title 5, United States Code, is amend-
7 ed by striking subsection (e) and inserting the following:
8 "(e)(1) The transcript of testimony and exhibits, to-
9 gether with all papers and requests filed in the proceeding,
10 constitutes the exclusive record for decision in accordance
11 with section 557 and shall be made available to the parties
12 and the public by electronic means and, upon payment of
13 lawfully prescribed costs, otherwise. When an agency deci-
14 sion rests on official notice of a material fact not appear-
15 ing in the evidence in the record, a party is entitled, on
16 timely request, to an opportunity to show the contrary.
17 "(2) Notwithstanding paragraph (1) of this sub-
18 section, in a proceeding held under this section pursuant
19 to section 553(d)(4) or 553(e), the record for decision
20 shall also include any information that is part of the
21 record of proceedings under section 553.
22 "(f) When an agency conducts rule making under this
23 section and section 557 directly after concluding pro-
24 ceedings upon an advance notice of proposed rule making

1 under section 553(e), the matters to be considered and
2 determinations to be made shall include, among other rel-
3 evant matters and determinations, the matters and deter-
4 minations described in subsections (b) and (f) of section
5 553.

6 "(g) Upon receipt of a petition for a hearing under
7 this section, the agency shall grant the petition in the case
8 of any major rule, unless the agency reasonably deter-
9 mines that a hearing would not advance consideration of
10 the rule or would, in light of the need for agency action,
11 unreasonably delay completion of the rule making. The
12 agency shall publish its decision to grant or deny the peti-
13 tion when it renders the decision, including an explanation
14 of the grounds for decision. The information contained in
15 the petition shall in all cases be included in the adminis-
16 trative record. This subsection shall not apply to rule mak-
17 ings that concern monetary policy proposed or imple-
18 mented by the Board of Governors of the Federal Reserve
19 System or the Federal Open Market Committee.".

20 **SEC. 206. ACTIONS REVIEWABLE.**

21 Section 704 of title 5, United States Code, is amend-
22 ed—

23 (1) by striking "Agency action made" and in-
24 serting "(a) Agency action made"; and

1 (2) by adding at the end the following: "Denial
2 by an agency of a correction request or, where ad-
3 ministrative appeal is provided for, denial of an ap-
4 peal, under an administrative mechanism described
5 in subsection (b)(2)(B) of the Information Quality
6 Act, or the failure of an agency within 90 days to
7 grant or deny such request or appeal, shall be final
8 action for purposes of this section.
9 "(b) Other than in cases involving interests of na-
10 tional security, notwithstanding subsection (a) of this sec-
11 tion, upon the agency's publication of an interim rule with-
12 out compliance with section 553(c), (d), or (e) or require-
13 ments to render final determinations under subsection (f)
14 of section 553, an interested party may seek immediate
15 judicial review under this chapter of the agency's deter-
16 mination to adopt such rule on an interim basis. Review
17 shall be limited to whether the agency abused its discre-
18 tion to adopt the interim rule without compliance with sec-
19 tion 553(c), (d), or (e) or without rendering final deter-
20 minations under subsection (f) of section 553.".
21 **SEC. 207. SCOPE OF REVIEW.**
22 Section 706 of title 5, United States Code is amend-
23 ed—
24 (1) by striking "To the extent necessary" and
25 inserting "(a) To the extent necessary";

(2) in paragraph (2)(A) of subsection (a) (as designated by paragraph (1) of this section), by inserting after "in accordance with law" the following: "(including the Information Quality Act)"; and

(3) by adding at the end the following:

"(b) The court shall not defer to the agency's—

"(1) interpretation of an agency rule if the agency did not comply with the procedures of section 553 or sections 556–557 of chapter 5 of this title to issue the interpretation;

"(2) determination of the costs and benefits or other economic or risk assessment of the action, if the agency failed to conform to guidelines on such determinations and assessments established by the Administrator of the Office of Information and Regulatory Affairs under section 553(k);

"(3) determinations made in the adoption of an interim rule; or

"(4) guidance.

"(c) The court shall review agency denials of petitions under section 553(e)(6) or any other petition for a hearing under sections 556 and 557 for abuse of agency discretion.".

SEC. 208. ADDED DEFINITION.

Section 701(b) of title 5, United States Code, is amended—

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

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

(3) by adding at the end the following:

"(3) 'substantial evidence' means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of the record considered as a whole, taking into account whatever in the record fairly detracts from the weight of the evidence relied upon by the agency to support its decision.".

SEC. 209. EFFECTIVE DATE.

The amendments made by this title to—

(1) sections 553, 556, and 704 of title 5, United States Code;

(2) subsection (b) of section 701 of such title;

(3) paragraphs (2) and (3) of section 706(b) of such title; and

(4) subsection (e) of section 706 of such title,

shall not apply to any rule makings pending or completed on the date of enactment of this title.

TITLE III—REGULATORY FLEXIBILITY IMPROVEMENTS ACT

SEC. 301. SHORT TITLE.

This title may be cited as the "Regulatory Flexibility Improvements Act of 2014".

SEC. 302. CLARIFICATION AND EXPANSION OF RULES COVERED BY THE REGULATORY FLEXIBILITY ACT.

(a) IN GENERAL.—Paragraph (2) of section 601 of title 5, United States Code, is amended to read as follows:

"(2) RULE.—The term 'rule' has the meaning given such term in section 551(4) of this title, except that such term does not include a rule pertaining to the protection of the rights of and benefits for veterans or a rule of particular (and not general) applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances.".

(b) INCLUSION OF RULES WITH INDIRECT EFFECTS.—Section 601 of title 5, United States Code, is amended by adding at the end the following new paragraph:

"(9) ECONOMIC IMPACT.—The term 'economic impact' means, with respect to a proposed or final rule—

"(A) any direct economic effect on small entities of such rule; and

"(B) any indirect economic effect (including compliance costs and effects on revenue) on small entities which is reasonably foreseeable and results from such rule (without regard to whether small entities will be directly regulated by the rule).".

(c) INCLUSION OF RULES WITH BENEFICIAL EFFECTS.—

(1) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—Subsection (c) of section 603 of title 5, United States Code, is amended by striking the first sentence and inserting "Each initial regulatory flexibility analysis shall also contain a detailed description of alternatives to the proposed rule which minimize any adverse significant economic impact or maximize any beneficial significant economic impact on small entities.".

(2) FINAL REGULATORY FLEXIBILITY ANALYSIS.—The first paragraph (6) of section 604(a) of title 5, United States Code, is amended by striking

"minimize the significant economic impact" and inserting "minimize the adverse significant economic impact or maximize the beneficial significant economic impact".

(d) INCLUSION OF RULES AFFECTING TRIBAL ORGANIZATIONS.—Paragraph (5) of section 601 of title 5, United States Code, is amended by inserting "and tribal organizations (as defined in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l))," after "special districts,".

(e) INCLUSION OF LAND MANAGEMENT PLANS AND FORMAL RULEMAKING.—

(1) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—Subsection (a) of section 603 of title 5, United States Code, is amended in the first sentence—

(A) by striking "or" after "proposed rule,"; and

(B) by inserting "or publishes a revision or amendment to a land management plan," after "United States,".

(2) FINAL REGULATORY FLEXIBILITY ANALYSIS.—Subsection (a) of section 604 of title 5, United States Code, is amended in the first sentence—

1 (A) by striking "or" after "proposed rule-
2 making,"; and
3 (B) by inserting "or adopts a revision or
4 amendment to a land management plan," after
5 "section 603(a),".
6 (3) LAND MANAGEMENT PLAN DEFINED.—Sec-
7 tion 601 of title 5, United States Code, is amended
8 by adding at the end the following new paragraph:
9 "(10) LAND MANAGEMENT PLAN.—
10 "(A) IN GENERAL.—The term 'land man-
11 agement plan' means—
12 "(i) any plan developed by the Sec-
13 retary of Agriculture under section 6 of
14 the Forest and Rangeland Renewable Re-
15 sources Planning Act of 1974 (16 U.S.C.
16 1604); and
17 "(ii) any plan developed by the Sec-
18 retary of the Interior under section 202 of
19 the Federal Land Policy and Management
20 Act of 1976 (43 U.S.C. 1712).
21 "(B) REVISION.—The term 'revision'
22 means any change to a land management plan
23 which—
24 "(i) in the case of a plan described in
25 subparagraph (A)(i), is made under section

1 6(f)(5) of the Forest and Rangeland Re-
2 newable Resources Planning Act of 1974
3 (16 U.S.C. 1604(f)(5)); or
4 "(ii) in the case of a plan described in
5 subparagraph (A)(ii), is made under sec-
6 tion 1610.5–6 of title 43, Code of Federal
7 Regulations (or any successor regulation).
8 "(C) AMENDMENT.—The term 'amend-
9 ment' means any change to a land management
10 plan which—
11 "(i) in the case of a plan described in
12 subparagraph (A)(i), is made under section
13 6(f)(4) of the Forest and Rangeland Re-
14 newable Resources Planning Act of 1974
15 (16 U.S.C. 1604(f)(4)) and with respect to
16 which the Secretary of Agriculture pre-
17 pares a statement described in section
18 102(2)(C) of the National Environmental
19 Policy Act of 1969 (42 U.S.C.
20 4332(2)(C)); or
21 "(ii) in the case of a plan described in
22 subparagraph (A)(ii), is made under sec-
23 tion 1610.5–5 of title 43, Code of Federal
24 Regulations (or any successor regulation)
25 and with respect to which the Secretary of

1 the Interior prepares a statement described
2 in section 102(2)(C) of the National Envi-
3 ronmental Policy Act of 1969 (42 U.S.C.
4 4332(2)(C)).".
5 (f) INCLUSION OF CERTAIN INTERPRETIVE RULES
6 INVOLVING THE INTERNAL REVENUE LAWS.—
7 (1) IN GENERAL.—Subsection (a) of section
8 603 of title 5, United States Code, is amended by
9 striking the period at the end and inserting "or a
10 recordkeeping requirement, and without regard to
11 whether such requirement is imposed by statute or
12 regulation.".
13 (2) COLLECTION OF INFORMATION.—Paragraph
14 (7) of section 601 of title 5, United States Code, is
15 amended to read as follows:
16 "(7) COLLECTION OF INFORMATION.—The term
17 'collection of information' has the meaning given
18 such term in section 3502(3) of title 44.".
19 (3) RECORDKEEPING REQUIREMENT.—Para-
20 graph (8) of section 601 of title 5, United States
21 Code, is amended to read as follows:
22 "(8) RECORDKEEPING REQUIREMENT.—The
23 term 'recordkeeping requirement' has the meaning
24 given such term in section 3502(13) of title 44.".

1 (g) DEFINITION OF SMALL ORGANIZATION.—Para-
2 graph (4) of section 601 of title 5, United States Code,
3 is amended to read as follows:
4 "(4) SMALL ORGANIZATION.—
5 "(A) IN GENERAL.—The term 'small orga-
6 nization' means any not-for-profit enterprise
7 which, as of the issuance of the notice of pro-
8 posed rulemaking—
9 "(i) in the case of an enterprise which
10 is described by a classification code of the
11 North American Industrial Classification
12 System, does not exceed the size standard
13 established by the Administrator of the
14 Small Business Administration pursuant to
15 section 3 of the Small Business Act (15
16 U.S.C. 632) for small business concerns
17 described by such classification code; and
18 "(ii) in the case of any other enter-
19 prise, has a net worth that does not exceed
20 $7,000,000 and has not more than 500
21 employees.
22 "(B) LOCAL LABOR ORGANIZATIONS.—In
23 the case of any local labor organization, sub-
24 paragraph (A) shall be applied without regard

1 to any national or international organization of
2 which such local labor organization is a part.
3 "(C) AGENCY DEFINITIONS.—Subpara-
4 graphs (A) and (B) shall not apply to the ex-
5 tent that an agency, after consultation with the
6 Office of Advocacy of the Small Business Ad-
7 ministration and after opportunity for public
8 comment, establishes one or more definitions
9 for such term which are appropriate to the ac-
10 tivities of the agency and publishes such defini-
11 tions in the Federal Register.".

12 **SEC. 303. EXPANSION OF REPORT OF REGULATORY AGEN-**
13 **DA.**

14 Section 602 of title 5, United States Code, is amend-
15 ed—
16 (1) in subsection (a)—
17 (A) in paragraph (2), by striking ", and"
18 at the end and inserting ";";
19 (B) by redesignating paragraph (3) as
20 paragraph (4); and
21 (C) by inserting after paragraph (2) the
22 following:
23 "(3) a brief description of the sector of the
24 North American Industrial Classification System
25 that is primarily affected by any rule which the

1 agency expects to propose or promulgate which is
2 likely to have a significant economic impact on a
3 substantial number of small entities; and"; and
4 (2) in subsection (e), to read as follows:
5 "(e) Each agency shall prominently display a plain
6 language summary of the information contained in the
7 regulatory flexibility agenda published under subsection
8 (a) on its website within 3 days of its publication in the
9 Federal Register. The Office of Advocacy of the Small
10 Business Administration shall compile and prominently
11 display a plain language summary of the regulatory agen-
12 das referenced in subsection (a) for each agency on its
13 website within 3 days of their publication in the Federal
14 Register.".

15 **SEC. 304. REQUIREMENTS PROVIDING FOR MORE DE-**
16 **TAILED ANALYSES.**

17 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—
18 Subsection (b) of section 603 of title 5, United States
19 Code, is amended to read as follows:
20 "(b) Each initial regulatory flexibility analysis re-
21 quired under this section shall contain a detailed state-
22 ment—
23 "(1) describing the reasons why action by the
24 agency is being considered;

1 "(2) describing the objectives of, and legal basis
2 for, the proposed rule;
3 "(3) estimating the number and type of small
4 entities to which the proposed rule will apply;
5 "(4) describing the projected reporting, record-
6 keeping, and other compliance requirements of the
7 proposed rule, including an estimate of the classes of
8 small entities which will be subject to the require-
9 ment and the type of professional skills necessary
10 for preparation of the report and record;
11 "(5) describing all relevant Federal rules which
12 may duplicate, overlap, or conflict with the proposed
13 rule, or the reasons why such a description could not
14 be provided;
15 "(6) estimating the additional cumulative eco-
16 nomic impact of the proposed rule on small entities
17 beyond that already imposed on the class of small
18 entities by the agency or why such an estimate is
19 not available;
20 "(7) describing any disproportionate economic
21 impact on small entities or a specific class of small
22 entities; and
23 "(8) describing any impairment of the ability of
24 small entities to have access to credit.".
25 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

1 (1) IN GENERAL.—Section 604(a) of title 5,
2 United States Code, is amended—
3 (A) in paragraph (4), by striking "an ex-
4 planation" and inserting "a detailed expla-
5 nation";
6 (B) in each of paragraphs (4), (5), and the
7 first paragraph (6), by inserting "detailed" be-
8 fore "description";
9 (C) in the second paragraph (6), by strik-
10 ing the period and inserting "; and";
11 (D) by redesignating the second paragraph
12 (6) as paragraph (7); and
13 (E) by adding at the end the following:
14 "(8) a detailed description of any dispropor-
15 tionate economic impact on small entities or a spe-
16 cific class of small entities.".
17 (2) INCLUSION OF RESPONSE TO COMMENTS ON
18 CERTIFICATION OF PROPOSED RULE.—Paragraph
19 (2) of section 604(a) of title 5, United States Code,
20 is amended by inserting "(or certification of the pro-
21 posed rule under section 605(b))" after "initial reg-
22 ulatory flexibility analysis".
23 (3) PUBLICATION OF ANALYSIS ON WEBSITE.—
24 Subsection (b) of section 604 of title 5, United
25 States Code, is amended to read as follows:

"(b) The agency shall make copies of the final regulatory flexibility analysis available to the public, including placement of the entire analysis on the agency's website, and shall publish in the Federal Register the final regulatory flexibility analysis, or a summary thereof which includes the telephone number, mailing address, and link to the website where the complete analysis may be obtained.".

(c) CROSS-REFERENCES TO OTHER ANALYSES.—Subsection (a) of section 605 of title 5, United States Code, is amended to read as follows:

"(a) A Federal agency shall be treated as satisfying any requirement regarding the content of an agenda or regulatory flexibility analysis under section 602, 603, or 604, if such agency provides in such agenda or analysis a cross-reference to the specific portion of another agenda or analysis which is required by any other law and which satisfies such requirement.".

(d) CERTIFICATIONS.—Subsection (b) of section 605 of title 5, United States Code, is amended—

(1) by inserting "detailed" before "statement" the first place it appears; and

(2) by inserting "and legal" after "factual".

1 (c) QUANTIFICATION REQUIREMENTS.—Section 607
2 of title 5, United States Code, is amended to read as fol-
3 lows:

4 **"§ 607. Quantification requirements**

5 "In complying with sections 603 and 604, an agency
6 shall provide—

7 "(1) a quantifiable or numerical description of
8 the effects of the proposed or final rule and alter-
9 natives to the proposed or final rule; or

10 "(2) a more general descriptive statement and
11 a detailed statement explaining why quantification is
12 not practicable or reliable.".

13 **SEC. 305. REPEAL OF WAIVER AND DELAY AUTHORITY; AD-**
14 **DITIONAL POWERS OF THE CHIEF COUNSEL**
15 **FOR ADVOCACY.**

16 (a) IN GENERAL.—Section 608 is amended to read
17 as follows:

18 **"§ 608. Additional powers of Chief Counsel for Advo-**
19 **cacy**

20 "(a)(1) Not later than 270 days after the date of the
21 enactment of this section, the Chief Counsel for Advocacy
22 of the Small Business Administration shall, after oppor-
23 tunity for notice and comment under section 553, issue
24 rules governing agency compliance with this chapter. The
25 Chief Counsel may modify or amend such rules after no-

1 tice and comment under section 553. This chapter (other
2 than this subsection) shall not apply with respect to the
3 issuance, modification, and amendment of rules under this
4 paragraph.

5 "(2) An agency shall not issue rules which supple-
6 ment the rules issued under subsection (a) unless such
7 agency has first consulted with the Chief Counsel for Ad-
8 vocacy to ensure that such supplemental rules comply with
9 this chapter and the rules issued under paragraph (1).

10 "(b) Notwithstanding any other law, the Chief Coun-
11 sel for Advocacy of the Small Business Administration
12 may intervene in any agency adjudication (unless such
13 agency is authorized to impose a fine or penalty under
14 such adjudication), and may inform the agency of the im-
15 pact that any decision on the record may have on small
16 entities. The Chief Counsel shall not initiate an appeal
17 with respect to any adjudication in which the Chief Coun-
18 sel intervenes under this subsection.

19 "(c) The Chief Counsel for Advocacy may file com-
20 ments in response to any agency notice requesting com-
21 ment, regardless of whether the agency is required to file
22 a general notice of proposed rulemaking under section
23 553.".

24 (b) CONFORMING AMENDMENTS.—

1 (1) Section 611(a)(1) of such title is amended
2 by striking "608(b),".
3 (2) Section 611(a)(2) of such title is amended
4 by striking "608(b),".
5 (3) Section 611(a)(3) of such title is amend-
6 ed—
7 (A) by striking subparagraph (B); and
8 (B) by striking "(3)(A) A small entity"
9 and inserting the following:
10 "(3) A small entity".

11 **SEC. 306. PROCEDURES FOR GATHERING COMMENTS.**

12 Section 609 of title 5, United States Code, is amend-
13 ed by striking subsection (b) and all that follows through
14 the end of the section and inserting the following:
15 "(b)(1) Prior to publication of any proposed rule de-
16 scribed in subsection (e), an agency making such rule shall
17 notify the Chief Counsel for Advocacy of the Small Busi-
18 ness Administration and provide the Chief Counsel with—
19 "(A) all materials prepared or utilized by the
20 agency in making the proposed rule, including the
21 draft of the proposed rule; and
22 "(B) information on the potential adverse and
23 beneficial economic impacts of the proposed rule on
24 small entities and the type of small entities that
25 might be affected.

1 "(2) An agency shall not be required under para-
2 graph (1) to provide the exact language of any draft if
3 the rule—
4 "(A) relates to the internal revenue laws of the
5 United States; or
6 "(B) is proposed by an independent regulatory
7 agency (as defined in section 3502(5) of title 44).
8 "(c) Not later than 15 days after the receipt of such
9 materials and information under subsection (b), the Chief
10 Counsel for Advocacy of the Small Business Administra-
11 tion shall—
12 "(1) identify small entities or representatives of
13 small entities or a combination of both for the pur-
14 pose of obtaining advice, input, and recommenda-
15 tions from those persons about the potential eco-
16 nomic impacts of the proposed rule and the compli-
17 ance of the agency with section 603; and
18 "(2) convene a review panel consisting of an
19 employee from the Office of Advocacy of the Small
20 Business Administration, an employee from the
21 agency making the rule, and in the case of an agen-
22 cy other than an independent regulatory agency (as
23 defined in section 3502(5) of title 44), an employee
24 from the Office of Information and Regulatory Af-
25 fairs of the Office of Management and Budget to re-

1 view the materials and information provided to the
2 Chief Counsel under subsection (b).
3 "(d)(1) Not later than 60 days after the review panel
4 described in subsection (c)(2) is convened, the Chief Coun-
5 sel for Advocacy of the Small Business Administration
6 shall, after consultation with the members of such panel,
7 submit a report to the agency and, in the case of an agen-
8 cy other than an independent regulatory agency (as de-
9 fined in section 3502(5) of title 44), the Office of Informa-
10 tion and Regulatory Affairs of the Office of Management
11 and Budget.
12 "(2) Such report shall include an assessment of the
13 economic impact of the proposed rule on small entities,
14 including an assessment of the proposed rule's impact on
15 the cost that small entities pay for energy, an assessment
16 of the proposed rule's impact on start-up costs for small
17 entities, and a discussion of any alternatives that will min-
18 imize adverse significant economic impacts or maximize
19 beneficial significant economic impacts on small entities.
20 "(3) Such report shall become part of the rulemaking
21 record. In the publication of the proposed rule, the agency
22 shall explain what actions, if any, the agency took in re-
23 sponse to such report.
24 "(e) A proposed rule is described by this subsection
25 if the Administrator of the Office of Information and Reg-

1 ulatory Affairs of the Office of Management and Budget,
2 the head of the agency (or the delegatee of the head of
3 the agency), or an independent regulatory agency deter-
4 mines that the proposed rule is likely to result in—
5 "(1) an annual effect on the economy of
6 $100,000,000 or more;
7 "(2) a major increase in costs or prices for con-
8 sumers, individual industries, Federal, State, or local
9 governments, tribal organizations, or geographic re-
10 gions;
11 "(3) significant adverse effects on competition,
12 employment, investment, productivity, innovation, or
13 on the ability of United States-based enterprises to
14 compete with foreign-based enterprises in domestic
15 and export markets; or
16 "(4) a significant economic impact on a sub-
17 stantial number of small entities.
18 "(f) Upon application by the agency, the Chief Coun-
19 sel for Advocacy of the Small Business Administration
20 may waive the requirements of subsections (b) through (e)
21 if the Chief Counsel determines that compliance with the
22 requirements of such subsections are impracticable, un-
23 necessary, or contrary to the public interest.
24 "(g) A small entity or a representative of a small enti-
25 ty may submit a request that the agency provide a copy

of the report prepared under subsection (d) and all materials and information provided to the Chief Counsel for Advocacy of the Small Business Administration under subsection (b). The agency receiving such request shall provide the report, materials and information to the requesting small entity or representative of a small entity not later than 10 business days after receiving such request, except that the agency shall not disclose any information that is prohibited from disclosure to the public pursuant to section 552(b) of this title.".

SEC. 307. PERIODIC REVIEW OF RULES.

Section 610 of title 5, United States Code, is amended to read as follows:

"§ 610. Periodic review of rules

"(a) Not later than 180 days after the enactment of this section, each agency shall publish in the Federal Register and place on its website a plan for the periodic review of rules issued by the agency which the head of the agency determines have a significant economic impact on a substantial number of small entities. Such determination shall be made without regard to whether the agency performed an analysis under section 604. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes,

1 to minimize any adverse significant economic impacts or
2 maximize any beneficial significant economic impacts on
3 a substantial number of small entities. Such plan may be
4 amended by the agency at any time by publishing the revi-
5 sion in the Federal Register and subsequently placing the
6 amended plan on the agency's website.

7 "(b) The plan shall provide for the review of all such
8 agency rules existing on the date of the enactment of this
9 section within 10 years of the date of publication of the
10 plan in the Federal Register and for review of rules adopt-
11 ed after the date of enactment of this section within 10
12 years after the publication of the final rule in the Federal
13 Register. If the head of the agency determines that com-
14 pletion of the review of existing rules is not feasible by
15 the established date, the head of the agency shall so certify
16 in a statement published in the Federal Register and may
17 extend the review for not longer than 2 years after publi-
18 cation of notice of extension in the Federal Register. Such
19 certification and notice shall be sent to the Chief Counsel
20 for Advocacy of the Small Business Administration and
21 the Congress.

22 "(c) The plan shall include a section that details how
23 an agency will conduct outreach to and meaningfully in-
24 clude small businesses (including small business concerns
25 owned and controlled by women, small business concerns

1 owned and controlled by veterans, and small business con-
2 cerns owned and controlled by socially and economically
3 disadvantaged individuals (as such terms are defined in
4 the Small Business Act)) for the purposes of carrying out
5 this section. The agency shall include in this section a plan
6 for how the agency will contact small businesses and gath-
7 er their input on existing agency rules.

8 "(d) Each agency shall annually submit a report re-
9 garding the results of its review pursuant to such plan
10 to the Congress, the Chief Counsel for Advocacy of the
11 Small Business Administration, and, in the case of agen-
12 cies other than independent regulatory agencies (as de-
13 fined in section 3502(5) of title 44) to the Administrator
14 of the Office of Information and Regulatory Affairs of the
15 Office of Management and Budget. Such report shall in-
16 clude the identification of any rule with respect to which
17 the head of the agency made a determination described
18 in paragraph (5) or (6) of subsection (e) and a detailed
19 explanation of the reasons for such determination.

20 "(e) In reviewing a rule pursuant to subsections (a)
21 through (d), the agency shall amend or rescind the rule
22 to minimize any adverse significant economic impact on
23 a substantial number of small entities or disproportionate
24 economic impact on a specific class of small entities, or
25 maximize any beneficial significant economic impact of the

1 rule on a substantial number of small entities to the great-
2 est extent possible, consistent with the stated objectives
3 of applicable statutes. In amending or rescinding the rule,
4 the agency shall consider the following factors:
5 "(1) The continued need for the rule.
6 "(2) The nature of complaints received by the
7 agency from small entities concerning the rule.
8 "(3) Comments by the Regulatory Enforcement
9 Ombudsman and the Chief Counsel for Advocacy of
10 the Small Business Administration.
11 "(4) The complexity of the rule.
12 "(5) The extent to which the rule overlaps, du-
13 plicates, or conflicts with other Federal rules and,
14 unless the head of the agency determines it to be in-
15 feasible, State, territorial, and local rules.
16 "(6) The contribution of the rule to the cumu-
17 lative economic impact of all Federal rules on the
18 class of small entities affected by the rule, unless the
19 head of the agency determines that such calculations
20 cannot be made and reports that determination in
21 the annual report required under subsection (d).
22 "(7) The length of time since the rule has been
23 evaluated or the degree to which technology, eco-
24 nomic conditions, or other factors have changed in
25 the area affected by the rule.

"(f) Each year, each agency shall publish in the Federal Register and on its website a list of rules to be reviewed pursuant to such plan. The agency shall include in the publication a solicitation of public comments on any further inclusions or exclusions of rules from the list, and shall respond to such comments. Such publication shall include a brief description of the rule, the reason why the agency determined that it has a significant economic impact on a substantial number of small entities (without regard to whether it had prepared a final regulatory flexibility analysis for the rule), and request comments from the public, the Chief Counsel for Advocacy of the Small Business Administration, and the Regulatory Enforcement Ombudsman concerning the enforcement of the rule.".

SEC. 308. JUDICIAL REVIEW OF COMPLIANCE WITH THE REQUIREMENTS OF THE REGULATORY FLEXIBILITY ACT AVAILABLE AFTER PUBLICATION OF THE FINAL RULE.

(a) IN GENERAL.—Paragraph (1) of section 611(a) of title 5, United States Code, is amended by striking "final agency action" and inserting "such rule".

(b) JURISDICTION.—Paragraph (2) of such section is amended by inserting "(or which would have such jurisdic-

1 tion if publication of the final rule constituted final agency
2 action)" after "provision of law,".
3 (c) TIME FOR BRINGING ACTION.—Paragraph (3) of
4 such section is amended—
5 (1) by striking "final agency action" and insert-
6 ing "publication of the final rule"; and
7 (2) by inserting ", in the case of a rule for
8 which the date of final agency action is the same
9 date as the publication of the final rule," after "ex-
10 cept that".
11 (d) INTERVENTION BY CHIEF COUNSEL FOR ADVO-
12 CACY.—Subsection (b) of section 612 of title 5, United
13 States Code, is amended by inserting before the first pe-
14 riod "or agency compliance with section 601, 603, 604,
15 605(b), 609, or 610".
16 **SEC. 309. JURISDICTION OF COURT OF APPEALS OVER**
17 **RULES IMPLEMENTING THE REGULATORY**
18 **FLEXIBILITY ACT.**
19 (a) IN GENERAL.—Section 2342 of title 28, United
20 States Code, is amended—
21 (1) in paragraph (6), by striking "and" at the
22 end;
23 (2) in paragraph (7), by striking the period at
24 the end and inserting "; and"; and

(3) by inserting after paragraph (7) the following new paragraph:

"(8) all final rules under section 608(a) of title 5.".

(b) CONFORMING AMENDMENTS.—Paragraph (3) of section 2341 of title 28, United States Code, is amended—

(1) in subparagraph (D), by striking "and" at the end;

(2) in subparagraph (E), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(F) the Office of Advocacy of the Small Business Administration, when the final rule is under section 608(a) of title 5.".

(c) AUTHORIZATION TO INTERVENE AND COMMENT ON AGENCY COMPLIANCE WITH ADMINISTRATIVE PROCEDURE.—Subsection (b) of section 612 of title 5, United States Code, is amended by inserting "chapter 5, and chapter 7," after "this chapter,".

1 **SEC. 310. ESTABLISHMENT AND APPROVAL OF SMALL BUSI-**
2 **NESS CONCERN SIZE STANDARDS BY CHIEF**
3 **COUNSEL FOR ADVOCACY.**

4 (a) IN GENERAL.—Subparagraph (A) of section
5 3(a)(2) of the Small Business Act (15 U.S.C.
6 632(a)(2)(A)) is amended to read as follows:

7 "(A) IN GENERAL.—In addition to the cri-
8 teria specified in paragraph (1)—

9 "(i) the Administrator may specify de-
10 tailed definitions or standards by which a
11 business concern may be determined to be
12 a small business concern for purposes of
13 this Act or the Small Business Investment
14 Act of 1958; and

15 "(ii) the Chief Counsel for Advocacy
16 may specify such definitions or standards
17 for purposes of any other Act.".

18 (b) APPROVAL BY CHIEF COUNSEL.—Clause (iii) of
19 section 3(a)(2)(C) of the Small Business Act (15 U.S.C.
20 632(a)(2)(C)(iii)) is amended to read as follows:

21 "(iii) except in the case of a size
22 standard prescribed by the Administrator,
23 is approved by the Chief Counsel for Advo-
24 cacy.".

1 (c) INDUSTRY VARIATION.—Paragraph (3) of section
2 3(a) of the Small Business Act (15 U.S.C. 632(a)(3)) is
3 amended—
4 (1) by inserting "or Chief Counsel for Advo-
5 cacy, as appropriate" before "shall ensure"; and
6 (2) by inserting "or Chief Counsel for Advo-
7 cacy" before the period at the end.
8 (d) JUDICIAL REVIEW OF SIZE STANDARDS AP-
9 PROVED BY CHIEF COUNSEL.—Section 3(a) of the Small
10 Business Act (15 U.S.C. 632(a)) is amended by adding
11 at the end the following new paragraph:
12 "(9) JUDICIAL REVIEW OF STANDARDS AP-
13 PROVED BY CHIEF COUNSEL.—In the case of an ac-
14 tion for judicial review of a rule which includes a
15 definition or standard approved by the Chief Counsel
16 for Advocacy under this subsection, the party seek-
17 ing such review shall be entitled to join the Chief
18 Counsel as a party in such action.".
19 **SEC. 311. CLERICAL AMENDMENTS.**
20 (a) DEFINITIONS.—Section 601 of title 5, United
21 States Code, is amended—
22 (1) in paragraph (1)—
23 (A) by striking the semicolon at the end
24 and inserting a period; and

1 (B) by striking "(1) the term" and insert-
2 ing the following:
3 "(1) AGENCY.—The term";
4 (2) in paragraph (3)—
5 (A) by striking the semicolon at the end
6 and inserting a period; and
7 (B) by striking "(3) the term" and insert-
8 ing the following:
9 "(3) SMALL BUSINESS.—The term";
10 (3) in paragraph (5)—
11 (A) by striking the semicolon at the end
12 and inserting a period; and
13 (B) by striking "(5) the term" and insert-
14 ing the following:
15 "(5) SMALL GOVERNMENTAL JURISDICTION.—
16 The term"; and
17 (4) in paragraph (6)—
18 (A) by striking "; and" and inserting a pe-
19 riod; and
20 (B) by striking "(6) the term" and insert-
21 ing the following:
22 "(6) SMALL ENTITY.—The term".
23 (b) INCORPORATIONS BY REFERENCE AND CERTIFI-
24 CATIONS.—The heading of section 605 of title 5, United
25 States Code, is amended to read as follows:

1 **"§ 605. Incorporations by reference and certifi-**
2 **cations".**
3 (c) TABLE OF SECTIONS.—The table of sections for
4 chapter 6 of title 5, United States Code, is amended—
5 (1) by striking the item relating to section 605
6 and inserting the following new item:

"605. Incorporations by reference and certifications.";

7 (2) by striking the item relating to section 607
8 and inserting the following new item:

"607. Quantification requirements.";

9 and
10 (3) by striking the item relating to section 608
11 and inserting the following:

"608. Additional powers of Chief Counsel for Advocacy.".

12 (d) OTHER CLERICAL AMENDMENTS TO CHAPTER
13 6.—Chapter 6 of title 5, United States Code, is amended
14 in section 603(d)—
15 (1) by striking paragraph (2);
16 (2) by striking "(1) For a covered agency," and
17 inserting "For a covered agency,";
18 (3) by striking "(A) any" and inserting "(1)
19 any";
20 (4) by striking "(B) any" and inserting "(2)
21 any"; and
22 (5) by striking "(C) advice" and inserting "(3)
23 advice".

SEC. 312. AGENCY PREPARATION OF GUIDES.

Section 212(a)(5) the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 note) is amended to read as follows:

"(5) AGENCY PREPARATION OF GUIDES.—The agency shall, in its sole discretion, taking into account the subject matter of the rule and the language of relevant statutes, ensure that the guide is written using sufficiently plain language likely to be understood by affected small entities. Agencies may prepare separate guides covering groups or classes of similarly affected small entities and may cooperate with associations of small entities to distribute such guides. In developing guides, agencies shall solicit input from affected small entities or associations of affected small entities. An agency may prepare guides and apply this section with respect to a rule or a group of related rules.".

SEC. 313. COMPTROLLER GENERAL REPORT.

Not later than 90 days after the date of enactment of this title, the Comptroller General of the United States shall complete and publish a study that examines whether the Chief Counsel for Advocacy of the Small Business Administration has the capacity and resources to carry out the duties of the Chief Counsel under this title and the amendments made by this title.

TITLE IV—SUNSHINE FOR REGULATORY DECREES AND SETTLEMENTS ACT

SEC. 401. SHORT TITLE.

This title may be cited as the "Sunshine for Regulatory Decrees and Settlements Act of 2014".

SEC. 402. DEFINITIONS.

In this title—

(1) the terms "agency" and "agency action" have the meanings given those terms under section 551 of title 5, United States Code;

(2) the term "covered civil action" means a civil action—

(A) seeking to compel agency action;

(B) alleging that the agency is unlawfully withholding or unreasonably delaying an agency action relating to a regulatory action that would affect the rights of—

(i) private persons other than the person bringing the action; or

(ii) a State, local, or tribal government; and

(C) brought under—

(i) chapter 7 of title 5, United States Code; or

1 (ii) any other statute authorizing such
2 an action;
3 (3) the term "covered consent decree" means—
4 (A) a consent decree entered into in a cov-
5 ered civil action; and
6 (B) any other consent decree that requires
7 agency action relating to a regulatory action
8 that affects the rights of—
9 (i) private persons other than the per-
10 son bringing the action; or
11 (ii) a State, local, or tribal govern-
12 ment;
13 (4) the term "covered consent decree or settle-
14 ment agreement" means a covered consent decree
15 and a covered settlement agreement; and
16 (5) the term "covered settlement agreement"
17 means—
18 (A) a settlement agreement entered into in
19 a covered civil action; and
20 (B) any other settlement agreement that
21 requires agency action relating to a regulatory
22 action that affects the rights of—
23 (i) private persons other than the per-
24 son bringing the action; or

(ii) a State, local, or tribal government.

SEC. 403. CONSENT DECREE AND SETTLEMENT REFORM.

(a) PLEADINGS AND PRELIMINARY MATTERS.—

(1) IN GENERAL.—In any covered civil action, the agency against which the covered civil action is brought shall publish the notice of intent to sue and the complaint in a readily accessible manner, including by making the notice of intent to sue and the complaint available online not later than 15 days after receiving service of the notice of intent to sue or complaint, respectively.

(2) ENTRY OF A COVERED CONSENT DECREE OR SETTLEMENT AGREEMENT.—A party may not make a motion for entry of a covered consent decree or to dismiss a civil action pursuant to a covered settlement agreement until after the end of proceedings in accordance with paragraph (1) and subparagraphs (A) and (B) of paragraph (2) of subsection (d) or subsection (d)(3)(A), whichever is later.

(b) INTERVENTION.—

(1) REBUTTABLE PRESUMPTION.—In considering a motion to intervene in a covered civil action or a civil action in which a covered consent decree or settlement agreement has been proposed that is

1 filed by a person who alleges that the agency action
2 in dispute would affect the person, the court shall
3 presume, subject to rebuttal, that the interests of
4 the person would not be represented adequately by
5 the existing parties to the action.
6 (2) STATE, LOCAL, AND TRIBAL GOVERN-
7 MENTS.—In considering a motion to intervene in a
8 covered civil action or a civil action in which a cov-
9 ered consent decree or settlement agreement has
10 been proposed that is filed by a State, local, or tribal
11 government, the court shall take due account of
12 whether the movant—
13 (A) administers jointly with an agency that
14 is a defendant in the action the statutory provi-
15 sions that give rise to the regulatory action to
16 which the action relates; or
17 (B) administers an authority under State,
18 local, or tribal law that would be preempted by
19 the regulatory action to which the action re-
20 lates.
21 (c) SETTLEMENT NEGOTIATIONS.—Efforts to settle
22 a covered civil action or otherwise reach an agreement on
23 a covered consent decree or settlement agreement shall—
24 (1) be conducted pursuant to the mediation or
25 alternative dispute resolution program of the court

1 or by a district judge other than the presiding judge,
2 magistrate judge, or special master, as determined
3 appropriate by the presiding judge; and
4 (2) include any party that intervenes in the ac-
5 tion.
6 (d) PUBLICATION OF AND COMMENT ON COVERED
7 CONSENT DECREES OR SETTLEMENT AGREEMENTS.—
8 (1) IN GENERAL.—Not later than 60 days be-
9 fore the date on which a covered consent decree or
10 settlement agreement is filed with a court, the agen-
11 cy seeking to enter the covered consent decree or
12 settlement agreement shall publish in the Federal
13 Register and online—
14 (A) the proposed covered consent decree or
15 settlement agreement; and
16 (B) a statement providing—
17 (i) the statutory basis for the covered
18 consent decree or settlement agreement;
19 and
20 (ii) a description of the terms of the
21 covered consent decree or settlement agree-
22 ment, including whether it provides for the
23 award of attorneys' fees or costs and, if so,
24 the basis for including the award.
25 (2) PUBLIC COMMENT.—

1 (A) IN GENERAL.—An agency seeking to
2 enter a covered consent decree or settlement
3 agreement shall accept public comment during
4 the period described in paragraph (1) on any
5 issue relating to the matters alleged in the com-
6 plaint in the applicable civil action or addressed
7 or affected by the proposed covered consent de-
8 cree or settlement agreement.
9 (B) RESPONSE TO COMMENTS.—An agency
10 shall respond to any comment received under
11 subparagraph (A).
12 (C) SUBMISSIONS TO COURT.—When mov-
13 ing that the court enter a proposed covered con-
14 sent decree or settlement agreement or for dis-
15 missal pursuant to a proposed covered consent
16 decree or settlement agreement, an agency
17 shall—
18 (i) inform the court of the statutory
19 basis for the proposed covered consent de-
20 cree or settlement agreement and its
21 terms;
22 (ii) submit to the court a summary of
23 the comments received under subparagraph
24 (A) and the response of the agency to the
25 comments;

1 (iii) submit to the court a certified
2 index of the administrative record of the
3 notice and comment proceeding; and
4 (iv) make the administrative record
5 described in clause (iii) fully accessible to
6 the court.
7 (D) INCLUSION IN RECORD.—The court
8 shall include in the court record for a civil ac-
9 tion the certified index of the administrative
10 record submitted by an agency under subpara-
11 graph (C)(iii) and any documents listed in the
12 index which any party or amicus curiae appear-
13 ing before the court in the action submits to the
14 court.
15 (3) PUBLIC HEARINGS PERMITTED.—
16 (A) IN GENERAL.—After providing notice
17 in the Federal Register and online, an agency
18 may hold a public hearing regarding whether to
19 enter into a proposed covered consent decree or
20 settlement agreement.
21 (B) RECORD.—If an agency holds a public
22 hearing under subparagraph (A)—
23 (i) the agency shall—
24 (I) submit to the court a sum-
25 mary of the proceedings;

1 (II) submit to the court a cer-
2 tified index of the hearing record; and
3 (III) provide access to the hear-
4 ing record to the court; and
5 (ii) the full hearing record shall be in-
6 cluded in the court record.
7 (4) MANDATORY DEADLINES.—If a proposed
8 covered consent decree or settlement agreement re-
9 quires an agency action by a date certain, the agen-
10 cy shall, when moving for entry of the covered con-
11 sent decree or settlement agreement or dismissal
12 based on the covered consent decree or settlement
13 agreement, inform the court of—
14 (A) any required regulatory action the
15 agency has not taken that the covered consent
16 decree or settlement agreement does not ad-
17 dress;
18 (B) how the covered consent decree or set-
19 tlement agreement, if approved, would affect
20 the discharge of the duties described in sub-
21 paragraph (A); and
22 (C) why the effects of the covered consent
23 decree or settlement agreement on the manner
24 in which the agency discharges its duties is in
25 the public interest.

1 (c) SUBMISSION BY THE GOVERNMENT.—

2 (1) IN GENERAL.—For any proposed covered
3 consent decree or settlement agreement that con-
4 tains a term described in paragraph (2), the Attor-
5 ney General or, if the matter is being litigated inde-
6 pendently by an agency, the head of the agency shall
7 submit to the court a certification that the Attorney
8 General or head of the agency approves the proposed
9 covered consent decree or settlement agreement. The
10 Attorney General or head of the agency shall person-
11 ally sign any certification submitted under this para-
12 graph.

13 (2) TERMS.—A term described in this para-
14 graph is—

15 (A) in the case of a covered consent decree,
16 a term that—

17 (i) converts into a nondiscretionary
18 duty a discretionary authority of an agency
19 to propose, promulgate, revise, or amend
20 regulations;

21 (ii) commits an agency to expend
22 funds that have not been appropriated and
23 that have not been budgeted for the regu-
24 latory action in question;

1 (iii) commits an agency to seek a par-
2 ticular appropriation or budget authoriza-
3 tion;
4 (iv) divests an agency of discretion
5 committed to the agency by statute or the
6 Constitution of the United States, without
7 regard to whether the discretion was
8 granted to respond to changing cir-
9 cumstances, to make policy or managerial
10 choices, or to protect the rights of third
11 parties; or
12 (v) otherwise affords relief that the
13 court could not enter under its own au-
14 thority upon a final judgment in the civil
15 action; or
16 (B) in the case of a covered settlement
17 agreement, a term—
18 (i) that provides a remedy for a fail-
19 ure by the agency to comply with the
20 terms of the covered settlement agreement
21 other than the revival of the civil action re-
22 solved by the covered settlement agree-
23 ment; and
24 (ii) that—

1 (I) interferes with the authority
2 of an agency to revise, amend, or
3 issue rules under the procedures set
4 forth in chapter 5 of title 5, United
5 States Code, or any other statute or
6 Executive order prescribing rule-
7 making procedures for a rulemaking
8 that is the subject of the covered set-
9 tlement agreement;
10 (II) commits the agency to ex-
11 pend funds that have not been appro-
12 priated and that have not been budg-
13 eted for the regulatory action in ques-
14 tion; or
15 (III) for such a covered settle-
16 ment agreement that commits the
17 agency to exercise in a particular way
18 discretion which was committed to the
19 agency by statute or the Constitution
20 of the United States to respond to
21 changing circumstances, to make pol-
22 icy or managerial choices, or to pro-
23 tect the rights of third parties.
24 (f) REVIEW BY COURT.—

1 (1) AMICUS.—A court considering a proposed
2 covered consent decree or settlement agreement shall
3 presume, subject to rebuttal, that it is proper to
4 allow amicus participation relating to the covered
5 consent decree or settlement agreement by any per-
6 son who filed public comments or participated in a
7 public hearing on the covered consent decree or set-
8 tlement agreement under paragraph (2) or (3) of
9 subsection (d).
10 (2) REVIEW OF DEADLINES.—
11 (A) PROPOSED COVERED CONSENT DE-
12 CREES.—For a proposed covered consent de-
13 cree, a court shall not approve the covered con-
14 sent decree unless the proposed covered consent
15 decree allows sufficient time and incorporates
16 adequate procedures for the agency to comply
17 with chapter 5 of title 5, United States Code,
18 and other applicable statutes that govern rule-
19 making and, unless contrary to the public inter-
20 est, the provisions of any Executive order that
21 governs rulemaking.
22 (B) PROPOSED COVERED SETTLEMENT
23 AGREEMENTS.—For a proposed covered settle-
24 ment agreement, a court shall ensure that the
25 covered settlement agreement allows sufficient

1 time and incorporates adequate procedures for
2 the agency to comply with chapter 5 of title 5,
3 United States Code, and other applicable stat-
4 utes that govern rulemaking and, unless con-
5 trary to the public interest, the provisions of
6 any Executive order that governs rulemaking.
7 (g) ANNUAL REPORTS.—Each agency shall submit to
8 Congress an annual report that, for the year covered by
9 the report, includes—
10 (1) the number, identity, and content of covered
11 civil actions brought against and covered consent de-
12 crees or settlement agreements entered against or
13 into by the agency; and
14 (2) a description of the statutory basis for—
15 (A) each covered consent decree or settle-
16 ment agreement entered against or into by the
17 agency; and
18 (B) any award of attorneys fees or costs in
19 a civil action resolved by a covered consent de-
20 cree or settlement agreement entered against or
21 into by the agency.
22 **SEC. 404. MOTIONS TO MODIFY CONSENT DECREES.**
23 If an agency moves a court to modify a covered con-
24 sent decree or settlement agreement and the basis of the
25 motion is that the terms of the covered consent decree or

1 settlement agreement are no longer fully in the public in-
2 terest due to the obligations of the agency to fulfill other
3 duties or due to changed facts and circumstances, the
4 court shall review the motion and the covered consent de-
5 cree or settlement agreement de novo.

6 **SEC. 405. EFFECTIVE DATE.**

7 This title shall apply to—
8 (1) any covered civil action filed on or after the
9 date of enactment of this title; and
10 (2) any covered consent decree or settlement
11 agreement proposed to a court on or after the date
12 of enactment of this title.

13 DIVISION IV—JUDICIARY

14 TITLE I—REGULATIONS FROM 15 THE EXECUTIVE IN NEED OF 16 SCRUTINY

17 **SEC. 101. SHORT TITLE.**

18 This title may be cited as the "Regulations From the
19 Executive in Need of Scrutiny Act of 2014".

20 **SEC. 102. PURPOSE.**

21 The purpose of this title is to increase accountability
22 for and transparency in the Federal regulatory process.
23 Section 1 of article I of the United States Constitution
24 grants all legislative powers to Congress. Over time, Con-
25 gress has excessively delegated its constitutional charge

while failing to conduct appropriate oversight and retain accountability for the content of the laws it passes. By requiring a vote in Congress, the REINS Act will result in more carefully drafted and detailed legislation, an improved regulatory process, and a legislative branch that is truly accountable to the American people for the laws imposed upon them. Moreover, as a tax on carbon emissions increases energy costs on consumers, reduces economic growth and is therefore detrimental to individuals, families and businesses, the REINS Act includes in the definition of a major rule, any rule that implements or provides for the imposition or collection of a tax on carbon emissions.

SEC. 103. CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.

Chapter 8 of title 5, United States Code, is amended to read as follows:

"CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

"Sec.
"801. Congressional review.
"802. Congressional approval procedure for major rules.
"803. Congressional disapproval procedure for nonmajor rules.
"804. Definitions.
"805. Judicial review.
"806. Exemption for monetary policy.
"807. Effective date of certain rules.

1 **"§ 801. Congressional review**

2 "(a)(1)(A) Before a rule may take effect, the Federal
3 agency promulgating such rule shall submit to each House
4 of the Congress and to the Comptroller General a report
5 containing—

6 "(i) a copy of the rule;

7 "(ii) a concise general statement relating to the
8 rule;

9 "(iii) a classification of the rule as a major or
10 nonmajor rule, including an explanation of the clas-
11 sification specifically addressing each criteria for a
12 major rule contained within clauses (i) through (iii)
13 of section 804(2)(A) or within section 804(2)(B);

14 "(iv) a list of any other related regulatory ac-
15 tions taken by or that will be taken by the Federal
16 agency promulgating the rule that are intended to
17 implement the same statutory provision or regu-
18 latory objective as well as the individual and aggre-
19 gate economic effects of those actions;

20 "(v) a list of any other related regulatory ac-
21 tions taken by or that will be taken by any other
22 Federal agency with authority to implement the
23 same statutory provision or regulatory objective that
24 are intended to implement such provision or objec-
25 tive, of which the Federal agency promulgating the

1 rule is aware, as well as the individual and aggre-
2 gate economic effects of those actions; and
3 "(vi) the proposed effective date of the rule.
4 "(B) On the date of the submission of the report
5 under subparagraph (A), the Federal agency promulgating
6 the rule shall submit to the Comptroller General and make
7 available to each House of Congress—
8 "(i) a complete copy of the cost-benefit analysis
9 of the rule, if any, including an analysis of any jobs
10 added or lost, differentiating between public and pri-
11 vate sector jobs;
12 "(ii) the agency's actions pursuant to sections
13 603, 604, 605, 607, and 609 of this title;
14 "(iii) the agency's actions pursuant to sections
15 202, 203, 204, and 205 of the Unfunded Mandates
16 Reform Act of 1995; and
17 "(iv) any other relevant information or require-
18 ments under any other Act and any relevant Execu-
19 tive orders.
20 "(C) Upon receipt of a report submitted under sub-
21 paragraph (A), each House shall provide copies of the re-
22 port to the chairman and ranking member of each stand-
23 ing committee with jurisdiction under the rules of the
24 House of Representatives or the Senate to report a bill

1 to amend the provision of law under which the rule is
2 issued.
3 "(2)(A) The Comptroller General shall provide a re-
4 port on each major rule to the committees of jurisdiction
5 by the end of 15 calendar days after the submission or
6 publication date. The report of the Comptroller General
7 shall include an assessment of the agency's compliance
8 with procedural steps required by paragraph (1)(B) and
9 an assessment of whether the major rule imposes any new
10 limits or mandates on private-sector activity.
11 "(B) Federal agencies shall cooperate with the Comp-
12 troller General by providing information relevant to the
13 Comptroller General's report under subparagraph (A).
14 "(3) A major rule relating to a report submitted
15 under paragraph (1) shall take effect upon enactment of
16 a joint resolution of approval described in section 802 or
17 as provided for in the rule following enactment of a joint
18 resolution of approval described in section 802, whichever
19 is later.
20 "(4) A nonmajor rule shall take effect as provided
21 by section 803 after submission to Congress under para-
22 graph (1).
23 "(5) If a joint resolution of approval relating to a
24 major rule is not enacted within the period provided in
25 subsection (b)(2), then a joint resolution of approval relat-

1 ing to the same rule may not be considered under this
2 chapter in the same Congress by either the House of Rep-
3 resentatives or the Senate.

4 "(b)(1) A major rule shall not take effect unless the
5 Congress enacts a joint resolution of approval described
6 under section 802.

7 "(2) If a joint resolution described in subsection (a)
8 is not enacted into law by the end of 70 session days or
9 legislative days, as applicable, beginning on the date on
10 which the report referred to in section 801(a)(1)(A) is re-
11 ceived by Congress (excluding days either House of Con-
12 gress is adjourned for more than 3 days during a session
13 of Congress), then the rule described in that resolution
14 shall be deemed not to be approved and such rule shall
15 not take effect.

16 "(c)(1) Notwithstanding any other provision of this
17 section (except subject to paragraph (3)), a major rule
18 may take effect for one 90-calendar-day period if the
19 President makes a determination under paragraph (2) and
20 submits written notice of such determination to the Con-
21 gress.

22 "(2) Paragraph (1) applies to a determination made
23 by the President by Executive order that the major rule
24 should take effect because such rule is—

1 "(A) necessary because of an imminent threat
2 to health or safety or other emergency;
3 "(B) necessary for the enforcement of criminal
4 laws;
5 "(C) necessary for national security; or
6 "(D) issued pursuant to any statute imple-
7 menting an international trade agreement.
8 "(3) An exercise by the President of the authority
9 under this subsection shall have no effect on the proce-
10 dures under section 802.
11 "(d)(1) In addition to the opportunity for review oth-
12 erwise provided under this chapter, in the case of any rule
13 for which a report was submitted in accordance with sub-
14 section (a)(1)(A) during the period beginning on the date
15 occurring—
16 "(A) in the case of the Senate, 60 session days,
17 or
18 "(B) in the case of the House of Representa-
19 tives, 60 legislative days,
20 before the date the Congress is scheduled to adjourn a
21 session of Congress through the date on which the same
22 or succeeding Congress first convenes its next session, sec-
23 tions 802 and 803 shall apply to such rule in the suc-
24 ceeding session of Congress.

1 "(2)(A) In applying sections 802 and 803 for pur-
2 poses of such additional review, a rule described under
3 paragraph (1) shall be treated as though—
4 "(i) such rule were published in the Federal
5 Register on—
6 "(I) in the case of the Senate, the 15th
7 session day, or
8 "(II) in the case of the House of Rep-
9 resentatives, the 15th legislative day,
10 after the succeeding session of Congress first con-
11 venes; and
12 "(ii) a report on such rule were submitted to
13 Congress under subsection (a)(1) on such date.
14 "(B) Nothing in this paragraph shall be construed
15 to affect the requirement under subsection (a)(1) that a
16 report shall be submitted to Congress before a rule can
17 take effect.
18 "(3) A rule described under paragraph (1) shall take
19 effect as otherwise provided by law (including other sub-
20 sections of this section).
21 **"§ 802. Congressional approval procedure for major**
22 **rules**
23 "(a)(1) For purposes of this section, the term 'joint
24 resolution' means only a joint resolution addressing a re-

1 port classifying a rule as major pursuant to section
2 801(a)(1)(A)(iii) that—
3 "(A) bears no preamble;
4 "(B) bears the following title (with blanks filled
5 as appropriate): 'Approving the rule submitted by
6 ..... relating to .....';
7 "(C) includes after its resolving clause only the
8 following (with blanks filled as appropriate): 'That
9 Congress approves the rule submitted by _____ re-
10 lating to _____.'; and
11 "(D) is introduced pursuant to paragraph (2).
12 "(2) After a House of Congress receives a report
13 classifying a rule as major pursuant to section
14 801(a)(1)(A)(iii), the majority leader of that House (or
15 his or her respective designee) shall introduce (by request,
16 if appropriate) a joint resolution described in paragraph
17 (1)—
18 "(A) in the case of the House of Representa-
19 tives, within three legislative days; and
20 "(B) in the case of the Senate, within three ses-
21 sion days.
22 "(3) A joint resolution described in paragraph (1)
23 shall not be subject to amendment at any stage of pro-
24 ceeding.

1 "(b) A joint resolution described in subsection (a)
2 shall be referred in each House of Congress to the commit-
3 tees having jurisdiction over the provision of law under
4 which the rule is issued.

5 "(c) In the Senate, if the committee or committees
6 to which a joint resolution described in subsection (a) has
7 been referred have not reported it at the end of 15 session
8 days after its introduction, such committee or committees
9 shall be automatically discharged from further consider-
10 ation of the resolution and it shall be placed on the cal-
11 endar. A vote on final passage of the resolution shall be
12 taken on or before the close of the 15th session day after
13 the resolution is reported by the committee or committees
14 to which it was referred, or after such committee or com-
15 mittees have been discharged from further consideration
16 of the resolution.

17 "(d)(1) In the Senate, when the committee or com-
18 mittees to which a joint resolution is referred have re-
19 ported, or when a committee or committees are discharged
20 (under subsection (c)) from further consideration of a
21 joint resolution described in subsection (a), it is at any
22 time thereafter in order (even though a previous motion
23 to the same effect has been disagreed to) for a motion
24 to proceed to the consideration of the joint resolution, and
25 all points of order against the joint resolution (and against

1 consideration of the joint resolution) are waived. The mo-
2 tion is not subject to amendment, or to a motion to post-
3 pone, or to a motion to proceed to the consideration of
4 other business. A motion to reconsider the vote by which
5 the motion is agreed to or disagreed to shall not be in
6 order. If a motion to proceed to the consideration of the
7 joint resolution is agreed to, the joint resolution shall re-
8 main the unfinished business of the Senate until disposed
9 of.

10 "(2) In the Senate, debate on the joint resolution,
11 and on all debatable motions and appeals in connection
12 therewith, shall be limited to not more than 2 hours, which
13 shall be divided equally between those favoring and those
14 opposing the joint resolution. A motion to further limit
15 debate is in order and not debatable. An amendment to,
16 or a motion to postpone, or a motion to proceed to the
17 consideration of other business, or a motion to recommit
18 the joint resolution is not in order.

19 "(3) In the Senate, immediately following the conclu-
20 sion of the debate on a joint resolution described in sub-
21 section (a), and a single quorum call at the conclusion of
22 the debate if requested in accordance with the rules of the
23 Senate, the vote on final passage of the joint resolution
24 shall occur.

1 "(4) Appeals from the decisions of the Chair relating
2 to the application of the rules of the Senate to the proce-
3 dure relating to a joint resolution described in subsection
4 (a) shall be decided without debate.

5 "(e) In the House of Representatives, if any com-
6 mittee to which a joint resolution described in subsection
7 (a) has been referred has not reported it to the House
8 at the end of 15 legislative days after its introduction,
9 such committee shall be discharged from further consider-
10 ation of the joint resolution, and it shall be placed on the
11 appropriate calendar. On the second and fourth Thursdays
12 of each month it shall be in order at any time for the
13 Speaker to recognize a Member who favors passage of a
14 joint resolution that has appeared on the calendar for at
15 least 5 legislative days to call up that joint resolution for
16 immediate consideration in the House without intervention
17 of any point of order. When so called up a joint resolution
18 shall be considered as read and shall be debatable for 1
19 hour equally divided and controlled by the proponent and
20 an opponent, and the previous question shall be considered
21 as ordered to its passage without intervening motion. It
22 shall not be in order to reconsider the vote on passage.
23 If a vote on final passage of the joint resolution has not
24 been taken by the third Thursday on which the Speaker

1 may recognize a Member under this subsection, such vote
2 shall be taken on that day.
3 "(f)(1) If, before passing a joint resolution described
4 in subsection (a), one House receives from the other a
5 joint resolution having the same text, then—
6 "(A) the joint resolution of the other House
7 shall not be referred to a committee; and
8 "(B) the procedure in the receiving House shall
9 be the same as if no joint resolution had been re-
10 ceived from the other House until the vote on pas-
11 sage, when the joint resolution received from the
12 other House shall supplant the joint resolution of
13 the receiving House.
14 "(2) This subsection shall not apply to the House of
15 Representatives if the joint resolution received from the
16 Senate is a revenue measure.
17 "(g) If either House has not taken a vote on final
18 passage of the joint resolution by the last day of the period
19 described in section 801(b)(2), then such vote shall be
20 taken on that day.
21 "(h) This section and section 803 are enacted by
22 Congress—
23 "(1) as an exercise of the rulemaking power of
24 the Senate and House of Representatives, respec-
25 tively, and as such is deemed to be part of the rules

of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution described in subsection (a) and superseding other rules only where explicitly so; and

"(2) with full recognition of the Constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

"§ 803. Congressional disapproval procedure for nonmajor rules

"(a) For purposes of this section, the term 'joint resolution' means only a joint resolution introduced in the period beginning on the date on which the report referred to in section 801(a)(1)(A) is received by Congress and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: 'That Congress disapproves the nonmajor rule submitted by the _____ relating to _____, and such rule shall have no force or effect.' (The blank spaces being appropriately filled in).

1 "(b) A joint resolution described in subsection (a)
2 shall be referred to the committees in each House of Con-
3 gress with jurisdiction.

4 "(c) In the Senate, if the committee to which is re-
5 ferred a joint resolution described in subsection (a) has
6 not reported such joint resolution (or an identical joint
7 resolution) at the end of 15 session days after the date
8 of introduction of the joint resolution, such committee may
9 be discharged from further consideration of such joint res-
10 olution upon a petition supported in writing by 30 Mem-
11 bers of the Senate, and such joint resolution shall be
12 placed on the calendar.

13 "(d)(1) In the Senate, when the committee to which
14 a joint resolution is referred has reported, or when a com-
15 mittee is discharged (under subsection (c)) from further
16 consideration of a joint resolution described in subsection
17 (a), it is at any time thereafter in order (even though a
18 previous motion to the same effect has been disagreed to)
19 for a motion to proceed to the consideration of the joint
20 resolution, and all points of order against the joint resolu-
21 tion (and against consideration of the joint resolution) are
22 waived. The motion is not subject to amendment, or to
23 a motion to postpone, or to a motion to proceed to the
24 consideration of other business. A motion to reconsider the
25 vote by which the motion is agreed to or disagreed to shall

1 not be in order. If a motion to proceed to the consideration
2 of the joint resolution is agreed to, the joint resolution
3 shall remain the unfinished business of the Senate until
4 disposed of.

5 "(2) In the Senate, debate on the joint resolution,
6 and on all debatable motions and appeals in connection
7 therewith, shall be limited to not more than 10 hours,
8 which shall be divided equally between those favoring and
9 those opposing the joint resolution. A motion to further
10 limit debate is in order and not debatable. An amendment
11 to, or a motion to postpone, or a motion to proceed to
12 the consideration of other business, or a motion to recom-
13 mit the joint resolution is not in order.

14 "(3) In the Senate, immediately following the conclu-
15 sion of the debate on a joint resolution described in sub-
16 section (a), and a single quorum call at the conclusion of
17 the debate if requested in accordance with the rules of the
18 Senate, the vote on final passage of the joint resolution
19 shall occur.

20 "(4) Appeals from the decisions of the Chair relating
21 to the application of the rules of the Senate to the proce-
22 dure relating to a joint resolution described in subsection
23 (a) shall be decided without debate.

"(e) In the Senate the procedure specified in subsection (c) or (d) shall not apply to the consideration of a joint resolution respecting a nonmajor rule—

"(1) after the expiration of the 60 session days beginning with the applicable submission or publication date, or

"(2) if the report under section 801(a)(1)(A) was submitted during the period referred to in section 801(d)(1), after the expiration of the 60 session days beginning on the 15th session day after the succeeding session of Congress first convenes.

"(f) If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply:

"(1) The joint resolution of the other House shall not be referred to a committee.

"(2) With respect to a joint resolution described in subsection (a) of the House receiving the joint resolution—

"(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

"(B) the vote on final passage shall be on the joint resolution of the other House.

"§ 804. Definitions

"For purposes of this chapter—

"(1) The term 'Federal agency' means any agency as that term is defined in section 551(1).

"(2) The term 'major rule' means any rule, including an interim final rule, that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds—

"(A) has resulted in or is likely to result in—

"(i) an annual effect on the economy of $50,000,000 or more;

"(ii) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

"(iii) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets; or

"(B) is made by the Administrator of the Environmental Protection Agency and that would have a significant impact on a substantial number of agricultural entities, as determined by the Secretary of Agriculture (who shall publish such determination in the Federal Register);

"(C) is a rule that implements or provides for the imposition or collection of a carbon tax; or

"(D) is made under the Patient Protection and Affordable Care Act (Public Law 111–148).

"(3) The term 'nonmajor rule' means any rule that is not a major rule.

"(4) The term 'rule' has the meaning given such term in section 551, except that such term does not include any rule of particular applicability, including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefore, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing.

"(5) The term 'submission date or publication date', except as otherwise provided in this chapter, means—

"(A) in the case of a major rule, the date on which the Congress receives the report submitted under section 801(a)(1); and

"(B) in the case of a nonmajor rule, the later of—

"(i) the date on which the Congress receives the report submitted under section 801(a)(1); and

"(ii) the date on which the nonmajor rule is published in the Federal Register, if so published.

"(6) The term 'agricultural entity' means any entity involved in or related to agricultural enterprise, including enterprises that are engaged in the business of production of food and fiber, ranching and raising of livestock, aquaculture, and all other farming and agricultural related industries.

"(7) The term 'carbon tax' means a fee, levy, or price on—

"(A) emissions, including carbon dioxide emissions generated by the burning of coal, natural gas, or oil; or

"(B) coal, natural gas, or oil based on emissions, including carbon dioxide emissions that would be generated through the fuel's combustion.

"§ 805. Judicial review

"(a) No determination, finding, action, or omission under this chapter shall be subject to judicial review.

"(b) Notwithstanding subsection (a), a court may determine whether a Federal agency has completed the necessary requirements under this chapter for a rule to take effect.

"(c) The enactment of a joint resolution of approval under section 802 shall not be interpreted to serve as a grant or modification of statutory authority by Congress for the promulgation of a rule, shall not extinguish or affect any claim, whether substantive or procedural, against any alleged defect in a rule, and shall not form part of the record before the court in any judicial proceeding concerning a rule except for purposes of determining whether or not the rule is in effect.

"§ 806. Exemption for monetary policy

"Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

1 **"§ 807. Effective date of certain rules**

2 "Notwithstanding section 801—

3 "(1) any rule that establishes, modifies, opens,
4 closes, or conducts a regulatory program for a com-
5 mercial, recreational, or subsistence activity related
6 to hunting, fishing, or camping; or

7 "(2) any rule other than a major rule which an
8 agency for good cause finds (and incorporates the
9 finding and a brief statement of reasons therefore in
10 the rule issued) that notice and public procedure
11 thereon are impracticable, unnecessary, or contrary
12 to the public interest,

13 shall take effect at such time as the Federal agency pro-
14 mulgating the rule determines.".

15 **SEC. 104. BUDGETARY EFFECTS OF RULES SUBJECT TO**
16 **SECTION 802 OF TITLE 5, UNITED STATES**
17 **CODE.**

18 Section 257(b)(2) of the Balanced Budget and Emer-
19 gency Deficit Control Act of 1985 is amended by adding
20 at the end the following new subparagraph:

21 "(E) BUDGETARY EFFECTS OF RULES
22 SUBJECT TO SECTION 802 OF TITLE 5, UNITED
23 STATES CODE.—Any rules subject to the con-
24 gressional approval procedure set forth in sec-
25 tion 802 of chapter 8 of title 5, United States
26 Code, affecting budget authority, outlays, or re-

1 ceipts shall be assumed to be effective unless it
2 is not approved in accordance with such sec-
3 tion.".

4 **SEC. 105. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
5 **OF RULES.**

6 (a) IN GENERAL.—The Comptroller General of the
7 United States shall conduct a study to determine, as of
8 the date of the enactment of this Act—
9 (1) how many rules (as such term is defined in
10 section 804 of title 5, United States Code) were in
11 effect;
12 (2) how many major rules (as such term is de-
13 fined in section 804 of title 5, United States Code)
14 were in effect; and
15 (3) the total estimated economic cost imposed
16 by all such rules.
17 (b) REPORT.—Not later than one year after the date
18 of the enactment of this Act, the Comptroller General of
19 the United States shall submit a report to Congress that
20 contains the findings of the study conducted under sub-
21 section (a).

TITLE II—PERMANENT INTERNET TAX FREEDOM

SEC. 201. SHORT TITLE.

This title may be cited as the "Permanent Internet Tax Freedom Act".

SEC. 202. PERMANENT MORATORIUM ON INTERNET ACCESS TAXES AND MULTIPLE AND DISCRIMINATORY TAXES ON ELECTRONIC COMMERCE.

(a) IN GENERAL.—Section 1101(a) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking " during the period beginning November 1, 2003, and ending November 1, 2014".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxes imposed after the date of the enactment of this Act.

DIVISION V—NATURAL RESOURCES

SUBDIVISION A—RESTORING HEALTHY FORESTS FOR HEALTHY COMMUNITIES

SEC. 100. SHORT TITLE.

This subdivision may be cited as the "Restoring Healthy Forests for Healthy Communities Act".

TITLE I—RESTORING THE COMMITMENT TO RURAL COUNTIES AND SCHOOLS

SEC. 101. PURPOSES.

The purposes of this title are as follows:

(1) To restore employment and educational opportunities in, and improve the economic stability of, counties containing National Forest System land.

(2) To ensure that such counties have a dependable source of revenue from National Forest System land.

(3) To reduce Forest Service management costs while also ensuring the protection of United States forests resources.

SEC. 102. DEFINITIONS.

In this title:

(1) ANNUAL VOLUME REQUIREMENT.—

(A) IN GENERAL.—The term "annual volume requirement", with respect to a Forest Reserve Revenue Area, means a volume of national forest materials no less than 50 percent of the sustained yield of the Forest Reserve Revenue Area.

(B) EXCLUSIONS.—In determining the volume of national forest materials or the sus-

1 tained yield of a Forest Reserve Revenue Area,
2 the Secretary may not include non-commercial
3 post and pole sales and personal use firewood.
4 (2) BENEFICIARY COUNTY.—The term "bene-
5 ficiary county" means a political subdivision of a
6 State that, on account of containing National Forest
7 System land, was eligible to receive payments
8 through the State under title I of the Secure Rural
9 Schools and Community Self-Determination Act of
10 2000 (16 U.S.C. 7111 et seq.).
11 (3) CATASTROPHIC EVENT.—The term "cata-
12 strophic event" means an event (including severe
13 fire, insect or disease infestations, windthrow, or
14 other extreme weather or natural disaster) that the
15 Secretary determines will cause or has caused sub-
16 stantial damage to National Forest System land or
17 natural resources on National Forest System land.
18 (4) COVERED FOREST RESERVE PROJECT.—
19 The terms "covered forest reserve project" and "cov-
20 ered project" mean a project involving the manage-
21 ment or sale of national forest materials within a
22 Forest Reserve Revenue Area to generate forest re-
23 serve revenues and achieve the annual volume re-
24 quirement for the Forest Reserve Revenue Area.
25 (5) FOREST RESERVE REVENUE AREA.—

1 (A) IN GENERAL.—The term "Forest Re-
2 serve Revenue Area" means National Forest
3 System land in a unit of the National Forest
4 System designated for sustainable forest man-
5 agement for the production of national forest
6 materials and forest reserve revenues.
7 (B) INCLUSIONS.—Subject to subpara-
8 graph (C), but otherwise notwithstanding any
9 other provision of law, including executive or-
10 ders and regulations, the Secretary shall include
11 in Forest Reserve Revenue Areas not less than
12 50 percent of the National Forest System lands
13 identified as commercial forest land capable of
14 producing twenty cubic feet of timber per acre.
15 (C) EXCLUSIONS.—A Forest Reserve Rev-
16 enue Area may not include National Forest
17 System land—
18 (i) that is a component of the Na-
19 tional Wilderness Preservation System;
20 (ii) on which the removal of vegetation
21 is specifically prohibited by Federal stat-
22 ute; or
23 (iii) that is within a National Monu-
24 ment as of the date of the enactment of
25 this Act.

1 (6) FOREST RESERVE REVENUES.—The term
2 "forest reserve revenues" means revenues derived
3 from the sale of national forest materials in a Forest
4 Reserve Revenue Area.
5 (7) NATIONAL FOREST MATERIALS.—The term
6 "national forest materials" has the meaning given
7 that term in section 14(e)(1) of the National Forest
8 Management Act of 1976 (16 U.S.C. 472a(e)(1)).
9 (8) NATIONAL FOREST SYSTEM.—The term
10 "National Forest System" has the meaning given
11 that term in section 11(a) of the Forest and Range-
12 land Renewable Resources Planning Act of 1974 (16
13 U.S.C. 1609(a)), except that the term does not in-
14 clude the National Grasslands and land utilization
15 projects designated as National Grasslands adminis-
16 tered pursuant to the Act of July 22, 1937 (7
17 U.S.C. 1010–1012).
18 (9) SECRETARY.—The term "Secretary" means
19 the Secretary of Agriculture.
20 (10) SUSTAINED YIELD.—The term "sustained
21 yield" means the maximum annual growth potential
22 of the forest calculated on the basis of the culmina-
23 tion of mean annual increment using cubic measure-
24 ment.

1 (11) STATE.—The term "State" includes the
2 Commonwealth of Puerto Rico.
3 (12) 25-PERCENT PAYMENT.—The term "25-
4 percent payment" means the payment to States re-
5 quired by the sixth paragraph under the heading of
6 "FOREST SERVICE" in the Act of May 23, 1908
7 (35 Stat. 260; 16 U.S.C. 500), and section 13 of the
8 Act of March 1, 1911 (36 Stat. 963; 16 U.S.C.
9 500).

10 **SEC. 103. ESTABLISHMENT OF FOREST RESERVE REVENUE**
11 **AREAS AND ANNUAL VOLUME REQUIRE-**
12 **MENTS.**

13 (a) ESTABLISHMENT OF FOREST RESERVE REV-
14 ENUE AREAS.—Notwithstanding any other provision of
15 law, the Secretary shall establish one or more Forest Re-
16 serve Revenue Areas within each unit of the National For-
17 est System.
18 (b) DEADLINE FOR ESTABLISHMENT.—The Sec-
19 retary shall complete establishment of the Forest Reserve
20 Revenue Areas not later than 60 days after the date of
21 enactment of this Act,
22 (c) PURPOSE.—The purpose of a Forest Reserve Rev-
23 enue Area is to provide a dependable source of 25-percent
24 payments and economic activity through sustainable forest

1 management for each beneficiary county containing Na-
2 tional Forest System land.
3 (d) FIDUCIARY RESPONSIBILITY.—The Secretary
4 shall have a fiduciary responsibility to beneficiary counties
5 to manage Forest Reserve Revenue Areas to satisfy the
6 annual volume requirement.
7 (e) DETERMINATION OF ANNUAL VOLUME REQUIRE-
8 MENT.—Not later than 30 days after the date of the es-
9 tablishment of a Forest Reserve Revenue Area, the Sec-
10 retary shall determine the annual volume requirement for
11 that Forest Reserve Revenue Area.
12 (f) LIMITATION ON REDUCTION OF FOREST RE-
13 SERVE REVENUE AREAS.—Once a Forest Reserve Rev-
14 enue Area is established under subsection (a), the Sec-
15 retary may not reduce the number of acres of National
16 Forest System land included in that Forest Reserve Rev-
17 enue Area.
18 (g) MAP.—The Secretary shall provide a map of all
19 Forest Reserve Revenue Areas established under sub-
20 section (a) for each unit of the National Forest System—
21 (1) to the Committee on Agriculture and the
22 Committee on Natural Resources of the House of
23 Representatives; and

1 (2) to the Committee on Agriculture, Nutrition,
2 and Forestry and the Committee on Energy and
3 Natural Resources of the Senate.
4 (h) RECOGNITION OF VALID AND EXISTING
5 RIGHTS.—Neither the establishment of Forest Reserve
6 Revenue Areas under subsection (a) nor any other provi-
7 sion of this title shall be construed to limit or restrict—
8 (1) access to National Forest System land for
9 hunting, fishing, recreation, and other related pur-
10 poses; or
11 (2) valid and existing rights regarding National
12 Forest System land, including rights of any federally
13 recognized Indian tribe.

14 **SEC. 104. MANAGEMENT OF FOREST RESERVE REVENUE**
15 **AREAS.**

16 (a) REQUIREMENT TO ACHIEVE ANNUAL VOLUME
17 REQUIREMENT.—Immediately upon the establishment of
18 a Forest Reserve Revenue Area, the Secretary shall man-
19 age the Forest Reserve Revenue Area in the manner nec-
20 essary to achieve the annual volume requirement for the
21 Forest Reserve Revenue Area. The Secretary is authorized
22 and encouraged to commence covered forest reserve
23 projects as soon as practicable after the date of the enact-
24 ment of this Act to begin generating forest reserve reve-
25 nues.

1 (b) STANDARDS FOR PROJECTS WITHIN FOREST RE-
2 SERVE REVENUE AREAS.—The Secretary shall conduct
3 covered forest reserve projects within Forest Reserve Rev-
4 enue Areas in accordance with this section, which shall
5 serve as the sole means by which the Secretary will comply
6 with the National Environmental Policy Act of 1969 (42
7 U.S.C. 4331 et seq.) and other laws applicable to the cov-
8 ered projects.
9 (c) ENVIRONMENTAL ANALYSIS PROCESS FOR
10 PROJECTS IN FOREST RESERVE REVENUE AREAS.—
11 (1) ENVIRONMENTAL ASSESSMENT.—The Se-
12 cretary shall give published notice and complete an
13 environmental assessment pursuant to section
14 102(2) of the National Environmental Policy Act of
15 1969 (42 U.S.C. 4332(2)) for a covered forest re-
16 serve project proposed to be conducted within a For-
17 est Reserve Revenue Area, except that the Secretary
18 is not required to study, develop, or describe any al-
19 ternative to the proposed agency action.
20 (2) CUMULATIVE EFFECTS.—The Secretary
21 shall consider cumulative effects solely by evaluating
22 the impacts of a proposed covered forest reserve
23 project combined with the impacts of any other
24 projects that were approved with a Decision Notice
25 or Record of Decision before the date on which the

1 Secretary published notice of the proposed covered
2 project. The cumulative effects of past projects may
3 be considered in the environmental assessment by
4 using a description of the current environmental
5 conditions.

6 (3) LENGTH.—The environmental assessment
7 prepared for a proposed covered forest reserve
8 project shall not exceed 100 pages in length. The
9 Secretary may incorporate in the environmental as-
10 sessment, by reference, any documents that the Sec-
11 retary determines, in the sole discretion of the Sec-
12 retary, are relevant to the assessment of the environ-
13 mental effects of the covered project.

14 (4) DEADLINE FOR COMPLETION.—The Sec-
15 retary shall complete the environmental assessment
16 for a covered forest reserve project within 180 days
17 after the date on which the Secretary published no-
18 tice of the proposed covered project.

19 (5) TREATMENT OF DECISION NOTICE.—The
20 decision notice for a covered forest reserve project
21 shall be considered a final agency action and no ad-
22 ditional analysis under the National Environmental
23 Policy Act of 1969 (42 U.S.C. 4331 et seq.) shall be
24 required to implement any portion of the covered
25 project.

1 (6) CATEGORICAL EXCLUSION.—A covered for-
2 est reserve project that is proposed in response to a
3 catastrophic event, that covers an area of 10,000
4 acres or less, or an eligible hazardous fuel reduction
5 or forest health project proposed under title II that
6 involves the removal of insect-infected trees, dead or
7 dying trees, trees presenting a threat to public safe-
8 ty, or other hazardous fuels within 500 feet of utility
9 or telephone infrastructure, campgrounds, roadsides,
10 heritage sites, recreation sites, schools, or other in-
11 frastructure, shall be categorically excluded from the
12 requirements of the National Environmental Policy
13 Act of 1969 (42 U.S.C. 4331 et seq.).
14 (d) APPLICATION OF LAND AND RESOURCE MANAGE-
15 MENT PLAN.—The Secretary may modify the standards
16 and guidelines contained in the land and resource manage-
17 ment plan for the unit of the National Forest System in
18 which the covered forest reserve project will be carried out
19 as necessary to achieve the requirements of this subdivi-
20 sion. Section 6(g)(3)(E)(iv) of the Forest and Rangeland
21 Renewable Resources Planning Act of 1974 (16 U.S.C.
22 1604(g)(3)(E)(iv)) shall not apply to a covered forest re-
23 serve project.
24 (e) COMPLIANCE WITH ENDANGERED SPECIES
25 ACT.—

1 (1) NON-JEOPARDY ASSESSMENT.—If the Sec-
2 retary determines that a proposed covered forest re-
3 serve project may affect the continued existence of
4 any species listed as endangered or threatened under
5 section 4 of the Endangered Species Act of 1973 (16
6 U.S.C. 1533), the Secretary shall issue a determina-
7 tion explaining the view of the Secretary that the
8 proposed covered project is not likely to jeopardize
9 the continued existence of the species.
10 (2) SUBMISSION, REVIEW, AND RESPONSE.—
11 (A) SUBMISSION.—The Secretary shall
12 submit a determination issued by the Secretary
13 under paragraph (1) to the Secretary of the In-
14 terior or the Secretary of Commerce, as appro-
15 priate.
16 (B) REVIEW AND RESPONSE.—Within 30
17 days after receiving a determination under sub-
18 paragraph (A), the Secretary of the Interior or
19 the Secretary of Commerce, as appropriate,
20 shall provide a written response to the Sec-
21 retary concurring in or rejecting the Secretary's
22 determination. If the Secretary of the Interior
23 or the Secretary of Commerce rejects the deter-
24 mination, the written response shall include rec-
25 ommendations for measures that—

1 (i) will avoid the likelihood of jeopardy
2 to an endangered or threatened species;
3 (ii) can be implemented in a manner
4 consistent with the intended purpose of the
5 covered forest reserve project;
6 (iii) can be implemented consistent
7 with the scope of the Secretary's legal au-
8 thority and jurisdiction; and
9 (iv) are economically and techno-
10 logically feasible.
11 (3) FORMAL CONSULTATION.—If the Secretary
12 of the Interior or the Secretary of Commerce rejects
13 a determination issued by the Secretary under para-
14 graph (1), the Secretary of the Interior or the Sec-
15 retary of Commerce also is required to engage in
16 formal consultation with the Secretary. The Secre-
17 taries shall complete such consultation pursuant to
18 section 7 of the Endangered Species Act of 1973 (16
19 U.S.C. 1536) within 90 days after the submission of
20 the written response under paragraph (2).
21 (f) ADMINISTRATIVE AND JUDICIAL REVIEW.—
22 (1) ADMINISTRATIVE REVIEW.—Administrative
23 review of a covered forest reserve project shall occur
24 only in accordance with the special administrative
25 review process established under section 105 of the

1 Healthy Forests Restoration Act of 2003 (16 U.S.C.
2 6515).
3 (2) JUDICIAL REVIEW.—
4 (A) IN GENERAL.—Judicial review of a
5 covered forest reserve project shall occur in ac-
6 cordance with section 106 of the Healthy For-
7 ests Restoration Act of 2003 (16 U.S.C. 6516),
8 except that a court of the United States may
9 not issue a restraining order, preliminary in-
10 junction, or injunction pending appeal covering
11 a covered forest reserve project in response to
12 an allegation that the Secretary violated any
13 procedural requirement applicable to how the
14 project was selected, planned, or analyzed.
15 (B) BOND REQUIRED.—A plaintiff chal-
16 lenging a covered forest reserve project shall be
17 required to post a bond or other security ac-
18 ceptable to the court for the reasonably esti-
19 mated costs, expenses, and attorneys fees of the
20 Secretary as defendant. All proceedings in the
21 action shall be stayed until the security is given.
22 If the plaintiff has not complied with the order
23 to post such bond or other security within 90
24 days after the date of service of the order, then
25 the action shall be dismissed with prejudice.

1 (C) RECOVERY.—If the Secretary prevails
2 in the case, the Secretary shall submit to the
3 court a motion for payment of all litigation ex-
4 penses.
5 (g) USE OF ALL-TERRAIN VEHICLES FOR MANAGE-
6 MENT ACTIVITIES.—The Secretary may allow the use of
7 all-terrain vehicles within the Forest Reserve Revenue
8 Areas for the purpose of activities associated with the sale
9 of national forest materials in a Forest Reserve Revenue
10 Area.
11 **SEC. 105. DISTRIBUTION OF FOREST RESERVE REVENUES.**
12 (a) 25-PERCENT PAYMENTS.—The Secretary shall
13 use forest reserve revenues generated by a covered forest
14 reserve project to make 25-percent payments to States for
15 the benefit of beneficiary counties.
16 (b) DEPOSIT IN KNUTSON-VANDENBERG AND SAL-
17 VAGE SALE FUNDS.—After compliance with subsection
18 (a), the Secretary shall use forest reserve revenues to
19 make deposits into the fund established under section 3
20 of the Act of June 9, 1930 (16 U.S.C. 576b; commonly
21 known as the Knutson-Vandenberg Fund) and the fund
22 established under section 14(h) of the National Forest
23 Management Act of 1976 (16 U.S.C. 472a(h); commonly
24 known as the salvage sale fund) in contributions equal to

1 the monies otherwise collected under those Acts for
2 projects conducted on National Forest System land.
3 (c) DEPOSIT IN GENERAL FUND OF THE TREAS-
4 URY.—After compliance with subsections (a) and (b), the
5 Secretary shall deposit remaining forest reserve revenues
6 into the general fund of the Treasury.

7 **SEC. 106. ANNUAL REPORT.**

8 (a) REPORT REQUIRED.—Not later than 60 days
9 after the end of each fiscal year, the Secretary shall sub-
10 mit to Congress an annual report specifying the annual
11 volume requirement in effect for that fiscal year for each
12 Forest Reserve Revenue Area, the volume of board feet
13 actually harvested for each Forest Reserve Revenue Area,
14 the average cost of preparation for timber sales, the forest
15 reserve revenues generated from such sales, and the
16 amount of receipts distributed to each beneficiary county.
17 (b) FORM OF REPORT.—The information required by
18 subsection (a) to be provided with respect to a Forest Re-
19 serve Revenue Area shall be presented on a single page.
20 In addition to submitting each report to Congress, the
21 Secretary shall also make the report available on the
22 website of the Forest Service.

TITLE II—HEALTHY FOREST MANAGEMENT AND CATASTROPHIC WILDFIRE PREVENTION

SEC. 201. PURPOSES.

The purposes of this title are as follows:

(1) To provide the Secretary of Agriculture and the Secretary of the Interior with the tools necessary to reduce the potential for wildfires.

(2) To expedite wildfire prevention projects to reduce the chances of wildfire on certain high-risk Federal lands.

(3) To protect communities and forest habitat from uncharacteristic wildfires.

(4) To enhance aquatic conditions and terrestrial wildlife habitat.

(5) To restore diverse and resilient landscapes through improved forest conditions.

SEC. 202. DEFINITIONS.

In this title:

(1) AT-RISK COMMUNITY.—The term "at-risk community" has the meaning given that term in section 101 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6511).

1 (2) AT-RISK FOREST.—The term "at-risk for-
2 est" means—
3 (A) Federal land in condition class II or
4 III, as those classes were developed by the For-
5 est Service Rocky Mountain Research Station
6 in the general technical report titled "Develop-
7 ment of Coarse-Scale Spatial Data for Wildland
8 Fire and Fuel Management" (RMRS–87) and
9 dated April 2000 or any subsequent revision of
10 the report; or
11 (B) Federal land where there exists a high
12 risk of losing an at-risk community, key eco-
13 system, water supply, wildlife, or wildlife habi-
14 tat to wildfire, including catastrophic wildfire
15 and post-fire disturbances, as designated by the
16 Secretary concerned.
17 (3) FEDERAL LAND.—
18 (A) COVERED LAND.—The term "Federal
19 land" means—
20 (i) land of the National Forest System
21 (as defined in section 11(a) of the Forest
22 and Rangeland Renewable Resources Plan-
23 ning Act of 1974 (16 U.S.C. 1609(a))); or

1 (ii) public lands (as defined in section
2 103 of the Federal Land Policy and Man-
3 agement Act of 1976 (43 U.S.C. 1702)).
4 (B) EXCLUDED LAND.—The term does not
5 include land—
6 (i) that is a component of the Na-
7 tional Wilderness Preservation System;
8 (ii) on which the removal of vegetation
9 is specifically prohibited by Federal stat-
10 ute; or
11 (iii) that is within a National Monu-
12 ment as of the date of the enactment of
13 this Act.
14 (4) HIGH-RISK AREA.—The term "high-risk
15 area" means an area of Federal land identified
16 under section 205 as an area suffering from the
17 bark beetle epidemic, drought, or deteriorating forest
18 health conditions, with the resulting imminent risk
19 of devastating wildfires, or otherwise at high risk for
20 bark beetle infestation, drought, or wildfire.
21 (5) SECRETARY CONCERNED.—The term "Sec-
22 retary concerned" means—
23 (A) the Secretary of Agriculture, in the
24 case of National Forest System land; and

1 (B) the Secretary of the Interior, in the
2 case of public lands.
3 (6) ELIGIBLE HAZARDOUS FUEL REDUCTION
4 AND FOREST HEALTH PROJECTS.—The terms "haz-
5 ardous fuel reduction project" or "forest health
6 project" mean the measures and methods developed
7 for a project to be carried out on Federal land—
8 (A) in an at-risk forest under section 203
9 for hazardous fuels reduction, forest health, for-
10 est restoration, or watershed restoration, using
11 ecological restoration principles consistent with
12 the forest type where such project will occur; or
13 (B) in a high-risk area under section 206.
14 **SEC. 203. HAZARDOUS FUEL REDUCTION PROJECTS AND**
15 **FOREST HEALTH PROJECTS IN AT-RISK FOR-**
16 **ESTS.**
17 (a) IMPLEMENTATION.—As soon as practicable after
18 the date of the enactment of this Act, the Secretary con-
19 cerned is authorized to implement a hazardous fuel reduc-
20 tion project or a forest health project in at-risk forests
21 in a manner that focuses on surface, ladder, and canopy
22 fuels reduction activities using ecological restoration prin-
23 ciples consistent with the forest type in the location where
24 such project will occur.
25 (b) AUTHORIZED PRACTICES.—

1 (1) INCLUSION OF LIVESTOCK GRAZING AND
2 TIMBER HARVESTING.—A hazardous fuel reduction
3 project or a forest health project may include live-
4 stock grazing and timber harvest projects carried
5 out for the purposes of hazardous fuels reduction,
6 forest health, forest restoration, watershed restora-
7 tion, or threatened and endangered species habitat
8 protection or improvement, if the management ac-
9 tion is consistent with achieving long-term ecological
10 restoration of the forest type in the location where
11 such project will occur.
12 (2) GRAZING.—Domestic livestock grazing may
13 be used in a hazardous fuel reduction project or a
14 forest health project to reduce surface fuel loads and
15 to recover burned areas. Utilization standards shall
16 not apply when domestic livestock grazing is used in
17 such a project.
18 (3) TIMBER HARVESTING AND THINNING.—
19 Timber harvesting and thinning, where the ecologi-
20 cal restoration principles are consistent with the for-
21 est type in the location where such project will
22 occur, may be used in a hazardous fuel reduction
23 project or a forest health project to reduce ladder
24 and canopy fuel loads to prevent unnatural fire.

1 (c) PRIORITY.—The Secretary concerned shall give
2 priority to hazardous fuel reduction projects and forest
3 health projects submitted by the Governor of a State as
4 provided in section 206(c) and to projects submitted under
5 the Tribal Forest Protection Act of 2004 (25 U.S.C.
6 3115a).

7 **SEC. 204. ENVIRONMENTAL ANALYSIS.**

8 Subsections (b) through (f) of section 104 shall apply
9 to the implementation of a hazardous fuel reduction
10 project or a forest health project under this title. In addi-
11 tion, if the primary purpose of a hazardous fuel reduction
12 project or a forest health project under this title is the
13 salvage of dead, damaged, or down timber resulting from
14 wildfire occurring in 2013 or 2014, the hazardous fuel re-
15 duction project or forest health project, and any decision
16 of the Secretary concerned in connection with the project,
17 shall not be subject to judicial review or to any restraining
18 order or injunction issued by a United States court.

19 **SEC. 205. STATE DESIGNATION OF HIGH-RISK AREAS OF NA-**
20 **TIONAL FOREST SYSTEM AND PUBLIC LANDS.**

21 (a) DESIGNATION AUTHORITY.—The Governor of a
22 State may designate high-risk areas of Federal land in the
23 State for the purposes of addressing—

24 (1) deteriorating forest health conditions in ex-
25 istence as of the date of the enactment of this Act

1 due to the bark beetle epidemic or drought, with the
2 resulting imminent risk of devastating wildfires; and
3 (2) the future risk of insect infestations or dis-
4 ease outbreaks through preventative treatments to
5 improve forest health conditions.
6 (b) CONSULTATION.—In designating high-risk areas,
7 the Governor of a State shall consult with county govern-
8 ment from affected counties and with affected Indian
9 tribes.
10 (c) EXCLUSION OF CERTAIN AREAS.—The following
11 Federal land may not be designated as a high-risk area:
12 (1) A component of the National Wilderness
13 Preservation System.
14 (2) Federal land on which the removal of vege-
15 tation is specifically prohibited by Federal statute.
16 (3) Federal land within a National Monument
17 as of the date of the enactment of this Act.
18 (d) STANDARDS FOR DESIGNATION.—Designation of
19 high-risk areas shall be consistent with standards and
20 guidelines contained in the land and resource management
21 plan or land use plan for the unit of Federal land for
22 which the designation is being made, except that the Sec-
23 retary concerned may modify such standards and guide-
24 lines to correspond with a specific high-risk area designa-
25 tion.

1 (e) TIME FOR INITIAL DESIGNATIONS.—The first
2 high-risk areas should be designated not later than 60
3 days after the date of the enactment of this Act, but high-
4 risk areas may be designated at any time consistent with
5 subsection (a).

6 (f) DURATION OF DESIGNATION.—The designation of
7 a high-risk area in a State shall expire 20 years after the
8 date of the designation, unless earlier terminated by the
9 Governor of the State.

10 (g) REDESIGNATION.—The expiration of the 20-year
11 period specified in subsection (f) does not prohibit the
12 Governor from redesignating an area of Federal land as
13 a high-risk area under this section if the Governor deter-
14 mines that the Federal land continues to be subject to the
15 terms of this section.

16 (h) RECOGNITION OF VALID AND EXISTING
17 RIGHTS.—The designation of a high-risk area shall not
18 be construed to limit or restrict—

19 (1) access to Federal land included in the area
20 for hunting, fishing, and other related purposes; or

21 (2) valid and existing rights regarding the Fed-
22 eral land.

1 **SEC. 206. USE OF HAZARDOUS FUELS REDUCTION OR FOR-**
2 **EST HEALTH PROJECTS FOR HIGH-RISK**
3 **AREAS.**
4 (a) PROJECT PROPOSALS.—
5 (1) PROPOSALS AUTHORIZED.—Upon designa-
6 tion of a high-risk area in a State, the Governor of
7 the State may provide for the development of pro-
8 posed hazardous fuel reduction projects or forest
9 health projects for the high-risk area.
10 (2) PROJECT CRITERIA.—In preparing a pro-
11 posed hazardous fuel reduction project or a forest
12 health project, the Governor of a State and the Sec-
13 retary concerned shall—
14 (A) take into account managing for rights
15 of way, protection of watersheds, protection of
16 wildlife and endangered species habitat, safe-
17 guarding water resources, and protecting at-
18 risk communities from wildfires; and
19 (B) emphasize activities that thin the for-
20 est to provide the greatest health and longevity
21 of the forest.
22 (b) CONSULTATION.—In preparing a proposed haz-
23 ardous fuel reduction project or a forest health project,
24 the Governor of a State shall consult with county govern-
25 ment from affected counties, and with affected Indian
26 tribes.

1 (c) SUBMISSION AND IMPLEMENTATION.—The Gov-
2 ernor of a State shall submit proposed emergency haz-
3 ardous fuel reduction projects and forest health projects
4 to the Secretary concerned for implementation as provided
5 in section 203.

6 **SEC. 207. MORATORIUM ON USE OF PRESCRIBED FIRE IN**
7 **MARK TWAIN NATIONAL FOREST, MISSOURI,**
8 **PENDING REPORT.**

9 (a) MORATORIUM.—Except as provided in subsection
10 (b), the Secretary of Agriculture may not conduct any pre-
11 scribed fire in Mark Twain National Forest, Missouri,
12 under the Collaborative Forest Landscape Restoration
13 Project until the report required by subsection (c) is sub-
14 mitted to Congress.

15 (b) EXCEPTION FOR WILDFIRE SUPPRESSION.—Sub-
16 section (a) does not prohibit the use of prescribed fire as
17 part of wildfire suppression activities.

18 (c) REPORT REQUIRED.—Not later than one year
19 after the date of the enactment of this Act, the Secretary
20 of Agriculture shall submit to Congress a report con-
21 taining an evaluation of recent and current Forest Service
22 management practices for Mark Twain National Forest,
23 including lands in the National Forest enrolled, or under
24 consideration for enrollment, in the Collaborative Forest
25 Landscape Restoration Project to convert certain lands

1 into shortleaf pine-oak woodlands, to determine the impact
2 of such management practices on forest health and tree
3 mortality. The report shall specifically address—
4 (1) the economic costs associated with the fail-
5 ure to utilize hardwoods cut as part of the Collabo-
6 rative Forest Landscape Restoration Project and the
7 subsequent loss of hardwood production from the
8 treated lands in the long term;
9 (2) the extent of increased tree mortality due to
10 excessive heat generated by prescribed fires;
11 (3) the impacts to water quality and rate of
12 water run off due to erosion of the scorched earth
13 left in the aftermath of the prescribed fires; and
14 (4) a long-term plan for evaluation of the im-
15 pacts of prescribed fires on lands previously burned
16 within the Eleven Point Ranger District.

17 TITLE III—OREGON AND CALI-
18 FORNIA RAILROAD GRANT
19 LANDS TRUST, CONSERVA-
20 TION, AND JOBS

21 **SEC. 301. SHORT TITLE.**

22 This title may be cited as the "O&C Trust, Conserva-
23 tion, and Jobs Act".

24 **SEC. 302. DEFINITIONS.**

25 In this title:

1 (1) AFFILIATES.—The term "Affiliates" has
2 the meaning given such term in part 121 of title 13,
3 Code of Federal Regulations.
4 (2) BOARD OF TRUSTEES.—The term "Board
5 of Trustees" means the Board of Trustees for the
6 Oregon and California Railroad Grant Lands Trust
7 appointed under section 313.
8 (3) COOS BAY WAGON ROAD GRANT LANDS.—
9 The term "Coos Bay Wagon Road Grant lands"
10 means the lands reconveyed to the United States
11 pursuant to the first section of the Act of February
12 26, 1919 (40 Stat. 1179).
13 (4) FISCAL YEAR.—The term "fiscal year"
14 means the Federal fiscal year, October 1 through
15 the next September 30.
16 (5) GOVERNOR.—The term "Governor" means
17 the Governor of the State of Oregon.
18 (6) O&C REGION PUBLIC DOMAIN LANDS.—The
19 term "O&C Region Public Domain lands" means all
20 the land managed by the Bureau of Land Manage-
21 ment in the Salem District, Eugene District,
22 Roseburg District, Coos Bay District, and Medford
23 District in the State of Oregon, excluding the Or-
24 egon and California Railroad Grant lands and the
25 Coos Bay Wagon Road Grant lands.

1 (7) O&C TRUST.—The terms "Oregon and Cali-
2 fornia Railroad Grant Lands Trust" and "O&C
3 Trust" mean the trust created by section 311, which
4 has fiduciary responsibilities to act for the benefit of
5 the O&C Trust counties in the management of O&C
6 Trust lands.
7 (8) O&C TRUST COUNTY.—The term "O&C
8 Trust county" means each of the 18 counties in the
9 State of Oregon that contained a portion of the Or-
10 egon and California Railroad Grant lands as of Jan-
11 uary 1, 2013, each of which are beneficiaries of the
12 O&C Trust.
13 (9) O&C TRUST LANDS.—The term "O&C
14 Trust lands" means the surface estate of the lands
15 over which management authority is transferred to
16 the O&C Trust pursuant to section 311(e)(1). The
17 term does not include any of the lands excluded
18 from the O&C Trust pursuant to section 311(e)(2),
19 transferred to the Forest Service under section 321,
20 or Tribal lands transferred under subtitle D.
21 (10) OREGON AND CALIFORNIA RAILROAD
22 GRANT LANDS.—The term "Oregon and California
23 Railroad Grant lands" means the following lands:
24 (A) All lands in the State of Oregon re-
25 vested in the United States under the Act of

1 June 9, 1916 (39 Stat. 218), regardless of
2 whether the lands are—
3 (i) administered by the Secretary of
4 the Interior, acting through the Bureau of
5 Land Management, pursuant to the first
6 section of the Act of August 28, 1937 (43
7 U.S.C. 1181a); or
8 (ii) administered by the Secretary of
9 Agriculture as part of the National Forest
10 System pursuant to the first section of the
11 Act of June 24, 1954 (43 U.S.C. 1181g).
12 (B) All lands in the State obtained by the
13 Secretary of the Interior pursuant to the land
14 exchanges authorized and directed by section 2
15 of the Act of June 24, 1954 (43 U.S.C. 1181h).
16 (C) All lands in the State acquired by the
17 United States at any time and made subject to
18 the provisions of title II of the Act of August
19 28, 1937 (43 U.S.C. 1181f).
20 (11) RESERVE FUND.—The term "Reserve
21 Fund" means the reserve fund created by the Board
22 of Trustees under section 315(b).
23 (12) SECRETARY CONCERNED.—The term
24 "Secretary concerned" means—

1 (A) the Secretary of the Interior, with re-
2 spect to Oregon and California Railroad Grant
3 lands that are transferred to the management
4 authority of the O&C Trust and, immediately
5 before such transfer, were managed by the Bu-
6 reau of Land Management; and
7 (B) the Secretary of Agriculture, with re-
8 spect to Oregon and California Railroad Grant
9 lands that—
10 (i) are transferred to the management
11 authority of the O&C Trust and, imme-
12 diately before such transfer, were part of
13 the National Forest System; or
14 (ii) are transferred to the Forest
15 Service under section 321.
16 (13) STATE.—The term "State" means the
17 State of Oregon.
18 (14) TRANSITION PERIOD.—The term "transi-
19 tion period" means the three fiscal-year period speci-
20 fied in section 331 following the appointment of the
21 Board of Trustees during which—
22 (A) the O&C Trust is created; and
23 (B) interim funding of the O&C Trust is
24 secured.

1 (15) TRIBAL LANDS.—The term "Tribal lands"
2 means any of the lands transferred to the Cow
3 Creek Band of the Umpqua Tribe of Indians or the
4 Confederated Tribes of Coos, Lower Umpqua, and
5 Siuslaw Indians under subtitle D.

6 Subtitle A—Trust, Conservation, 7 and Jobs

8 CHAPTER 1—CREATION AND TERMS OF 9 O&C TRUST

10 SEC. 311. CREATION OF O&C TRUST AND DESIGNATION OF 11 O&C TRUST LANDS.

12 (a) CREATION.—The Oregon and California Railroad
13 Grant Lands Trust is established effective on October 1
14 of the first fiscal year beginning after the appointment of
15 the Board of Trustees. As management authority over the
16 surface of estate of the O&C Trust lands is transferred
17 to the O&C Trust during the transition period pursuant
18 to section 331, the transferred lands shall be held in trust
19 for the benefit of the O&C Trust counties.

20 (b) TRUST PURPOSE.—The purpose of the O&C
21 Trust is to produce annual maximum sustained revenues
22 in perpetuity for O&C Trust counties by managing the
23 timber resources on O&C Trust lands on a sustained-yield
24 basis subject to the management requirements of section
25 314.

1 (c) DESIGNATION OF O&C TRUST LANDS.—

2 (1) LANDS INCLUDED.—Except as provided in
3 paragraph (2), the O&C Trust lands shall include all
4 of the lands containing the stands of timber de-
5 scribed in subsection (d) that are located, as of Jan-
6 uary 1, 2013, on Oregon and California Railroad
7 Grant lands and O&C Region Public Domain lands.

8 (2) LANDS EXCLUDED.—O&C Trust lands shall
9 not include any of the following Oregon and Cali-
10 fornia Railroad Grant lands and O&C Region Public
11 Domain lands (even if the lands are otherwise de-
12 scribed in subsection (d)):

13 (A) Federal lands within the National
14 Landscape Conservation System as of January
15 1, 2013.

16 (B) Federal lands designated as Areas of
17 Critical Environmental Concern as of January
18 1, 2013.

19 (C) Federal lands that were in the Na-
20 tional Wilderness Preservation System as of
21 January 1, 2013.

22 (D) Federal lands included in the National
23 Wild and Scenic Rivers System of January 1,
24 2013.

1 (E) Federal lands within the boundaries of
2 a national monument, park, or other developed
3 recreation area as of January 1, 2013.
4 (F) Oregon treasures addressed in subtitle
5 C, any portion of which, as of January 1, 2013,
6 consists of Oregon and California Railroad
7 Grant lands or O&C Region Public Domain
8 lands.
9 (G) Tribal lands addressed in subtitle D.
10 (d) COVERED STANDS OF TIMBER.—
11 (1) DESCRIPTION.—The O&C Trust lands con-
12 sist of stands of timber that have previously been
13 managed for timber production or that have been
14 materially altered by natural disturbances since
15 1886. Most of these stands of timber are 80 years
16 old or less, and all of such stands can be classified
17 as having a predominant stand age of 125 years or
18 less.
19 (2) DELINEATION OF BOUNDARIES BY BUREAU
20 OF LAND MANAGEMENT.—The Oregon and Cali-
21 fornia Railroad Grant lands and O&C Region Public
22 Domain lands that, immediately before transfer to
23 the O&C Trust, were managed by the Bureau of
24 Land Management are timber stands that have pre-
25 dominant birth date attributes of 1886 or later, with

1 boundaries that are defined by polygon spatial data
2 layer in and electronic data compilation filed by the
3 Bureau of Land Management pursuant to paragraph
4 (4). Except as provided in paragraph (5), the bound-
5 aries of all timber stands constituting the O&C
6 Trust lands are finally and conclusively determined
7 for all purposes by coordinates in or derived by ref-
8 erence to the polygon spatial data layer prepared by
9 the Bureau of Land Management and filed pursuant
10 to paragraph (4), notwithstanding anomalies that
11 might later be discovered on the ground. The bound-
12 ary coordinates are locatable on the ground by use
13 of global positioning system signals. In cases where
14 the location of the stand boundary is disputed or is
15 inconsistent with paragraph (1), the location of
16 boundary coordinates on the ground shall be, except
17 as otherwise provided in paragraph (5), finally and
18 conclusively determined for all purposes by the direct
19 or indirect use of global positioning system equip-
20 ment with accuracy specification of one meter or
21 less.
22 (3) DELINEATION OF BOUNDARIES BY FOREST
23 SERVICE.—The O&C Trust lands that, immediately
24 before transfer to the O&C Trust, were managed by
25 the Forest Service are timber stands that can be

1 classified as having predominant stand ages of 125
2 years old or less. Within 30 days after the date of
3 the enactment of this Act, the Secretary of Agri-
4 culture shall commence identification of the bound-
5 aries of such stands, and the boundaries of all such
6 stands shall be identified and made available to the
7 Board of Trustees not later than 180 days following
8 the creation of the O&C Trust pursuant to sub-
9 section (a). In identifying the stand boundaries, the
10 Secretary may use geographic information system
11 data, satellite imagery, cadastral survey coordinates,
12 or any other means available within the time al-
13 lowed. The boundaries shall be provided to the
14 Board of Trustees within the time allowed in the
15 form of a spatial data layer from which coordinates
16 can be derived that are locatable on the ground by
17 use of global positioning system signals. Except as
18 provided in paragraph (5), the boundaries of all tim-
19 ber stands constituting the O&C Trust lands are fi-
20 nally and conclusively determined for all purposes by
21 coordinates in or derived by reference to the data
22 provided by the Secretary within the time provided
23 by this paragraph, notwithstanding anomalies that
24 might later be discovered on the ground. In cases
25 where the location of the stand boundary is disputed

1 or inconsistent with paragraph (1), the location of
2 boundary coordinates on the ground shall be, except
3 as otherwise provided in paragraph (5), finally and
4 conclusively determined for all purposes by the
5 boundary coordinates provided by the Secretary as
6 they are located on the ground by the direct or indi-
7 rect use of global positioning system equipment with
8 accuracy specifications of one meter or less. All ac-
9 tions taken by the Secretary under this paragraph
10 shall be deemed to not involve Federal agency action
11 or Federal discretionary involvement or control.
12 (4) DATA AND MAPS.—Copies of the data con-
13 taining boundary coordinates for the stands included
14 in the O&C Trust lands, or from which such coordi-
15 nates are derived, and maps generally depicting the
16 stand locations shall be filed with the Committee on
17 Energy and Natural Resources of the Senate, the
18 Committee on Natural Resources of the House of
19 Representatives, and the office of the Secretary con-
20 cerned. The maps and data shall be filed—
21 (A) not later than 90 days after the date
22 of the enactment of this Act, in the case of the
23 lands identified pursuant to paragraph (2); and
24 (B) not later than 180 days following the
25 creation of the O&C Trust pursuant to sub-

1 section (a), in the case of lands identified pur-
2 suant to paragraph (3).
3 (5) ADJUSTMENT AUTHORITY AND LIMITA-
4 TIONS.—
5 (A) NO IMPACT ON DETERMINING TITLE
6 OR PROPERTY OWNERSHIP BOUNDARIES.—
7 Stand boundaries identified under paragraph
8 (2) or (3) shall not be relied upon for purposes
9 of determining title or property ownership
10 boundaries. If the boundary of a stand identi-
11 fied under paragraph (2) or (3) extends beyond
12 the property ownership boundaries of Oregon
13 and California Railroad Grant lands or O&C
14 Region Public Domain lands, as such property
15 boundaries exist on the date of enactment of
16 this Act, then that stand boundary is deemed
17 adjusted by this subparagraph to coincide with
18 the property ownership boundary.
19 (B) EFFECT OF DATA ERRORS OR INCON-
20 SISTENCIES.—Data errors or inconsistencies
21 may result in parcels of land along property
22 ownership boundaries that are unintentionally
23 omitted from the O&C Trust lands that are
24 identified under paragraph (2) or (3). In order
25 to correct such errors, any parcel of land that

1 satisfies all of the following criteria is hereby
2 deemed to be O&C Trust land:
3 (i) The parcel is within the ownership
4 boundaries of Oregon and California Rail-
5 road Grant lands or O&C Region Public
6 Domain lands on the date of the enact-
7 ment of this Act.
8 (ii) The parcel satisfies the description
9 in paragraph (1) on the date of enactment
10 of this Act.
11 (iii) The parcel is not excluded from
12 the O&C Trust lands pursuant to sub-
13 section (e)(2).
14 (C) NO IMPACT ON LAND EXCHANGE AU-
15 THORITY.—Nothing in this subsection is in-
16 tended to limit the authority of the Trust and
17 the Forest Service to engage in land exchanges
18 between themselves or with owners of non-Fed-
19 eral land as provided elsewhere in this title.
20 **SEC. 312. LEGAL EFFECT OF O&C TRUST AND JUDICIAL RE-**
21 **VIEW.**
22 (a) LEGAL STATUS OF TRUST LANDS.—Subject to
23 the other provisions of this section, all right, title, and in-
24 terest in and to the O&C Trust lands remain in the United
25 States, except that—

1 (1) the Board of Trustees shall have all author-
2 ity to manage the surface estate of the O&C Trust
3 lands and the resources found thereon;
4 (2) actions on the O&C Trust lands shall be
5 deemed to involve no Federal agency action or Fed-
6 eral discretionary involvement or control and the
7 laws of the State shall apply to the surface estate of
8 the O&C Trust lands in the manner applicable to
9 privately owned timberlands in the State; and
10 (3) the O&C Trust shall be treated as the bene-
11 ficial owner of the surface estate of the O&C Trust
12 lands for purposes of all legal proceedings involving
13 the O&C Trust lands.
14 (b) MINERALS.—
15 (1) IN GENERAL.—Mineral and other sub-
16 surface rights in the O&C Trust lands are retained
17 by the United States or other owner of such rights
18 as of the date on which management authority over
19 the surface estate of the lands are transferred to the
20 O&C Trust.
21 (2) ROCK AND GRAVEL.—
22 (A) USE AUTHORIZED; PURPOSE.—For
23 maintenance or construction on the road system
24 under the control of the O&C Trust or for non-

1 Federal lands intermingled with O&C Trust
2 lands, the Board of Trustees may—
3 (i) utilize rock or gravel found within
4 quarries in existence immediately before
5 the date of the enactment of this Act on
6 any Oregon and California Railroad Grant
7 lands and O&C Region Public Domain
8 lands, excluding those lands designated
9 under subtitle C or transferred under sub-
10 title D; and
11 (ii) construct new quarries on O&C
12 Trust lands, except that any quarry so
13 constructed may not exceed 5 acres.
14 (B) EXCEPTION.—The Board of Trustees
15 shall not construct new quarries on any of the
16 lands transferred to the Forest Service under
17 section 321 or lands designated under subtitle
18 D.
19 (c) ROADS.—
20 (1) IN GENERAL.—Except as provided in sub-
21 section (b), the Board of Trustees shall assume au-
22 thority and responsibility over, and have authority to
23 use, all roads and the road system specified in the
24 following subparagraphs:

1 (A) All roads and road systems on the Or-
2 egon and California Railroad and Grant lands
3 and O&C Region Public Domain lands owned or
4 administered by the Bureau of Land Manage-
5 ment immediately before the date of the enact-
6 ment of this Act, except that the Secretary of
7 Agriculture shall assume the Secretary of Inte-
8 rior's obligations for pro-rata maintenance ex-
9 pense and road use fees under reciprocal right-
10 of-way agreements for those lands transferred
11 to the Forest Service under section 321. All of
12 the lands transferred to the Forest Service
13 under section 321 shall be considered as part of
14 the tributary area used to calculate pro-rata
15 maintenance expense and road use fees.
16 (B) All roads and road systems owned or
17 administered by the Forest Service immediately
18 before the date of the enactment of this Act
19 and subsequently included within the bound-
20 aries of the O&C Trust lands.
21 (C) All roads later added to the road sys-
22 tem for management of the O&C Trust lands.
23 (2) LANDS TRANSFERRED TO FOREST SERV-
24 ICE.—The Secretary of Agriculture shall assume the
25 obligations of the Secretary of Interior for pro-rata

1 maintenance expense and road use fees under recip-
2 rocal rights-of-way agreements for those Oregon and
3 California Railroad Grant lands or O&C Region
4 Public Domain lands transferred to the Forest Serv-
5 ice under section 321.

6 (3) COMPLIANCE WITH CLEAN WATER ACT.—
7 All roads used, constructed, or reconstructed under
8 the jurisdiction of the O&C Trust must comply with
9 requirements of the Federal Water Pollution Control
10 Act (33 U.S.C. 1251 et seq.) applicable to private
11 lands through the use of Best Management Prac-
12 tices under the Oregon Forest Practices Act.

13 (d) PUBLIC ACCESS.—

14 (1) IN GENERAL.—Subject to paragraph (2),
15 public access to O&C Trust lands shall be preserved
16 consistent with the policies of the Secretary con-
17 cerned applicable to the O&C Trust lands as of the
18 date on which management authority over the sur-
19 face estate of the lands is transferred to the O&C
20 Trust.

21 (2) RESTRICTIONS.—The Board of Trustees
22 may limit or control public access for reasons of
23 public safety or to protect the resources on the O&C
24 Trust lands.

1 (e) LIMITATIONS.—The assets of the O&C Trust
2 shall not be subject to the creditors of an O&C Trust coun-
3 ty, or otherwise be distributed in an unprotected manner
4 or be subject to anticipation, encumbrance, or expenditure
5 other than for a purpose for which the O&C Trust was
6 created.

7 (f) REMEDY.—An O&C Trust county shall have all
8 of the rights and remedies that would normally accrue to
9 a beneficiary of a trust. An O&C Trust county shall pro-
10 vide the Board of Trustees, the Secretary concerned, and
11 the Attorney General with not less than 60 days notice
12 of an intent to sue to enforce the O&C Trust county's
13 rights under the O&C Trust.

14 (g) JUDICIAL REVIEW.—

15 (1) IN GENERAL.—Except as provided in para-
16 graph (2), judicial review of any provision of this
17 title shall be sought in the United States Court of
18 Appeals for the District of Columbia Circuit. Parties
19 seeking judicial review of the validity of any provi-
20 sion of this title must file suit within 90 days after
21 the date of the enactment of this Act and no pre-
22 liminary injunctive relief or stays pending appeal will
23 be permitted. If multiple cases are filed under this
24 paragraph, the Court shall consolidate the cases.

1 The Court must rule on any action brought under
2 this paragraph within 180 days.
3 (2) DECISIONS OF BOARD OF TRUSTEES.—De-
4 cisions made by the Board of Trustees shall be sub-
5 ject to judicial review only in an action brought by
6 an O&C County, except that nothing in this title
7 precludes bringing a legal claim against the Board
8 of Trustees that could be brought against a private
9 landowner for the same action.

10 **SEC. 313. BOARD OF TRUSTEES.**

11 (a) APPOINTMENT AUTHORIZATION.—Subject to the
12 conditions on appointment imposed by this section, the
13 Governor is authorized to appoint the Board of Trustees
14 to administer the O&C Trust and O&C Trust lands. Ap-
15 pointments by the Governor shall be made within 60 days
16 after the date of the enactment of this Act.
17 (b) MEMBERS AND ELIGIBILITY.—
18 (1) NUMBER.—Subject to subsection (c), the
19 Board of Trustees shall consist of seven members.
20 (2) RESIDENCY REQUIREMENT.—Members of
21 the Board of Trustees must reside within an O&C
22 Trust county.
23 (3) GEOGRAPHICAL REPRESENTATION.—To the
24 extent practicable, the Governor shall ensure broad
25 geographic representation among the O&C Trust

1 counties in appointing members to the Board of
2 Trustees.
3 (c) COMPOSITION.—The Board of Trustees shall in-
4 clude the following members:
5 (1)(A) Two forestry and wood products rep-
6 resentatives, consisting of—
7 (i) one member who represents the com-
8 mercial timber, wood products, or milling indus-
9 tries and who represents an Oregon-based com-
10 pany with more than 500 employees, taking
11 into account its affiliates, that has submitted a
12 bid for a timber sale on the Oregon and Cali-
13 fornia Railroad Grant lands, O&C Region Pub-
14 lic Domain lands, Coos Bay Wagon Road Grant
15 lands, or O&C Trust lands in the preceding five
16 years; and
17 (ii) one member who represents the com-
18 mercial wood products or milling industries and
19 who represents an Oregon-based company with
20 500 or fewer employees, taking into account its
21 affiliates, that has submitted a bid for a timber
22 sale on the Oregon and California Railroad
23 Grant lands, O&C Region Public Domain lands,
24 Coos Bay Wagon Road Grant lands, or O&C
25 Trust lands in the preceding five years.

1 (B) At least one of the two representatives se-
2 lected in this paragraph must own commercial forest
3 land that is adjacent to the O&C Trust lands and
4 from which the representative has not exported un-
5 processed timber in the preceding five years.
6 (2) One representative of the general public
7 who has professional experience in one or more of
8 the following fields:
9 (A) Business management.
10 (B) Law.
11 (C) Accounting.
12 (D) Banking.
13 (E) Labor management.
14 (F) Transportation.
15 (G) Engineering.
16 (H) Public policy.
17 (3) One representative of the science commu-
18 nity who, at a minimum, holds a Doctor of Philos-
19 ophy degree in wildlife biology, forestry, ecology, or
20 related field and has published peer-reviewed aca-
21 demic articles in the representative's field of exper-
22 tise.
23 (4) Three governmental representatives, con-
24 sisting of—

1 (A) two members who are serving county
2 commissioners of an O&C Trust county and
3 who are nominated by the governing bodies of
4 a majority of the O&C Trust counties and ap-
5 proved by the Governor, except that the two
6 representatives may not be from the same coun-
7 ty; and
8 (B) one member who holds State-wide
9 elected office (or is a designee of such a person)
10 or who represents a federally recognized Indian
11 tribe or tribes within one or more O&C Trust
12 counties.
13 (d) TERM, INITIAL APPOINTMENT, VACANCIES.—
14 (1) TERM.—Except in the case of initial ap-
15 pointments, members of the Board of Trustees shall
16 serve for five-year terms and may be reappointed for
17 one consecutive term.
18 (2) INITIAL APPOINTMENTS.—In making the
19 first appointments to the Board of Trustees, the
20 Governor shall stagger initial appointment lengths so
21 that two members have three-year terms, two mem-
22 bers have four-year terms, and three members have
23 a full five-year term.
24 (3) VACANCIES.—Any vacancy on the Board of
25 Trustees shall be filled within 45 days by the Gov-

1 ernor for the unexpired term of the departing mem-
2 ber.
3 (4) BOARD OF TRUSTEES MANAGEMENT
4 COSTS.—Members of the Board of Trustees may re-
5 ceive annual compensation from the O&C Trust at
6 a rate not to exceed 50 percent of the average an-
7 nual salary for commissioners of the O&C Trust
8 counties for that year.
9 (e) CHAIRPERSON AND OPERATIONS.—
10 (1) CHAIRPERSON.—A majority of the Board of
11 Trustees shall select the chairperson for the Board
12 of Trustees each year.
13 (2) MEETINGS.—The Board of Trustees shall
14 establish proceedings to carry out its duties. The
15 Board shall meet at least quarterly. Except for
16 meetings substantially involving personnel and con-
17 tractual decisions, all meetings of the Board shall
18 comply with the public meetings law of the State.
19 (f) QUORUM AND DECISION-MAKING.—
20 (1) QUORUM.—A quorum shall consist of five
21 members of the Board of Trustees. The presence of
22 a quorum is required to constitute an official meet-
23 ing of the board of trustees to satisfy the meeting
24 requirement under subsection (e)(2).

1 (2) DECISIONS.—All actions and decisions by
2 the Board of Trustees shall require approval by a
3 majority of members.
4 (g) ANNUAL AUDIT.—Financial statements regard-
5 ing operation of the O&C Trust shall be independently
6 prepared and audited annually for review by the O&C
7 Trust counties, Congress, and the State.

8 **SEC. 314. MANAGEMENT OF O&C TRUST LANDS.**

9 (a) IN GENERAL.—Except as otherwise provided in
10 this title, the O&C Trust lands will be managed by the
11 Board of Trustees in compliance with all Federal and
12 State laws in the same manner as such laws apply to pri-
13 vate forest lands.
14 (b) TIMBER SALE PLANS.—The Board of Trustees
15 shall approve and periodically update management and
16 sale plans for the O&C Trust lands consistent with the
17 purpose specified in section 311(b). The Board of Trust-
18 ees may defer sale plans during periods of depressed tim-
19 ber markets if the Board of Trustees, in its discretion,
20 determines that such delay until markets improve is finan-
21 cially prudent and in keeping with its fiduciary obligation
22 to the O&C Trust counties.
23 (c) STAND ROTATION.—
24 (1) 100–120 YEAR ROTATION.—The Board of
25 Trustees shall manage not less than 50 percent of

1 the harvestable acres of the O&C Trust lands on a
2 100–120 year rotation. The acreage subject to 100–
3 120 year management shall be geographically dis-
4 persed across the O&C Trust lands in a manner that
5 the Board of Trustees, in its discretion, determines
6 will contribute to aquatic and terrestrial ecosystem
7 values.
8 (2) BALANCE.—The balance of the harvestable
9 acreage of the O&C Trust lands shall be managed
10 on any rotation age the Board of Trustees, in its
11 discretion and in compliance with applicable State
12 law, determines will best satisfy its fiduciary obliga-
13 tion to provide revenue to the O&C Trust counties.
14 (3) THINNING.—Nothing in this subsection is
15 intended to limit the ability of the Board of Trustees
16 to decide, in its discretion, to thin stands of timber
17 on O&C Trust lands.
18 (d) SALE TERMS.—
19 (1) IN GENERAL.—Subject to paragraphs (2)
20 and (3), the Board of Trustees is authorized to es-
21 tablish the terms for sale contracts of timber or
22 other forest products from O&C Trust lands.
23 (2) SET ASIDE.—The Board of Trustees shall
24 establish a program consistent with the program of
25 the Bureau of Land Management under a March 10,

1959 Memorandum of Understanding, as amended, regarding calculation of shares and sale of timber set aside for purchase by business entities with 500 or fewer employees and consistent with the regulations in part 121 of title 13, Code of Federal Regulations applicable to timber sale set asides, except that existing shares in effect on the date of enactment of this Act shall apply until the next scheduled recomputation of shares. In implementing its program that is consistent with such Memorandum of Understanding, the Board of Trustees shall utilize the Timber Sale Procedure Handbook and other applicable procedures of the Bureau of Land Management, including the Operating Procedures for Conducting the Five-Year Recomputation of Small Business Share Percentages in effect on January 1, 2013.

(3) COMPETITIVE BIDDING.—The Board of Trustees must sell timber on a competitive bid basis. No less than 50 percent of the total volume of timber sold by the Board of Trustees each year shall be sold by oral bidding consistent with practices of the Bureau of Land Management as of January 1, 2013.

(e) PROHIBITION ON EXPORT.—

1 (1) IN GENERAL.—As a condition on the sale of
2 timber or other forest products from O&C Trust
3 lands, unprocessed timber harvested from O&C
4 Trust lands may not be exported.
5 (2) VIOLATIONS.—Any person who knowingly
6 exports unprocessed timber harvested from O&C
7 Trust lands, who knowingly provides such unproc-
8 essed timber for export by another person, or know-
9 ingly sells timber harvested from O&C Trust lands
10 to a person who is disqualified from purchasing tim-
11 ber from such lands pursuant to this section shall be
12 disqualified from purchasing timber or other forest
13 products from O&C Trust lands or from Federal
14 lands administered under this subtitle. Any person
15 who uses unprocessed timber harvested from O&C
16 Trust lands in substitution for exported unprocessed
17 timber originating from private lands shall be dis-
18 qualified from purchasing timber or other forest
19 products from O&C Trust lands or from Federal
20 lands administered under this subtitle.
21 (3) UNPROCESSED TIMBER DEFINED.—In this
22 subsection, the term "unprocessed timber" has the
23 meaning given such term in section 493(9) of the
24 Forest Resources Conservation and Shortage Relief
25 Act of 1990 (16 U.S.C. 620e(9)).

1 (f) INTEGRATED PEST, DISEASE, AND WEED MAN-
2 AGEMENT PLAN.—The Board of Trustees shall develop an
3 integrated pest and vegetation management plan to assist
4 forest managers in prioritizing and minimizing the use of
5 pesticides and herbicides approved by the Environmental
6 Protection Agency and used in compliance with the Or-
7 egon Forest Practices Act. The plan shall optimize the
8 ability of the O&C Trust to re-establish forest stands after
9 harvest in compliance with the Oregon Forest Practices
10 Act and to create diverse early seral stage forests. The
11 plan shall allow for the eradication, containment and sup-
12 pression of disease, pests, weeds and noxious plants, and
13 invasive species as found on the State Noxious Weed List
14 and prioritize ground application of herbicides and pes-
15 ticides to the greatest extent practicable. The plan shall
16 be completed before the start of the second year of the
17 transition period. The planning process shall be open to
18 the public and the Board of Trustees shall hold not less
19 than two public hearings on the proposed plan before final
20 adoption.
21 (g) ACCESS TO LANDS TRANSFERRED TO FOREST
22 SERVICE.—Persons acting on behalf of the O&C Trust
23 shall have a right of timely access over lands transferred
24 to the Forest Service under section 321 and Tribal lands
25 transferred under subtitle D as is reasonably necessary for

1 the Board of Trustees to carry out its management activi-
2 ties with regard to the O&C Trust lands and the O&C
3 Trust to satisfy its fiduciary duties to O&C counties.
4 (h) HARVEST AREA TREE AND RETENTION RE-
5 QUIREMENTS.—
6 (1) IN GENERAL.—The O&C Trust lands shall
7 include harvest area tree and retention requirements
8 consistent with State law.
9 (2) USE OF OLD GROWTH DEFINITION.—To the
10 greatest extent practicable, and at the discretion of
11 the Board of Trustees, old growth, as defined by the
12 Old Growth Review Panel created by section 324,
13 shall be used to meet the retention requirements ap-
14 plicable under paragraph (1).
15 (i) RIPARIAN AREA MANAGEMENT.—
16 (1) IN GENERAL.—The O&C Trust lands shall
17 be managed with timber harvesting limited in ripar-
18 ian areas as follows:
19 (A) STREAMS.—For all fish bearing
20 streams and all perennial non-fish-bearing
21 streams, there shall be no removal of timber
22 within a distance equal to the height of one site
23 potential tree on both sides of the stream chan-
24 nel. For intermittent, non-fish-bearing streams,
25 there shall be no removal of timber within a

1 distance equal to one-half the height of a site
2 potential tree on both sides of the stream chan-
3 nel. For purposes of this subparagraph, the
4 stream channel boundaries are the lines of ordi-
5 nary high water.
6 (B) LARGER LAKES, PONDS AND RES-
7 ERVOIRS.—For all lakes, ponds, and reservoirs
8 with surface area larger than one quarter of
9 one acre, there shall be no removal of timber
10 within a distance equal to the height of one site
11 potential tree from the line of ordinary high
12 water of the water body.
13 (C) SMALL PONDS AND NATURAL WET-
14 LANDS, SPRINGS AND SEEPS.—For all ponds
15 with surface area one quarter acre or less, and
16 for all natural wetlands, springs and seeps,
17 there shall be no removal of timber within the
18 area dominated by riparian vegetation.
19 (2) MEASUREMENTS.—For purposes of para-
20 graph (1), all distances shall be measured along
21 slopes, and all site potential tree heights shall be av-
22 erage height at maturity of the dominant species of
23 conifer determined at a scale no finer than the appli-
24 cable fifth field watershed.

1 (3) RULES OF CONSTRUCTION.—Nothing in
2 paragraph (1) shall be construed—
3 (A) to prohibit the falling or placement of
4 timber into streams to create large woody de-
5 bris for the benefit of aquatic ecosystems; or
6 (B) to prohibit the falling of trees within
7 riparian areas as may be reasonably necessary
8 for safety or operational reasons in areas adja-
9 cent to the riparian areas, or for road construc-
10 tion or maintenance pursuant to section
11 312(e)(3).
12 (j) FIRE PROTECTION AND EMERGENCY RE-
13 SPONSE.—
14 (1) RECIPROCAL FIRE PROTECTION AGREE-
15 MENTS.—
16 (A) CONTINUATION OF AGREEMENTS.—
17 Subject to subparagraphs (B), (C), and (D),
18 any reciprocal fire protection agreement be-
19 tween the State or any other entity and the
20 Secretary concerned with regard to Oregon and
21 California Railroad Grant lands and O&C Re-
22 gion Public Domain lands in effect on the date
23 of the enactment of this Act shall remain in
24 place for a period of ten years after such date

1 unless earlier terminated by the State or other
2 entity.
3 (B) ASSUMPTION OF BLM RIGHTS AND DU-
4 TIES.—The Board of Trustees shall exercise the
5 rights and duties of the Bureau of Land Man-
6 agement under the agreements described in
7 subparagraph (A), except as such rights and
8 duties might apply to Tribal lands under sub-
9 title D.
10 (C) EFFECT OF EXPIRATION OF PERIOD.—
11 Following the expiration of the ten-year period
12 under subparagraph (A), the Board of Trustees
13 shall continue to provide for fire protection of
14 the Oregon and California Railroad Grant lands
15 and O&C Region Public Domain lands, includ-
16 ing those transferred to the Forest Service
17 under section 331, through continuation of the
18 reciprocal fire protection agreements, new coop-
19 erative agreements, or by any means otherwise
20 permitted by law. The means selected shall be
21 based on the review by the Board of Trustees
22 of whether the reciprocal fire protection agree-
23 ments were effective in protecting the lands
24 from fire.

1 (D) EMERGENCY RESPONSE.—Nothing in
2 this paragraph shall prevent the Secretary of
3 Agriculture from an emergency response to a
4 fire on the O&C Trust lands or lands trans-
5 ferred to the Forest Service under section 321.
6 (2) EMERGENCY RESPONSE TO FIRE.—Subject
7 to paragraph (1), if the Secretary of Agriculture de-
8 termines that fire on any of the lands transferred
9 under section 321 is burning uncontrolled or the
10 Secretary, the Board of Trustees, or contracted
11 party does not have readily and immediately avail-
12 able personnel and equipment to control or extin-
13 guish the fire, the Secretary, or any forest protective
14 association or agency under contract or agreement
15 with the Secretary or the Board of Trustees for the
16 protection of forestland against fire, shall summarily
17 and aggressively abate the nuisance thus controlling
18 and extinguishing the fire.
19 (k) NORTHERN SPOTTED OWL.—So long as the O&C
20 Trust maintains the 100–120 year rotation on 50 percent
21 of the harvestable acres required in subsection (e), the sec-
22 tion 321 lands representing the best quality habitat for
23 the owl are transferred to the Forest Service, and the O&C
24 Trust protects currently occupied northern spotted owl
25 nest sites consistent with the forest practices in the Or-

1 egon Forest Practices Act, management of the O&C Trust
2 land by the Board of Trustees shall be considered to com-
3 ply with section 9 of Public Law 93–205 (16 U.S.C. 1538)
4 for the northern spotted owl. A currently occupied north-
5 ern spotted owl nest site shall be considered abandoned
6 if there are no northern spotted owl responses following
7 three consecutive years of surveys using the Protocol for
8 Surveying Management Activities that May Impact North-
9 ern Spotted Owls dated February 2, 2013.

10 **SEC. 315. DISTRIBUTION OF REVENUES FROM O&C TRUST**
11 **LANDS.**

12 (a) ANNUAL DISTRIBUTION OF REVENUES.—
13 (1) TIME FOR DISTRIBUTION; USE.—Payments
14 to each O&C Trust county shall be made available
15 to the general fund of the O&C Trust county as soon
16 as practicable following the end of each fiscal year,
17 to be used as are other unrestricted county funds.
18 (2) AMOUNT.—The amount paid to an O&C
19 Trust county in relation to the total distributed to
20 all O&C Trust counties for a fiscal year shall be
21 based on the proportion that the total assessed value
22 of the Oregon and California Railroad Grant lands
23 in each of the O&C Trust counties for fiscal year
24 1915 bears to the total assessed value of all of the
25 Oregon and California Railroad Grant lands in the

1 State for that same fiscal year. However, for the
2 purposes of this subsection the portion of the re-
3 vested Oregon and California Railroad Grant lands
4 in each of the O&C Trust counties that was not as-
5 sessed for fiscal year 1915 shall be deemed to have
6 been assessed at the average assessed value of the
7 Oregon and California Railroad Grant lands in the
8 county.
9 (3) LIMITATION.—After the fifth payment made
10 under this subsection, the payment to an O&C Trust
11 county for a fiscal year shall not exceed 110 percent
12 of the previous year's payment to the O&C Trust
13 county, adjusted for inflation based on the consumer
14 price index applicable to the geographic area in
15 which the O&C Trust counties are located.
16 (b) RESERVE FUND.—
17 (1) ESTABLISHMENT OF RESERVE FUND.—The
18 Board of Trustees shall generate and maintain a re-
19 serve fund.
20 (2) DEPOSITS TO RESERVE FUND.—Within 10
21 years after creation of the O&C Trust or as soon
22 thereafter as is practicable, the Board of Trustees
23 shall establish and seek to maintain an annual bal-
24 ance of $125,000,000 in the Reserve Fund, to be de-
25 rived from revenues generated from management ac-

1 tivities involving O&C Trust lands. All annual reve-
2 nues generated in excess of operating costs and pay-
3 ments to O&C Trust counties required by subsection
4 (a) and payments into the Conservation Fund as
5 provided in subsection (c) shall be deposited in the
6 Reserve Fund.
7 (3) EXPENDITURES FROM RESERVE FUND.—
8 The Board of Trustees shall use amounts in the Re-
9 serve Fund only—
10 (A) to pay management and administrative
11 expenses or capital improvement costs on O&C
12 Trust lands; and
13 (B) to make payments to O&C Trust coun-
14 ties when payments to the counties under sub-
15 section (a) are projected to be 90 percent or
16 less of the previous year's payments.
17 (c) O&C TRUST CONSERVATION FUND.—
18 (1) ESTABLISHMENT OF CONSERVATION
19 FUND.—The Board of Trustees shall use a portion
20 of revenues generated from activity on the O&C
21 Trust lands, consistent with paragraph (2), to estab-
22 lish and maintain a O&C Trust Conservation Fund.
23 The O&C Trust Conservation Fund shall include no
24 Federal appropriations.

1 (2) REVENUES.—Following the transition pe-
2 riod, five percent of the O&C Trust's annual net op-
3 erating revenue, after deduction of all management
4 costs and expenses, including the payment required
5 under section 317, shall be deposited to the O&C
6 Trust Conservation Fund.
7 (3) EXPENDITURES FROM CONSERVATION
8 FUND.—The Board of Trustees shall use amounts
9 from the O&C Trust Conservation Fund only—
10 (A) to fund the voluntary acquisition of
11 conservation easements from willing private
12 landowners in the State;
13 (B) to fund watershed restoration, remedi-
14 ation and enhancement projects within the
15 State; or
16 (C) to contribute to balancing values in a
17 land exchange with willing private landowners
18 proposed under section 323(b), if the land ex-
19 change will result in a net increase in ecosystem
20 benefits for fish, wildlife, or rare native plants.
21 **SEC. 316. LAND EXCHANGE AUTHORITY.**
22 (a) AUTHORITY.—Subject to approval by the Sec-
23 retary concerned, the Board of Trustees may negotiate
24 proposals for land exchanges with owners of lands adja-
25 cent to O&C Trust lands in order to create larger contig-

1 uous blocks of land under management by the O&C Trust
2 to facilitate resource management, to improve conserva-
3 tion value of such lands, or to improve the efficiency of
4 management of such lands.

5 (b) APPROVAL REQUIRED; CRITERIA.—The Sec-
6 retary concerned may approve a land exchange proposed
7 by the Board of Trustees administratively if the exchange
8 meets the following criteria:

9 (1) The non-Federal lands are completely with-
10 in the State.

11 (2) The non-Federal lands have high timber
12 production value, or are necessary for more efficient
13 or effective management of adjacent or nearby O&C
14 Trust lands.

15 (3) The non-Federal lands have equal or great-
16 er value to the O&C Trust lands proposed for ex-
17 change.

18 (4) The proposed exchange is reasonably likely
19 to increase the net income to the O&C Trust coun-
20 ties over the next 20 years and not decrease the net
21 income to the O&C Trust counties over the next 10
22 years.

23 (c) ACREAGE LIMITATION.—The Secretary concerned
24 shall not approve land exchanges under this section that,
25 taken together with all previous exchanges involving the

1 O&C Trust lands, have the effect of reducing the total
2 acreage of the O&C Trust lands by more than five percent
3 from the total acreage to be designated as O&C Trust land
4 under section 311(e)(1).

5 (d) INAPPLICABILITY OF CERTAIN LAWS.—Section 3
6 of the Oregon Public Lands Transfer and Protection Act
7 of 1998 (Public Law 105–321; 112 Stat. 3022), the Fed-
8 eral Land Policy and Management Act of 1976 (43 U.S.C.
9 1701 et. seq.), including the amendments made by the
10 Federal Land Exchange Facilitation Act of 1988 (Public
11 Law 100–409; 102 Stat. 1086), the Act of March 20,
12 1922 (16 U.S.C. 485, 486), and the Act of March 1, 1911
13 (commonly known as the Weeks Act; 16 U.S.C. 480 et
14 seq.) shall not apply to the land exchange authority pro-
15 vided by this section.

16 (e) EXCHANGES WITH FOREST SERVICE.—

17 (1) EXCHANGES AUTHORIZED.—The Board of
18 Trustees is authorized to engage in land exchanges
19 with the Forest Service if approved by the Secretary
20 pursuant to section 323(e).

21 (2) MANAGEMENT OF EXCHANGED LANDS.—
22 Following completion of a land exchange under para-
23 graph (1), the management requirements applicable
24 to the newly acquired lands by the O&C Trust or the
25 Forest Service shall be the same requirements under

this subtitle applicable to the other lands that are managed by the O&C Board or the Forest Service.

SEC. 317. PAYMENTS TO THE UNITED STATES TREASURY.

As soon as practicable after the end of the third fiscal year of the transition period and in each of the subsequent seven fiscal years, the O&C Trust shall submit a payment of $10,000,000 to the United States Treasury.

CHAPTER 2—TRANSFER OF CERTAIN LANDS TO FOREST SERVICE

SEC. 321. TRANSFER OF CERTAIN OREGON AND CALIFORNIA RAILROAD GRANT LANDS TO FOREST SERVICE.

(a) TRANSFER REQUIRED.—The Secretary of the Interior shall transfer administrative jurisdiction over all Oregon and California Railroad Grant lands and O&C Region Public Domain lands not designated as O&C Trust lands by subparagraphs (A) through (F) of section 311(c)(1), including those lands excluded by section 311(c)(2), to the Secretary of Agriculture for inclusion in the National Forest System and administration by the Forest Service as provided in section 322.

(b) EXCEPTION.—This section does not apply to Tribal lands transferred under subtitle D.

1 **SEC. 322. MANAGEMENT OF TRANSFERRED LANDS BY FOR-**
2 **EST SERVICE.**

3 (a) ASSIGNMENT TO EXISTING NATIONAL FOR-
4 ESTS.—To the greatest extent practicable, management
5 responsibilities for the lands transferred under section 321
6 shall be assigned to the unit of the National Forest Sys-
7 tem geographically closest to the transferred lands. The
8 Secretary of Agriculture shall have ultimate decision-mak-
9 ing authority, but shall assign the transferred lands to a
10 unit not later than the applicable transfer date provided
11 in the transition period.

12 (b) APPLICATION OF NORTHWEST FOREST PLAN.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (2), the lands transferred under section 321
15 shall be managed under the Northwest Forest Plan
16 and shall retain Northwest Forest Plan land use
17 designations until or unless changed in the manner
18 provided by Federal laws applicable to the adminis-
19 tration and management of the National Forest Sys-
20 tem.

21 (2) EXCEPTION FOR CERTAIN DESIGNATED
22 LANDS.—The lands excluded from the O&C Trust by
23 subparagraphs (A) through (F) of section 311(c)(2)
24 and transferred to the Forest Service under section
25 321 shall be managed as provided by Federal laws
26 applicable to the lands.

1 (c) PROTECTION OF OLD GROWTH.—Old growth, as
2 defined by the Old Growth Review Panel pursuant to rule-
3 making conducted in accordance with section 553 of title
4 5, United States Code, shall not be harvested by the For-
5 est Service on lands transferred under section 321.

6 (d) EMERGENCY RESPONSE TO FIRE.—Subject to
7 section 314(i), if the Secretary of Agriculture determines
8 that fire on any of the lands transferred under section 321
9 is burning uncontrolled or the Secretary or contracted
10 party does not have readily and immediately available per-
11 sonnel and equipment to control or extinguish the fire, the
12 Secretary, or any forest protective association or agency
13 under contract or agreement with the Secretary for the
14 protection of forestland against fire, and within whose pro-
15 tection area the fire exists, shall summarily and aggres-
16 sively abate the nuisance thus controlling and extin-
17 guishing the fire.

18 **SEC. 323. MANAGEMENT EFFICIENCIES AND EXPEDITED**
19 **LAND EXCHANGES.**

20 (a) LAND EXCHANGE AUTHORITY.—The Secretary
21 of Agriculture may conduct land exchanges involving lands
22 transferred under section 321, other than the lands ex-
23 cluded from the O&C Trust by subparagraphs (A) through
24 (F) of section 311(c)(2), in order create larger contiguous
25 blocks of land under management of the Secretary to fa-

1 cilitate resource management, to improve conservation
2 value of such lands, or to improve the efficiency of man-
3 agement of such lands.
4 (b) CRITERIA FOR EXCHANGES WITH NON-FEDERAL
5 OWNERS.—The Secretary of Agriculture may conduct a
6 land exchange administratively under this section with a
7 non-Federal owner (other than the O&C Trust) if the land
8 exchange meets the following criteria:
9 (1) The non-Federal lands are completely with-
10 in the State.
11 (2) The non-Federal lands have high wildlife
12 conservation or recreation value or the exchange is
13 necessary to increase management efficiencies of
14 lands administered by the Forest Service for the
15 purposes of the National Forest System.
16 (3) The non-Federal lands have equal or great-
17 er value to the Federal lands purposed for exchange
18 or a balance of values can be achieved—
19 (A) with a grant of funds provided by the
20 O&C Trust pursuant to section 315(c); or
21 (B) from other sources.
22 (c) CRITERIA FOR EXCHANGES WITH O&C TRUST.—
23 The Secretary of Agriculture may conduct land exchanges
24 with the Board of Trustees administratively under this
25 subsection, and such an exchange shall be deemed to not

1 involve any Federal action or Federal discretionary in-
2 volvement or control if the land exchange with the O&C
3 Trust meets the following criteria:
4 (1) The O&C Trust lands to be exchanged have
5 high wildlife value or ecological value or the ex-
6 change would facilitate resource management or oth-
7 erwise contribute to the management efficiency of
8 the lands administered by the Forest Service.
9 (2) The exchange is requested or approved by
10 the Board of Trustees for the O&C Trust and will
11 not impair the ability of the Board of Trustees to
12 meet its fiduciary responsibilities.
13 (3) The lands to be exchanged by the Forest
14 Service do not contain stands of timber meeting the
15 definition of old growth established by the Old
16 Growth Review Panel pursuant to section 324.
17 (4) The lands to be exchanged are equal in
18 acreage.
19 (d) ACREAGE LIMITATION.—The Secretary of Agri-
20 culture shall not approve land exchanges under this sec-
21 tion that, taken together with all previous exchanges in-
22 volving the lands described in subsection (a), have the ef-
23 fect of reducing the total acreage of such lands by more
24 than five percent from the total acreage originally trans-
25 ferred to the Secretary.

1 (e) INAPPLICABILITY OF CERTAIN LAWS.—Section 3
2 of the Oregon Public Lands Transfer and Protection Act
3 of 1998 (Public Law 105–321; 112 Stat. 3022), the Fed-
4 eral Land Policy and Management Act of 1976 (43 U.S.C.
5 1701 et. seq.), including the amendments made by the
6 Federal Land Exchange Facilitation Act of 1988 (Public
7 Law 100–409; 102 Stat. 1086), the Act of March 20,
8 1922 (16 U.S.C. 485, 486), and the Act of March 1, 1911
9 (commonly known as the Weeks Act; 16 U.S.C. 480 et
10 seq.) shall not apply to the land exchange authority pro-
11 vided by this section.

12 **SEC. 324. REVIEW PANEL AND OLD GROWTH PROTECTION.**

13 (a) APPOINTMENT; MEMBERS.—Within 60 days after
14 the date of the enactment of this Act the Secretary of Ag-
15 riculture shall appoint an Old Growth Review Panel con-
16 sisting of five members. At a minimum, the members must
17 hold a Doctor of Philosophy degree in wildlife biology, for-
18 estry, ecology, or related field and published peer-reviewed
19 academic articles in their field of expertise.

20 (b) PURPOSE OF REVIEW.—Members of the Old
21 Growth Review Panel shall review existing, published,
22 peer-reviewed articles in relevant academic journals and
23 establish a definition or definitions of old growth as it ap-
24 plies to the ecologically, geographically and climato-
25 logically unique Oregon and California Railroad Grant

1 lands and O&C Region Public Domain lands managed by
2 the O&C Trust or the Forest Service only. The definition
3 or definitions shall bear no legal force, shall not be used
4 as a precedent for, and shall not apply to any lands other
5 than the Oregon and California Railroad Grant lands and
6 O&C Region Public Domain lands managed by the O&C
7 Trust or the Forest Service in western Oregon. The defini-
8 tion or definitions shall not apply to Tribal lands.

9 (c) SUBMISSION OF RESULTS.—The definition or
10 definitions for old growth in western Oregon established
11 under subsection (b), if approved by at least four members
12 of the Old Growth Review Panel, shall be submitted to
13 the Secretary of Agriculture within six months after the
14 date of the enactment of this Act.

15 **SEC. 325. UNIQUENESS OF OLD GROWTH PROTECTION ON**
16 **OREGON AND CALIFORNIA RAILROAD GRANT**
17 **LANDS.**

18 All sections of this subtitle referring to the term "old
19 growth" are uniquely suited to resolve management issues
20 for the lands covered by this subtitle only, and shall not
21 be construed as precedent for any other situation involving
22 management of other Federal, State, Tribal, or private
23 lands.

CHAPTER 3—TRANSITION

SEC. 331. TRANSITION PERIOD AND OPERATIONS.

(a) TRANSITION PERIOD.—

(1) COMMENCEMENT; DURATION.—Effective on October 1 of the first fiscal year beginning after the appointment of the Board of Trustees under section 313, a transition period of three fiscal years shall commence.

(2) EXCEPTIONS.—Unless specifically stated in the following subsections, any action under this section shall be deemed not to involve Federal agency action or Federal discretionary involvement or control.

(b) YEAR ONE.—

(1) APPLICABILITY.—During the first fiscal year of the transition period, the activities described in this subsection shall occur.

(2) BOARD OF TRUSTEES ACTIVITIES.—The Board of Trustees shall employ sufficient staff or contractors to prepare for beginning management of O&C Trust lands and O&C Region Public Domain lands in the second fiscal year of the transition period, including preparation of management plans and a harvest schedule for the lands over which

1 management authority is transferred to the O&C
2 Trust in the second fiscal year.
3 (3) FOREST SERVICE ACTIVITIES.—The Forest
4 Service shall begin preparing to assume management
5 authority of all Oregon and California Railroad
6 Grant lands and O&C Region Public Domain lands
7 transferred under section 321 in the second fiscal
8 year.
9 (4) SECRETARY CONCERNED ACTIVITIES.—The
10 Secretary concerned shall continue to exercise man-
11 agement authority over all Oregon and California
12 Railroad Grant lands and O&C Region Public Do-
13 main lands under all existing Federal laws.
14 (5) INFORMATION SHARING.—Upon written re-
15 quest from the Board of Trustees, the Secretary of
16 the Interior shall provide copies of any documents or
17 data, however stored or maintained, that includes
18 the requested information concerning O&C Trust
19 lands. The copies shall be provided as soon as prac-
20 ticable and to the greatest extent possible, but in no
21 event later than 30 days following the date of the re-
22 quest.
23 (6) EXCEPTION.—This subsection does not
24 apply to Tribal lands transferred under subtitle D.
25 (*e*) YEAR TWO.—

(1) APPLICABILITY.—During the second fiscal year of the transition period, the activities described in this subsection shall occur.

(2) TRANSFER OF O&C TRUST LANDS.—Effective on October 1 of the second fiscal year of the transition period, management authority over the O&C Trust lands shall be transferred to the O&C Trust.

(3) TRANSFER OF LANDS TO FOREST SERVICE.—The transfers required by section 321 shall occur.

(4) INFORMATION SHARING.—The Secretary of Agriculture shall obtain and manage, as soon as practicable, all documents and data relating to the Oregon and California Railroad Grant lands, O&C Region Public Domain lands, and Coos Bay Wagon Road lands previously managed by the Bureau of Land Management. Upon written request from the Board of Trustees, the Secretary of Agriculture shall provide copies of any documents or data, however stored or maintained, that includes the requested information concerning O&C Trust lands. The copies shall be provided as soon as practicable and to the greatest extent possible, but in no event later than 30 days following the date of the request.

1 (5) IMPLEMENTATION OF MANAGEMENT
2 PLAN.—The Board of Trustees shall begin imple-
3 menting its management plan for the O&C Trust
4 lands and revise the plan as necessary. Distribution
5 of revenues generated from all activities on the O&C
6 Trust lands shall be subject to section 315.
7 (d) YEAR THREE AND SUBSEQUENT YEARS.—
8 (1) APPLICABILITY.—During the third fiscal
9 year of the transition period and all subsequent fis-
10 cal years, the activities described in this subsection
11 shall occur.
12 (2) BOARD OF TRUSTEES MANAGEMENT.—The
13 Board of Trustees shall manage the O&C Trust
14 lands pursuant to subtitle A.
15 **SEC. 332. O&C TRUST MANAGEMENT CAPITALIZATION.**
16 (a) BORROWING AUTHORITY.—The Board of Trust-
17 ees is authorized to borrow from any available private
18 sources and non-Federal, public sources in order to pro-
19 vide for the costs of organization, administration, and
20 management of the O&C Trust during the three-year tran-
21 sition period provided in section 331.
22 (b) SUPPORT.—Notwithstanding any other provision
23 of law, O&C Trust counties are authorized to loan to the
24 O&C Trust, and the Board of Trustees is authorized to
25 borrow from willing O&C Trust counties, amounts held on

account by such counties that are required to be expended in accordance with the Act of May 23,1908 (35 Stat. 260; 16 U.S.C. 500) and section 13 of the Act of March 1, 1911 (36 Stat. 963; 16 U.S.C. 500), except that, upon repayment by the O&C Trust, the obligation of such counties to expend the funds in accordance with such Acts shall continue to apply.

SEC. 333. EXISTING BUREAU OF LAND MANAGEMENT AND FOREST SERVICE CONTRACTS.

(a) TREATMENT OF EXISTING CONTRACTS.—Any work or timber contracts sold or awarded by the Bureau of Land Management or Forest Service on or with respect to Oregon and California Railroad Grant lands or O&C Region Public Domain lands before the transfer of the lands to the O&C Trust or the Forest Service, or Tribal lands transferred under subtitle D, shall remain binding and effective according to the terms of the contracts after the transfer of the lands. The Board of Trustees and Secretary concerned shall make such accommodations as are necessary to avoid interfering in any way with the performance of the contracts.

(b) TREATMENT OF PAYMENTS UNDER CONTRACTS.—Payments made pursuant to the contracts described in subsection (a), if any, shall be made as provided in those contracts and not made to the O&C Trust.

1 **SEC. 334. PROTECTION OF VALID EXISTING RIGHTS AND**
2 **ACCESS TO NON-FEDERAL LAND.**

3 (a) VALID RIGHTS.—Nothing in this title, or any
4 amendment made by this title, shall be construed as termi-
5 nating any valid lease, permit, patent, right-of-way, agree-
6 ment, or other right of authorization existing on the date
7 of the enactment of this Act with regard to Oregon and
8 California Railroad Grant lands or O&C Region Public
9 Domain lands, including O&C Trust lands over which
10 management authority is transferred to the O&C Trust
11 pursuant to section 311(c)(1), lands transferred to the
12 Forest Service under section 321, and Tribal lands trans-
13 ferred under subtitle D.

14 (b) ACCESS TO LANDS.—

15 (1) EXISTING ACCESS RIGHTS.—The Secretary
16 concerned shall preserve all rights of access and use,
17 including (but not limited to) reciprocal right-of-way
18 agreements, tail hold agreements, or other right-of-
19 way or easement obligations existing on the date of
20 the enactment of this Act, and such rights shall re-
21 main applicable to lands covered by this subtitle in
22 the same manner and to the same extent as such
23 rights applied before the date of the enactment of
24 this Act.

25 (2) NEW ACCESS RIGHTS.—If a current or fu-
26 ture landowner of land intermingled with Oregon

1 and California Railroad Grant lands or O&C Region
2 Public Domain lands does not have an existing ac-
3 cess agreement related to the lands covered by this
4 subtitle, the Secretary concerned shall enter into an
5 access agreement, including appurtenant lands, to
6 secure the landowner the reasonable use and enjoy-
7 ment of the landowner's land, including the harvest
8 and hauling of timber.

9 (c) MANAGEMENT COOPERATION.—The Board of
10 Trustees and the Secretary concerned shall provide cur-
11 rent and future landowners of land intermingled with Or-
12 egon and California Railroad Grant lands or O&C Region
13 Public Domain lands the permission needed to manage
14 their lands, including to locate tail holds, tramways, and
15 logging wedges, to purchase guylines, and to cost-share
16 property lines surveys to the lands covered by this subtitle,
17 within 30 days after receiving notification of the land-
18 owner's plan of operation.

19 (d) JUDICIAL REVIEW.—Notwithstanding section
20 312(g)(2), a private landowner may obtain judicial review
21 of a decision of the Board of Trustees to deny—

22 (1) the landowner the rights provided by sub-
23 section (b) regarding access to the landowner's land;
24 or

(2) the landowner the reasonable use and enjoyment of the landowner's land.

SEC. 335. REPEAL OF SUPERSEDED LAW RELATING TO OREGON AND CALIFORNIA RAILROAD GRANT LANDS.

(a) REPEAL.—Except as provided in subsection (b), the Act of August 28, 1937 (43 U.S.C. 1181a et seq.) is repealed effective on October 1 of the first fiscal year beginning after the appointment of the Board of Trustees.

(b) EFFECT OF CERTAIN COURT RULINGS.—If, as a result of judicial review authorized by section 312, any provision of this subtitle is held to be invalid and implementation of the provision or any activity conducted under the provision is then enjoined, the Act of August 28, 1937 (43 U.S.C. 1181a et seq.), as in effect immediately before its repeal by subsection (a), shall be restored to full legal force and effect as if the repeal had not taken effect.

Subtitle B—Coos Bay Wagon Roads

SEC. 341. TRANSFER OF MANAGEMENT AUTHORITY OVER CERTAIN COOS BAY WAGON ROAD GRANT LANDS TO COOS COUNTY, OREGON.

(a) TRANSFER REQUIRED.—Except in the case of the lands described in subsection (b), the Secretary of the Interior shall transfer management authority over the Coos Bay Wagon Road Grant lands reconveyed to the United

1 States pursuant to the first section of the Act of February
2 26, 1919 (40 Stat. 1179), and the surface resources there-
3 on, to the Coos County government. The transfer shall be
4 completed not later than one year after the date of the
5 enactment of this Act.

6 (b) LANDS EXCLUDED.—The transfer under sub-
7 section (a) shall not include any of the following Coos Bay
8 Wagon Road Grant lands:

9 (1) Federal lands within the National Land-
10 scape Conservation System as of January 1, 2013.

11 (2) Federal lands designated as Areas of Crit-
12 ical Environmental Concern as of January 1, 2013.

13 (3) Federal lands that were in the National
14 Wilderness Preservation System as of January 1,
15 2013.

16 (4) Federal lands included in the National Wild
17 and Scenic Rivers System of January 1, 2013.

18 (5) Federal lands within the boundaries of a
19 national monument, park, or other developed recre-
20 ation area as of January 1, 2013.

21 (6) All stands of timber generally older than
22 125 years old, as of January 1, 2011, which shall
23 be conclusively determined by reference to the pol-
24 ygon spatial data layer in the electronic data com-
25 pilation filed by the Bureau of Land Management

1 based on the predominant birth-date attribute, and
2 the boundaries of such stands shall be conclusively
3 determined for all purposes by the global positioning
4 system coordinates for such stands.
5 (7) Tribal lands addressed in subtitle D.
6 (c) MANAGEMENT.—
7 (1) IN GENERAL.—Coos County shall manage
8 the Coos Bay Wagon Road Grant lands over which
9 management authority is transferred under sub-
10 section (a) consistent with section 314, and for pur-
11 poses of applying such section, "Board of Trustees"
12 shall be deemed to mean "Coos County" and "O&C
13 Trust lands" shall be deemed to mean the trans-
14 ferred lands.
15 (2) RESPONSIBILITY FOR MANAGEMENT
16 COSTS.—Coos County shall be responsible for all
17 management and administrative costs of the Coos
18 Bay Wagon Road Grant lands over which manage-
19 ment authority is transferred under subsection (a).
20 (3) MANAGEMENT CONTRACTS.—Coos County
21 may contract, if competitively bid, with one or more
22 public, private, or tribal entities, including (but not
23 limited to) the Coquille Indian Tribe, if such entities
24 are substantially based in Coos or Douglas Counties,
25 Oregon, to manage and administer the lands.

1 (d) TREATMENT OF REVENUES.—

2 (1) IN GENERAL.—All revenues generated from
3 the Coos Bay Wagon Road Grant lands over which
4 management authority is transferred under sub-
5 section (a) shall be deposited in the general fund of
6 the Coos County treasury to be used as are other
7 unrestricted county funds.

8 (2) TREASURY.—As soon as practicable after
9 the end of the third fiscal year of the transition pe-
10 riod and in each of the subsequent seven fiscal
11 years, Coos County shall submit a payment of
12 $400,000 to the United States Treasury.

13 (3) DOUGLAS COUNTY.—Beginning with the
14 first fiscal year for which management of the Coos
15 Bay Wagon Road Grant lands over which manage-
16 ment authority is transferred under subsection (a)
17 generates net positive revenues, and for all subse-
18 quent fiscal years, Coos County shall transmit a
19 payment to the general fund of the Douglas County
20 treasury from the net revenues generated from the
21 lands. The payment shall be made as soon as prac-
22 ticable following the end of each fiscal year and the
23 amount of the payment shall bear the same propor-
24 tion to total net revenues for the fiscal year as the
25 proportion of the Coos Bay Wagon Road Grant

lands in Douglas County in relation to all Coos Bay Wagon Road Grant lands in Coos and Douglas Counties as of January 1, 2013.

SEC. 342. TRANSFER OF CERTAIN COOS BAY WAGON ROAD GRANT LANDS TO FOREST SERVICE.

The Secretary of the Interior shall transfer administrative jurisdiction over the Coos Bay Wagon Road Grant lands excluded by paragraphs (1) through (6) of section 341(b) to the Secretary of Agriculture for inclusion in the National Forest System and administration by the Forest Service as provided in section 322.

SEC. 343. LAND EXCHANGE AUTHORITY.

Coos County may recommend land exchanges to the Secretary of Agriculture and carry out such land exchanges in the manner provided in section 316.

Subtitle C—Oregon Treasures

CHAPTER 1—WILDERNESS AREAS

SEC. 351. DESIGNATION OF DEVIL'S STAIRCASE WILDERNESS.

(a) DESIGNATION.—In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131 et seq.), the Federal land in the State of Oregon administered by the Forest Service and the Bureau of Land Management, comprising approximately 30,520 acres, as generally depicted on the map titled "Devil's Staircase Wilderness Proposal", dated

1 October 26, 2009, are designated as a wilderness area for
2 inclusion in the National Wilderness Preservation System
3 and to be known as the "Devil's Staircase Wilderness".
4 (b) MAP AND LEGAL DESCRIPTION.—As soon as
5 practicable after the date of the enactment of this Act,
6 the Secretary shall file with the Committee on Natural Re-
7 sources of the House of Representatives and the Com-
8 mittee on Energy and Natural Resources of the Senate
9 a map and legal description of wilderness area designated
10 by subsection (a). The map and legal description shall
11 have the same force and effect as if included in this sub-
12 division, except that the Secretary may correct clerical and
13 typographical errors in the map and description. In the
14 case of any discrepancy between the acreage specified in
15 subsection (a) and the map, the map shall control. The
16 map and legal description shall be on file and available
17 for public inspection in the Office of the Chief of the For-
18 est Service.
19 (c) ADMINISTRATION.—
20 (1) IN GENERAL.—Subject to valid existing
21 rights, the Devil's Staircase Wilderness Area shall be
22 administered by the Secretaries of Agriculture and
23 the Interior, in accordance with the Wilderness Act
24 and the Oregon Wilderness Act of 1984, except that,
25 with respect to the wilderness area, any reference in

1 the Wilderness Act to the effective date of that Act
2 shall be deemed to be a reference to the date of the
3 enactment of this Act.
4 (2) FOREST SERVICE ROADS.—As provided in
5 section 4(d)(1) of the Wilderness Act (16 U.S.C.
6 1133(d)(1)), the Secretary of Agriculture shall—
7 (A) decommission any National Forest
8 System road within the wilderness boundaries;
9 and
10 (B) convert Forest Service Road 4100
11 within the wilderness boundary to a trail for
12 primitive recreational use.
13 (d) INCORPORATION OF ACQUIRED LAND AND IN-
14 TERESTS.—Any land within the boundary of the wilder-
15 ness area designated by this section that is acquired by
16 the United States shall—
17 (1) become part of the Devil's Staircase Wilder-
18 ness Area; and
19 (2) be managed in accordance with this section
20 and any other applicable law.
21 (e) FISH AND WILDLIFE.—Nothing in this section
22 shall be construed as affecting the jurisdiction or respon-
23 sibilities of the State of Oregon with respect to wildlife
24 and fish in the national forests.

1 (f) WITHDRAWAL.—Subject to valid rights in exist-
2 ence on the date of enactment of this Act, the Federal
3 land designated as wilderness area by this section is with-
4 drawn from all forms of—
5 (1) entry, appropriation, or disposal under the
6 public land laws;
7 (2) location, entry, and patent under the mining
8 laws; and
9 (3) disposition under all laws pertaining to min-
10 eral and geothermal leasing or mineral materials.
11 (g) PROTECTION OF TRIBAL RIGHTS.—Nothing in
12 this section shall be construed to diminish—
13 (1) the existing rights of any Indian tribe; or
14 (2) tribal rights regarding access to Federal
15 lands for tribal activities, including spiritual, cul-
16 tural, and traditional food gathering activities.
17 **SEC. 352. EXPANSION OF WILD ROGUE WILDERNESS AREA.**
18 (a) EXPANSION.—In accordance with the Wilderness
19 Act (16 U.S.C. 1131 et seq.), certain Federal land man-
20 aged by the Bureau of Land Management, comprising ap-
21 proximately 58,100 acres, as generally depicted on the
22 map entitled "Wild Rogue", dated September 16, 2010,
23 are hereby included in the Wild Rogue Wilderness, a com-
24 ponent of the National Wilderness Preservation System.
25 (b) MAPS AND LEGAL DESCRIPTIONS.—

1 (1) IN GENERAL.—As soon as practicable after
2 the date of enactment of this Act, the Secretary of
3 the Interior shall file a map and a legal description
4 of the wilderness area designated by this section,
5 with—
6 (A) the Committee on Energy and Natural
7 Resources of the Senate; and
8 (B) the Committee on Natural Resources
9 of the House of Representatives.
10 (2) FORCE OF LAW.—The maps and legal de-
11 scriptions filed under paragraph (1) shall have the
12 same force and effect as if included in this subtitle,
13 except that the Secretary may correct typographical
14 errors in the maps and legal descriptions.
15 (3) PUBLIC AVAILABILITY.—Each map and
16 legal description filed under paragraph (1) shall be
17 on file and available for public inspection in the ap-
18 propriate offices of the Forest Service.
19 (c) ADMINISTRATION.—Subject to valid existing
20 rights, the area designated as wilderness by this section
21 shall be administered by the Secretary of Agriculture in
22 accordance with the Wilderness Act (16 U.S.C. 1131 et
23 seq.).
24 (d) WITHDRAWAL.—Subject to valid rights in exist-
25 ence on the date of enactment of this Act, the Federal

land designated as wilderness by this section is withdrawn from all forms of—

(1) entry, appropriation, or disposal under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) disposition under all laws pertaining to mineral and geothermal leasing or mineral materials.

CHAPTER 2—WILD AND SCENIC RIVER DESIGNATED AND RELATED PROTECTIONS

SEC. 361. WILD AND SCENIC RIVER DESIGNATIONS, MOLALLA RIVER.

(a) DESIGNATIONS.—Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding at the end the following:

"(____) MOLALLA RIVER, OREGON.—The following segments in the State of Oregon, to be administered by the Secretary of the Interior as a recreational river:

"(A) The approximately 15.1-mile segment from the southern boundary line of T. 7 S., R. 4 E., sec. 19, downstream to the edge of the Bureau of Land Management boundary in T. 6 S., R. 3 E., sec. 7.

"(B) The approximately 6.2-mile segment from the easternmost Bureau of Land Management boundary line in the NE¼ sec. 4, T. 7 S., R. 4 E., downstream to the confluence with the Molalla River.".

(b) TECHNICAL CORRECTIONS.—Section 3(a)(102) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)(102)) is amended—

(1) in the heading, by striking "SQUAW CREEK" and inserting "WHYCHUS CREEK";

(2) in the matter preceding subparagraph (A), by striking "McAllister Ditch, including the Soap Fork Squaw Creek, the North Fork, the South Fork, the East and West Forks of Park Creek, and Park Creek Fork" and inserting "Plainview Ditch, including the Soap Creek, the North and South Forks of Whychus Creek, the East and West Forks of Park Creek, and Park Creek"; and

(3) in subparagraph (B), by striking "McAllister Ditch" and inserting "Plainview Ditch".

SEC. 362. WILD AND SCENIC RIVERS ACT TECHNICAL CORRECTIONS RELATED TO CHETCO RIVER.

Section 3(a)(69) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)(69)) is amended—

1 (1) by inserting before the "The 44.5-mile" the
2 following:
3 "(A) DESIGNATIONS.—";
4 (2) by redesignating subparagraphs (A), (B),
5 and (C) as clauses (i), (ii), and (iii), respectively
6 (and by moving the margins 2 ems to the right);
7 (3) in clause (i), as redesignated—
8 (A) by striking "25.5-mile" and inserting
9 "27.5-mile"; and
10 (B) by striking "Boulder Creek at the
11 Kalmiopsis Wilderness boundary" and inserting
12 "Mislatnah Creek";
13 (4) in clause (ii), as redesignated—
14 (A) by striking "8" and inserting "7.5";
15 (B) by striking "Boulder Creek" and in-
16 serting "Mislatnah Creek"; and
17 (C) by striking "Steel Bridge" and insert-
18 ing "Eagle Creek";
19 (5) in clause (iii), as redesignated—
20 (A) by striking "11" and inserting "9.5";
21 and
22 (B) by striking "Steel Bridge" and insert-
23 ing "Eagle Creek"; and
24 (6) by adding at the end the following:

"(B) WITHDRAWAL.—Subject to valid rights, the Federal land within the boundaries of the river segments designated by subparagraph (A), is withdrawn from all forms of—

"(i) entry, appropriation, or disposal under the public land laws;

"(ii) location, entry, and patent under the mining laws; and

"(iii) disposition under all laws pertaining to mineral and geothermal leasing or mineral materials.".

SEC. 363. WILD AND SCENIC RIVER DESIGNATIONS, WASSON CREEK AND FRANKLIN CREEK.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding at the end the following:

"(____) FRANKLIN CREEK, OREGON.—The 4.5-mile segment from the headwaters to the private land boundary in section 8 to be administered by the Secretary of Agriculture as a wild river.

"(____) WASSON CREEK, OREGON.—

"(A) The 4.2-mile segment from the eastern edge of section 17 downstream to the boundary of sections 11 and 12 to be adminis-

1 tered by the Secretary of Interior as a wild
2 river.
3 "(B) The 5.9-mile segment downstream
4 from the boundary of sections 11 and 12 to the
5 private land boundary in section 22 to be ad-
6 ministered by the Secretary of Agriculture as a
7 wild river.".

8 **SEC. 364. WILD AND SCENIC RIVER DESIGNATIONS, ROGUE**
9 **RIVER AREA.**

10 (a) DESIGNATIONS.—Section 3(a)(5) of the Wild and
11 Scenic Rivers Act (16 U.S.C. 1274(a)(5)) (relating to the
12 Rogue River, Oregon) is amended by adding at the end
13 the following: "In addition to the segment described in the
14 previous sentence, the following segments in the Rogue
15 River area are designated:
16 "(A) KELSEY CREEK.—The approximately 4.8
17 miles of Kelsey Creek from east section line of
18 T32S, R9W, sec. 34, W.M. to the confluence with
19 the Rogue River as a wild river.
20 "(B) EAST FORK KELSEY CREEK.—The ap-
21 proximately 4.6 miles of East Fork Kelsey Creek
22 from the Wild Rogue Wilderness boundary in T33S,
23 R8W, sec. 5, W.M. to the confluence with Kelsey
24 Creek as a wild river.
25 "(C) WHISKY CREEK.—

"(i) The approximately 0.6 miles of Whisky Creek from the confluence of the East Fork and West Fork to 0.1 miles downstream from road 33–8–23 as a recreational river.

"(ii) The approximately 1.9 miles of Whisky Creek from 0.1 miles downstream from road 33–8–23 to the confluence with the Rogue River as a wild river.

"(D) EAST FORK WHISKY CREEK.—

"(i) The approximately 2.8 miles of East Fork Whisky Creek from the Wild Rogue Wilderness boundary in T33S, R8W, sec. 11, W.M. to 0.1 miles downstream of road 33–8–26 crossing as a wild river.

"(ii) The approximately .3 miles of East Fork Whisky Creek from 0.1 miles downstream of road 33–8–26 to the confluence with Whisky Creek as a recreational river.

"(E) WEST FORK WHISKY CREEK.—The approximately 4.8 miles of West Fork Whisky Creek from its headwaters to the confluence with Whisky Creek as a wild river.

"(F) BIG WINDY CREEK.—

"(i) The approximately 1.5 miles of Big Windy Creek from its headwaters to 0.1 miles

1 downstream from road 34–9–17.1 as a scenic
2 river.
3 "(ii) The approximately 5.8 miles of Big
4 Windy Creek from 0.1 miles downstream from
5 road 34–9–17.1 to the confluence with the
6 Rogue River as a wild river.
7 "(G) EAST FORK BIG WINDY CREEK.—
8 "(i) The approximately 0.2 miles of East
9 Fork Big Windy Creek from its headwaters to
10 0.1 miles downstream from road 34–8–36 as a
11 scenic river.
12 "(ii) The approximately 3.7 miles of East
13 Fork Big Windy Creek from 0.1 miles down-
14 stream from road 34–8–36 to the confluence
15 with Big Windy Creek as a wild river.
16 "(H) LITTLE WINDY CREEK.—The approxi-
17 mately 1.9 miles of Little Windy Creek from 0.1
18 miles downstream of road 34–8–36 to the confluence
19 with the Rogue River as a wild river.
20 "(I) HOWARD CREEK.—
21 "(i) The approximately 0.3 miles of How-
22 ard Creek from its headwaters to 0.1 miles
23 downstream of road 34–9–34 as a scenic river.
24 "(ii) The approximately 6.9 miles of How-
25 ard Creek from 0.1 miles downstream of road

34–9–34 to the confluence with the Rogue River as a wild river.

"(J) MULE CREEK.—The approximately 6.3 miles of Mule Creek from east section line of T32S, R10W, sec. 25, W.M. to the confluence with the Rogue River as a wild river.

"(K) ANNA CREEK.—The approximately 3.5-mile section of Anna Creek from its headwaters to the confluence with Howard Creek as a wild river.

"(L) MISSOURI CREEK.—The approximately 1.6 miles of Missouri Creek from the Wild Rogue Wilderness boundary in T33S, R10W, sec. 24, W.M. to the confluence with the Rogue River as a wild river.

"(M) JENNY CREEK.—The approximately 1.8 miles of Jenny Creek from the Wild Rogue Wilderness boundary in T33S, R9W, sec. 28, W.M. to the confluence with the Rogue River as a wild river.

"(N) RUM CREEK.—The approximately 2.2 miles of Rum Creek from the Wild Rogue Wilderness boundary in T34S, R8W, sec. 9, W.M. to the confluence with the Rogue River as a wild river.

"(O) EAST FORK RUM CREEK.—The approximately 1.5 miles of East Rum Creek from the Wild Rogue Wilderness boundary in T34S, R8W, sec. 10,

W.M. to the confluence with Rum Creek as a wild river.

"(P) WILDCAT CREEK.—The approximately 1.7-mile section of Wildcat Creek from its headwaters downstream to the confluence with the Rogue River as a wild river.

"(Q) MONTGOMERY CREEK.—The approximately 1.8-mile section of Montgomery Creek from its headwaters downstream to the confluence with the Rogue River as a wild river.

"(R) HEWITT CREEK.—The approximately 1.2 miles of Hewitt Creek from the Wild Rogue Wilderness boundary in T33S, R9W, sec. 19, W.M. to the confluence with the Rogue River as a wild river.

"(S) BUNKER CREEK.—The approximately 6.6 miles of Bunker Creek from its headwaters to the confluence with the Rogue River as a wild river.

"(T) DULOG CREEK.—

"(i) The approximately 0.8 miles of Dulog Creek from its headwaters to 0.1 miles downstream of road 34–8–36 as a scenic river.

"(ii) The approximately 1.0 miles of Dulog Creek from 0.1 miles downstream of road 34–8–36 to the confluence with the Rogue River as a wild river.

1 "(U) QUAIL CREEK.—The approximately 1.7
2 miles of Quail Creek from the Wild Rogue Wilder-
3 ness boundary in T33S, R10W, sec. 1, W.M. to the
4 confluence with the Rogue River as a wild river.
5 "(V) MEADOW CREEK.—The approximately 4.1
6 miles of Meadow Creek from its headwaters to the
7 confluence with the Rogue River as a wild river.
8 "(W) RUSSIAN CREEK.—The approximately 2.5
9 miles of Russian Creek from the Wild Rogue Wilder-
10 ness boundary in T33S, R8W, sec. 20, W.M. to the
11 confluence with the Rogue River as a wild river.
12 "(X) ALDER CREEK.—The approximately 1.2
13 miles of Alder Creek from its headwaters to the con-
14 fluence with the Rogue River as a wild river.
15 "(Y) BOOZE CREEK.—The approximately 1.5
16 miles of Booze Creek from its headwaters to the
17 confluence with the Rogue River as a wild river.
18 "(Z) BRONCO CREEK.—The approximately 1.8
19 miles of Bronco Creek from its headwaters to the
20 confluence with the Rogue River as a wild river.
21 "(AA) COPSEY CREEK.—The approximately 1.5
22 miles of Copsey Creek from its headwaters to the
23 confluence with the Rogue River as a wild river.

"(BB) CORRAL CREEK.—The approximately 0.5 miles of Corral Creek from its headwaters to the confluence with the Rogue River as a wild river.

"(CC) COWLEY CREEK.—The approximately 0.9 miles of Cowley Creek from its headwaters to the confluence with the Rogue River as a wild river.

"(DD) DITCH CREEK.—The approximately 1.8 miles of Ditch Creek from the Wild Rogue Wilderness boundary in T33S, R9W, sec. 5, W.M. to its confluence with the Rogue River as a wild river.

"(EE) FRANCIS CREEK.—The approximately 0.9 miles of Francis Creek from its headwaters to the confluence with the Rogue River as a wild river.

"(FF) LONG GULCH.—The approximately 1.1 miles of Long Gulch from the Wild Rogue Wilderness boundary in T33S, R10W, sec. 23, W.M. to the confluence with the Rogue River as a wild river.

"(GG) BAILEY CREEK.—The approximately 1.7 miles of Bailey Creek from the west section line of T34S, R8W, sec. 14, W.M. to the confluence of the Rogue River as a wild river.

"(HH) SHADY CREEK.—The approximately 0.7 miles of Shady Creek from its headwaters to the confluence with the Rogue River as a wild river.

"(II) SLIDE CREEK.—

"(i) The approximately 0.5-mile section of Slide Creek from its headwaters to 0.1 miles downstream from road 33–9–6 as a scenic river.

"(ii) The approximately 0.7-mile section of Slide Creek from 0.1 miles downstream of road 33–9–6 to the confluence with the Rogue River as a wild river.".

(b) MANAGEMENT.—All wild, scenic, and recreation classified segments designated by the amendment made by subsection (a) shall be managed as part of the Rogue Wild and Scenic River.

(c) WITHDRAWAL.—Subject to valid rights, the Federal land within the boundaries of the river segments designated by the amendment made by subsection (a) is withdrawn from all forms of—

(1) entry, appropriation, or disposal under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) disposition under all laws pertaining to mineral and geothermal leasing or mineral materials.

1 **SEC. 365. ADDITIONAL PROTECTIONS FOR ROGUE RIVER**
2 **TRIBUTARIES.**

3 (a) WITHDRAWAL.—Subject to valid rights, the Fed-
4 eral land within a quarter-mile on each side of the streams
5 listed in subsection (b) is withdrawn from all forms of—

6 (1) entry, appropriation, or disposal under the
7 public land laws;

8 (2) location, entry, and patent under the mining
9 laws; and

10 (3) disposition under all laws pertaining to min-
11 eral and geothermal leasing or mineral materials.

12 (b) STREAM SEGMENTS.—Subsection (a) applies the
13 following tributaries of the Rogue River:

14 (1) KELSEY CREEK.—The approximately 4.5
15 miles of Kelsey Creek from its headwaters to the
16 east section line of 32S 9W sec. 34.

17 (2) EAST FORK KELSEY CREEK.—The approxi-
18 mately .2 miles of East Fork Kelsey Creek from its
19 headwaters to the Wild Rogue Wilderness boundary
20 in 33S 8W sec. 5.

21 (3) EAST FORK WHISKY CREEK.—The approxi-
22 mately .7 miles of East Fork Whisky Creek from its
23 headwaters to the Wild Rogue Wilderness boundary
24 in 33S 8W section 11.

1 (4) LITTLE WINDY CREEK.—The approximately
2 1.2 miles of Little Windy Creek from its headwaters
3 to west section line of 33S 9W sec. 34.
4 (5) MULE CREEK.—The approximately 5.1
5 miles of Mule Creek from its headwaters to east sec-
6 tion line of 32S 10W sec. 25.
7 (6) MISSOURI CREEK.—The approximately 3.1
8 miles of Missouri Creek from its headwaters to the
9 Wild Rogue Wilderness boundary in 33S 10W sec.
10 24.
11 (7) JENNY CREEK.—The approximately 3.1
12 miles of Jenny Creek from its headwaters to the
13 Wild Rogue Wilderness boundary in 33S 9W sec.
14 28.
15 (8) RUM CREEK.—The approximately 2.2 miles
16 of Rum Creek from its headwaters to the Wild
17 Rogue Wilderness boundary in 34S 8W sec. 9.
18 (9) EAST FORK RUM CREEK.—The approxi-
19 mately .5 miles of East Fork Rum Creek from its
20 headwaters to the Wild Rogue Wilderness boundary
21 in 34S 8W sec. 10.
22 (10) HEWITT CREEK.—The approximately 1.4
23 miles of Hewitt Creek from its headwaters to the
24 Wild Rogue Wilderness boundary in 33S 9W sec.
25 19.

1 (11) QUAIL CREEK.—The approximately .8
2 miles of Quail Creek from its headwaters to the Wild
3 Rogue Wilderness boundary in 33S 10W sec. 1.
4 (12) RUSSIAN CREEK.—The approximately .1
5 miles of Russian Creek from its headwaters to the
6 Wild Rogue Wilderness boundary in 33S 8W sec.
7 20.
8 (13) DITCH CREEK.—The approximately .7
9 miles of Ditch Creek from its headwaters to the
10 Wild Rogue Wilderness boundary in 33S 9W sec. 5.
11 (14) LONG GULCH.—The approximately 1.4
12 miles of Long Gulch from its headwaters to the Wild
13 Rogue Wilderness boundary in 33S 10W sec. 23.
14 (15) BAILEY CREEK.—The approximately 1.4
15 miles of Bailey Creek from its headwaters to west
16 section line of 34S 8W sec. 14.
17 (16) QUARTZ CREEK.—The approximately 3.3
18 miles of Quartz Creek from its headwaters to its
19 confluence with the North Fork Galice Creek.
20 (17) NORTH FORK GALICE CREEK.—The ap-
21 proximately 5.7 miles of the North Fork Galice
22 Creek from its headwaters to its confluence with
23 Galice Creek.
24 (18) GRAVE CREEK.—The approximately 10.2
25 mile section of Grave Creek from the confluence of

1 Wolf Creek downstream to the confluence with the
2 Rogue River.
3 (19) CENTENNIAL GULCH.—The approximately
4 2.2 miles of Centennial Gulch from its headwaters to
5 its confluence with the Rogue River.

6 CHAPTER 3—ADDITIONAL PROTECTIONS

7 SEC. 371. LIMITATIONS ON LAND ACQUISITION.

8 (a) PROHIBITION ON USE OF CONDEMNATION.—The
9 Secretary of the Interior or the Secretary of Agriculture
10 may not acquire by condemnation any land or interest
11 within the boundaries of the river segments or wilderness
12 designated by this subtitle.
13 (b) LANDOWNER CONSENT REQUIRED.—Private or
14 non-Federal public property shall not be included within
15 the boundaries of the river segments or wilderness des-
16 ignated by this subtitle unless the owner of the property
17 has consented in writing to having that property included
18 in such boundaries.

19 SEC. 372. OVERFLIGHTS.

20 (a) IN GENERAL.—Nothing in this subtitle or the
21 Wilderness Act shall preclude low-level overflights and op-
22 erations of military aircraft, helicopters, missiles, or un-
23 manned aerial vehicles over the wilderness designated by
24 this subtitle, including military overflights and operations
25 that can be seen or heard within the wilderness.

(b) SPECIAL USE AIRSPACE AND TRAINING ROUTES.—Nothing in this subtitle or the Wilderness Act shall preclude the designation of new units of special use airspace, the expansion of existing units of special use airspace, or the use or establishment of military training routes over wilderness designated by this subtitle.

SEC. 373. BUFFER ZONES.

Nothing in this subtitle—

(1) establishes or authorizes the establishment of a protective perimeter or buffer zone around the boundaries of the river segments or wilderness designated by this subtitle; or

(2) precludes, limits, or restricts an activity from being conducted outside such boundaries, including an activity that can be seen or heard from within such boundaries.

SEC. 374. PREVENTION OF WILDFIRES.

The designation of a river segment or wilderness by this subtitle or the withdrawal of the Federal land under this subtitle shall not be construed to interfere with the authority of the Secretary of the Interior or the Secretary of Agriculture to authorize mechanical thinning of trees or underbrush to prevent or control the spread of wildfires, or conditions creating the risk of wildfire that threatens areas outside the boundary of the wilderness, or the use

of mechanized equipment for wildfire pre-suppression and suppression.

SEC. 375. LIMITATION ON DESIGNATION OF CERTAIN LANDS IN OREGON.

A national monument designation under the Act of June 8, 1906 (commonly known as the Antiquities Act; 16 U.S.C. 431 et seq.) within or on any portion of the Oregon and California Railroad Grant Lands or the O&C Region Public Domain lands, regardless of whether management authority over the lands are transferred to the O&C Trust pursuant to section 311(c)(1), the lands are excluded from the O&C Trust pursuant to section 311(c)(2), or the lands are transferred to the Forest Service under section 321, shall only be made pursuant to Congressional approval in an Act of Congress.

CHAPTER 4—EFFECTIVE DATE

SEC. 381. EFFECTIVE DATE.

(a) IN GENERAL.—This subtitle and the amendments made by this subtitle shall take effect on October 1 of the second fiscal year of the transition period.

(b) EXCEPTION.—If, as a result of judicial review authorized by section 312, any provision of subtitle A is held to be invalid and implementation of the provision or any activity conducted under the provision is enjoined, this subtitle and the amendments made by this subtitle shall

1 not take effect, or if the effective date specified in sub-
2 section (a) has already occurred, this subtitle shall have
3 no force and effect and the amendments made by this sub-
4 title are repealed.

5 **Subtitle D—Tribal Trust Lands**

6 **PART 1—COUNCIL CREEK LAND CONVEYANCE**

7 **SEC. 391. DEFINITIONS.**

8 In this part:

9 (1) COUNCIL CREEK LAND.—The term "Council
10 Creek land" means the approximately 17,519 acres
11 of land, as generally depicted on the map entitled
12 "Canyon Mountain Land Conveyance" and dated
13 June 27, 2013.

14 (2) TRIBE.—The term "Tribe" means the Cow
15 Creek Band of Umpqua Tribe of Indians.

16 **SEC. 392. CONVEYANCE.**

17 (a) IN GENERAL.—Subject to valid existing rights,
18 including rights-of-way, all right, title, and interest of the
19 United States in and to the Council Creek land, including
20 any improvements located on the land, appurtenances to
21 the land, and minerals on or in the land, including oil and
22 gas, shall be—

23 (1) held in trust by the United States for the
24 benefit of the Tribe; and

25 (2) part of the reservation of the Tribe.

1 (b) SURVEY.—Not later than one year after the date
2 of enactment of this Act, the Secretary of the Interior
3 shall complete a survey of the boundary lines to establish
4 the boundaries of the land taken into trust under sub-
5 section (a).

6 **SEC. 393. MAP AND LEGAL DESCRIPTION.**

7 (a) IN GENERAL.—As soon as practicable after the
8 date of enactment of this Act, the Secretary of the Interior
9 shall file a map and legal description of the Council Creek
10 land with—

11 (1) the Committee on Energy and Natural Re-
12 sources of the Senate; and

13 (2) the Committee on Natural Resources of the
14 House of Representatives.

15 (b) FORCE AND EFFECT.—The map and legal de-
16 scription filed under subsection (a) shall have the same
17 force and effect as if included in this subdivision, except
18 that the Secretary of the Interior may correct any clerical
19 or typographical errors in the map or legal description.

20 (c) PUBLIC AVAILABILITY.—The map and legal de-
21 scription filed under subsection (a) shall be on file and
22 available for public inspection in the Office of the Sec-
23 retary of the Interior.

1 **SEC. 394. ADMINISTRATION.**

2 (a) IN GENERAL.—Unless expressly provided in this
3 part, nothing in this part affects any right or claim of
4 the Tribe existing on the date of enactment of this Act
5 to any land or interest in land.

6 (b) PROHIBITIONS.—

7 (1) EXPORTS OF UNPROCESSED LOGS.—Fed-
8 eral law (including regulations) relating to the ex-
9 port of unprocessed logs harvested from Federal
10 land shall apply to any unprocessed logs that are
11 harvested from the Council Creek land.

12 (2) NON-PERMISSIBLE USE OF LAND.—Any real
13 property taken into trust under section 392 shall not
14 be eligible, or used, for any gaming activity carried
15 out under Public Law 100–497 (25 U.S.C. 2701 et
16 seq.).

17 (c) FOREST MANAGEMENT.—Any forest management
18 activity that is carried out on the Council Creek land shall
19 be managed in accordance with all applicable Federal
20 laws.

21 **PART 2—OREGON COASTAL LAND CONVEYANCE**

22 **SEC. 395. DEFINITIONS.**

23 In this part:

24 (1) OREGON COASTAL LAND.—The term "Or-
25 egon Coastal land" means the approximately 14,804
26 acres of land, as generally depicted on the map enti-

1 tled "Oregon Coastal Land Conveyance" and dated
2 March 5, 2013.
3 (2) CONFEDERATED TRIBES.—The term "Con-
4 federated Tribes" means the Confederated Tribes of
5 Coos, Lower Umpqua, and Siuslaw Indians.

6 **SEC. 396. CONVEYANCE.**

7 (a) IN GENERAL.—Subject to valid existing rights,
8 including rights-of-way, all right, title, and interest of the
9 United States in and to the Oregon Coastal land, includ-
10 ing any improvements located on the land, appurtenances
11 to the land, and minerals on or in the land, including oil
12 and gas, shall be—
13 (1) held in trust by the United States for the
14 benefit of the Confederated Tribes; and
15 (2) part of the reservation of the Confederated
16 Tribes.
17 (b) SURVEY.—Not later than one year after the date
18 of enactment of this Act, the Secretary of the Interior
19 shall complete a survey of the boundary lines to establish
20 the boundaries of the land taken into trust under sub-
21 section (a).

22 **SEC. 397. MAP AND LEGAL DESCRIPTION.**

23 (a) IN GENERAL.—As soon as practicable after the
24 date of enactment of this Act, the Secretary of the Interior

1 shall file a map and legal description of the Oregon Coast-
2 al land with—
3 (1) the Committee on Energy and Natural Re-
4 sources of the Senate; and
5 (2) the Committee on Natural Resources of the
6 House of Representatives.
7 (b) FORCE AND EFFECT.—The map and legal de-
8 scription filed under subsection (a) shall have the same
9 force and effect as if included in this subdivision, except
10 that the Secretary of the Interior may correct any clerical
11 or typographical errors in the map or legal description.
12 (c) PUBLIC AVAILABILITY.—The map and legal de-
13 scription filed under subsection (a) shall be on file and
14 available for public inspection in the Office of the Sec-
15 retary of the Interior.
16 **SEC. 398. ADMINISTRATION.**
17 (a) IN GENERAL.—Unless expressly provided in this
18 part, nothing in this part affects any right or claim of
19 the Consolidated Tribes existing on the date of enactment
20 of this Act to any land or interest in land.
21 (b) PROHIBITIONS.—
22 (1) EXPORTS OF UNPROCESSED LOGS.—Fed-
23 eral law (including regulations) relating to the ex-
24 port of unprocessed logs harvested from Federal

land shall apply to any unprocessed logs that are harvested from the Oregon Coastal land.

(2) NON-PERMISSIBLE USE OF LAND.—Any real property taken into trust under section 396 shall not be eligible, or used, for any gaming activity carried out under Public Law 100–497 (25 U.S.C. 2701 et seq.).

(c) FOREST MANAGEMENT.—Any forest management activity that is carried out on the Oregon Coastal land shall be managed in accordance with all applicable Federal laws.

TITLE IV—COMMUNITY FOREST MANAGEMENT DEMONSTRATION

SEC. 401. PURPOSE AND DEFINITIONS.

(a) PURPOSE.—The purpose of this title is to generate dependable economic activity for counties and local governments by establishing a demonstration program for local, sustainable forest management.

(b) DEFINITIONS.—In this title:

(1) ADVISORY COMMITTEE.—The term "Advisory Committee" means the Advisory Committee appointed by the Governor of a State for the community forest demonstration area established for the State.

(2) COMMUNITY FOREST DEMONSTRATION AREA.—The term "community forest demonstration area" means a community forest demonstration area established for a State under section 402.

(3) NATIONAL FOREST SYSTEM.—The term "National Forest System" has the meaning given that term in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a)), except that the term does not include the National Grasslands and land utilization projects designated as National Grasslands administered pursuant to the Act of July 22, 1937 (7 U.S.C. 1010–1012).

(4) SECRETARY.—The term "Secretary" means the Secretary of Agriculture or the designee of the Secretary of Agriculture.

(5) STATE.—The term "State" includes the Commonwealth of Puerto Rico.

SEC. 402. ESTABLISHMENT OF COMMUNITY FOREST DEMONSTRATION AREAS.

(a) ESTABLISHMENT REQUIRED; TIME FOR ESTABLISHMENT.—Subject to subsection (c) and not later than one year after the date of the enactment of this Act, the Secretary of Agriculture shall establish a community forest demonstration area at the request of the Advisory

1 Committee appointed to manage community forest dem-
2 onstration area land in that State.
3 (b) COVERED LAND.—
4 (1) INCLUSION OF NATIONAL FOREST SYSTEM
5 LAND.—The community forest demonstration areas
6 of a State shall consist of the National Forest Sys-
7 tem land in the State identified for inclusion by the
8 Advisory Committee of that State.
9 (2) EXCLUSION OF CERTAIN LAND.—A commu-
10 nity forest demonstration area shall not include Na-
11 tional Forest System land—
12 (A) that is a component of the National
13 Wilderness Preservation System;
14 (B) on which the removal of vegetation is
15 specifically prohibited by Federal statute;
16 (C) National Monuments; or
17 (D) over which administration jurisdiction
18 was first assumed by the Forest Service under
19 title III.
20 (c) CONDITIONS ON ESTABLISHMENT.—
21 (1) ACREAGE REQUIREMENT.—A community
22 forest demonstration area must include at least
23 200,000 acres of National Forest System land. If
24 the unit of the National Forest System in which a
25 community forest demonstration area is being estab-

lished contains more than 5,000,000 acres, the community forest demonstration area may include 900,000 or more acres of National Forest System land.

(2) MANAGEMENT LAW OR BEST MANAGEMENT PRACTICES REQUIREMENT.—A community forest demonstration area may be established in a State only if the State—

(A) has a forest practices law applicable to State or privately owned forest land in the State; or

(B) has established silvicultural best management practices or other regulations for forest management practices related to clean water, soil quality, wildlife or forest health.

(3) REVENUE SHARING REQUIREMENT.—As a condition of the inclusion in a community forest demonstration area of National Forest System land located in a particular county in a State, the county must enter into an agreement with the Governor of the State that requires that, in utilizing revenues received by the county under section 406(b), the county shall continue to meet any obligations under applicable State law as provided under title I of the Secure Rural Schools and Community Self-Deter-

1 mination Act of 2000 (16 U.S.C. 7111 et seq.) or
2 as provided in the sixth paragraph under the head-
3 ing "FOREST SERVICE" in the Act of May 23,
4 1908 (16 U.S.C. 500) and section 13 of the Act of
5 March 1, 1911 (16 U.S.C. 500).
6 (d) TREATMENT UNDER CERTAIN OTHER LAWS.—
7 National Forest System land included in a community for-
8 est demonstration area shall not be considered Federal
9 land for purposes of—
10 (1) making payments to counties under the
11 sixth paragraph under the heading "FOREST
12 SERVICE" in the Act of May 23, 1908 (16 U.S.C.
13 500) and section 13 of the Act of March 1, 1911
14 (16 U.S.C. 500); or
15 (2) title I.
16 (e) ACREAGE LIMITATION.—Not more than a total
17 of 4,000,000 acres of National Forest System land may
18 be established as community forest demonstration areas.
19 (f) RECOGNITION OF VALID AND EXISTING
20 RIGHTS.—Nothing in this title shall be construed to limit
21 or restrict—
22 (1) access to National Forest System land in-
23 cluded in a community forest demonstration area for
24 hunting, fishing, and other related purposes; or

1 (2) valid and existing rights regarding such Na-
2 tional Forest System land, including rights of any
3 federally recognized Indian tribe.

4 **SEC. 403. ADVISORY COMMITTEE.**

5 (a) APPOINTMENT.—A community forest demonstra-
6 tion area for a State shall be managed by an Advisory
7 Committee appointed by the Governor of the State.

8 (b) COMPOSITION.—The Advisory Committee for a
9 community forest demonstration area in a State shall in-
10 clude, but is not limited to, the following members:

11 (1) One member who holds county or local
12 elected office, appointed from each county or local
13 governmental unit in the State containing commu-
14 nity forest demonstration area land.

15 (2) One member who represents the commercial
16 timber, wood products, or milling industry.

17 (3) One member who represents persons hold-
18 ing Federal grazing or other land use permits.

19 (4) One member who represents recreational
20 users of National Forest System land.

21 (c) TERMS.—

22 (1) IN GENERAL.—Except in the case of certain
23 initial appointments required by paragraph (2),
24 members of an Advisory Committee shall serve for
25 a term of three years.

1 (2) INITIAL APPOINTMENTS.—In making initial
2 appointments to an Advisory Committee, the Gov-
3 ernor making the appointments shall stagger terms
4 so that at least one-third of the members will be re-
5 placed every three years.
6 (d) COMPENSATION.—Members of a Advisory Com-
7 mittee shall serve without pay, but may be reimbursed
8 from the funds made available for the management of a
9 community forest demonstration area for the actual and
10 necessary travel and subsistence expenses incurred by
11 members in the performance of their duties.

12 **SEC. 404. MANAGEMENT OF COMMUNITY FOREST DEM-**
13 **ONSTRATION AREAS.**

14 (a) ASSUMPTION OF MANAGEMENT.—
15 (1) CONFIRMATION.—The Advisory Committee
16 appointed for a community forest demonstration
17 area shall assume all management authority with re-
18 gard to the community forest demonstration area as
19 soon as the Secretary confirms that—
20 (A) the National Forest System land to be
21 included in the community forest demonstration
22 area meets the requirements of subsections (b)
23 and (c) of section 402;

1 (B) the Advisory Committee has been duly
2 appointed under section 403 and is able to con-
3 duct business; and
4 (C) provision has been made for essential
5 management services for the community forest
6 demonstration area.
7 (2) SCOPE AND TIME FOR CONFIRMATION.—
8 The determination of the Secretary under paragraph
9 (1) is limited to confirming whether the conditions
10 specified in subparagraphs (A) and (B) of such
11 paragraph have been satisfied. The Secretary shall
12 make the determination not later than 60 days after
13 the date of the appointment of the Advisory Com-
14 mittee.
15 (3) EFFECT OF FAILURE TO CONFIRM.—If the
16 Secretary determines that either or both conditions
17 specified in subparagraphs (A) and (B) of paragraph
18 (1) are not satisfied for confirmation of an Advisory
19 Committee, the Secretary shall—
20 (A) promptly notify the Governor of the af-
21 fected State and the Advisory Committee of the
22 reasons preventing confirmation; and
23 (B) make a new determination under para-
24 graph (2) within 60 days after receiving a new
25 request from the Advisory Committee that ad-

1 dresses the reasons that previously prevented
2 confirmation.
3 (b) MANAGEMENT RESPONSIBILITIES.—Upon as-
4 sumption of management of a community forest dem-
5 onstration area, the Advisory Committee for the commu-
6 nity forest demonstration area shall manage the land and
7 resources of the community forest demonstration area and
8 the occupancy and use thereof in conformity with this
9 title, and to the extent not in conflict with this title, the
10 laws and regulations applicable to management of State
11 or privately-owned forest lands in the State in which the
12 community forest demonstration area is located.
13 (c) APPLICABILITY OF OTHER FEDERAL LAWS.—
14 (1) IN GENERAL.—The administration and
15 management of a community forest demonstration
16 area, including implementing actions, shall not be
17 considered Federal action and shall be subject to the
18 following only to the extent that such laws apply to
19 the State or private administration and management
20 of forest lands in the State in which the community
21 forest demonstration area is located:
22 (A) The Federal Water Pollution Control
23 Act (33 U.S.C. 1251 note).
24 (B) The Clean Air Act (42 U.S.C. 7401 et
25 seq.).

1 (C) The Endangered Species Act of 1973
2 (16 U.S.C. 1531 et seq.).
3 (D) Federal laws and regulations gov-
4 erning procurement by Federal agencies.
5 (E) Except as provided in paragraph (2),
6 other Federal laws.
7 (2) APPLICABILITY OF NATIVE AMERICAN
8 GRAVES PROTECTION AND REPATRIATION ACT.—
9 Notwithstanding the assumption by an Advisory
10 Committee of management of a community forest
11 demonstration area, the Native American Graves
12 Protection and Repatriation Act (25 U.S.C. 3001 et
13 seq.) shall continue to apply to the National Forest
14 System land included in the community forest dem-
15 onstration area.
16 (d) CONSULTATION.—
17 (1) WITH INDIAN TRIBES.—The Advisory Com-
18 mittee for a community forest demonstration area
19 shall cooperate and consult with Indian tribes on
20 management policies and practices for the commu-
21 nity forest demonstration area that may affect the
22 Indian tribes. The Advisory Committee shall take
23 into consideration the use of lands within the com-
24 munity forest demonstration area for religious and
25 cultural uses by Native Americans.

1 (2) WITH COLLABORATIVE GROUPS.—The Advi-
2 sory Committee for a community forest demonstra-
3 tion area shall consult with any applicable forest col-
4 laborative group.
5 (e) RECREATION.—Nothing in this section shall af-
6 fect public use and recreation within a community forest
7 demonstration area.
8 (f) FIRE MANAGEMENT.—The Secretary shall pro-
9 vide fire presuppression, suppression, and rehabilitation
10 services on and with respect to a community forest dem-
11 onstration area to the same extent generally authorized
12 in other units of the National Forest System.
13 (g) PROHIBITION ON EXPORT.—As a condition on
14 the sale of timber or other forest products from a commu-
15 nity forest demonstration area, unprocessed timber har-
16 vested from a community forest demonstration area may
17 not be exported in accordance with subpart F of part 223
18 of title 36, Code of Federal Regulations.

19 **SEC. 405. DISTRIBUTION OF FUNDS FROM COMMUNITY**
20 **FOREST DEMONSTRATION AREA.**

21 (a) RETENTION OF FUNDS FOR MANAGEMENT.—The
22 Advisory Committee appointed for a community forest
23 demonstration area may retain such sums as the Advisory
24 Committee considers to be necessary from amounts gen-
25 erated from that community forest demonstration area to

1 fund the management, administration, restoration, oper-
2 ation and maintenance, improvement, repair, and related
3 expenses incurred with respect to the community forest
4 demonstration area.

5 (b) FUNDS TO COUNTIES OR LOCAL GOVERNMENTAL
6 UNITS.—Subject to subsection (a) and section 407, the
7 Advisory Committee for a community forest demonstra-
8 tion area in a State shall distribute funds generated from
9 that community forest demonstration area to each county
10 or local governmental unit in the State in an amount pro-
11 portional to the funds received by the county or local gov-
12 ernmental unit under title I of the Secure Rural Schools
13 and Community Self-Determination Act of 2000 (16
14 U.S.C. 7111 et seq.).

15 **SEC. 406. INITIAL FUNDING AUTHORITY.**

16 (a) FUNDING SOURCE.—Counties may use such sum
17 as the counties consider to be necessary from the amounts
18 made available to the counties under section 501 to pro-
19 vide initial funding for the management of community for-
20 est demonstration areas.

21 (b) NO RESTRICTION ON USE OF NON-FEDERAL
22 FUNDS.—Nothing in this title restricts the Advisory Com-
23 mittee of a community forest demonstration area from
24 seeking non-Federal loans or other non-Federal funds for
25 management of the community forest demonstration area.

SEC. 407. PAYMENTS TO UNITED STATES TREASURY.

(a) PAYMENT REQUIREMENT.—As soon as practicable after the end of the fiscal year in which a community forest demonstration area is established and as soon as practicable after the end of each subsequent fiscal year, the Advisory Committee for a community forest demonstration area shall make a payment to the United States Treasury.

(b) PAYMENT AMOUNT.—The payment for a fiscal year under subsection (a) with respect to a community forest demonstration area shall be equal to 75 percent of the quotient obtained by dividing—

(1) the number obtained by multiplying the number of acres of land in the community forest demonstration area by the average annual receipts generated over the preceding 10-fiscal year period from the unit or units of the National Forest System containing that community forest demonstration area; by

(2) the total acres of National Forest System land in that unit or units of the National Forest System.

SEC. 408. TERMINATION OF COMMUNITY FOREST DEMONSTRATION AREA.

(a) TERMINATION AUTHORITY.—Subject to approval by the Governor of the State, the Advisory Committee for

1 a community forest demonstration area may terminate the
2 community forest demonstration area by a unanimous
3 vote.

4 (b) EFFECT OF TERMINATION.—Upon termination of
5 a community forest demonstration area, the Secretary
6 shall immediately resume management of the National
7 Forest System land that had been included in the commu-
8 nity forest demonstration area, and the Advisory Com-
9 mittee shall be dissolved.

10 (c) TREATMENT OF UNDISTRIBUTED FUNDS.—Any
11 revenues from the terminated area that remain undistrib-
12 uted under section 405 more than 30 days after the date
13 of termination shall be deposited in the general fund of
14 the Treasury for use by the Forest Service in such
15 amounts as may be provided in advance in appropriation
16 Acts.

TITLE V—REAUTHORIZATION AND AMENDMENT OF EXISTING AUTHORITIES AND OTHER MATTERS

SEC. 501. EXTENSION OF SECURE RURAL SCHOOLS AND COMMUNITY SELF-DETERMINATION ACT OF 2000 PENDING FULL OPERATION OF FOREST RESERVE REVENUE AREAS.

(a) BENEFICIARY COUNTIES.—During the month of February 2015, the Secretary of Agriculture shall distribute to each beneficiary county (as defined in section 102(2)) a payment equal to the amount distributed to the beneficiary county for fiscal year 2010 under section 102(c)(1) of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7112(c)(1)).

(b) COUNTIES THAT WERE ELIGIBLE FOR DIRECT COUNTY PAYMENTS.—

(1) TOTAL AMOUNT AVAILABLE FOR PAYMENTS.—During the month of February 2015, the Secretary of the Interior shall distribute to all counties that received a payment for fiscal year 2010 under subsection (a)(2) of section 102 of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7112) payments in a total amount equal to the difference between—

(A) the total amount distributed to all such counties for fiscal year 2010 under subsection (c)(1) of such section; and

(B) $27,000,000.

(2) COUNTY SHARE.—From the total amount determined under paragraph (1), each county described in such paragraph shall receive, during the month of February 2015, an amount that bears the same proportion to the total amount made available under such paragraph as that county's payment for fiscal year 2010 under subsection (c)(1) of section 102 of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7112) bears to the total amount distributed to all such counties for fiscal year 2010 under such subsection.

(e) EFFECT ON 25-PERCENT AND 50-PERCENT PAYMENTS.—A county that receives a payment made under subsection (a) or (b) may not receive a 25-percent payment or 50-percent payment (as those terms are defined in section 3 of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7102)) for fiscal year 2015.

1 **SEC. 502. RESTORING ORIGINAL CALCULATION METHOD**
2 **FOR 25-PERCENT PAYMENTS.**

3 (a) AMENDMENT OF ACT OF MAY 23, 1908.—The
4 sixth paragraph under the heading "FOREST SERV-
5 ICE" in the Act of May 23, 1908 (16 U.S.C. 500) is
6 amended in the first sentence—

7 (1) by striking "the annual average of 25 per-
8 cent of all amounts received for the applicable fiscal
9 year and each of the preceding 6 fiscal years" and
10 inserting "25 percent of all amounts received for the
11 applicable fiscal year";

12 (2) by striking "said reserve" both places it ap-
13 pears and inserting "the national forest"; and

14 (3) by striking "forest reserve" both places it
15 appears and inserting "national forest".

16 (b) CONFORMING AMENDMENT TO WEEKS LAW.—
17 Section 13 of the Act of March 1, 1911 (commonly known
18 as the Weeks Law; 16 U.S.C. 500) is amended in the first
19 sentence by striking "the annual average of 25 percent
20 of all amounts received for the applicable fiscal year and
21 each of the preceding 6 fiscal years" and inserting "25
22 percent of all amounts received for the applicable fiscal
23 year".

SEC. 503. FOREST SERVICE AND BUREAU OF LAND MANAGEMENT GOOD-NEIGHBOR COOPERATION WITH STATES TO REDUCE WILDFIRE RISKS.

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE STATE.—The term "eligible State" means a State that contains National Forest System land or land under the jurisdiction of the Bureau of Land Management.

(2) SECRETARY.—The term "Secretary" means—

(A) the Secretary of Agriculture, with respect to National Forest System land; or

(B) the Secretary of the Interior, with respect to land under the jurisdiction of the Bureau of Land Management.

(3) STATE FORESTER.—The term "State forester" means the head of a State agency with jurisdiction over State forestry programs in an eligible State.

(b) COOPERATIVE AGREEMENTS AND CONTRACTS AUTHORIZED.—The Secretary may enter into a cooperative agreement or contract (including a sole source contract) with a State forester to authorize the State forester to provide the forest, rangeland, and watershed restoration, management, and protection services described in subsection (c) on National Forest System land or land

1 under the jurisdiction of the Bureau of Land Manage-
2 ment, as applicable, in the eligible State.
3 (c) AUTHORIZED SERVICES.—The forest, rangeland,
4 and watershed restoration, management, and protection
5 services referred to in subsection (b) include the conduct
6 of—
7 (1) activities to treat insect infected forests;
8 (2) activities to reduce hazardous fuels;
9 (3) activities involving commercial harvesting or
10 other mechanical vegetative treatments; or
11 (4) any other activities to restore or improve
12 forest, rangeland, and watershed health, including
13 fish and wildlife habitat.
14 (d) STATE AS AGENT.—Except as provided in sub-
15 section (g), a cooperative agreement or contract entered
16 into under subsection (b) may authorize the State forester
17 to serve as the agent for the Secretary in providing the
18 restoration, management, and protection services author-
19 ized under subsection (b).
20 (e) SUBCONTRACTS.—In accordance with applicable
21 contract procedures for the eligible State, a State forester
22 may enter into subcontracts to provide the restoration,
23 management, and protection services authorized under a
24 cooperative agreement or contract entered into under sub-
25 section (b).

1 (f) TIMBER SALES.—Subsections (d) and (g) of sec-
2 tion 14 of the National Forest Management Act of 1976
3 (16 U.S.C. 472a) shall not apply to services performed
4 under a cooperative agreement or contract entered into
5 under subsection (b).

6 (g) RETENTION OF NEPA RESPONSIBILITIES.—Any
7 decision required to be made under the National Environ-
8 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with
9 respect to any restoration, management, or protection
10 services to be provided under this section by a State for-
11 ester on National Forest System land or Bureau of Land
12 Management land, as applicable, shall not be delegated to
13 a State forester or any other officer or employee of the
14 eligible State.

15 (h) APPLICABLE LAW.—The restoration, manage-
16 ment, and protection services to be provided under this
17 section shall be carried out on a project-to-project basis
18 under existing authorities of the Forest Service or Bureau
19 of Land Management, as applicable.

20 **SEC. 504. TREATMENT AS SUPPLEMENTAL FUNDING.**

21 None of the funds made available to a beneficiary
22 county (as defined in section 102(2)) or other political
23 subdivision of a State under this subdivision shall be used
24 in lieu of or to otherwise offset State funding sources for
25 local schools, facilities, or educational purposes.

1 **SEC. 505. DEFINITION OF FIRE SUPPRESSION TO INCLUDE**
2 **CERTAIN RELATED ACTIVITIES.**

3 For purposes of utilizing amounts made available to
4 the Secretary of Agriculture or the Secretary of the Inte-
5 rior for fire suppression activities, including funds made
6 available from the FLAME Fund, the term "fire suppres-
7 sion" includes reforestation, site rehabilitation, salvage op-
8 erations, and replanting occurring following fire damage
9 on lands under the jurisdiction of the Secretary concerned
10 or following fire suppression efforts on such lands by the
11 Secretary concerned.

12 **SEC. 506. PROHIBITION ON CERTAIN ACTIONS REGARDING**
13 **FOREST SERVICE ROADS AND TRAILS.**

14 The Forest Service shall not remove or otherwise
15 eliminate or obliterate any legally created road or trail un-
16 less there has been a specific decision, which included ade-
17 quate and appropriate public involvement, to decommis-
18 sion the specific road or trail in question. The fact that
19 any road or trail is a not a Forest System road or trail,
20 or does not appear on a Motor Vehicle Use Map, shall
21 not constitute a decision.

SUBDIVISION B—NATIONAL STRATEGIC AND CRITICAL MINERALS PRODUCTION

SEC. 100. SHORT TITLE.

This subdivision may be cited as the "National Strategic and Critical Minerals Production Act of 2014".

SEC. 100A. FINDINGS.

Congress finds the following:

(1) The industrialization of China and India has driven demand for nonfuel mineral commodities, sparking a period of resource nationalism exemplified by China's reduction in exports of rare-earth elements necessary for telecommunications, military technologies, healthcare technologies, and conventional and renewable energy technologies.

(2) The availability of minerals and mineral materials are essential for economic growth, national security, technological innovation, and the manufacturing and agricultural supply chain.

(3) The exploration, production, processing, use, and recycling of minerals contribute significantly to the economic well-being, security and general welfare of the Nation.

(4) The United States has vast mineral resources, but is becoming increasingly dependent

1 upon foreign sources of these mineral materials, as
2 demonstrated by the following:
3 (A) Twenty-five years ago the United
4 States was dependent on foreign sources for 30
5 nonfuel mineral materials, 6 of which the
6 United States imported 100 percent of the Na-
7 tion's requirements, and for another 16 com-
8 modities the United States imported more than
9 60 percent of the Nation's needs.
10 (B) By 2011 the United States import de-
11 pendence for nonfuel mineral materials had
12 more than doubled from 30 to 67 commodities,
13 19 of which the United States imported 100
14 percent of the Nation's requirements, and for
15 another 24 commodities, imported more than
16 50 percent of the Nation's needs.
17 (C) The United States share of worldwide
18 mineral exploration dollars was 8 percent in
19 2011, down from 19 percent in the early 1990s.
20 (D) In the 2012 Ranking of Countries for
21 Mining Investment, out of 25 major mining
22 countries, the United States ranked last with
23 Papua New Guinea in permitting delays, and
24 towards the bottom regarding government take
25 and social issues affecting mining.

1 **SEC. 100B. DEFINITIONS.**

2 In this subdivision:

3 (1) STRATEGIC AND CRITICAL MINERALS.—The
4 term "strategic and critical minerals" means min-
5 erals that are necessary—

6 (A) for national defense and national secu-
7 rity requirements;

8 (B) for the Nation's energy infrastructure,
9 including pipelines, refining capacity, electrical
10 power generation and transmission, and renew-
11 able energy production;

12 (C) to support domestic manufacturing,
13 agriculture, housing, telecommunications,
14 healthcare, and transportation infrastructure;
15 or

16 (D) for the Nation's economic security and
17 balance of trade.

18 (2) AGENCY.—The term "agency" means any
19 agency, department, or other unit of Federal, State,
20 local, or tribal government, or Alaska Native Cor-
21 poration.

22 (3) MINERAL EXPLORATION OR MINE PER-
23 MIT.—The term "mineral exploration or mine per-
24 mit" includes plans of operation issued by the Bu-
25 reau of Land Management and the Forest Service

pursuant to 43 CFR 3809 and 36 CFR 228A or the authorities listed in 43 CFR 3503.13, respectively.

TITLE I—DEVELOPMENT OF DOMESTIC SOURCES OF STRATEGIC AND CRITICAL MINERALS

SEC. 101. IMPROVING DEVELOPMENT OF STRATEGIC AND CRITICAL MINERALS.

Domestic mines that will provide strategic and critical minerals shall be considered an "infrastructure project" as described in Presidential Order "Improving Performance of Federal Permitting and Review of Infrastructure Projects" dated March 22, 2012.

SEC. 102. RESPONSIBILITIES OF THE LEAD AGENCY.

(a) IN GENERAL.—The lead agency with responsibility for issuing a mineral exploration or mine permit shall appoint a project lead who shall coordinate and consult with cooperating agencies and any other agency involved in the permitting process, project proponents and contractors to ensure that agencies minimize delays, set and adhere to timelines and schedules for completion of the permitting process, set clear permitting goals and track progress against those goals.

(b) DETERMINATION UNDER NEPA.—To the extent that the National Environmental Policy Act of 1969 ap-

1 plies to any mineral exploration or mine permit, the lead
2 agency with responsibility for issuing a mineral explo-
3 ration or mine permit shall determine that the action to
4 approve the exploration or mine permit does not constitute
5 a major Federal action significantly affecting the quality
6 of the human environment within the meaning of the Na-
7 tional Environmental Policy Act of 1969 if the procedural
8 and substantive safeguards of the permitting process
9 alone, any applicable State permitting process alone, or
10 a combination of the two processes together provide an
11 adequate mechanism to ensure that environmental factors
12 are taken into account.

13 (c) COORDINATION ON PERMITTING PROCESS.—The
14 lead agency with responsibility for issuing a mineral explo-
15 ration or mine permit shall enhance government coordina-
16 tion for the permitting process by avoiding duplicative re-
17 views, minimizing paperwork and engaging other agencies
18 and stakeholders early in the process. The lead agency
19 shall consider the following best practices:

20 (1) Deferring to and relying upon baseline data,
21 analyses and reviews performed by State agencies
22 with jurisdiction over the proposed project.

23 (2) Conducting any consultations or reviews
24 concurrently rather than sequentially to the extent

1 practicable and when such concurrent review will ex-
2 pedite rather than delay a decision.
3 (d) SCHEDULE FOR PERMITTING PROCESS.—At the
4 request of a project proponent, the lead agency, cooper-
5 ating agencies and any other agencies involved with the
6 mineral exploration or mine permitting process shall enter
7 into an agreement with the project proponent that sets
8 time limits for each part of the permitting process includ-
9 ing the following:
10 (1) The decision on whether to prepare a docu-
11 ment required under the National Environmental
12 Policy Act of 1969.
13 (2) A determination of the scope of any docu-
14 ment required under the National Environmental
15 Policy Act of 1969.
16 (3) The scope of and schedule for the baseline
17 studies required to prepare a document required
18 under the National Environmental Policy Act of
19 1969.
20 (4) Preparation of any draft document required
21 under the National Environmental Policy Act of
22 1969.
23 (5) Preparation of a final document required
24 under the National Environmental Policy Act of
25 1969.

1 (6) Consultations required under applicable
2 laws.
3 (7) Submission and review of any comments re-
4 quired under applicable law.
5 (8) Publication of any public notices required
6 under applicable law.
7 (9) A final or any interim decisions.
8 (e) TIME LIMIT FOR PERMITTING PROCESS.—In no
9 case should the total review process described in sub-
10 section (d) exceed 30 months unless agreed to by the sig-
11 natories of the agreement.
12 (f) LIMITATION ON ADDRESSING PUBLIC COM-
13 MENTS.—The lead agency is not required to address agen-
14 cy or public comments that were not submitted during any
15 public comment periods or consultation periods provided
16 during the permitting process or as otherwise required by
17 law.
18 (g) FINANCIAL ASSURANCE.—The lead agency will
19 determine the amount of financial assurance for reclama-
20 tion of a mineral exploration or mining site, which must
21 cover the estimated cost if the lead agency were to con-
22 tract with a third party to reclaim the operations accord-
23 ing to the reclamation plan, including construction and
24 maintenance costs for any treatment facilities necessary
25 to meet Federal, State or tribal environmental standards.

1 (h) APPLICATION TO EXISTING PERMIT APPLICA-
2 TIONS.—This section shall apply with respect to a mineral
3 exploration or mine permit for which an application was
4 submitted before the date of the enactment of this Act
5 if the applicant for the permit submits a written request
6 to the lead agency for the permit. The lead agency shall
7 begin implementing this section with respect to such appli-
8 cation within 30 days after receiving such written request.
9 (i) STRATEGIC AND CRITICAL MINERALS WITHIN
10 NATIONAL FORESTS.—With respect to strategic and crit-
11 ical minerals within a federally administered unit of the
12 National Forest System, the lead agency shall—
13 (1) exempt all areas of identified mineral re-
14 sources in Land Use Designations, other than Non-
15 Development Land Use Designations, in existence as
16 of the date of the enactment of this Act from the
17 procedures detailed at and all rules promulgated
18 under part 294 of title 36, Code for Federal Regula-
19 tions;
20 (2) apply such exemption to all additional
21 routes and areas that the lead agency finds nec-
22 essary to facilitate the construction, operation, main-
23 tenance, and restoration of the areas of identified
24 mineral resources described in paragraph (1); and

1 (3) continue to apply such exemptions after ap-
2 proval of the Minerals Plan of Operations for the
3 unit of the National Forest System.

4 **SEC. 103. CONSERVATION OF THE RESOURCE.**

5 In evaluating and issuing any mineral exploration or
6 mine permit, the priority of the lead agency shall be to
7 maximize the development of the mineral resource, while
8 mitigating environmental impacts, so that more of the
9 mineral resource can be brought to the market place.

10 **SEC. 104. FEDERAL REGISTER PROCESS FOR MINERAL EX-**
11 **PLORATION AND MINING PROJECTS.**

12 (a) PREPARATION OF FEDERAL NOTICES FOR MIN-
13 ERAL EXPLORATION AND MINE DEVELOPMENT
14 PROJECTS.—The preparation of Federal Register notices
15 required by law associated with the issuance of a mineral
16 exploration or mine permit shall be delegated to the orga-
17 nization level within the agency responsible for issuing the
18 mineral exploration or mine permit. All Federal Register
19 notices regarding official document availability, announce-
20 ments of meetings, or notices of intent to undertake an
21 action shall be originated and transmitted to the Federal
22 Register from the office where documents are held, meet-
23 ings are held, or the activity is initiated.

24 (b) DEPARTMENTAL REVIEW OF FEDERAL REG-
25 ISTER NOTICES FOR MINERAL EXPLORATION AND MIN-

ING PROJECTS.—Absent any extraordinary circumstance or except as otherwise required by any Act of Congress, each Federal Register notice described in subsection (a) shall undergo any required reviews within the Department of the Interior or the Department of Agriculture and be published in its final form in the Federal Register no later than 30 days after its initial preparation.

TITLE II—JUDICIAL REVIEW OF AGENCY ACTIONS RELATING TO EXPLORATION AND MINE PERMITS

SEC. 201. DEFINITIONS FOR TITLE.

In this title the term "covered civil action" means a civil action against the Federal Government containing a claim under section 702 of title 5, United States Code, regarding agency action affecting a mineral exploration or mine permit.

SEC. 202. TIMELY FILINGS.

A covered civil action is barred unless filed no later than the end of the 60-day period beginning on the date of the final Federal agency action to which it relates.

SEC. 203. RIGHT TO INTERVENE.

The holder of any mineral exploration or mine permit may intervene as of right in any covered civil action by

a person affecting rights or obligations of the permit holder under the permit.

SEC. 204. EXPEDITION IN HEARING AND DETERMINING THE ACTION.

The court shall endeavor to hear and determine any covered civil action as expeditiously as possible.

SEC. 205. LIMITATION ON PROSPECTIVE RELIEF.

In a covered civil action, the court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of a legal requirement, and is the least intrusive means necessary to correct that violation.

SEC. 206. LIMITATION ON ATTORNEYS' FEES.

Sections 504 of title 5, United States Code, and 2412 of title 28, United States Code (together commonly called the Equal Access to Justice Act) do not apply to a covered civil action, nor shall any party in such a covered civil action receive payment from the Federal Government for their attorneys' fees, expenses, and other court costs.

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. SECRETARIAL ORDER NOT AFFECTED.

Nothing in this subdivision shall be construed as to affect any aspect of Secretarial Order 3324, issued by the

1 Secretary of the Interior on December 3, 2012, with re-
2 spect to potash and oil and gas operators.

Passed the House of Representatives September 18, 2014.

Attest: KAREN L. HAAS,
Clerk.

Calendar No. 597

113TH CONGRESS
2D SESSION

H. R. 4

AN ACT

To make revisions to Federal law to improve the conditions necessary for economic growth and job creation, and for other purposes.

NOVEMBER 13, 2014

Read the second time and placed on the calendar

113TH CONGRESS
2D SESSION

H. R. 5652

To provide for fiscal responsibility by the Federal Government through the use of accountability laws.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 18, 2014

Mr. RUIZ (for himself, Ms. KUSTER, Mr. MURPHY of Florida, Mr. SWALWELL of California, Ms. SINEMA, and Mr. GALLEGO) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Oversight and Government Reform 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

---

A BILL

To provide for fiscal responsibility by the Federal Government through the use of accountability laws.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fiscal Responsibility Using Government Accountability Laws Act of 2014" or the "FRUGAL Act".

SEC. 2. OFFSHORE TAX POLICIES ENFORCEMENT.

(a) DETERMINATION OF EXTENT OF TAXPAYER COMPLIANCE IN REPORTING ON FOREIGN ACCOUNTS.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Treasury Inspector General for Tax Administration shall—

(A) conduct an analysis designed to measure the extent to which taxpayers are reporting existing foreign accounts and circumventing the 2003 Offshore Voluntary Compliance Initiative, 2009 Offshore Voluntary Disclosure Program, 2011 Offshore Voluntary Disclosure Initiative, and 2012 Offshore Voluntary Disclosure Programs and the extent to which taxpayers are properly utilizing offshore voluntary disclosure initiatives, and

(B) submit a report to Congress based on the analysis.

(2) REPORT.—The report required by paragraph (1) shall—

(A) specify the extent to which taxpayers are circumventing offshore voluntary compliance initiatives and the amount of lost revenue as a result of such circumvention, and

(B) contain such recommendations as the Treasury Inspector General for Tax Adminis-

tration considers is necessary or appropriate for closing offshore tax loopholes and increasing revenue collection from offshore sources.

(b) INCREASE IN EDUCATIONAL OUTREACH CONCERNING TAXPAYER OFFSHORE TAX OBLIGATIONS.—

(1) IN GENERAL.—The Commissioner of Internal Revenue shall—

(A) improve targeting taxpayers with offshore accounts by determining how taxpayers learned about the offshore voluntary disclosure program and targeting outreach efforts about offshore account reporting requirements to recent immigrants, and

(B) use data gained from offshore programs—

(i) to identify taxpayers with unreported foreign accounts, and

(ii) to educate populations of taxpayers that might not be aware of their tax obligations related to offshore income filing requirements.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Commissioner of Internal Revenue shall submit a report to Congress describing how the Internal Revenue Service

will close offshore tax loopholes and containing recommendations for closing offshore tax loopholes and increasing revenue collection from offshore sources.

SEC. 3. REVERSE AUCTIONS IN GOVERNMENT CONTRACTING.

(a) REVISION OF FAR.—Not later than 180 days after the date of the enactment of this Act, the Federal Acquisition Regulation shall be revised to clarify the provisions relating to the use of reverse auctions by Federal agencies.

(b) GUIDELINES.—The revisions to the Federal Acquisition Regulation shall include guidelines for the most efficient use of reverse auctions, including guidelines for ensuring that reverse auctions uphold high quality standards and that small businesses can continue to participate in the procurement process.

(c) REVERSE AUCTION DEFINED.—In this section, the term "reverse auction", with respect to a procurement by a Federal agency, means a real-time auction conducted through an electronic medium by a group of offerors that compete against each other by submitting bids for a contract or a task or delivery order, with the ability to submit revised bids throughout the course of the auction, with award made to the offeror that submits the lowest bid.

SEC. 4. COIN INVENTORY MANAGEMENT PLAN AND REPORT.

(a) PLAN REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Board of Governors of the Federal Reserve System shall develop and implement a plan to reduce spending on coin inventory management.

(b) CONTENTS OF PLAN.—The plan required under subsection (a) shall—

(1) assess factors that have increased coin management costs;

(2) establish a process to separately monitor direct and indirect costs, including support costs, of coin management;

(3) establish goals and performance metrics related to coin management costs; and

(4) establish a process to systematically track, analyze, and revise forecasting models of coin orders.

(c) REPORT.—The Board of Governors shall submit to Congress a report on the plan that includes—

(1) a timeline for implementing each objective of the plan;

(2) a description of the accuracy of monthly forecasts of coin orders; and

(3) a description of cost effective coin management practices across Federal reserve banks.

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113TH CONGRESS
1ST SESSION

H. R. 436

To preserve open competition and Federal Government neutrality towards the labor relations of Federal Government contractors on Federal and federally funded construction projects.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 29, 2013

Mr. HARRIS (for himself, Mr. ADERHOLT, Mr. ALEXANDER, Mr. AMASH, Mr. AMODEI, Mrs. BACHMANN, Mr. BACHUS, Mr. BARTON, Mrs. BLACK, Mrs. BLACKBURN, Mr. BROOKS of Alabama, Mr. BROUN of Georgia, Mr. BUCSHON, Mr. BURGESS, Mr. CALVERT, Mr. COFFMAN, Mr. DESJARLAIS, Mr. DUNCAN of South Carolina, Mr. DUNCAN of Tennessee, Mr. FINCHER, Mr. FLEISCHMANN, Mr. FORTENBERRY, Mr. GARRETT, Mr. GOSAR, Mr. HARPER, Mr. HUELSKAMP, Mr. HUIZENGA of Michigan, Mr. HURT, Mr. JORDAN, Mr. KING of Iowa, Mr. LATTA, Mr. GARY G. MILLER of California, Mr. MILLER of Florida, Mr. MULVANEY, Mr. NEUGEBAUER, Mr. NUNNELEE, Mr. PALAZZO, Mr. PEARCE, Mr. POE of Texas, Mr. RIBBLE, Mr. ROE of Tennessee, Mr. ROSS, Mr. SCALISE, Mr. SENSENBRENNER, Mr. SESSIONS, Mr. SMITH of Texas, Mr. STIVERS, Mr. STUTZMAN, Mr. THOMPSON of Pennsylvania, Mr. THORNBERRY, Mr. WEBSTER of Florida, Mr. WESTMORELAND, Mr. WILSON of South Carolina, Mr. WOLF, Mr. WOMACK, and Mr. YOUNG of Indiana) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

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A BILL

To preserve open competition and Federal Government neutrality towards the labor relations of Federal Government contractors on Federal and federally funded construction projects.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Government Neutrality in Contracting Act".

SEC. 2. PURPOSES.

It is the purpose of this Act to—

(1) promote and ensure open competition on Federal and federally funded or assisted construction projects;

(2) maintain Federal Government neutrality towards the labor relations of Federal Government contractors on Federal and federally funded or assisted construction projects;

(3) reduce construction costs to the Federal Government and to the taxpayers;

(4) expand job opportunities, especially for small and disadvantaged businesses; and

(5) prevent discrimination against Federal Government contractors or their employees based upon labor affiliation or the lack thereof, thereby promoting the economical, nondiscriminatory, and efficient administration and completion of Federal and federally funded or assisted construction projects.

SEC. 3. PRESERVATION OF OPEN COMPETITION AND FEDERAL GOVERNMENT NEUTRALITY.

(a) PROHIBITION.—

(1) GENERAL RULE.—The head of each executive agency that awards any construction contract after the date of enactment of this Act, or that obligates funds pursuant to such a contract, shall ensure that the agency, and any construction manager acting on behalf of the Federal Government with respect to such contract, in its bid specifications, project agreements, or other controlling documents does not—

(A) require or prohibit a bidder, offeror, contractor, or subcontractor from entering into, or adhering to, agreements with 1 or more labor organizations, with respect to that construction project or another related construction project; or

(B) otherwise discriminate against or give preference to a bidder, offeror, contractor, or subcontractor because such bidder, offeror, contractor, or subcontractor—

(i) becomes a signatory, or otherwise adheres to, an agreement with 1 or more labor organizations with respect to that

construction project or another related construction project; or

(ii) refuses to become a signatory, or otherwise adhere to, an agreement with 1 or more labor organizations with respect to that construction project or another related construction project.

(2) APPLICATION OF PROHIBITION.—The provisions of this section shall not apply to contracts awarded prior to the date of enactment of this Act, and subcontracts awarded pursuant to such contracts regardless of the date of such subcontracts.

(3) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed to prohibit a contractor or subcontractor from voluntarily entering into an agreement described in such paragraph.

(b) RECIPIENTS OF GRANTS AND OTHER ASSISTANCE.—The head of each executive agency that awards grants, provides financial assistance, or enters into cooperative agreements for construction projects after the date of enactment of this Act, shall ensure that—

(1) the bid specifications, project agreements, or other controlling documents for such construction projects of a recipient of a grant or financial assistance, or by the parties to a cooperative agreement,

do not contain any of the requirements or prohibitions described in subparagraph (A) or (B) of subsection (a)(1); or

(2) the bid specifications, project agreements, or other controlling documents for such construction projects of a construction manager acting on behalf of a recipient or party described in paragraph (1), do not contain any of the requirements or prohibitions described in subparagraph (A) or (B) of subsection (a)(1).

(c) FAILURE TO COMPLY.—If an executive agency, a recipient of a grant or financial assistance from an executive agency, a party to a cooperative agreement with an executive agency, or a construction manager acting on behalf of such an agency, recipient or party, fails to comply with subsection (a) or (b), the head of the executive agency awarding the contract, grant, or assistance, or entering into the agreement, involved shall take such action, consistent with law, as the head of the agency determines to be appropriate.

(d) EXEMPTIONS.—

(1) IN GENERAL.—The head of an executive agency may exempt a particular project, contract, subcontract, grant, or cooperative agreement from the requirements of 1 or more of the provisions of

subsections (a) and (b) if the head of such agency determines that special circumstances exist that require an exemption in order to avert an imminent threat to public health or safety or to serve the national security.

(2) SPECIAL CIRCUMSTANCES.—For purposes of paragraph (1), a finding of "special circumstances" may not be based on the possibility or existence of a labor dispute concerning contractors or subcontractors that are nonsignatories to, or that otherwise do not adhere to, agreements with 1 or more labor organizations, or labor disputes concerning employees on the project who are not members of, or affiliated with, a labor organization.

(3) ADDITIONAL EXEMPTION FOR CERTAIN PROJECTS.—The head of an executive agency, upon application of an awarding authority, a recipient of grants or financial assistance, a party to a cooperative agreement, or a construction manager acting on behalf of any of such entities, may exempt a particular project from the requirements of any or all of the provisions of subsection (a) or (b), if the agency head finds—

(A) that the awarding authority, recipient of grants or financial assistance, party to a co-

operative agreement, or construction manager acting on behalf of any of such entities had issued or was a party to, as of the date of the enactment of this Act, bid specifications, project agreements, agreements with 1 or more labor organizations, or other controlling documents with respect to that particular project, which contained any of the requirements or prohibitions set forth in subsection (a)(1); and

(B) that 1 or more construction contracts subject to such requirements or prohibitions had been awarded as of the date of the enactment of this Act.

(e) FEDERAL ACQUISITION REGULATORY COUNCIL.—With respect to Federal contracts to which this section applies, not later than 60 days after the date of enactment of this Act, the Federal Acquisition Regulatory Council shall take appropriate action to amend the Federal Acquisition Regulation to implement the provisions of this section.

(f) DEFINITIONS.—In this section:

(1) CONSTRUCTION CONTRACT.—The term "construction contract" means any contract for the construction, rehabilitation, alteration, conversion,

1 extension, or repair of buildings, highways, or other
2 improvements to real property.
3 (2) EXECUTIVE AGENCY.—The term "executive
4 agency" has the meaning given such term in section
5 105 of title 5, United States Code, except that such
6 term shall not include the Government Account-
7 ability Office.
8 (3) LABOR ORGANIZATION.—The term "labor
9 organization" has the meaning given such term in
10 section 701(d) of the Civil Rights Act of 1964 (42
11 U.S.C. 2000e(d)).

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Mr. CROWLEY. We tried to get our colleagues on the other side of the aisle to see what they were doing. We told them it was a tax on working families. Mr. Ellis, even your boss, Grover Norquist, admitted as much in his letter he sent to Chairman Camp back in 2011, calling this a gross tax increase but then saying never mind. It is okay because it is tucked into a bigger bill. Every time, and they brought it back up repeatedly. We asked them to not put this burden on American families. What did we hear in response? Crickets. We heard nothing. Last summer right around the point that these same colleagues were beginning to change their tune to the so-called sympathy that is on display today, one of my colleagues on the other side of the aisle said that they had been told, and I quote, in a pretty loud tone that this would be a tax increase.

I think that was aimed at me. I, from time to time, use a bellowing Queens accent, and I am proud of it. Because you know what I will say is this; I will speak up in a pretty loud tone when my constituents and hardworking Americans across the country are being targeted for baseless attacks.

Mr. Ellis, I see that you are concerned about the, quote, liability the taxpayer will have at the time of tax filing. I share your concern, and that is why each of the numerous times my colleagues on the other side of the aisle tried to scale back or remove altogether protections for working families on how much they would have to pay back, I tried to stop it. Did your organization ever raise this concern to members of the majority? No. In fact, I have a letter here from your boss, as I mentioned earlier, to Mr. Camp reassuring him that your organization was okay with raising taxes on families as long as they also cut taxes and created loopholes for businesses. Your boss may be okay with raising taxes on individuals to cut them for businesses and industry, but my constituents

in Queens and in the Bronx are not okay with that. But maybe I am just using too loud a tone, and I yield back, Madam Chair.

Mrs. BLACK. The gentleman yields back. The gentleman from New York, Mr. Reed, is recognized.

Mr. REED. Thank you, Madam Chair. And being from New York, I don't share that Queens accent. I am from the real part of New York, the country lawyer section of New York. I thank the gentlemen, Mr. Crowley, from New York. His friendship has always been appreciated. I just want to bring this down to day-to-day folks, being that country lawyer from western New York and being an area that is very rural, and I can tell you I remember first getting out of college, getting out of law school, being with my wife, filling out my returns, filling out my tax returns, and, you know, I got a refund check. And like millions of Americans, you know, I got that refund check, and we did a little something with it. My wife and I would go on a trip for the weekend. We would maybe buy something, maybe a new stove or something like that that we needed around the house.

Just so I clearly understand what is going to happen here, and I get a lot of Americans aren't going to do this intentionally. It is not going to be done fraudulently. What is going to happen is someone is going to misreport their income, they will go to fill out their return, their 1040EZ just like I did with my wife, and they are going to get a notice saying you know what, that refund check that you thought you were going to be able to rely on that millions of Americans have grown accustomed to getting every year, they are not going to get it. Is that correct, Mr. Ellis?

Mr. ELLIS. It will at least be smaller because they are going to have to somehow some way, assuming their income is over a certain level, pay back any overage, yeah.

Mr. REED. So they get an excess credit, tax credit, premium support payment, something of that nature, and that is equal to the calculated refund that they would typically get in their tax refund check; they are not going to get that check. Is that fair to say?

Mr. ELLIS. Yes.

Mr. REED. That is going to happen. And that is where, Mr. Pollack, with all due respect, when you say this is much about nothing, I remember those days. I remember those days. And I know millions of Americans are going to be looking at that saying wait a second. I was going to take my kids on a vacation. I was going to take them maybe to the zoo or something like that and spend a weekend with their families. You say, you know, to us this is much about nothing.

Mr. POLLACK. That's not what I said.

Mr. REED. That was your testimony.

Mr. POLLACK. What I said, Mr. Reed—let's get it correct. What I said, Mr. Reed, is that the number of inaccuracies are going to be small, and that is much about very little. I didn't say——

Mr. REED. Sir, with all due respect, I don't appreciate you pointing at me, and I will tell you, you said much about nothing.

Mr. POLLACK. But you are misquoting what I was referring to.

Mr. REED. Why aren't we telling them about it? No one wants to talk about this. All my colleagues on the other side, if you want to stand with the law, I stand for the repeal of the law. I disagree

with it. Doesn't mean I don't care about Americans. I care about Americans. That is why I ran for this job. That is why I am doing this. If they want to stand with this law, why don't you tell Americans what is coming. Why don't you tell them what is coming down the pipeline. What is coming down the pipeline is Americans don't understand what this is going to do to them. What is going to happen in 2015, when they get that notice from the IRS? Are they going to say, oh, I should have seen that coming?

This is what my home State of New York did. The health exchange circulated a notice saying during the following year's tax season you are expected to pay back whatever actual amount you took in the form of health insurance subsidies that you weren't eligible for after your income change. Depending on your situation, this can be a huge amount of money. That is like buried on the health exchange. I can tell you, Americans are working hard, just like me and my wife were. So is this the best that we can do to warn Americans as to what is coming? Mr. Holtz-Eakin, I have a lot of respect for you. Is this the best we can do?

Mr. HOLTZ-EAKIN. No. I think there is a real place for an IRS taxpayer advocation effort in this regard. I think it has not happened so far and it would be time to get going.

Mr. REED. I have to also make a comment in response to my colleague from New York, that somehow by waiving this overpayment, and that is essentially what he is talking about. He is just saying we are going to just waive it. You don't have to pay it back. What kind of responsible leadership is that? They have developed a system. They have stood by a law that is potentially going to overpay taxpayer dollars to people, and the best solution they can offer is, well, what we are going to say is don't worry about paying it back. Well, someone's got to pay it. That is one of the things I am frustrated in Washington, D.C., about. This is taxpayer dollars. It is not free money. This is their money. Somehow it is their money that they can say wave their magic wand and say we are just not going to pay it back. We are going to waive it. Is that the responsible, sensible solution that you would recommend us to pursue when we deal with this situation in 2015, Mr. Holtz-Eakin?

Mr. HOLTZ-EAKIN. Absolutely not.

Mr. REED. That is why I am frustrated. I am frustrated, and this isn't much about nothing. This is a real problem. I am interested in solutions, but I am interested in responsible solutions that stand up for the hardworking taxpayer and not just say don't worry about it. We are not going to pay it back because your taxpayers are going pay it back. With that I yield back.

Mrs. BLACK. The gentleman's time is expired. The gentleman from Georgia, Mr. Price, is recognized.

Mr. PRICE. Thank you, Madam Chair. And I want to commend these two subcommittees and the committee for holding this hearing. I want to thank the witnesses, and I apologize for not being here earlier. I had a conflicting hearing. I want to draw attention to what title of this hearing is: Verification System For Income and Eligibility For Tax Credits Under the President's Healthcare Law. We are not talking about the health consequences of the healthcare law. As a physician we can go on and on about that. This is about the financial aspect of the healthcare law to real people. I want to

associate myself with Mr. Reed's remarks. This is real stuff for real people. We are going to be harmed in big, big ways. Not just on the healthcare side, but on the financial side personally as well.

Mr. Holtz-Eakin, I had a chance to read part of your testimony, and in your testimony you likened the ACA premium tax credits to the EITC, Earned Income Tax Credit. I wonder if you would explain how the two are the same and how the two are dissimilar?

Mr. HOLTZ-EAKIN. As I mentioned earlier, the EITC is a refundable credit, as are the premium tax credits from the ACA. They are based on family size and earnings in the same way that the ACA has subsidies up to 400 percent of the Federal poverty line, different amount, bigger for lower income individuals. The key difference is that is where the EITC stops. It is based strictly on the household's tax return, and you could do it based on that information. To fully implement the ACA, you need to have employer information as well, particularly the offer of affordable insurance or not, the value of that insurance, and its characteristics. It is a much more complicated system than the EITC for that reason. The matching that will go into multiple employers during a single year, different work hours, all of that complexity will become clear as time passes.

Mr. PRICE. And the error rate in the EITC is, I think, 1 in 5, or about 20 percent?

Mr. HOLTZ-EAKIN. In the ballpark of 20, 23 percent, somewhere in that range.

Mr. PRICE. So you have got a system that is much more complicated than the EITC. We already see how the Federal Government is doing on an error rate for the EITC, which is a simpler system at 20 percent; so what would you estimate the error rate to be for this verification system?

Mr. HOLTZ-EAKIN. We have no track record, so I think it is always important to be conservative. So if you apply the 20-odd percent to the $700 trillion of insurance subsidies, you are looking at $200 billion, something in that range.

Mr. PRICE. Hundreds of billions of dollars.

Mr. HOLTZ-EAKIN. Yes.

Mr. PRICE. And, of course, the systems are set up already to verify the income eligibility and the like, are they not, or the ACA, the subsidies?

Mr. HOLTZ-EAKIN. No.

Mr. PRICE. The systems aren't set up?

Mr. HOLTZ-EAKIN. No, sir.

Mr. PRICE. So we have already started this program. We have got an error rate on a program that is similar in some ways of 20 percent; and the systems aren't even set up to provide the income and eligibility verification?

Mr. HOLTZ-EAKIN. Again, I think there is going to be two very big sets of problems that are different. One is the fundamental character of the system, which we have talked about. The second is next year, and the startup when information sharing is incomplete, the employers are not yet required to provide information, and the taxpayers are not yet understanding their obligations under the new law.

Mr. PRICE. So let me take it in a little different direction, if I may. I serve on the Budget Committee as well. This appears to be a huge potential liability to the budget itself, does it not?

Mr. HOLTZ-EAKIN. Yes.

Mr. PRICE. So the amount of money that is projected to have been required to be spent by the American taxpayers to fund this program may, in fact, be expanding significantly; is that correct?

Mr. HOLTZ-EAKIN. That is a concern, yes, sir.

Mr. PRICE. And any quantification of that? Any way to know how much that would be?

Mr. HOLTZ-EAKIN. Well, I mean, the 20 percent error rate is the best estimate that we have at the moment. From your time on the Budget Committee you know that in systems of this type, and the two other great examples are the EITC and then in Medicare where we have set up a system of pay and then go find inappropriate payments. Those estimates are on the order of 10 percent, 60, $80 billion a year. So $800 billion over 10 years. You start adding up $800 billion there, $200 billion here, another, you know, $100 billion out of EITC, you can make significant progress on some of our problems.

Mr. PRICE. So at a time when we continue to run significant deficits, at a time when we have an overall debt for the country of over $17.5 trillion, the spending increases in Washington continue, we have got a program in front of us where we don't even have the systems in place that will continue to add to the national debt?

Mr. HOLTZ-EAKIN. The decision has been made to add to the national debt. My hope is that we would run it efficiently enough to keep it as small as possible.

Mr. PRICE. Mr. Ellis and Mr. Skarlatos, I wonder if in my brief seconds remaining, what tools does the IRS have to provide income and eligibility verification set up right now for this, Mr. Ellis?

Mr. ELLIS. That is still not clear at this point in the middle part of the year. To the extent that they do it retroactively, it is going to have to use the W-2 system, and that is going to have to be a lag system because as you know that goes to the Social Security Administration first. So that remains to be seen.

Mr. SKARLATOS. I am not aware of any other tools, sir.

Mr. PRICE. Sounds like a real headache, Madam Chair. Thank you.

Mrs. BLACK. The gentleman's time has expired. Mr. Pascrell from New Jersey is recognized.

Mr. PASCRELL. Now here is the real headache. Let me tell you what the real headache is. You are sitting over there and talking about taxpayers and liability when you just voted on $600 billion, $600 billion in tax relief which is unpaid for. You got a problem. You got a serious problem, and it is not just inconsistency. So I have heard the term "inconsistency," and I have heard the term "premium tax credits" over and over again. Mr. Pollack, you have some friends here. I have heard that over and over again. Here is the problem. Flashback like they do on television at a sporting event, flashback 10 years ago. The Prescription Drug Bill. Do you remember that, Mr. Pollack?

Mr. POLLACK. I do.

Mr. PASCRELL. Do all of you remember that? Mr. Ellis, do you remember it?

Mr. ELLIS. Absolutely.

Mr. PASCRELL. Good. Then you will follow what I am saying. Do you remember what happened in the passage of that bill? Democrats, for the most part, did not accept it, voted against it. We were here until 3:00, 4:00 in the morning, if you will remember that. It passed. And what did Democrats do after the passage? Democrats, after the passage, went back to their districts—I will speak for myself—went to towns which were not Democratic, spoke so the seniors about, yes, I was against this, but now we have to make it work. Here is the equalizer. And you don't understand it. Here is the equalizer, Mr. Ellis.

Instead of sour grapes and instead of burying our heads in the sand, we said we only have one country here. We have been talking about helping seniors out with the prescription drug plan, Plan D, for a long time, and while it wasn't the plan that I voted for—I voted against it—we got to make it work. Here is how it works. Here is how you register for it. Here is how you get involved.

In fact, it was so terrible, talk about a rollout. You guys got short memories. You really do. You really do. You got a major problem here. Not only was it a poor rollout, but you had to depend upon the States to bail you out of the plan, to make it work. The States had to come up with the money.

Mr. PASCRELL. That is only 10 years ago. I am not talking about ancient history. I am talking about the United States of America 10 years ago.

Mr. Pollack, let me ask you this question. This is especially interesting. We have twice tried to repeal a provision in the ACA, the Affordable Care Act, that would place limits on the premium tax credit reconciliation, once as a way to pay for the repeal of the medical device tax and another to pay for the Republican plan to replace defense sequestration cuts.

Mr. Pollack, can you discuss the impact that repealing this provision, the one we are talking about today, would have on consumers?

Mr. POLLACK. Well, there really is an irony. I have heard from on both sides of the aisle concern that people may have a liability in April of 2015 and that liability, mind you, is most likely to come not because of an error, it is more likely to occur because there have been changes of circumstances over the course of this calendar year that were unpredictable. Somebody got a raise, somebody got a bonus, somebody had more overtime pay. And I challenge us on both sides of the aisle, let's work to try and ease the difficulties that people will experience, who provided information with no errors, no fraud, but changes occurred.

And for those changes that occurred where somebody was conscientious, let's try and ease the burden of reconciliation. Let's go in the opposite direction and I think that makes a great deal of sense. It reflects the concerns that people expressed on both sides of the aisle, and I hope this is something we can do in a bipartisan way.

But in response to your question, if we eliminate the protections, particularly for lower income folks, it is going to mean they are going to experience significant hardship.

Mr. PASCRELL. Mr. Eakin—can I have a quick question of Mr. Eakin?

Mrs. BLACK. Your time has expired.

Mr. PASCRELL. What is time?

Mrs. BLACK. I would like to now ask Ms. Mahoney and Mr. Holtz-Eakin a question.

During the regulatory writing process, the E-FLEX Coalition, made a specific recommendation to the administration of the tax credits, to make the tax credits more accurate, and this is what they suggested, and I am going to quote, "giving employers the option of prospectively filing information with the IRS about coverage available to employees through an annual certification process." Their letter went on to say that "we believe that this is in the collective best interests of individual Americans, employers and the administration to ensure that the accuracy of such upfront determinations to avoid subjecting individuals to unexpected repayments of tax credits for which exchanges incorrectly deemed them to be eligible."

Now, the Treasury rejected this recommendation. Do you believe that was a mistake and should be revisited, and further, would it help employers and would it help more accurately administer the tax credits if this were put into place? Ms. Mahoney?

Ms. MAHONEY. Thank you. I have very high regard for the members of the E-FLEX Coalition and their efforts. We are not a member of that coalition, but I would imagine that proposals that they put forth have viability and value to different types of employers. Again, it is a coalition that focuses on a certain segment of types of employers, and we continue to believe that there are a variety of different scenarios that employers are looking at and need a variety of different solutions.

Mrs. BLACK. Mr. Holtz-Eakin, do you have an opinion on that?

Mr. HOLTZ-EAKIN. I have no great detail of the specifics. It sounds like the kind of approach that says let's give prior approval before you start sending out payments. There is a lot of merit to those kinds of situations. You can always do audits and other checks to make sure that it has been done in good faith on a regular basis and see how that system works.

Mrs. BLACK. Thank you for that.

Mr. Holtz-Eakin, I want to ask you, do you know how much taxpayer funds that we estimate are being issued every month without a verification system in place? Do you have an idea about that?

Mr. HOLTZ-EAKIN. Off the top of my head, no, but I would be happy to get a number for you.

Mrs. BLACK. Okay. Well, on the estimated number that I have seen in some of the reports is $10 billion a month, $10 billion a month and I might say that when this law was initiated, there were two major planks to this law: one is that if someone did not have employer insurance, that they would be eligible for the exchanges and the subsidies, and two, that they would also have to have verification of their income to ensure that whatever those subsidies were accurate.

We have now seen, this was the law, that neither one of these really is in place. One, the employer mandate has now been delayed until 2016. So there is really not a way other than attestation to say that someone does not have employer-sponsored insurance or that what is employer-sponsored insurance that they are unable to afford; and, two, we see a verification system that is not properly in place, yet we have been told by this administration on several occasions and the attestment of the Secretary of HHS as of the first of last year that there were—or first of this year that this verification process was in place.

We now see that either they were incompetent in believing that it was, or we see that perhaps that was a malicious statement to convince us to just get off their backs. Regardless, it is clear that the implementation of the President's health care law under this administration is harming Americans, we have heard that today, placing billions of taxpayer dollars at risk as well.

Now that we know that 1.2 million applicants have inconsistencies on their basis of income, it is time that we put a temporary halt to the issuance of these taxpayer-funded subsidies until HHS can get their act together.

And I specifically want to say that there is a bill out there, a bill that I have offered, H.R. 4805, the No Subsidies Without Verification. It was passed originally by the House and not taken up in the Senate and I do believe if we were to put a stop on this right now, it would protect taxpayers from getting a tax bill that they did not expect.

In addition to that, it would also protect the American taxpayer from subsidies that were inappropriately given to folks either inappropriately because the verification wasn't in place or because there was fraud.

I want to just ask one last question of Mr. Holtz-Eakin, because I know that you have certainly been in the forefront of Government and the monetary piece of what we do here at the government level. What have you seen in other programs where there potentially were fraudulent dollars given out, and in specific in programs like the EITC? Can you tell us what you have seen in the past about when those dollars are fraudulently given out, how much of that money is ever brought back into the Treasury?

Mr. HOLTZ-EAKIN. It is very difficult to recapture funds once they have been inappropriately paid, and the things that have happened with EITC, for example, is it is a refundable credit but there were also efforts to make it advanceable, arrive on a monthly basis. Those proved to be fraught with even more in the way of payment errors and the potential for fraud.

Again, if you look at the Affordable Care Act, its basic intent is to identify, out of 310 million Americans, those who are eligible for subsidies, calculate the subsidy correctly, deliver it in advance each month to the exchange in the state of the residence and the insurance company that has the plan of their choice. It is an extraordinarily difficult task in the best of circumstances, and it will be difficult to do well.

Mrs. BLACK. Thank you very much.

I also want to thank all of our witnesses for their testimony today, and I appreciate their continued assistance in getting an-

swers to the questions that were asked here at committee that you may not have had time to answer.

As a reminder, any member wishing to submit a question for the record will have 14 days to do so. If any questions are submitted, I ask that the witness respond in a timely manner.

Mrs. BLACK. With that, this subcommittee is adjourned.

[Whereupon, at 12:43 p.m., the subcommittees were adjourned.]

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